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Strasbourg, 13 August 2021

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Drafting Committee
on Migrant Women (GEC-MIG)

**Draft Recommendation on protecting the rights of migrant,
refugee and asylum-seeking women**

Internal and external consultation 04.06.2021- 16.07.2021

Compilation of the proposed amendments

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AUSTRIA

Eva FEHRINGER

02/07/2021



Strasbourg, 4 June 2021

GEC-MIG (2021) 3 rev 1

GENERAL REMARK:

It should also be pointed out that the Draft Recommendation does not make a consistent distinction between irregular and legal migration (see, for example, Op. Clause 8). It would be desirable for this distinction to be even more pronounced.

The areas of "Legal Migration / Citizenship" should be left to the full discretion of the MS (OP 57, 68).

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

**Draft Recommendation on protecting the rights of migrant, refugee
and asylum-seeking women**

Working document in view of the internal and external consultation

04.06.2021- 16.07.2021

Draft Recommendation on protecting the rights of migrant, refugee, asylum-seeking women and girls

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 equality¹ 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. 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;
5. 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), and notably its strategic objective to identify and address vulnerabilities throughout asylum and migration procedures;
6. Bearing in mind the obligations and commitments undertaken by states, including 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 (CETS No. 126, 1987); 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);
7. 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

¹ Gender equality entails equal rights for women and men, girls and boys as well as the same visibility, empowerment, responsibility, and participation in all spheres of public and private life. It also implies equal access to and distribution of resources between women and men. (Council of Europe Gender Equality Strategy 2018-2023).

preventing and combating sexism; 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;

8. Recalling the United Nations Convention Relating to the Status of Refugees (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); 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. Noting 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); CEDAW General Recommendation No. 35 on gender-based violence against women; CEDAW Recommendation No.38 on trafficking in women and girls in the context of global migration (2020); as well as 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 human beings, 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. Bearing in mind the importance of the overall application and impact of the United Nations 2030 Agenda for Sustainable Development, in particular Sustainable Development Goal 5 ("Achieve gender equality and empower all women and girls"); Sustainable Development Goal 10.7 ("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");
12. 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;
13. Acknowledging the positive contribution that migrant, refugee and asylum-seeking women and girls may bring to European societies and communities;

14. Considering the profound changes in migration patterns and in the situation of migrant, refugee and asylum-seeking women and girls, the fact that their numbers have reached the highest ever in the 2010's and the significant developments in gender equality-, migration- and asylum-related concepts, policies and legal instruments at all levels;
15. Recognising that while existing international human rights standards apply to all persons, and bearing in mind the possible differences in legal status of the persons concerned, 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;
16. Underlining that women are exposed to a continuum of violence that is specific to them because they are women, or which affects them disproportionately, and that such violence is, in this sense, gender-based; recognising with grave concern, that migrant, refugee and asylum-seeking women and girls are particularly exposed to such forms of violence and exploitation in their countries of origin, during their journey, in transit and/or in destination countries, which may constitute a serious violation of their human rights, especially as migrant, refugee and asylum-seeking women and girls face difficulties and structural barriers in overcoming such violence and exploitation in their diverse forms;
17. 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 including, as appropriate, migrant Roma and Traveller women and girls.
18. Aware of the multiple and intersecting barriers that migrant, refugee and asylum-seeking women and girls face in terms of access to and exercise of rights, access to services, participation and leadership and of the need to facilitate their integration and full participation in the economic, social, civic, political and cultural life;
19. Wishing therefore to review and update its Recommendation No. R(79)10 to member States on women migrants, henceforth replaced by the present instrument;
20. Recommends that the governments of member States:
 1. Take all necessary measures to promote and apply the principles set out in the Recommendation and its appendix, aimed at ensuring that migrant, refugee and asylum-seeking women and girls can effectively access and exercise their rights;

Commented [FE1]: Unclear notion should be deleted

Commented [FE2]: Delete the part from including to girls. There is no distinction because of ethnic origin to be made.

AUSTRIA

Eva FEHRINGER

02/07/2021

2. Ensure, by appropriate means and action, including where appropriate translation, a wide dissemination (in accessible formats) of this Recommendation among relevant authorities and stakeholders, which are encouraged to take measures to implement it;
3. Examine periodically, within the competent Council of Europe steering committee(s) and bodies, the measures taken, 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 live in another, including citizens of Council of Europe member States with a migrant background, and stateless women and girls.

'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 migrant, refugee and asylum-seeking women and girls do not face discrimination on any ground.
3. Member States should apply an intersectional approach in all measures referred to in this Appendix, notably bearing in mind the different situations and individual characteristics of migrant, refugee and asylum-seeking women and girls.
4. Measures should be established to safeguard the fundamental rights of undocumented migrants and facilitate their access to essential services including, at a minimum, protection and complaint mechanisms and all support services for victims of violence against women and trafficking in human beings, without fearing any reporting to migration authorities.
5. Within both migrant and host countries and communities, member States should:
 - 5.1. pay special attention to measures aimed at dismantling all forms of stereotypes which have a negative impact on the rights of migrant, refugee and asylum-seeking women and girls;

- 5.2. implement awareness-raising and educational measures in respect of gender equality and human rights to promote dialogue.

Girls

6. Member States should adopt a child rights-based approach to migrant, refugee and asylum-seeking children, which takes account of the age and specific situations and needs of girls, including ensuring suitable and safe alternative care arrangements when they are separated from their parents or caregiver 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 migrant, refugee and asylum-seeking girls to support their transition to adulthood beyond the age of 18, including access to education and healthcare, as well as support for their integration and social participation.

Commented [FE3]: What is meant with this notion? Definition is needed,

Information, empowerment, awareness raising and promotion of human rights

9. To empower migrant, refugee and asylum-seeking women and girls and enable them to access their rights, they should be provided with relevant and accessible information and advice in a way and a language that they understand, covering, at least:
- 9.1 Their fundamental human rights 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 violence or other violations of rights by State authorities or private contractors acting on behalf of the State, including rights to civil remedies and compensation;
- 9.3 Protection services available in the host country against all forms of violence against women and trafficking in human beings, including access to general and specific support services, specialist support provided by NGOs and legal aid;

Commented [FE4]: See comment on Chapter Access to Justice

Available and accessible public services in the host country, notably healthcare
[Recommendations points 9.4 and 74](#)

[The target group for measures for social and economic integration in Austria according to Austria's National Action Plan of Integration and the Integration Act are persons who are entitled to permanent residence. This includes persons entitled to asylum, persons entitled to subsidiary protection and third-country nationals who are legally established. While people who are at the stage of an open asylum procedure are only entitled to stay for the duration of this procedure. Integration assistance in the form of German courses can only be granted to asylum seekers under the condition of Asylum Act Section 68 Para 2.](#)

Commented [FE5]:

9.4 including (where applicable and according to national law and practice) mental and sexual and reproductive health and rights, comprehensive sexuality education, psycho-social support, education, language and digital training, vocational training, integration programmes, housing and employment.

10. Member States should provide resources and tools for the empowerment and support of migrant, refugee and asylum-seeking women and girls, based on their needs and personal characteristics, in order for them to benefit to as great an extent possible from the social services and welfare available.

Commented [FE6]: What is meant? Add after provide "where appropriate"

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

Access to justice including legal aid

12. According to national law and practice Migrant, refugee and asylum-seeking women and girls should have access to the different national and international civil, administrative, and criminal remedies, as well as legal aid, to effectively exercise their rights and/or take action in cases of non-compliance with those rights.

Commented [FE7]: The whole para has to be reformulated: especially since there is basically no legal right to legal assistance / legal advice in the ongoing first instance proceedings before the BFA in Austria. SO we propose to add: according to national law and practice in Point 13-14

13. According to national law and practice Member States should ensure that refugee and asylum-seeking women and girls receive adequate support as claimants, defendants, or witnesses throughout civil, administrative, or criminal proceedings.

In open proceedings in the area of responsibility of the Federal Office, foreigners can be granted free legal advice according to the factual possibilities (Section 49 (1) BFA-VG). With the exception of unaccompanied minors and interviews before the BFA within 72 hours, there is no legal entitlement to legal advice.
A legal claim only exists in the complaint procedure before the Federal Administrative Court.

14. According to national law and practice An intersectional and gender-sensitive approach to individual migrant, refugee and asylum-seeking women and girls should be adopted when determining/assessing their credibility in civil, administrative, and criminal proceedings, particularly where decisions have an impact on their legal status.

See also the requirements under Union law: Granting of free legal advice and representation in appeal proceedings (Art. 20 (1) Procedural Directive, Art. 26 (2) Admission Directive).

Might be useful to include according to national law and practice

Artificial intelligence, automated decision-making, and data protection

15. 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.

Commented [FE8]: Unclear notion, should be deleted

16. 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:

16.1 border and immigration control decision-making, including decisions relating to entry or return;

16.2 migration management, including the use of biometric information, such as DNA testing

16.3 policing and security of migrant, refugee and asylum-seeking women and girls, and services related to protection and prevention of crimes;

16.4 the provision of services to migrant, refugee and asylum-seeking women and girls.

17. Migrant, refugee and asylum-seeking women and relevant civil society organisations should be given the opportunity to participate in discussions and decision-making around the development and deployment of new technologies affecting them.

18. Bearing in mind the particular situations of vulnerability of migrant, refugee and asylum-seeking women and girls, relevant authorities should:

18.1 ensure the confidentiality and security of personal data in accordance with their national legislation and applicable international obligations;

18.2 not transfer any such data to the country of origin without explaining to the affected person, in a language that they understand, which data is being transferred and under which conditions, including providing the affected person the opportunity to object.

Commented [FE9]: Delete 18.2. it is too far reaching and not in line with EU Law

Co-operation with civil society

19. Member States should co-operate with and support migrant and refugee women's organisations, women's rights organisations and other civil society organisations that uphold the universal human rights of migrant and refugee and asylum-seeking women and girls, and that defend and empower them.

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

Commented [FE10]: Delete 20. In rule of law based democracies the law is set by democratically elected parliaments and not by private actors.

Data collection, research and monitoring

21. Member States should support the collection of data, disaggregated notably by age and sex, on migration, refugee and asylum issues, including regarding victims of violence against women and of trafficking in human beings, and ensuring compliance with applicable data protection requirements.

Commented [FE11]: Add after should: "as far as possible", not all data is available.

Deleted:

22. 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.

23. 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 and support

24. Member States should protect migrant, refugee, and asylum-seeking women and girls from all forms of violence against women and trafficking in human beings.
25. Measures should be taken to protect migrant, refugee and asylum-seeking women and girls from hate speech and sexism.
26. Member States should develop specific measures to address the sexual exploitation of migrant, refugee and asylum-seeking women and girls, in particular the demand for such exploitation, including protective, punitive, preventive and educational measures.
27. Member States should ensure that culture, custom, religion, tradition or so-called 'honour' shall not be considered as justification for any exploitation or acts of violence against women and girls.
28. Member States should ensure effective access for migrant, refugee and asylum-seeking women and girls, with or without children, to shelters for women victims of violence against women and trafficking in human beings, regardless of their legal status.
29. Access to free legal advice and free legal aid available in the language of the beneficiary, should be provided, in order to support migrant, refugee and asylum-seeking women and girls victims of all forms of violence against women and trafficking in human beings through criminal, administrative and civil proceedings, including the pursuit of compensation claims and legal redress against the perpetrators.
30. General and specialist support services should be provided to victims of violence against women and trafficking in human beings, including for those persons accommodated in transit, reception and accommodation facilities. This includes, at a minimum, short- and long-term psychological support and healthcare, including mental healthcare, sexual and reproductive healthcare, immediate medical support and the collection of forensic medical evidence in cases of rape and sexual assault.
31. Member States should allow migrant, refugee and asylum-seeking women and girls access to available compensation schemes, measures or other programmes aimed at the integration or reintegration of victims of violence against women or trafficking in human beings, on the same conditions as nationals.
32. Member States should ensure that migrant, refugee and asylum-seeking women and girls do not suffer any penalty, including loss of lawful migration or refugee status as a consequence of their exploitation as victims of trafficking in human beings or as a consequence of leaving an abusive sponsoring partner or spouse on whom their status was dependant or where they have been taken to another country against their will for the purpose of forced marriage.
33. A multi-agency, victim-centred approach, that prevents secondary victimisation and is aimed at the empowerment of migrant, refugee and asylum-seeking women and girls, inclusive of migrant and refugee women's organisations, should be adopted as regards matters relating to their protection and support.

Commented [FE12]: Ad. Chapter III „Protection and support“, Paragraph 26 “Member States should develop specific measures to address the sexual exploitation of migrant, refugee and asylum-seeking women and girls, in particular the demand for such exploitation, including protective, punitive, preventive and educational measures.” We welcome the urge in the present draft for Member States to develop specific measures to combat sexual exploitation of migrant, refugee and asylum-seeking women and girls, in particular protective and preventive measures. With regard to demand reduction and punitive measures, we request that the following opinion may be considered:
Opinion by AUT to Chapter III „Protection and support“, Paragraph 26: We suggest shifting the focus from demand reduction and punitive measures to increased monitoring and awareness to enable the identification of victims and allow for appropriate support and empowerment.

Reasons for the opinion

In Austria, the Covid-crisis has more or less simulated a situation, where prostitution was prohibited. The experience highlighted the impact of abolishing regulated prostitution – police in Austria reports that during lockdown-phases prostitution did not end, but was practiced in spite of the prohibitions, but in illegality - which made police controls and access to trafficked persons almost impossible. Thus, it once again became evident, that a ban of sex work does not reduce the demand for sex services but rather pushes it into illegality, making women and girls even more vulnerable to violence and exploitation.
 Furthermore, it should be taken into consideration, that human trafficking is a so-called “control crime”, an increased number of trafficked individuals can be identified in highly controlled areas. The discussion of demand reduction particularly focuses on sex trafficking, arguing, that this sector causes the highest number of victims trafficked. **However, in this context it is crucial to emphasize that this sector accounts for the highest number of identified victims:** Prostitution is highly regulated and controlled in most countries, which leads to the result that a comparably large number of trafficked persons is identified in this sector. The density of state controls in labour exploitation (agriculture, care, construction, etc.) is significantly lower; consequently, fewer victims are identified in these areas. Hence, it is evident, that the number of identified victims does not automatically reflect the actual number of victims and the dimension of the crime.

Commented [FE13]: See comment on Chapter Access to Justice: Too far reaching, only where applicable according to national law and practice

Commented [FE14]: See comment on Chapter Access to Justice

34. Professional interpreters, legal assistants, and intercultural mediators, including women, should be available to assist migrant, refugee and asylum-seeking women and girls seeking protection, whilst making initial complaints, throughout the justice process and in seeking reparations, as well as in the context of the asylum determination procedures.
35. Training in violence against women, trafficking in human beings, gender equality and intercultural issues should be adequately funded and provided to relevant authorities and staff including interpreters, legal assistants and intercultural mediators to enable them to:
- 35.1 promptly identify victims, where possible, in collaboration with relevant support organisations, conduct risk assessments, refer to relevant authorities and provide protection, treatment and care for migrant, refugee and asylum-seeking women and girls who are victims of all forms of violence and trafficking in human beings;
 - 35.2 be aware of the difficulties that migrant, refugee and asylum-seeking women and girls may face in disclosing incidents of violence against women and of trafficking in human beings, due to their insecure legal status, unavailability of quality interpretation services, lack of knowledge of their legal rights and lack of knowledge of the relevance of their experiences of violence in relation to migration/asylum decisions, social stigma, and lack of support to them in this regard.
36. Easily accessible mechanisms should be in place in State- and privately-run institutions, such as reception, transit and detention centres, police stations, prisons, childcare institutions, schools and hospitals, counselling centres and shelters, to enable incidents of violence against women and trafficking in human beings to be reported to staff and by staff. Member states should ensure access to age- and gender-sensitive telephone helplines, procedures for referral to other appropriate agencies, and medical and psychological treatment to facilitate reporting.
37. Risk assessment and risk management of violence against migrant, refugee and asylum-seeking women and girls should be conducted, taking specific account of their potential enhanced vulnerable situation owing to their insecure legal status.

Commented [FE15]: See comments on Access to Justice

State of emergency and crisis management

38. In situations of public health crisis, humanitarian crisis and crisis related to climate change, member States should take into account the increased risk of gender-based violence, trafficking in human beings, poverty and homelessness for migrant, refugee and asylum-seeking women and girls, and should therefore:
- 38.1 take into consideration the situation and needs of migrant, refugee and asylum-seeking women and girls in crisis management and recovery measures, including protection of rights, and notably the right to health, shelter, food security, water, economic empowerment and access to specialist support services for women victims of violence, by qualifying them as essential services and guaranteeing their continuity;

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

Commented [FE16]: Deletion of the para, see point 20

IV. Arrival

Pre-arrival information

39. Member States should ensure that immigration procedures, including visa issuing procedures, take into account migrant, refugee and asylum-seeking women and girls' specific situations, needs and vulnerabilities and are age- and gender-sensitive.
40. Information should be provided to migrant, refugee and asylum-seeking women and girls about the conditions enabling the legal entry and stay in a member State's territory.

Transit and reception facilities

41. Relevant authorities should ensure that transit, reception, accommodation and screening arrangements are age- and gender-sensitive. The screening process should, in particular, facilitate the identification of victims of violence against women and trafficking in human beings at the earliest possible opportunity and ensure that women's protection claims are processed efficiently.
42. Reception and accommodation facilities should be located in areas where women and girls are safe and can access relevant services, with respect to health, and in particular sexual and reproductive health, social and legal assistance, education and shopping facilities.
43. The specific needs and safety concerns of victims of all forms of violence against women and trafficking in human beings 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 and clothing should be provided as needed.
44. Staff should be trained in women's human rights, gender equality-related and trauma issues as well as violence against women and the specific needs of migrant, refugee and asylum-seeking women and girls, and the presence of professional women social workers, intercultural mediators, interpreters, police officers and guards should be ensured in these facilities.
45. Migrant, refugee and asylum-seeking women and girls should be offered adequate safe living space. Separate sleeping areas, as well as other safe spaces should be provided for single women with or without children (up to age 18). Other elements to be provided include access to natural and artificial light, sufficient ventilation and heating, a clean bed

Commented [FE17]: See Comments on Chapter Access to Justice

and bedding, ready access to clean, separate, well-lit shower and toilet facilities, and the availability of a basic sanitary kit / hygiene products free of charge and on a regular basis.

46. Women in transit and reception facilities should have access to a complaint /reporting system, whereby complaints are investigated and referred to the police where relevant, including, where appropriate, access to legal aid.
47. Member states should ensure that transit, reception and accommodation facilities and services are subject to regular independent monitoring, including when provided by private contractors, to ensure compliance with the standards of protection of this Appendix.
48. If migrant, refugee or asylum-seeking women and girls are confined to transit, reception or accommodation centres, member States should also ensure compliance with the provisions contained in the paragraphs of this Appendix related to detention.

Asylum

49. Member States should adopt and implement age- and gender-sensitive-asylum laws, practices and procedures.
50. Women and girls should be entitled to access asylum and protection information and procedures at the borders and elsewhere.
51. The possibility for women and girls to lodge an independent asylum claim should be ensured and they should be made aware of this right.
52. To ensure that gender-based violence against women is properly assessed within the framework of the 1951 United Nations Convention Relating to the Status of Refugees member States should:
- 52.1 ensure that all forms of gender-based violence can be recognized as a form of persecution within the meaning of Article 1A(2) of the 1951 Convention;
- 52.2 ensure a gender-sensitive interpretation of the 1951 Convention 'grounds' for asylum;
- 52.3 develop comprehensive gender-sensitive guidelines at all stages of the asylum process, including reception and support services, screening, determination of 'safe' countries for the purpose of accelerated or suspensive procedures, detention, status determination, adjudication and returns; and ensure that border police, migration officials, asylum officers, decision-makers, intercultural mediators and interpreters receive training in respect of such guidelines
53. Women asylum officers should be available to women applicants, who should be informed about this possibility.
54. Separate interviews for women and men from the same family, in the absence of children, should be made possible and their confidentiality should be guaranteed.

Commented [FE18]: Instead of laws use "regulations"

Commented [FE19]: Para should read as follows: Women and girls should be able to access asylum and protection information and procedures at designated locations at the borders or in the territory of member States and elsewhere

Commented [FE20]: Please, delete "independent"

Commented [FE21]: Delete "all"

Commented [FE22]: 52.1 should read as follows: ensure a gender-sensitive interpretation of the 1951 Convention 'grounds' for asylum **if the relevant conditions are met;**

Commented [FE23]: Should read as follows: endeavour to provide gender-sensitive guidelines where available at relevant stages of the asylum process,

Commented [FE24]: Should read as follows: Women asylum officers should be available to women applicants, **if appropriate**, who should be informed about this possibility

Commented [FE25]: 54. Should read as follows: Separate interviews for women and men from the same family, in the absence of children, should be made possible, **where adequate** and their confidentiality should be guaranteed.

55. In processing and determining asylum claims, regard should be given to:

- 55.1 the applicant's own personal circumstances and individual assessment of risk;
- 55.2 relevant country of origin information, including in relation to gender equality and women's rights. This encompasses access to justice, the legal framework, and its implementation; available social, economic, and other support; and any form of multiple and intersecting discrimination and/or patriarchal attitudes that women are likely to encounter.

Commented [FE26]: Should read as follows: This could encompass access to justice, the legal framework, and its implementation

56. Member States should ensure that women and girls have access to complementary/subsidiary protection, where necessary, if the decision on their refugee status is negative.

Commented [FE27]: 56. Should read as follows: Member States should ensure that women and girls have access to complementary/subsidiary protection, **where the women concerned fulfils the criteria for complementary/subsidiary protection**, if the decision on their refugee status is negative.

Cross-border measures

- 57. Member States should seek to participate in resettlement and relocation programmes as well as reinforce and promote legal pathways to ensure safe transit for women and girls.
- 58. Member States are encouraged to fund specific assistance and humanitarian resettlement programmes for women and girls' victims, or at risk, of violence against women and trafficking in human beings, including trafficking for the purpose of sexual exploitation.
- 59. The setting up and implementation of effective cross-border protection mechanisms for victims of violence against women or trafficking in human beings, including trafficking for the purpose of sexual exploitation should be encouraged.

Commented [FE28]: Should read as follows: Member States **are encouraged** to participate in resettlement and relocation programmes as well as reinforce and promote legal pathways to ensure safe transit for women and girls

Commented [FE29]: Should read as follows: The setting up and implementation of effective cross-border protection mechanisms for victims of violence against women or trafficking in human beings, including trafficking for the purpose of sexual exploitation is encouraged

V. Residence and Integration

Access to holistic and quality health services, including sexual and reproductive health and rights

- 60. Authorities should ensure that healthcare provision takes into account the situation and personal characteristics of migrant women and girls and is age- and gender sensitive.
- 61. Essential healthcare services including primary care, urgent and immediate care, palliative care and treatment or assistance necessary for public health reasons should be provided to all migrant, refugee and asylum-seeking women and girls, including migrant women and girls in an irregular situation.

Member States should also enable migrant, refugee and asylum-seeking women and girls to access free or affordable, comprehensive, quality, age- and gender-sensitive health services encompassing mental, sexual and reproductive health, including during pregnancy, as well as hygiene products. Member States should also seek to provide such health services to migrant women and girls in an irregular situation. [62](#).

In principle, the services that the host countries are supposed to make available to the target groups of the recommendation should also be available to their own citizens (e.g. deletion of hygiene articles in point 62).

62.

63. Migrant, refugee and asylum-seeking girls should be provided with access to age-appropriate sexual and reproductive health and rights information in a language that they can understand.

64. Access to available healthcare should not be dependent on obtaining the authorisation of the migration authority nor permission from any person other than the woman concerned. The treatment of minor girls may be subject to the consent of a parent or guardian.

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

Social services, social security and housing

66. In all decisions relating to the safety and welfare of migrant, refugee and asylum-seeking women and girls, including decisions taken by social services and in respect of social security, their needs should be a primary consideration.

67. Member States should ensure that migrant women lawfully residing in the country are given a treatment not less favourable than that accorded to nationals regarding access to housing and rents.

Integration, social, cultural and political participation

68. Member States should ensure that any child born in their territory is entitled to have their birth registered immediately after birth and is granted a pathway to a nationality.

69. Owing to persisting stereotypes and existing inequalities in access to civic rights and participation in political decision-making, which are even more serious for migrant, refugee and asylum-seeking women, member States should take steps to ensure that migrant, refugee and asylum-seeking women who are entitled to vote and stand for election in local, regional, national or European elections are aware of their rights and encouraged to participate without any form of discrimination.

70. Authorities should encourage and support initiatives aimed at empowering migrant, refugee and asylum-seeking 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 can include participation in local, cultural, women's or other associations, sports clubs, youth clubs and other organisations.

71. Public and private coaching, mentoring and other support programmes aimed at migrant and refugee women and girls should be set up and supported, notably in order to promote positive role models and promising practices of integration.

Commented [FE30]: General opint: It is not entirely clear what is meant here. More clarification needed.

Commented [FE31]: It has to be made clear that "Pathway" does not necessarily mean ius soli.

Commented [FE32]: A reformulation is suggested in order to emphasize more clearly that this paragraph only applies to those states that regulate a right to vote for the named group of people (in AT right to vote for asylum seekers, for example, is not legally provided for).

72. The positive contribution made by migrant and refugee women and girls to society and host communities, the economy and culture should be highlighted and encouraged.

Education, vocational training and life-long learning

73. Authorities should ensure that migrant, refugee and asylum-seeking children have access to education and take measures to reach those migrant, refugee, and asylum-seeking 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. Recognizing that the ability to communicate in the host country's language is essential for integration, member States should ensure access to an adequate number of hours of quality language training and integration programmes to migrant, refugee and asylum-seeking women and girls, to promote their empowerment and protection. Literacy and digital skills courses should also be provided to migrant, refugee and asylum-seeking women and girls corresponding to their needs and as soon as possible after their arrival in the host country.

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

76. Migrant, refugee and, where appropriate, asylum-seeking women and girls 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.

77. Access to the programmes and measures referred to in paragraphs 74, 75 and 76 for migrants in an irregular situation may be subject to national laws governing eligibility.

Employment

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

79. Member States should comply with the obligations regarding the right to work and self-employment for refugee women and girls set out by the United Nations Convention Relating to the Status of Refugees and consider removing barriers to work, for other migrant women and girls after they have been present in the territory for a certain length of time.

80. In respect of *at least* those migrant, refugee, and asylum-seeking women and girls who are permitted to work under the national law of member States, the latter should ensure decent and dignified working conditions, including:

80.1. taking measures to regulate and improve migrant, refugee, and asylum-seeking women and girls' working conditions and to eliminate all forms of labour

Commented [KH33]: Offering all those facilities to asylum seekers might not always be appropriate, e.g. when an asylum-seeker does not properly cooperate with the authorities and hinders progress of procedures.

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Commented [KH34]: The wording of this point regarding the promotion of migrant women's access to employment at an early stage of the migration process seems too broad, since it does not reflect the different status migrants may have (legal/illegal) nor the different situation the receiving MS (destination countries) are in (e.g. reception capacities and/or labour market situation of the receiving MS). Therefore MS should apply these measures on a voluntary basis.

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exploitation and discrimination, including when they are multiple and intersecting;

80.2. supporting and assisting migrant, refugee, and asylum-seeking women and girls where appropriate 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, internships, apprenticeships and job placement programmes;

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

80.4 ensure that migrant, refugee, and asylum-seeking women 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 in line with non-discriminatory legislation.

81. Member States should implement the provisions of relevant national and international standards directed at protecting migrant, refugee and asylum-seeking women and girls carrying out domestic work from discrimination, exploitation and abuse.

Residence permits

82. Member States should ensure that migrant, refugee and asylum-seeking women and girls who are granted a residence permit on the basis of a family relationship are entitled to social, economic and labour-related rights and entitlements in an autonomous capacity.

83. Migrant, refugee and asylum-seeking women and girls should be made aware of any entitlement to a renewable autonomous residence permit, for example due to their own protection needs under the UN Refugee Convention, their status as a victim of violence against women, a victim of trafficking in human beings, relationship breakdown, or other particularly difficult circumstances

84. The evidentiary criteria and threshold for the granting of autonomous residence permits should be realistic and sensitive to the individual situation of migrant, refugee and asylum-seeking women and responsible statutory agencies should be adequately trained to ensure that migrant, refugee and asylum-seeking women and girls can benefit from these permits.

85. Member States should ensure that migrant, refugee and asylum-seeking women and girls and their dependents are granted a renewable residence permit if their stay is necessary for criminal investigations or proceedings and until at least their conclusions.

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

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Commented [KH35]: A wording suggesting unrestricted retention of all rights under every circumstances seems too broad. Taken seriously, it would mean a disproportionate preferential treatment compared to all other groups such as nationals of the member states, whose retention of rights is also subject to conditions laid down in law.

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Commented [FE36]: Should read as follows: Member States should ensure that migrant, refugee and asylum-seeking women and girls are granted a renewable residence permit if their stay is necessary for criminal investigations or proceedings and until at least their conclusions.

In Austria, criminal proceedings must have started or civil law claims have already been asserted, otherwise the application must be rejected as inadmissible in accordance with Section 57 (3) AsylG.

Commented [FE37]: Basically we agree with the content but we still have to look into a more suitable formulation.

87. Member States are encouraged to provide security of residence on an independent basis to migrant and refugee women and girls present in a country for a long time, including stateless women and girls.

88. Member States should provide pathways to naturalisation and take measures to ensure that migrant and refugee women and girls are not faced with gender-related obstacles in this regard.

Family reunion

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

- 89.1. adopt a definition of family consistent with article 8 of the European Convention on Human Rights;
- 89.2. ensure that women and girls are aware of their right to family reunion, including as migrant or refugee sponsors, and receive access to legal advice and assistance to pursue that right; and
- 89.3. consider accepting or seeking the transfer of asylum claims to enable the family reunion of migrant, refugee and asylum-seeking women and girls separated on their journeys.
- 89.4. Seek to provide within their national laws, gender-sensitive legal pathways to respect the family life of migrant women lawfully residing on their territory, in particular by providing the immediate and dependent family members with the possibly to migrate with or join them in the host country.

Commented [FE38]: Should read as follows: adopt a definition of family adequate to the situation.

Commented [FE39]: 89.1. Should read as follows: ensure that women and girls are aware of their right to family reunion, , and receive access to legal advice and assistance to pursue that right if the conditions are fulfilled; and Furthermore when it comes to access to legal advice and assistance see comment on access to justice

Detention

90. In respect of all forms of deprivation of liberty, member States should adopt an age- and gender-sensitive approach, which takes into account the individual situation and personal characteristics of migrant, refugee and asylum-seeking women and girls. Member States should also provide the following services to migrant, refugee and asylum-seeking women and girls deprived of their liberty:

- 90.1 access to law enforcement measures and reporting / complaints mechanisms including referral to and investigation of those complaints by police where relevant and access to legal aid;
- 90.2 access to information about their rights, as set forth in paragraph 9 of this Appendix;
- 90.3 access to health-care and hygiene services, telephone helplines and appropriate trauma support and counselling facilities;

Commented [FE40]: See comment on chapter access to justice

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- 90.4 access to a telephone, and/or Internet facility to inform a relative or third party of the fact of deprivation of liberty, as well as to consular assistance;
- 90.5 the opportunity to remain in meaningful contact with the outside world, including regular access to a telephone, to their mobile phones or to Internet facilities; and
- 90.6 the presence of women among border, migration and other police or custody staff, as well as among social workers and interpreters.
91. Member States should ensure that conditions in immigration detention centres reflect those listed in paragraphs 41-48 of this Appendix (Transit and reception facilities).
92. Member states should ensure that detention facilities, including administrative detention facilities, are subject to regular independent monitoring.
93. In the event that administrative detention under immigration legislation 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 women and girls within detention facilities, where their privacy is guaranteed and which cater adequately for their specific needs. Unaccompanied or separated girls should not, as a general rule, be detained.
94. Effective alternatives to administrative detention should be provided in any event for migrant, refugee and asylum-seeking women and girls who have been victims of torture, violence against women or trafficking in human beings, pregnant and nursing women, elderly women, and women with disabilities.
95. Migrant, refugee and asylum-seeking women and girls in administrative detention should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation. Care should be taken in the design and layout of such premises to avoid, as far as possible, any impression of a carceral environment. Within the detention centre, migrant refugee and asylum-seeking women and girls should be restricted in their freedom of movement as little as possible.
96. Migrant, refugee and asylum-seeking women and girls in administrative detention should be offered appropriate activities, and they should in principle have free access to outdoor exercise throughout the day (i.e. considerably more than one hour per day).

Commented [FE42]: Should read: Migrant, refugee and asylum-seeking women and girls in administrative detention should be accommodated, **as far as possible**, in centres specifically designed....

Commented [FE43]: 90. Should read: Migrant, refugee and asylum-seeking women and girls in administrative detention should be offered appropriate activities if available.

VI. Returns

97. Voluntary returns should be the preferred option. Returns should always be in safety and dignity, in line with the principle of *non-refoulement*. Member States should therefore ensure that migrant and asylum-seeking women and girls are not returned or removed to a country where their life would be at risk or where they might be subjected to acts of torture or inhuman or degrading treatment or punishment, including those acts which disproportionately affect women or are directed at them because they are women.

98. In these situations, due regard should be given to relevant human rights obligations, notably the right to family life, in accordance with the case law of the European Court of Human Rights; the best interest of the child, if applicable; and to the state of health of the person, including for example pregnancy.
99. Recognising the particular difficulties that victims of violence against women and of trafficking in human beings and face in fully disclosing the grounds for their international protection claim, member States should:
- 99.1 ensure a process that protects women and girls against the risk of *refoulement*;
- 99.2 ensure that accelerated and non-suspensive procedures are not implemented under any circumstance, until such a process has been completed to guarantee an individual assessment of the international protection needs in conformity with the provisions of this Appendix, especially if there are any signs of violence against women or trafficking in human beings.
100. Member States should ensure the possibility of suspending expulsion measures of migrant women based on their dependent status on a spouse, partner, parent, or other family member, in order to enable them to apply for an independent residence permit.
101. In order to facilitate the reintegration of returnee women, member States should take the necessary measures to allow for the recognition of eventual diplomas or qualifications obtained.

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CROATIA

Martina BOSAK

29/06/2021



Strasbourg, 4 June 2021

GEC-MIG (2021) 3 rev 1

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

**Draft Recommendation on protecting the rights of migrant, refugee
and asylum-seeking women**

Working document in view of the internal and external consultation

04.06.2021- 16.07.2021

Draft Recommendation on protecting the rights of migrant, refugee, asylum-seeking women and girls

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 equality¹ 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. 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;
5. 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), and notably its strategic objective to identify and address vulnerabilities throughout asylum and migration procedures;
6. Bearing in mind the obligations and commitments undertaken by states, including 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 (CETS No. 126, 1987); 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);
7. 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; Recommendation CM/Rec(2019)4 on supporting

¹ Gender equality entails equal rights for women and men, girls and boys as well as the same visibility, empowerment, responsibility, and participation in all spheres of public and private life. It also implies equal access to and distribution of resources between women and men. (Council of Europe Gender Equality Strategy 2018-2023).

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;

8. Recalling the United Nations Convention Relating to the Status of Refugees (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); 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. Noting 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); CEDAW General Recommendation No. 35 on gender-based violence against women; CEDAW Recommendation No.38 on trafficking in women and girls in the context of global migration (2020); as well as 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 human beings, 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. Bearing in mind the importance of the overall application and impact of the United Nations 2030 Agenda for Sustainable Development, in particular Sustainable Development Goal 5 (“Achieve gender equality and empower all women and girls”); Sustainable Development Goal 10.7 (“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”);
12. 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;
13. Acknowledging the positive contribution that migrant, refugee and asylum-seeking women and girls may bring to European societies and communities;

14. Considering the profound changes in migration patterns and in the situation of migrant, refugee and asylum-seeking women and girls, the fact that their numbers have reached the highest ever in the 2010's and the significant developments in gender equality-, migration- and asylum-related concepts, policies and legal instruments at all levels;
15. Recognising that while existing international human rights standards apply to all persons, and bearing in mind the possible differences in legal status of the persons concerned, 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;
16. Underlining that women are exposed to a continuum of violence that is specific to them because they are women, or which affects them disproportionately, and that such violence is, in this sense, gender-based; recognising with grave concern, that migrant, refugee and asylum-seeking women and girls are particularly exposed to such forms of violence and exploitation in their countries of origin, during their journey, in transit and/or in destination countries, which may constitute a serious violation of their human rights, especially as migrant, refugee and asylum-seeking women and girls face difficulties and structural barriers in overcoming such violence and exploitation in their diverse forms;
17. 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 including, as appropriate, migrant Roma and Traveller women and girls.
18. Aware of the multiple and intersecting barriers that migrant, refugee and asylum-seeking women and girls face in terms of access to and exercise of rights, access to services, participation and leadership and of the need to facilitate their integration and full participation in the economic, social, civic, political and cultural life;
19. Wishing therefore to review and update its Recommendation No. R(79)10 to member States on women migrants, henceforth replaced by the present instrument;
20. Recommends that the governments of member States:
 1. Take all necessary measures to promote and apply the principles set out in the Recommendation and its appendix, aimed at ensuring that migrant, refugee and asylum-seeking women and girls can effectively access and exercise their rights;
 2. Ensure, by appropriate means and action, including where appropriate translation, a wide dissemination (in accessible formats) of this Recommendation among relevant authorities and stakeholders, which are encouraged to take measures to implement it;

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29/06/2021

3. Examine periodically, within the competent Council of Europe steering committee(s) and bodies, the measures taken, 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 live in another, including citizens of Council of Europe member States with a migrant background, and stateless women and girls.

'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 migrant, refugee and asylum-seeking women and girls do not face discrimination on any ground.
3. Member States should apply an intersectional approach in all measures referred to in this Appendix, notably bearing in mind the different situations and individual characteristics of migrant, refugee and asylum-seeking women and girls.
4. Measures should be established to safeguard the fundamental rights of undocumented migrants and facilitate their access to essential services including, at a minimum, protection and complaint mechanisms and all support services for victims of violence against women and trafficking in human beings, without fearing any reporting to migration authorities.
5. Within both migrant and host countries and communities, member States should:
 - 5.1. pay special attention to measures aimed at dismantling all forms of stereotypes which have a negative impact on the rights of migrant, refugee and asylum-seeking women and girls;

- 5.2. implement awareness-raising and educational measures in respect of gender equality and human rights to promote dialogue.

Girls

6. Member States should adopt a child rights-based approach to migrant, refugee and asylum-seeking children, which takes account of the age and specific situations and needs of girls, including ensuring suitable and safe alternative care arrangements when they are separated from their parents or caregiver 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 migrant, refugee and asylum-seeking girls to support their transition to adulthood beyond the age of 18, including access to education and healthcare, as well as support for their integration and social participation.

Information, empowerment, awareness raising and promotion of human rights

9. To empower migrant, refugee and asylum-seeking women and girls and enable them to access their rights, they should be provided with relevant and accessible information and advice in a way and a language that they understand, covering, at least:
 - 9.1 Their fundamental human rights 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 violence or other violations of rights by State authorities or private contractors acting on behalf of the State, including rights to civil remedies and compensation;
 - 9.3 Protection services available in the host country against all forms of violence against women and trafficking in human beings, including access to general and specific support services, specialist support provided by NGOs and legal aid;
 - 9.4 Available and accessible public services in the host country, notably healthcare including mental and sexual and reproductive health and rights, comprehensive sexuality education, psycho-social support, education, language and digital training, vocational training, integration programmes, housing and employment.
10. Member States should provide resources and tools for the empowerment and support of migrant, refugee and asylum-seeking women and girls, based on their needs and personal characteristics, in order for them to benefit to as great an extent possible from the social services and welfare available.

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

Access to justice including legal aid

12. Migrant, refugee and asylum-seeking women and girls should have access to the different national and international civil, administrative, and criminal remedies, as well as legal aid, to effectively exercise their rights and/or take action in cases of non-compliance with those rights.
13. Member States should ensure that refugee and asylum-seeking women and girls receive adequate support as claimants, defendants, or witnesses throughout civil, administrative, or criminal proceedings.
14. An intersectional and gender-sensitive approach to individual migrant, refugee and asylum-seeking women and girls should be adopted when determining/assessing their credibility in civil, administrative, and criminal proceedings, particularly where decisions have an impact on their legal status.

Artificial intelligence, automated decision-making, and data protection

15. 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.
16. 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:
 - 16.1 border and immigration control decision- making, including decisions relating to entry or return;
 - 16.2 migration management, including the use of biometric information, such as DNA testing
 - 16.3 policing and security of migrant, refugee and asylum-seeking women and girls, and services related to protection and prevention of crimes;
 - 16.4 the provision of services to migrant, refugee and asylum-seeking women and girls.
17. Migrant, refugee and asylum-seeking women and relevant civil society organisations should be given the opportunity to participate in discussions and decision-making around the development and deployment of new technologies affecting them.

18. Bearing in mind the particular situations of vulnerability of migrant, refugee and asylum-seeking women and girls, relevant authorities should:

18.1 ensure the confidentiality and security of personal data in accordance with their national legislation and applicable international obligations;

18.2 not transfer any such data to the country of origin without explaining to the affected person, in a language that they understand, which data is being transferred and under which conditions, including providing the affected person the opportunity to object.

Co-operation with civil society

19. Member States should co-operate with and support migrant and refugee women's organisations, women's rights organisations and other civil society organisations that uphold the universal human rights of migrant and refugee and asylum-seeking women and girls, and that defend and empower them.

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

Data collection, research and monitoring

21. Member States should support the collection of data, disaggregated notably by age, sex and grounds on asylum claim, on migration, refugee and asylum issues, including regarding victims of violence against women and of trafficking in human beings, and ensuring compliance with applicable data protection requirements.

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22. 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.

23. 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 and support

24. Member States should protect migrant, refugee, and asylum-seeking women and girls from all forms of violence against women and trafficking in human beings.

25. Measures should be taken to protect migrant, refugee and asylum-seeking women and girls from hate speech and sexism.

26. Member States should develop specific measures to address the sexual exploitation of migrant, refugee and asylum-seeking women and girls, in particular the demand for such exploitation, including protective, punitive, preventive and educational measures.
27. Member States should ensure that culture, custom, religion, tradition or so-called 'honour' shall not be considered as justification for any exploitation or acts of violence against women and girls.
28. Member States should ensure effective access for migrant, refugee and asylum-seeking women and girls, with or without children, to shelters for women victims of violence against women and trafficking in human beings, regardless of their legal status.
29. Access to free legal advice and free legal aid available in the language of the beneficiary, should be provided, in order to support migrant, refugee and asylum-seeking women and girls victims of all forms of violence against women and trafficking in human beings through criminal, administrative and civil proceedings, including the pursuit of compensation claims and legal redress against the perpetrators.
30. General and specialist support services should be provided to victims of violence against women and trafficking in human beings, including for those persons accommodated in transit, reception and accommodation facilities. This includes, at a minimum, short- and long-term psychological support and healthcare, including mental healthcare, sexual and reproductive healthcare, immediate medical support and the collection of forensic medical evidence in cases of rape and sexual assault.
31. Member States should allow migrant, refugee and asylum-seeking women and girls access to available compensation schemes, measures or other programmes aimed at the integration or reintegration of victims of violence against women or trafficking in human beings, on the same conditions as nationals.
32. Member States should ensure that migrant, refugee and asylum-seeking women and girls do not suffer any penalty, including loss of lawful migration or refugee status as a consequence of their exploitation as victims of trafficking in human beings or as a consequence of leaving an abusive sponsoring partner or spouse on whom their status was dependant or where they have been taken to another country against their will for the purpose of forced marriage.
33. A multi-agency, victim-centred approach, that prevents secondary victimisation and is aimed at the empowerment of migrant, refugee and asylum-seeking women and girls, inclusive of migrant and refugee women's organisations, should be adopted as regards matters relating to their protection and support.
34. Professional interpreters, legal assistants, and intercultural mediators, including women, should be available to assist migrant, refugee and asylum-seeking women and girls seeking protection, whilst making initial complaints, throughout the justice process and in seeking reparations, as well as in the context of the asylum determination procedures.

35. Training in violence against women, trafficking in human beings, gender equality and intercultural issues should be adequately funded and provided to relevant authorities and staff including interpreters, legal assistants and intercultural mediators to enable them to:
- 35.1 promptly identify victims, where possible, in collaboration with relevant support organisations, conduct risk assessments, refer to relevant authorities and provide protection, treatment and care for migrant, refugee and asylum-seeking women and girls who are victims of all forms of violence and trafficking in human beings;
 - 35.2 be aware of the difficulties that migrant, refugee and asylum-seeking women and girls may face in disclosing incidents of violence against women and of trafficking in human beings, due to their insecure legal status, unavailability of quality interpretation services, lack of knowledge of their legal rights and lack of knowledge of the relevance of their experiences of violence in relation to migration/asylum decisions, social stigma, and lack of support to them in this regard.
36. Easily accessible mechanisms should be in place in State- and privately-run institutions, such as reception, transit and detention centres, police stations, prisons, childcare institutions, schools and hospitals, counselling centres and shelters, to enable incidents of violence against women and trafficking in human beings to be reported to staff and by staff. Member states should ensure access to age- and gender-sensitive telephone helplines, procedures for referral to other appropriate agencies, and medical and psychological treatment to facilitate reporting.
37. Risk assessment and risk management of violence against migrant, refugee and asylum-seeking women and girls should be conducted, taking specific account of their potential enhanced vulnerable situation owing to their insecure legal status.

State of emergency and crisis management

38. In situations of public health crisis, humanitarian crisis and crisis related to climate change, member States should take into account the increased risk of gender-based violence, trafficking in human beings, poverty and homelessness for migrant, refugee and asylum-seeking women and girls, and should therefore:
- 38.1 take into consideration the situation and needs of migrant, refugee and asylum-seeking women and girls in crisis management and recovery measures, including protection of rights, and notably the right to health, shelter, food security, water, economic empowerment and access to specialist support services for women victims of violence, by qualifying them as essential services and guaranteeing their continuity;
 - 38.2 ensure that measures taken during a crisis and ensuing state of emergency conform with international obligations related to the human rights of migrant, refugee and asylum-seeking women and girls;

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

IV. Arrival

Pre-arrival information

39. Member States should ensure that immigration procedures, including visa issuing procedures, take into account migrant, refugee and asylum-seeking women and girls' specific situations, needs and vulnerabilities and are age- and gender-sensitive.
40. Information should be provided to migrant, refugee and asylum-seeking women and girls about the conditions enabling the legal entry and stay in a member State's territory.

Transit and reception facilities

41. Relevant authorities should ensure that transit, reception, accommodation and screening arrangements are age- and gender-sensitive. The screening process should, in particular, facilitate the identification of victims of violence against women and trafficking in human beings at the earliest possible opportunity and ensure that women's protection claims are processed efficiently.
42. Reception and accommodation facilities should be located in areas where women and girls are safe and can access relevant services, with respect to health, and in particular sexual and reproductive health, social and legal assistance, education and shopping facilities.
43. The specific needs and safety concerns of victims of all forms of violence against women and trafficking in human beings 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 and clothing should be provided as needed.
44. Staff should be trained in women's human rights, gender equality-related and trauma issues as well as violence against women and the specific needs of migrant, refugee and asylum-seeking women and girls, and the presence of professional women social workers, intercultural mediators, interpreters, police officers and guards should be ensured in these facilities.
45. Migrant, refugee and asylum-seeking women and girls should be offered adequate safe living space. Separate sleeping areas, as well as other safe spaces should be provided for single women with or without children (up to age 18). Other elements to be provided include access to natural and artificial light, sufficient ventilation and heating, a clean bed and bedding, ready access to clean, separate, well-lit shower and toilet facilities, and the availability of a basic sanitary kit / hygiene products free of charge and on a regular basis.

46. Women in transit and reception facilities should have access to a complaint /reporting system, whereby complaints are investigated and referred to the police where relevant, including, where appropriate, access to legal aid.
47. Member states should ensure that transit, reception and accommodation facilities and services are subject to regular independent monitoring, including when provided by private contractors, to ensure compliance with the standards of protection of this Appendix.
48. If migrant, refugee or asylum-seeking women and girls are confined to transit, reception or accommodation centres, member States should also ensure compliance with the provisions contained in the paragraphs of this Appendix related to detention.

Asylum

49. Member States should adopt and implement age- and gender-sensitive-asylum laws, practices and procedures.
50. Women and girls should be entitled to access asylum and protection information and procedures at the borders and elsewhere.
51. The possibility for women and girls to lodge an independent asylum claim should be ensured and they should be made aware of this right.
52. To ensure that gender-based violence against women is properly assessed within the framework of the 1951 United Nations Convention Relating to the Status of Refugees member States should:
 - 52.1 ensure that all forms of gender-based violence can be recognized as a form of persecution within the meaning of Article 1A(2) of the 1951 Convention;
 - 52.2 ensure a gender-sensitive interpretation of the 1951 Convention 'grounds' for asylum;
 - 52.3 develop comprehensive gender-sensitive guidelines at all stages of the asylum process, including reception and support services, screening, determination of 'safe' countries for the purpose of accelerated or suspensive procedures, detention, status determination, adjudication and returns; and ensure that border police, migration officials, asylum officers, decision-makers, intercultural mediators and interpreters receive training in respect of such guidelines
53. Women asylum officers should be available to women applicants, who should be informed about this possibility.
54. Separate interviews for women and men from the same family, in the absence of children, should be made possible and their confidentiality should be guaranteed.
55. In processing and determining asylum claims, regard should be given to:

- 55.1 the applicant's own personal circumstances and individual assessment of risk;
 - 55.2 relevant country of origin information, including in relation to gender equality and women's rights. This encompasses access to justice, the legal framework, and its implementation; available social, economic, and other support; and any form of multiple and intersecting discrimination and/or patriarchal attitudes that women are likely to encounter.
56. Member States should ensure that women and girls have access to complementary/subsidiary protection, where necessary, if the decision on their refugee status is negative.

Cross-border measures

57. Member States should seek to participate in resettlement and relocation programmes as well as reinforce and promote legal pathways to ensure safe transit for women and girls.
58. Member States are encouraged to fund specific assistance and humanitarian resettlement programmes for women and girls' victims, or at risk, of violence against women and trafficking in human beings, including trafficking for the purpose of sexual exploitation.
59. The setting up and implementation of effective cross-border protection mechanisms for victims of violence against women or trafficking in human beings, including trafficking for the purpose of sexual exploitation should be encouraged.

V. Residence and Integration

Access to holistic and quality health services, including sexual and reproductive health and rights

60. Authorities should ensure that healthcare provision takes into account the situation and personal characteristics of migrant women and girls and is age- and gender sensitive.
61. Essential healthcare services including primary care, urgent and immediate care, palliative care and treatment or assistance necessary for public health reasons should be provided to all migrant, refugee and asylum-seeking women and girls, including migrant women and girls in an irregular situation.
62. Member States should also enable migrant, refugee and asylum-seeking women and girls to access free or affordable, comprehensive, quality, age- and gender-sensitive health services encompassing mental, sexual and reproductive health, including during pregnancy, as well as hygiene products. Member States should also seek to provide such health services to migrant women and girls in an irregular situation.

63. Migrant, refugee and asylum-seeking girls should be provided with access to age-appropriate sexual and reproductive health and rights information in a language that they can understand.
64. Access to available healthcare should not be dependent on obtaining the authorisation of the migration authority nor permission from any person other than the woman concerned. The treatment of minor girls may be subject to the consent of a parent or guardian.
65. Taking into account language and cultural barriers, member States should ensure that women give prior, free and informed consent to any medical treatment.

Social services, social security and housing

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

Integration, social, cultural and political participation

68. Member States should ensure that any child born in their territory is entitled to have their birth registered immediately after birth and is granted a pathway to a nationality.
69. Owing to persisting stereotypes and existing inequalities in access to civic rights and participation in political decision-making, which are even more serious for migrant, refugee and asylum-seeking women, member States should take steps to ensure that migrant, refugee and asylum-seeking women who are entitled to vote and stand for election in local, regional, national or European elections are aware of their rights and encouraged to participate without any form of discrimination.
70. Authorities should encourage and support initiatives aimed at empowering migrant, refugee and asylum-seeking 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 can include participation in local, cultural, women's or other associations, sports clubs, youth clubs and other organisations.
71. Public and private coaching, mentoring and other support programmes aimed at migrant and refugee women and girls should be set up and supported, notably in order to promote positive role models and promising practices of integration.
72. The positive contribution made by migrant and refugee women and girls to society and host communities, the economy and culture should be highlighted and encouraged.

Education, vocational training and life-long learning

73. Authorities should ensure that migrant, refugee and asylum-seeking children have access to education and take measures to reach those migrant, refugee, and asylum-seeking 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. Recognizing that the ability to communicate in the host country's language is essential for integration, member States should ensure access to an adequate number of hours of quality language training and integration programmes to migrant, refugee and asylum-seeking women and girls, to promote their empowerment and protection. Literacy and digital skills courses should also be provided to migrant, refugee and asylum-seeking women and girls corresponding to their needs and as soon as possible after their arrival in the host country.
75. Member States should take steps to facilitate the recognition and validation of migrant and refugee women and girls' existing vocational and academic qualifications and work experience in practice, including through initiatives such as the Council of Europe European Qualifications Passport for Refugees.
76. Migrant, refugee and asylum-seeking women and girls 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.
77. Access to the programmes and measures referred to in paragraphs 74, 75 and 76 for migrants in an irregular situation may be subject to national laws governing eligibility.

Employment

78. Member States should take specific and targeted measures to prevent discrimination and promote access to employment for migrant and refugee women, at an early stage in the migration process, including safe and legal routes to employment pre-arrival.
79. Member States should comply with the obligations regarding the right to work and self-employment for refugee women and girls set out by the United Nations Convention Relating to the Status of Refugees and consider removing barriers to work, for other migrant women and girls after they have been present in the territory for a certain length of time.
80. In respect of *at least* those migrant, refugee, and asylum-seeking women and girls who are permitted to work under the national law of member States, the latter should ensure decent and dignified working conditions, including:
- 80.1. taking measures to regulate and improve migrant, refugee, and asylum-seeking women and girls' working conditions and to eliminate all forms of labour exploitation and discrimination, including when they are multiple and intersecting;

- 80.2. supporting and assisting migrant, refugee, and asylum-seeking women and girls where appropriate 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, internships, apprenticeships and job placement programmes;
- 80.3 in order to facilitate access to the labour market, take steps to ensure that migrant, refugee and asylum-seeking workers have access to work/life balance measures including maternity, paternity and parental leave, flexible working conditions where possible, and ensure access to and enjoyment of child-care facilities on an equal footing with national workers; and
- 80.4 ensure that migrant, refugee, and asylum-seeking women 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.
81. Member States should implement the provisions of relevant national and international standards directed at protecting migrant, refugee and asylum-seeking women and girls carrying out domestic work from discrimination, exploitation and abuse.

Residence permits

82. Member States should ensure that migrant, refugee and asylum-seeking women and girls who are granted a residence permit on the basis of a family relationship are entitled to social, economic and labour-related rights and entitlements in an autonomous capacity.
83. Migrant, refugee and asylum-seeking women and girls should be made aware of any entitlement to a renewable autonomous residence permit, for example due to their own protection needs under the UN Refugee Convention, their status as a victim of violence against women, a victim of trafficking in human beings, relationship breakdown, or other particularly difficult circumstances
84. The evidentiary criteria and threshold for the granting of autonomous residence permits should be realistic and sensitive to the individual situation of migrant, refugee and asylum-seeking women and responsible statutory agencies should be adequately trained to ensure that migrant, refugee and asylum-seeking women and girls can benefit from these permits.
85. Member States should ensure that migrant, refugee and asylum-seeking women and girls and their dependents are granted a renewable residence permit if their stay is necessary for criminal investigations or proceedings and until at least their conclusions.
86. Member States should facilitate the possibility for victims of forced marriage brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, to regain such status.

87. Member States are encouraged to provide security of residence on an independent basis to migrant and refugee women and girls present in a country for a long time, including stateless women and girls.
88. Member States should provide pathways to naturalisation and take measures to ensure that migrant and refugee women and girls are not faced with gender-related obstacles in this regard.

Family reunion

89. Recognising that family reunion can be both a secure pathway to safety for migrant and refugee women and girls, and a protective factor in the host country, member States should safeguard the right to family reunion for migrant and refugee women and girls in accordance with obligations under the European Convention on Human Rights and international law. In this respect, member States should:
- 89.1. adopt a definition of family consistent with article 8 of the European Convention on Human Rights;
 - 89.2. ensure that women and girls are aware of their right to family reunion, including as migrant or refugee sponsors, and receive access to legal advice and assistance to pursue that right; and
 - 89.3. consider accepting or seeking the transfer of asylum claims to enable the family reunion of migrant, refugee and asylum-seeking women and girls separated on their journeys.
 - 89.4. Seek to provide within their national laws, gender-sensitive legal pathways to respect the family life of migrant women lawfully residing on their territory, in particular by providing the immediate and dependent family members with the possibly to migrate with or join them in the host country.

Detention

90. In respect of all forms of deprivation of liberty, member States should adopt an age- and gender-sensitive approach, which takes into account the individual situation and personal characteristics of migrant, refugee and asylum-seeking women and girls. Member States should also provide the following services to migrant, refugee and asylum-seeking women and girls deprived of their liberty:
- 90.1 access to law enforcement measures and reporting / complaints mechanisms including referral to and investigation of those complaints by police where relevant and access to legal aid;
 - 90.2 access to information about their rights, as set forth in paragraph 9 of this Appendix;
 - 90.3 access to health-care and hygiene services, telephone helplines and appropriate trauma support and counselling facilities;

- 90.4 access to a telephone, and/or Internet facility to inform a relative or third party of the fact of deprivation of liberty, as well as to consular assistance;
- 90.5 the opportunity to remain in meaningful contact with the outside world, including regular access to a telephone, to their mobile phones or to Internet facilities; and
- 90.6 the presence of women among border, migration and other police or custody staff, as well as among social workers and interpreters.
91. Member States should ensure that conditions in immigration detention centres reflect those listed in paragraphs 41-48 of this Appendix (Transit and reception facilities).
92. Member states should ensure that detention facilities, including administrative detention facilities, are subject to regular independent monitoring.
93. In the event that administrative detention under immigration legislation 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 women and girls within detention facilities, where their privacy is guaranteed and which cater adequately for their specific needs. Unaccompanied or separated girls should not, as a general rule, be detained.
94. Effective alternatives to administrative detention should be provided in any event for migrant, refugee and asylum-seeking women and girls who have been victims of torture, violence against women or trafficking in human beings, pregnant and nursing women, elderly women, and women with disabilities.
95. Migrant, refugee and asylum-seeking women and girls in administrative detention should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation. Care should be taken in the design and layout of such premises to avoid, as far as possible, any impression of a carceral environment. Within the detention centre, migrant refugee and asylum-seeking women and girls should be restricted in their freedom of movement as little as possible.
96. Migrant, refugee and asylum-seeking women and girls in administrative detention should be offered appropriate activities, and they should in principle have free access to outdoor exercise throughout the day (i.e. considerably more than one hour per day).

VI. Returns

97. Voluntary returns should be the preferred option. Returns should always be in safety and dignity, in line with the principle of *non-refoulement*. Member States should therefore ensure that migrant and asylum-seeking women and girls are not returned or removed to a country where their life would be at risk or where they might be subjected to acts of

torture or inhuman or degrading treatment or punishment, including those acts which disproportionately affect women or are directed at them because they are women.

98. In these situations, due regard should be given to relevant human rights obligations, notably the right to family life, in accordance with the case law of the European Court of Human Rights; the best interest of the child, if applicable; and to the state of health of the person, including for example pregnancy.
99. Recognising the particular difficulties that victims of violence against women and of trafficking in human beings and face in fully disclosing the grounds for their international protection claim, member States should:
 - 99.1 ensure a process that protects women and girls against the risk of *refoulement*;
 - 99.2 ensure that accelerated and non-suspensive procedures are not implemented under any circumstance, until such a process has been completed to guarantee an individual assessment of the international protection needs in conformity with the provisions of this Appendix, especially if there are any signs of violence against women or trafficking in human beings.
100. Member States should ensure the possibility of suspending expulsion measures of migrant women based on their dependent status on a spouse, partner, parent, or other family member, in order to enable them to apply for an independent residence permit.
101. In order to facilitate the reintegration of returnee women, member States should take the necessary measures to allow for the recognition of eventual diplomas or qualifications obtained.

DENMARK

Jasmina Ashanti Walters Hviid

26/07/21



Strasbourg, 4 June 2021

GEC-MIG (2021) 3 rev 1

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

**Draft Recommendation on protecting the rights of migrant, refugee
and asylum-seeking women**

Working document in view of the internal and external consultation

04.06.2021- 16.07.2021

Draft Recommendation on protecting the human rights of migrant, refugee, asylum-seeking women and girls

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 equality¹ 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. 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;
5. 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), and notably its strategic objective to identify and address vulnerabilities throughout asylum and migration procedures;
6. Bearing in mind the obligations and commitments undertaken by states, including 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 (CETS No. 126, 1987); 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);
7. 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; Recommendation CM/Rec(2019)4 on supporting

¹ Gender equality entails equal rights for women and men, girls and boys as well as the same visibility, empowerment, responsibility, and participation in all spheres of public and private life. It also implies equal access to and distribution of resources between women and men. (Council of Europe Gender Equality Strategy 2018-2023).

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;

8. Recalling the United Nations Convention Relating to the Status of Refugees (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); 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. Noting 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); CEDAW General Recommendation No. 35 on gender-based violence against women; CEDAW Recommendation No.38 on trafficking in women and girls in the context of global migration (2020); as well as 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 human beings, 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. Bearing in mind the importance of the overall application and impact of the United Nations 2030 Agenda for Sustainable Development, in particular Sustainable Development Goal 5 (“Achieve gender equality and empower all women and girls”); Sustainable Development Goal 10.7 (“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”);
12. 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;
13. Acknowledging the positive contribution that [some regular](#) migrant, refugee and asylum-seeking women and girls may bring to European societies and communities; [while at the](#)

same time reaffirming the commitment to address the challenges which irregular migration constitutes to host countries and communities.

Commented [JEG1]: Reaffirm both opportunities and challenges. The balance is crucial.

14. Considering the profound changes in migration patterns and in the situation of migrant, refugee and asylum-seeking women and girls, the fact that their numbers have reached the highest ever in the 2010's and the significant developments in gender equality-, migration- and asylum-related concepts, policies and legal instruments at all levels;
15. Recognising that while existing international human rights standards apply to all persons, and bearing in mind the possible differences in legal status of the persons concerned, 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;
16. Underlining that women are exposed to a continuum of violence that is specific to them because they are women, or which affects them disproportionately, and that such violence is, in this sense, gender-based; recognising with grave concern, that migrant, refugee and asylum-seeking women and girls are often particularly exposed to such forms of violence and exploitation in their countries of origin, during their journey, in transit and/or in destination countries, which may constitute a serious violation of their human rights, especially as migrant, refugee and asylum-seeking women and girls face difficulties and structural barriers in overcoming such violence and exploitation in their diverse forms;
17. 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 including, as appropriate, migrant Roma and Traveller women and girls.
18. Aware of the multiple and intersecting barriers that migrant, refugee and asylum-seeking women and girls face in terms of access to and exercise of rights and services given within their status, participation and leadership and of the need to facilitate their integration and full participation in the economic, social, civic, political and cultural life when given residence permit.
19. Wishing therefore to review and update its Recommendation No. R(79)10 to member States on women migrants, henceforth replaced by the present instrument;
20. Recommends that the governments of member States:
 1. Take all necessary measures to promote and apply the principles set out in the Recommendation and its appendix, aimed at ensuring that migrant, refugee and asylum-seeking women and girls can effectively access and exercise their rights;

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2. Ensure, by appropriate means and action, including where appropriate translation, a wide dissemination (in accessible formats) of this Recommendation among relevant authorities and stakeholders, which are encouraged to take measures to implement it;
3. Examine periodically, within the competent Council of Europe steering committee(s) and bodies, the measures taken, 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 live in another in accordance with national legislation, including citizens of Council of Europe member States with a migrant background, and stateless women and girls.

'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 migrant, refugee and asylum-seeking women and girls do not face discrimination on any ground.
3. Member States should apply an intersectional approach in all measures referred to in this Appendix, notably bearing in mind the different situations and individual characteristics of migrant, refugee and asylum-seeking women and girls.
4. Measures should be established to safeguard the fundamental rights of undocumented migrants and facilitate their access to essential services.
5. Within both migrant and host countries and communities, member States should:
 - 5.1. pay special attention to measures aimed at dismantling all forms of stereotypes which have a negative impact on the rights of migrant, refugee and asylum-seeking women and girls;
 - 5.2. implement awareness-raising and educational measures in respect of gender equality and human rights to promote dialogue.

Commented [MT3]: Suggest to leave it to the member states to interpret what are essential services.

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Girls

6. Member States should adopt a child rights-based approach to migrant, refugee and asylum-seeking children, which takes account of the age and specific situations and needs of girls, including ensuring suitable and safe alternative care arrangements when they are separated from their parents or caregiver 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 migrant, refugee and asylum-seeking girls to support their transition to adulthood beyond the age of 18, including access to education and healthcare, as well as support for their integration and social participation.

Information, empowerment, awareness raising and promotion of human rights

9. To empower migrant, refugee and asylum-seeking women and girls and enable them to access their rights, they should be provided with relevant and accessible information and advice in a way and a language that they understand, covering, at least:
 - 9.1 Their fundamental human rights 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 violence or other violations of rights by State authorities or private contractors acting on behalf of the State, including rights to civil remedies and compensation;
 - 9.3 Protection services available in the host country against all forms of violence against women and trafficking in human beings, including access to general and specific support services, specialist support provided by NGOs and when necessary legal aid;
 - 9.4 Available and accessible public services in the host country, notably healthcare including mental and sexual and reproductive health and rights, comprehensive sexuality education, psycho-social support, education, language and digital training, vocational training, integration programmes, housing and employment.
10. Member States should provide resources and tools for the empowerment and support of migrant, refugee and asylum-seeking women and girls, based on their needs and personal characteristics, in order for them to benefit to as great an extent possible from the social services and welfare available.

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

Access to justice including legal aid

12. Migrant, refugee and asylum-seeking women and girls should have access to the different national and international civil, administrative, and criminal remedies, as well as legal aid, to effectively exercise their rights and/or take action in cases of non-compliance with those rights.
13. Member States should ensure that refugee and asylum-seeking women and girls receive adequate support as claimants, defendants, or witnesses throughout civil, administrative, or criminal proceedings.
14. An intersectional and gender-sensitive approach to individual migrant, refugee and asylum-seeking women and girls should be adopted when determining/assessing their credibility in civil, administrative, and criminal proceedings, particularly where decisions have an impact on their legal status.

Artificial intelligence, automated decision-making, and data protection

15. 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.
16. 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:
 - 16.1 border and immigration control decision- making, including decisions relating to entry or return;
 - 16.2 migration management, including the use of biometric information, such as DNA testing
 - 16.3 policing and security of migrant, refugee and asylum-seeking women and girls, and services related to protection and prevention of crimes;
 - 16.4 the provision of services to migrant, refugee and asylum-seeking women and girls.
17. Migrant, refugee and asylum-seeking women and relevant civil society organisations should be given the opportunity to participate in discussions and decision-making around the development and deployment of new technologies affecting them.

18. Bearing in mind the particular situations of vulnerability of migrant, refugee and asylum-seeking women and girls, relevant authorities should:

18.1 ensure the confidentiality and security of personal data in accordance with their national legislation and applicable international obligations;

18.2 not transfer any such data to the country of origin without explaining to the affected person, in a language that they understand, which categories of data is being transferred and under which conditions, including providing the affected person the opportunity to object.

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Co-operation with civil society

19. Member States should co-operate with and support migrant and refugee women's organisations, women's rights organisations and other civil society organisations that uphold the universal human rights of migrant and refugee and asylum-seeking women and girls, and that defend and empower them.

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

Data collection, research and monitoring

21. Member States should support the collection of data, disaggregated notably by age and sex, on migration, refugee and asylum issues, including regarding victims of violence against women and of trafficking in human beings, and ensuring compliance with applicable data protection requirements.

22. 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.

23. 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 and support

24. Member States should protect migrant, refugee, and asylum-seeking women and girls from all forms of violence against women and trafficking in human beings.

25. Measures should be taken to protect migrant, refugee and asylum-seeking women and girls from hate speech and sexism.

26. Member States should develop specific measures to address the sexual exploitation of migrant, refugee and asylum-seeking women and girls, in particular the demand for such exploitation, including protective, punitive, preventive and educational measures.
27. Member States should ensure that culture, custom, religion, tradition or so-called 'honour' shall not be considered as justification for any exploitation or acts of violence against women and girls.
28. Member States should ensure effective access for migrant, refugee and asylum-seeking women and girls, with or without children, to shelters for women victims of violence against women and trafficking in human beings, regardless of their legal status.
29. Access to free legal advice and free legal aid available in the language of the beneficiary, should be provided, in order to support migrant, refugee and asylum-seeking women and girls victims of all forms of violence against women and trafficking in human beings through criminal, administrative and civil proceedings, including the pursuit of compensation claims and legal redress against the perpetrators.
30. General and specialist support services should be provided to victims of violence against women and trafficking in human beings, including for those persons accommodated in transit, reception and accommodation facilities. This includes, at a minimum, short- and long-term psychological support and healthcare, including mental healthcare, sexual and reproductive healthcare, immediate medical support and the collection of forensic medical evidence in cases of rape and sexual assault.
31. Member States should allow migrant, refugee and asylum-seeking women and girls access to available compensation schemes, measures or other programmes aimed at the integration or reintegration of victims of violence against women or trafficking in human beings, on the same conditions as nationals.
32. Member States should ensure that migrant, refugee and asylum-seeking women and girls do not suffer any penalty, including loss of lawful migration or refugee status as a consequence of their exploitation as victims of trafficking in human beings or as a consequence of leaving an abusive sponsoring partner or spouse on whom their status was dependant or where they have been taken to another country against their will for the purpose of forced marriage.
33. A multi-agency, victim-centred approach, that prevents secondary victimisation and is aimed at the empowerment of migrant, refugee and asylum-seeking women and girls, inclusive of migrant and refugee women's organisations, should be adopted as regards matters relating to their protection and support.
34. Professional interpreters, legal assistants, and intercultural mediators, including women, should be available to assist migrant, refugee and asylum-seeking women and girls seeking protection, whilst making initial complaints, throughout the justice process and in seeking reparations, as well as in the context of the asylum determination procedures.

35. Training in violence against women, trafficking in human beings, gender equality and intercultural issues should be adequately funded and provided to relevant authorities and staff to enable them to:

35.1 promptly identify victims, where possible, in collaboration with relevant support organisations, conduct risk assessments, refer to relevant authorities and provide protection, treatment and care for migrant, refugee and asylum-seeking women and girls who are victims of all forms of violence and trafficking in human beings;

35.2 be aware of the difficulties that migrant, refugee and asylum-seeking women and girls may face in disclosing incidents of violence against women and of trafficking in human beings, due to their insecure legal status, unavailability of quality interpretation services, lack of knowledge of their legal rights and lack of knowledge of the relevance of their experiences of violence in relation to migration/asylum decisions, social stigma, and lack of support to them in this regard.

36. Easily accessible mechanisms should be in place in State- and privately-run institutions, such as reception, transit and detention centres, police stations, prisons, childcare institutions, schools and hospitals, counselling centres and shelters, to enable incidents of violence against women and trafficking in human beings to be reported to staff and by staff. Member states should ensure access to age- and gender-sensitive telephone helplines, procedures for referral to other appropriate agencies, and medical and psychological treatment to facilitate reporting.

37. Risk assessment and risk management of violence against migrant, refugee and asylum-seeking women and girls should be conducted, taking specific account of their potential enhanced vulnerable situation owing to their insecure legal status.

State of emergency and crisis management

38. In situations of public health crisis, humanitarian crisis and crisis related to climate change, member States should take into account the increased risk of gender-based violence, trafficking in human beings, poverty and homelessness for migrant, refugee and asylum-seeking women and girls, and should therefore:

38.1 take into consideration the situation and needs of migrant, refugee and asylum-seeking women and girls in crisis management and recovery measures, including protection of rights, and notably the right to health, shelter, food security, water, economic empowerment and access to specialist support services for women victims of violence, by qualifying them as essential services and guaranteeing their continuity;

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

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

IV. Arrival

Pre-arrival information

39. Member States should ensure that immigration procedures, including visa issuing procedures, take into account migrant and refugee women and girls' specific situations, needs and vulnerabilities and are age- and gender-sensitive.

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

Transit and reception facilities

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

42. Reception and accommodation facilities should be located in areas where women and girls are safe and can access relevant services, with respect to health, and in particular sexual and reproductive health, social and legal assistance, education and shopping facilities.

43. The specific needs and safety concerns of victims of all forms of violence against women and trafficking in human beings 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 and clothing should be provided as needed.

44. Staff should be trained in women's human rights, gender equality-related and trauma issues as well as violence against women and the specific needs of migrant, refugee and asylum-seeking women and girls in accordance with the specific needs at the accomodation centers, and the presence of relevant staff should be ensured in these facilities.

45. Migrant, refugee and asylum-seeking women and girls should be offered adequate safe living space. Separate sleeping areas, as well as other safe spaces should be provided for single women with or without children (up to age 18). Other elements to be provided include access to natural and artificial light, sufficient ventilation and heating, a clean bed and bedding, ready access to clean, separate, well-lit shower and toilet facilities, and the availability of a basic sanitary kit / hygiene products free of charge and on a regular basis.

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Denmark suggest that either the wording "asylum seeking" or the wording "visa issuing" is deleted in para 39 and 40. The reason for this being that no Schengen country can neither ensure visa issuing procedures nor provide information about the conditions enabling the legal entry and stay in member states territory for foreigners who the authorities know will (mis)use a (short stay) visa to apply for asylum (long stay) after entering the Schengen area.

It is not in accordance with Denmark's (or any other Schengen country's) obligations within the Schengen Cooperation to provide information to asylum-seeking women and girls about the conditions enabling the legal entry and stay in a member state's territory.

In accordance with the rules of the Visa Code Schengen visas are only issued for stays of a shorter duration of a maximum of 90 days within a period of 180 days. Thus, according to EU rules, visas are not issued to foreigners subject to a visa requirement if it is clear in advance that they do not intend to return home before the expiry of the visa they have applied for.

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46. Women in transit and reception facilities should have access to a complaint /reporting system, whereby complaints are investigated and referred to the police where relevant, including, where appropriate, access to legal aid.
47. Member states should ensure that transit, reception and accommodation facilities and services are subject to regular independent monitoring, including when provided by private contractors, to ensure compliance with the standards of protection of this Appendix.
48. If migrant, refugee or asylum-seeking women and girls are confined to transit, reception or accommodation centres, member States should also ensure compliance with the provisions contained in the paragraphs of this Appendix related to detention.

Asylum

49. Member States should adopt and implement age- and gender-sensitive-asylum practices and procedures.
50. Women and girls should be entitled to access asylum and protection information and procedures at the borders and elsewhere.
51. The possibility for women and girls to lodge an independent asylum claim should be ensured and they should, where relevant, be made aware of this right.
52. To ensure that gender-based violence against women is properly assessed within the framework of the 1951 United Nations Convention Relating to the Status of Refugees member States should:
- 52.1 ensure that gender-based violence can be recognized as a form of persecution within the meaning of Article 1A(2) of the 1951 Convention;
- 52.2 ensure a gender-sensitive interpretation of the 1951 Convention 'grounds' for asylum;
- 52.3 develop comprehensive gender-sensitive guidelines at all stages of the asylum process, including reception and support services, screening, determination of 'safe' countries for the purpose of accelerated or suspensive procedures, detention, status determination, adjudication and returns; and ensure that all relevant officials receive training in respect of such guidelines
54. Women asylum officers should be available to women applicants, who should be informed about this possibility on request.
55. Separate interviews for women and men from the same family, in the absence of children, should be made possible and their confidentiality should be guaranteed.
56. In processing and determining asylum claims, regard should be given to:
- 55.1 the applicant's own personal circumstances and individual assessment of risk;

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55.2 relevant country of origin information, including in relation to gender equality and women's rights. This encompasses access to justice, the legal framework, and its implementation; available social, economic, and other support; and any form of multiple and intersecting discrimination and/or patriarchal attitudes that women are likely to encounter.

56. Member States should ensure that women and girls have access to complementary/subsidiary protection, where necessary, if the decision on their refugee status is negative.

Cross-border measures

57. Member States ~~are encouraged~~ to participate in resettlement programmes as well as reinforce and promote legal pathways within the member states' capacity to ensure safe transit for women and girls.

58. Member States are encouraged to fund specific assistance and humanitarian resettlement programmes for women and girls' victims, or at risk, of violence against women and trafficking in human beings, including trafficking for the purpose of sexual exploitation.

59. The setting up and implementation of effective cross-border protection mechanisms for victims of violence against women or trafficking in human beings, including trafficking for the purpose of sexual exploitation should be encouraged.

V. Residence and Integration

Access to holistic and quality health services, including sexual and reproductive health and rights

60. Authorities should ensure that healthcare provision takes into account the situation and personal characteristics of migrant women and girls and is age- and gender sensitive.

61. Essential healthcare services including primary care, urgent and immediate care, palliative care and treatment or assistance necessary for public health reasons should be provided to all migrant, refugee and asylum-seeking women and girls.

62. Member States should also enable migrant and refugee women and girls to access free or affordable, comprehensive, quality, age- and gender-sensitive basic health services encompassing mental, sexual and reproductive health, including during pregnancy. Member States should also provide the most essential health services to asylum-seeking women and girls, including during pregnancy and to seek to provide the most essential health services to migrant women and girls in an irregular situation.

63. Migrant, refugee and asylum-seeking girls should be provided with access to age-appropriate sexual and reproductive health and rights information in a language that they can understand.

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64. Access to essential [preferably: basic] healthcare should as a starting point not be dependent on obtaining the authorisation of the migration authority nor permission from any person other than the woman concerned. The treatment of minor girls may be subject to the consent of a parent or guardian.

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

Social services, social security and housing

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

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67. Member States should ensure that migrant women lawfully residing in the country are given a treatment not less favourable than that accorded to nationals regarding access to housing and rents.

Integration, social, cultural and political participation

68. Member States should ensure that any child born in their territory is entitled to have their birth registered immediately after birth and is granted a pathway to a nationality.

69. 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 and refugee women, member States should take steps to ensure that migrant, refugee and asylum-seeking women who are entitled to vote and stand for election in local, regional, national or European elections are aware of their rights and encouraged to participate without any form of discrimination.

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70. Authorities should encourage and support initiatives aimed at empowering migrant and refugee 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 can include participation in local, cultural, women's or other associations, sports clubs, youth clubs and other organisations.

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71. Public and private coaching, mentoring and other support programmes aimed at migrant and refugee women and girls should be set up and supported, notably in order to promote positive role models and promising practices of integration.

72. The positive contribution made by some regular migrant and refugee women and girls to society and host communities, the economy and culture should encouraged, while at the same time reaffirming the commitment to address the challenges which irregular migration constitutes to host countries and communities.

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Education, vocational training and life-long learning

- 73. Authorities should ensure that migrant and refugee children have access to education and take measures to reach those migrant and refugee girls who may have been prevented from accessing education in their country of origin, ensuring the provision of education or day care, preferably within mainstream educational structures.
- 74. Recognizing that the ability to communicate in the host country’s language is essential for integration, member States should ensure access to an adequate number of hours of quality language training and integration programmes to migrant and refugee women and girls, to promote their empowerment and protection. Literacy and digital skills courses should also be provided to migrant and refugee women and girls corresponding to their needs and as soon as possible after their arrival in the host country.
- 75. Member States should take steps to facilitate the recognition and validation of migrant and refugee women and girls’ existing vocational and academic qualifications and work experience in practice, including through initiatives such as the Council of Europe European Qualifications Passport for Refugees.
- 76. Migrant and refugee women and girls 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.

77. ↓

Employment

- 78. Member States should take specific and targeted measures to prevent discrimination and promote access to employment for migrant and refugee women, at an early stage in the migration process, including safe and legal routes to employment pre-arrival.
- 79. Member States should comply with the obligations regarding the right to work and self-employment for refugee women and girls set out by the United Nations Convention Relating to the Status of Refugees and consider removing barriers to work, for other migrant women and girls after they have been present in the territory for a certain length of time.
- 80. In respect of *at least* those migrant and refugee women and girls who are permitted to work under the national law of member States, the latter should ensure decent and dignified working conditions, including:
 - 80.1. taking measures to regulate and improve migrant and refugee women and girls’ working conditions and to eliminate all forms of labour exploitation and discrimination, including when they are multiple and intersecting;
 - 80.2. supporting and assisting migrant and refugee women and girls where appropriate 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

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support volunteering, internships, apprenticeships and job placement programmes;

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

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80.4 ensure that migrant ~~and~~ refugee women 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.

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

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Residence permits

82. Member States should ensure that migrant, refugee and asylum-seeking women and girls who are granted a residence permit on the basis of a family relationship are entitled to social, economic and labour-related rights and entitlements in an autonomous capacity.

83. Migrant, refugee and asylum-seeking women and girls should be made aware of any entitlement to a renewable autonomous residence permit, for example due to their own protection needs under the UN Refugee Convention, their status as a victim of violence against women, a victim of trafficking in human beings, relationship breakdown, or other particularly difficult circumstances.

84. The evidentiary criteria and threshold for the granting of autonomous residence permits should be realistic and sensitive to the individual situation of migrant, refugee and asylum-seeking women and responsible statutory agencies should be adequately trained to ensure that migrant, refugee and asylum-seeking women and girls can benefit from these permits.

85. Member States should ensure that migrant, refugee and asylum-seeking women and girls and their dependents are granted a renewable residence permit if their stay is necessary for criminal investigations or proceedings and until at least their conclusions.

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

87. Member States are encouraged to provide security of residence on an independent basis to migrant and refugee women and girls present in a country for a long time, including stateless women and girls.

88. Member States should provide pathways to naturalisation and take measures to ensure that migrant and refugee women and girls are not faced with gender-related obstacles in this regard.

Family reunion

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

- 89.1. adopt a definition of family consistent with article 8 of the European Convention on Human Rights;
- 89.2. ensure that women and girls are aware of their right to family reunion, including as migrant or refugee sponsors, and receive access to legal advice and assistance to pursue that right; and
- 89.3. consider accepting or seeking the transfer of asylum claims to enable the family reunion of migrant, refugee and asylum-seeking women and girls separated on their journeys.
- 89.4. Seek to provide within their national laws, gender-sensitive legal pathways to respect the family life of migrant women lawfully residing on their territory, in particular by providing the immediate and dependent family members with the possibly to migrate with or join them in the host country.

Detention

90. In respect of all forms of deprivation of liberty, member States should adopt an age- and gender-sensitive approach, which takes into account the individual situation and personal characteristics of migrant, refugee and asylum-seeking women and girls. Member States should also provide the following services to migrant, refugee and asylum-seeking women and girls deprived of their liberty:

- 90.1 access to law enforcement measures and reporting / complaints mechanisms including referral to and investigation of those complaints by police where relevant and access to legal aid;
- 90.2 access to information about their rights, as set forth in paragraph 9 of this Appendix;
- 90.3 access to health-care and hygiene services, telephone helplines and appropriate trauma support and counselling facilities;
- 90.4 access to a telephone, and/or Internet facility to inform a relative or third party of the fact of deprivation of liberty, as well as to consular assistance;

- 90.5 the opportunity to remain in meaningful contact with the outside world, including regular access to a telephone, to their mobile phones or to Internet facilities; and
- 90.6 the presence of women among border, migration and other police or custody staff, as well as among social workers and interpreters.
91. Member States should ensure that conditions in immigration detention centres reflect those listed in paragraphs 41-48 of this Appendix (Transit and reception facilities).
92. Member states should ensure that detention facilities, including administrative detention facilities, are subject to regular independent monitoring.
93. In the event that administrative detention under immigration legislation 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 women and girls within detention facilities, where their privacy is guaranteed and which cater adequately for their specific needs. Unaccompanied or separated girls should not, as a general rule, be detained.
94. Effective alternatives to administrative detention should be provided in any event for migrant, refugee and asylum-seeking women and girls who have been victims of torture, violence against women or trafficking in human beings, pregnant and nursing women, elderly women, and women with disabilities.
95. Migrant, refugee and asylum-seeking women and girls in administrative detention should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation. Care should be taken in the design and layout of such premises to avoid, as far as possible, any impression of a carceral environment. Within the detention centre, migrant refugee and asylum-seeking women and girls should be restricted in their freedom of movement as little as possible.
96. Migrant, refugee and asylum-seeking women and girls in administrative detention should be offered appropriate activities, and they should in principle have free access to outdoor exercise throughout the day (i.e. considerably more than one hour per day).

VI. Returns

97. Voluntary returns should be the preferred option. Returns should always be in safety and dignity, in line with the principle of *non-refoulement*. Member States should therefore ensure that migrant and asylum-seeking women and girls are not returned or removed to a country where their life would be at risk or where they might be subjected to acts of torture or inhuman or degrading treatment or punishment, including those acts which disproportionately affect women or are directed at them because they are women.

98. In these situations, due regard should be given to relevant human rights obligations, notably the right to family life, in accordance with the case law of the European Court of Human Rights; the best interest of the child, if applicable; and to the state of health of the person, including for example pregnancy.
99. Recognising the particular difficulties that victims of violence against women and of trafficking in human beings and face in fully disclosing the grounds for their international protection claim, member States should:
- 99.1 ensure a process that protects women and girls against the risk of *refoulement*;
 - 99.2 ensure that accelerated and non-suspensive procedures are not implemented under any circumstance, until such a process has been completed to guarantee an individual assessment of the international protection needs in conformity with the provisions of this Appendix, especially if there are any signs of violence against women or trafficking in human beings.
100. Member States should ensure the possibility of suspending expulsion measures of migrant women based on their dependent status on a spouse, partner, parent, or other family member, in order to enable them to apply for an independent residence permit.
101. In order to facilitate the reintegration of returnee women, member States should take the necessary measures to allow for the recognition of eventual diplomas or qualifications obtained.

FINLAND

Päivi YLI-PIETILÄ

15/07/21



Strasbourg, 4 June 2021

GEC-MIG (2021) 3 rev 1

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

**Draft Recommendation on protecting the rights of migrant, refugee
and asylum-seeking women**

Working document in view of the internal and external consultation

04.06.2021- 16.07.2021

Draft Recommendation on protecting the rights of migrant, refugee, asylum-seeking women and girls

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 equality¹ 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. 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;
5. 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), and notably its strategic objective to identify and address vulnerabilities throughout asylum and migration procedures;
6. Bearing in mind the obligations and commitments undertaken by states, including 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 (CETS No. 126, 1987); 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);
7. 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; Recommendation CM/Rec(2019)4 on supporting

¹ Gender equality entails equal rights for women and men, girls and boys as well as the same visibility, empowerment, responsibility, and participation in all spheres of public and private life. It also implies equal access to and distribution of resources between women and men. (Council of Europe Gender Equality Strategy 2018-2023).

Commented [v1]: Must be ensured that this paper is in line with the Council of Europe Convention on Action against trafficking in Human Beings. It is important to be able to identify the victims of human trafficking. The rights of the victims of the human trafficking can be in some cases wider than those of immigrant or asylum seeker women or girls. We did not notice that the right of victims of human trafficking to seek for a residence permit in certain cases, was mentioned in the text.

Also reference to the return and integration paragraphs of the convention should be referred (as well as for example the responsibility of the states to avoid re-victimization and principle of non-refoulement (art16)

It can be justified to think that human trafficking is one form of violence against women and girls. An therefore it should be included in the recommendations.

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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;

8. Recalling the United Nations Convention Relating to the Status of Refugees (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); 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. Noting 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); CEDAW General Recommendation No. 35 on gender-based violence against women; CEDAW Recommendation No.38 on trafficking in women and girls in the context of global migration (2020); as well as 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 human beings, 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. Bearing in mind the importance of the overall application and impact of the United Nations 2030 Agenda for Sustainable Development, in particular Sustainable Development Goal 5 (“Achieve gender equality and empower all women and girls”); Sustainable Development Goal 10.7 (“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”);
12. 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;
13. Acknowledging the positive contribution that migrant, refugee and asylum-seeking women and girls may bring to European societies and communities;

Commented [v3]: Have to be ensured that this paper of recommendations is in accordance with the CEDAW Recommendation no 38 which is very wide.

14. Considering the profound changes in migration patterns and in the situation of migrant, refugee and asylum-seeking women and girls, the fact that their numbers have reached the highest ever in the 2010's and the significant developments in gender equality-, migration- and asylum-related concepts, policies and legal instruments at all levels;
15. Recognising that while existing international human rights standards apply to all persons, and bearing in mind the possible differences in legal status of the persons concerned, 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;
16. Underlining that women are exposed to a continuum of violence that is specific to them because they are women, or which affects them disproportionately, and that such violence is, in this sense, gender-based; recognising with grave concern, that migrant, refugee and asylum-seeking women and girls are particularly exposed to such forms of violence and exploitation in their countries of origin, during their journey, in transit and/or in destination countries, which may constitute a serious violation of their human rights, especially as migrant, refugee and asylum-seeking women and girls face difficulties and structural barriers in overcoming such violence and exploitation in their diverse forms;
17. 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 including, as appropriate, migrant Roma and Traveller women and girls.
18. Aware of the multiple and intersecting barriers that migrant, refugee and asylum-seeking women and girls face in terms of access to and exercise of rights, access to services, participation and leadership and of the need to facilitate their integration and full participation in the economic, social, civic, political and cultural life;
19. Wishing therefore to review and update its Recommendation No. R(79)10 to member States on women migrants, henceforth replaced by the present instrument;
20. Recommends that the governments of member States:
 1. Take all necessary measures to promote and apply the principles set out in the Recommendation and its appendix, aimed at ensuring that migrant, refugee and asylum-seeking women and girls can effectively access and exercise their rights;

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2. Ensure, by appropriate means and action, including where appropriate translation, a wide dissemination (in accessible formats) of this Recommendation among relevant authorities and stakeholders, which are encouraged to take measures to implement it;
3. Examine periodically, within the competent Council of Europe steering committee(s) and bodies, the measures taken, 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 live in another, including citizens of Council of Europe member States with a migrant background, and stateless women and girls.

'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 migrant, refugee and asylum-seeking women and girls do not face discrimination on any ground.
3. Member States should apply an intersectional approach in all measures referred to in this Appendix, notably bearing in mind the different situations and individual characteristics of migrant, refugee and asylum-seeking women and girls.
4. Measures should be established to safeguard the fundamental rights of undocumented migrants and facilitate their access to essential services including, at a minimum, protection and complaint mechanisms and all support services for victims of violence against women and trafficking in human beings, without fearing any reporting to migration authorities.
5. Within both migrant and host countries and communities, member States should:
 - 5.1. pay special attention to measures aimed at dismantling all forms of stereotypes which have a negative impact on the rights of migrant, refugee and asylum-seeking women and girls;

- 5.2. implement awareness-raising and educational measures in respect of gender equality and human rights to promote dialogue.

Girls

6. Member States should adopt a child rights-based approach to migrant, refugee and asylum-seeking children, which takes account of the age and specific situations and needs of girls, including ensuring suitable and safe alternative care arrangements when they are separated from their parents or caregiver 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 migrant, refugee and asylum-seeking girls to support their transition to adulthood beyond the age of 18, including access to education and healthcare, as well as support for their integration and social participation.

Information, empowerment, awareness raising and promotion of human rights

9. To empower migrant, refugee and asylum-seeking women and girls and enable them to access their rights, they should be provided with relevant and accessible information and advice in a way and a language that they understand, covering, at least:
 - 9.1 Their fundamental human rights 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 violence or other violations of rights by State authorities or private contractors acting on behalf of the State, including rights to civil remedies and compensation;
 - 9.3 Protection services available in the host country against all forms of violence against women and trafficking in human beings, including access to general and specific support services, specialist support provided by NGOs and legal aid;
 - 9.4 Available and accessible public services in the host country, notably healthcare including mental and sexual and reproductive health and rights, comprehensive sexuality education, psycho-social support, education, language and digital training, vocational training, integration programmes, housing and employment.
10. Member States should provide resources and tools for the empowerment and support of migrant, refugee and asylum-seeking women and girls, based on their needs and personal characteristics, in order for them to benefit to as great an extent possible from the social services and welfare available.

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

Access to justice including legal aid

12. Migrant, refugee and asylum-seeking women and girls should have access to the different national and international civil, administrative, and criminal remedies, as well as legal aid, to effectively exercise their rights and/or take action in cases of non-compliance with those rights.
13. Member States should ensure that refugee and asylum-seeking women and girls receive adequate support as claimants, defendants, or witnesses throughout civil, administrative, or criminal proceedings.
14. An intersectional and gender-sensitive approach to individual migrant, refugee and asylum-seeking women and girls should be adopted when determining/assessing their credibility in civil, administrative, and criminal proceedings, particularly where decisions have an impact on their legal status.

Artificial intelligence, automated decision-making, and data protection

15. 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.
16. 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:
 - 16.1 border and immigration control decision-making, including decisions relating to entry or return;
 - 16.2 migration management, including the use of biometric information, such as DNA testing
 - 16.3 policing and security of migrant, refugee and asylum-seeking women and girls, and services related to protection and prevention of crimes;
 - 16.4 the provision of services to migrant, refugee and asylum-seeking women and girls.
17. Migrant, refugee and asylum-seeking women and relevant civil society organisations should be given the opportunity to participate in discussions and decision-making around the development and deployment of new technologies affecting them.

18. Bearing in mind the particular situations of vulnerability of migrant, refugee and asylum-seeking women and girls, relevant authorities should:

18.1 ensure the confidentiality and security of personal data in accordance with their national legislation and applicable international obligations;

18.2 not transfer any such data to the country of origin without explaining to the affected person, in a language that they understand, which data is being transferred and under which conditions, including providing the affected person the opportunity to object.

Co-operation with civil society

19. Member States should co-operate with and support migrant and refugee women's organisations, women's rights organisations and other civil society organisations that uphold the universal human rights of migrant and refugee and asylum-seeking women and girls, and that defend and empower them.

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

Data collection, research and monitoring

21. Member States should support the collection of data, disaggregated notably by age and sex, on migration, refugee and asylum issues, including regarding victims of violence against women and of trafficking in human beings, and ensuring compliance with applicable data protection requirements.

22. 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.

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

Commented [v4]: Data production on discrimination by population group, and in particular vulnerable groups, must in future be part of targeted and population-based population surveys.

Commented [v5]: Data collection would require permanent resourcing in order to collect data in a regular and high quality manner.

III. Protection and support

24. Member States should protect migrant, refugee, and asylum-seeking women and girls from all forms of violence against women and trafficking in human beings.

25. Measures should be taken to protect migrant, refugee and asylum-seeking women and girls from hate speech and sexism.

Commented [v6]: Also the gender and / or sexual minorities should be taken into account as they are often in a very vulnerable position in their country of origin and within their communities as well (face discrimination and violence).

26. Member States should develop specific measures to address the sexual exploitation of migrant, refugee and asylum-seeking women and girls, in particular the demand for such exploitation, including protective, punitive, preventive and educational measures.
27. Member States should ensure that culture, custom, religion, tradition or so-called 'honour' shall not be considered as justification for any exploitation or acts of violence against women and girls.
28. Member States should ensure effective access for migrant, refugee and asylum-seeking women and girls, with or without children, to shelters for women victims of violence against women and trafficking in human beings, regardless of their legal status.
29. Access to free legal advice and free legal aid available in the language of the beneficiary, should be provided, in order to support migrant, refugee and asylum-seeking women and girls victims of all forms of violence against women and trafficking in human beings through criminal, administrative and civil proceedings, including the pursuit of compensation claims and legal redress against the perpetrators.
30. General and specialist support services should be provided to victims of violence against women and trafficking in human beings, including for those persons accommodated in transit, reception and accommodation facilities. This includes, at a minimum, short- and long-term psychological support and healthcare, including mental healthcare, sexual and reproductive healthcare, immediate medical support and the collection of forensic medical evidence in cases of rape and sexual assault.
31. Member States should allow migrant, refugee and asylum-seeking women and girls access to available compensation schemes, measures or other programmes aimed at the integration or reintegration of victims of violence against women or trafficking in human beings, on the same conditions as nationals.
32. Member States should ensure that migrant, refugee and asylum-seeking women and girls do not suffer any penalty, including loss of lawful migration or refugee status as a consequence of their exploitation as victims of trafficking in human beings or as a consequence of leaving an abusive sponsoring partner or spouse on whom their status was dependant or where they have been taken to another country against their will for the purpose of forced marriage.
33. A multi-agency, victim-centred approach, that prevents secondary victimisation and is aimed at the empowerment of migrant, refugee and asylum-seeking women and girls, inclusive of migrant and refugee women's organisations, should be adopted as regards matters relating to their protection and support.
34. Professional interpreters, legal assistants, and intercultural mediators, including women, should be available to assist migrant, refugee and asylum-seeking women and girls seeking protection, whilst making initial complaints, throughout the justice process and in seeking reparations, as well as in the context of the asylum determination procedures.

35. Training in violence against women, trafficking in human beings, gender equality and intercultural issues should be adequately funded and provided to relevant authorities and staff including interpreters, legal assistants and intercultural mediators to enable them to:
- 35.1 promptly identify victims, where possible, in collaboration with relevant support organisations, conduct risk assessments, refer to relevant authorities and provide protection, treatment and care for migrant, refugee and asylum-seeking women and girls who are victims of all forms of violence and trafficking in human beings;
 - 35.2 be aware of the difficulties that migrant, refugee and asylum-seeking women and girls may face in disclosing incidents of violence against women and of trafficking in human beings, due to their insecure legal status, unavailability of quality interpretation services, lack of knowledge of their legal rights and lack of knowledge of the relevance of their experiences of violence in relation to migration/asylum decisions, social stigma, and lack of support to them in this regard.
36. Easily accessible mechanisms should be in place in State- and privately-run institutions, such as reception, transit and detention centres, police stations, prisons, childcare institutions, schools and hospitals, counselling centres and shelters, to enable incidents of violence against women and trafficking in human beings to be reported to staff and by staff. Member states should ensure access to age- and gender-sensitive telephone helplines, procedures for referral to other appropriate agencies, and medical and psychological treatment to facilitate reporting.
37. Risk assessment and risk management of violence against migrant, refugee and asylum-seeking women and girls should be conducted, taking specific account of their potential enhanced vulnerable situation owing to their insecure legal status.

State of emergency and crisis management

38. In situations of public health crisis, humanitarian crisis and crisis related to climate change, member States should take into account the increased risk of gender-based violence, trafficking in human beings, poverty and homelessness for migrant, refugee and asylum-seeking women and girls, and should therefore:
- 38.1 take into consideration the situation and needs of migrant, refugee and asylum-seeking women and girls in crisis management and recovery measures, including protection of rights, and notably the right to health, shelter, food security, water, economic empowerment and access to specialist support services for women victims of violence, by qualifying them as essential services and guaranteeing their continuity;
 - 38.2 ensure that measures taken during a crisis and ensuing state of emergency conform with international obligations related to the human rights of migrant, refugee and asylum-seeking women and girls;

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

IV. Arrival

Pre-arrival information

39. Member States should ensure that immigration procedures, including visa issuing procedures, take into account migrant, refugee and asylum-seeking women and girls' specific situations, needs and vulnerabilities and are age- and gender-sensitive.
40. Information should be provided to migrant, refugee and asylum-seeking women and girls about the conditions enabling the legal entry and stay in a member State's territory.

Transit and reception facilities

41. Relevant authorities should ensure that transit, reception, accommodation and screening arrangements are age- and gender-sensitive. The screening process should, in particular, facilitate the identification of victims of violence against women and trafficking in human beings at the earliest possible opportunity and ensure that women's protection claims are processed efficiently.
42. Reception and accommodation facilities should be located in areas where women and girls are safe and can access relevant services, with respect to health, and in particular sexual and reproductive health, social and legal assistance, education and shopping facilities.
43. The specific needs and safety concerns of victims of all forms of violence against women and trafficking in human beings 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 and clothing should be provided as needed.
44. Staff should be trained in women's human rights, gender equality-related and trauma issues as well as violence against women and the specific needs of migrant, refugee and asylum-seeking women and girls, and the presence of professional women social workers, intercultural mediators, interpreters, police officers and guards should be ensured in these facilities.
45. Migrant, refugee and asylum-seeking women and girls should be offered adequate safe living space. Separate sleeping areas, as well as other safe spaces should be provided for single women with or without children (up to age 18). Other elements to be provided include access to natural and artificial light, sufficient ventilation and heating, a clean bed and bedding, ready access to clean, separate, well-lit shower and toilet facilities, and the availability of a basic sanitary kit / hygiene products free of charge and on a regular basis.

46. Women in transit and reception facilities should have access to a complaint /reporting system, whereby complaints are investigated and referred to the police where relevant, including, where appropriate, access to legal aid.
47. Member states should ensure that transit, reception and accommodation facilities and services are subject to regular independent monitoring, including when provided by private contractors, to ensure compliance with the standards of protection of this Appendix.
48. If migrant, refugee or asylum-seeking women and girls are confined to transit, reception or accommodation centres, member States should also ensure compliance with the provisions contained in the paragraphs of this Appendix related to detention.

Asylum

49. Member States should adopt and implement age- and gender-sensitive-asylum laws, practices and procedures.
50. Women and girls should be entitled to access asylum and protection information and procedures at the borders and elsewhere.
51. The possibility for women and girls to lodge an independent asylum claim should be ensured and they should be made aware of this right.
52. To ensure that gender-based violence against women is properly assessed within the framework of the 1951 United Nations Convention Relating to the Status of Refugees member States should:
 - 52.1 ensure that all forms of gender-based violence can be recognized as a form of persecution within the meaning of Article 1A(2) of the 1951 Convention;
 - 52.2 ensure a gender-sensitive interpretation of the 1951 Convention 'grounds' for asylum;
 - 52.3 develop comprehensive gender-sensitive guidelines at all stages of the asylum process, including reception and support services, screening, determination of 'safe' countries for the purpose of accelerated or suspensive procedures, detention, status determination, adjudication and returns; and ensure that border police, migration officials, asylum officers, decision-makers, intercultural mediators and interpreters receive training in respect of such guidelines
53. Women asylum officers should be available to women applicants, who should be informed about this possibility.
54. Separate interviews for women and men from the same family, in the absence of children, should be made possible and their confidentiality should be guaranteed.
55. In processing and determining asylum claims, regard should be given to:

- 55.1 the applicant's own personal circumstances and individual assessment of risk;
- 55.2 relevant country of origin information, including in relation to gender equality and women's rights. This encompasses access to justice, the legal framework, and its implementation; available social, economic, and other support; and any form of multiple and intersecting discrimination and/or patriarchal attitudes that women are likely to encounter.

56. Member States should ensure that women and girls have access to complementary/subsidiary protection, where necessary, if the decision on their refugee status is negative.

Cross-border measures

- 57. Member States should seek to participate in resettlement and relocation programmes as well as reinforce and promote legal pathways to ensure safe transit for women and girls.
- 58. Member States are encouraged to fund specific assistance and humanitarian resettlement programmes for women and girls' victims, or at risk, of violence against women and trafficking in human beings, including trafficking for the purpose of sexual exploitation.
- 59. The setting up and implementation of effective cross-border protection mechanisms for victims of violence against women or trafficking in human beings, including trafficking for the purpose of sexual exploitation should be encouraged.

V. Residence and Integration

Access to holistic and quality health services, including sexual and reproductive health and rights

- 60. Authorities should ensure that healthcare provision takes into account the situation and personal characteristics of migrant women and girls and is age- and gender sensitive.
- 61. Essential healthcare services including primary care, urgent and immediate care, palliative care and treatment or assistance necessary for public health reasons should be provided to all migrant, refugee and asylum-seeking women and girls, including migrant women and girls in an irregular situation.
- 62. Member States should also enable migrant, refugee and asylum-seeking women and girls to access free or affordable, comprehensive, quality, age- and gender-sensitive health services encompassing mental, sexual and reproductive health, including during pregnancy, as well as hygiene products. Member States should also seek to provide such health services to migrant women and girls in an irregular situation.

Commented [v7]: and postnatal time, nursing, contraceptive services, safe induced abortion if needed and posttrauma care including psychosocial support.

Commented [v8]: Those who have undergone female genital mutilation/cutting (FGM/C) should be identified and provided the necessary medical and psychological support. It should be ensured that those at risk of FGM/C are not mutilated.

63. Migrant, refugee and asylum-seeking girls should be provided with access to age-appropriate sexual and reproductive health and rights information in a language that they can understand.
64. Access to available healthcare should not be dependent on obtaining the authorisation of the migration authority nor permission from any person other than the woman concerned. The treatment of minor girls may be subject to the consent of a parent or guardian.
65. Taking into account language and cultural barriers, member States should ensure that women give prior, free and informed consent to any medical treatment.

Social services, social security and housing

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

Integration, social, cultural and political participation

68. Member States should ensure that any child born in their territory is entitled to have their birth registered immediately after birth and is granted a pathway to a nationality.
69. Owing to persisting stereotypes and existing inequalities in access to civic rights and participation in political decision-making, which are even more serious for migrant, refugee and asylum-seeking women, member States should take steps to ensure that migrant, refugee and asylum-seeking women who are entitled to vote and stand for election in local, regional, national or European elections are aware of their rights and encouraged to participate without any form of discrimination.
70. Authorities should encourage and support initiatives aimed at empowering migrant, refugee and asylum-seeking 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 can include participation in local, cultural, women's or other associations, sports clubs, youth clubs and other organisations.
71. Public and private coaching, mentoring and other support programmes aimed at migrant and refugee women and girls should be set up and supported, notably in order to promote positive role models and promising practices of integration.
72. The positive contribution made by migrant and refugee women and girls to society and host communities, the economy and culture should be highlighted and encouraged.

Education, vocational training and life-long learning

73. Authorities should ensure that migrant, refugee and asylum-seeking children have access to education and take measures to reach those migrant, refugee, and asylum-seeking 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. Recognizing that the ability to communicate in the host country's language is essential for integration, member States should ensure access to an adequate number of hours of quality language training and integration programmes to migrant, refugee and asylum-seeking women and girls, to promote their empowerment and protection. Literacy and digital skills courses should also be provided to migrant, refugee and asylum-seeking women and girls corresponding to their needs and as soon as possible after their arrival in the host country.
75. Member States should take steps to facilitate the recognition and validation of migrant and refugee women and girls' existing vocational and academic qualifications and work experience in practice, including through initiatives such as the Council of Europe European Qualifications Passport for Refugees.
76. Migrant, refugee and asylum-seeking women and girls 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.
77. Access to the programmes and measures referred to in paragraphs 74, 75 and 76 for migrants in an irregular situation may be subject to national laws governing eligibility.

Employment

78. Member States should take specific and targeted measures to prevent discrimination and promote access to employment for migrant and refugee women, at an early stage in the migration process, including safe and legal routes to employment pre-arrival.
79. Member States should comply with the obligations regarding the right to work and self-employment for refugee women and girls set out by the United Nations Convention Relating to the Status of Refugees and consider removing barriers to work, for other migrant women and girls after they have been present in the territory for a certain length of time.
80. In respect of *at least* those migrant, refugee, and asylum-seeking women and girls who are permitted to work under the national law of member States, the latter should ensure decent and dignified working conditions, including:
- 80.1. taking measures to regulate and improve migrant, refugee, and asylum-seeking women and girls' working conditions and to eliminate all forms of labour exploitation and discrimination, including when they are multiple and intersecting;

- 80.2. supporting and assisting migrant, refugee, and asylum-seeking women and girls where appropriate 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, internships, apprenticeships and job placement programmes;
- 80.3 in order to facilitate access to the labour market, take steps to ensure that migrant, refugee and asylum-seeking workers have access to work/life balance measures including maternity, paternity and parental leave, flexible working conditions where possible, and ensure access to and enjoyment of child-care facilities on an equal footing with national workers; and
- 80.4 ensure that migrant, refugee, and asylum-seeking women 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.
81. Member States should implement the provisions of relevant national and international standards directed at protecting migrant, refugee and asylum-seeking women and girls carrying out domestic work from discrimination, exploitation and abuse.

Residence permits

82. Member States should ensure that migrant, refugee and asylum-seeking women and girls who are granted a residence permit on the basis of a family relationship are entitled to social, economic and labour-related rights and entitlements in an autonomous capacity.
83. Migrant, refugee and asylum-seeking women and girls should be made aware of any entitlement to a renewable autonomous residence permit, for example due to their own protection needs under the UN Refugee Convention, their status as a victim of violence against women, a victim of trafficking in human beings, relationship breakdown, or other particularly difficult circumstances
84. The evidentiary criteria and threshold for the granting of autonomous residence permits should be realistic and sensitive to the individual situation of migrant, refugee and asylum-seeking women and responsible statutory agencies should be adequately trained to ensure that migrant, refugee and asylum-seeking women and girls can benefit from these permits.
85. Member States should ensure that migrant, refugee and asylum-seeking women and girls and their dependents are granted a renewable residence permit if their stay is necessary for criminal investigations or proceedings and until at least their conclusions.
86. Member States should facilitate the possibility for victims of forced marriage brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, to regain such status.

87. Member States are encouraged to provide security of residence on an independent basis to migrant and refugee women and girls present in a country for a long time, including stateless women and girls.
88. Member States should provide pathways to naturalisation and take measures to ensure that migrant and refugee women and girls are not faced with gender-related obstacles in this regard.

Family reunion

89. Recognising that family reunion can be both a secure pathway to safety for migrant and refugee women and girls, and a protective factor in the host country, member States should safeguard the right to family reunion for migrant and refugee women and girls in accordance with obligations under the European Convention on Human Rights and international law. In this respect, member States should:
- 89.1. adopt a definition of family consistent with article 8 of the European Convention on Human Rights;
 - 89.2. ensure that women and girls are aware of their right to family reunion, including as migrant or refugee sponsors, and receive access to legal advice and assistance to pursue that right; and
 - 89.3. consider accepting or seeking the transfer of asylum claims to enable the family reunion of migrant, refugee and asylum-seeking women and girls separated on their journeys.
 - 89.4. Seek to provide within their national laws, gender-sensitive legal pathways to respect the family life of migrant women lawfully residing on their territory, in particular by providing the immediate and dependent family members with the possibly to migrate with or join them in the host country.

Detention

90. In respect of all forms of deprivation of liberty, member States should adopt an age- and gender-sensitive approach, which takes into account the individual situation and personal characteristics of migrant, refugee and asylum-seeking women and girls. Member States should also provide the following services to migrant, refugee and asylum-seeking women and girls deprived of their liberty:
- 90.1 access to law enforcement measures and reporting / complaints mechanisms including referral to and investigation of those complaints by police where relevant and access to legal aid;
 - 90.2 access to information about their rights, as set forth in paragraph 9 of this Appendix;
 - 90.3 access to health-care and hygiene services, telephone helplines and appropriate trauma support and counselling facilities;

- 90.4 access to a telephone, and/or Internet facility to inform a relative or third party of the fact of deprivation of liberty, as well as to consular assistance;
- 90.5 the opportunity to remain in meaningful contact with the outside world, including regular access to a telephone, to their mobile phones or to Internet facilities; and
- 90.6 the presence of women among border, migration and other police or custody staff, as well as among social workers and interpreters.
91. Member States should ensure that conditions in immigration detention centres reflect those listed in paragraphs 41-48 of this Appendix (Transit and reception facilities).
92. Member states should ensure that detention facilities, including administrative detention facilities, are subject to regular independent monitoring.
93. In the event that administrative detention under immigration legislation 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 women and girls within detention facilities, where their privacy is guaranteed and which cater adequately for their specific needs. Unaccompanied or separated girls should not, as a general rule, be detained.
94. Effective alternatives to administrative detention should be provided in any event for migrant, refugee and asylum-seeking women and girls who have been victims of torture, violence against women or trafficking in human beings, pregnant and nursing women, elderly women, and women with disabilities.
95. Migrant, refugee and asylum-seeking women and girls in administrative detention should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation. Care should be taken in the design and layout of such premises to avoid, as far as possible, any impression of a carceral environment. Within the detention centre, migrant refugee and asylum-seeking women and girls should be restricted in their freedom of movement as little as possible.
96. Migrant, refugee and asylum-seeking women and girls in administrative detention should be offered appropriate activities, and they should in principle have free access to outdoor exercise throughout the day (i.e. considerably more than one hour per day).

VI. Returns

97. Voluntary returns should be the preferred option. Returns should always be in safety and dignity, in line with the principle of *non-refoulement*. Member States should therefore ensure that migrant and asylum-seeking women and girls are not returned or removed to a country where their life would be at risk or where they might be subjected to acts of

torture or inhuman or degrading treatment or punishment, including those acts which disproportionately affect women or are directed at them because they are women.

98. In these situations, due regard should be given to relevant human rights obligations, notably the right to family life, in accordance with the case law of the European Court of Human Rights; the best interest of the child, if applicable; and to the state of health of the person, including for example pregnancy.
99. Recognising the particular difficulties that victims of violence against women and of trafficking in human beings and face in fully disclosing the grounds for their international protection claim, member States should:
 - 99.1 ensure a process that protects women and girls against the risk of *refoulement*;
 - 99.2 ensure that accelerated and non-suspensive procedures are not implemented under any circumstance, until such a process has been completed to guarantee an individual assessment of the international protection needs in conformity with the provisions of this Appendix, especially if there are any signs of violence against women or trafficking in human beings.
100. Member States should ensure the possibility of suspending expulsion measures of migrant women based on their dependent status on a spouse, partner, parent, or other family member, in order to enable them to apply for an independent residence permit.
101. In order to facilitate the reintegration of returnee women, member States should take the necessary measures to allow for the recognition of eventual diplomas or qualifications obtained.

FRANCE

Alexis RINCKENBACH

02/07/2021



Strasbourg, le 4 juin 2021

GEC-MIG (2021)3 rev 1

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

**Projet de recommandation sur la protection des droits des femmes et
des filles migrantes, réfugiées et demandeuses d'asile**

Document de travail en vue de la consultation interne et externe

04.06.2021 – 16.07.2021

Projet de recommandation sur la protection des droits des femmes et des filles migrantes, réfugiées et demandeuses d'asile

1. Le Comité des Ministres, en vertu de l'article 15.b du Statut du Conseil de l'Europe,
2. Considérant que le but du Conseil de l'Europe est de réaliser une union plus étroite entre ses États membres, notamment en promouvant des normes communes et en développant des actions dans le domaine des droits humains ;
3. Rappelant que l'égalité entre les femmes et les hommes¹ est essentielle pour assurer la protection des droits humains, le fonctionnement de la démocratie et la bonne gouvernance, le respect de l'État de droit et la promotion du bien-être de toutes et tous;
4. Tenant compte de la Stratégie du Conseil de l'Europe pour l'égalité entre les femmes et les hommes 2018-2023 et de son objectif stratégique de protection des droits des femmes et des filles migrantes, réfugiées et demandeuses d'asile;
5. Agissant conformément au Plan d'action du Conseil de l'Europe sur la protection des personnes vulnérables dans le contexte des migrations et de l'asile en Europe (2021-2025) et notamment, à son objectif stratégique consistant à identifier les vulnérabilités et à y remédier tout au long des procédures d'asile et de migration.
6. Ayant à l'esprit les obligations et les engagements pris par les Etats, notamment, la Convention de sauvegarde des droits de l'homme et des libertés fondamentales (STE n° 5, 1950) et ses Protocoles, à la lumière de la jurisprudence pertinente de la Cour européenne des Droits de l'Homme ; la Charte sociale européenne (STE n° 35, 1961, révisée en 1996, STE n° 163) ; la Convention européenne pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (STCE n° 126, 1987) ; la Convention du Conseil de l'Europe sur la lutte contre la traite des êtres humains (STCE n° 197, 2005), la Convention du Conseil de l'Europe sur la protection des enfants contre l'exploitation et les abus sexuels (STCE n° 201, 2007) et la Convention du Conseil de l'Europe sur la prévention et la lutte contre la violence à l'égard des femmes et la violence domestique (STCE n° 210, Convention d'Istanbul, 2011);
7. Rappelant les recommandations suivantes du Comité des Ministres aux États membres du Conseil de l'Europe : Rec(2002)5 sur la protection des femmes contre la violence ; CM/Rec(2010)10 sur le rôle des femmes et des hommes dans la prévention et la résolution des conflits et la consolidation de la paix; CM/Rec(2015)1 sur l'intégration interculturelle ; CM/Rec(2019)1 sur la prévention et la lutte contre le sexisme ; CM/Rec(2019)4 sur l'aide

1 L'égalité entre les femmes et les hommes implique des droits égaux pour les femmes et les hommes, les filles et les garçons ainsi que la même visibilité, autonomisation, responsabilité et participation dans tous les domaines de la vie publique et privée. Elle implique également l'égalité des femmes et des hommes dans l'accès aux ressources et dans la distribution de celles-ci. (Stratégie pour l'égalité entre les femmes et les hommes 2018-2023 du Conseil de l'Europe).

aux jeunes réfugiés en transition vers l'âge adulte ; ainsi que les résolutions et recommandations pertinentes de l'Assemblée parlementaire, du Congrès des pouvoirs locaux et régionaux et de la Conférence des OING du Conseil de l'Europe;

8. Rappelant la Convention des Nations unies relative au statut des réfugiés (1951) ; la Convention 189 de l'Organisation internationale du travail sur le travail décent pour les travailleuses et travailleurs domestiques (2011); la Convention des Nations unies sur l'élimination de toutes les formes de discrimination à l'égard des femmes ("CEDEF", 1979) et son protocole facultatif (1999) ; la Convention des Nations Unies sur les droits de l'enfant (1989) et ses protocoles facultatifs (2000) ; et la Convention des Nations Unies relative aux droits des personnes handicapées (2006);
9. Notant la Recommandation générale n° 30 de la CEDEF sur les femmes dans la prévention des conflits, les situations de conflit et d'après-conflit (2013) ; la Recommandation générale n°32 de la CEDEF sur les dimensions sexospécifiques du statut de réfugié, de l'asile, de la nationalité et de l'apatridie des femmes (2014) ; la Recommandation générale n°35 de la CEDEF sur la violence à l'égard des femmes fondée sur le genre; la Recommandation générale n° 38 sur la traite des femmes et des filles dans le contexte des migrations mondiales (2020); ainsi que les mesures pertinentes contenues dans le Pacte mondial des Nations unies pour les réfugiés (2018) et dans le Pacte mondial des Nations unies pour des migrations sûres, ordonnées et régulières (2018), visant à « promouvoir l'égalité entre les sexes et de responsabiliser les femmes et les filles ; de mettre fin à toutes les formes de violences sexuelles et de genre, de traite d'êtres humains, d'exploitation et d'abus sexuels, ainsi que de pratiques néfastes »;
10. Vues les "Directives sur la protection internationale de l'Agence des Nations Unies pour les réfugiés : Persécution fondée sur le genre dans le contexte de l'article 1A(2) de la Convention de 1951 et/ou de son Protocole de 1967 relatif au statut des réfugiés", du 7 mai 2002 ;
11. Gardant à l'esprit l'importance d'une mise en œuvre et d'un impact généraux de l'Agenda 2030 des Nations unies pour le développement durable, notamment l'objectif 5 de développement durable ("Réaliser l'égalité des sexes et l'autonomisation de toutes les femmes et de toutes les filles"); l'objectif 10.7 de développement durable ("Réduire les inégalités dans les pays, et d'un pays à l'autre"), avec pour cible de "faciliter des migrations et une mobilité des personnes ordonnées, sûres, régulières et responsables, notamment par la mise en œuvre de politiques migratoires planifiées et bien gérées" ; et l'objectif 16 de développement durable ("Promouvoir l'avènement de sociétés pacifiques et inclusives aux fins du développement durable, assurer l'accès de tous à la justice et mettre en place, à tous les niveaux, des institutions efficaces, responsables et ouvertes à tous") ;
12. **Réaffirmant que tous les droits humains et les libertés fondamentales sont universels, indivisibles, interdépendants et intimement liés, et qu'il est nécessaire de garantir leur pleine jouissance sans aucune discrimination, par les femmes et les filles migrantes, réfugiées et demandeuses d'asile ;**

13. Reconnaisant la contribution positive que les femmes et les filles migrantes, réfugiées et demandeuses d'asile peuvent apporter aux sociétés et communautés en Europe;
14. Considérant les profonds changements dans les formes de migration et dans la situation des femmes et des filles migrantes, réfugiées et demandeuses d'asile, le fait que leur nombre a atteint un **niveau record dans les années 2010** et les **évolutions significatives dans les concepts, politiques et instruments juridiques** liés à l'égalité entre les femmes et les hommes, à la migration et à l'asile à tous les niveaux;
15. Reconnaisant que si les normes internationales de protection des droits humains s'appliquent à toutes les personnes, tout en gardant à l'esprit les différences possibles en matière de statuts juridiques, **des efforts supplémentaires devraient être entrepris** pour évaluer les lacunes en matière de prévention et de protection résultant des insuffisances dans la mise en œuvre de ces normes, dans l'information concernant ces dernières et dans le suivi des normes et politiques existantes relatives aux femmes et aux filles migrantes, réfugiées et demandeuses d'asile ;
16. Soulignant que les femmes sont exposées à **un continuum de violences** qui leur sont spécifiques parce qu'elles sont des femmes, ou qui les touchent de manière disproportionnée en tant que femmes, et que ces violences sont, en ce sens, fondées sur le genre; reconnaissant avec une profonde préoccupation que les femmes et les filles migrantes, réfugiées et demandeuses d'asile sont particulièrement exposées à ces formes de violence et d'exploitation dans leur pays d'origine, au cours de leur voyage, en transit et/ou dans les pays de destination, ce qui peut constituer une grave violation de leurs droits humains d'autant plus que les femmes et les filles migrantes, réfugiées et demandeuses d'asile sont confrontées à des difficultés et des barrières structurelles pour surmonter cette violence et cette exploitation dans leurs différentes formes;
17. Notant avec inquiétude que les femmes et les filles migrantes, réfugiées et demandeuses d'asile peuvent être confrontées à des **formes multiples et intersectionnelles de discrimination et de persécutions** dans leur pays d'origine, au cours de leur voyage et dans leur pays de destination et soulignant la nécessité d'une **approche inclusive et intersectionnelle** qui tienne compte des différentes situations et caractéristiques personnelles des femmes et des filles migrantes, réfugiées et demandeuses d'asile, y compris, le cas échéant des femmes et des filles migrantes **issues des communautés roms et des gens du voyage** ;
18. Conscient des obstacles multiples et intersectionnels auxquels sont confrontées les femmes et les filles migrantes, réfugiées et demandeuses d'asile en termes d'accès aux droits et d'exercice des droits, **d'accès à la justice**, d'accès aux services à la participation et à la prise de décision, et de la nécessité de faciliter leur intégration et leur pleine participation à la vie économique, sociale, civique, politique et culturelle;
19. Souhaitant de ce fait **revoir et mettre à jour sa Recommandation n° R (79)10** aux États membres concernant les femmes migrantes, désormais remplacée par le présent instrument ;

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20. Recommande aux gouvernements des États membres :

1. de prendre toutes les mesures nécessaires pour promouvoir et appliquer les principes énoncés dans la présente recommandation et son annexe, visant à garantir que les femmes et les filles migrantes, réfugiées et demandeuses d'asile puissent effectivement accéder à leurs droits et les exercer et, le cas échéant, accéder à la justice ;
2. d'assurer, par les moyens et actions appropriés, y compris, le cas échéant, la traduction, une large diffusion (dans des formats accessibles) de la présente recommandation auprès des autorités et parties prenantes concernées, qui sont encouragées à prendre des mesures pour la mettre en œuvre ;
3. d'examiner périodiquement, au sein du ou des comités directeurs et organes compétents du Conseil de l'Europe, les mesures prises et les progrès accomplis dans ce domaine.

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Projet d'annexe

I. Définitions

[Aux fins de la présente recommandation :

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

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

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

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

II. Questions horizontales

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

Non-discrimination, intersectionnalité, élimination des stéréotypes

2. Les Etats membres devraient veiller à ce que les femmes et les filles migrantes, réfugiées et demandeuses d'asile ne soient confrontées à aucune discrimination, quel qu'en soit le motif.
3. Les États membres devraient appliquer une approche intersectionnelle à toutes les mesures visées dans la présente annexe, en tenant compte notamment des différentes situations et caractéristiques des femmes et des filles migrantes, réfugiées et demandeuses d'asile à titre individuel.
4. Des mesures devraient être mises en œuvre pour garantir les droits fondamentaux des personnes migrantes sans-papiers et faciliter leur accès aux services essentiels sans aucune crainte de rapport aux autorités d'immigration, y compris et au minimum les mécanismes de protection et de plainte et tous les services de soutien aux victimes de violence à l'égard des femmes et des enfants et de traite des êtres humains.
5. Au sein des pays d'accueil et des communautés de personnes migrantes, les États membres devraient:

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- 5.1 accorder une attention particulière aux mesures visant à démanteler toutes les formes de stéréotypes ayant un impact négatif sur les droits des femmes et des filles migrantes, réfugiées et demandeuses d'asile;
- 5.2 mener des campagnes de sensibilisation et d'éducation concernant l'égalité entre les femmes et les hommes et les droits humains, afin de promouvoir le dialogue.

Filles

6. Les États membres devraient adopter une approche fondée sur les droits de l'enfant à l'égard des enfants migrants, réfugiés et demandeurs d'asile, qui tienne compte de l'âge, de la situation de vulnérabilité et des besoins spécifiques des filles, y compris, garantir des solutions alternatives de prise en charge appropriées et sûres lorsqu'elles sont séparées de leurs parents ou de la personne qui s'occupe d'elles ou lorsqu'elles sont mineures non-accompagnées.
7. En raison de la vulnérabilité accrue des filles migrantes à l'exploitation et aux abus, les solutions de prise en charge devraient être alignées sur celles des enfants non-migrants dans les institutions ou services de protection de l'enfance classiques. Les enfants non accompagnés et séparés devraient se voir attribuer un-e tuteur/tutrice.
8. Les États membres devraient garantir un accès ininterrompu aux services essentiels aux filles migrantes, réfugiées et demandeuses d'asile, afin de les soutenir lors de la transition vers l'âge adulte au-delà de 18 ans, y compris l'accès à l'éducation, au logement, aux soins de santé ainsi que le soutien à l'intégration et à la participation sociale.

Information, autonomisation, sensibilisation et promotion des droits humains

9. Afin d'autonomiser les femmes et les filles migrantes, réfugiées et demandeuses d'asile et de leur permettre d'accéder à leurs droits, il convient de leur **fournir des informations et des conseils pertinents, accessibles d'une façon et dans une langue qu'elles comprennent**, couvrant :
 - 9.1 leurs droits humains fondamentaux tels qu'ils sont énoncés dans la Convention européenne des droits de l'homme et autres instruments pertinents, y compris lorsqu'elles se trouvent dans des structures de détention et d'accueil ;
 - 9.2 **les mécanismes de signalement et de plainte** pour toute forme de violence ou de violation des droits par des autorités publiques ou des entreprises privées agissant au nom de l'État, y compris les **droits aux recours civils et à l'indemnisation** ;
 - 9.3 les services de protection disponibles dans le pays d'accueil contre toutes les formes de violence à l'égard des femmes et des enfants et de traite des êtres humains. Cela inclut l'accès à tout moment aux services d'assistance généraux et spécifiques, aux services de soutien spécialisés fournis par les ONG et à l'aide juridique ;

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9.4 les services publics disponibles et accessibles dans le pays d'accueil, notamment les soins de santé, y compris les soins de santé mentale par des professionnels formés au traumatisme psychique et à l'interculturalité et intervenant dans une langue comprise par la personne, ainsi que la santé et les droits sexuels et génésiques, l'éducation complète à la sexualité, le soutien psycho-social, l'éducation, la formation linguistique et au numérique, la formation continue, les programmes d'intégration, le logement et l'emploi.

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10. Les États membres devraient fournir des ressources et des outils pour l'autonomisation et le soutien aux femmes et aux filles migrantes, réfugiées et demandeuses d'asile, en fonction de leurs besoins et de leurs caractéristiques personnelles, afin qu'elles puissent bénéficier autant que possible des services sociaux et de l'assistance sociale disponibles.

11. Les États membres devraient faciliter l'accès des femmes et des filles migrantes, réfugiées et demandeuses d'asile aux services et connexions numériques, y compris l'Internet, en particulier si les services et informations sont disponibles uniquement ou en grande partie sous forme numérique.

Accès à la justice, y compris l'aide juridique

12. Les femmes et les filles migrantes, réfugiées et demandeuses d'asile devraient avoir accès aux différentes **voies de recours** civils, administratifs et pénaux, nationaux et internationaux, y compris à l'aide juridique pour exercer effectivement leurs droits et/ou agir en cas de non-respect de ces droits.

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-Proposition d'insister sur l'accessibilité de la justice d'une façon et dans une langue qu'elles comprennent, en remontant ici, dans la partie « Accès à la justice », le point 29.

-Proposition de remonter également le point 34 dans cette partie.

-Invitation à préciser en quoi consisterait un « soutien adéquat », en particulier pour les mineurs.

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La France ne procède pas à l'évaluation de la « crédibilité » des victimes. Elle a pu constater les dérives de ce type de démarche à l'égard des mineurs.

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Intelligence artificielle, prise de décision automatisée et protection des données

15. Les États membres devraient assurer qu'une évaluation de l'impact sur les droits humains incluant une perspective de genre soit réalisée avant l'introduction de systèmes liés à l'intelligence artificielle et de systèmes de prise de décision automatisée dans le domaine de la migration.

16. L'utilisation de l'intelligence artificielle et de systèmes automatisés de prise de décision par le secteur public et ses prestataires de services et entreprises sous contrat ne devrait entraîner aucune discrimination, être conforme aux principes de protection de la vie privée, transparente et s'accompagner de mécanismes de gouvernance clairs, dans le cadre de :

- 16.1 la prise de décision en matière de contrôle aux frontières et contrôle de la migration, y compris concernant les décisions en matière d'entrée ou de retour ;
- 16.2 la gestion des migrations, y compris l'utilisation d'informations biométriques, comme les tests ADN ;
- 16.3 le maintien de l'ordre et la sécurité en relation avec les femmes et les filles migrantes, réfugiées et demandeuses d'asile et les services liés à la protection ou à la prévention des crimes ;
- 16.4 la fourniture de services aux femmes et aux filles migrantes, réfugiées et demandeuses d'asile.
17. Les femmes migrantes, réfugiées et demandeuses d'asile ainsi que les organisations pertinentes de la société civile devraient avoir la possibilité de participer aux discussions et à la prise de décision sur le développement et le déploiement des nouvelles technologies qui les affectent.
18. Compte tenu des situations de vulnérabilité particulières des femmes et des filles migrantes, réfugiées et demandeuses d'asile, les autorités pertinentes devraient :
- 18.1. assurer la confidentialité et la sécurité de leurs données personnelles conformément à leur législation nationale et aux obligations internationales applicables;
- 18.2. ne pas transférer ces données personnelles vers le pays d'origine sans expliquer à la personne concernée, dans une langue qu'elle comprend, quelles données sont transférées et dans quelles conditions, y compris en donnant à la personne concernée la possibilité de s'y opposer.

Coopération avec la société civile

19. Les États membres devraient coopérer avec et soutenir les organisations de femmes migrantes et réfugiées et les organisations des droits des femmes et des enfants et les autres organisations de la société civile qui défendent les droits humains universels des femmes et des filles migrantes, réfugiées et demandeuses d'asile, les soutiennent et travaillent à leur autonomisation.
20. Des mécanismes devraient être mis en place pour garantir que les organisations de femmes migrantes, y compris, le cas échéant, les organisations de femmes des communautés roms et du voyage, soient consultées, en particulier lors de l'élaboration des politiques en matière de migration, d'asile et d'intégration qui les concernent.

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Collecte de données, recherche et suivi

21. Les États membres devraient soutenir la collecte de données ventilées notamment par âge et par sexe sur les questions de migration et d'asile, y compris pour ce qui concerne **les victimes de violence à l'égard des femmes et des enfants et de traite des êtres humains**, en veillant au respect des exigences applicables en matière de protection des données.
22. La recherche, le suivi et l'évaluation des politiques de migration, d'intégration et d'asile dans une perspective d'égalité de genre devraient être soutenus et dotés de ressources adéquates à tous les niveaux, en particulier en ce qui concerne la prévention de toute violation des droits fondamentaux des femmes.
23. Les données collectées et les résultats de la recherche et de l'évaluation des politiques de migration, d'intégration et d'asile dans une perspective d'égalité de genre devraient être utilisés à tous les niveaux pour le développement et l'ajustement des politiques publiques dans ces domaines.

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III. Protection et soutien

24. Les États membres devraient protéger les femmes et les filles migrantes, réfugiées et demandeuses d'asile contre toutes les formes de **violence à l'égard des femmes et des enfants et de traite des êtres humains**.
25. Des mesures devraient être prises pour protéger les femmes et les filles migrantes, réfugiées et demandeuses d'asile contre **le discours de haine et le sexisme**.
26. Les États membres devraient élaborer des mesures spécifiques pour lutter contre **l'exploitation sexuelle** des femmes et des filles migrantes, réfugiées et demandeuses d'asile, en particulier contre la demande de cette exploitation, y compris des mesures en matière de protection, de répression, de prévention et d'éducation.
27. Les États membres devraient veiller à ce que la culture, la coutume, la religion, la tradition ou le prétendu "honneur" ne soient pas considérés comme justifiant toute exploitation ou acte de violence à l'égard des femmes et des filles.
28. Les États membres devraient garantir l'accès effectif des femmes et des filles migrantes, réfugiées et demandeuses d'asile, avec ou sans enfants, aux refuges pour femmes victimes de violence ~~et de traite des êtres humains, quel que soit leur statut juridique.~~

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29. L'accès à l'information, aux conseils juridiques ou à une aide juridique gratuits et accessibles dans la langue des bénéficiaires (mise à disposition de documents traduits, recours à des interprètes ou des associations), devrait être assuré dans le cadre des procédures pénales, administratives et civiles, y compris la poursuite des demandes d'indemnisation et de réparation juridique contre les auteur-e-s, afin de soutenir les femmes et les filles migrantes, réfugiées et demandeuses d'asile victimes de toute forme de violence à l'égard des femmes et de traite des êtres humains.
30. Il convient de fournir aux victimes de violence à l'égard des femmes, et des enfants et de la traite des êtres humains des services de soutien généraux et spécialisés, y compris pour les personnes hébergées dans des installations de transit, d'accueil et d'hébergement. Cela inclut au minimum le soutien psychologique et les soins de santé à court et à long terme, y compris les soins de santé mentale par des professionnels formés au traumatisme psychique et à l'interculturalité et intervenant dans une langue comprise par la personne, les soins en matière de santé sexuelle et génésique, le soutien médical immédiat et la collecte de preuves médico-légales dans les cas de viols et d'agressions sexuelles.
31. Les États membres devraient permettre aux femmes et aux filles migrantes, réfugiées et demandeuses d'asile d'accéder aux régimes d'indemnisation, mesures ou autres programmes disponibles visant à l'intégration ou à la réintégration des victimes de violence à l'égard des femmes ou de traite des êtres humains, dans les mêmes conditions que les ressortissant-e-s nationaux/nationales.
32. Les États membres devraient veiller à ce que les femmes et les filles migrantes, réfugiées et demandeuses d'asile ne subissent aucune sanction, y compris la perte de leur statut légal de migrante ou de réfugiée, du fait de leur exploitation en tant que victimes de la traite des êtres humains ou du fait d'avoir quitté un partenaire ou un conjoint violent qui les avait parrainées et dont dépendait leur statut, ou lorsqu'elles ont été emmenées dans un autre pays contre leur gré à des fins de mariage forcé.
33. Une approche interinstitutionnelle, centrée sur la victime, qui prévient la victimisation secondaire et vise l'autonomisation des femmes et des filles migrantes, réfugiées et demandeuses d'asile, incluant les organisations de femmes migrantes et réfugiées, devrait être adoptée en ce qui concerne les questions relatives à leur protection et à leur soutien.
34. Des interprètes, des assistants juridiques et des médiateurs interculturels professionnels, y compris des femmes, devraient être disponibles pour soutenir les femmes et les filles migrantes, réfugiées et demandeuses d'asile qui cherchent une protection, lors du dépôt initial des plaintes, tout au long du processus judiciaire et lors des demandes de réparations, ainsi que dans le cadre des procédures de détermination de l'asile et de la délivrance de soins de santé mentale.

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Les associations d'aide aux victimes assurent cette mission d'INFORMATION juridique (non de conseil), et d'aide dans de nombreuses permanences délocalisées, notamment au sein des bureaux d'aide aux victimes présent dans chaque tribunal judiciaire grâce à des financements du ministère de la justice.

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35. Les États membres devraient fournir et financer de manière adéquate des **formations** sur les questions liées à la violence à l'égard des femmes et des enfants, à la traite des êtres humains, à l'égalité entre les femmes et les hommes ainsi qu'aux questions interculturelles. Ces formations devraient être dispensées aux autorités et au personnel concernés, y compris aux interprètes, aux personnes fournissant l'assistance juridique et aux médiatrices/médiateurs interculturels, afin de leur permettre :

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35.1. d'identifier rapidement les victimes, si possible en collaboration avec les organisations de soutien concernées, d'estimer le risque, de s'adresser aux autorités compétentes et de fournir une protection, un traitement et des soins aux femmes et aux filles migrantes, réfugiées et demandeuses d'asile victimes de toute forme de violence et de traite des êtres humains ;

35.2. d'être conscient-e-s des difficultés que les femmes et les filles migrantes, réfugiées et demandeuses d'asile peuvent rencontrer pour révéler des incidents relatifs à la violence à l'égard des femmes et des enfants sous toutes ses formes et de traite des êtres humains, en raison de leur statut juridique précaire, de l'absence de services d'interprétation de qualité, du manque de connaissance de leurs droits légaux et du manque de connaissances concernant la pertinence de leurs expériences de violence pour les décisions en matière de migration/d'asile, de la stigmatisation sociale et du manque de soutien à leur égard.

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36. Des mécanismes facilement accessibles devraient être mis en place dans les institutions gérées par l'État et par le secteur privé, telles que les **centres d'accueil**, y compris les centres d'hébergement d'urgence, de transit ou de détention, les postes de police, **les prisons**, les établissements de garde d'enfants, les écoles et les hôpitaux, les centres de conseil et les refuges, afin de **permettre le signalement des incidents de violence** à l'égard des femmes et des enfants **et de traite des êtres humains au personnel et par le personnel**. Cela comprend également l'accès à des lignes d'assistance téléphonique sensibles à l'âge et au genre, des procédures d'orientation vers d'autres organismes appropriés, ainsi qu'un traitement médical et psychologique qui puisse faciliter le signalement.

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37. Il convient de procéder à une **évaluation personnalisée des besoins spécifiques en matière de protection** **et à une gestion des risques de violence** (traite des êtres humains, violences sexuelles, notamment) à l'égard des femmes et des filles migrantes, réfugiées et demandeuses d'asile, en tenant spécifiquement compte de leur vulnérabilité potentiellement accrue du fait de leur statut juridique précaire.

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Etat d'urgence et gestion des crises

38. Dans les situations de crises de santé publique, humanitaires et liées au changement climatique, les États membres devraient prendre en compte le risque accru de violence fondée sur le genre, de traite des êtres humains, de pauvreté et de sans-abrisme pour les

femmes et les filles migrantes, réfugiées et demandeuses d'asile et adopter les mesures suivantes :

- 38.1 prendre en considération la situation et les besoins des femmes et des filles migrantes, réfugiées et demandeuses d'asile dans les mesures de gestion de crise et de relance, y compris la protection des droits, et notamment le droit à la santé, au logement, à la sécurité alimentaire, à l'eau, à l'autonomisation économique et à l'accès à la justice et à des services de soutien spécialisés pour les femmes **victimes de violence**, en les qualifiant de services essentiels et en garantissant leur continuité ;
- 38.2 veiller à ce que les mesures prises pendant une crise et pendant l'état d'urgence qui s'ensuit soient conformes aux obligations internationales relatives aux droits humains des femmes et des filles migrantes, réfugiées et demandeuses d'asile ;
- 38.3 assurer la participation des femmes et des filles migrantes, réfugiées et demandeuses d'asile et des organisations de la société civile concernées à la prise de décision et à l'élaboration des politiques dans ces situations.

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IV. Arrivée

Informations préalables à l'arrivée

39. Les États membres devraient veiller à ce que les procédures d'immigration, y compris les procédures de délivrance des visas, tiennent compte des situations et besoins spécifiques ainsi que des vulnérabilités des femmes et des filles migrantes, réfugiées et demandeuses d'asile et soient sensibles à l'âge et au genre.
40. Des informations devraient être fournies aux femmes et aux filles migrantes, réfugiées et demandeuses d'asile concernant les conditions permettant l'entrée et le séjour légaux sur le territoire d'un Etat membre.

Installations de transit et d'accueil

41. Les autorités compétentes devraient veiller à ce que les dispositions concernant le transit, l'accueil, l'hébergement et le filtrage tiennent compte des spécificités liées à l'âge et au genre. Le **processus de filtrage** devrait, en particulier, faciliter **l'identification des victimes de violence** à l'égard des femmes et des enfants et de traite des êtres humains le plus tôt possible et assurer que les demandes de protection des femmes soient traitées avec diligence.
42. Les centres d'accueil et d'hébergement devraient être situés dans des zones où les femmes et les filles sont en sécurité et peuvent accéder aux services appropriés, concernant la santé, en particulier la santé sexuelle et génésique, **l'assistance sociale et juridique**, l'éducation et les commerces.

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43. Les besoins particuliers et les préoccupations liées à la sécurité des victimes de toute forme de violence à l'égard des femmes et des enfants et de traite des êtres humains, ainsi que d'autres besoins pertinents, par exemple en cas de grossesse, de handicap ou de besoins de santé spécifiques, devraient être pris en compte lors de la détermination des placements et de l'accès aux services. Une alimentation et des vêtements essentiels pour les nourrissons devraient être fournis le cas échéant.

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44. Le personnel devrait être formé aux droits humains et aux questions liées à l'égalité entre les femmes et les hommes, aux traumatismes, ainsi qu'aux questions de violence envers les femmes et les enfants et aux besoins spécifiques des femmes et des filles migrantes, réfugiées et demandeuses d'asile ; la présence d'avocates, travailleuses sociales, médiatrices interculturelles, interprètes, officières de police et gardiennes professionnelles devrait être assurée dans ces établissements.

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45. Les femmes et les filles migrantes, réfugiées et demandeuses d'asile devraient se voir offrir des espaces de vie sûrs et adaptés. Des espaces de couchage et sanitaires séparés, ainsi que d'autres espaces sûrs, devraient être fournis aux femmes seules avec ou sans enfants (jusqu'à l'âge de 18 ans). Parmi les autres éléments à fournir figurent l'accès à la lumière naturelle et artificielle, une ventilation et un chauffage suffisants, un lit et une literie propres, un accès facile à des douches et à des toilettes propres, séparées et bien éclairées, ainsi que la mise à disposition gratuite et régulière de kits sanitaires de base / de produits d'hygiène.

46. Les femmes et les filles qui se trouvent dans des centres de transit et d'accueil devraient avoir accès à un système de plainte /signalement dans le cadre duquel les plaintes font l'objet d'une enquête et sont transmises à la police le cas échéant, et accès à l'aide juridique.

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47. Les États membres devraient veiller à ce que les installations et services de transit, d'accueil et d'hébergement fassent l'objet d'un contrôle indépendant régulier, y compris lorsqu'ils sont fournis par des entreprises privées, afin de garantir le respect des normes de protection de la présente annexe.

48. Si des femmes et les filles migrantes, réfugiées ou demandeuses d'asile sont confinées dans des centres de transit, d'accueil ou d'hébergement, les États membres devraient également veiller au respect des dispositions contenues dans les paragraphes de la présente annexe relatifs à la détention.

Asile

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

50. Les femmes et les filles devraient avoir accès à l'information ainsi qu'aux procédures d'asile et de protection aux frontières et ailleurs.

51. La possibilité pour les femmes et les filles de déposer une demande d'asile indépendante devrait être garantie et elles devraient être informées de ce droit.
52. Pour assurer que la violence fondée sur le genre soit bien prise en compte dans la cadre de la Convention des Nations unies relative au statut des réfugiés de 1951, les Etats membres devraient :
- 52.1 veiller à ce que toutes les formes de violence fondée sur le genre puissent être reconnues comme une forme de persécution au sens de l'article 1A, paragraphe 2, de la Convention de 1951 ;
- 52.2 garantir une interprétation sensible au genre des "motifs" d'asile de la Convention de 1951;
- 52.3 développer des lignes directrices sensibles au genre complètes à toutes les étapes de la procédure d'asile, y compris les services d'accueil et de soutien, le filtrage, la détermination des pays "sûrs" aux fins de procédures accélérées ou suspensives, la détention, la détermination du statut, la décision et les retours; et veiller à ce que le personnel en charge de la police des frontières, de l'immigration, de l'asile, les responsables, les médiatrices/médiateurs interculturel-le-s et les interprètes reçoivent une formation concernant ces lignes directrices.
53. Des agentes d'asile devraient être à la disposition des demandeuses d'asile, qui devraient être informées de cette possibilité.
54. Des entretiens séparés pour les femmes et les hommes d'une même famille, en l'absence d'enfants, devraient être possibles et la confidentialité de ces entretiens assurée.
55. Lors du traitement et de la détermination des demandes d'asile, il convient de tenir compte des éléments suivants :
- 55.1 la situation personnelle de la personne faisant la demande et une évaluation individuelle des risques ;
- 55.2 les informations pertinentes sur le pays d'origine, y compris concernant l'égalité entre les femmes et les hommes et les droits des femmes. Cela inclut l'accès à la justice, y compris le cadre juridique et sa mise en œuvre, l'accès aux soins, les aides sociales, économiques et autres aides disponibles, et toute les formes de discrimination multiple et intersectionnelle et/ou attitude patriarcale que les femmes sont susceptibles de rencontrer.

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56. Les États membres devraient veiller à ce que les femmes et les filles aient de manière effective, la possibilité de demander la protection complémentaire/subsidaire, en cas de décision négative concernant leur statut de réfugiée.

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Mesures transfrontalières

57. Les États membres devraient s'efforcer de participer à des programmes de réinstallation et de relocalisation et de renforcer et promouvoir les voies légales pour garantir un transit sûr aux femmes et aux filles.

58. Les États membres sont encouragés à financer une assistance spécifique et des programmes humanitaires de réinstallation pour les femmes et les enfants victimes à risque de violence à l'égard des femmes ou de traite des êtres humains, y compris la traite à des fins d'exploitation sexuelle.

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59. Il convient d'encourager la création et la mise en œuvre de mécanismes efficaces de protection transfrontalière des victimes de violence à l'égard des femmes et des enfants et de traite des êtres humains, y compris de traite à des fins d'exploitation sexuelle.

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V. Résidence et intégration

Accès à des services de santé globaux et de qualité, y compris la santé et les droits sexuels et génésiques

60. Les autorités devraient assurer la prise en compte de de la situation et des caractéristiques personnelles des femmes et des filles migrantes, réfugiées et demandeuses d'asile, ainsi que de l'âge et du genre, lors de la fourniture des soins de santé.

61. Les services de santé essentiels, y compris les soins primaires, les soins urgents et immédiats, les soins palliatifs et les traitements ou l'assistance nécessaires pour des raisons de santé publique, devraient être fournis à toutes les femmes et les filles migrantes, réfugiées et demandeuses d'asile, y compris les femmes et les filles en situation irrégulière.

62. Les États membres devraient également donner accès aux femmes et aux filles migrantes, réfugiées et demandeuses d'asile à des services de santé gratuits ou abordables, complets, de qualité et sensibles à l'âge et au genre ; cela inclut la santé mentale, la santé sexuelle et génésique, y compris pendant la grossesse, ainsi que les produits d'hygiène. Les États membres devraient également s'efforcer de fournir de tels soins aux femmes et aux filles en situation irrégulière

63. Les filles migrantes, réfugiées et demandeuses d'asile devraient avoir accès à des informations adaptées à leur âge et dans une langue qu'elles comprennent concernant la santé et les droits sexuels et génésiques

64. L'accès aux soins de santé disponibles ne devrait pas dépendre de l'obtention de l'autorisation de l'autorité migratoire ni de la permission d'une personne autre que la femme concernée. Le traitement des filles mineures peut être soumis au consentement d'un parent ou d'un-e tuteur/tutrice.
65. En tenant compte des barrières linguistiques et culturelles, les Etats membres devraient veiller à ce que les femmes et les filles donnent leur consentement préalable, libre et éclairé à tout traitement médical.

Services sociaux, sécurité sociale et logement

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

Intégration, participation sociale, culturelle et politique

68. Les États membres devraient veiller à ce que tout enfant né sur leur territoire ait le droit de faire enregistrer sa naissance immédiatement après la naissance et de se voir accorder une possibilité d'accès à une nationalité.
69. Du fait des stéréotypes persistants et des inégalités existantes en matière d'accès aux droits civiques et de participation à la prise de décision politique, qui sont encore plus marqués pour les femmes migrantes, réfugiées et demandeuses d'asile, les Etats membres devraient prendre des mesures pour que les femmes migrantes, réfugiées et demandeuses d'asile qui ont le droit de voter et de se présenter aux élections locales, régionales, nationales ou européennes connaissent leurs droits et soient encouragées à participer sans aucune discrimination.
70. Les autorités devraient encourager et soutenir les initiatives visant à renforcer l'autonomie des femmes et des filles migrantes, réfugiées et demandeuses d'asile au sein de leurs familles, de leurs communautés et de la société dans son ensemble, en développant leur confiance en elles et leur autodétermination et en protégeant les femmes et les filles contre tout contrôle social négatif. Cela peut inclure la participation à des associations locales, culturelles, de femmes ou autres, à des clubs sportifs, à des clubs de jeunes et autres.
71. Des programmes publics et privés de coaching, de mentorat et d'autres formes de soutien visant les femmes et les filles migrantes et réfugiées devraient être mis en œuvre et

soutenus, notamment pour promouvoir l'utilisation de modèles positifs et les pratiques prometteuses en matière d'intégration.

72. La contribution positive des femmes et des filles migrantes et réfugiées à la société et aux communautés d'accueil, à l'économie et à la culture devrait être mise en évidence et encouragée.

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

73. Les autorités devraient veiller à ce que les enfants migrants, réfugiés et demandeurs d'asile aient accès à l'éducation et prendre des mesures pour atteindre les filles migrantes, réfugiées et demandeuses d'asile qui ont pu être empêchées d'accéder à l'éducation dans leur pays d'origine, en fournissant des services éducatifs ou des crèches, de préférence dans les structures éducatives générales.

74. Reconnaissant que la capacité à communiquer dans la langue du pays d'accueil est essentielle à l'intégration sous tous ses aspects, les États membres devraient assurer l'accès des femmes et filles migrantes, réfugiées et demandeuses d'asile à un nombre adéquat d'heures de formation linguistique de qualité ainsi qu'à des programmes d'intégration, afin de promouvoir leur autonomisation et leur protection. Des cours d'alphabétisation et de compétences numériques adaptés à leurs besoins devraient également être fournis aux femmes et aux filles migrantes, réfugiées et demandeuses d'asile, le plus tôt possible après leur arrivée dans le pays d'accueil.

75. Les États membres devraient prendre des mesures pour faciliter la reconnaissance et la validation des qualifications professionnelles et universitaires ainsi que de l'expérience professionnelle existantes des femmes et des filles migrantes et réfugiées dans la pratique, y compris par le biais d'initiatives telles que le Passeport européen de qualifications pour les réfugié-e-s du Conseil de l'Europe.

76. Les femmes et les filles migrantes, réfugiées et demandeuses d'asile devraient bénéficier de toutes les possibilités d'éducation supérieure ou complémentaire, de formation professionnelle, de recyclage et de réadaptation offertes par les services compétents et disponibles pour les ressortissant-e-s nationaux/nationales.

77. L'accès aux programmes et mesures visés aux paragraphes 74, 75, 76 pour les personnes migrantes en situation irrégulière peut dépendre de la législation nationale régissant l'éligibilité.

Emploi

78. Les États membres devraient prendre des mesures spécifiques et ciblées pour prévenir la discrimination et promouvoir l'accès à l'emploi des femmes migrantes et réfugiées à un

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stade précoce du processus de migration, cela inclut des voies d'accès à l'emploi sûres et légales avant l'arrivée.

79. Les États membres devraient se conformer aux obligations relatives au droit au travail et à l'activité indépendante des femmes et des filles réfugiées énoncées par la Convention des Nations unies relative au statut des réfugiés et envisager de supprimer les obstacles au travail pour les autres femmes et filles migrantes, après qu'elles aient été présentes sur le territoire pendant un certain temps.

80. Concernant ~~a minima~~ les femmes et les filles migrantes, réfugiées et demandeuses d'asile qui sont autorisées à travailler en vertu de la législation nationale des États membres, ceux-ci devraient assurer des conditions de travail décentes et dignes, cela inclut:

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80.1 des mesures pour réglementer et améliorer les conditions de travail des femmes et des filles migrantes, réfugiées et demandeuses d'asile, et pour éliminer toutes les formes d'exploitation et de discrimination, y compris lorsqu'elles sont multiples et intersectionnelles ;

80.2 de soutenir et d'aider les femmes et des filles migrantes, réfugiées et demandeuses d'asile à accéder au marché du travail par le biais du travail indépendant et de l'entrepreneuriat, en leur offrant les mêmes possibilités de formation continue, de programmes de microcrédit, de prêts de démarrage et de développement d'entreprise qu'aux travailleurs/travailleuses nationaux/nationales et de soutenir les programmes de volontariat, de stages, d'apprentissage et de placement ;

80.3 afin de faciliter l'accès au marché du travail, de prendre des mesures pour garantir que les travailleuses et travailleurs migrants, réfugiés et demandeurs d'asile aient accès aux mesures de conciliation de la vie privée et professionnelle, y compris le congé de maternité, de paternité et parental, des conditions de travail flexibles lorsque cela est possible, et de garantir l'accès et la jouissance des services de garde d'enfants sur un pied d'égalité avec les travailleurs/travailleuses nationaux/nationales ;

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

81. Les États membres devraient mettre en œuvre les dispositions des normes nationales et internationales pertinentes visant à protéger les femmes et les filles migrantes réfugiées et demandeuses d'asile travailleuses domestiques de la discrimination, de l'exploitation et des abus.

Permis de séjour

82. Les États membres devraient veiller à ce que les femmes et les filles migrantes qui se voient accorder un permis de séjour sur la base d'une relation familiale puissent bénéficier des droits et prestations sociaux, économiques et liés au travail à titre autonome.
83. Les femmes et les filles migrantes, réfugiées et demandeuses d'asile devraient être informées de leur droit à un permis de séjour autonome renouvelable, par exemple en raison de leurs propres besoins de protection en vertu de la Convention sur les réfugiés des Nations-Unies, de leur statut de victime de violence, de victime de traite des êtres humains, de la rupture d'une relation ou d'autres circonstances particulièrement difficiles.
84. Les critères et le seuil de preuve requis pour l'octroi de permis de séjour autonomes devraient être réalistes et sensibles à la situation individuelle des femmes et des filles migrantes, réfugiées et demandeuses d'asile, et les organismes statutaires responsables devraient être formés de manière adéquate pour garantir que les femmes et les filles migrantes, réfugiées et demandeuses d'asile puissent bénéficier de ces permis.
85. Les États membres devraient veiller à ce que les femmes et les filles migrantes, réfugiées et demandeuses d'asile et leurs personnes à charge obtiennent un permis de séjour renouvelable si leur séjour est nécessaire pour les besoins d'enquêtes ou de procédures pénales, et ce au moins jusqu'à leur conclusion.
86. Les États membres devraient faciliter la possibilité pour les victimes de mariage forcé amenées dans un autre pays pour les besoins du mariage et qui, de ce fait, ont perdu leur statut de résidente dans le pays où elles résident habituellement, de retrouver ce statut.
87. Les États membres sont encouragés à accorder la sécurité de résidence sur une base indépendante aux femmes et filles migrantes présentes dans un pays depuis longtemps, y compris aux femmes et aux filles apatrides.
88. Les États membres devraient fournir des possibilités de naturalisation et prendre des mesures pour garantir que les femmes et les filles migrantes et réfugiées ne soient pas confrontées à des obstacles liés au genre à cet égard.

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Regroupement familial

89. Reconnaissant que le regroupement familial peut être à la fois une voie sûre vers la sécurité pour les femmes et les filles migrantes et réfugiées, et un facteur de protection dans le pays d'accueil, les États membres devraient assurer le droit au regroupement familial pour les femmes et les filles migrantes et réfugiées, conformément aux obligations découlant de la Convention européenne des droits de l'homme et du droit international. À cet égard, les États membres devraient :
- 89.1. adopter une définition de la famille conforme à l'article 8 de la Convention européenne des droits de l'homme ;

- 89.2. veiller à ce que les femmes et les filles soient informées de leur droit au regroupement familial, y compris en tant que requérantes, et qu'elles aient accès à une assistance et à des conseils juridiques pour faire valoir ce droit ;
- 89.3. envisager d'accepter ou de demander le transfert des demandes d'asile pour permettre la réunification familiale des femmes et des filles migrantes séparées au cours de leur voyage.
- 89.4. s'efforcer de prévoir dans leur législation nationale, des voies légales tenant compte de la dimension de genre afin de respecter la vie familiale des femmes migrantes résidant légalement dans le pays d'accueil, en particulier en offrant aux membres de la famille proches et à charge la possibilité de migrer avec elles ou de les rejoindre dans le pays d'accueil.

Détention

90. En ce qui concerne **toutes les formes de privation de liberté**, les États membres devraient adopter une approche sensible à l'âge et au genre, qui tienne compte de la situation individuelle et des caractéristiques personnelles des femmes et des filles migrantes, réfugiées et demandeuses d'asile. Les États membres devraient aussi fournir les services suivants aux femmes et aux filles migrantes, réfugiées et demandeuses d'asile privées de liberté :

90.1 accès aux mesures d'application de la loi et aux **mécanismes de signalement/plaintes**, y compris le renvoi à la police et les enquêtes sur ces plaintes par la police, le cas échéant, et accès à l'**aide juridique** ;

90.2 **accès à l'informations sur leurs droits** comme prévu au paragraphe 9 de la présente annexe;

90.3 accès à des services de soins de santé et d'hygiène, à des lignes d'assistance téléphonique et des structures appropriées de soutien et de conseil en matière de traumatismes ;

90.4 accès à un téléphone, et/ou à l'Internet pour informer un proche ou un tiers du fait de la privation de liberté, ainsi qu'à une assistance consulaire ;

90.5 possibilité de rester en contact de manière significative avec le monde extérieur, y compris l'accès régulier à un téléphone, à leur téléphone portable ou à l'Internet;

90.6 présence de **femmes parmi le personnel** chargé des frontières, des migrations et des autres services **pénitentiaires ou de sécurité**, ainsi que parmi les travailleurs sociaux et les interprètes.

91. Les États membres devraient veiller à ce que les conditions dans les centres de détention liés à l'immigration reflètent celles énumérées aux paragraphes 41 à 48 de la présente annexe (Installations de transit et d'accueil).

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92. Les États membres devraient veiller à ce que les centres de détention, y compris les centres de détention administrative, fassent l'objet d'un **contrôle indépendant régulier**.

93. En cas de recours à la détention administrative en vertu de la législation sur l'immigration - qui devrait être une mesure de dernier recours - les familles ne devraient pas être séparées et des zones sûres distinctes devraient être prévues pour les femmes et les filles dans les centres de détention, où leur intimité est garantie et qui répondent de manière adéquate à leurs besoins spécifiques. Les filles non accompagnées ou séparées ne devraient, en règle générale, pas être placées en détention.

94. Des alternatives efficaces à la détention administrative devraient être prévues dans tous les cas pour les femmes et les filles migrantes, réfugiées et demandeuses d'asile qui ont été **victimes de torture, de violence à l'égard des femmes** ou des enfants **ou de traite des êtres humains**, les femmes enceintes et allaitantes, les femmes âgées et les femmes en situation de handicap.

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95. Les femmes et les filles migrantes, réfugiées et demandeuses d'asile placées en détention administrative devraient être hébergées dans des centres spécifiquement conçus à cet effet, offrant des conditions matérielles et un régime adapté à leur situation juridique. Il convient de veiller à ce que la conception et l'aménagement de ces locaux évitent, dans la mesure du possible, toute impression d'environnement carcéral. A l'intérieur du centre de détention, les femmes et les filles migrantes réfugiées et demandeuses d'asile devraient le moins possible être limitées dans leur liberté de mouvement.

96. Les femmes et les filles migrantes, réfugiées et demandeuses d'asile placées en détention administrative devraient se voir proposer des activités appropriées, et elles devraient en principe avoir librement accès à des exercices en plein air tout au long de la journée (c'est-à-dire nettement plus d'une heure par jour).

VI. Retours

97. Les retours volontaires doivent être l'option privilégiée. Les retours devraient toujours se faire dans la sécurité et la dignité et conformément au principe de non-refoulement. Les États membres devraient donc veiller à ce que les femmes et les filles migrantes et demandeuses d'asile ne soient pas renvoyées ou éloignées vers un pays où leur vie serait en danger ou bien dans lequel elles pourraient être soumises à la torture ou à des peines ou traitements inhumains ou dégradants, y compris des actes qui affectent les femmes et les filles de manière disproportionnée ou qui sont dirigés contre elles en tant que femmes ou filles.

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98. Dans ces situations, il convient de prendre dûment en considération les obligations pertinentes en matière de droits humains, notamment le droit à la vie familiale, conformément à la jurisprudence de la Cour européenne des droits de l'homme, ainsi que

l'intérêt supérieur de l'enfant, le cas échéant, et la situation de vulnérabilité de la personne eu égard, notamment, à son état de santé, par exemple la grossesse.

99. Reconnaisant les difficultés particulières que rencontrent les victimes de violence à l'égard des femmes et des enfants et de traite des êtres humains pour divulguer pleinement les motifs de leur demande de protection internationale, les États membres devraient :

99.1 garantir un processus qui protège les femmes et les filles contre le risque de *refoulement* ;

99.2 veiller à ce que des procédures accélérées et non suspensives ne soient en aucun cas mises en œuvre, tant qu'un processus garantissant une évaluation individuelle des besoins de protection internationale conformément aux dispositions de la présente annexe n'a pas été achevé, en particulier s'il existe des signes de violence à l'égard des femmes et des enfants ou de traite des êtres humains.

100 Les États membres devraient garantir possibilité de suspension de mesures d'expulsion de femmes migrantes basées sur leur statut de personne à charge d'un conjoint, d'un partenaire ou d'un parent, afin de leur donner la possibilité de demander un titre de séjour indépendant.

101 Afin de faciliter la réintégration des femmes rapatriées, les États membres devraient prendre les mesures nécessaires pour permettre la reconnaissance des diplômes et qualifications éventuellement obtenus.

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GERMANY

Waltraud DAHS

02/08/2021



Strasbourg, 4 June 2021

GEC-MIG (2021) 3 rev 1

Drafting Committee
on Migrant Women (GEC-MIG)

**Draft Recommendation on protecting the rights of migrant, refugee
and asylum-seeking women**

Working document in view of the internal and external consultation

04.06.2021- 16.07.2021

Draft Recommendation on protecting the rights of migrant, refugee, asylum-seeking women and girls

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 equality¹ 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. 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;
5. 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), and notably its strategic objective to identify and address vulnerabilities throughout asylum and migration procedures;
6. Bearing in mind the obligations and commitments undertaken by states, including 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 (CETS No. 126, 1987); 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);
7. 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; Recommendation CM/Rec(2019)4 on supporting

¹ Gender equality entails equal rights for women and men, girls and boys as well as the same visibility, empowerment, responsibility, and participation in all spheres of public and private life. It also implies equal access to and distribution of resources between women and men. (Council of Europe Gender Equality Strategy 2018-2023).

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;

8. Recalling the United Nations Convention Relating to the Status of Refugees (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); 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. Noting 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); CEDAW General Recommendation No. 35 on gender-based violence against women; CEDAW Recommendation No.38 on trafficking in women and girls in the context of global migration (2020); as well as 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 human beings, 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. Bearing in mind the importance of the overall application and impact of the United Nations 2030 Agenda for Sustainable Development, in particular Sustainable Development Goal 5 ("Achieve gender equality and empower all women and girls"); Sustainable Development Goal 10.7 ("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");
12. 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;
13. Acknowledging the positive contribution that migrant, refugee and asylum-seeking women and girls may bring to European societies and communities;

14. Considering the profound changes in migration patterns and in the situation of migrant, refugee and asylum-seeking women and girls, the fact that their numbers have reached the highest ever in the 2010's and the significant developments in gender equality-, migration- and asylum-related concepts, policies and legal instruments at all levels;
15. Recognising that while existing international human rights standards apply to all persons, within the jurisdiction of States, and bearing in mind the possible differences in legal status of the persons concerned, 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;
16. Underlining that women are exposed to a continuum of violence that is specific to them because they are women, or which affects them disproportionately, and that such violence is, in this sense, gender-based; recognising with grave concern, that migrant, refugee and asylum-seeking women and girls are particularly exposed to such forms of violence and exploitation in their countries of origin, during their journey, in transit and/or in destination countries, which may constitute a serious violation of their human rights, especially as migrant, refugee and asylum-seeking women and girls face difficulties and structural barriers in overcoming such violence and exploitation in their diverse forms;
17. 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 including, as appropriate, migrant Roma and Traveller women and girls.
18. Aware of the multiple and intersecting barriers that migrant, refugee and asylum-seeking women and girls face in terms of access to and exercise of rights, access to services, participation and leadership and of the need to facilitate their integration and full participation in the economic, social, civic, political and cultural life;
19. Wishing therefore to review and update its Recommendation No. R(79)10 to member States on women migrants, henceforth replaced by the present instrument;
20. Recommends that the governments of member States:
 1. Take all necessary measures to promote and apply the principles set out in the Recommendation and its appendix, aimed at ensuring that migrant, refugee and asylum-seeking women and girls can effectively access and exercise their rights;
 2. Ensure, by appropriate means and action, including where appropriate translation, a wide dissemination (in accessible formats) of this Recommendation among relevant authorities and stakeholders, which are encouraged to take measures to implement it;

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Waltraud DAHS

02/08/2021

3. Examine periodically, within the competent Council of Europe steering committee(s) and bodies, the measures taken, 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 live in another, including citizens of Council of Europe member States with a migrant background, and stateless women and girls.

'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 migrant, refugee and asylum-seeking women and girls do not face discrimination on any ground.
3. Member States should apply an intersectional approach in all measures referred to in this Appendix, notably bearing in mind the different situations and individual characteristics of migrant, refugee and asylum-seeking women and girls.
4. Measures should be established to safeguard the fundamental rights of undocumented migrants, refugee and asylum-seeking women and facilitate their access to essential services including, at a minimum, protection and complaint mechanisms and, without fearing any reporting to migration authorities, all support services for victims of violence against women and trafficking in human beings, without fearing any reporting to migration authorities.
5. Within both migrant and host countries and communities, member States should:
 - 5.1. pay special attention to measures aimed at dismantling all forms of stereotypes which have a negative impact on the rights of migrant, refugee and asylum-seeking women and girls;

Commented [CL1]:

The definition also comprises (legal) (labour) migration (potentially even from EU Member States). The document's style, in my view, is primarily aimed at asylum seekers and/or cases of illegal migration, resulting in individual text passages containing provisions that are likely to be dispensable in cases of legal migration.

Commented [CL2]:

As the recommendation addresses dealings with women and girls, they should possibly be explicitly mentioned here.

Commented [BT3]:

Including a move between the regions in the definition seems to be going too far, because then e.g. a person from Lower Saxony living in Berlin would be a migrant under this definition. Here, a definition should be used that is closer to the definition used in document GEC(2018)12 ("Migrant women are those who have lived in a country other than that where they were born for more than one year, for whatever reasons").

Commented [CL4]:

Even citizens of some Council of Europe member states appear in asylum statistics for Germany. This wording excludes these persons from the scope of application. "Migrant background" should therefore be deleted.

Commented [BT5]:

The scope of application is unclear. Is it to include also "women migrant workers"? And who is meant by "citizens of Council of Europe member States with a migrant background"? This seems to be very far-reaching.

Commented [BT6]:

Question: Does this refer to the so-called "second generation"? If this is the case, this would have to be rejected, in our opinion, as this would refer to one's own citizens at least to some degree. In addition, it must be noted that the term "migrant background" is not defined.

Commented [WD7]:

With regard to the definitions in I. women and girls that enjoy international protection would not be covered by this term. With regard to the horizontal issues in II. it could be at least stated in a footnote that beneficiaries of international protection are covered as well. This comment applies to all upcoming numbers. In any case it must be secured that all women and girls – migrants, refugees, beneficiaries of international protection and asylum seekers – are included, when it comes to non-discrimination. In other cases, it must be checked in every chapter or number who is to be included and who is not, see our changings in 32 and 89.2 and our comment in Nr. 97.

Commented [WD8]:

See comment on Nr. 3. With regard to the definitions in I. all groups should be included here as the term "migrants" does not cover refugees, beneficiaries of international protection or asylum seekers.

Commented [BT9]:

Conflicts with Section 87 (2) of the German Residence Act (AufenthG) and should accordingly be amended.

- 5.2. implement awareness-raising and educational measures in respect of gender equality and human rights to promote dialogue.

Girls

6. Member States should adopt a child rights-based approach to migrant, refugee and asylum-seeking children, which takes account of the age and specific situations and needs of girls, including ensuring suitable and safe alternative care arrangements when they are separated from their parents or caregiver or when they are unaccompanied minors.
7. Owing to migrant, refugee and asylum-seeking 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 migrant, refugee and asylum-seeking girls to support their transition to adulthood beyond the age of 18, including access to education and healthcare, as well as support for their integration and social participation.

Commented [WD10]:

Specifying the non-discrimination principle we would like to suggest to make clear that whenever child protection measures (child protection measures in the broader definition of the Hague Convention on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children, 19 October 1996) are needed, their applicability remains unaffected by the legal status of the children. We therefore suggest adding the following sentence: "The child protection rules, procedures and systems of the Council of Europe member states prevail when it comes to child-protection measures for girls in need and unaccompanied girls."

Information, empowerment, awareness raising and promotion of human rights

9. To empower migrant, refugee and asylum-seeking women and girls and enable them to access their rights, they should be provided with relevant and accessible information and advice in a way and a language that they understand or are reasonably supposed to understand, covering, at least:
- 9.1 Their fundamental human rights 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 violence or other violations of rights by State authorities or private contractors acting on behalf of the State, including rights to civil remedies and compensation;
- 9.3 Available and accessible public services in the host country, notably healthcare including mental and sexual and reproductive health and rights, comprehensive sexuality education, psycho-social support, education, language and digital training, vocational training, integration programmes, housing and employment.
10. Member States should provide resources and tools for the empowerment and support of migrant, refugee and asylum-seeking ~~and~~ women and girls, based on their needs and personal characteristics, in order for them to benefit to as great an extent possible from the social services and welfare available.

Commented [WD11]:

When it comes to minors the information must be child-friendly and as far as unaccompanied minors are concerned a guardian has to be appointed - we would therefore like to suggest an extra bullet-point dealing with minors' rights.

Commented [BT12]:

recommendation for an amendment for cases in which the language is not known ("silent affected persons").

Commented [BT13]:

It is assumed that in this regard, the existing system of state prosecution and police, as well as the judicial system, in Germany is to be considered as sufficient and that there is no need to establish an independent complaints body. This would be rejected.

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

Access to justice including legal aid

12. Migrant, refugee and asylum-seeking women and girls should have equal access to the different national and international civil, administrative, and criminal remedies, as well as legal aid, in accordance with existing national legislation to effectively exercise their rights and/or take action in cases of non-compliance with those rights.
13. Member States should ensure that refugee and asylum-seeking women and girls receive adequate support as claimants, defendants, or witnesses throughout civil, administrative, or criminal proceedings on the same conditions as nationals.
14. An intersectional and gender-sensitive approach to individual migrant, refugee and asylum-seeking women and girls should be adopted when determining/assessing their credibility in civil, administrative, and criminal proceedings, particularly where decisions have an impact on their legal status.

Commented [IV B 214]:

Addition to make clear, that the aim is not to provide exclusive rights for certain groups but to secure that existing rights equally apply to everyone including migrant, refugee and asylum-seeking women and girls.

Commented [WD15]:

In addition we would suggest: "Unaccompanied minor girls have immediate access to guardianship and legal representation in accordance with the national law in order to exercise their rights."

Artificial intelligence, automated decision-making, and data protection

15. 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. AI systems used shall be fair and not cause direct or indirect discrimination or unjust bias against individuals or groups on any grounds. These principles shall extend to all harmful differentiation grounds, including intersectional discrimination, and shall be respected throughout the entire AI system's lifecycle as well as the related human choices around their use. In order to ensure that the right to equal treatment and non-discrimination is respected, AI system providers shall test and verify their systems to identify, assess and mitigate unjust bias as well as document the steps that have been taken to that end.

Commented [CL16]:

In our opinion, the following remarks are "generally valid" and apply not only to female migrants/refugees but to all citizens and/or non-privileged (third-country) foreigners.

15.

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16. Any design, development and application use of artificial intelligence and automated decision-making systems by the public and private sector and its service providers/contractors, should not cause any discrimination, be operated consistently with privacy principles, be transparent, explainable and traceable, and have clear governance mechanisms, in the context of:

16.1 border and immigration control decision- making, including decisions relating to entry or return;

16.2 migration management, including the use of biometric information, such as DNA testing

16.3 policing and security of migrant, refugee and asylum-seeking women and girls, and services related to protection and prevention of crimes;

16.4 the provision of services to migrant, refugee and asylum-seeking women and girls.

16.4 Member States shall ensure that providers and users of AI systems can be held legally accountable when the application of an AI system results in any harm to or significant impact on the enjoyment of human rights.

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17. Migrant, refugee and asylum-seeking women and relevant civil society organisations should be given the opportunity to participate in discussions and decision-making around the development and deployment of new technologies affecting them.

18. Bearing in mind the particular situations of vulnerability of migrant, refugee and asylum-seeking women and girls, relevant authorities should:

18.1 ensure protection, the confidentiality and security of personal data in accordance with their national legislation and applicable international obligations;

18.2 not transfer any such data to the country of origin without explaining to the affected person, in a language that they understand, which data is being transferred and under which conditions, including providing the affected person the opportunity to object.

Commented [WD17]:

Do the aspects mentioned in 18.1 and 18.2 go beyond Article 7 ("Data security"), Article 8 ("Transparency of processing") and Article 9(1)(f) ("Redress") of the modernised Convention 108? There seems to be no added value.

In addition, the protection of personal data should be understood as a fundamental right, which is granted regardless of sex or nationality.

See also Article 1 of the modernised Convention 108: "The purpose of this Convention is to protect every individual, whatever his or her nationality or residence, with regard to the processing of their personal data, thereby contributing to respect for his or her human rights and fundamental freedoms, and in particular the right to privacy."

Co-operation with civil society

19. Member States should co-operate with and support migrant and refugee women's organisations, women's rights organisations and other civil society organisations that uphold the universal human rights of migrant and refugee and asylum-seeking women and girls, and that defend and empower them.

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

Commented [WD18]:

The term "protection" should be inserted. The protection of personal data is a human right, that also applies with regards to migrant, refugee and asylum-seeking women and girls. (see comment above)

Data collection, research and monitoring

21. Member States should support the collection of data, disaggregated notably by age and sex, on migration, refugee and asylum issues, including regarding victims of violence against women and of trafficking in human beings, and ensuring compliance with applicable data protection requirements.

22. 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.

23. 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 and support

24. Member States should protect migrant, refugee, and asylum-seeking women and girls from all forms of violence against women and trafficking in human beings.
25. Measures should be taken to protect migrant, refugee and asylum-seeking women and girls from hate speech and sexism.
26. Member States should develop specific measures to address the sexual exploitation of migrant, refugee and asylum-seeking women and girls, in particular the demand for such exploitation, including protective, punitive, preventive and educational measures.
27. Member States should ensure that culture, custom, religion, tradition or so-called 'honour' shall not be considered as justification for any exploitation or acts of violence against women and girls.
28. Member States should ensure effective access for migrant, refugee and asylum-seeking women and girls, with or without children, to shelters for ~~women~~-victims of violence against women and trafficking in human beings, regardless of their legal status.
29. Equal access to free legal advice and free legal aid available in the language of the beneficiary, should be provided in accordance with their national legislation, in order to support migrant, refugee and asylum-seeking women and girls victims of all forms of violence against women and trafficking in human beings through criminal, administrative and civil proceedings, including the pursuit of compensation claims and legal redress against the perpetrators, on the same conditions as nationals, for civil and administrative proceedings if the beneficiary is unable to cover the costs and provided that the action they intend to bring or their defence against an action that has been brought against them has sufficient prospects of success and does not seem frivolous.

Commented [WD19]:
When it comes to minors ("girls") we would like to suggest that it should be made clear that the child protection systems prevail.

Commented [CL20]:
In line with the wording in no. 31.

Commented [BT21]:
In our opinion, legal aid should not be without limits but be granted in accordance with national law in order to exclude funding "hopeless" cases. Moreover, no. 46 only refers to the granting of legal aid.

29.

30. General and specialist support services should be provided to victims of violence against women and trafficking in human beings, including for those persons accommodated in transit, reception and accommodation facilities. This includes, at a minimum, short- and long-term psychological support and healthcare, including mental healthcare, sexual and reproductive healthcare, immediate medical support and the collection of forensic medical evidence in cases of rape and sexual assault.
31. Member States should allow migrant, refugee and asylum-seeking women and girls access to available compensation schemes, measures or other programmes aimed at the integration or reintegration of victims of violence against women or trafficking in human beings, on the same conditions as nationals.

32. Member States should take into account the special situation of ~~ensure that~~ migrant, refugee and asylum-seeking women and girls ~~when it comes to do not suffer any penalty, including loss of lawful migration or refugee / international protection status~~ as a consequence of their exploitation as victims of trafficking in human beings or as a consequence of leaving an abusive sponsoring partner or spouse on whom their status was dependant or where they have been taken to another country against their will for the purpose of forced marriage.
33. A multi-agency, victim-centred approach, that prevents secondary victimisation and is aimed at the empowerment of migrant, refugee and asylum-seeking women and girls, inclusive of migrant and refugee women's organisations, should be adopted as regards matters relating to their protection and support.
34. Professional interpreters, legal assistants, and intercultural mediators, ~~including especially~~ women, should be available to assist migrant, refugee and asylum-seeking women and girls seeking protection, whilst making initial complaints, throughout the justice process and in seeking reparations, as well as in the context of the asylum determination procedures, ~~according to the respective national procedural rules.~~
35. Training in violence against women, trafficking in human beings, gender equality and intercultural issues should be adequately funded and provided to relevant authorities and staff including interpreters, legal assistants and intercultural mediators to enable them to:
- 35.1 promptly identify victims, where possible, in collaboration with relevant support organisations, conduct risk assessments, refer to relevant authorities and provide protection, treatment and care for migrant, refugee and asylum-seeking women and girls who are victims of all forms of violence and trafficking in human beings;
- 35.2 be aware of the difficulties that migrant, refugee and asylum-seeking women and girls may face in disclosing incidents of violence against women and of trafficking in human beings, due to their insecure legal status, unavailability of quality interpretation services, lack of knowledge of their legal rights and lack of knowledge of the relevance of their experiences of violence in relation to migration/asylum decisions, social stigma, and lack of support to them in this regard.
36. Easily accessible mechanisms should be in place in State- and privately-run institutions, such as reception, transit and detention centres, police stations, prisons, childcare institutions, schools and hospitals, counselling centres and shelters, to enable incidents of violence against women and trafficking in human beings to be reported to staff and by staff. Member states should ensure access to age- and gender-sensitive telephone helplines, procedures for referral to other appropriate agencies, and medical and psychological treatment to facilitate reporting.

Commented [BT22]:

1. This provision relates to Council Directive 2004/81/EC of 29 April 2004

on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, and to Section 25 (4a) of the German Residence Act and should not lead to the unconditional issuance of residence titles. It should continue to be conditional upon discontinuation of the relationship with and testimonies against the perpetrator.

2. Regarding the right of residence, there are already legal provisions in Section 25 (4a) of the German Residence Act (right of residence under certain conditions for victims of certain crimes) and in Section 31 (2) of the German Residence Act (independent right of residence for spouses taking into account special cases of hardship). Germany thus already meets the obligations arising from no. 32. However, it is suggested that the wording in no. 32 is adjusted to clarify the scope of the recommendation.

37. Risk assessment and risk management of violence against migrant, refugee and asylum-seeking women and girls should be conducted, taking specific account of their potential enhanced vulnerable situation ~~owing to their insecure legal status.~~

37. :

Commented [WD23]:

We recommend the deletion of the last part of this sentence as it might lead to misinterpretation. Once refugee status is determined for example, this status is not insecure and must be guaranteed.

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State of emergency and crisis management

38. In situations of public health crisis, humanitarian crisis and crisis related to climate change, member States should take into account the increased risk of gender-based violence, trafficking in human beings, poverty and homelessness for migrant, refugee and asylum-seeking women and girls, and should therefore:

38.1 take into consideration the situation and needs of migrant, refugee and asylum-seeking women and girls in crisis management and recovery measures, including protection of rights, and notably the right to health, shelter, food security, water, economic empowerment and access to specialist support services for women victims of violence, by qualifying them as essential services and guaranteeing their continuity;

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

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

IV. Arrival

Pre-arrival information

39. Member States should ensure that immigration procedures, including visa issuing procedures, take into account migrant, refugee and asylum-seeking women and girls' specific situations, needs and vulnerabilities and are age- and gender-sensitive.

40. Information should be provided to migrant, refugee and asylum-seeking women and girls about the conditions enabling the legal entry and stay in a member State's territory.

Commented [CL24]:

That's not gender-specific. Entry and residence regulations apply equally to everyone.

Commented [IV B 225]:

Women and girls might be vulnerable even if not victims of violence against women and trafficking in human beings. A vulnerability check should be made at the earliest possible opportunity.

Transit and reception facilities

41. Relevant authorities should ensure that transit, reception, accommodation and screening arrangements are age- and gender-sensitive. **The screening process should, in particular, facilitate, *inter alia*, the identification of victims of violence against women and trafficking in human beings at the earliest possible opportunity and ensure that women's protection claims are processed efficiently.**

42. Reception and accommodation facilities should be located in areas where women and girls are safe and can access relevant services, with respect to health, and in particular sexual and reproductive health, social and legal assistance, education and shopping facilities.

Commented [BT26]:

The internal instruction of the Federal Office for Migration and Refugees (BAMF) contains several provisions to facilitate the identification of victims of violence against women and trafficking in human beings at an early state of the asylum procedure and to protect the victims. For instance, in case of suspicion of human trafficking a specially-commissioned case-officer for human trafficking is involved to process the claim efficiently. Further examples are the use of specially trained and sensitized case-workers, the use of female interpreters, instructions on conducting the personal interview or on the assessment of gender-specific human rights violations.

43. The specific needs and safety concerns of victims of all forms of violence against women and trafficking in human beings 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 and clothing should be provided as needed.
44. Staff should be trained in women's human rights, gender equality-related and trauma issues as well as violence against women and the specific needs of migrant, refugee and asylum-seeking women and girls, and the presence of professional women social workers, intercultural mediators, interpreters, police officers and guards and access to specialised counselling services, as for example for victims of human trafficking should be ensured in these facilities.
45. Migrant, refugee and asylum-seeking women and girls should be offered adequate safe living space. Separate lockable sleeping areas, as well as other safe spaces should be provided for single women and girls with or without children (up to age 18). Other elements to be provided include access to natural and artificial light, sufficient ventilation and heating, a clean bed and bedding, ready access to clean, separate, lockable well-lit shower and toilet facilities, and the availability of a basic sanitary kit / hygiene products free of charge and on a regular basis.
46. Women in transit and reception facilities should have access to a complaint /reporting system, whereby complaints are investigated and referred to the police where relevant, including, where appropriate, access to legal aid.
47. Member states should ensure that transit, reception and accommodation facilities and services are subject to regular independent monitoring, including when provided by private contractors, to ensure compliance with the standards of protection of this Appendix.
48. If migrant, refugee or asylum-seeking women and girls are confined to transit, reception or accommodation centres, member States should also ensure compliance with the provisions contained in the paragraphs of this Appendix related to detention.

Asylum

49. Member States should adopt and implement age- and gender-sensitive-asylum laws, practices and procedures.
50. Women and girls should be entitled to access asylum and protection information and procedures at the borders and elsewhere.
51. The possibility for women and girls to lodge an independent asylum claim should be ensured and they should be made aware of this right.

Commented [WD27]:

We agree that in order to meet the needs of women and girls for female contact persons, an adequate number of female specialists in the accommodation is important. We would like to propose to emphasize this point (again) especially with regard to "guards", who are often the first to be confronted with critical situations.

Commented [WD28]:

When it comes to minors ("girls") we would like to suggest that it should be made clear that the child protection systems (inter alia accommodation) prevail.

Commented [WD29]:

We would like to propose to add that the sleeping areas should be "lockable"

Commented [WD30]:

We would like to propose to add that showers and toilet facilities should be "lockable"

Commented [WD31]:

In our opinion it is also important that women not only have access to legal aid if required, but also to specialist advice centres (as for example for victims of violence against women) or health service (help and preservation of evidence if needed).

You find this point already in Nr. 30:

"General and specialist support services should be provided to victims of violence against women and trafficking in human beings, including for those persons accommodated in transit, reception and accommodation facilities. This includes, at a minimum, short- and long-term psychological support and healthcare, including mental healthcare, sexual and reproductive healthcare, immediate medical support and the collection of forensic medical evidence in cases of rape and sexual assault."

We would like to propose to underline this point again or to refer to Nr. 30 in Nr. 46.

Commented [ZA32]:

The Federal Office for Migration and Refugees has implemented a number of measures for the specific protection of women who apply for asylum. The Federal Office's internal instruction contains specific procedural and legal provisions for dealing with victims of gender-based violence. Examples of such provisions include instructions on the ... [1]

Commented [ZA33]:

Information is provided to all applicants, regardless of sex, age or gender. If the applicant already makes an application upon entry or if the application is made from within the German territory, the border authorities or the federal states are responsible for providing and communicating the relevant information to the applicants. ... [2]

Commented [ZA34]:

Every asylum application is lodged individually and separately from family members, regardless of their respective sex or gender. All applicants are informed equally about their rights. This includes specific information for women, to advise them on gender based rights.

The Federal Office for Migration and Refugees has implemented a number of measures for the specific protection of women who apply for asylum. The Federal Office's internal instruction contains specific procedural and legal provisions for dealing with victims of gender-based violence. Examples of such provisions include instructions on the use of specially trained and sensitized case-workers, the use of female interpreters, instructions on conducting the personal interview or on the assessment of gender-specific human rights violations.

Information is provided to all applicants, regardless of sex, age or gender. If the applicant already makes an application upon entry or if the application is made from within the German territory, the border authorities or the federal states are responsible for providing and communicating the relevant information to the applicants.

The Federal Office for Migration and Refugees informs all asylum seekers about the asylum procedure in group and in individual counselling sessions (article 12(a) of the German Asylum Act). For the language mediation, freelance interpreters are available from the pool of the Federal Office. The applicants can address sensitive issues in one-to-one interviews. The asylum procedure counselling is a voluntary offer to all applicants provided by the Federal Office.

52. To ensure that gender-based violence against women is properly assessed within the framework of the 1951 United Nations Convention Relating to the Status of Refugees member States should:

- 52.1 ensure that all forms of gender-based violence can be recognized as a form of persecution within the meaning of Article 1A(2) of the 1951 Convention;
- 52.2 ensure a gender-sensitive interpretation of the 1951 Convention 'grounds' for asylum;
- 52.3 develop comprehensive gender-sensitive guidelines at all stages of the asylum process, including reception and support services, screening, determination of 'safe' countries for the purpose of accelerated or suspensive procedures, detention, status determination, adjudication and returns; and ensure that border police, migration officials, asylum officers, decision-makers, intercultural mediators and interpreters receive training in respect of such guidelines

53. Women asylum officers should be available to women applicants, who should be informed about this possibility.

54. Separate interviews for women and men from the same family, in the absence of children, should be made possible and their confidentiality should be guaranteed.

55. In processing and determining asylum claims, regard should be given to:

- 55.1 the applicant's own personal circumstances and individual assessment of risk;
- 55.2 relevant country of origin information, including in relation to gender equality and women's rights. This encompasses access to justice, the legal framework, and its implementation; available social, economic, and other support; and any form of multiple and intersecting discrimination and/or patriarchal attitudes that women are likely to encounter.

56. Member States should ensure that women and girls have access to complementary/subsidiary protection, where necessary, if the decision on their refugee status is negative.

Cross-border measures

57. Member States should seek to participate in resettlement and relocation programmes as well as reinforce and promote legal pathways to ensure safe transit for women and girls.

58. Member States are encouraged to fund specific assistance and humanitarian resettlement programmes for women and girls' victims, or at risk, of violence against women and trafficking in human beings, including trafficking for the purpose of sexual exploitation.

59. The setting up and implementation of effective cross-border protection mechanisms for victims of violence against women or trafficking in human beings, including trafficking for the purpose of sexual exploitation should be encouraged.

Commented [ZA35]:

Within the assessment of the asylum application, all forms of gender-based violence are recognised as possible forms of persecution and documented in the applicant's file. However, to be established as an 'act of persecution', any form of violence – with or without gender reference – must meet the requirements of article 9 QD, defining the prerequisites of article 1A(2) of the 1951 Convention within the Common European Asylum System.

Commented [ZA36]:

Article 3a paragraph 2 n° 6 of the German Asylum Act explicitly stipulates that an act of persecution within the meaning of Article 1(A) of the Geneva Convention can take the form of acts of gender-specific nature. The German asylum law therefore underlines that gender-specific persecution requires special attention.

The Federal Office of Migration and Refugees has implemented several measures to ensure a gender-sensitive assessment of asylum applications (See above commentary to 49 and below commentary to 52.3).

Commented [ZA37]:

The internal instruction of the Federal Office for Migration and Refugees contains several gender-sensitive guidelines. For example, guidelines for gender-based persecution or gender-sensitive training for decision-makers. The decision makers receive regular mandatory specialist training courses according to the European Curriculum of the European Asylum Support Office (EASO). Specific training and coaching seminars aim to impart theory and practice in dealing with conflicts and crisis situations in interviews, as does individual stress management.

The internal instruction states that applications of particularly vulnerable individuals have to be examined by "specially-commissioned case-officers" who receive additional training.

Commented [ZA38]:

Every female applicant has the right to ask for a female caseworker and interpreter (under the conditions set by article 15(3)b of the Asylum Procedure Directive. All applicants are informed about this possibility when lodging their application and again within the 'asylum procedure consultation'.

Commented [ZA39]:

Every female applicant is interviewed without her partner. According to article 15(1) of the Asylum Procedure Directive, interviews are in general conducted without family members present.

Commented [ZA40]:

The assessment of asylum applications is always based on the individual circumstances of the applicant. This includes, among others, the applicant's sex, gender, social and economic status, as well as the general situation in the country of origin, comprising gender-based discrimination, difficulties or infringements.

Commented [ZA41]:

In Germany all applicants for international protection apply automatically for refugee status or subsidiary protection. The assessment of subsidiary protection therefore always and immediately begins if the applicant does not qualify as refugee.

If a person qualifies neither for refugee status nor for subsidiary protection the Federal Office for Migration and Refugees can also issue a ban on deportation as a measure of humanitarian protection. Therefore, a person who is see ... [3]

In Germany all applicants for international protection apply automatically for refugee status or subsidiary protection. The assessment of subsidiary protection therefore always and immediately begins if the applicant does not qualify as refugee.

If a person qualifies neither for refugee status nor for subsidiary protection the Federal Office for Migration and Refugees can also issue a ban on deportation as a measure of humanitarian protection. Therefore, a person who is seeking protection may not be returned if the return to the destination country constitutes a breach of the ECHR, or if a considerable concrete danger to life, limb or liberty exists in that country.

V. Residence and Integration

Access to holistic and quality health services, including sexual and reproductive health and rights

60. Authorities should ensure that healthcare provision takes into account the situation and personal characteristics of migrant women and girls and is age- and gender sensitive.
61. Essential healthcare services including primary care, urgent and immediate care, palliative care and treatment or assistance necessary for public health reasons should be provided to all migrant, refugee and asylum-seeking women and girls, including migrant women and girls in an irregular situation.
62. Member States should also enable migrant, refugee and asylum-seeking women and girls to access necessary free or affordable, comprehensive, quality, age- and gender-sensitive health services including encompassing mental, sexual and reproductive health and pregnancy related care, including during pregnancy, as well as hygiene products. Member States should also seek to provide such health services to migrant women and girls in an irregular situation.
63. Migrant, refugee and asylum-seeking girls should be provided with access to age-appropriate sexual and reproductive health and rights information in a language that they can understand.
64. In accordance with national administrative procedures, Access to available healthcare should in principle not be dependent on obtaining the authorisation of the migration authority nor permission from any person other than the woman concerned. The treatment of minor girls may be subject to the consent of a parent or guardian.
65. Taking into account language and cultural barriers, member States should ensure that women give prior, free and informed consent to any medical treatment, unless medical screenings are obligatory on public health grounds under the national law of member states.

Social services, social security and housing

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

Commented [BT42]:

In our view, this would also apply to persons receiving benefits under the Asylum Seekers Benefits Act, even though compared to the eligible persons under Book XII of the Social Code ("social assistance") it provides for a restricted entitlement to healthcare: for the treatment of acute medical conditions and pain conditions necessary medical and dental treatments are to be granted (see Section 4 (1) Asylum Seekers Benefits Act).

Commented [BT43]:

Pursuant to the Asylum Seekers Benefits Act, Section 4 (3), the relevant authority ensures the provision of the benefits under Section 4 (1) and (2).

Commented [Nor44]: In some Laender, the social welfare authorities have to check before treatment begins, whether the requirements of sections 4 and 6 of the Asylum Seekers' Benefits Act are met.

Commented [CL45]:

Maybe more fitting under no. 65.

Commented [ZA46]:

Section 62 German Asylum Act

"Medical examination

(1) Foreigners who are required to stay in a reception centre or in collective accommodation shall be required to undergo a medical examination for communicable diseases including an x-ray of the respiratory organs."

DIRECTIVE 2013/33/EU

Article 13

"Medical screening

Member States may require medical screening for applicants on public health grounds."

Integration, social, cultural and political participation

68. Member States should ensure that any child born in their territory is entitled to have their birth registered immediately after birth and is granted a pathway to a nationality in accordance with the European Convention on nationality.
69. Owing to persisting stereotypes and existing inequalities in access to civic rights and participation in political decision-making, which are even more serious for migrant, refugee and asylum-seeking women, member States should take steps to ensure that migrant, refugee and asylum-seeking women who are entitled to vote and stand for election in local, regional, national or European elections are aware of their rights and encouraged to participate without any form of discrimination.
70. Authorities should encourage and support initiatives aimed at empowering migrant, refugee and asylum-seeking 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 can include participation in local, cultural, women's or other associations, sports clubs, youth clubs and other organisations.
71. Public and private coaching, mentoring and other support programmes aimed at migrant and refugee women and girls should be set up and supported, notably in order to promote positive role models and promising practices of integration.
72. The positive contribution made by migrant and refugee women and girls to society and host communities, the economy and culture as well as to their countries of origin through development-oriented engagement should be highlighted and encouraged.

Commented [BT47]:

With the European Convention on Nationality of 6 November 1997, the Council of Europe already provided for provisions on the acquisition of nationality within the states parties to the Convention (Article 6). They should therefore be generally referred to in no. 68 of the recommendation.

Education, vocational training and life-long learning

73. Authorities should ensure that migrant, refugee and asylum-seeking children-girls have equal access to education as their nationals and take measures to reach those migrant, refugee, and asylum-seeking 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. Recognizing that the ability to communicate in the host country's language is essential ~~for~~ integration, member States should ensure access to an adequate number of hours of quality language training and integration programmes to migrant, refugee and asylum-seeking women and girls, to promote their empowerment and protection. Literacy, numeracy and digital skills courses should also be provided to migrant, refugee and asylum-seeking women and girls corresponding to their needs and as soon as possible after their arrival in the host country.
75. Member States should take steps to facilitate the recognition and validation of migrant and refugee women and girls' existing vocational and academic qualifications and work

Commented [CL48]:

A value judgement. We should refrain from value judgements.

Commented [IA49]:

The positive development impacts also relate to the countries of origin of migrant and refugee women.

Commented [CL50]:

By definition, this applies to all female migrants, thus, also to those who come from a Council of Europe member state to take up employment, for instance. This seems to be too far-reaching in this context.

Commented [WD51]:

Art. 73 only makes clear that the education has to be "preferably within mainstream structures" but also the access to education has to be equal to the nationals' access.

experience in practice, including through initiatives such as the Council of Europe European Qualifications Passport for Refugees.

76. Migrant, refugee and asylum-seeking women and girls should be able to enjoy any further or higher education, vocational as well as continuous education and training, retraining and rehabilitation facilities provided by the competent services and available for national workers.
77. Access to the programmes and measures referred to in paragraphs 74, 75 and 76 for migrants in an irregular situation may be subject to national laws governing eligibility.

Employment

78. Member States should take specific and targeted measures to prevent discrimination and promote access to employment for migrant and refugee women, at an early stage in the migration process, including safe and legal routes to employment pre-arrival.
79. Member States should comply with the obligations regarding the right to work and self-employment for refugee women and girls set out by the United Nations Convention Relating to the Status of Refugees and consider removing barriers to work, for other migrant women and girls after they have been present in the territory for a certain length of time.
80. In respect of *at least* those migrant, refugee, and asylum-seeking women and girls who are permitted to work under the national law of member States, the latter should ensure decent and dignified working conditions, including:
- 80.1. taking measures to regulate and improve migrant, refugee, and asylum-seeking women and girls' working conditions and to eliminate all forms of labour exploitation and discrimination, including when they are multiple and intersecting;
 - 80.2. supporting and assisting migrant, refugee, and asylum-seeking women and girls where appropriate to access the labour market through self-employment and entrepreneurship, by providing them with the same opportunities for vocational as well as continuous education and training, microcredit schemes, start-up loans and business development as for national workers, and support volunteering, internships, apprenticeships and job placement programmes;
 - 80.3 in order to facilitate access to the labour market, take steps to ensure that migrant, refugee and asylum-seeking workers have access to work/life balance measures including maternity, paternity and parental leave, flexible working conditions where possible, and ensure access to and enjoyment of child-care facilities on an equal footing with national workers; and
 - 80.4 ensure that migrant, refugee, and asylum-seeking women workers who are made redundant and are compelled to leave the country of employment or return to their country of origin retain all their acquired rights.

Commented [BT52]:

To avoid any positive discrimination, an amendment should be made that this will only happen in the context of national legislation.

Commented [CL53]:

What does this refer to? To the rights acquired in connection with employment? Should possibly be clarified.

81. Member States should implement the provisions of relevant national and international standards directed at protecting migrant, refugee and asylum-seeking women and girls carrying out domestic work from discrimination, exploitation and abuse.

Residence permits

82. Member States should ensure that migrant, refugee and asylum-seeking women and girls who are granted a residence permit on the basis of a family relationship **are entitled to social, economic and labour-related rights and entitlements in an autonomous capacity.**
83. Migrant, refugee and asylum-seeking women and girls should be made aware of any entitlement to a renewable autonomous residence permit, for example due to their own protection needs under the UN Refugee Convention, their status as a victim of violence against women, a victim of trafficking in human beings, relationship breakdown, or other particularly difficult circumstances
84. The evidentiary criteria and threshold for the granting of autonomous residence permits should be realistic and sensitive to the individual situation of migrant, refugee and asylum-seeking women. ~~and responsible statutory agencies should be adequately trained to ensure that migrant, refugee and asylum-seeking women and girls can benefit from these permits.~~
85. Member States should ensure that migrant, refugee and asylum-seeking women and girls and their dependents are granted a renewable residence permit if their stay is necessary for criminal investigations or proceedings and until at least their conclusions.
86. Member States should facilitate the possibility for victims of forced marriage brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, to regain such status.
87. **Member States are encouraged to provide security of residence on an independent basis to migrant and refugee women and girls present in a country for a long time, including stateless women and girls.**
88. Member States should provide pathways to naturalisation and take measures to ensure that migrant and refugee women and girls are not faced with gender-related obstacles in this regard.

Commented [BT54]:
What is the scope here and/or to what extent does this apply?
The residence title for family reasons is in general tied to "third parties".

Commented [CL55]:
The existing legal preconditions are decisive.

Commented [BT56]:
This provision must not lead to a situation where this group of people must be granted a right of residence even though they have been in the country illegally and they themselves have brought about the reason for their non-deportability.

Family reunion

89. Recognising that family reunion can be both a secure pathway to safety for migrant and refugee women and girls, and a protective factor in the host country, member States should safeguard the right to family reunion for migrant and refugee women and girls in accordance with obligations under the European Convention on Human Rights and international law. In this respect, member States should:
- 89.1. adopt a definition of family consistent with article 8 of the European Convention on Human Rights;

- 89.2. ensure that women and girls are aware of their right to family reunion, including as migrant or refugee / international protection sponsors, and receive access to legal advice and assistance to pursue that right; and
- 89.3. consider accepting or seeking the transfer of asylum claims to enable the family reunion of migrant, refugee and asylum-seeking women and girls separated on their journeys.
- 89.4. Seek to provide within their national laws, gender-sensitive legal pathways to respect the family life of migrant women lawfully residing on their territory, in particular by providing the immediate and dependent family members with the possibly to migrate with or join them in the host country.

Commented [BT57]:
Unclear what is meant here.

Detention

90. In respect of all forms of deprivation of liberty, member States should adopt an age- and gender-sensitive approach, which takes into account the individual situation and personal characteristics of migrant, refugee and asylum-seeking women and girls. Member States should also provide the following services to migrant, refugee and asylum-seeking women and girls deprived of their liberty, such as :

- 90.1 access to law enforcement measures and reporting / complaints mechanisms including referral to and investigation of those complaints by police where relevant and including, where appropriate access to legal aid;
- 90.2 access to information about their rights, as set forth in paragraph 9 of this Appendix;
- 90.3 access to health-care and hygiene services, specialised advisory service telephone helplines and appropriate trauma support and counselling facilities
- 90.4 access to a telephone, and/or Internet facility to inform a relative or third party of the fact of deprivation of liberty, as well as to consular assistance;
- 90.5 the opportunity to remain in meaningful contact with the outside world, including regular access to a telephone, to their mobile phones or to Internet facilities; and
- 90.6 the presence of women among border, migration and other police or custody staff, as well as among social workers and interpreters.

Commented [WD58]:

This addition adopts the wording used in Nr. 46 – there is no reason for a different wording here.

Commented [BT59]:

The general reference to telephone helplines does not seem to make sense here.

Commented [BT60]:

As this could also refer to custodial sentences there should be an addition to the possibility of a restriction if this becomes necessary for reasons of public safety and order.

91. Member States should ensure that conditions in immigration detention centres reflect those listed in paragraphs 41-48 of this Appendix (Transit and reception facilities).

Commented [WD61]:

We would like to suggest to add a clarifying sentence concerning immigration detention of girls which should be inadmissible, at least a measure of last resort.

92. Member states should ensure that detention facilities, including administrative detention facilities, are subject to regular independent monitoring.

Commented [BT62]:

We assume that a monitoring in line with CPT corresponds to the requested monitoring.

93. In the event that administrative detention under immigration legislation 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 women and girls within detention facilities, where their

privacy is guaranteed and which cater adequately for their specific needs. Unaccompanied or separated girls should not, as a general rule, be detained.

94. Effective alternatives to administrative detention should be provided in any event for migrant, refugee and asylum-seeking women and girls who have been victims of torture, violence against women or trafficking in human beings, pregnant and nursing women, elderly women, and women with disabilities.
95. Migrant, refugee and asylum-seeking women and girls in administrative detention should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation. Care should be taken in the design and layout of such premises to avoid, as far as possible, any impression of a carceral environment. Within the detention centre, migrant refugee and asylum-seeking women and girls should be restricted in their freedom of movement as little as possible.
96. Migrant, refugee and asylum-seeking women and girls in administrative detention should be offered appropriate activities, and they should in principle have free access to outdoor exercise throughout the day (i.e. considerably more than one hour per day).

VI. Returns

97. Assisted voluntary returns, accompanied by measures for a sustainable reintegration, should be the preferred option. Returns should always be in safety and dignity, in line with the principle of *non-refoulement*. Member States should therefore ensure that migrant ~~and asylum-seeking~~ women and girls are not returned or removed to a country where their life would be at risk or where they might be subjected to acts of torture or inhuman or degrading treatment or punishment, including those acts which disproportionately affect women or are directed at them because they are women.
98. In these situations, due regard should be given to relevant human rights obligations, notably the right to family life, in accordance with the case law of the European Court of Human Rights; the best interest of the child, if applicable; and to the state of health of the person, including for example pregnancy.
99. Recognising the particular difficulties that victims of violence against women and of trafficking in human beings ~~and~~ face in fully disclosing the grounds for their international protection claim, member States should:
- 99.1 ensure a process that protects women and girls against the risk of *refoulement*;
- 99.2 ensure that accelerated and non-suspensive procedures are not implemented under any circumstance, until such a process has been completed to guarantee an individual assessment of the international protection needs in conformity with the

Commented [WD63]:

Assisted voluntary returns should be accompanied by a sustainable reintegration as to ensure that migrant women and girls find a perspective after return and receive the necessary assistance, including, where necessary, psychosocial support, especially if having been a victim of human trafficking or sexual exploitation along the migratory route.

Commented [WD64]:

As long as a person enjoys refugee status or international protection or the asylum procedure has not been concluded, she shall not be returned or removed. Only when an asylum application is denied a removal may be considered, but only when their life would not be at risk or where they might not be subject to acts of inhuman or degrading treatment and punishment, including those acts which disproportionately affect women or are directed at them because they are women. Therefore, we suggest to delete "and asylum seeking". See also Nr. 100, where expulsion measures are only referred to "migrant women and girls".

Commented [WD65]:

We would like to add the following sentence:
 "If a girl is unaccompanied she can only return voluntarily if the return is in her best interests and if she is represented by a guardian who safeguards her best interests and before returning her the competent authority has ensured that in the state to which she is to be returned she will be handed over to a family member, to a person having the right of care or custody or to an appropriate reception centre. If the girl has suffered gender-based violence in this country it is not in her best interests to return unless it is demonstrated otherwise."

provisions of this Appendix, especially if there are any signs of violence against women or trafficking in human beings.

100. Member States should ensure the possibility of suspending expulsion measures of migrant women based on their dependent status on a spouse, partner, parent, or other family member, in order to enable them to apply for an independent residence permit.

101. In order to facilitate the sustainable reintegration of returnee women, member States should take the necessary measures to allow for the recognition of eventual diplomas or qualifications obtained. Member States are encouraged to support highly qualified women who want to return to their countries of origin in order to use acquired knowledge and skills for local development.

99.

Commented [WD66]:
In the case of "girls" we would like to add to the individual assessment a child's best interest assessment.

Commented [IA67]:
Member States should support the positive developmental impacts generated by returning highly qualified women.

GREECE

Angeliki PAPAZOGLOU

13/07/21



Strasbourg, 4 June 2021

GEC-MIG (2021) 3 rev 1

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

**Draft Recommendation on protecting the rights of migrant, refugee
and asylum-seeking women and girls**

Working document in view of the internal and external consultation

04.06.2021- 16.07.2021

Draft Recommendation on protecting the rights of migrant, refugee, asylum-seeking women and girls

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 equality¹ 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. 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;
5. 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), and notably its strategic objective to identify and address vulnerabilities throughout asylum and migration procedures;
6. Bearing in mind the obligations and commitments undertaken by states, including 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 (CETS No. 126, 1987); 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);
7. 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; Recommendation CM/Rec(2019)4 on supporting

¹ Gender equality entails equal rights for women and men, girls and boys as well as the same visibility, empowerment, responsibility, and participation in all spheres of public and private life. It also implies equal access to and distribution of resources between women and men. (Council of Europe Gender Equality Strategy 2018-2023).

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;

8. Recalling the United Nations Convention Relating to the Status of Refugees (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); 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. Noting 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); CEDAW General Recommendation No. 35 on gender-based violence against women; CEDAW Recommendation No.38 on trafficking in women and girls in the context of global migration (2020); as well as 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 human beings, 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. Bearing in mind the importance of the overall application and impact of the United Nations 2030 Agenda for Sustainable Development, in particular Sustainable Development Goal 5 (“Achieve gender equality and empower all women and girls”); Sustainable Development Goal 10.7 (“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”);
12. 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;
13. Acknowledging the positive contribution that migrant, refugee and asylum-seeking women and girls may bring to European societies and communities;

14. Considering the profound changes in migration patterns and in the situation of migrant, refugee and asylum-seeking women and girls, the fact that their numbers have reached the highest ever in the 2010's and the significant developments in gender equality-, migration- and asylum-related concepts, policies and legal instruments at all levels;
15. Recognising that while existing international human rights standards apply to all persons, and bearing in mind the possible differences in legal status of the persons concerned, 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;
16. Underlining that women are exposed to a continuum of violence that is specific to them because they are women, or which affects them disproportionately, and that such violence is, in this sense, gender-based; recognising with grave concern, that migrant, refugee and asylum-seeking women and girls are particularly exposed to such forms of violence and exploitation in their countries of origin, during their journey, in transit and/or in destination countries, which may constitute a serious violation of their human rights, especially as migrant, refugee and asylum-seeking women and girls face difficulties and structural barriers in overcoming such violence and exploitation in their diverse forms;
17. 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 including, as appropriate, migrant Roma and Traveller women and girls.
18. Aware of the multiple and intersecting barriers that migrant, refugee and asylum-seeking women and girls face in terms of access to and exercise of rights, access to services, participation and leadership and of the need to facilitate their integration and full participation in the economic, social, civic, political and cultural life;
19. ~~Wishing~~ Indenting therefore to review and update its Recommendation No. R(79)10 to member States on women migrants, henceforth replaced by the present instrument;
20. Recommends that member States:
 1. Take all necessary measures to promote and apply the principles set out in the Recommendation and its appendix, aimed at ensuring that migrant, refugee and asylum-seeking women and girls can effectively access and exercise their rights;
 2. Ensure, by appropriate means and action, including where appropriate translation, a wide dissemination (in accessible formats) of this Recommendation among relevant authorities and stakeholders, which are encouraged to take measures to implement it;

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13/07/21

3. Examine periodically, within the competent Council of Europe steering committee(s) and bodies, the measures taken, 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 live in another, including citizens of Council of Europe member States with a migrant background, and stateless women and girls.

'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 migrant, refugee and asylum-seeking women and girls do not face discrimination on any ground.
3. Member States should apply an intersectional approach in all measures referred to in this Appendix, notably bearing in mind the different situations and individual characteristics of migrant, refugee and asylum-seeking women and girls.
4. Measures should be established to safeguard the fundamental rights of undocumented migrants and facilitate their access to essential services including, at a minimum, protection and complaint mechanisms and all support services for victims of violence against women and trafficking in human beings, without fearing any reporting to migration authorities.
5. Within both migrant and host countries and communities, member States should:
 - 5.1. pay special attention to measures aimed at dismantling all forms of stereotypes which have a negative impact on the rights of migrant, refugee and asylum-seeking women and girls;

- 5.2. implement awareness-raising and educational measures in respect of gender equality and human rights to promote dialogue.

Girls

6. Member States should adopt a child rights-based approach to migrant, refugee and asylum-seeking children, which takes account of the age and specific situations and needs of girls, including ensuring suitable and safe alternative care arrangements when they are separated from their parents or caregiver 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 migrant, refugee and asylum-seeking girls to support their transition to adulthood beyond the age of 18, including access to education and healthcare, as well as support for their integration and social participation.

Information, empowerment, awareness raising and promotion of human rights

9. To empower migrant, refugee and asylum-seeking women and girls and enable them to access their rights, they should be provided with relevant and accessible information and advice in a way and a language that they understand, covering, at least:
 - 9.1 Their fundamental human rights 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 violence or other violations of rights by State authorities or private contractors acting on behalf of the State, including rights to civil remedies and compensation;
 - 9.3 Protection services available in the host country against all forms of violence against women and trafficking in human beings, including access to general and specific support services, specialist support provided by NGOs and legal aid;
 - 9.4 Available and accessible public services in the host country, notably healthcare including mental and sexual and reproductive health and rights, comprehensive sexuality education, psycho-social support, education, language and digital training, vocational training, integration programmes, housing and employment.
10. Member States should provide resources and tools for the empowerment and support of migrant, refugee and asylum-seeking women and girls, based on their needs and personal characteristics, in order for them to benefit to as great an extent possible from the social services and welfare available.

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

Access to justice including legal aid

12. Migrant, refugee and asylum-seeking women and girls should have access to the different national and international civil, administrative, and criminal remedies, as well as legal aid, to effectively exercise their rights and/or take action in cases of non-compliance with those rights.
13. Member States should ensure that refugee and asylum-seeking women and girls receive adequate support as claimants, defendants, or witnesses throughout civil, administrative, or criminal proceedings.
14. An intersectional and gender-sensitive approach to individual migrant, refugee and asylum-seeking women and girls should be adopted when determining/assessing their credibility in civil, administrative, and criminal proceedings, particularly where decisions have an impact on their legal status.

Artificial intelligence, automated decision-making, and data protection

15. Member States should ensure that a human rights impact assessment, with a gender sensitive perspective, is conducted before the introduction of artificial intelligence and automated decision-making systems in the field of migration.
16. 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:
- 16.1 border and immigration control decision- making, including decisions relating to entry or return;
 - 16.2 migration management, including the use of biometric information,
 - 16.3 policing and security of migrant, refugee and asylum-seeking women and girls, and services related to protection and prevention of crimes;
 - 16.4 the provision of services to migrant, refugee and asylum-seeking women and girls.
17. Migrant, refugee and asylum-seeking women and relevant civil society organisations should be given the opportunity to participate in discussions and decision-making around the development and deployment of new technologies affecting them.

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18. Bearing in mind the particular situations of vulnerability of migrant, refugee and asylum-seeking women and girls, relevant authorities should:

18.1 ensure the confidentiality and security of personal data in accordance with their state, national legislation and applicable international obligations;

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18.2 not transfer any such data to the country of origin without explaining to the affected person, in a language that they understand, which data is being transferred and under which conditions, including providing the affected person the opportunity to object.

Co-operation with civil society

19. Member States should co-operate with and support migrant and refugee women's organisations, women's rights organisations and other civil society organisations that uphold the universal human rights of migrant and refugee and asylum-seeking women and girls, and that defend and empower them.

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

Data collection, research and monitoring

21. Member States should support the collection of data, disaggregated notably by age and sex, on migration, refugee and asylum issues, including regarding victims of violence against women and of trafficking in human beings, and ensuring compliance with applicable data protection requirements.

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

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23. 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 and support

24. Member States should protect migrant, refugee, and asylum-seeking women and girls from all forms of violence against women and trafficking in human beings.

25. Measures should be taken to protect migrant, refugee and asylum-seeking women and girls from hate speech and sexism.

26. Member States should develop specific measures to address the sexual exploitation of migrant, refugee and asylum-seeking women and girls, in particular the demand for such exploitation, including protective, punitive, preventive and educational measures.
27. Member States should ensure that culture, custom, religion, tradition or so-called 'honour' shall not be considered as justification for any exploitation or acts of violence against women and girls.
28. Member States should ensure effective access for migrant, refugee and asylum-seeking women and girls, with or without children, to shelters for women victims of violence against women and trafficking in human beings, regardless of their legal status.
29. Access to free legal advice and free legal aid available in the language of the beneficiary, should be provided, in order to support migrant, refugee and asylum-seeking women and girls victims of all forms of violence against women and trafficking in human beings through criminal, administrative and civil proceedings, including the pursuit of compensation claims and legal redress against the perpetrators.
30. General and specialist support services should be provided to victims of violence against women and trafficking in human beings, including for those persons accommodated in transit, reception and accommodation facilities. This includes, at a minimum, short- and long-term psychological support and healthcare, including mental healthcare, sexual and reproductive healthcare, immediate medical support and the collection of forensic medical evidence in cases of rape and sexual assault.
31. Member States should allow migrant, refugee and asylum-seeking women and girls access to available compensation schemes, measures or other programmes aimed at the integration or reintegration of victims of violence against women or trafficking in human beings, on the same conditions as nationals.
32. Member States should ensure that migrant, refugee and asylum-seeking women and girls do not suffer any penalty, including loss of lawful migration or refugee status as a consequence of their exploitation as victims of trafficking in human beings or as a consequence of leaving an abusive sponsoring partner or spouse on whom their status was dependant or where they have been taken to another country against their will for the purpose of forced marriage.
33. A multi-agency, victim-centred approach, that prevents secondary victimisation and is aimed at the empowerment of migrant, refugee and asylum-seeking women and girls, inclusive of migrant and refugee women's organisations, should be adopted as regards matters relating to their protection and support.
34. Professional interpreters, legal assistants, and intercultural mediators, including women, should be available to assist migrant, refugee and asylum-seeking women and girls seeking protection, whilst making initial complaints, throughout the justice process and in seeking reparations, as well as in the context of the asylum determination procedures.

35. Training in violence against women, trafficking in human beings, gender equality and intercultural issues should be adequately funded and provided to relevant authorities and staff including interpreters, legal assistants and intercultural mediators to enable them to:
- 35.1 promptly identify victims, where possible, in collaboration with relevant support organisations, conduct risk assessments, refer to relevant authorities and provide protection, treatment and care for migrant, refugee and asylum-seeking women and girls who are victims of all forms of violence and trafficking in human beings;
 - 35.2 be aware of the difficulties that migrant, refugee and asylum-seeking women and girls may face in disclosing incidents of violence against women and of trafficking in human beings, due to their insecure legal status, unavailability of quality interpretation services, lack of knowledge of their legal rights and lack of knowledge of the relevance of their experiences of violence in relation to migration/asylum decisions, social stigma, and lack of support to them in this regard.
36. Easily accessible mechanisms should be in place in State- and privately-run institutions, such as reception, transit and detention centres, police stations, prisons, childcare institutions, schools and hospitals, counselling centres and shelters, to enable incidents of violence against women and trafficking in human beings to be reported to staff and by staff. Member states should ensure access to age- and gender-sensitive telephone helplines, procedures for referral to other appropriate agencies, and medical and psychological treatment to facilitate reporting.
37. Risk assessment and risk management of violence against migrant, refugee and asylum-seeking women and girls should be conducted, taking specific account of their potential enhanced vulnerable situation owing to their insecure legal status.

State of emergency and crisis management

38. In situations of public health crisis, humanitarian crisis and crisis related to climate change, member States should take into account the increased risk of gender-based violence, trafficking in human beings, poverty and homelessness for migrant, refugee and asylum-seeking women and girls, and should therefore:
- 38.1 take into consideration the situation and needs of migrant, refugee and asylum-seeking women and girls in crisis management and recovery measures, including protection of rights, and notably the right to health, shelter, food security, water, economic empowerment and access to specialist support services for women victims of violence [against women/or gender-based violence](#), by qualifying them as essential services and guaranteeing their continuity;
 - 38.2 ensure that measures taken during a crisis and ensuing state of emergency conform with international obligations related to the human rights of migrant, refugee and asylum-seeking women and girls;

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

IV. Arrival

Pre-arrival information

39. Member States should ensure that immigration procedures, including visa issuing procedures, take into account migrant, refugee and asylum-seeking women and girls' specific situations, needs and vulnerabilities and are age- and gender-sensitive.
40. Information should be provided to migrant, refugee and asylum-seeking women and girls about the conditions enabling the legal entry and stay in a member State's territory.

Transit and reception facilities

41. Relevant authorities should ensure that transit, reception, accommodation and screening arrangements are age- and gender-sensitive. The screening process should, in particular, facilitate the identification of victims of violence against women and trafficking in human beings at the earliest possible opportunity and ensure that women's protection claims are processed efficiently.
42. Reception and accommodation facilities should be located in areas where women and girls are safe and can access relevant services, with respect to health, and in particular sexual and reproductive health, social and legal assistance, education and shopping facilities.
43. The specific needs and safety concerns of victims of all forms of violence against women and trafficking in human beings 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 and clothing should be provided as needed.
44. Staff should be trained in women's human rights, gender equality-related and trauma issues as well as violence against women and the specific needs of migrant, refugee and asylum-seeking women and girls, and the presence of professional women social workers, intercultural mediators, interpreters, police officers and guards should be ensured in these facilities.
45. Migrant, refugee and asylum-seeking women and girls should be offered adequate safe living space. Separate sleeping areas, as well as other safe spaces should be provided for single women with or without children (up to age 18). Other elements to be provided include access to natural and artificial light, sufficient ventilation and heating, a clean bed and bedding, ready access to clean, separate, well-lit shower and toilet facilities, and the availability of a basic sanitary kit / hygiene products free of charge and on a regular basis.

46. Women in transit and reception facilities should have access to a complaint /reporting system, whereby complaints are investigated and referred to the police where relevant, including, where appropriate, access to legal aid.
47. Member states should ensure that transit, reception and accommodation facilities and services are subject to regular independent monitoring, including when provided by private contractors, to ensure compliance with the standards of protection of this Appendix.
48. If migrant, refugee or asylum-seeking women and girls are confined to transit, reception or accommodation centres, member States should also ensure compliance with the provisions contained in the paragraphs of this Appendix related to detention.

Asylum

49. Member States should adopt and implement age- and gender-sensitive-asylum laws, practices and procedures.
50. Women and girls should be entitled to access asylum and protection information and procedures at the borders and elsewhere.
51. The possibility for women and girls to lodge an independent asylum claim should be ensured and they should be made aware of this right.
52. To ensure that gender-based violence against women is properly assessed within the framework of the 1951 United Nations Convention Relating to the Status of Refugees member States should:
 - 52.1 ensure that all forms of gender-based violence can be recognized as a form of persecution within the meaning of Article 1A(2) of the 1951 Convention;
 - 52.2 ensure a gender-sensitive interpretation of the 1951 Convention 'grounds' for asylum;
 - 52.3 develop comprehensive gender-sensitive guidelines at all stages of the asylum process, including reception and support services, screening, determination of 'safe' countries for the purpose of accelerated or suspensive procedures, detention, status determination, adjudication and returns; and ensure that border police, migration officials, asylum officers, decision-makers, intercultural mediators and interpreters receive training in respect of such guidelines
53. Women asylum officers should be available to women applicants, who should be informed about this possibility.
54. Separate interviews for women and men from the same family, in the absence of children, should be made possible and their confidentiality should be guaranteed.
55. In processing and determining asylum claims, regard should be given to:

- 55.1 the applicant's own personal circumstances and individual assessment of risk;
- 55.2 relevant country of origin information, including in relation to gender equality and women's rights. This encompasses access to justice, the legal framework, and its implementation; available social, economic, and other support; and any form of multiple and intersecting discrimination and/or patriarchal attitudes that women are likely to encounter.
56. Member States should ensure that women and girls have access to complementary/subsidiary protection, where necessary, if the decision on their refugee status is negative.

Cross-border measures

57. Member States should seek to participate in resettlement and relocation programmes as well as reinforce and promote legal pathways to ensure safe transit for women and girls.
58. Member States are encouraged to fund specific assistance and humanitarian resettlement programmes for women and girls' victims, or at risk, of violence against women and trafficking in human beings, including trafficking for the purpose of sexual exploitation.
59. The setting up and implementation of effective cross-border protection mechanisms for victims of violence against women or trafficking in human beings, including trafficking for the purpose of sexual exploitation should be encouraged.

V. Residence and Integration

Access to holistic and quality health services, including sexual and reproductive health and rights

60. Authorities should ensure that healthcare provision takes into account the situation and personal characteristics of migrant women and girls and is age- and gender sensitive.
61. Essential healthcare services including primary care, urgent and immediate care, palliative care and treatment or assistance necessary for public health reasons should be provided to all migrant, refugee and asylum-seeking women and girls, including migrant women and girls in an irregular situation.
62. Member States should also enable migrant, refugee and asylum-seeking women and girls to access free or affordable, comprehensive, quality, age- and gender-sensitive health services encompassing mental, sexual and reproductive health, including during pregnancy, as well as hygiene products. Member States should also seek to provide such health services to migrant women and girls in an irregular situation.

63. Migrant, refugee and asylum-seeking girls should be provided with access to age-appropriate sexual and reproductive health and rights information in a language that they can understand.
64. Access to available healthcare should not be dependent on obtaining the authorisation of the migration authority nor permission from any person other than the woman concerned. The treatment of minor girls may be subject to the consent of a parent or guardian.
65. Taking into account language and cultural barriers, member States should ensure that women give prior, free and informed consent to any medical treatment.

Social services, social security and housing

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

Integration, social, cultural and political participation

68. Member States should ensure that any child born in their territory is entitled to have their birth registered immediately after birth and is granted a pathway to a nationality.
69. Owing to persisting stereotypes and existing inequalities in access to civic rights and participation in political decision-making, which are even more serious for migrant, refugee and asylum-seeking women, member States should take steps to ensure that migrant, refugee and asylum-seeking women who are entitled to vote and stand for election in local, regional, national or European elections are aware of their rights and encouraged to participate without any form of discrimination.
70. Authorities should encourage and support initiatives aimed at empowering migrant, refugee and asylum-seeking 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 can include participation in local, cultural, women's or other associations, sports clubs, youth clubs and other organisations.
71. Public and private coaching, mentoring and other support programmes aimed at migrant and refugee women and girls should be set up and supported, notably in order to promote positive role models and promising practices of integration.
72. The positive contribution made by migrant and refugee women and girls to society and host communities, the economy and culture should be highlighted and encouraged.

Education, vocational training and life-long learning

73. Authorities should ensure that migrant, refugee and asylum-seeking children have access to education and take measures to reach those migrant, refugee, and asylum-seeking 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. Recognizing that the ability to communicate in the host country's language is essential for integration, member States should ensure access to an adequate number of hours of quality language training and integration programmes to migrant, refugee and asylum-seeking women and girls, to promote their empowerment and protection. Literacy and digital skills courses should also be provided to migrant, refugee and asylum-seeking women and girls corresponding to their needs and as soon as possible after their arrival in the host country.
75. Member States should take steps to facilitate the recognition and validation of migrant and refugee women and girls' existing vocational and academic qualifications and work experience in practice, including through initiatives such as the Council of Europe European Qualifications Passport for Refugees.
76. Migrant, refugee and asylum-seeking women and girls 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.
77. Access to the programmes and measures referred to in paragraphs 74, 75 and 76 for migrants in an irregular situation may be subject to national laws governing eligibility.

Employment

78. Member States should take specific and targeted measures to prevent discrimination and promote access to employment for migrant and refugee women, at an early stage in the migration process, including safe and legal routes to employment pre-arrival.
79. Member States should comply with the obligations regarding the right to work and self-employment for refugee women and girls set out by the United Nations Convention Relating to the Status of Refugees and consider removing barriers to work, for other migrant women and girls after they have been present in the territory for a certain length of time.
80. In respect of *at least* those migrant, refugee, and asylum-seeking women and girls who are permitted to work under the national law of member States, the latter should ensure decent and dignified working conditions, including:
- 80.1. taking measures to regulate and improve migrant, refugee, and asylum-seeking women and girls' working conditions and to eliminate all forms of labour exploitation and discrimination, including when they are multiple and intersecting;

- 80.2. supporting and assisting migrant, refugee, and asylum-seeking women and girls where appropriate 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, internships, apprenticeships and job placement programmes;
- 80.3 in order to facilitate access to the labour market, take steps to ensure that migrant, refugee and asylum-seeking workers have access to work/life balance measures including maternity, paternity and parental leave, flexible working conditions where possible, and ensure access to and enjoyment of child-care facilities on an equal footing with national workers; and
- 80.4 ensure that migrant, refugee, and asylum-seeking women 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.
81. Member States should implement the provisions of relevant national and international standards directed at protecting migrant, refugee and asylum-seeking women and girls carrying out domestic work from discrimination, exploitation and abuse.

Residence permits

82. Member States should ensure that migrant, refugee and asylum-seeking women and girls who are granted a residence permit on the basis of a family relationship are entitled to social, economic and labour-related rights and entitlements in an autonomous capacity.
83. Migrant, refugee and asylum-seeking women and girls should be made aware of any entitlement to a renewable autonomous residence permit, for example due to their own protection needs under the UN Refugee Convention, their status as a victim of violence against women, a victim of trafficking in human beings, relationship breakdown, or other particularly difficult circumstances
84. The evidentiary criteria and threshold for the granting of autonomous residence permits should be realistic and sensitive/[tailor made](#) to the individual situation of migrant, refugee and asylum-seeking women and responsible statutory agencies should be adequately trained to ensure that migrant, refugee and asylum-seeking women and girls can benefit from these permits.
85. Member States should ensure that migrant, refugee and asylum-seeking women and girls and their dependents are granted a renewable residence permit if their stay is necessary for criminal investigations or proceedings and until at least their conclusions.
86. Member States should facilitate the possibility for victims of forced marriage brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, to regain such status.

87. Member States are encouraged to provide security of residence on an independent basis to migrant and refugee women and girls present in a country for a long time, including stateless women and girls.
88. Member States should provide pathways to naturalisation and take measures to ensure that migrant and refugee women and girls are not faced with gender-related obstacles in this regard.

Family reunion

89. Recognising that family reunion can be both a secure pathway to safety for migrant and refugee women and girls, and a protective factor in the host country, member States should safeguard the right to family reunion for migrant and refugee women and girls in accordance with obligations under the European Convention on Human Rights and international law. In this respect, member States should:
- 89.1. adopt a definition of family consistent with article 8 of the European Convention on Human Rights;
 - 89.2. ensure that women and girls are aware of their right to family reunion, including as migrant or refugee sponsors, and receive access to legal advice and assistance to pursue that right; and
 - 89.3. consider accepting or seeking the transfer of asylum claims to enable the family reunion of migrant, refugee and asylum-seeking women and girls separated on their journeys.
 - 89.4. Seek to provide within their national laws, gender-sensitive legal pathways to respect the family life of migrant women lawfully residing on their territory, in particular by providing the immediate and dependent family members with the possibly to migrate with or join them in the host country.

Detention

90. In respect of all forms of deprivation of liberty, member States should adopt an age- and gender-sensitive approach, which takes into account the individual situation and personal characteristics of migrant, refugee and asylum-seeking women and girls. Member States should also provide the following services to migrant, refugee and asylum-seeking women and girls deprived of their liberty:
- 90.1 access to law enforcement measures and reporting / complaints mechanisms including referral to and investigation of those complaints by police where relevant and access to legal aid;
 - 90.2 access to information about their rights, as set forth in paragraph 9 of this Appendix;
 - 90.3 access to health-care and hygiene services, telephone helplines and appropriate trauma support and counselling facilities;

- 90.4 access to a telephone, and/or Internet facility to inform a relative or third party of the fact of deprivation of liberty, as well as to consular assistance;
- 90.5 the opportunity to remain in meaningful contact with the outside world, including regular access to a telephone, to their mobile phones or to Internet facilities; and
- 90.6 the presence of women among border, migration and other police or custody staff, as well as among social workers and interpreters.
91. Member States should ensure that conditions in immigration detention centres reflect those listed in paragraphs 41-48 of this Appendix (Transit and reception facilities).
92. Member states should ensure that detention facilities, including administrative detention facilities, are subject to regular independent monitoring.
93. In the event that administrative detention under immigration legislation 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 women and girls within detention facilities, where their privacy is guaranteed and which cater adequately for their specific needs. Unaccompanied or separated girls should not, as a general rule, be detained.
94. Effective alternatives to administrative detention should be provided in any event for migrant, refugee and asylum-seeking women and girls who have been victims of torture, violence against women or trafficking in human beings, pregnant and nursing women, elderly women, and women with disabilities.
95. Migrant, refugee and asylum-seeking women and girls in administrative detention should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation. Care should be taken in the design and layout of such premises to avoid, as far as possible, any impression of a carceral environment. Within the detention centre, migrant refugee and asylum-seeking women and girls should be restricted in their freedom of movement as little as possible.
96. Migrant, refugee and asylum-seeking women and girls in administrative detention should be offered appropriate activities, and they should in principle have free access to outdoor exercise throughout the day (i.e. considerably more than one hour per day).

VI. Returns

97. Voluntary returns should be the preferred option. Returns should always be in safety and dignity, in line with the principle of *non-refoulement*. Member States should therefore ensure that migrant and asylum-seeking women and girls are not returned or removed to a country where their life would be at risk or where they might be subjected to acts of

torture or inhuman or degrading treatment or punishment, including those acts which disproportionately affect women or are directed at them because they are women.

98. In these situations, due regard should be given to relevant human rights obligations, notably the right to family life, in accordance with the case law of the European Court of Human Rights; the best interest of the child, if applicable; and to the state of health of the person, including for example pregnancy.
99. Recognising the particular difficulties that victims of violence against women and of trafficking in human beings and face in fully disclosing the grounds for their international protection claim, member States should:
 - 99.1 ensure a process that protects women and girls against the risk of *refoulement*;
 - 99.2 ensure that accelerated and non-suspensive procedures are not implemented under any circumstance, until such a process has been completed to guarantee an individual assessment of the international protection needs in conformity with the provisions of this Appendix, especially if there are any signs of violence against women or trafficking in human beings.
100. Member States should ensure the possibility of suspending expulsion measures of migrant women based on their dependent status on a spouse, partner, parent, or other family member, in order to enable them to apply for an independent residence permit.
101. In order to facilitate the reintegration of returnee women, member States should take the necessary measures to allow for the recognition of eventual diplomas or qualifications obtained.

HUNGARY

Rita NAGYLAKI

14/07/21



Strasbourg, 4 June 2021

GEC-MIG (2021) 3 rev 1

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

**Draft Recommendation on protecting the rights of migrant, refugee
and asylum-seeking women**

Working document in view of the internal and external consultation

04.06.2021- 16.07.2021

Draft Recommendation on protecting the rights of migrant, refugee, asylum-seeking women and girls

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 equality¹ 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. 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;
5. 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), and notably its strategic objective to identify and address vulnerabilities throughout asylum and migration procedures;
6. Bearing in mind the obligations and commitments undertaken by states, including 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 (CETS No. 126, 1987); 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);
7. 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; Recommendation CM/Rec(2019)4 on supporting

¹ Gender equality entails equal rights for women and men, girls and boys as well as the same visibility, empowerment, responsibility, and participation in all spheres of public and private life. It also implies equal access to and distribution of resources between women and men. (Council of Europe Gender Equality Strategy 2018-2023).

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;

8. Recalling the United Nations Convention Relating to the Status of Refugees (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); 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. Noting 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); CEDAW General Recommendation No. 35 on gender-based violence against women; CEDAW Recommendation No.38 on trafficking in women and girls in the context of global migration (2020); as well as 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 human beings, 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. Bearing in mind the importance of the overall application and impact of the United Nations 2030 Agenda for Sustainable Development, in particular Sustainable Development Goal 5 ("Achieve gender equality and empower all women and girls"); Sustainable Development Goal 10.7 ("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");
12. 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;
13. Acknowledging the positive contribution that migrant, refugee and asylum-seeking women and girls may bring to European societies and communities;

14. Considering the profound changes in migration patterns and in the situation of migrant, refugee and asylum-seeking women and girls, the fact that their numbers have reached the highest ever in the 2010's and the significant developments in gender equality-, migration- and asylum-related concepts, policies and legal instruments at all levels;
15. Recognising that while existing international human rights standards apply to all persons, and bearing in mind the possible differences in legal status of the persons concerned, 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;
16. Underlining that women are exposed to a continuum of violence that is specific to them because they are women, or which affects them disproportionately, and that such violence is, in this sense, gender-based; recognising with grave concern, that migrant, refugee and asylum-seeking women and girls are particularly exposed to such forms of violence and exploitation in their countries of origin, during their journey, in transit and/or in destination countries, which may constitute a serious violation of their human rights, especially as migrant, refugee and asylum-seeking women and girls face difficulties and structural barriers in overcoming such violence and exploitation in their diverse forms;
17. 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 including, as appropriate, migrant Roma and Traveller women and girls.
18. Aware of the multiple and intersecting barriers that migrant, refugee and asylum-seeking women and girls face in terms of access to and exercise of rights, access to services, participation and leadership and of the need to facilitate their integration and full participation in the economic, social, civic, political and cultural life;
19. Wishing therefore to review and update its Recommendation No. R(79)10 to member States on women migrants, henceforth replaced by the present instrument;
20. Recommends that the governments of member States:
 1. Take all necessary measures to promote and apply the principles set out in the Recommendation and its appendix, aimed at ensuring that migrant, refugee and asylum-seeking women and girls can effectively access and exercise their rights;

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14/07/21

2. Ensure, by appropriate means and action, including where appropriate translation, a wide dissemination (in accessible formats) of this Recommendation among relevant authorities and stakeholders, which are encouraged to take measures to implement it;
3. Examine periodically, within the competent Council of Europe steering committee(s) and bodies, the measures taken, 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 live in another, including citizens of Council of Europe member States with a migrant background, and stateless women and girls.

'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 migrant, refugee and asylum-seeking women and girls do not face discrimination on any ground.
3. Member States should apply an intersectional approach in all measures referred to in this Appendix, notably bearing in mind the different situations and individual characteristics of migrant, refugee and asylum-seeking women and girls.
4. Measures should be established to safeguard the fundamental rights of undocumented migrants and facilitate their access to essential services including, at a minimum, protection and complaint mechanisms and all support services for victims of violence against women and trafficking in human beings, without fearing any reporting to migration authorities.
5. Within both migrant and host countries and communities, member States should:
 - 5.1. pay special attention to measures aimed at dismantling all forms of stereotypes which have a negative impact on the rights of migrant, refugee and asylum-seeking women and girls;

- 5.2. implement awareness-raising and educational measures in respect of gender equality and human rights to promote dialogue.

Girls

6. Member States should adopt a child rights-based approach to migrant, refugee and asylum-seeking children, which takes account of the age and specific situations and needs of girls, including ensuring suitable and safe alternative care arrangements when they are separated from their parents or caregiver 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 migrant, refugee and asylum-seeking girls to support their transition to adulthood beyond the age of 18, including access to education and healthcare, as well as support for their integration and social participation.

Information, empowerment, awareness raising and promotion of human rights

9. To empower migrant, refugee and asylum-seeking women and girls and enable them to access their rights, they should be provided with relevant and accessible information and advice in a way and a language that they understand, covering, at least:
 - 9.1 Their fundamental human rights 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 violence or other violations of rights by State authorities or private contractors acting on behalf of the State, including rights to civil remedies and compensation;
 - 9.3 Protection services available in the host country against all forms of violence against women and trafficking in human beings, including access to general and specific support services, specialist support provided by NGOs and legal aid;
 - 9.4 Available and accessible public services in the host country, notably healthcare including mental and sexual and reproductive health and [reproductive rights in accordance with the Programme of Action of the ICPD and the Beijing Platform for Action](#)², [evidence-based/age-appropriate](#) comprehensive sexuality education³,

² UN Sustainable Development Goals 5.6

³ UN Resolution on the Rights of the Child

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psycho-social support, education, language and digital training, vocational training, integration programmes, housing and employment.⁴

10. Member States should provide resources and tools for the empowerment and support of migrant, refugee and asylum-seeking women and girls, based on their needs and personal characteristics, in order for them to benefit to as great an extent possible from the social services and welfare available.
11. Member States should facilitate the access of migrant, refugee and asylum-seeking women and girls to digital services and connection including the Internet, in particular if services and information are available solely or largely in digital format.

Access to justice including legal aid

12. Migrant, refugee and asylum-seeking women and girls should have access to the different national and international civil, administrative, and criminal remedies, as well as legal aid, to effectively exercise their rights and/or take action in cases of non-compliance with those rights.
13. Member States should ensure that refugee and asylum-seeking women and girls receive adequate support as claimants, defendants, or witnesses throughout civil, administrative, or criminal proceedings.
14. An intersectional and gender-sensitive approach to individual migrant, refugee and asylum-seeking women and girls should be adopted when determining/assessing their credibility in civil, administrative, and criminal proceedings, particularly where decisions have an impact on their legal status.

Artificial intelligence, automated decision-making, and data protection

15. 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.
16. 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:

16.1 border and immigration control decision- making, including decisions relating to entry or return;

⁴ based on the definitions adopted in the Programme of Action of the International Conference on Population and Development (ICPD) and in the Beijing Platform for Action.

- 16.2 migration management, including the use of biometric information, such as DNA testing
- 16.3 policing and security of migrant, refugee and asylum-seeking women and girls, and services related to protection and prevention of crimes;
- 16.4 the provision of services to migrant, refugee and asylum-seeking women and girls.
17. Migrant, refugee and asylum-seeking women and relevant civil society organisations should be given the opportunity to participate in discussions and decision-making around the development and deployment of new technologies affecting them.
18. Bearing in mind the particular situations of vulnerability of migrant, refugee and asylum-seeking women and girls, relevant authorities should:
- 18.1 ensure the confidentiality and security of personal data in accordance with their national legislation and applicable international obligations;
- 18.2 not transfer any such data to the country of origin without explaining to the affected person, in a language that they understand, which data is being transferred and under which conditions, including providing the affected person the opportunity to object.

Co-operation with civil society

19. Member States should co-operate with and support migrant and refugee women's organisations, women's rights organisations and other civil society organisations that uphold the universal human rights of migrant and refugee and asylum-seeking women and girls, and that defend and empower them.
20. Mechanisms should be established to ensure that migrant and refugee women's organisations, including where appropriate Roma and Travellers' women's organisations, are consulted, in particular when devising migration, asylum and integration policies which affect them.

Data collection, research and monitoring

21. Member States should support the collection of data, disaggregated notably by age and sex, on migration, refugee and asylum issues, including regarding victims of violence against women and of trafficking in human beings, and ensuring compliance with applicable data protection requirements.
22. 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.

23. 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 and support

24. Member States should protect migrant, refugee, and asylum-seeking women and girls from all forms of violence against women and trafficking in human beings.
25. Measures should be taken to protect migrant, refugee and asylum-seeking women and girls from hate speech and sexism.
26. Member States should develop specific measures to address the sexual exploitation of migrant, refugee and asylum-seeking women and girls, in particular the demand for such exploitation, including protective, punitive, preventive and educational measures.
27. Member States should ensure that culture, custom, religion, tradition or so-called 'honour' shall not be considered as justification for any exploitation or acts of violence against women and girls.
28. Member States should ensure effective access for migrant, refugee and asylum-seeking women and girls, with or without children, to shelters for women victims of violence against women and trafficking in human beings, regardless of their legal status.
29. Access to free legal advice and free legal aid available in the language of the beneficiary, should be provided, in order to support migrant, refugee and asylum-seeking women and girls victims of all forms of violence against women and trafficking in human beings through criminal, administrative and civil proceedings, including the pursuit of compensation claims and legal redress against the perpetrators.
30. General and specialist support services should be provided to victims of violence against women and trafficking in human beings, including for those persons accommodated in transit, reception and accommodation facilities. This includes, at a minimum, short- and long-term psychological support and healthcare, including mental healthcare, sexual and reproductive healthcare, immediate medical support and the collection of forensic medical evidence in cases of rape and sexual assault.
31. Member States should allow migrant, refugee and asylum-seeking women and girls access to available compensation schemes, measures or other programmes aimed at the integration or reintegration of victims of violence against women or trafficking in human beings, on the same conditions as nationals.
32. Member States should ensure that migrant, refugee and asylum-seeking women and girls do not suffer any penalty, including loss of lawful migration or refugee status as a consequence of their exploitation as victims of trafficking in human beings or as a consequence of leaving an abusive sponsoring partner or spouse on whom their status

was dependant or where they have been taken to another country against their will for the purpose of forced marriage.

33. A multi-agency, victim-centred approach, that prevents secondary victimisation and is aimed at the empowerment of migrant, refugee and asylum-seeking women and girls, inclusive of migrant and refugee women's organisations, should be adopted as regards matters relating to their protection and support.
34. Professional interpreters, legal assistants, and intercultural mediators, including women, should be available to assist migrant, refugee and asylum-seeking women and girls seeking protection, whilst making initial complaints, throughout the justice process and in seeking reparations, as well as in the context of the asylum determination procedures.
35. Training in violence against women, trafficking in human beings, gender equality and intercultural issues should be adequately funded and provided to relevant authorities and staff including interpreters, legal assistants and intercultural mediators to enable them to:
 - 35.1 promptly identify victims, where possible, in collaboration with relevant support organisations, conduct risk assessments, refer to relevant authorities and provide protection, treatment and care for migrant, refugee and asylum-seeking women and girls who are victims of all forms of violence and trafficking in human beings;
 - 35.2 be aware of the difficulties that migrant, refugee and asylum-seeking women and girls may face in disclosing incidents of violence against women and of trafficking in human beings, due to their insecure legal status, unavailability of quality interpretation services, lack of knowledge of their legal rights and lack of knowledge of the relevance of their experiences of violence in relation to migration/asylum decisions, social stigma, and lack of support to them in this regard.
36. Easily accessible mechanisms should be in place in State- and privately-run institutions, such as reception, transit and detention centres, police stations, prisons, childcare institutions, schools and hospitals, counselling centres and shelters, to enable incidents of violence against women and trafficking in human beings to be reported to staff and by staff. Member states should ensure access to age- and gender-sensitive telephone helplines, procedures for referral to other appropriate agencies, and medical and psychological treatment to facilitate reporting.
37. Risk assessment and risk management of violence against migrant, refugee and asylum-seeking women and girls should be conducted, taking specific account of their potential enhanced vulnerable situation owing to their insecure legal status.

State of emergency and crisis management

38. In situations of public health crisis, humanitarian crisis and crisis related to climate change, member States should take into account the increased risk of gender-based

violence, trafficking in human beings, poverty and homelessness for migrant, refugee and asylum-seeking women and girls, and should therefore:

- 38.1 take into consideration the situation and needs of migrant, refugee and asylum-seeking women and girls in crisis management and recovery measures, including protection of rights, and notably the right to health, shelter, food security, water, economic empowerment and access to specialist support services for women victims of violence, by qualifying them as essential services and guaranteeing their continuity;
- 38.2 ensure that measures taken during a crisis and ensuing state of emergency conform with international obligations related to the human rights of migrant, refugee and asylum-seeking women and girls;
- 38.3 ensure the participation of migrant, refugee and asylum-seeking women and girls and relevant civil society organisations, in decision and policy-making in these situations.

IV. Arrival

Pre-arrival information

39. Member States should ensure that immigration procedures, including visa issuing procedures, take into account migrant, refugee and asylum-seeking women and girls' specific situations, needs and vulnerabilities and are age- and gender-sensitive.
40. Information should be provided to migrant, refugee and asylum-seeking women and girls about the conditions enabling the legal entry and stay in a member State's territory.

Transit and reception facilities

41. Relevant authorities should ensure that transit, reception, accommodation and screening arrangements are age- and gender-sensitive. The screening process should, in particular, facilitate the identification of victims of violence against women and trafficking in human beings at the earliest possible opportunity and ensure that women's protection claims are processed efficiently.
42. Reception and accommodation facilities should be located in areas where women and girls are safe and can access relevant services, with respect to health, and in particular sexual and reproductive health, social and legal assistance, education and shopping facilities.
43. The specific needs and safety concerns of victims of all forms of violence against women and trafficking in human beings 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 and clothing should be provided as needed.

44. Staff should be trained in women's human rights, gender equality-related and trauma issues as well as violence against women and the specific needs of migrant, refugee and asylum-seeking women and girls, and the presence of professional women social workers, intercultural mediators, interpreters, police officers and guards should be ensured in these facilities.
45. Migrant, refugee and asylum-seeking women and girls should be offered adequate safe living space. Separate sleeping areas, as well as other safe spaces should be provided for single women with or without children (up to age 18). Other elements to be provided include access to natural and artificial light, sufficient ventilation and heating, a clean bed and bedding, ready access to clean, separate, well-lit shower and toilet facilities, and the availability of a basic sanitary kit / hygiene products free of charge and on a regular basis.
46. Women in transit and reception facilities should have access to a complaint /reporting system, whereby complaints are investigated and referred to the police where relevant, including, where appropriate, access to legal aid.
47. Member states should ensure that transit, reception and accommodation facilities and services are subject to regular independent monitoring, including when provided by private contractors, to ensure compliance with the standards of protection of this Appendix.
48. If migrant, refugee or asylum-seeking women and girls are confined to transit, reception or accommodation centres, member States should also ensure compliance with the provisions contained in the paragraphs of this Appendix related to detention.

Asylum

49. Member States should adopt and implement age- and gender-sensitive-asylum laws, practices and procedures.
50. Women and girls should be entitled to access asylum and protection information and procedures at the borders and elsewhere.
51. The possibility for women and girls to lodge an independent asylum claim should be ensured and they should be made aware of this right.
52. To ensure that gender-based violence against women is properly assessed within the framework of the 1951 United Nations Convention Relating to the Status of Refugees member States should:
 - 52.1 ensure that all forms of gender-based violence can be recognized as a form of persecution within the meaning of Article 1A(2) of the 1951 Convention;
 - 52.2 ensure a gender-sensitive interpretation of the 1951 Convention 'grounds' for asylum;

- 52.3 develop comprehensive gender-sensitive guidelines at all stages of the asylum process, including reception and support services, screening, determination of 'safe' countries for the purpose of accelerated or suspensive procedures, detention, status determination, adjudication and returns; and ensure that border police, migration officials, asylum officers, decision-makers, intercultural mediators and interpreters receive training in respect of such guidelines
53. Women asylum officers should be available to women applicants, who should be informed about this possibility.
54. Separate interviews for women and men from the same family, in the absence of children, should be made possible and their confidentiality should be guaranteed.
55. In processing and determining asylum claims, regard should be given to:
- 55.1 the applicant's own personal circumstances and individual assessment of risk;
 - 55.2 relevant country of origin information, including in relation to gender equality and women's rights. This encompasses access to justice, the legal framework, and its implementation; available social, economic, and other support; and any form of multiple and intersecting discrimination and/or patriarchal attitudes that women are likely to encounter.
56. Member States should ensure that women and girls have access to complementary/subsidiary protection, where necessary, if the decision on their refugee status is negative.

Cross-border measures

57. Member States should seek to participate in resettlement and relocation programmes as well as reinforce and promote legal pathways to ensure safe transit for women and girls.
58. Member States are encouraged to fund specific assistance and humanitarian resettlement programmes for women and girls' victims, or at risk, of violence against women and trafficking in human beings, including trafficking for the purpose of sexual exploitation.
59. The setting up and implementation of effective cross-border protection mechanisms for victims of violence against women or trafficking in human beings, including trafficking for the purpose of sexual exploitation should be encouraged.

V. Residence and Integration

Access to holistic and quality health services, including sexual and reproductive health and rights

60. Authorities should ensure that healthcare provision takes into account the situation and personal characteristics of migrant women and girls and is age- and gender sensitive.
61. Essential healthcare services including primary care, urgent and immediate care, palliative care and treatment or assistance necessary for public health reasons should be provided to all migrant, refugee and asylum-seeking women and girls, including migrant women and girls in an irregular situation.
62. Member States should also enable migrant, refugee and asylum-seeking women and girls to access free or affordable, comprehensive, quality, age- and gender-sensitive health services encompassing mental, sexual and reproductive health, including during pregnancy, as well as hygiene products. Member States should also seek to provide such health services to migrant women and girls in an irregular situation.
63. Migrant, refugee and asylum-seeking girls should be provided with access to age-appropriate sexual and reproductive health and rights information in a language that they can understand.
64. Access to available healthcare should not be dependent on obtaining the authorisation of the migration authority nor permission from any person other than the woman concerned. The treatment of minor girls may be subject to the consent of a parent or guardian.
65. Taking into account language and cultural barriers, member States should ensure that women give prior, free and informed consent to any medical treatment.

Social services, social security and housing

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

Integration, social, cultural and political participation

68. Member States should ensure that any child born in their territory is entitled to have their birth registered immediately after birth and is granted a pathway to a nationality.

69. Owing to persisting stereotypes and existing inequalities in access to civic rights and participation in political decision-making, which are even more serious for migrant, refugee and asylum-seeking women, member States should take steps to ensure that migrant, refugee and asylum-seeking women who are entitled to vote and stand for election in local, regional, national or European elections are aware of their rights and encouraged to participate without any form of discrimination.
70. Authorities should encourage and support initiatives aimed at empowering migrant, refugee and asylum-seeking 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 can include participation in local, cultural, women's or other associations, sports clubs, youth clubs and other organisations.
71. Public and private coaching, mentoring and other support programmes aimed at migrant and refugee women and girls should be set up and supported, notably in order to promote positive role models and promising practices of integration.
72. The positive contribution made by migrant and refugee women and girls to society and host communities, the economy and culture should be highlighted and encouraged.

Education, vocational training and life-long learning

73. Authorities should ensure that migrant, refugee and asylum-seeking children have access to education and take measures to reach those migrant, refugee, and asylum-seeking 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. Recognizing that the ability to communicate in the host country's language is essential for integration, member States should ensure access to an adequate number of hours of quality language training and integration programmes to migrant, refugee and asylum-seeking women and girls, to promote their empowerment and protection. Literacy and digital skills courses should also be provided to migrant, refugee and asylum-seeking women and girls corresponding to their needs and as soon as possible after their arrival in the host country.
75. Member States should take steps to facilitate the recognition and validation of migrant and refugee women and girls' existing vocational and academic qualifications and work experience in practice, including through initiatives such as the Council of Europe European Qualifications Passport for Refugees.
76. Migrant, refugee and asylum-seeking women and girls 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.

77. Access to the programmes and measures referred to in paragraphs 74, 75 and 76 for migrants in an irregular situation may be subject to national laws governing eligibility.

Employment

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

79. Member States should comply with the obligations regarding the right to work and self-employment for refugee women and girls set out by the United Nations Convention Relating to the Status of Refugees and consider removing barriers to work, for other migrant women and girls after they have been present in the territory for a certain length of time.

80. In respect of *at least* those migrant, refugee, and asylum-seeking women and girls who are permitted to work under the national law of member States, the latter should ensure decent and dignified working conditions, including:

80.1. taking measures to regulate and improve migrant, refugee, and asylum-seeking women and girls' working conditions and to eliminate all forms of labour exploitation and discrimination, including when they are multiple and intersecting;

80.2. supporting and assisting migrant, refugee, and asylum-seeking women and girls where appropriate 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, internships, apprenticeships and job placement programmes;

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

80.4 ensure that migrant, refugee, and asylum-seeking women 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.

81. Member States should implement the provisions of relevant national and international standards directed at protecting migrant, refugee and asylum-seeking women and girls carrying out domestic work from discrimination, exploitation and abuse.

Residence permits

82. Member States should ensure that migrant, refugee and asylum-seeking women and girls who are granted a residence permit on the basis of a family relationship are entitled to social, economic and labour-related rights and entitlements in an autonomous capacity.
83. Migrant, refugee and asylum-seeking women and girls should be made aware of any entitlement to a renewable autonomous residence permit, for example due to their own protection needs under the UN Refugee Convention, their status as a victim of violence against women, a victim of trafficking in human beings, relationship breakdown, or other particularly difficult circumstances
84. The evidentiary criteria and threshold for the granting of autonomous residence permits should be realistic and sensitive to the individual situation of migrant, refugee and asylum-seeking women and responsible statutory agencies should be adequately trained to ensure that migrant, refugee and asylum-seeking women and girls can benefit from these permits.
85. Member States should ensure that migrant, refugee and asylum-seeking women and girls and their dependents are granted a renewable residence permit if their stay is necessary for criminal investigations or proceedings and until at least their conclusions.
86. Member States should facilitate the possibility for victims of forced marriage brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, to regain such status.
87. Member States are encouraged to provide security of residence on an independent basis to migrant and refugee women and girls present in a country for a long time, including stateless women and girls.
88. Member States should provide pathways to naturalisation and take measures to ensure that migrant and refugee women and girls are not faced with gender-related obstacles in this regard.

Family reunion

89. Recognising that family reunion can be both a secure pathway to safety for migrant and refugee women and girls, and a protective factor in the host country, member States should safeguard the right to family reunion for migrant and refugee women and girls in accordance with obligations under the European Convention on Human Rights and international law. In this respect, member States should:
 - 89.1. adopt a definition of family consistent with article 8 of the European Convention on Human Rights;
 - 89.2. ensure that women and girls are aware of their right to family reunion, including as migrant or refugee sponsors, and receive access to legal advice and assistance to pursue that right; and

- 89.3. consider accepting or seeking the transfer of asylum claims to enable the family reunion of migrant, refugee and asylum-seeking women and girls separated on their journeys.
- 89.4. Seek to provide within their national laws, gender-sensitive legal pathways to respect the family life of migrant women lawfully residing on their territory, in particular by providing the immediate and dependent family members with the possibly to migrate with or join them in the host country.

Detention

90. In respect of all forms of deprivation of liberty, member States should adopt an age- and gender-sensitive approach, which takes into account the individual situation and personal characteristics of migrant, refugee and asylum-seeking women and girls. Member States should also provide the following services to migrant, refugee and asylum-seeking women and girls deprived of their liberty:
 - 90.1 access to law enforcement measures and reporting / complaints mechanisms including referral to and investigation of those complaints by police where relevant and access to legal aid;
 - 90.2 access to information about their rights, as set forth in paragraph 9 of this Appendix;
 - 90.3 access to health-care and hygiene services, telephone helplines and appropriate trauma support and counselling facilities;
 - 90.4 access to a telephone, and/or Internet facility to inform a relative or third party of the fact of deprivation of liberty, as well as to consular assistance;
 - 90.5 the opportunity to remain in meaningful contact with the outside world, including regular access to a telephone, to their mobile phones or to Internet facilities; and
 - 90.6 the presence of women among border, migration and other police or custody staff, as well as among social workers and interpreters.
91. Member States should ensure that conditions in immigration detention centres reflect those listed in paragraphs 41-48 of this Appendix (Transit and reception facilities).
92. Member states should ensure that detention facilities, including administrative detention facilities, are subject to regular independent monitoring.
93. In the event that administrative detention under immigration legislation 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 women and girls within detention facilities, where their privacy is guaranteed and which cater adequately for their specific needs. Unaccompanied or separated girls should not, as a general rule, be detained.

94. Effective alternatives to administrative detention should be provided in any event for migrant, refugee and asylum-seeking women and girls who have been victims of torture, violence against women or trafficking in human beings, pregnant and nursing women, elderly women, and women with disabilities.
95. Migrant, refugee and asylum-seeking women and girls in administrative detention should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation. Care should be taken in the design and layout of such premises to avoid, as far as possible, any impression of a carceral environment. Within the detention centre, migrant refugee and asylum-seeking women and girls should be restricted in their freedom of movement as little as possible.
96. Migrant, refugee and asylum-seeking women and girls in administrative detention should be offered appropriate activities, and they should in principle have free access to outdoor exercise throughout the day (i.e. considerably more than one hour per day).

VI. Returns

97. Voluntary returns should be the preferred option. Returns should always be in safety and dignity, in line with the principle of *non-refoulement*. Member States should therefore ensure that migrant and asylum-seeking women and girls are not returned or removed to a country where their life would be at risk or where they might be subjected to acts of torture or inhuman or degrading treatment or punishment, including those acts which disproportionately affect women or are directed at them because they are women.
98. In these situations, due regard should be given to relevant human rights obligations, notably the right to family life, in accordance with the case law of the European Court of Human Rights; the best interest of the child, if applicable; and to the state of health of the person, including for example pregnancy.
99. Recognising the particular difficulties that victims of violence against women and of trafficking in human beings and face in fully disclosing the grounds for their international protection claim, member States should:
- 99.1 ensure a process that protects women and girls against the risk of *refoulement*;
 - 99.2 ensure that accelerated and non-suspensive procedures are not implemented under any circumstance, until such a process has been completed to guarantee an individual assessment of the international protection needs in conformity with the provisions of this Appendix, especially if there are any signs of violence against women or trafficking in human beings.

100. Member States should ensure the possibility of suspending expulsion measures of migrant women based on their dependent status on a spouse, partner, parent, or other family member, in order to enable them to apply for an independent residence permit.
101. In order to facilitate the reintegration of returnee women, member States should take the necessary measures to allow for the recognition of eventual diplomas or qualifications obtained.

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14/07/21



Strasbourg, 4 June 2021

GEC-MIG (2021) 3 rev 1

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

**Draft Recommendation on protecting the rights of migrant, refugee
and asylum-seeking women**

Working document in view of the internal and external consultation

04.06.2021- 16.07.2021

Draft Recommendation on protecting the rights of migrant, refugee, asylum-seeking women and girls

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 equality¹ 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. 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;
5. 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), and notably its strategic objective to identify and address vulnerabilities throughout asylum and migration procedures;
6. Bearing in mind the obligations and commitments undertaken by states, including 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 (CETS No. 126, 1987); 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);
7. 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; Recommendation CM/Rec(2019)4 on supporting

¹ Gender equality entails equal rights for women and men, girls and boys as well as the same visibility, empowerment, responsibility, and participation in all spheres of public and private life. It also implies equal access to and distribution of resources between women and men. (Council of Europe Gender Equality Strategy 2018-2023).

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;

8. Recalling the United Nations Convention Relating to the Status of Refugees (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); 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. Noting 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); CEDAW General Recommendation No. 35 on gender-based violence against women; CEDAW Recommendation No.38 on trafficking in women and girls in the context of global migration (2020); as well as 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 human beings, 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. Bearing in mind the importance of the overall application and impact of the United Nations 2030 Agenda for Sustainable Development, in particular Sustainable Development Goal 5 (“Achieve gender equality and empower all women and girls”); Sustainable Development Goal 10.7 (“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”);
12. 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;
13. Acknowledging the positive contribution that migrant, refugee and asylum-seeking women and girls may bring to European societies and communities;

14. Considering the profound changes in migration patterns and in the situation of migrant, refugee and asylum-seeking women and girls, the fact that their numbers have reached the highest ever in the 2010's and the significant developments in gender equality-, migration- and asylum-related concepts, policies and legal instruments at all levels;
15. Recognising that while existing international human rights standards apply to all persons, and bearing in mind the possible differences in legal status of the persons concerned, 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;
16. Underlining that women are exposed to a continuum of violence that is specific to them because they are women, or which affects them disproportionately, and that such violence is, in this sense, gender-based; recognising with grave concern, that migrant, refugee and asylum-seeking women and girls are particularly exposed to such forms of violence and exploitation in their countries of origin, during their journey, in transit and/or in destination countries, which may constitute a serious violation of their human rights, especially as migrant, refugee and asylum-seeking women and girls face difficulties and structural barriers in overcoming such violence and exploitation in their diverse forms;
17. 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 including, as appropriate, migrant Roma and Traveller women and girls.
18. Aware of the multiple and intersecting barriers that migrant, refugee and asylum-seeking women and girls face in terms of access to and exercise of rights, access to services, participation and leadership and of the need to facilitate their integration and full participation in the economic, social, civic, political and cultural life;
19. Wishing therefore to review and update its Recommendation No. R(79)10 to member States on women migrants, henceforth replaced by the present instrument;
20. Recommends that the governments of member States:
 1. Take all necessary measures to promote and apply the principles set out in the Recommendation and its appendix, aimed at ensuring that migrant, refugee and asylum-seeking women and girls can effectively access and exercise their rights;

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14/07/21

2. Ensure, by appropriate means and action, including where appropriate translation, a wide dissemination (in accessible formats) of this Recommendation among relevant authorities and stakeholders, which are encouraged to take measures to implement it;
3. Examine periodically, within the competent Council of Europe steering committee(s) and bodies, the measures taken, 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 live in another, including citizens of Council of Europe member States with a migrant background, and stateless women and girls.

'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 migrant, refugee and asylum-seeking women and girls do not face discrimination on any ground.
3. Member States should apply an intersectional approach in all measures referred to in this Appendix, notably bearing in mind the different situations and individual characteristics of migrant, refugee and asylum-seeking women and girls.
4. Measures should be established to safeguard the fundamental rights of undocumented migrants and facilitate their access to essential services including, at a minimum, protection and complaint mechanisms and all support services for victims of violence against women and trafficking in human beings, without fearing any reporting to migration authorities.
5. Within both migrant and host countries and communities, member States should:
 - 5.1. pay special attention to measures aimed at dismantling all forms of stereotypes which have a negative impact on the rights of migrant, refugee and asylum-seeking women and girls;

Commented [MM(1): Implications for interagency/multi agency approach are not clear - Requires clarification or re-phrasing

- 5.2. implement awareness-raising and educational measures in respect of gender equality and human rights to promote dialogue.

Girls

6. Member States should adopt a child rights-based approach to migrant, refugee and asylum-seeking children, which takes account of the age and specific situations and needs of girls, including ensuring suitable and safe alternative care arrangements when they are separated from their parents or caregiver 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 migrant, refugee and asylum-seeking girls to support their transition to adulthood beyond the age of 18, including access to education and healthcare, as well as support for their integration and social participation.

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Information, empowerment, awareness raising and promotion of human rights

9. To empower migrant, refugee and asylum-seeking women and girls and enable them to access their rights, they should be provided with relevant and accessible information and advice in a way and a language that they understand, covering, at least:
- 9.1 Their fundamental human rights 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 violence or other violations of rights by State authorities or private contractors acting on behalf of the State, including rights to civil remedies and compensation;
- 9.3 Protection services available in the host country against all forms of violence against women and trafficking in human beings, including access to general and specific support services, specialist support provided by NGOs and legal aid;
- 9.4 Available and accessible public services in the host country, notably healthcare including mental and sexual and reproductive health and rights, comprehensive sexuality education, psychosocial support, education, language and digital training, vocational training, integration programmes, housing and employment.
10. Member States should provide resources and tools for the empowerment and support of migrant, refugee and asylum-seeking women and girls, based on their needs and personal characteristics, in order for them to benefit to as great an extent possible from the social services and welfare available.

Deleted: psycho-social

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

Access to justice including legal aid

12. Migrant, refugee and asylum-seeking women and girls should have access to the different national and international civil, administrative, and criminal remedies, as well as legal aid, to effectively exercise their rights and/or take action in cases of non-compliance with those rights.
13. Member States should ensure that refugee and asylum-seeking women and girls receive adequate support as claimants, defendants, or witnesses throughout civil, administrative, or criminal proceedings.
14. An intersectional and gender-sensitive approach to individual migrant, refugee and asylum-seeking women and girls should be adopted when determining/assessing their credibility in civil, administrative, and criminal proceedings, particularly where decisions have an impact on their legal status.

Artificial intelligence, automated decision-making, and data protection

15. 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.
16. Any use of artificial intelligence and automated decision-making systems by the public sector and its service providers/contractors, should not cause any discrimination, and shall be operated consistently with privacy principles, be transparent, and have clear governance mechanisms, in the context of:
 - 16.1 border and immigration control decision- making, including decisions relating to entry or return;
 - 16.2 migration management, including the use of biometric information, such as DNA testing
 - 16.3 policing and security of migrant, refugee and asylum-seeking women and girls, and services related to protection and prevention of crimes;
 - 16.4 the provision of services to migrant, refugee and asylum-seeking women and girls.
17. Migrant, refugee and asylum-seeking women and relevant civil society organisations should be given the opportunity to participate in discussions and decision-making around the development and deployment of new technologies affecting them.

18. Bearing in mind the particular situations of vulnerability of migrant, refugee and asylum-seeking women and girls, relevant authorities should:

18.1 ensure the confidentiality and security of personal data in accordance with their national legislation and applicable international obligations;

18.2 not transfer any such data to the country of origin without explaining to the affected person, in a language that they understand, which data is being transferred and under which conditions, including providing the affected person the opportunity to object.

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Co-operation with civil society

19. Member States should co-operate with and support migrant and refugee women's organisations, women's rights organisations and other civil society organisations that uphold the universal human rights of migrant and refugee and asylum-seeking women and girls, and that defend and empower them.

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

Data collection, research and monitoring

21. Member States should support the collection of data, disaggregated notably by age and sex, on migration, refugee and asylum issues, including regarding victims of violence against women and of trafficking in human beings, and ensuring compliance with applicable data protection requirements.

22. 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.

23. 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 and support

24. Member States should protect migrant, refugee, and asylum-seeking women and girls from all forms of violence against women and trafficking in human beings.

25. Measures should be taken to protect migrant, refugee and asylum-seeking women and girls from hate speech and sexism.

26. Member States should develop specific measures to address the sexual exploitation of migrant, refugee and asylum-seeking women and girls, in particular the demand for such exploitation, including protective, punitive, preventive and educational measures.
27. Member States should ensure that culture, custom, religion, tradition or so-called 'honour' shall not be considered as justification for any exploitation or acts of violence against women and girls.
28. Member States should ensure effective access for migrant, refugee and asylum-seeking women and girls, with or without children, to shelters for women victims of violence against women and trafficking in human beings, regardless of their legal status.
29. Access to free legal advice and free legal aid available in the language of the beneficiary, should be provided, in order to support migrant, refugee and asylum-seeking women and girls victims of all forms of violence against women and trafficking in human beings through criminal, administrative and civil proceedings, including the pursuit of compensation claims and legal redress against the perpetrators.
30. General and specialist support services should be provided to victims of violence against women and trafficking in human beings, including for those persons accommodated in transit, reception and accommodation facilities. This includes, at a minimum, short- and long-term psychological support and healthcare, including mental healthcare, sexual and reproductive healthcare, immediate medical support and the collection of forensic medical evidence in cases of rape and sexual assault.
31. Member States should allow migrant, refugee and asylum-seeking women and girls access to available compensation schemes, measures or other programmes aimed at the integration or reintegration of victims of violence against women or trafficking in human beings, on the same conditions as nationals.
32. Member States should ensure that migrant, refugee and asylum-seeking women and girls do not suffer any penalty, including loss of lawful migration or refugee status as a consequence of their exploitation as victims of trafficking in human beings or as a consequence of leaving an abusive sponsoring partner or spouse on whom their status was dependant or where they have been taken to another country against their will for the purpose of forced marriage.
33. A multi-agency, victim-centred approach, that prevents secondary victimisation and is aimed at the empowerment of migrant, refugee and asylum-seeking women and girls, inclusive of migrant and refugee women's organisations, should be adopted as regards matters relating to their protection and support.
34. Professional interpreters, legal assistants, and intercultural mediators, including women, should be available to assist migrant, refugee and asylum-seeking women and girls seeking protection, whilst making initial complaints, throughout the justice process and in seeking reparations, as well as in the context of the asylum determination procedures.

Commented [MM(4): Suggest including word 'Investigative', protective...

35. Training in violence against women, trafficking in human beings, gender equality and intercultural issues should be adequately funded and provided to relevant authorities and staff including interpreters, legal assistants and intercultural mediators to enable them to:

35.1 promptly identify victims, where possible, in collaboration with relevant support organisations, conduct risk assessments, refer to relevant authorities and provide protection, treatment and care for migrant, refugee and asylum-seeking women and girls who are victims of all forms of violence and trafficking in human beings;

35.2 be aware of the difficulties that migrant, refugee and asylum-seeking women and girls may face in disclosing incidents of violence against women and of trafficking in human beings, due to their insecure legal status, unavailability of quality interpretation services, lack of knowledge of their legal rights and lack of knowledge of the relevance of their experiences of violence in relation to migration/asylum decisions, social stigma, and lack of support to them in this regard.

36. Easily accessible mechanisms should be in place in State and privately-run institutions - such as reception, transit and detention centres, police stations, prisons, childcare institutions, schools and hospitals, counselling centres and shelters - to enable incidents of violence against women and trafficking in human beings to be reported to staff and by staff. Member states should ensure access to age- and gender-sensitive telephone helplines, procedures for referral to other appropriate agencies, and medical and psychological treatment to facilitate reporting.

37. Risk assessment and risk management of violence against migrant, refugee and asylum-seeking women and girls should be conducted, taking specific account of their potential enhanced vulnerable situation owing to their insecure legal status.

State of emergency and crisis management

38. In situations of public health crisis, humanitarian crisis and crisis related to climate change, member States should take into account the increased risk of gender-based violence, trafficking in human beings, poverty and homelessness for migrant, refugee and asylum-seeking women and girls, and should therefore:

38.1 take into consideration the situation and needs of migrant, refugee and asylum-seeking women and girls in crisis management and recovery measures, including protection of rights, and notably the right to health, shelter, food security, water, economic empowerment and access to specialist support services for women victims of violence, by qualifying them as essential services and guaranteeing their continuity;

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

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

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IV. Arrival

Pre-arrival information

39. Member States should ensure that immigration procedures, including visa-issuing procedures, take into account migrant, refugee and asylum-seeking women and girls' specific situations, needs and vulnerabilities and are age- and gender-sensitive.

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40. Information should be provided to migrant, refugee and asylum-seeking women and girls about the conditions enabling the legal entry and stay in a member State's territory.

Transit and reception facilities

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

42. Reception and accommodation facilities should be located in areas where women and girls are safe and can access relevant services, with respect to health, and in particular sexual and reproductive health, social and legal assistance, education and shopping facilities.

43. The specific needs and safety concerns of victims of all forms of violence against women and trafficking in human beings 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 and clothing should be provided as needed.

44. Staff should be trained in women's human rights, gender equality-related and trauma issues, as well as violence against women and the specific needs of migrant, refugee and asylum-seeking women and girls, and the presence of professional women social workers, intercultural mediators, interpreters, police officers and guards should be ensured in these facilities.

Commented [MM(5)]: Child protection and welfare issues

45. Migrant, refugee and asylum-seeking women and girls should be offered adequate safe living space. Separate sleeping areas, as well as other safe spaces should be provided for single women with or without children (up to age 18). Other elements to be provided include access to natural and artificial light, sufficient ventilation and heating, a clean bed and bedding, ready access to clean, separate, well-lit shower and toilet facilities, and the availability of a basic sanitary kit / hygiene products free of charge and on a regular basis.

46. Women in transit and reception facilities should have access to a complaint /reporting system, whereby complaints are investigated and referred to the police where relevant, including, where appropriate, access to legal aid.
47. Member states should ensure that transit, reception and accommodation facilities and services are subject to regular independent monitoring, including when provided by private contractors, to ensure compliance with the standards of protection of this Appendix.
48. If migrant, refugee or asylum-seeking women and girls are confined to transit, reception or accommodation centres, member States should also ensure compliance with the provisions contained in the paragraphs of this Appendix related to detention.

Commented [MM(6): Including from a child welfare and protection perspective

Asylum

49. Member States should adopt and implement age- and gender-sensitive-asylum laws, practices and procedures.
50. Women and girls should be entitled to access asylum and protection information and procedures at the borders and elsewhere.
51. The possibility for women and girls to lodge an independent asylum claim should be ensured and they should be made aware of this right.
52. To ensure that gender-based violence against women is properly assessed within the framework of the 1951 United Nations Convention Relating to the Status of Refugees member States should:
- 52.1 ensure that all forms of gender-based violence can be recognized as a form of persecution within the meaning of Article 1A(2) of the 1951 Convention;
 - 52.2 ensure a gender-sensitive interpretation of the 1951 Convention 'grounds' for asylum;
 - 52.3 develop comprehensive gender-sensitive guidelines at all stages of the asylum process, including reception and support services, screening, determination of 'safe' countries for the purpose of accelerated or suspensive procedures, detention, status determination, adjudication and returns; and ensure that border police, migration officials, asylum officers, decision-makers, intercultural mediators and interpreters receive training in respect of such guidelines.
53. Women asylum officers should be available to women applicants, who should be informed about this possibility.
54. Separate interviews for women and men from the same family, in the absence of children, should be made possible and their confidentiality should be guaranteed.
55. In processing and determining asylum claims, regard should be given to:

Commented [MM(7): Can it be guaranteed? For example in relation to contrary instructions or to an allegation

- 55.1 the applicant's own personal circumstances and individual assessment of risk;
- 55.2 relevant country of origin information, including in relation to gender equality and women's rights. This encompasses access to justice, the legal framework, and its implementation; available social, economic, and other support; and any form of multiple and intersecting discrimination and/or patriarchal attitudes that women are likely to encounter.
56. Member States should ensure that women and girls have access to complementary/subsidiary protection, where necessary, if the decision on their refugee status is negative.

Cross-border measures

57. Member States should seek to participate in resettlement and relocation programmes as well as reinforce and promote legal pathways to ensure safe transit for women and girls.
58. Member States are encouraged to fund specific assistance and humanitarian resettlement programmes for women and girls' victims, or at risk, of violence against women and trafficking in human beings, including trafficking for the purpose of sexual exploitation.
59. The setting up and implementation of effective cross-border protection mechanisms for victims of violence against women or trafficking in human beings, including trafficking for the purpose of sexual exploitation should be encouraged.

V. Residence and Integration

Access to holistic and quality health services, including sexual and reproductive health and rights

60. Authorities should ensure that healthcare provision takes into account the situation and personal characteristics of migrant women and girls and is age- and gender sensitive.
61. Essential healthcare services including primary care, urgent and immediate care, palliative care and treatment or assistance necessary for public health reasons should be provided to all migrant, refugee and asylum-seeking women and girls, including migrant women and girls in an irregular situation.
62. Member States should also enable migrant, refugee and asylum-seeking women and girls to access free or affordable, comprehensive, quality, age- and gender-sensitive health services encompassing mental, sexual and reproductive health, including during pregnancy, as well as hygiene products. Member States should also seek to provide such health services to migrant women and girls in an irregular situation.

Commented [MM(8): Clarification required -What does 'an irregular situation' mean

63. Migrant, refugee and asylum-seeking girls should be provided with access to age-appropriate sexual and reproductive health and rights information in a language that they can understand.
64. Access to available healthcare should not be dependent on obtaining the authorisation of the migration authority nor permission from any person other than the woman concerned. The treatment of minor girls may be subject to the consent of a parent or guardian.
65. Taking into account language and cultural barriers, member States should ensure that women give prior, free and informed consent to any medical treatment.

Social services, social security and housing

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

Integration, social, cultural and political participation

68. Member States should ensure that any child born in their territory is entitled to have their birth registered immediately after birth and is granted a pathway to a nationality.
69. Owing to persisting stereotypes and existing inequalities in access to civic rights and participation in political decision-making, which are even more serious for migrant, refugee and asylum-seeking women, member States should take steps to ensure that migrant, refugee and asylum-seeking women who are entitled to vote and stand for election in local, regional, national or European elections are aware of their rights and encouraged to participate without any form of discrimination.
70. Authorities should encourage and support initiatives aimed at empowering migrant, refugee and asylum-seeking 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 can include participation in local, cultural, women's or other associations, sports clubs, youth clubs and other organisations.
71. Public and private coaching, mentoring and other support programmes aimed at migrant and refugee women and girls should be set up and supported, notably in order to promote positive role models and promising practices of integration.
72. The positive contribution made by migrant and refugee women and girls to society and host communities, the economy and culture should be highlighted and encouraged.

Education, vocational training and life-long learning

73. Authorities should ensure that migrant, refugee and asylum-seeking children have access to education and take measures to reach those migrant, refugee, and asylum-seeking 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. Recognizing that the ability to communicate in the host country's language is essential for integration, member States should ensure access to an adequate number of hours of quality language training and integration programmes to migrant, refugee and asylum-seeking women and girls, to promote their empowerment and protection. Literacy and digital skills courses should also be provided to migrant, refugee and asylum-seeking women and girls corresponding to their needs and as soon as possible after their arrival in the host country.
75. Member States should take steps to facilitate the recognition and validation of migrant and refugee women and girls' existing vocational and academic qualifications and work experience in practice, including through initiatives such as the Council of Europe European Qualifications Passport for Refugees.
76. Migrant, refugee and asylum-seeking women and girls 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.
77. Access to the programmes and measures referred to in paragraphs 74, 75 and 76 for migrants in an irregular situation may be subject to national laws governing eligibility.

Employment

78. Member States should take specific and targeted measures to prevent discrimination and promote access to employment for migrant and refugee women, at an early stage in the migration process, including safe and legal routes to employment pre-arrival.
79. Member States should comply with the obligations regarding the right to work and self-employment for refugee women and girls set out by the United Nations Convention Relating to the Status of Refugees and consider removing barriers to work, for other migrant women and girls after they have been present in the territory for a certain length of time.
80. In respect of *at least* those migrant, refugee, and asylum-seeking women and girls who are permitted to work under the national law of member States, the latter should ensure decent and dignified working conditions, including:
- 80.1. taking measures to regulate and improve migrant, refugee, and asylum-seeking women and girls' working conditions and to eliminate all forms of labour exploitation and discrimination, including when they are multiple and intersecting;

- 80.2. supporting and assisting migrant, refugee, and asylum-seeking women and girls where appropriate 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, internships, apprenticeships and job placement programmes;
- 80.3 in order to facilitate access to the labour market, take steps to ensure that migrant, refugee and asylum-seeking workers have access to work/life balance measures including maternity, paternity and parental leave, flexible working conditions where possible, and ensure access to and enjoyment of child-care facilities on an equal footing with national workers; and
- 80.4 ensure that migrant, refugee, and asylum-seeking women 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.
81. Member States should implement the provisions of relevant national and international standards directed at protecting migrant, refugee and asylum-seeking women and girls carrying out domestic work from discrimination, exploitation and abuse.

Residence permits

82. Member States should ensure that migrant, refugee and asylum-seeking women and girls who are granted a residence permit on the basis of a family relationship are entitled to social, economic and labour-related rights and entitlements in an autonomous capacity.
83. Migrant, refugee and asylum-seeking women and girls should be made aware of any entitlement to a renewable autonomous residence permit, for example due to their own protection needs under the UN Refugee Convention, their status as a victim of violence against women, a victim of trafficking in human beings, relationship breakdown, or other particularly difficult circumstances
84. The evidentiary criteria and threshold for the granting of autonomous residence permits should be realistic and sensitive to the individual situation of migrant, refugee and asylum-seeking women and responsible statutory agencies should be adequately trained to ensure that migrant, refugee and asylum-seeking women and girls can benefit from these permits.
85. Member States should ensure that migrant, refugee and asylum-seeking women and girls and their dependents are granted a renewable residence permit if their stay is necessary for criminal investigations or proceedings and until at least their conclusions.
86. Member States should facilitate the possibility for victims of forced marriage brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, to regain such status.

87. Member States are encouraged to provide security of residence on an independent basis to migrant and refugee women and girls present in a country for a long time, including stateless women and girls.

88. Member States should provide pathways to naturalisation and take measures to ensure that migrant and refugee women and girls are not faced with gender-related obstacles in this regard.

Commented [MM(9): 'for a long time' requires re-phrasing as is a vague term – suggest wording similar to 'for sufficient periods to enable them to develop autonomy/independence/alternative safe arrangements'

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Family reunion

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

- 89.1. adopt a definition of family consistent with article 8 of the European Convention on Human Rights;
- 89.2. ensure that women and girls are aware of their right to family reunion, including as migrant or refugee sponsors, and receive access to legal advice and assistance to pursue that right; and
- 89.3. consider accepting or seeking the transfer of asylum claims to enable the family reunion of migrant, refugee and asylum-seeking women and girls separated on their journeys.
- 89.4. Seek to provide within their national laws, gender-sensitive legal pathways to respect the family life of migrant women lawfully residing on their territory, in particular by providing the immediate and dependent family members with the possibly to migrate with or join them in the host country.

Detention

90. In respect of all forms of deprivation of liberty, member States should adopt an age- and gender-sensitive approach, which takes into account the individual situation and personal characteristics of migrant, refugee and asylum-seeking women and girls. Member States should also provide the following services to migrant, refugee and asylum-seeking women and girls deprived of their liberty:

- 90.1 access to law enforcement measures and reporting / complaints mechanisms including referral to and investigation of those complaints by police where relevant and access to legal aid;
- 90.2 access to information about their rights, as set forth in paragraph 9 of this Appendix;
- 90.3 access to health-care and hygiene services, telephone helplines and appropriate trauma support and counselling facilities;

Commented [MM(10): Suggest adding after 'information', 'legal advice and representation regarding their legal status and legal rights'

- 90.4 access to a telephone, and/or Internet facility to inform a relative or third party of the fact of deprivation of liberty, as well as to consular assistance;
- 90.5 the opportunity to remain in meaningful contact with the outside world, including regular access to a telephone, to their mobile phones or to Internet facilities; and
- 90.6 the presence of women among border, migration and other police or custody staff, as well as among social workers and interpreters.
91. Member States should ensure that conditions in immigration detention centres reflect those listed in paragraphs 41-48 of this Appendix (Transit and reception facilities).
92. Member states should ensure that detention facilities, including administrative detention facilities, are subject to regular independent monitoring.
93. In the event that administrative detention under immigration legislation 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 women and girls within detention facilities, where their privacy is guaranteed and which cater adequately for their specific needs. Unaccompanied or separated girls should not, as a general rule, be detained.
94. Effective alternatives to administrative detention should be provided in any event for migrant, refugee and asylum-seeking women and girls who have been victims of torture, violence against women or trafficking in human beings, pregnant and nursing women, elderly women, and women with disabilities.
95. Migrant, refugee and asylum-seeking women and girls in administrative detention should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation. Care should be taken in the design and layout of such premises to avoid, as far as possible, any impression of a carceral environment. Within the detention centre, migrant refugee and asylum-seeking women and girls should be restricted in their freedom of movement as little as possible.
96. Migrant, refugee and asylum-seeking women and girls in administrative detention should be offered appropriate activities, and they should in principle have free access to outdoor exercise throughout the day (i.e. considerably more than one hour per day).

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VI. Returns

97. Voluntary returns should be the preferred option. Returns should always be in safety and dignity, in line with the principle of *non-refoulement*. Member States should therefore ensure that migrant and asylum-seeking women and girls are not returned or removed to a country where their life would be at risk or where they might be subjected to acts of

torture or inhuman or degrading treatment or punishment, including those acts which disproportionately affect women or are directed at them because they are women.

98. In these situations, due regard should be given to relevant human rights obligations, notably the right to family life, in accordance with the case law of the European Court of Human Rights; the best interest of the child, if applicable; and to the state of health of the person, including, for example, pregnancy.

99. Recognising the particular difficulties that victims of violence against women and of trafficking in human beings face in fully disclosing the grounds for their international protection claim, member States should:

99.1 ensure a process that protects women and girls against the risk of *refoulement*;

99.2 ensure that accelerated and non-suspensive procedures are not implemented under any circumstance, until such a process has been completed to guarantee an individual assessment of the international protection needs in conformity with the provisions of this Appendix, especially if there are any signs of violence against women or trafficking in human beings.

100. Member States should ensure the possibility of suspending expulsion measures of migrant women based on their dependent status on a spouse, partner, parent, or other family member, in order to enable them to apply for an independent residence permit.

101. In order to facilitate the reintegration of returnee women, member States should take the necessary measures to allow for the recognition of eventual diplomas or qualifications obtained.

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Strasbourg, 4 June 2021

GEC-MIG (2021) 3 rev 1

Drafting Committee
on Migrant Women (GEC-MIG)

**Draft Recommendation on protecting the rights of migrant, refugee
and asylum-seeking women**

**Working document in view of the internal and external
consultation**

04.06.2021- 16.07.2021

Draft Recommendation on protecting the rights of migrant, refugee, asylum-seeking women and girls

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 equality¹ 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. 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;
5. 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), and notably its strategic objective to identify and address vulnerabilities throughout asylum and migration procedures;
6. Bearing in mind the obligations and commitments undertaken by states, including 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 (CETS No. 126, 1987); 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);

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¹ Gender equality entails equal rights for women and men, girls and boys as well as the same visibility, empowerment, responsibility, and participation in all spheres of public and private life. It also implies equal access to and distribution of resources between women and men. (Council of Europe Gender Equality Strategy 2018-2023).

7. 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; 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;
8. Recalling the United Nations Convention Relating to the Status of Refugees (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); 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. Noting 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); CEDAW General Recommendation No. 35 on gender-based violence against women; CEDAW Recommendation No.38 on trafficking in women and girls in the context of global migration (2020); as well as 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 human beings, 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. Bearing in mind the importance of the overall application and impact of the United Nations 2030 Agenda for Sustainable Development, in particular Sustainable Development Goal 5 (“Achieve gender equality and empower all women and girls”); Sustainable Development Goal 10.7 (“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”);

1. 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;
2. Acknowledging the positive contribution that migrant, refugee and asylum-seeking women and girls may bring to European societies and communities;
3. Considering the profound changes in migration patterns and in the situation of migrant, refugee and asylum-seeking women and girls, the fact that their numbers have reached the highest ever in the 2010’s and the significant developments in gender equality-, migration- and asylum-related concepts, policies and legal instruments at all levels;
12. Recognising that while existing international human rights standards apply to all persons, and bearing in mind the possible differences in legal status of the persons concerned, 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;
4. Underlining that women are exposed to a continuum of violence that is specific to them because they are women, or which affects them disproportionately, and that such violence is, in this sense, gender-based; recognising with grave concern, that migrant, refugee and asylum-seeking women and girls are particularly exposed to such forms of violence and exploitation in their countries of origin, during their journey, in transit and/or in destination countries, which may constitute a serious violation of their human rights, especially as migrant, refugee and asylum-seeking women and girls face difficulties and structural barriers in overcoming such violence and exploitation in their diverse forms;
13. 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 including, as appropriate, migrant Roma and Traveller women and girls.

14. Aware of the multiple and intersecting barriers that migrant, refugee and asylum-seeking women and girls face in terms of access to and exercise of rights, access to services, participation and leadership and of the need to facilitate their integration and full participation in the economic, social, civic, political and cultural life;
15. Wishing therefore to review and update its Recommendation No. R(79)10 to member States on women migrants, henceforth replaced by the present instrument;
16. Recommends that the governments of member States:
 1. Take all necessary measures to promote and apply the principles set out in the Recommendation and its appendix, aimed at ensuring that migrant, refugee and asylum-seeking women and girls can effectively access and exercise their rights;
 2. Ensure, by appropriate means and action, including where appropriate translation, a wide dissemination (in accessible formats) of this Recommendation among relevant authorities and stakeholders, which are encouraged to take measures to implement it;
 3. Examine periodically, within the competent Council of Europe steering committee(s) and bodies, the measures taken, 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 live in another, including citizens of Council of Europe member States with a migrant background, and stateless women and girls.

'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.]

I. Horizontal issues

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

Non-discrimination

1. Member States should ensure that migrant, refugee and asylum-seeking women and girls do not face discrimination on any ground.
- 2.
- 3.
5. Within both migrant and host countries and communities, member States should
 - 3.1.
6.
 - 6.1. implement awareness-raising and educational measures in respect of gender equality and human rights to promote dialogue.

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Girls

6. Member States should adopt a child rights-based approach to migrant, refugee and asylum-seeking children, which takes account of the age and specific situations and needs of girls, including ensuring suitable and safe alternative care arrangements when they are separated from their parents or caregiver or when they are unaccompanied minors.

1. Owing to migrant girls' situation of heightened vulnerability to exploitation and abuse, Unaccompanied and separated children should be assigned a guardian.

2. ↓

Information, empowerment, awareness raising and promotion of human rights

3. To empower migrant, refugee and asylum-seeking women and girls and enable them to access their rights, they should be provided with relevant and accessible information and advice in a way and a language that they understand, covering, at least:

9.1 Their fundamental human rights 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 violence or other violations of rights by State authorities or private contractors acting on behalf of the State, including rights to civil remedies and compensation;

9.3 Protection services available in the host country against all forms of violence against women and trafficking in human beings, including access to general and specific support services, specialist support provided by NGOs and legal aid;

9.4 Available and accessible public services in the host country, ↓

4. ↓

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

Commented [RF1]: There is no objective justification for this policy, which may not be preferred by States.

Deleted: care arrangements should be aligned with those for non-migrant children in mainstream child protection services or institutions.

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Commented [RF2]: There is no definition of what constitutes « essential services », and access to services will depend on the legal status of the person which is not specified here.

Commented [RF3]: Adulthood is reached at the age of 18 years, as per Convention on the Rights of the Child

Deleted: Member States should ensure continued access to essential services for migrant, refugee and asylum-seeking

Deleted: girls to support their transition to adulthood beyond the age of 18,

Deleted: including access to education and healthcare, as well as support for their integration and social participation.

Commented [RF4]: This list is unnecessary as it presumes availability of certain services which may not be provided by States.

Deleted: , notably healthcare including mental and sexual and reproductive health and rights, comprehensive sexuality education, psycho-social support, education, language and digital training, vocational training, integration programmes, housing and employment

Commented [RF5]: Any access to welfare or other support would be dependant on the legal status of the person, which is not specified here. Furthermore, « to as great an extent as possible » is clearly not applicable here, as by nature illegal migrants and other categories of non-nationals may be substantially limited in access to certain social programs.

Deleted: Member States should provide resources and tools for the empowerment and support of migrant, refugee and asylum-seeking women and girls, based on their needs and personal characteristics, in order for them to benefit to as great an extent possible from the social services and welfare available.

Access to justice including legal aid

12. Migrant, refugee and asylum-seeking women and girls should have access to the different national and international civil, administrative, and criminal remedies, as well as legal aid, to effectively exercise their rights and/or take action in cases of non-compliance with those rights.
13. Member States should ensure that refugee and asylum-seeking women and girls receive adequate support as claimants, defendants, or witnesses throughout civil, administrative, or criminal proceedings.
14. An intersectional and gender-sensitive approach to individual migrant, refugee and asylum-seeking women and girls should be adopted when determining/assessing their credibility in civil, administrative, and criminal proceedings, particularly where decisions have an impact on their legal status.

Artificial intelligence, automated decision-making, and data protection

15. Member States should ensure that a human rights impact assessment, with a gender equality perspective, in line with applicable international obligations, is conducted before the introduction of artificial intelligence and automated decision-making systems in the field of migration.
16. Taking into account that not every difference in treatment, particularly with regard to illegal migrants and other categories of non-nationals, constitutes discrimination, 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:
 - 16.1 border and immigration control decision-making, including decisions relating to entry or return;
 - 16.2 migration management, including the use of biometric information, such as DNA testing
 - 16.3 policing and security of migrant, refugee and asylum-seeking women and girls, and services related to protection and prevention of crimes;
 - 16.4 the provision of services to migrant, refugee and asylum-seeking women and girls.

17. ↓

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Commented [RF6]: Illegal migrants and other categories of non-nationals may be legitimately excluded from the democratic government processes enacting these policies.

Deleted: Migrant, refugee and asylum-seeking women and relevant civil society organisations should be given the opportunity to participate in discussions and decision-making around the development and deployment of new technologies affecting them.

18. Bearing in mind the particular situations of vulnerability of migrant, refugee and asylum-seeking women and girls, relevant authorities should:

18.1 ensure the confidentiality and security of personal data in accordance with their national legislation and applicable international obligations;

18.2

Commented [RF7]: This requirement is clearly extraneous to existing legal obligations and has no basis for inclusion.

Deleted: not transfer any such data to the country of origin without explaining to the affected person, in a language that they understand, which data is being transferred and under which conditions, including providing the affected person the opportunity to object.

Co-operation with civil society

19. Member States should co-operate with and support migrant and refugee women’s organisations, women’s rights organisations and other civil society organisations that uphold the universal human rights of migrant and refugee and asylum-seeking women and girls, and that defend and empower them.

20. Mechanisms should be established to ensure that migrant and refugee women’s organisations, including where appropriate Roma and Travellers’ women’s organisations, are consulted, in particular when devising migration, asylum and integration policies which affect them.

Data collection, research and monitoring

21. Member States should support the collection of data, disaggregated notably by age and sex, on migration, refugee and asylum issues, including regarding victims of violence against women and of trafficking in human beings, and ensuring compliance with applicable data protection requirements.

21. Objective research, monitoring and evaluation of migration, integration and asylum policies, in particular in relation to preventing any violation of women’s fundamental rights, should be supported and adequately resourced at all levels.

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Commented [RF8]: This phrase presupposes that a « gender equality perspective » would affect scientific research, which by nature should be objective and unbiased.

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

Deleted: from a gender equality perspective

III. Protection and support

23. Member States should protect migrant, refugee, and asylum-seeking women and girls from all forms of violence against women and trafficking in human beings.

24. Measures should be taken to protect migrant, refugee and asylum-seeking women and girls from hate speech and sexism.

25. Member States should develop specific measures to address the sexual exploitation of migrant, refugee and asylum-seeking women and girls, in particular the demand for such exploitation, including protective, punitive, preventive and educational measures.
26. Member States should ensure that culture, custom, religion, tradition or so-called 'honour' shall not be considered as justification for any exploitation or acts of violence against women and girls.
27. Member States should ensure effective access for migrant, refugee and asylum-seeking women and girls, with or without children, to shelters for women victims of violence against women and trafficking in human beings, regardless of their legal status.
28. Access to free legal advice and free legal aid available in the language of the beneficiary, should be provided, in order to support migrant, refugee and asylum-seeking women and girls victims of all forms of violence against women and trafficking in human beings through criminal, administrative and civil proceedings, including the pursuit of compensation claims and legal redress against the perpetrators.
29. General and specialist support services should be provided to victims of violence against women and trafficking in human beings, including for those persons accommodated in transit, reception and accommodation facilities. This includes, at a minimum, short- and long-term psychological support and healthcare, including mental healthcare, sexual and reproductive healthcare, immediate medical support and the collection of forensic medical evidence in cases of rape and sexual assault.
30. Member States should allow migrant, refugee and asylum-seeking women and girls access to available compensation schemes, measures or other programmes aimed at the integration or reintegration of victims of violence against women or trafficking in human beings, on the same conditions as nationals.
31. Member States should ensure that migrant, refugee and asylum-seeking women and girls do not suffer any penalty, including loss of lawful migration or refugee status as a consequence of their exploitation as victims of trafficking in human beings or as a consequence of leaving an abusive sponsoring partner or spouse on whom their status was dependant or where they have been taken to another country against their will for the purpose of forced marriage.
32. A multi-agency, victim-centred approach, that prevents secondary victimisation and is aimed at the empowerment of migrant, refugee and asylum-seeking women and

girls, inclusive of migrant and refugee women's organisations, should be adopted as regards matters relating to their protection and support.

33. Professional interpreters, legal assistants, and intercultural mediators, including women, should be available to assist migrant, refugee and asylum-seeking women and girls seeking protection, whilst making initial complaints, throughout the justice process and in seeking reparations, as well as in the context of the asylum determination procedures.
34. Training in violence against women, trafficking in human beings, gender equality and intercultural issues should be adequately funded and provided to relevant authorities and staff including interpreters, legal assistants and intercultural mediators to enable them to:
 - 35.1 promptly identify victims, where possible, in collaboration with relevant support organisations, conduct risk assessments, refer to relevant authorities and provide protection, treatment and care for migrant, refugee and asylum-seeking women and girls who are victims of all forms of violence and trafficking in human beings;
 - 35.2 be aware of the difficulties that migrant, refugee and asylum-seeking women and girls may face in disclosing incidents of violence against women and of trafficking in human beings, due to their insecure legal status, unavailability of quality interpretation services, lack of knowledge of their legal rights and lack of knowledge of the relevance of their experiences of violence in relation to migration/asylum decisions, social stigma, and lack of support to them in this regard.
36. Easily accessible mechanisms should be in place in State- and privately-run institutions, such as reception, transit and detention centres, police stations, prisons, childcare institutions, schools and hospitals, counselling centres and shelters, to enable incidents of violence against women and trafficking in human beings to be reported to staff and by staff. Member states should ensure access to age- and gender-sensitive telephone helplines, procedures for referral to other appropriate agencies, and medical and psychological treatment to facilitate reporting.
37. Risk assessment and risk management of violence against migrant, refugee and asylum-seeking women and girls should be conducted, taking specific account of their potential enhanced vulnerable situation owing to their insecure legal status.

State of emergency and crisis management

38. In situations of public health crisis, humanitarian crisis and crisis related to climate change, member States should take into account the increased risk of gender-based violence, trafficking in human beings, poverty and homelessness for migrant, refugee and asylum-seeking women and girls, and should therefore:

38.1 take into consideration the situation and needs of migrant, refugee and asylum-seeking women and girls in crisis management and recovery measures, including protection of rights, and notably the right to health, shelter, food security, water, economic empowerment and access to specialist support services for women victims of violence, by qualifying them as essential services and guaranteeing their continuity;

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

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

IV. Arrival**Pre-arrival information**

39. Member States should ensure that immigration procedures, including visa issuing procedures, take into account migrant, refugee and asylum-seeking women and girls' specific situations, needs and vulnerabilities and are age- and gender-sensitive.

40. Information should be provided to migrant, refugee and asylum-seeking women and girls about the conditions enabling the legal entry and stay in a member State's territory.

Transit and reception facilities

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

42. Reception and accommodation facilities should be located in areas where women and girls are safe and can access relevant services, with respect to health, and in particular

sexual and reproductive health, social and legal assistance, education and shopping facilities.

43. The specific needs and safety concerns of victims of all forms of violence against women and trafficking in human beings 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 and clothing should be provided as needed.
44. Staff should be trained in women's human rights, gender equality-related and trauma issues as well as violence against women and the specific needs of migrant, refugee and asylum-seeking women and girls, and the presence of professional women social workers, intercultural mediators, interpreters, police officers and guards should be ensured in these facilities.
45. Migrant, refugee and asylum-seeking women and girls should be offered adequate safe living space. Separate sleeping areas, as well as other safe spaces should be provided for single women with or without children (up to age 18). Other elements to be provided include access to natural and artificial light, sufficient ventilation and heating, a clean bed and bedding, ready access to clean, separate, well-lit shower and toilet facilities, and the availability of a basic sanitary kit / hygiene products free of charge and on a regular basis.
46. Women in transit and reception facilities should have access to a complaint /reporting system, whereby complaints are investigated and referred to the police where relevant, including, where appropriate, access to legal aid.
47. Member states should ensure that transit, reception and accommodation facilities and services are subject to regular independent monitoring, including when provided by private contractors, to ensure compliance with the standards of protection of this Appendix.
48. If migrant, refugee or asylum-seeking women and girls are confined to transit, reception or accommodation centres, member States should also ensure compliance with the provisions contained in the paragraphs of this Appendix related to detention.

Asylum

49. Member States should adopt and implement age- and gender-sensitive-asylum laws, practices and procedures.
50. Women and girls should be entitled to access asylum and protection information and procedures at the borders and elsewhere.

51. The possibility for women and girls to lodge an independent asylum claim should be ensured and they should be made aware of this right.
52. To ensure that gender-based violence against women is properly assessed within the framework of the 1951 United Nations Convention Relating to the Status of Refugees member States should:
- 52.1 ensure that all forms of gender-based violence can be recognized as a form of persecution within the meaning of Article 1A(2) of the 1951 Convention;
 - 52.2 ensure a gender-sensitive interpretation of the 1951 Convention 'grounds' for asylum;
 - 52.3 develop comprehensive gender-sensitive guidelines at all stages of the asylum process, including reception and support services, screening, determination of 'safe' countries for the purpose of accelerated or suspensive procedures, detention, status determination, adjudication and returns; and ensure that border police, migration officials, asylum officers, decision-makers, intercultural mediators and interpreters receive training in respect of such guidelines
53. Women asylum officers should be available to women applicants, who should be informed about this possibility.
54. Separate interviews for women and men from the same family, in the absence of children, should be made possible and their confidentiality should be guaranteed.
55. In processing and determining asylum claims, regard should be given to:
- 55.1 the applicant's own personal circumstances and individual assessment of risk;
 - 55.2 relevant country of origin information, including in relation to gender equality and women's rights. This encompasses access to justice, the legal framework, and its implementation; available social, economic, and other support; and any form of multiple and intersecting discrimination and/or patriarchal attitudes that women are likely to encounter.
56. Member States should ensure that women and girls have access to complementary/subsidiary protection, where necessary, if the decision on their refugee status is negative.

Cross-border measures

- 57. Member States should seek to participate in resettlement and relocation programmes as well as reinforce and promote legal pathways to ensure safe transit for women and girls.
- 58. Member States are encouraged to fund specific assistance and humanitarian resettlement programmes for women and girls’ victims, or at risk, of violence against women and trafficking in human beings, including trafficking for the purpose of sexual exploitation.
- 59. The setting up and implementation of effective cross-border protection mechanisms for victims of violence against women or trafficking in human beings, including trafficking for the purpose of sexual exploitation should be encouraged.

V. Residence and Integration

Access to holistic and quality health services, including sexual and reproductive health and rights

- 60. Authorities should ensure that healthcare provision takes into account the situation and personal characteristics of legally present migrant women and girls and is age- and gender sensitive.
- 61. Essential healthcare services including primary care, urgent and immediate care, palliative care and treatment or assistance necessary for public health reasons should be provided to all legally present migrant, refugee and asylum-seeking women and girls. Member States are encouraged to extend these services to migrant women and girls in an irregular situation, where feasible.
- 62. Member States should also seek to enable legally present migrant, refugee and asylum-seeking women and girls to access free or affordable, comprehensive, quality, age- and gender-sensitive health services encompassing mental, sexual and reproductive health, including during pregnancy, as well as hygiene products.
- 63. where necessary and feasible, migrant, refugee and asylum-seeking girls should be provided with access to age-appropriate sexual and reproductive health and rights information in a language that they can understand.
- 64. |
- 65. Taking into account language and cultural barriers, member States should ensure that women give prior, free and informed consent to any medical treatment except when otherwise required by law.

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Commented [RF9]: What is the basis for this requirement?

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Deleted: Member States should also seek to provide such health services to migrant women and girls in an irregular situation.

Commented [RF11]: In some Member States, medical treatment may be mandatory, e.g. for criminal offenders, and this is not contrary to international obligations.

Social services, social security and housing

66. |

67. Member States should consider ensuring that migrant women lawfully residing in the country are given a treatment not less favourable than that accorded to nationals regarding access to housing and rents.

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Commented [RF13]: Again, no real basis for this. Purely domain of States to decide on this kind of policy.

Integration, adaptation, social, cultural and political participation

68. Member States should ensure that any child born in their territory is entitled to have their birth registered immediately after birth and is granted a pathway to a nationality.

69. Member States should take steps to ensure that migrant, refugee and asylum-seeking women who are entitled to vote and stand for election in local, regional, national or European elections are aware of their rights and allowed to participate without any form of discrimination.

Deleted: Owing to persisting stereotypes and existing inequalities in access to civic rights and participation in political decision-making, which are even more serious for migrant, refugee and asylum-seeking women, m

Deleted: encouraged to

70. Authorities should encourage and support initiatives aimed at empowering lawfully present migrant, refugee and asylum-seeking women and girls within their families, in their communities and in society at large, by developing their self-confidence and self-determination. This can include participation in local, cultural, women's or other associations, sports clubs, youth clubs and other organisations.

Deleted: and by protecting women and girls from negative social control

71. Public and private coaching, mentoring and other support programmes aimed at lawfully present migrant and refugee women and girls should be set up and supported, notably in order to promote positive role models and promising practices of integration.

72. The positive contribution made by migrant and refugee women and girls to society and host communities, the economy and culture should be highlighted and encouraged on par with other members of society, without discrimination.

Commented [RF16]: When the contributions of a certain category of people based solely on their race, sex, nationality, etc. are valued above of others, this creates issues of discrimination.

Education, vocational training and life-long learning

73. Authorities should ensure that lawfully present migrant, refugee and asylum-seeking children have access to education and take measures to reach those migrant, refugee, and asylum-seeking girls who may have been prevented from accessing education in their country of origin, ensuring the provision of education or day care, preferably within mainstream educational structures.

Commented [RF17]: Even if viewing the situation from the angle of best interests of the child, such interests may include return to the country of origin, with which the child has close cultural, linguistic, familial, national, economic and other ties.

74. Recognizing that the ability to communicate in the host country's language is essential for integration, member States should ensure access to an adequate number of hours of quality language training and integration programmes to migrant, refugee and asylum-seeking women and girls, to promote their empowerment and protection.

Literacy and digital skills courses should also be provided to migrant, refugee and asylum-seeking women and girls corresponding to their needs and as soon as possible after their arrival in the host country.

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

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76. Member States should consider enabling lawfully present Migrant, refugee and asylum-seeking women and girls to enjoy any further or higher education, vocational training, retraining and rehabilitation facilities provided by the competent services and available for national workers.

Deleted: should be able

77. Access to the programmes and measures referred to in paragraphs 73, 74, 75 and 76 for illegal migrants is be subject to national laws governing eligibility.

Commented [RF18]: This is non-disputable, so « is » instead of « may » must be used.

Deleted: in an irregular situation may

Employment

78. Member States should take specific and targeted measures to prevent discrimination and promote access to employment for legal migrant and refugee women, at an early stage in the migration process,

Commented [RF19]: These benefits are not extended to illegal migrants who do not have a right to work in the host State.

79. Member States should comply with the obligations regarding the right to work and self-employment for refugee women and girls set out by the United Nations Convention Relating to the Status of Refugees,

Deleted: , including safe and legal routes to employment pre-arrival

80. Without prejudice to national employment policies. In respect of those migrant, refugee, and asylum-seeking women and girls who are permitted to work under the national law of member States, the latter should ensure decent and dignified working conditions, including:

Deleted: and consider removing barriers to work, for other migrant women and girls after they have been present in the territory for a certain length of time

Commented [RF20]: This creates ambiguity as to the possibility of an obligation of States to ensure good working conditions for persons who do not have a right to work in that State, which is mutually contradictory.

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80.1. taking measures to regulate and improve migrant, refugee, and asylum-seeking women and girls' working conditions and to eliminate all forms of labour exploitation and discrimination;

Deleted: , including when they are multiple and intersecting

80.2. supporting and assisting migrant, refugee, and asylum-seeking women and girls where appropriate 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, internships, apprenticeships and job placement programmes;

80.3 in order to facilitate access to the labour market, take steps to ensure that migrant, refugee and asylum-seeking workers have access to work/life

balance measures including maternity, paternity and parental leave, flexible working conditions where possible, and ensure access to and enjoyment of child-care facilities on an equal footing with national workers; and

80.4 ensure that migrant, refugee, and asylum-seeking women 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.

81. Member States should implement the provisions of relevant national and international standards directed at protecting migrant, refugee and asylum-seeking women and girls carrying out domestic work from discrimination, exploitation and abuse.

Residence permits

82. Member States should ensure that migrant, refugee and asylum-seeking women and girls who are granted a residence permit on the basis of a family relationship are entitled to social, economic and labour-related rights and entitlements in an autonomous capacity.

83. Migrant, refugee and asylum-seeking women and girls should be made aware of any entitlement to a renewable autonomous residence permit, for example due to their own protection needs under the UN Refugee Convention.

84. The evidentiary criteria and threshold for the granting of autonomous residence permits should be realistic and sensitive to the individual situation of migrant, refugee and asylum-seeking women.

85. Member States should ensure that migrant, refugee and asylum-seeking women and girls and their dependents are granted a renewable residence permit if their stay is necessary for criminal investigations or proceedings and until at least their conclusions.

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

87. Member States are encouraged to provide security of residence on an independent basis to migrant and refugee women and girls present in a country for a long time, including stateless women and girls, with the exception of illegal migrants.

Commented [RF21]: These additional examples are not based on universal obligations and are unnecessary.

Deleted: , their status as a victim of violence against women, a victim of trafficking in human beings, relationship breakdown, or other particularly difficult circumstances

Commented [RF22]: The criteria « realistic and sensitive » are unclear in this context. For certain, there can be no presumption that migrants can benefit from these permits, as this would depend on national legislation and circumstances of the case, so it is unfounded to require « ensuring » this happens.

Deleted: and responsible statutory agencies should be adequately trained to ensure that migrant, refugee and asylum-seeking women and girls can benefit from these permits

Commented [RF23]: What is the basis for this recommendation? It is for the States to decide upon granting nationality or residence to foreigners.

Commented [RF24]: This cannot extend to illegal migrants.

Commented [RF25]: There is no such obligation upon Member States, and nationalisation policy is within their sovereign purview, unless prevailing legal obligations exist, which are not mentioned here.

Deleted: Member States should provide pathways to naturalisation and take measures to ensure that migrant and refugee women and girls are not faced with gender-related obstacles in this regard.

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Family reunion

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

- 89.1. adopt a definition of family consistent with article 8 of the European Convention on Human Rights;
- 89.2. ensure that women and girls are aware of their right to family reunion, including as migrant or refugee sponsors, and receive access to legal advice and assistance to pursue that right; and
- 89.3. consider accepting or seeking the transfer of asylum claims to enable the family reunion of migrant, refugee and asylum-seeking women and girls separated on their journeys.
- 89.4. Seek to provide within their national laws, gender-sensitive legal pathways to respect the family life of migrant women lawfully residing on their territory, in particular by providing the immediate and dependent family members with the possibly to migrate with or join them in the host country.

Detention

90. In respect of all forms of deprivation of liberty, member States should adopt an age- and gender-sensitive approach, which takes into account the individual situation and personal characteristics of migrant, refugee and asylum-seeking women and girls. Member States should also provide the following services to migrant, refugee and asylum-seeking women and girls deprived of their liberty:

- 90.1 access to law enforcement measures and reporting / complaints mechanisms including referral to and investigation of those complaints by police where relevant and access to legal aid;
- 90.2 access to information about their rights, as set forth in paragraph 9 of this Appendix;
- 90.3 access to health-care and hygiene services, telephone helplines and appropriate trauma support and counselling facilities;
- 90.4 access to a telephone, and/or Internet facility to inform a relative or third party of the fact of deprivation of liberty, as well as to consular assistance;

Commented [RF26]: There is no universal « right to family reunion » in international law. Concrete obligations may exist in specific circumstances delineated by applicable treaties (such as the 1951 Convention on the Status of Refugees, the Convention on the Rights of the Child, or the European Social Charter). However, this paragraph is formulated far too broadly and without sufficient basis. It should be either reworked or removed.

Also, the subparagraphs are too far-reaching in their requirements.

90.5 the opportunity to remain in meaningful contact with the outside world, including regular access to a telephone, to their mobile phones or to Internet facilities; and

90.6 the presence of women among border, migration and other police or custody staff, as well as among social workers and interpreters.

91. Member States should ensure that conditions in immigration detention centres reflect those listed in paragraphs 41-48 of this Appendix (Transit and reception facilities).

92. Member states should ensure that detention facilities, including administrative detention facilities, are subject to regular independent monitoring.

93. In the event that administrative detention under immigration legislation is used families should not be separated and separate safe zones should be provided for women and girls within detention facilities, where their privacy is guaranteed and which cater adequately for their specific needs.

94.

95. Migrant, refugee and asylum-seeking women and girls in administrative detention should be accommodated in centres offering material conditions and a regime appropriate to their legal situation.

96. Migrant, refugee and asylum-seeking women and girls in administrative detention should be offered appropriate activities, and they should in principle have free access to outdoor exercise throughout the day (i.e. considerably more than one hour per day).

VI. Returns

97. Returns should always be in safety and dignity, in line with the principle of *non-refoulement* when the application of this principle is warranted. Member States should therefore ensure that migrant and asylum-seeking women and girls are not returned or removed to a country where their life would be at risk or where they might be subjected to acts of torture or inhuman or degrading treatment or punishment.

98. In these situations, due regard should be given to relevant human rights obligations, notably the right to family life, in accordance with the case law of the European Court of Human Rights; the best interest of the child, if applicable; and to the state of health of the person, including for example pregnancy.

Commented [RF27]: No basis for this requirement.

Deleted: - which should only be as a measure of last resort -

Commented [RF28]: Likewise.

Deleted: Unaccompanied or separated girls should not, as a general rule, be detained.

Commented [RF29]: Likewise.

Deleted: Effective alternatives to administrative detention should be provided in any event for migrant, refugee and asylum-seeking women and girls who have been victims of torture, violence against women or trafficking in human beings, pregnant and nursing women, elderly women, and women with disabilities.

Commented [RF30]: These requirements are excessive.

Deleted: specifically designed for that purpose,

Deleted: Care should be taken in the design and layout of such premises to avoid, as far as possible, any impression of a carceral environment.

Deleted: Within the detention centre, migrant refugee and asylum-seeking women and girls should be restricted in their freedom of movement as little as possible.

Commented [RF31]: No basis for this requirement. If the presence of a migrant is illegal and there are no overriding obligations, such as under the 1951 Convention, expulsion will remain the lawful response.

Deleted: Voluntary returns should be the preferred option.

Commented [RF32]: This addition is either unnecessary (as those acts will already be included under preceding clause) or unfounded (if not related to preceding clause). Either way, should be removed for legal certainty.

Deleted: , including those acts which disproportionately affect women or are directed at them because they are women

99.1 ensure that a process has been completed to guarantee an individual assessment of the international protection needs in conformity with the provisions of this Appendix, especially if there are any signs of violence against women or trafficking in human beings.

99. Member States should ensure the possibility of suspending expulsion measures of migrant women based on their dependent status on a spouse, partner, parent, or other family member, in order to enable them to apply for an independent residence permit.

100. In order to facilitate the reintegration of returnee women, member States should take the necessary measures to allow for the recognition of eventual diplomas or qualifications obtained.

Commented [RF33]: If there is no basis for providing special protection, then there is no basis for requiring it.

Commented [RF34]: Such a specific rule, linked exclusively to the sex of the person and not any special circumstance warranting additional protection, would be of a discriminatory nature.

Deleted: Recognising the particular difficulties that victims of violence against women and of trafficking in human beings and face in fully disclosing the grounds for their international protection claim, member States should:

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Deleted: ¶ ensure a process that protects women and girls against the risk of *refoulement*;

Commented [RF35]: Accelerated procedures are not mutually exclusive with individual assessment.

Deleted: accelerated and non-suspensive procedures are not implemented under any circumstance, until such

Commented [RF36]: What is the basis for this requirement?

Commented [RF37]: Obtained where? Regardless, it is up to State policy on recognition of education documents.

**Comments of the Russian Federation
on the draft Committee of Ministers Recommendation
on protecting the rights of migrant, refugee and asylum-seeking women**

(version_GEC-MIG (2021) 3 rev 1 of 4 June 2021)

The Russian delegation appreciates the work that has already been done by the Secretariat providing the revised draft Recommendation on protecting the rights of migrant, refugee and asylum-seeking women. We also thank the Secretariat for taking into account some of our comments made at the previous meetings of the GEC-MIG.

We have thoroughly examined the present version of the draft Recommendation and propose to insert the following amendments into the text:

Draft Preamble

1. To insert in **paragraph 7** after “Recommendation CM/Rec(2015)1 on intercultural integration” the following footnote:

“At the time of the adoption of this Recommendation by the Committee of Ministers, the Representative of the Russian Federation stated that this document did not reflect a common approach of all Member States and reserved the right of his government to comply or not with the Recommendation.”

2. To insert in **paragraph 7** after “Recommendation CM/Rec(2019)1 on preventing and combating sexism” the following footnote:

“At the time of the adoption of this Recommendation by the Committee of Ministers, the Representative of the Russian Federation did not agree with a number of provisions of this Recommendation and in accordance with Article 10.2c of the Rules of Procedure for the meetings of the Ministers’ Deputies reserved the right of his government to comply or not with the Recommendation.”

3. To merge **paragraphs 8, 9 and 10** and to formulate them as follows:

“8. Recalling the United Nations Convention Relating to the Status of Refugees (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 relevant CEDAW General Recommendations**; 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); **and other relevant documents, elaborated within the UN.***

~~9. Noting 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); CEDAW General Recommendation No. 35 on gender-based violence against women; CEDAW Recommendation No.38 on trafficking in women and girls in the context of global migration (2020); as well as 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 human beings, 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;”~~

Rationale: the practice of elaboration and implementation of CM recommendations to member States confirms that this type of documents should be short, precise and user-friendly. The presented preamble is too long and too detailed. It should be two pages maximum and should be shortened.

On the other hand, in our view, general recommendations adopted by human rights treaty bodies are solely the opinion of experts and may not impose on States

any obligations additional to those undertaken by them when ratifying or acceding to an international treaty, unless otherwise declared by States on a voluntary basis.

4. To add a new paragraph **after paragraph 12** reading:

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

5. To rephrase **paragraph 16** as follows:

“Underlining that women are exposed to a continuum of violence that is specific to them ~~because they are women~~, or which affects them disproportionately, ~~and that such violence is, in this sense, gender-based~~; recognising with grave concern, that migrant, refugee and asylum-seeking women and girls are particularly exposed to such forms of violence and exploitation in their countries of origin, during their journey, in transit and/or in destination countries, which may constitute a serious violation of their human rights, especially as migrant, refugee and asylum-seeking women and girls face difficulties and structural barriers in overcoming such violence and exploitation in their diverse forms;”

Alternative:

To reflect the position of the Russian Federation relating to the word “gender” **after its first mentioning (as a separate word or in a wording) in the text of the Recommendation** in a footnote reading:

“There is no definition of the “social sex” in the Russian Federation, as well as in other legal systems in which the feature of the biological sex is fixed. The Russian legislation therefore does not contain the concept of “gender” and there is no commonly accepted definition of the word “gender” at the international level.

During the drafting and adoption of this Recommendation the Delegation of the Russian Federation consistently opposed the use of the word “gender” in the documents of the Council of Europe. Therefore the Russian Federation understands

the word "gender" used in this Recommendation as a complete analogue of "sex", the word combination "gender-based violence" as "violence against women" etc.

The terms "woman" and "man" should thus be applied in their literal meaning, and cannot be construed to include persons other than women and men respectively.

Taking this into account the Russian Federation expresses its position that in this document any reference to "gender" as a separate word and in all wordings as "gender-based, gender-sensitive, gender-related" etc. should be considered as a sex-based concept."

Rationale: There is no definition of the "social sex" in the Russian Federation, as well as in other legal systems in which the feature of the biological sex is fixed. The Russian legislation therefore does not contain the concept of "gender" and there is no commonly accepted definition of the word "gender" at the international level.

Draft Appendix

6. To reformulate the definition of the word "migrant" in Chapter I "Definitions" as follows:

'Migrant': ~~a person who leaves one country or region to live in another, including citizens of Council of Europe member States with a migrant background, and stateless women and girls.~~ *any person who changes his or her country of usual residence, with the exclusion of recreation, holiday, visits to friends and relatives, business, medical treatment or religious pilgrimages.*¹

7. To delete **paragraph 4** in its entirety.

8. To delete the word combination "comprehensive sexuality education" from **paragraph 9.4.**

9. To change in **paragraph 14** the word combination "gender-sensitive approach" with "sensitive towards specific situations and needs approach".

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

10. To rephrase **paragraph 32** as follows:

“Member States should ensure that migrant, refugee and asylum-seeking women and girls do not suffer any penalty, including loss of lawful migration or refugee status as a consequence of their exploitation as victims of trafficking in human beings or as a consequence of leaving an abusive sponsoring ~~partner~~ or spouse on whom their status was dependant or where they have been taken to another country against their will for the purpose of forced marriage.”

Rationale: there is no definition of the word “partner” in the Russian legislation.

11. To add in **paragraph 33** the word combination “where necessary” after the word combination “refugee women’s organisations”.

12. To rephrase **paragraph 36** as follows:

*“Easily accessible mechanisms should be in place in State- and privately-run institutions, such as reception, transit and detention centres, police stations, prisons, childcare institutions, schools and hospitals, counselling centres and shelters, to enable incidents of violence against women and trafficking in human beings to be reported to staff and by staff. Member states should ensure access to age- ~~and gender~~-sensitive telephone helplines **for women**, procedures for referral to other appropriate agencies, and medical and psychological treatment to facilitate reporting.”*

13. To substitute in **paragraph 38** the word combination “gender-based violence” by “violence against women”.

14. To add at the end of **paragraph 38.3** the word combination “where appropriate”.

Rationale: state of emergency and crisis management are deep within the prerogatives of States, which should be given sufficient margin of appreciation in taking decisions on these critical matters.

15. To rephrase **paragraph 39** as follows:

“Member States should ensure that immigration procedures, including visa issuing procedures, take into account migrant, refugee and asylum-seeking women and girls’ specific situations, *characteristics*, needs and vulnerabilities and are age-~~and gender~~-sensitive.”

Rationale: the word “gender-“ is superfluous in this context since the phrase “specific situations, *characteristics*, needs and vulnerabilities” is all-encompassing and already includes everything.

16. To reformulate the 1st sentence of **paragraph 41** as follows:

“Relevant authorities should ensure that transit, reception, accommodation and screening arrangements are ~~age-and-gender~~-sensitive *to age and different situations and personal characteristics of migrant, refugee and asylum-seeking women.*”

Rationale: the word “gender-“ is superfluous in this context since the phrase “*different situations and personal characteristics*” is all-encompassing and already includes everything.

17. To reformulate **paragraph 42** as follows:

“Reception and accommodation facilities should *as much as possible* be located in areas where women and girls are safe and can access relevant services, with respect to health, and in particular sexual and reproductive health, social and legal assistance, education and shopping facilities.”

18. To reformulate **paragraph 49** as follows:

“Member States should adopt *if appropriate* and implement age-~~and gender~~-sensitive asylum laws, practices and procedures *taking into account special needs of migrant women and girls.*”

19. To delete **paragraphs 52, 52.1 and 52.2.**

Rationale: we see no need in these paragraphs as the 1951 Convention guarantees rights of all refugees without any specification. We should not call for a new interpretation of existing international conventions in our recommendation. We also see no need in broadening the scope of the 1951 Convention.

20. To reformulate **paragraph 52.3** as follows:

“Member states should if necessary develop comprehensive and taking account of the specific situations and needs of women and girls ~~gender-sensitive~~ guidelines at all stages of the asylum process, including reception and support services, screening, determination of ‘safe’ countries for the purpose of accelerated or suspensive procedures, detention, status determination, adjudication and returns; and ensure that border police, migration officials, asylum officers, decision-makers, intercultural mediators and interpreters receive training in respect of such guidelines.”

21. To reformulate **paragraph 56** as follows:

“Member States should ensure that women and girls have access to complementary/subsidiary protection procedure, where ~~necessary~~ available, if the decision on their refugee status is negative.”

Rationale: Not all Member States may have complementary/subsidiary protection laws, and the granting of such protection is usually subject to a certain procedure and fulfillment of relevant criteria.

22. To delete **paragraph 57** in its entirety.

Rationale: This paragraph is too prescriptive. Whether or not to engage in resettlement and relocation programmes is at the discretion of States. The phrase “legal pathways to ensure safe transit” is too vague.

23. To reformulate **paragraph 56** as follows:

“Member States are encouraged to consider if necessary fund~~ing~~ specific assistance and humanitarian resettlement programmes for women and girls’ victims, or at risk, of violence against women and trafficking in human beings, including trafficking for the purpose of sexual exploitation.”

24. It is not clear what is meant by “cross-border protection mechanisms” in the context of **paragraph 59**.

25. To reformulate **paragraph 60** as follows:

“Authorities should ensure that healthcare provision takes into account the situation and personal characteristics of migrant women and girls and is age- ~~and gender~~ sensitive.”

Rationale: the word “gender-“ is superfluous in this context since the phrase “the situation and personal characteristics” is all-encompassing and already includes everything.

26. To merge **paragraphs 61 and 62** and rephrase them as follows:

“Essential healthcare services including primary care, urgent and immediate care, palliative care and treatment or assistance necessary for public health reasons should be provided to all migrant, refugee and asylum-seeking women and girls, including migrant women and girls in an irregular situation. Member States should also enable ~~migrant, refugee and asylum-seeking women and girls~~ **them** to access free or affordable, comprehensive, quality, **sensitive to** age and **other individual needs, situations and characteristics** ~~and gender-sensitive~~ health services encompassing mental, sexual and reproductive health, including during pregnancy, as well as hygiene products. ~~Member States should also seek to provide such health services to migrant women and girls in an irregular situation.~~”

Rationale: the word “gender-sensitive“ is superfluous in this context since the phrase “sensitive to age and other individual needs, situations and characteristics” is all-encompassing and already includes everything.

27. To delete **paragraph 69** which provisions contradict Articles 32 and 81 of the Constitution of the Russian Federation, as well as Federal Law No. 67-FZ "On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation".

28. To reformulate **paragraph 88** as follows:

“Member States should provide pathways to naturalisation and take measures to ensure that migrant and refugee women and girls are not faced with ~~gender-related~~ **any** obstacles **related on their sex** in this regard.”

29. To rephrase **paragraph 89.4** as follows:

“Seek to provide within their national laws, ~~gender-sensitive~~ legal pathways sensitive to individual needs, situations and characteristics in order to respect the family life of migrant women lawfully residing on their territory, in particular by providing the immediate and dependent family members with the possibility to migrate with or join them in the host country.

30. To rephrase **paragraph 90** as follows:

“In respect of all forms of deprivation of liberty, member States should adopt an ~~age and gender-sensitive~~ approach, which takes into account age, individual situation and personal characteristics of migrant, refugee and asylum-seeking women and girls. Member States should also provide the following services to migrant, refugee and asylum-seeking women and girls deprived of their liberty:”

Rationale: the words “age and gender-sensitive“ are superfluous in this context since the phrase “takes into account age, the individual situation and personal characteristics” is all-encompassing and already includes everything.

31. To rephrase **paragraph 97** as follows:

“Voluntary returns should be the preferred option. Returns should always be in safety and dignity, in line with the principle of *non-refoulement*. Member States should therefore ensure that migrant and asylum-seeking women and girls are not returned or removed to a country where their life would be at risk or where they might be subjected to acts of torture or inhuman or degrading treatment or punishment, including those acts which disproportionately affect women or are directed at them because ~~they are women~~ of their sex.”

32. To rephrase **paragraph 100** as follows:

“Member States should ensure the possibility of suspending expulsion measures of migrant women based on their dependent status on a spouse, ~~partner~~, parent, or other family member, in order to enable them to apply for an independent residence permit.”

Rationale: there is no definition of the word “partner” in the Russian legislation.

SPAIN

Lara FERGUSON VÁZQUEZ DE PARGA

15/07/21



Strasbourg, 4 June 2021

GEC-MIG (2021) 3 rev 1

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

**Draft Recommendation on protecting the rights of migrant, refugee
and asylum-seeking women**

Working document in view of the internal and external consultation

04.06.2021- 16.07.2021

Draft Recommendation on protecting the rights of migrant, refugee, asylum-seeking women and girls

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 equality¹ 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. 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;
5. 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), and notably its strategic objective to identify and address vulnerabilities throughout asylum and migration procedures;
6. Bearing in mind the obligations and commitments undertaken by states, including 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 (CETS No. 126, 1987); 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);
7. 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; Recommendation CM/Rec(2019)4 on supporting

¹ Gender equality entails equal rights for women and men, girls and boys as well as the same visibility, empowerment, responsibility, and participation in all spheres of public and private life. It also implies equal access to and distribution of resources between women and men. (Council of Europe Gender Equality Strategy 2018-2023).

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;

8. Recalling the United Nations Convention Relating to the Status of Refugees (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); 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. Noting 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); CEDAW General Recommendation No. 35 on gender-based violence against women; CEDAW Recommendation No.38 on trafficking in women and girls in the context of global migration (2020); as well as 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 human beings, 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. Bearing in mind the importance of the overall application and impact of the United Nations 2030 Agenda for Sustainable Development, in particular Sustainable Development Goal 5 (“Achieve gender equality and empower all women and girls”); Sustainable Development Goal 10.7 (“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”);
12. 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;
13. Acknowledging the positive contribution that migrant, refugee and asylum-seeking women and girls may bring to European societies and communities;

14. Considering the profound changes in migration patterns and in the situation of migrant, refugee and asylum-seeking women and girls, the fact that their numbers have reached the highest ever in the 2010's and the significant developments in gender equality-, migration- and asylum-related concepts, policies and legal instruments at all levels;
15. Recognising that while existing international human rights standards apply to all persons, and bearing in mind the possible differences in legal status of the persons concerned, 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;
16. Underlining that women are exposed to a continuum of violence that is specific to them because they are women, or which affects them disproportionately, and that such violence is, in this sense, gender-based; recognising with grave concern, that migrant, refugee and asylum-seeking women and girls are particularly exposed to such forms of violence and exploitation in their countries of origin, during their journey, in transit and/or in destination countries, which may constitute a serious violation of their human rights, especially as migrant, refugee and asylum-seeking women and girls face difficulties and structural barriers in overcoming such violence and exploitation in their diverse forms;
17. 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 including, as appropriate, migrant Roma and Traveller women and girls.
18. Aware of the multiple and intersecting barriers that migrant, refugee and asylum-seeking women and girls face in terms of access to and exercise of rights, access to services, participation and leadership and of the need to facilitate their integration and full participation in the economic, social, civic, political and cultural life;
19. Wishing therefore to review and update its Recommendation No. R(79)10 to member States on women migrants, henceforth replaced by the present instrument;
20. Recommends that the governments of member States:
 1. Take all necessary measures to promote and apply the principles set out in the Recommendation and its appendix, aimed at ensuring that migrant, refugee and asylum-seeking women and girls can effectively access and exercise their rights;

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15/07/21

2. Ensure, by appropriate means and action, including where appropriate translation, a wide dissemination (in accessible formats) of this Recommendation among relevant authorities and stakeholders, which are encouraged to take measures to implement it;
3. Examine periodically, within the competent Council of Europe steering committee(s) and bodies, the measures taken, 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 live in another, including citizens of Council of Europe member States with a migrant background, and stateless women and girls.

'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 migrant, refugee and asylum-seeking women and girls do not face discrimination on any ground.
3. Member States should apply an intersectional approach in all measures referred to in this Appendix, notably bearing in mind the different situations and individual characteristics of migrant, refugee and asylum-seeking women and girls.
4. Measures should be established to safeguard the fundamental rights of undocumented migrants and facilitate their access to essential services including, at a minimum, protection and complaint mechanisms and all support services for victims of violence against women and trafficking in human beings, without fearing any reporting to migration authorities.
5. Within both migrant and host countries and communities, member States should:
 - 5.1. pay special attention to measures aimed at dismantling all forms of stereotypes which have a negative impact on the rights of migrant, refugee and asylum-seeking women and girls;

- 5.2. implement awareness-raising and educational measures in respect of gender equality and human rights to promote dialogue.

Girls

6. Member States should adopt a child rights-based approach to migrant, refugee and asylum-seeking children, which takes account of the age and specific situations and needs of girls, including ensuring suitable and safe alternative care arrangements when they are separated from their parents or caregiver or when they are unaccompanied minors.
7. Owing to migrant girls' situation of heightened vulnerability to [trafficking in human beings, gender based violence 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. [In addition, girls should be provided assistance by relevant specialized organizations.](#)
8. Member States should ensure continued access to essential services for migrant, refugee and asylum-seeking girls to support their transition to adulthood beyond the age of 18, including access to education and healthcare, as well as support for their integration and social participation.

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Commented [FVdPL1]: We consider that girls, especially if unaccompanied (mentioned in the previous para.), are especially exposed to the dangers of trafficking in human beings and gender violence in all its forms and therefore reference to exploitation and abuse would not be sufficient to convey these dangers.

Information, empowerment, awareness raising and promotion of human rights

9. To empower migrant, refugee and asylum-seeking women and girls and enable them to access their rights, they should be provided with relevant and accessible information and advice in a way and a language that they understand, covering, at least:
- 9.1 Their fundamental human rights 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 [any kind of](#) violence or other violations of rights by State authorities or private contractors acting on behalf of the State, including rights to civil remedies and compensation;
- 9.3 Protection services available in the host country against all forms of violence against women and trafficking in human beings, including access to general and specific support services, specialist support provided by NGOs and legal aid;
- 9.4 Available and accessible public services in the host country, notably healthcare including mental and sexual and reproductive health and rights, comprehensive sexuality education, psycho-social support, education, language and digital training, vocational training, integration programmes, housing and employment.
10. Member States should provide resources and tools for the empowerment and support of migrant, refugee and asylum-seeking and women and girls, based on their needs and

Commented [FVdPL2]: We propose to add "any kind of" violence so it can also include for example psychological violence.

personal characteristics, in order for them to benefit to as great an extent possible from the social services and welfare available.

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

Access to justice including legal aid

12. Migrant, refugee and asylum-seeking women and girls should have access to the different national and international civil, administrative, and criminal remedies, as well as legal aid, to effectively exercise their rights and/or take action in cases of non-compliance with those rights.
13. Member States should ensure that refugee and asylum-seeking women and girls receive adequate support as claimants, defendants, or witnesses throughout civil, administrative, or criminal proceedings.
14. An intersectional and gender-sensitive approach to individual migrant, refugee and asylum-seeking women and girls should be adopted when determining/assessing their credibility in civil, administrative, and criminal proceedings, particularly where decisions have an impact on their legal status.

Artificial intelligence, automated decision-making, and data protection

15. 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.
16. 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:
 - 16.1 border and immigration control decision-making, including decisions relating to entry or return;
 - 16.2 migration management, including the use of biometric information, such as DNA testing
 - 16.3 policing and security of migrant, refugee and asylum-seeking women and girls, and services related to protection and prevention of crimes;
 - 16.4 the provision of services to migrant, refugee and asylum-seeking women and girls.

17. Migrant, refugee and asylum-seeking women and relevant civil society organisations should be given the opportunity to participate in discussions and decision-making around the development and deployment of new technologies affecting them.
18. Bearing in mind the particular situations of vulnerability of migrant, refugee and asylum-seeking women and girls, relevant authorities should:
 - 18.1 ensure the confidentiality and security of personal data in accordance with their national legislation and applicable international obligations;
 - 18.2 not transfer any such data to the country of origin without explaining to the affected person, in a language that they understand, which data is being transferred and under which conditions, including providing the affected person the opportunity to object.

Co-operation with civil society

19. Member States should co-operate with and support migrant and refugee women's organisations, women's rights organisations and other civil society organisations that uphold the universal human rights of migrant and refugee and asylum-seeking women and girls, and that defend and empower them.
20. Mechanisms should be established to ensure that migrant and refugee women's organisations, including where appropriate Roma and Travellers' women's organisations, are consulted, in particular when devising migration, asylum and integration policies which affect them.

Data collection, research and monitoring

21. Member States should support the collection of data, disaggregated notably by age and sex, on migration, refugee and asylum issues, including regarding victims of violence against women and of trafficking in human beings, and ensuring compliance with applicable data protection requirements.
22. 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.
23. 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 and support

24. Member States should protect migrant, refugee, and asylum-seeking women and girls from all forms of violence against women and trafficking in human beings.
25. Measures should be taken to protect migrant, refugee and asylum-seeking women and girls from hate speech and sexism.
26. Member States should develop specific measures to address the sexual exploitation of migrant, refugee and asylum-seeking women and girls, in particular the demand for such exploitation, including protective, punitive, preventive and educational measures.
27. Member States should ensure that culture, custom, religion, tradition or so-called 'honour' shall not be considered as justification for any exploitation or acts of violence against women and girls.
28. Member States should ensure effective access for migrant, refugee and asylum-seeking women and girls, with or without children, to shelters for women victims of violence against women and trafficking in human beings, regardless of their legal status.
29. Access to free legal advice and free legal aid available in the language of the beneficiary, should be provided, in order to support migrant, refugee and asylum-seeking women and girls victims of all forms of violence against women and trafficking in human beings through criminal, administrative and civil proceedings, including the pursuit of compensation claims and legal redress against the perpetrators.
30. General and specialist support services should be provided to victims of violence against women and trafficking in human beings, including for those persons accommodated in transit, reception and accommodation facilities. This includes, at a minimum, short- and long-term psychological support and healthcare, including mental healthcare, sexual and reproductive healthcare, immediate medical support and the collection of forensic medical evidence in cases of rape and sexual assault.
31. Member States should allow migrant, refugee and asylum-seeking women and girls access to available compensation schemes, measures or other programmes aimed at the integration or reintegration of victims of violence against women or trafficking in human beings, on the same conditions as nationals.
32. Member States should ensure that migrant, refugee and asylum-seeking women and girls do not suffer any penalty, including loss of lawful migration or refugee status as a consequence of their exploitation as victims of trafficking in human beings or as a consequence of leaving an abusive sponsoring partner or spouse on whom their status was dependant or where they have been taken to another country against their will for the purpose of forced marriage.
33. A multi-agency, victim-centred approach, that prevents secondary victimisation and is aimed at the empowerment of migrant, refugee and asylum-seeking women and girls,

inclusive of migrant and refugee women's organisations, should be adopted as regards matters relating to their protection and support.

34. Professional interpreters, legal assistants, and intercultural mediators, including women, should be available to assist migrant, refugee and asylum-seeking women and girls seeking protection, whilst making initial complaints, throughout the justice process and in seeking reparations, as well as in the context of the asylum determination procedures.
35. Training in violence against women, trafficking in human beings, gender equality and intercultural issues should be adequately funded and provided to relevant authorities and staff including interpreters, legal assistants and intercultural mediators to enable them to:
 - 35.1 promptly identify victims, where possible, in collaboration with relevant support organisations, conduct risk assessments, refer to relevant authorities and provide protection, treatment and care for migrant, refugee and asylum-seeking women and girls who are victims of all forms of violence and trafficking in human beings;
 - 35.2 be aware of the difficulties that migrant, refugee and asylum-seeking women and girls may face in disclosing incidents of violence against women and of trafficking in human beings, due to their insecure legal status, unavailability of quality interpretation services, lack of knowledge of their legal rights and lack of knowledge of the relevance of their experiences of violence in relation to migration/asylum decisions, social stigma, and lack of support to them in this regard.
36. Easily accessible mechanisms should be in place in State- and privately-run institutions, such as reception, transit and detention centres, police stations, prisons, childcare institutions, schools and hospitals, counselling centres and shelters, to enable incidents of violence against women and trafficking in human beings to be reported to staff and by staff. Member states should ensure access to age- and gender-sensitive telephone helplines, procedures for referral to other appropriate agencies, and medical and psychological treatment to facilitate reporting.
37. Risk assessment and risk management of violence against migrant, refugee and asylum-seeking women and girls should be conducted, taking specific account of their potential enhanced vulnerable situation owing to their insecure legal status.

State of emergency and crisis management

38. In situations of public health crisis, humanitarian crisis and crisis related to climate change, member States should take into account the increased risk of gender-based violence, trafficking in human beings, poverty and homelessness for migrant, refugee and asylum-seeking women and girls, and should therefore:
 - 38.1 take into consideration the situation and needs of migrant, refugee and asylum-seeking women and girls in crisis management and recovery measures, including

protection of rights, and notably the right to health, shelter, food security, water, economic empowerment and access to specialist support services for women victims of violence, by qualifying them as essential services and guaranteeing their continuity;

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

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

IV. Arrival

Pre-arrival information

39. Member States should ensure that immigration procedures, including visa issuing procedures, take into account migrant, refugee and asylum-seeking women and girls' specific situations, needs and vulnerabilities and are age- and gender-sensitive.

40. Age and gender sensitive information should be provided to migrant, refugee and asylum-seeking women and girls about the conditions enabling the legal entry and stay in a member State's territory.

Commented [FVdPL3]: We consider it is very important to include in this paragraph that information related to legal entry and stay should be "age and gender sensitive"

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Transit and reception facilities

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

42. Reception and accommodation facilities should be located in areas where women and girls are safe and can access relevant services, with respect to health, and in particular sexual and reproductive health, social and legal assistance, education and shopping facilities.

43. The specific needs and safety concerns of victims of all forms of violence against women and trafficking in human beings 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 and clothing should be provided as needed.

44. Staff should be trained in women's human rights, gender equality-related and trauma issues as well as violence against women and the specific needs of migrant, refugee and asylum-seeking women and girls, and the presence of professional women social workers,

intercultural mediators, interpreters, police officers and guards should be ensured in these facilities.

45. Migrant, refugee and asylum-seeking women and girls should be offered adequate safe living space. Separate sleeping areas, as well as other safe spaces should be provided for single women with or without children (up to age 18). Other elements to be provided include access to natural and artificial light, sufficient ventilation and heating, a clean bed and bedding, ready access to clean, separate, well-lit shower and toilet facilities, and the availability of a basic sanitary kit / hygiene products free of charge and on a regular basis.
46. Women in transit and reception facilities should have access to a complaint /reporting system, whereby complaints are investigated and referred to the police where relevant, including, where appropriate, access to legal aid.
47. Member states should ensure that transit, reception and accommodation facilities and services are subject to regular independent monitoring, including when provided by private contractors, to ensure compliance with the standards of protection of this Appendix.
48. If migrant, refugee or asylum-seeking women and girls are confined to transit, reception or accommodation centres, member States should also ensure compliance with the provisions contained in the paragraphs of this Appendix related to detention.

Asylum

49. Member States should adopt and implement age- and gender-sensitive-asylum laws, practices and procedures.
50. Women and girls should be entitled to access asylum and protection information and procedures at the borders and elsewhere.
51. The possibility for women and girls to lodge an independent asylum claim should be ensured and they should be made aware of this right.
52. To ensure that gender-based violence against women is properly assessed within the framework of the 1951 United Nations Convention Relating to the Status of Refugees member States should:
 - 52.1 ensure that all forms of gender-based violence can be recognized as a form of persecution within the meaning of Article 1A(2) of the 1951 Convention;
 - 52.2 ensure a gender-sensitive interpretation of the 1951 Convention 'grounds' for asylum;
 - 52.3 develop comprehensive gender-sensitive guidelines at all stages of the asylum process, including reception and support services, screening, determination of 'safe' countries for the purpose of accelerated or suspensive procedures, detention, status determination, adjudication and returns; and ensure that border

police, migration officials, asylum officers, decision-makers, intercultural mediators and interpreters receive training in respect of such guidelines

53. Women asylum officers should be available to women applicants, who should be informed about this possibility.
54. Separate interviews for women and men from the same family, in the absence of children, should be made possible and their confidentiality should be guaranteed.
55. In processing and determining asylum claims, regard should be given to:
 - 55.1 the applicant's own personal circumstances and individual assessment of risk;
 - 55.2 relevant country of origin information, including in relation to gender equality and women's rights. This encompasses access to justice, the legal framework, and its implementation; available social, economic, and other support; and any form of multiple and intersecting discrimination and/or patriarchal attitudes that women are likely to encounter.
56. Member States should ensure that women and girls have access to complementary/subsidiary protection, where necessary, if the decision on their refugee status is negative.

Cross-border measures

57. Member States should seek to participate in resettlement and relocation programmes as well as reinforce and promote legal pathways to ensure safe transit for women and girls.
58. Member States are encouraged to fund specific assistance and humanitarian resettlement programmes for women and girls' victims, or at risk, of violence against women and trafficking in human beings, including trafficking for the purpose of sexual exploitation.
59. The setting up and implementation of effective cross-border protection mechanisms for victims of violence against women or trafficking in human beings, including trafficking for the purpose of sexual exploitation should be encouraged.

V. Residence and Integration

Access to holistic and quality health services, including sexual and reproductive health and rights

60. Authorities should ensure that healthcare provision takes into account the situation and personal characteristics of migrant women and girls and is age- and gender sensitive.
61. Essential healthcare services including primary care, urgent and immediate care, palliative care and treatment or assistance necessary for public health reasons should be

provided to all migrant, refugee and asylum-seeking women and girls, including migrant women and girls in an irregular situation.

62. Member States should also enable migrant, refugee and asylum-seeking women and girls to access free or affordable, comprehensive, quality, age- and gender-sensitive health services encompassing mental, sexual and reproductive health, including during pregnancy, as well as hygiene products. Member States should also seek to provide such health services to migrant women and girls in an irregular situation.
63. Migrant, refugee and asylum-seeking girls should be provided with access to age-appropriate sexual and reproductive health and rights information in a language that they can understand.
64. Access to available healthcare should not be dependent on obtaining the authorisation of the migration authority nor permission from any person other than the woman concerned. The treatment of minor girls may be subject to the consent of a parent or guardian.
65. Taking into account language and cultural barriers, member States should ensure that women give prior, free and informed consent to any medical treatment.

Social services, social security and housing

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

Integration, social, cultural and political participation

68. Member States should ensure that any child born in their territory is entitled to have their birth registered immediately after birth and is granted a pathway to a nationality.
69. Owing to persisting stereotypes and existing inequalities in access to civic rights and participation in political decision-making, which are even more serious for migrant, refugee and asylum-seeking women, member States should take steps to ensure that migrant, refugee and asylum-seeking women who are entitled to vote and stand for election in local, regional, national or European elections are aware of their rights and encouraged to participate without any form of discrimination.
70. Authorities should encourage and support initiatives aimed at empowering migrant, refugee and asylum-seeking 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 can include participation in local, cultural, women's or other associations, sports clubs, youth clubs and other organisations.

71. Public and private coaching, mentoring and other support programmes aimed at migrant and refugee women and girls should be set up and supported, notably in order to promote positive role models and promising practices of integration.
72. The positive contribution made by migrant and refugee women and girls to society and host communities, the economy and culture should be highlighted and encouraged.

Education, vocational training and life-long learning

73. Authorities should ensure that migrant, refugee and asylum-seeking children have access to education and take measures to reach those migrant, refugee, and asylum-seeking 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. Recognizing that the ability to communicate in the host country's language is essential for integration, member States should ensure access to an adequate number of hours of quality language training and integration programmes to migrant, refugee and asylum-seeking women and girls, to promote their empowerment and protection. Literacy and digital skills courses should also be provided to migrant, refugee and asylum-seeking women and girls corresponding to their needs and as soon as possible after their arrival in the host country.
75. Member States should take steps to facilitate the recognition and validation of migrant and refugee women and girls' existing vocational and academic qualifications and work experience in practice, including through initiatives such as the Council of Europe European Qualifications Passport for Refugees.
76. Migrant, refugee and asylum-seeking women and girls 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.
77. Access to the programmes and measures referred to in paragraphs 74, 75 and 76 for migrants in an irregular situation may be subject to national laws governing eligibility.

Employment

78. Member States should take specific and targeted measures to prevent discrimination and promote access to employment for migrant and refugee women, at an early stage in the migration process, including safe and legal routes to employment pre-arrival.
79. Member States should comply with the obligations regarding the right to work and self-employment for refugee women and girls set out by the United Nations Convention Relating to the Status of Refugees and consider removing barriers to work, for other migrant women and girls after they have been present in the territory for a certain length of time.

80. In respect of *at least* those migrant, refugee, and asylum-seeking women and girls who are permitted to work under the national law of member States, the latter should ensure decent and dignified working conditions, including:
- 80.1. taking measures to regulate and improve migrant, refugee, and asylum-seeking women and girls' working conditions and to eliminate all forms of labour exploitation and discrimination, including when they are multiple and intersecting;
 - 80.2. supporting and assisting migrant, refugee, and asylum-seeking women and girls where appropriate 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, internships, apprenticeships and job placement programmes;
 - 80.3. in order to facilitate access to the labour market, take steps to ensure that migrant, refugee and asylum-seeking workers have access to work/life balance measures including maternity, paternity and parental leave, flexible working conditions where possible, and ensure access to and enjoyment of child-care facilities on an equal footing with national workers; and
 - 80.4. ensure that migrant, refugee, and asylum-seeking women 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.
81. Member States should implement the provisions of relevant national and international standards directed at protecting migrant, refugee and asylum-seeking women and girls carrying out domestic work from discrimination, exploitation and abuse.

Residence permits

82. Member States should ensure that migrant, refugee and asylum-seeking women and girls who are granted a residence permit on the basis of a family relationship are entitled to social, economic and labour-related rights and entitlements in an autonomous capacity.
83. Migrant, refugee and asylum-seeking women and girls should be made aware of any entitlement to a renewable autonomous residence permit, for example due to their own protection needs under the UN Refugee Convention, their status as a victim of violence against women, a victim of trafficking in human beings, relationship breakdown, or other particularly difficult circumstances
84. The evidentiary criteria and threshold for the granting of autonomous residence permits should be realistic and sensitive to the individual situation of migrant, refugee and asylum-seeking women and responsible statutory agencies should be adequately trained to ensure that migrant, refugee and asylum-seeking women and girls can benefit from these permits.

85. Member States should ensure that migrant, refugee and asylum-seeking women and girls and their dependents are granted a renewable residence permit if their stay is necessary for criminal investigations or proceedings and until at least their conclusions.
86. Member States should facilitate the possibility for victims of forced marriage brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, to regain such status.
87. Member States are encouraged to provide security of residence on an independent basis to migrant and refugee women and girls present in a country for a long time, including stateless women and girls.
88. Member States should provide pathways to naturalisation and take measures to ensure that migrant and refugee women and girls are not faced with gender-related obstacles in this regard.

Family reunion

89. Recognising that family reunion can be both a secure pathway to safety for migrant and refugee women and girls, and a protective factor in the host country, member States should safeguard the right to family reunion for migrant and refugee women and girls in accordance with obligations under the European Convention on Human Rights and international law. In this respect, member States should:
 - 89.1. adopt a definition of family consistent with article 8 of the European Convention on Human Rights;
 - 89.2. ensure that women and girls are aware of their right to family reunion, including as migrant or refugee sponsors, and receive access to legal advice and assistance to pursue that right; and
 - 89.3. consider accepting or seeking the transfer of asylum claims to enable the family reunion of migrant, refugee and asylum-seeking women and girls separated on their journeys.
 - 89.4. Seek to provide within their national laws, gender-sensitive legal pathways to respect the family life of migrant women lawfully residing on their territory, in particular by providing the immediate and dependent family members with the possibly to migrate with or join them in the host country.

Detention

90. In respect of all forms of deprivation of liberty, member States should adopt an age- and gender-sensitive approach, which takes into account the individual situation and personal characteristics of migrant, refugee and asylum-seeking women and girls. Member States should also provide the following services to migrant, refugee and asylum-seeking women and girls deprived of their liberty:

- 90.1 access to law enforcement measures and **easily accessible and effective** reporting / complaints mechanisms including referral to and investigation of those complaints by police where relevant and access to legal aid;
- 90.2 access to information about their rights, as set forth in paragraph 9 of this Appendix;
- 90.3 access to health-care and hygiene services, telephone helplines and appropriate trauma support and counselling facilities;
- 90.4 access to a telephone, and/or Internet facility to inform a relative or third party of the fact of deprivation of liberty, as well as to consular assistance;
- 90.5 the opportunity to remain in meaningful contact with the outside world, including regular access to a telephone, to their mobile phones or to Internet facilities; and
- 90.6 the presence of women among border, migration and other police or custody staff, as well as among social workers and interpreters.
91. Member States should ensure that conditions in immigration detention centres reflect those listed in paragraphs 41-48 of this Appendix (Transit and reception facilities).
92. Member states should ensure that detention facilities, including administrative detention facilities, are subject to regular independent monitoring.
93. In the event that administrative detention under immigration legislation 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 women and girls within detention facilities, where their privacy is guaranteed and which cater adequately for their specific needs. Unaccompanied or separated girls should not, as a general rule, be detained.
94. Effective alternatives to administrative detention should be provided in any event for migrant, refugee and asylum-seeking women and girls who have been victims of torture, violence against women or trafficking in human beings, pregnant and nursing women, elderly women, and women with disabilities.
95. Migrant, refugee and asylum-seeking women and girls in administrative detention should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation. Care should be taken in the design and layout of such premises to avoid, as far as possible, any impression of a carceral environment. Within the detention centre, migrant refugee and asylum-seeking women and girls should be restricted in their freedom of movement as little as possible.
96. Migrant, refugee and asylum-seeking women and girls in administrative detention should be offered appropriate activities, and they should in principle have free access to outdoor exercise throughout the day (i.e. considerably more than one hour per day).

Commented [FVdPL4]: We propose to incorporate in the text express reference to "easily accessible and effective" in relation with services for migrant, refugee and asylum-seeking women and girls deprived of their liberty

VI. Returns

97. Voluntary returns should be the preferred option. Returns should always be in safety and dignity, in line with the principle of *non-refoulement*. Member States should therefore ensure that migrant and asylum-seeking women and girls are not returned or removed to a country where their life would be at risk or where they might be subjected to acts of torture or inhuman or degrading treatment or punishment, including those acts which disproportionately affect women or are directed at them because they are women.
98. In these situations, due regard should be given to relevant human rights obligations, notably the right to family life, in accordance with the case law of the European Court of Human Rights; the best interest of the child, if applicable; and to the state of health of the person, including for example pregnancy.
99. Recognising the particular difficulties that victims of violence against women and of trafficking in human beings and face in fully disclosing the grounds for their international protection claim, member States should:
- 99.1 ensure a process that protects women and girls against the risk of *refoulement*;
 - 99.2 ensure that accelerated and non-suspensive procedures are not implemented under any circumstance, until such a process has been completed to guarantee an individual assessment of the international protection needs in conformity with the provisions of this Appendix, especially if there are any signs of violence against women or trafficking in human beings.
100. Member States should ensure the possibility of suspending expulsion measures of migrant women based on their dependent status on a spouse, partner, parent, or other family member, in order to enable them to apply for an independent residence permit.
101. In order to facilitate the reintegration of returnee women, member States should take the necessary measures to allow for the recognition of eventual diplomas or qualifications obtained.

SWITZERLAND

Valérie HOFER

19/07/21



Strasbourg, le 4 juin 2021

GEC-MIG (2021)3 rev 1

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

**Projet de recommandation sur la protection des droits des femmes et
des filles migrantes, réfugiées et demandeuses d'asile**

Document de travail en vue de la consultation interne et externe

04.06.2021 – 16.07.2021

Projet de recommandation sur la protection des droits des femmes et des filles migrantes, réfugiées et demandeuses d'asile

1. Le Comité des Ministres, en vertu de l'article 15.b du Statut du Conseil de l'Europe,
2. Considérant que le but du Conseil de l'Europe est de réaliser une union plus étroite entre ses États membres, notamment en promouvant des normes communes et en développant des actions dans le domaine des droits humains ;
3. Rappelant que l'égalité entre les femmes et les hommes¹ est essentielle pour assurer la protection des droits humains, le fonctionnement de la démocratie et la bonne gouvernance, le respect de l'État de droit et la promotion du bien-être de toutes et tous;
4. Tenant compte de la Stratégie du Conseil de l'Europe pour l'égalité entre les femmes et les hommes 2018-2023 et de son objectif stratégique de protection des droits des femmes et des filles migrantes, réfugiées et demandeuses d'asile;
5. Agissant conformément au Plan d'action du Conseil de l'Europe sur la protection des personnes vulnérables dans le contexte des migrations et de l'asile en Europe (2021-2025) et notamment, à son objectif stratégique consistant à identifier les vulnérabilités et à y remédier tout au long des procédures d'asile et de migration.
6. Ayant à l'esprit les obligations et les engagements pris par les Etats, notamment, la Convention de sauvegarde des droits de l'homme et des libertés fondamentales (STE n° 5, 1950) et ses Protocoles, à la lumière de la jurisprudence pertinente de la Cour européenne des Droits de l'Homme ; la Charte sociale européenne (STE n° 35, 1961, révisée en 1996, STE n° 163) ; la Convention européenne pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (STCE n° 126, 1987) ; la Convention du Conseil de l'Europe sur la lutte contre la traite des êtres humains (STCE n° 197, 2005), la Convention du Conseil de l'Europe sur la protection des enfants contre l'exploitation et les abus sexuels (STCE n° 201, 2007) et la Convention du Conseil de l'Europe sur la prévention et la lutte contre la violence à l'égard des femmes et la violence domestique (STCE n° 210, Convention d'Istanbul, 2011);
7. Rappelant les recommandations suivantes du Comité des Ministres aux États membres du Conseil de l'Europe : Rec(2002)5 sur la protection des femmes contre la violence ; CM/Rec(2010)10 sur le rôle des femmes et des hommes dans la prévention et la résolution des conflits et la consolidation de la paix; CM/Rec(2015)1 sur l'intégration interculturelle ; CM/Rec(2019)1 sur la prévention et la lutte contre le sexisme ; CM/Rec(2019)4 sur l'aide

Commented [Hov1]: La Suisse a signé mais pas ratifié la Charte sociale européenne.
Etant donné la formulation actuelle du paragraphe, la non-ratification par la Suisse ne cause cependant pas de problème.

1 L'égalité entre les femmes et les hommes implique des droits égaux pour les femmes et les hommes, les filles et les garçons ainsi que la même visibilité, autonomisation, responsabilité et participation dans tous les domaines de la vie publique et privée. Elle implique également l'égalité des femmes et des hommes dans l'accès aux ressources et dans la distribution de celles-ci. (Stratégie pour l'égalité entre les femmes et les hommes 2018-2023 du Conseil de l'Europe).

aux jeunes réfugiés en transition vers l'âge adulte ; ainsi que les résolutions et recommandations pertinentes de l'Assemblée parlementaire, du Congrès des pouvoirs locaux et régionaux et de la Conférence des OING du Conseil de l'Europe;

8. Rappelant la Convention des Nations unies relative au statut des réfugiés (1951) ; la Convention 189 de l'Organisation internationale du travail sur le travail décent pour les travailleuses et travailleurs domestiques (2011); la Convention des Nations unies sur l'élimination de toutes les formes de discrimination à l'égard des femmes ("CEDEF", 1979) et son protocole facultatif (1999) ; la Convention des Nations Unies sur les droits de l'enfant (1989) et ses protocoles facultatifs (2000) ; et la Convention des Nations Unies relative aux droits des personnes handicapées (2006);
9. Notant la Recommandation générale n° 30 de la CEDEF sur les femmes dans la prévention des conflits, les situations de conflit et d'après-conflit (2013) ; la Recommandation générale n°32 de la CEDEF sur les dimensions sexospécifiques du statut de réfugié, de l'asile, de la nationalité et de l'apatridie des femmes (2014) ; la Recommandation générale n°35 de la CEDEF sur la violence à l'égard des femmes fondée sur le genre; la Recommandation générale n° 38 sur la traite des femmes et des filles dans le contexte des migrations mondiales (2020); ainsi que les mesures pertinentes contenues dans le Pacte mondial des Nations unies pour les réfugiés (2018) et dans le Pacte mondial des Nations unies pour des migrations sûres, ordonnées et régulières (2018), visant à « promouvoir l'égalité entre les sexes et de responsabiliser les femmes et les filles ; de mettre fin à toutes les formes de violences sexuelles et de genre, de traite d'êtres humains, d'exploitation et d'abus sexuels, ainsi que de pratiques néfastes »;
10. Vues les "Directives sur la protection internationale de l'Agence des Nations Unies pour les réfugiés : Persécution fondée sur le genre dans le contexte de l'article 1A(2) de la Convention de 1951 et/ou de son Protocole de 1967 relatif au statut des réfugiés", du 7 mai 2002 ;
11. Gardant à l'esprit l'importance d'une mise en œuvre et d'un impact généraux de l'Agenda 2030 des Nations unies pour le développement durable, notamment l'objectif 5 de développement durable ("Réaliser l'égalité des sexes et l'autonomisation de toutes les femmes et de toutes les filles"); l'objectif 10.7 de développement durable ("Réduire les inégalités dans les pays, et d'un pays à l'autre"), avec pour cible de "faciliter des migrations et une mobilité des personnes ordonnées, sûres, régulières et responsables, notamment par la mise en œuvre de politiques migratoires planifiées et bien gérées" ; et l'objectif 16 de développement durable ("Promouvoir l'avènement de sociétés pacifiques et inclusives aux fins du développement durable, assurer l'accès de tous à la justice et mettre en place, à tous les niveaux, des institutions efficaces, responsables et ouvertes à tous") ;
12. Réaffirmant que tous les droits humains et les libertés fondamentales sont universels, indivisibles, interdépendants et intimement liés, et qu'il est nécessaire de garantir leur pleine jouissance sans aucune discrimination, par les femmes et les filles migrantes, réfugiées et demandeuses d'asile ;

13. Reconnaisant la contribution positive que les femmes et les filles migrantes, réfugiées et demandeuses d'asile peuvent apporter aux sociétés et communautés en Europe;
14. Considérant les profonds changements dans les formes de migration et dans la situation des femmes et des filles migrantes, réfugiées et demandeuses d'asile, le fait que leur nombre a atteint un niveau record dans les années 2010 et les évolutions significatives dans les concepts, politiques et instruments juridiques liés à l'égalité entre les femmes et les hommes, à la migration et à l'asile à tous les niveaux;
15. Reconnaisant que si les normes internationales de protection des droits humains s'appliquent à toutes les personnes, tout en gardant à l'esprit les différences possibles en matière de statuts juridiques, des efforts supplémentaires devraient être entrepris pour évaluer les lacunes en matière de prévention et de protection résultant des insuffisances dans la mise en œuvre de ces normes, dans l'information concernant ces dernières et dans le suivi des normes et politiques existantes relatives aux femmes et aux filles migrantes, réfugiées et demandeuses d'asile ;
16. Soulignant que les femmes sont exposées à un continuum de violences qui leur sont spécifiques parce qu'elles sont des femmes, ou qui les touchent de manière disproportionnée en tant que femmes, et que ces violences sont, en ce sens, fondées sur le genre; reconnaissant avec une profonde préoccupation que les femmes et les filles migrantes, réfugiées et demandeuses d'asile sont particulièrement exposées à ces formes de violence et d'exploitation dans leur pays d'origine, au cours de leur voyage, en transit et/ou dans les pays de destination, ce qui peut constituer une grave violation de leurs droits humains d'autant plus que les femmes et les filles migrantes, réfugiées et demandeuses d'asile sont confrontées à des difficultés et des barrières structurelles pour surmonter cette violence et cette exploitation dans leurs différentes formes;
17. Notant avec inquiétude que les femmes et les filles migrantes, réfugiées et demandeuses d'asile peuvent être confrontées à des formes multiples et intersectionnelles de discrimination dans leur pays d'origine, au cours de leur voyage et dans leur pays de destination et soulignant la nécessité d'une approche inclusive et intersectionnelle qui tienne compte des différentes situations et caractéristiques personnelles des femmes et des filles migrantes, réfugiées et demandeuses d'asile, y compris, le cas échéant des femmes et des filles migrantes issues des communautés roms et des gens du voyage ;
18. Conscient des obstacles multiples et intersectionnels auxquels sont confrontées les femmes et les filles migrantes, réfugiées et demandeuses d'asile en termes d'accès aux droits et d'exercice des droits, d'accès aux services à la participation et à la prise de décision, et de la nécessité de faciliter leur intégration et leur pleine participation à la vie économique, sociale, civique, politique et culturelle;
19. Souhaitant de ce fait revoir et mettre à jour sa Recommandation n° R (79)10 aux États membres concernant les femmes migrantes, désormais remplacée par le présent instrument ;

Commented [Hov2]: Le projet de recommandation met globalement l'accent sur les aspects de protection liés aux femmes migrantes. Nous suggérons de développer ici davantage le potentiel des femmes et des filles migrantes, notamment dans des secteurs critiques tels que l'économie des soins.

Nous suggérons en outre d'ajouter un paragraphe sur le potentiel de la migration pour promouvoir l'égalité des genres : La migration peut améliorer l'autonomie, l'estime de soi et le statut social des femmes, etc.

Commented [Hov3]: Éventuellement approfondir le fait que la migration est un phénomène spécifique au genre. Les normes et les attentes liées au genre, les relations de pouvoir et l'inégalité des droits façonnent les choix et les expériences migratoires des femmes et des hommes.

20. Recommande aux gouvernements des États membres :

1. de prendre toutes les mesures nécessaires pour promouvoir et appliquer les principes énoncés dans la présente recommandation et son annexe, visant à garantir que les femmes et les filles migrantes, réfugiées et demandeuses d'asile puissent effectivement accéder à leurs droits et les exercer ;
2. d'assurer, par les moyens et actions appropriés, y compris, le cas échéant, la traduction, une large diffusion (dans des formats accessibles) de la présente recommandation auprès des autorités et parties prenantes concernées, qui sont encouragées à prendre des mesures pour la mettre en œuvre ;
3. d'examiner périodiquement, au sein du ou des comités directeurs et organes compétents du Conseil de l'Europe, les mesures prises et les progrès accomplis dans ce domaine.

Projet d'annexe

I. Définitions

[Aux fins de la présente recommandation :

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

« **Demandeuse d'asile** » : personne qui a présenté une demande de protection internationale.

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

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

II. Questions horizontales

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

Non-discrimination, intersectionnalité, élimination des stéréotypes

2. Les Etats membres devraient veiller à ce que les femmes et les filles migrantes, réfugiées et demandeuses d'asile ne soient confrontées à aucune discrimination, quel qu'en soit le motif.
3. Les États membres devraient appliquer une approche intersectionnelle à toutes les mesures visées dans la présente annexe, en tenant compte notamment des différentes situations et caractéristiques des femmes et des filles migrantes, réfugiées et demandeuses d'asile à titre individuel.
4. Des mesures devraient être mises en œuvre pour garantir les droits fondamentaux des personnes migrantes sans-papiers et faciliter leur accès aux services essentiels sans aucune crainte de rapport aux autorités d'immigration, y compris et au minimum les mécanismes de protection et de plainte et tous les services de soutien aux victimes de violence à l'égard des femmes et de traite des êtres humains.
5. Au sein des pays d'accueil et des communautés de personnes migrantes, les États membres devraient:

Commented [Hov4]: N'y a-t-il pas une incohérence dans l'usage du féminin et masculin en parlant de "migrant-e", "citoyennes et citoyens", puis uniquement de "femmes et filles apatrides".

L'homme apatride ne relève-t-il pas de la définition de migrant? Ou alors, si seules les femmes sont visées dans cette définition, ne faut-il pas l'intituler "migrante" et supprimer le terme "citoyen".

La question ne se pose pas dans la version anglaise qui utilise les termes "migrant", "citizens" et "stateless women and girls". On pourrait alors en déduire que le terme anglais "migrant" ne vise, au sens de cette recommandation, que les femmes et filles.

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- 5.1 accorder une attention particulière aux mesures visant à démanteler toutes les formes de stéréotypes ayant un impact négatif sur les droits des femmes et des filles migrantes, réfugiées et demandeuses d'asile;
- 5.2 mener des campagnes de sensibilisation et d'éducation concernant l'égalité entre les femmes et les hommes et les droits humains, afin de promouvoir le dialogue.

Filles

6. Les États membres devraient adopter une approche fondée sur les droits de l'enfant à l'égard des enfants migrants, réfugiés et demandeurs d'asile, qui tienne compte de la l'âge et de la situation et des besoins spécifiques des filles, y compris, garantir des solutions alternatives de prise en charge appropriées et sûres lorsqu'elles sont séparées de leurs parents ou de la personne qui s'occupe d'elles ou lorsqu'elles sont mineures non-accompagnées.
7. En raison de la vulnérabilité accrue des filles migrantes à l'exploitation et aux abus, les solutions de prise en charge devraient être alignées sur celles des enfants non-migrants dans les institutions ou services de protection de l'enfance classiques. Les enfants non accompagnés et séparés devraient se voir attribuer un-e tuteur/tutrice.
8. Les États membres devraient garantir un accès ininterrompu aux services essentiels aux filles migrantes, réfugiées et demandeuses d'asile, afin de les soutenir lors de la transition vers l'âge adulte au-delà de 18 ans, y compris l'accès à l'éducation, aux soins de santé ainsi que le soutien à l'intégration et à la participation sociale.

Information, autonomisation, sensibilisation et promotion des droits humains

9. Afin d'autonomiser les femmes et les filles migrantes, réfugiées et demandeuses d'asile et de leur permettre d'accéder à leurs droits, il convient de leur fournir des informations et des conseils pertinents, accessibles d'une façon et dans une langue qu'elles comprennent, couvrant :
 - 9.1 leurs droits humains fondamentaux tels qu'ils sont énoncés dans la Convention européenne des droits de l'homme et autres instruments pertinents, y compris lorsqu'elles se trouvent dans des structures de détention et d'accueil ;
 - 9.2 les mécanismes de signalement et de plainte pour toute forme de violence ou de violation des droits par des autorités publiques ou des entreprises privées agissant au nom de l'État, y compris les droits aux recours civils et à l'indemnisation ;
 - 9.3 les services de protection disponibles dans le pays d'accueil contre toutes les formes de violence à l'égard des femmes et de traite des êtres humains. Cela inclut l'accès aux services d'assistance généraux et spécifiques, aux services de soutien spécialisés fournis par les ONG et à l'aide juridique ;

9.4 les services publics disponibles et accessibles dans le pays d'accueil, notamment les soins de santé, y compris la santé mentale ainsi que la santé et les droits sexuels et reproductifs, l'éducation complète à la sexualité, le soutien psycho-social, l'éducation, la formation linguistique et au numérique, la formation continue, les programmes d'intégration, le logement et l'emploi.

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10. Les États membres devraient fournir des ressources et des outils pour l'autonomisation et le soutien aux femmes et aux filles migrantes, réfugiées et demandeuses d'asile, en fonction de leurs besoins et de leurs caractéristiques personnelles, afin qu'elles puissent bénéficier autant que possible des services sociaux et de l'assistance sociale disponibles.

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

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Accès à la justice, y compris l'aide juridique

12. Les femmes et les filles migrantes, réfugiées et demandeuses d'asile devraient avoir accès aux différentes voies de recours civils, administratifs et pénaux, nationaux et internationaux, y compris à l'aide juridique pour exercer effectivement leurs droits et/ou agir en cas de non-respect de ces droits.

13. Les États membres devraient veiller à ce que les femmes et les filles réfugiées et demandeuses d'asile bénéficient d'un soutien adéquat en demande, en défense ou comme témoins tout au long des procédures civiles, administratives ou pénales.

14. Une approche intersectionnelle et sensible au genre devrait être adoptée pour déterminer /évaluer la crédibilité individuelle des femmes et des filles migrantes, réfugiées et demandeuses d'asile dans les procédures civiles, administratives et pénales, notamment lorsque les décisions ont un impact sur leur statut juridique.

Intelligence artificielle, prise de décision automatisée et protection des données

15. Les États membres devraient assurer qu'une évaluation de l'impact sur les droits humains incluant une perspective de genre soit réalisée avant l'introduction de systèmes liés à l'intelligence artificielle et de systèmes de prise de décision automatisée dans le domaine de la migration.

16. L'utilisation de l'intelligence artificielle et de systèmes automatisés de prise de décision par le secteur public et ses prestataires de services et entreprises sous contrat ne devrait entraîner aucune discrimination, être conforme aux principes de protection de la vie privée, transparente et s'accompagner de mécanismes de gouvernance clairs, dans le cadre de :

16.1 la prise de décision en matière de contrôle aux frontières et contrôle de la migration, y compris concernant les décisions en matière d'entrée ou de retour ;

- 16.2 la gestion des migrations, y compris l'utilisation d'informations biométriques, comme les tests ADN ;
 - 16.3 le maintien de l'ordre et la sécurité en relation avec les femmes et les filles migrantes, réfugiées et demandeuses d'asile et les services liés à la protection ou à la prévention des crimes ;
 - 16.4 la fourniture de services aux femmes et aux filles migrantes, réfugiées et demandeuses d'asile.
17. Les femmes migrantes, réfugiées et demandeuses d'asile ainsi que les organisations pertinentes de la société civile devraient avoir la possibilité de participer aux discussions et à la prise de décision sur le développement et le déploiement des nouvelles technologies qui les affectent.
18. Compte tenu des situations de vulnérabilité particulières des femmes et des filles migrantes, réfugiées et demandeuses d'asile, les autorités pertinentes devraient :
- 18.1. assurer la confidentialité et la sécurité de leurs données personnelles conformément à leur législation nationale et aux obligations internationales applicables;
 - 18.2. ne pas transférer ces données personnelles vers le pays d'origine sans expliquer à la personne concernée, dans une langue qu'elle comprend, quelles données sont transférées et dans quelles conditions, y compris en donnant à la personne concernée la possibilité de s'y opposer.

Coopération avec la société civile

19. Les États membres devraient coopérer avec et soutenir les organisations de femmes migrantes et réfugiées et les organisations des droits des femmes et les autres organisations de la société civile qui défendent les droits humains universels des femmes et des filles migrantes, réfugiées et demandeuses d'asile, les soutiennent et travaillent à leur autonomisation.
20. Des mécanismes devraient être mis en place pour garantir que les organisations de femmes migrantes, y compris, le cas échéant, les organisations de femmes des communautés roms et du voyage, soient consultées, en particulier lors de l'élaboration des politiques en matière de migration, d'asile et d'intégration qui les concernent.

Collecte de données, recherche et suivi

21. Les États membres devraient soutenir la collecte de données ventilées **notamment par âge et par sexe** sur les questions de migration et d'asile, y compris pour ce qui concerne les victimes de violence à l'égard des femmes et de traite des êtres humains, en veillant au respect des exigences applicables en matière de protection des données.
22. La recherche, le suivi et l'évaluation des politiques de migration, d'intégration et d'asile dans une perspective d'égalité de genre devraient être soutenus et dotés de ressources adéquates à tous les niveaux, en particulier en ce qui concerne la prévention de toute violation des droits fondamentaux des femmes.
23. Les données collectées et les résultats de la recherche et de l'évaluation des politiques de migration, d'intégration et d'asile dans une perspective d'égalité de genre devraient être utilisés à tous les niveaux pour le développement et l'ajustement des politiques publiques dans ces domaines.

Commented [Hov5]: Nous suggérons d'ajouter d'autres catégories telles que religion ou ethnicité, afin de tenir compte de l'intersectionnalité.

III. Protection et soutien

24. Les États membres devraient protéger les femmes et les filles migrantes, réfugiées et demandeuses d'asile contre toutes les formes de violence à l'égard des femmes et de traite des êtres humains.
25. Des mesures devraient être prises pour protéger les femmes et les filles migrantes, réfugiées et demandeuses d'asile contre le discours de haine et le sexisme.
26. Les États membres devraient élaborer des mesures spécifiques pour lutter contre l'exploitation sexuelle des femmes et des filles migrantes, réfugiées et demandeuses d'asile, en particulier contre la demande de cette exploitation, y compris des mesures en matière de protection, de répression, de prévention et d'éducation.
27. Les États membres devraient veiller à ce que la culture, la coutume, la religion, la tradition ou le prétendu "honneur" ne soient pas considérés comme justifiant toute exploitation ou acte de violence à l'égard des femmes et des filles.
28. Les États membres devraient garantir l'accès effectif des femmes et des filles migrantes, réfugiées et demandeuses d'asile, avec ou sans enfants, aux refuges pour femmes victimes de violence à l'égard des femmes et de traite des êtres humains, quel que soit leur statut juridique.

29. L'accès à des conseils juridiques et à une aide juridique gratuits et accessibles dans la langue des bénéficiaires, devrait être assuré dans le cadre des procédures pénales, administratives et civiles, y compris la poursuite des demandes d'indemnisation et de réparation juridique contre les auteur-e-s, afin de soutenir les femmes et les filles migrantes, réfugiées et demandeuses d'asile victimes de toute forme de violence à l'égard des femmes et de traite des êtres humains.
30. Il convient de fournir aux victimes de violence à l'égard des femmes et de la traite des êtres humains des services de soutien généraux et spécialisés, y compris pour les personnes hébergées dans des installations de transit, d'accueil et d'hébergement. Cela inclut au minimum le soutien psychologique et les soins de santé à court et à long terme, y compris les soins de santé mentale, les soins en matière de santé sexuelle et reproductive, le soutien médical immédiat et la collecte de preuves médico-légales dans les cas de viols et d'agressions sexuelles.
31. Les États membres devraient permettre aux femmes et aux filles migrantes, réfugiées et demandeuses d'asile d'accéder aux régimes d'indemnisation, mesures ou autres programmes disponibles visant à l'intégration ou à la réintégration des victimes de violence à l'égard des femmes ou de traite des êtres humains, dans les mêmes conditions que les ressortissant-e-s nationaux/nationales.
32. Les États membres devraient veiller à ce que les femmes et les jeunes filles migrantes, réfugiées et demandeuses d'asile ne subissent aucune sanction, y compris la perte de leur statut légal de migrante ou de réfugiée, du fait de leur exploitation en tant que victimes de la traite des êtres humains ou du fait d'avoir quitté un partenaire ou un conjoint violent qui les avait parrainées et dont dépendait leur statut, ou lorsqu'elles ont été emmenées dans un autre pays contre leur gré à des fins de mariage forcé.
33. Une approche interinstitutionnelle, centrée sur la victime, qui prévient la victimisation secondaire et vise l'autonomisation des femmes et des filles migrantes, réfugiées et demandeuses d'asile, incluant les organisations de femmes migrantes et réfugiées, devrait être adoptée en ce qui concerne les questions relatives à leur protection et à leur soutien.
34. Des interprètes, des assistants juridiques et des médiateurs interculturels professionnels, y compris des femmes, devraient être disponibles pour soutenir les femmes et les filles migrantes, réfugiées et demandeuses d'asile qui cherchent une protection, lors du dépôt initial des plaintes, tout au long du processus judiciaire et lors des demandes de réparations, ainsi que dans le cadre des procédures de détermination de l'asile.
35. Les États membres devraient fournir et financer de manière adéquate des formations sur les questions liées à la violence à l'égard des femmes, à la traite des êtres humains, à l'égalité entre les femmes et les hommes ainsi qu'aux questions interculturelles. Ces formations devraient être dispensées aux autorités et au personnel concernés, y compris

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aux interprètes, aux personnes fournissant l'assistance juridique et aux médiatrices/médiateurs interculturels, afin de leur permettre :

- 35.1. d'identifier rapidement les victimes, si possible en collaboration avec les organisations de soutien concernées, d'estimer le risque, de s'adresser aux autorités compétentes et de fournir une protection, un traitement et des soins aux femmes et aux filles migrantes, réfugiées et demandeuses d'asile victimes de toute forme de violence et de traite des êtres humains ;
 - 35.2. d'être conscient-e-s des difficultés que les femmes et les filles migrantes, réfugiées et demandeuses d'asile peuvent rencontrer pour révéler des incidents relatifs à la violence à l'égard des femmes sous toutes ses formes et de traite des êtres humains, en raison de leur statut juridique précaire, de l'absence de services d'interprétation de qualité, du manque de connaissance de leurs droits légaux et du manque de connaissances concernant la pertinence de leurs expériences de violence pour les décisions en matière de migration/d'asile, de la stigmatisation sociale et du manque de soutien à leur égard.
36. Des mécanismes facilement accessibles devraient être mis en place dans les institutions gérées par l'État et par le secteur privé, telles que les centres d'accueil, de transit et de détention, les postes de police, les prisons, les établissements de garde d'enfants, les écoles et les hôpitaux, les centres de conseil et les refuges, afin de permettre le signalement des incidents de violence à l'égard des femmes et de traite des êtres humains au personnel et par le personnel. Cela comprend également l'accès à des lignes d'assistance téléphonique sensibles à l'âge et au genre, des procédures d'orientation vers d'autres organismes appropriés, ainsi qu'un traitement médical et psychologique qui puisse faciliter le signalement.
37. Il convient de procéder à une évaluation et à une gestion des risques de violence à l'égard des femmes et des filles migrantes, réfugiées et demandeuses d'asile, en tenant spécifiquement compte de leur vulnérabilité potentiellement accrue du fait de leur statut juridique précaire.

Etat d'urgence et gestion des crises

38. Dans les situations de crises de santé publique, humanitaires et liées au changement climatique, les États membres devraient prendre en compte le risque accru de violence fondée sur le genre, de traite des êtres humains, de pauvreté et de sans-abrisme pour les femmes et les filles migrantes, réfugiées et demandeuses d'asile et adopter les mesures suivantes :
- 38.1 prendre en considération la situation et les besoins des femmes et des filles migrantes, réfugiées et demandeuses d'asile dans les mesures de gestion de crise et de relance, y compris la protection des droits, et notamment le droit à la santé, au logement, à la sécurité alimentaire, à l'eau, à l'autonomisation économique et à

l'accès à des services de soutien spécialisés pour les femmes victimes de violence, en les qualifiant de services essentiels et en garantissant leur continuité ;

38.2 veiller à ce que les mesures prises pendant une crise et pendant l'état d'urgence qui s'ensuit soient conformes aux obligations internationales relatives aux droits humains des femmes et des filles migrantes, réfugiées et demandeuses d'asile ;

38.3 assurer la participation des femmes et des filles migrantes, réfugiées et demandeuses d'asile et des organisations de la société civile concernées à la prise de décision et à l'élaboration des politiques dans ces situations.

IV. Arrivée

Informations préalables à l'arrivée

39. Les États membres devraient veiller à ce que les procédures d'immigration, y compris les procédures de délivrance des visas, tiennent compte des situations et besoins spécifiques ainsi que des vulnérabilités des femmes et des filles migrantes, réfugiées et demandeuses d'asile et soient sensibles à l'âge et au genre.

40. Des informations devraient être fournies aux femmes et aux filles migrantes, réfugiées et demandeuses d'asile concernant les conditions permettant l'entrée et le séjour légaux sur le territoire d'un Etat membre.

Installations de transit et d'accueil

41. Les autorités compétentes devraient veiller à ce que les dispositions concernant le transit, l'accueil, l'hébergement et le filtrage tiennent compte des spécificités liées à l'âge et au genre. Le processus de filtrage devrait, en particulier, faciliter l'identification des victimes de violence à l'égard des femmes et de traite des êtres humains le plus tôt possible et assurer que les demandes de protection des femmes soient traitées avec diligence.

42. Les centres d'accueil et d'hébergement devraient être situés dans des zones où les femmes et les filles sont en sécurité et peuvent accéder aux services appropriés, concernant la santé, en particulier la santé sexuelle et reproductive, l'assistance sociale et juridique, l'éducation,

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43. Les besoins particuliers et les préoccupations liées à la sécurité des victimes de toute forme de violence à l'égard des femmes et de traite des êtres humains, ainsi que d'autres besoins pertinents, par exemple en cas de grossesse, de handicap ou de besoins de santé spécifiques, devraient être pris en compte lors de la détermination des placements et de l'accès aux services. Une alimentation et des vêtements essentiels pour les nourrissons devraient être fournis le cas échéant.

44. Le personnel devrait être formé aux droits humains des femmes et aux questions liées à l'égalité entre les femmes et les hommes, aux traumatismes, ainsi qu'aux questions de

violence envers les femmes et aux besoins spécifiques des femmes et des filles migrantes, réfugiées et demandeuses d'asile ; la présence de travailleuses sociales, médiatrices interculturelles, interprètes, officières de police et gardiennes professionnelles devrait assurée dans ces établissements.

45. Les femmes et les filles migrantes, réfugiées et demandeuses d'asile devraient se voir offrir des espaces de vie sûrs et adaptés. Des espaces de couchage séparés, ainsi que d'autres espaces sûrs, devraient être fournis aux femmes seules avec ou sans enfants (jusqu'à l'âge de 18 ans). Parmi les autres éléments à fournir figurent l'accès à la lumière naturelle et artificielle, une ventilation et un chauffage suffisants, un lit et une literie propres, un accès facile à des douches et à des toilettes propres, séparées et bien éclairées, ainsi que la mise à disposition gratuite et régulière de kits sanitaires de base / de produits d'hygiène.
46. Les femmes qui se trouvent dans des centres de transit et d'accueil devraient avoir accès à un système de plainte /signalement dans le cadre duquel les plaintes font l'objet d'une enquête et sont transmises à la police le cas échéant, y compris, s'il y a lieu, accès à l'aide juridique.
47. Les États membres devraient veiller à ce que les installations et services de transit, d'accueil et d'hébergement fassent l'objet d'un contrôle indépendant régulier, y compris lorsqu'ils sont fournis par des entreprises privées, afin de garantir le respect des normes de protection de la présente annexe.
48. Si des femmes et les filles migrantes, réfugiées ou demandeuses d'asile sont confinées dans des centres de transit, d'accueil ou d'hébergement, les Etats membres devraient également veiller au respect des dispositions contenues dans les paragraphes de la présente annexe relatifs à la détention.

Asile

49. Les États membres devraient adopter et mettre en œuvre des lois, des pratiques et des procédures d'asile sensibles à l'âge et au genre.
50. Les femmes et les filles devraient avoir accès à l'information ainsi qu'aux procédures d'asile et de protection aux postes frontières et dans le territoire des états membres.
51. La possibilité pour les femmes et les filles de déposer une demande d'asile indépendante devrait être garantie et elles devraient être informées de ce droit.
52. Pour assurer que la violence fondée sur le genre soit bien prise en compte dans la cadre de la Convention des Nations unies relative au statut des réfugiés de 1951, les Etats membres devraient :
 - 52.1 veiller à ce que toutes les formes de violence fondée sur le genre puissent être reconnues comme une forme de persécution au sens de l'article 1A, paragraphe 2, de la Convention de 1951 ;

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52.2 garantir une interprétation sensible au genre des "motifs" d'asile de la Convention de 1951;

52.3 développer des lignes directrices sensibles au genre complètes à toutes les étapes de la procédure d'asile, y compris les services d'accueil et de soutien, le filtrage, la détermination des pays "sûrs" aux fins de procédures accélérées ou suspensives, la détention, la détermination du statut, la décision et les retours; et veiller à ce que le personnel en charge de la police des frontières, de l'immigration, de l'asile, les responsables, les médiatrices/médiateurs interculturel-le-s et les interprètes reçoivent une formation concernant ces lignes directrices.

53. Des agentes d'asile devraient être à la disposition des demandeuses, qui devraient être informées de cette possibilité.

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

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

55.1 la situation personnelle de la personne faisant la demande et une évaluation individuelle des risques ;

55.2 les informations pertinentes sur le pays d'origine, y compris concernant l'égalité entre les femmes et les hommes et les droits des femmes. Cela inclut l'accès à la justice, y compris le cadre juridique et sa mise en œuvre, les aides sociales, économiques et autres aides disponibles, et toute les formes de discrimination multiple et intersectionnelle et/ou attitude patriarcale que les femmes sont susceptibles de rencontrer.

56. Les États membres devraient veiller à ce que les femmes et les filles aient accès à la protection complémentaire/subsidaire, si les conditions sont remplies, en cas de décision négative concernant leur statut de réfugiée.

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Mesures transfrontalières

57. Les États membres devraient s'efforcer de participer à des programmes de réinstallation et de relocalisation et de renforcer et promouvoir les voies légales pour garantir un transit sûr aux femmes et aux filles.

58. Les États membres sont encouragés à financer une assistance spécifique et des programmes humanitaires de réinstallation pour les femmes victimes à risque de violence

à l'égard des femmes ou de traite des êtres humains, y compris la traite à des fins d'exploitation sexuelle.

59. Il convient d'encourager la création et la mise en œuvre de mécanismes efficaces de protection transfrontalière des victimes de violence à l'égard des femmes et de traite des êtres humains, y compris de traite à des fins d'exploitation sexuelle.

V. Résidence et intégration

Accès à des services de santé globaux et de qualité, y compris la santé et les droits sexuels et reproductifs

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60. Les autorités devraient assurer la prise en compte de de la situation et des caractéristiques personnelles des femmes et des filles migrantes, réfugiées et demandeuses d'asile, ainsi que de l'âge et du genre, lors de la fourniture des soins de santé.

61. Les services de santé essentiels, y compris les soins primaires, les soins urgents et immédiats, les soins palliatifs et les traitements ou l'assistance nécessaires pour des raisons de santé publique, devraient être fournis à toutes les femmes et les filles migrantes, réfugiées et demandeuses d'asile, y compris les femmes et les filles en situation irrégulière.

62. Les États membres devraient également donner accès aux femmes et aux filles migrantes, réfugiées et demandeuses d'asile à des services de santé gratuits ou abordables, complets, de qualité et sensibles à l'âge et au genre ; cela inclut la santé mentale, la santé sexuelle et reproductive, y compris pendant la grossesse, ainsi que les produits d'hygiène. Les États membres devraient également s'efforcer de fournir de tels soins aux femmes et aux filles en situation irrégulière.

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63. Les filles migrantes, réfugiées et demandeuses d'asile devraient avoir accès à des informations adaptées à leur âge et dans une langue qu'elles comprennent concernant la santé et les droits sexuels et reproductive.

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64. L'accès aux soins de santé disponibles ne devrait pas dépendre de l'obtention de l'autorisation de l'autorité migratoire ni de la permission d'une personne autre que la femme concernée. Le traitement des filles mineures peut être soumis au consentement d'un parent ou d'un-e tuteur/tutrice.

65. En tenant compte des barrières linguistiques et culturelles, les Etats membres devraient veiller à ce que les femmes et les filles donnent leur consentement préalable, libre et éclairé à tout traitement médical.

Services sociaux, sécurité sociale et logement

66. Dans toutes les décisions relatives à la sécurité et au bien-être des femmes et des filles migrantes, réfugiées et demandeuses d'asile, y compris les décisions prises par les services sociaux et en matière de sécurité sociale, leurs besoins devraient être une des principales considérations.

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67. Les États membres devraient assurer que les femmes migrantes légalement résidentes dans un pays bénéficient d'un traitement non moins favorable que celui accordé aux ressortissant-e-s nationaux/nationales en ce qui concerne l'accès au logement et les loyers.

Intégration, participation sociale, culturelle et politique

68. Les États membres devraient veiller à ce que tout enfant né sur leur territoire ait le droit de faire enregistrer sa naissance immédiatement après la naissance et de se voir accorder une possibilité d'accès à une nationalité.

69. Du fait des stéréotypes persistants et des inégalités existantes en matière d'accès aux droits civiques et de participation à la prise de décision politique, qui sont encore plus marqués pour les femmes migrantes, réfugiées et demandeuses d'asile, les États membres devraient prendre des mesures pour que les femmes migrantes, réfugiées et demandeuses d'asile qui ont le droit de voter et de se présenter aux élections locales, régionales, nationales ou européennes connaissent leurs droits et soient encouragées à participer sans aucune discrimination.

70. Les autorités devraient encourager et soutenir les initiatives visant à renforcer l'autonomie des femmes et des filles migrantes, réfugiées et demandeuses d'asile au sein de leurs familles, de leurs communautés et de la société dans son ensemble, en développant leur confiance en elles et leur autodétermination et en protégeant les femmes et les filles contre tout contrôle social négatif. Cela peut inclure la participation à des associations locales, culturelles, de femmes ou autres, à des clubs sportifs, à des clubs de jeunes et autres.

71. Des programmes publics et privés de coaching, de mentorat et d'autres formes de soutien visant les femmes et les filles migrantes et réfugiées devraient être mis en œuvre et soutenus, notamment pour promouvoir l'utilisation de modèles positifs et les pratiques prometteuses en matière d'intégration.

72. La contribution positive des femmes et des filles migrantes et réfugiées à la société et aux communautés d'accueil, à l'économie et à la culture devrait être mise en évidence et encouragée.

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

73. Les autorités devraient veiller à ce que les enfants migrants, réfugiés et demandeurs d'asile aient accès à l'éducation et prendre des mesures pour atteindre les filles migrantes, réfugiées et demandeuses d'asile qui ont pu être empêchées d'accéder à l'éducation dans

Commented [Hov6]: Nous recommandons de mentionner quelque part l'importance de fournir un accès aux services financiers et une formation à la littératie financière pour les femmes afin de leur permettre d'utiliser les options d'épargne et de crédit, de contrôler et de gérer leurs revenus et de renforcer l'agence et le pouvoir de décision des femmes.

leur pays d'origine, en fournissant des services éducatifs ou des crèches, de préférence dans les structures éducatives générales.

74. Reconnaisant que la capacité à communiquer dans la langue du pays d'accueil est essentielle à l'intégration sous tous ses aspects, les États membres devraient assurer l'accès des femmes et filles migrantes, réfugiées et demandeuses d'asile à un nombre adéquat d'heures de formation linguistique de qualité ainsi qu'à des programmes d'intégration, afin de promouvoir leur autonomisation et leur protection. Des cours d'alphabétisation et de compétences numériques adaptés à leurs besoins devraient également être fournis aux femmes et aux filles migrantes, réfugiées et demandeuses d'asile, le plus tôt possible après leur arrivée dans le pays d'accueil.
75. Les États membres devraient prendre des mesures pour faciliter la reconnaissance et la validation des qualifications professionnelles et universitaires ainsi que de l'expérience professionnelle existantes des femmes et des filles migrantes et réfugiées dans la pratique, y compris par le biais d'initiatives telles que le Passeport européen de qualifications pour les réfugié-e-s du Conseil de l'Europe.
76. Les femmes et les filles migrantes, réfugiées et demandeuses d'asile devraient bénéficier de toutes les possibilités d'éducation supérieure ou complémentaire, de formation professionnelle, de réorientation et de réadaptation offertes par les services compétents et disponibles pour les ressortissant-e-s nationaux/nationales.
77. L'accès aux programmes et mesures visés aux paragraphes 74, 75, 76 pour les personnes migrantes en situation irrégulière peut dépendre de la législation nationale régissant l'éligibilité.

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Emploi

78. Les États membres devraient prendre des mesures spécifiques et ciblées pour prévenir la discrimination et promouvoir l'accès à l'emploi des femmes migrantes et réfugiées à un stade précoce du processus de migration, cela inclut des voies d'accès à l'emploi sûres et légales avant l'arrivée.
79. Les États membres devraient se conformer aux obligations relatives au droit au travail et à l'activité indépendante des femmes et des filles réfugiées énoncées par la Convention des Nations unies relative au statut des réfugiés et envisager de supprimer les obstacles au travail pour les autres femmes et filles migrantes, après qu'elles aient été présentes sur le territoire pendant un certain temps.
80. Concernant au minimum les femmes et les filles migrantes, réfugiées et demandeuses d'asile qui sont autorisées à travailler en vertu de la législation nationale des États

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membres, ceux-ci devraient assurer des conditions de travail décentes et dignes, cela inclut:

80.1 des mesures pour réglementer et améliorer les conditions de travail des femmes et des filles migrantes, réfugiées et demandeuses d'asile, et pour éliminer toutes les formes d'exploitation et de discrimination, y compris lorsqu'elles sont multiples et intersectionnelles ;

80.2 de soutenir et d'aider les femmes et des filles migrantes, réfugiées et demandeuses d'asile à accéder au marché du travail par le biais du travail indépendant et de l'entrepreneuriat, en leur offrant les mêmes possibilités de formation continue, de programmes de microcrédit, de prêts de démarrage et de développement d'entreprise qu'aux travailleurs/travailleuses nationaux/nationales et de soutenir les programmes de volontariat, de stages, d'apprentissage et de placement ;

80.3 afin de faciliter l'accès au marché du travail, de prendre des mesures pour garantir que les travailleuses et travailleurs migrants, réfugiés et demandeurs d'asile aient accès aux mesures de conciliation de la vie privée et professionnelle, y compris le congé de maternité, de paternité et parental, des conditions de travail flexibles lorsque cela est possible, et de garantir l'accès et la jouissance des services de garde d'enfants sur un pied d'égalité avec les travailleurs/travailleuses nationaux/nationales ;

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

81. Les États membres devraient mettre en œuvre les dispositions des normes nationales et internationales pertinentes visant à protéger les femmes et les filles migrantes réfugiées et demandeuses d'asile travailleuses domestiques de la discrimination, de l'exploitation et des abus.

Permis de séjour

82. Les États membres devraient veiller à ce que les femmes et les filles migrantes qui se voient accorder un permis de séjour sur la base d'une relation familiale puissent bénéficier des droits et prestations sociaux, économiques et liés au travail à titre autonome.

83. Les femmes et les filles migrantes, réfugiées et demandeuses d'asile devraient être informées de leur droit à un permis de séjour autonome renouvelable, par exemple en raison de leurs propres besoins de protection en vertu de la Convention sur les réfugiés des Nations-Unies, de leur statut de victime de violence à l'égard des femmes, de victime de traite des êtres humains, de la rupture d'une relation ou d'autres circonstances particulièrement difficiles.

84. Les critères et le seuil de preuve requis pour l'octroi de permis de séjour autonomes devraient être réalistes et sensibles à la situation individuelle des femmes et des filles migrantes, réfugiées et demandeuses d'asile, et les organismes statutaires responsables devraient être formés de manière adéquate pour garantir que les femmes et les filles migrantes, réfugiées et demandeuses d'asile puissent bénéficier de ces permis.
85. Les États membres devraient veiller à ce que les femmes et les filles migrantes, réfugiées et demandeuses d'asile et leurs personnes à charge obtiennent un permis de séjour renouvelable si leur séjour est nécessaire pour les besoins d'enquêtes ou de procédures pénales, et ce au moins jusqu'à leur conclusion.
86. Les États membres devraient faciliter la possibilité pour les victimes de mariage forcé amenées dans un autre pays pour les besoins du mariage et qui, de ce fait, ont perdu leur statut de résidente dans le pays où elles résident habituellement, de retrouver ce statut.
87. Les États membres sont encouragés à accorder la sécurité de résidence sur une base indépendante aux femmes et filles migrantes présentes dans un pays depuis longtemps, y compris aux femmes et aux filles apatrides.
88. Les États membres devraient fournir des possibilités de naturalisation et prendre des mesures pour garantir que les femmes et les filles migrantes et réfugiées ne soient pas confrontées à des obstacles liés au genre à cet égard.

Regroupement familial

89. Reconnaissant que le regroupement familial peut être à la fois une voie sûre vers la sécurité pour les femmes et les filles migrantes et réfugiées, et un facteur de protection dans le pays d'accueil, les États membres devraient assurer le droit au regroupement familial pour les femmes et les filles migrantes et réfugiées, conformément aux obligations découlant de la Convention européenne des droits de l'homme et du droit international. À cet égard, les États membres devraient :
- 89.1. adopter une définition de la famille conforme à l'article 8 de la Convention européenne des droits de l'homme ;
 - 89.2. veiller à ce que les femmes et les filles soient informées de leur droit au regroupement familial, y compris en tant que requérantes, et qu'elles aient accès à une assistance et à des conseils juridiques pour faire valoir ce droit ;
 - 89.3. envisager d'accepter ou de demander le transfert des demandes d'asile pour permettre la réunification familiale des femmes et des filles migrantes séparées au cours de leur voyage.
 - 89.4. s'efforcer de prévoir dans leur législation nationale, des voies légales tenant compte de la dimension de genre afin de respecter la vie familiale des femmes migrantes résidant légalement dans le pays d'accueil, en particulier en offrant aux

membres de la famille proches et à charge la possibilité de migrer avec elles ou de les rejoindre dans le pays d'accueil.

Détention

90. En ce qui concerne toutes les formes de privation de liberté, les États membres devraient adopter une approche sensible à l'âge et au genre, qui tienne compte de la situation individuelle et des caractéristiques personnelles des femmes et des filles migrantes, réfugiées et demandeuses d'asile. Les États membres devraient aussi fournir les services suivants aux femmes et aux filles migrantes, réfugiées et demandeuses d'asile privées de liberté :

90.1 accès aux mesures d'application de la loi et aux mécanismes de signalement/plaintes, y compris le renvoi à la police et les enquêtes sur ces plaintes par la police, le cas échéant, et accès à l'aide juridique ;

90.2 accès à l'informations sur leurs droits comme prévu au paragraphe 9 de la présente annexe;

90.3 accès à des services de soins de santé et d'hygiène, à des lignes d'assistance téléphonique et des structures appropriées de soutien et de conseil en matière de traumatismes ;

90.4 accès à un téléphone, et/ou à internet pour informer un proche ou un tiers du fait de la privation de liberté, ainsi qu'à une assistance consulaire ;

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90.5 possibilité de rester en contact de manière significative avec le monde extérieur, y compris l'accès régulier à un téléphone, à leur téléphone portable ou à internet;

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90.6 présence de femmes parmi le personnel chargé des frontières, des migrations et des autres services de police ou de garde à vue, ainsi que parmi les travailleurs sociaux et les interprètes.

91. Les États membres devraient veiller à ce que les conditions dans les centres de détention liés à l'immigration reflètent celles énumérées aux paragraphes 41 à 48 de la présente annexe (Installations de transit et d'accueil).

92. Les États membres devraient veiller à ce que les centres de détention, y compris les centres de détention administrative, fassent l'objet d'un contrôle indépendant régulier.

93. En cas de recours à la détention administrative en vertu de la législation sur l'immigration - qui devrait être une mesure de dernier recours - les familles ne devraient pas être séparées et des zones sûres distinctes devraient être prévues pour les femmes et les filles dans les centres de détention, où leur intimité est garantie et qui répondent de manière adéquate à leurs besoins spécifiques. Les filles non accompagnées ou séparées ne devraient, en règle générale, pas être placées en détention.

94. Des alternatives efficaces à la détention administrative devraient être prévues dans tous les cas pour les femmes et les filles migrantes, réfugiées et demandeuses d'asile qui ont été victimes de torture, de violence à l'égard des femmes ou de traite des êtres humains, les femmes enceintes et allaitantes, les femmes âgées et les femmes en situation de handicap.
95. Les femmes et les filles migrantes, réfugiées et demandeuses d'asile placées en détention administrative devraient être hébergées dans des centres spécifiquement conçus à cet effet, offrant des conditions matérielles et un régime adapté à leur situation juridique. Il convient de veiller à ce que la conception et l'aménagement de ces locaux évitent, dans la mesure du possible, toute impression d'environnement carcéral. A l'intérieur du centre de détention, les femmes et les filles migrantes réfugiées et demandeuses d'asile devraient le moins possible être limitées dans leur liberté de mouvement.
96. Les femmes et les filles migrantes, réfugiées et demandeuses d'asile placées en détention administrative devraient se voir proposer des activités appropriées, et elles devraient en principe avoir librement accès à des exercices en plein air tout au long de la journée (c'est-à-dire nettement plus d'une heure par jour).

VI. Retours

97. Les retours volontaires doivent être l'option privilégiée. Les retours devraient toujours se faire dans la sécurité et la dignité et conformément au principe de non-refoulement. Les États membres devraient donc veiller à ce que les femmes et les filles migrantes et demandeuses d'asile ne soient pas renvoyées ou éloignées vers un pays où leur vie serait en danger ou bien dans lequel elles pourraient être soumises à la torture ou à des peines ou traitements inhumains ou dégradants, y compris des actes qui affectent les femmes de manière disproportionnée ou qui sont dirigés contre elles en tant que femmes.
98. Dans ces situations, il convient de prendre dûment en considération les obligations pertinentes en matière de droits humains, notamment le droit à la vie familiale, conformément à la jurisprudence de la Cour européenne des droits de l'homme, ainsi que l'intérêt supérieur de l'enfant, le cas échéant, et l'état de santé de la personne, y compris par exemple la grossesse.
99. Reconnaisant les difficultés particulières que rencontrent les victimes de violence à l'égard des femmes et de traite des êtres humains pour divulguer pleinement les motifs de leur demande de protection internationale, les États membres devraient :
- 99.1 garantir un processus qui protège les femmes et les filles contre le risque de *refoulement* ;
 - 99.2 veiller à ce que des procédures accélérées et non suspensives ne soient en aucun cas mises en œuvre, tant qu'un processus garantissant une évaluation individuelle des besoins de protection internationale conformément aux dispositions de la

présente annexe n'a pas été achevée, en particulier s'il existe des signes de violence à l'égard des femmes ou de traite des êtres humains.

100 Les États membres devraient prévoir la possibilité de suspension de mesures d'expulsion de femmes migrantes basées sur leur statut de personne à charge d'un conjoint, d'un partenaire ou d'un parent, afin de leur donner la possibilité de demander un titre de séjour indépendant.

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101 Afin de faciliter la réintégration des femmes rapatriées, les États membres devraient prendre les mesures nécessaires pour permettre la reconnaissance des diplômes et qualifications éventuellement obtenus.

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15/07/21



Strasbourg, 4 June 2021

GEC-MIG (2021) 3 rev 1

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

**Draft Recommendation on protecting the rights of migrant, refugee
and asylum-seeking women**

Working document in view of the internal and external consultation

04.06.2021- 16.07.2021

Draft Recommendation on protecting the rights of migrant, refugee, asylum-seeking women and girls

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 equality¹ 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. 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;
5. 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), and notably its strategic objective to identify and address vulnerabilities throughout asylum and migration procedures;
6. Bearing in mind the obligations and commitments undertaken by states, including 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 (CETS No. 126, 1987); 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);
7. 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; Recommendation CM/Rec(2019)4 on supporting

¹ Gender equality entails equal rights for women and men, girls and boys as well as the same visibility, empowerment, responsibility, and participation in all spheres of public and private life. It also implies equal access to and distribution of resources between women and men. (Council of Europe Gender Equality Strategy 2018-2023).

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;

8. Recalling the United Nations Convention Relating to the Status of Refugees (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); 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. Noting 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); CEDAW General Recommendation No. 35 on gender-based violence against women; CEDAW Recommendation No.38 on trafficking in women and girls in the context of global migration (2020); as well as 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 human beings, 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. Bearing in mind the importance of the overall application and impact of the United Nations 2030 Agenda for Sustainable Development, in particular Sustainable Development Goal 5 (“Achieve gender equality and empower all women and girls”); Sustainable Development Goal 10.7 (“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”);
12. 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;
13. Acknowledging the positive contribution that migrant, refugee and asylum-seeking women and girls may bring to European societies and communities;

14. Considering the profound changes in migration patterns and in the situation of migrant, refugee and asylum-seeking women and girls, the fact that their numbers have reached the highest ever in the 2010's and the significant developments in gender equality-, migration- and asylum-related concepts, policies and legal instruments at all levels;
15. Recognising that while existing international human rights standards apply to all persons, and bearing in mind the possible differences in legal status of the persons concerned, 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;
16. Underlining that women are exposed to a continuum of violence that is specific to them because they are women, or which affects them disproportionately, and that such violence is, in this sense, gender-based; recognising with grave concern, that migrant, refugee and asylum-seeking women and girls are particularly exposed to such forms of violence and exploitation in their countries of origin, during their journey, in transit and/or in destination countries, which may constitute a serious violation of their human rights, especially as migrant, refugee and asylum-seeking women and girls face difficulties and structural barriers in overcoming such violence and exploitation in their diverse forms;
17. 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 including, as appropriate, migrant Roma and Traveller women and girls.
18. Aware of the multiple and intersecting barriers that migrant, refugee and asylum-seeking women and girls face in terms of access to and exercise of rights, access to services, participation and leadership and of the need to facilitate their integration and full participation in the economic, social, civic, political and cultural life;
19. Wishing therefore to review and update its Recommendation No. R(79)10 to member States on women migrants, henceforth replaced by the present instrument;
20. Recommends that the governments of member States:
 1. Take all necessary measures to promote and apply the principles set out in the Recommendation and its appendix, aimed at ensuring that migrant, refugee and asylum-seeking women and girls can effectively access and exercise their rights;
 2. Ensure, by appropriate means and action, including where appropriate translation, a wide dissemination (in accessible formats) of this Recommendation among relevant authorities and stakeholders, which are encouraged to take measures to implement it;

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3. Examine periodically, within the competent Council of Europe steering committee(s) and bodies, the measures taken, 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 live in another, including citizens of Council of Europe member States with a migrant background, and stateless women and girls.

'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 migrant, refugee and asylum-seeking women and girls do not face discrimination on any ground.
3. Member States should apply an intersectional approach in all measures referred to in this Appendix, notably bearing in mind the different situations and individual characteristics of migrant, refugee and asylum-seeking women and girls.
4. Measures should be established to safeguard the fundamental rights of undocumented migrants and facilitate their access to essential services including, at a minimum, protection and complaint mechanisms and all support services for victims of violence against women and trafficking in human beings, without fearing any reporting to migration authorities.
5. Within both migrant and host countries and communities, member States should:
 - 5.1. pay special attention to measures aimed at dismantling all forms of stereotypes which have a negative impact on the rights of migrant, refugee and asylum-seeking women and girls;

- 5.2. implement awareness-raising and educational measures in respect of gender equality and human rights to promote dialogue.

Girls

6. Member States should adopt a child rights-based approach to migrant, refugee and asylum-seeking children, which takes account of the age and specific situations and needs of girls, including ensuring suitable and safe alternative care arrangements when they are separated from their parents or caregiver 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 migrant, refugee and asylum-seeking girls to support their transition to adulthood beyond the age of 18, including access to education and healthcare, as well as support for their integration and social participation.

Information, empowerment, awareness raising and promotion of human rights

9. To empower migrant, refugee and asylum-seeking women and girls and enable them to access their rights, they should be provided with relevant and accessible information and advice in a way and a language that they understand, covering, at least:
 - 9.1 Their fundamental human rights 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 violence or other violations of rights by State authorities or private contractors acting on behalf of the State, including rights to civil remedies and compensation;
 - 9.3 Protection services available in the host country against all forms of violence against women and trafficking in human beings, including access to general and specific support services, specialist support provided by NGOs and legal aid;
 - 9.4 Available and accessible public services in the host country, notably healthcare including mental and sexual and reproductive health and rights, comprehensive sexuality education, psycho-social support, education, language and digital training, vocational training, integration programmes, housing and employment.
10. Member States should provide resources and tools for the empowerment and support of migrant, refugee and asylum-seeking women and girls, based on their needs and personal characteristics, in order for them to benefit to as great an extent possible from the social services and welfare available.

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

Access to justice including legal aid

12. Migrant, refugee and asylum-seeking women and girls should have access to the different national and international civil, administrative, and criminal remedies, as well as legal aid, to effectively exercise their rights and/or take action in cases of non-compliance with those rights.
13. Member States should ensure that refugee and asylum-seeking women and girls receive adequate support as claimants, defendants, or witnesses throughout civil, administrative, or criminal proceedings.
14. An intersectional and gender-sensitive approach to individual migrant, refugee and asylum-seeking women and girls should be adopted when determining/assessing their credibility in civil, administrative, and criminal proceedings, particularly where decisions have an impact on their legal status.

Artificial intelligence, automated decision-making, and data protection

15. 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.
16. 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:
 - 16.1 border and immigration control decision- making, including decisions relating to entry or return;
 - 16.2 migration management, including the use of biometric information, such as DNA testing
 - 16.3 policing and security of migrant, refugee and asylum-seeking women and girls, and services related to protection and prevention of crimes;
 - 16.4 the provision of services to migrant, refugee and asylum-seeking women and girls.
17. Migrant, refugee and asylum-seeking women and relevant civil society organisations should be given the opportunity to participate in discussions and decision-making around the development and deployment of new technologies affecting them.

18. Bearing in mind the particular situations of vulnerability of migrant, refugee and asylum-seeking women and girls, relevant authorities should:

18.1 ensure the confidentiality and security of personal data in accordance with their national legislation and applicable international obligations;

18.2 not transfer any such data to the country of origin without explaining to the affected person, in a language that they understand, which data is being transferred and under which conditions, including providing the affected person the opportunity to object.

Co-operation with civil society

19. Member States should co-operate with and support migrant and refugee women's organisations, women's rights organisations and other civil society organisations that uphold the universal human rights of migrant and refugee and asylum-seeking women and girls, and that defend and empower them.

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

Data collection, research and monitoring

21. Member States should support the collection of data, disaggregated notably by age and sex, on migration, refugee and asylum issues, including regarding victims of violence against women and of trafficking in human beings, and ensuring compliance with applicable data protection requirements.

22. 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.

23. 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 and support

24. Member States should protect migrant, refugee, and asylum-seeking women and girls from all forms of violence against women and trafficking in human beings.

25. Measures should be taken to protect migrant, refugee and asylum-seeking women and girls from hate speech and sexism.

26. Member States should develop specific measures to address the sexual exploitation of migrant, refugee and asylum-seeking women and girls, in particular the demand for such exploitation, including protective, punitive, preventive and educational measures.
27. Member States should ensure that culture, custom, religion, tradition or so-called 'honour' shall not be considered as justification for any exploitation or acts of violence against women and girls.
28. Member States should ensure effective access for migrant, refugee and asylum-seeking women and girls, with or without children, to shelters for women victims of violence against women and trafficking in human beings, regardless of their legal status.
29. Access to free legal advice and free legal aid available in the language of the beneficiary, should be provided, in order to support migrant, refugee and asylum-seeking women and girls victims of all forms of violence against women and trafficking in human beings through criminal, administrative and civil proceedings, including the pursuit of compensation claims and legal redress against the perpetrators.
30. General and specialist support services should be provided to victims of violence against women and trafficking in human beings, including for those persons accommodated in transit, reception and accommodation facilities. This includes, at a minimum, short- and long-term psychological support and healthcare, including mental healthcare, sexual and reproductive healthcare, immediate medical support and the collection of forensic medical evidence in cases of rape and sexual assault.
31. Member States should allow migrant, refugee and asylum-seeking women and girls access to available compensation schemes, measures or other programmes aimed at the integration or reintegration of victims of violence against women or trafficking in human beings, on the same conditions as nationals.
32. Member States should ensure that migrant, refugee and asylum-seeking women and girls do not suffer any penalty, including loss of lawful migration or refugee status as a consequence of their exploitation as victims of trafficking in human beings or as a consequence of leaving an abusive sponsoring partner or spouse on whom their status was dependant or where they have been taken to another country against their will for the purpose of forced marriage.
33. A multi-agency, victim-centred approach, that prevents secondary victimisation and is aimed at the empowerment of migrant, refugee and asylum-seeking women and girls, inclusive of migrant and refugee women's organisations, should be adopted as regards matters relating to their protection and support.
34. Professional interpreters, legal assistants, and intercultural mediators, including women, should be available to assist migrant, refugee and asylum-seeking women and girls seeking protection, whilst making initial complaints, throughout the justice process and in seeking reparations, as well as in the context of the asylum determination procedures.

35. Training in violence against women, trafficking in human beings, gender equality and intercultural issues should be adequately funded and provided to relevant authorities and staff including interpreters, legal assistants and intercultural mediators to enable them to:
- 35.1 promptly identify victims, where possible, in collaboration with relevant support organisations, conduct risk assessments, refer to relevant authorities and provide protection, treatment and care for migrant, refugee and asylum-seeking women and girls who are victims of all forms of violence and trafficking in human beings;
 - 35.2 be aware of the difficulties that migrant, refugee and asylum-seeking women and girls may face in disclosing incidents of violence against women and of trafficking in human beings, due to their insecure legal status, unavailability of quality interpretation services, lack of knowledge of their legal rights and lack of knowledge of the relevance of their experiences of violence in relation to migration/asylum decisions, social stigma, and lack of support to them in this regard.
36. Easily accessible mechanisms should be in place in State- and privately-run institutions, such as reception, transit and detention centres, police stations, prisons, childcare institutions, schools and hospitals, counselling centres and shelters, to enable incidents of violence against women and trafficking in human beings to be reported to staff and by staff. Member states should ensure access to age- and gender-sensitive telephone helplines, procedures for referral to other appropriate agencies, and medical and psychological treatment to facilitate reporting.
37. Risk assessment and risk management of violence against migrant, refugee and asylum-seeking women and girls should be conducted, taking specific account of their potential enhanced vulnerable situation owing to their insecure legal status.

State of emergency and crisis management

38. In situations of public health crisis, humanitarian crisis and crisis related to climate change, member States should take into account the increased risk of gender-based violence, trafficking in human beings, poverty and homelessness for migrant, refugee and asylum-seeking women and girls, and should therefore:
- 38.1 take into consideration the situation and needs of migrant, refugee and asylum-seeking women and girls in crisis management and recovery measures, including protection of rights, and notably the right to health, shelter, food security, water, economic empowerment and access to specialist support services for women victims of violence, by qualifying them as essential services and guaranteeing their continuity;
 - 38.2 ensure that measures taken during a crisis and ensuing state of emergency conform with international obligations related to the human rights of migrant, refugee and asylum-seeking women and girls;

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

IV. Arrival

Pre-arrival information

39. Member States should ensure that immigration procedures, including visa issuing procedures, take into account migrant, refugee and asylum-seeking women and girls' specific situations, needs and vulnerabilities and are age- and gender-sensitive.
40. Information should be provided to migrant, refugee and asylum-seeking women and girls about the conditions enabling the legal entry and stay in a member State's territory.

Transit and reception facilities

41. Relevant authorities should ensure that transit, reception, accommodation and screening arrangements are age- and gender-sensitive. The screening process should, in particular, facilitate the identification of victims of violence against women and trafficking in human beings at the earliest possible opportunity and ensure that women's protection claims are processed efficiently.
42. Reception and accommodation facilities should be located in areas where women and girls are safe and can access relevant services, with respect to health, and in particular sexual and reproductive health, social and legal assistance, education and shopping facilities.
43. The specific needs and safety concerns of victims of all forms of violence against women and trafficking in human beings 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 and clothing should be provided as needed.
44. Staff should be trained in women's human rights, gender equality-related and trauma issues as well as violence against women and the specific needs of migrant, refugee and asylum-seeking women and girls, and the presence of professional women social workers, intercultural mediators, interpreters, police officers and guards should be ensured in these facilities.
45. Migrant, refugee and asylum-seeking women and girls should be offered adequate safe living space. Separate sleeping areas, as well as other safe spaces should be provided for single women with or without children (up to age 18). Other elements to be provided include access to natural and artificial light, sufficient ventilation and heating, a clean bed and bedding, ready access to clean, separate, well-lit shower and toilet facilities, and the availability of a basic sanitary kit / hygiene products free of charge and on a regular basis.

46. Women in transit and reception facilities should have access to a complaint /reporting system, whereby complaints are investigated and referred to the police where relevant, including, where appropriate, access to legal aid.
47. Member states should ensure that transit, reception and accommodation facilities and services are subject to regular independent monitoring, including when provided by private contractors, to ensure compliance with the standards of protection of this Appendix.
48. If migrant, refugee or asylum-seeking women and girls are confined to transit, reception or accommodation centres, member States should also ensure compliance with the provisions contained in the paragraphs of this Appendix related to detention.

Asylum

49. Member States should adopt and implement age- and gender-sensitive-asylum laws, practices and procedures.
50. Women and girls should be entitled to access asylum and protection information and procedures at the borders and elsewhere.
51. The possibility for women and girls to lodge an independent asylum claim should be ensured and they should be made aware of this right.
52. To ensure that gender-based violence against women is properly assessed within the framework of the 1951 United Nations Convention Relating to the Status of Refugees member States should:
 - 52.1 ensure that all forms of gender-based violence can be recognized as a form of persecution within the meaning of Article 1A(2) of the 1951 Convention;
 - 52.2 ensure a gender-sensitive interpretation of the 1951 Convention 'grounds' for asylum;
 - 52.3 develop comprehensive gender-sensitive guidelines at all stages of the asylum process, including reception and support services, screening, determination of 'safe' countries for the purpose of accelerated or suspensive procedures, detention, status determination, adjudication and returns; and ensure that border police, migration officials, asylum officers, decision-makers, intercultural mediators and interpreters receive training in respect of such guidelines
53. Women asylum officers should be available to women applicants, who should be informed about this possibility.
54. Separate interviews for women and men from the same family, in the absence of children, should be made possible and their confidentiality should be guaranteed.
55. In processing and determining asylum claims, regard should be given to:

- 55.1 the applicant's own personal circumstances and individual assessment of risk;
 - 55.2 relevant country of origin information, including in relation to gender equality and women's rights. This encompasses access to justice, the legal framework, and its implementation; available social, economic, and other support; and any form of multiple and intersecting discrimination and/or patriarchal attitudes that women are likely to encounter.
56. Member States should ensure that women and girls have access to complementary/subsidiary protection, where necessary, if the decision on their refugee status is negative.

Cross-border measures

57. Member States should seek to participate in resettlement and relocation programmes as well as reinforce and promote legal pathways to ensure safe transit for women and girls.
58. Member States are encouraged to fund specific assistance and humanitarian resettlement programmes for women and girls' victims, or at risk, of violence against women and trafficking in human beings, including trafficking for the purpose of sexual exploitation.
59. The setting up and implementation of effective cross-border protection mechanisms for victims of violence against women or trafficking in human beings, including trafficking for the purpose of sexual exploitation should be encouraged.

V. Residence and Integration

Access to holistic and quality health services, including sexual and reproductive health and rights

60. Authorities should ensure that healthcare provision takes into account the situation and personal characteristics of migrant women and girls and is age- and gender sensitive.
61. Essential healthcare services including primary care, urgent and immediate care, palliative care and treatment or assistance necessary for public health reasons should be provided to all migrant, refugee and asylum-seeking women and girls, including migrant women and girls in an irregular situation.
62. Member States should also enable migrant, refugee and asylum-seeking women and girls to access free or affordable, comprehensive, quality, age- and gender-sensitive health services encompassing mental, sexual and reproductive health, including during pregnancy, as well as hygiene products. Member States should also seek to provide such health services to migrant women and girls in an irregular situation.

63. Migrant, refugee and asylum-seeking girls should be provided with access to age-appropriate sexual and reproductive health and rights information in a language that they can understand.
64. Access to available healthcare should not be dependent on obtaining the authorisation of the migration authority nor permission from any person other than the woman concerned. The treatment of minor girls may be subject to the consent of a parent or guardian.
65. Taking into account language and cultural barriers, member States should ensure that women give prior, free and informed consent to any medical treatment.

Social services, social security and housing

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

Integration, social, cultural and political participation

68. Member States should ensure that any child born in their territory is entitled to have their birth registered immediately after birth and is granted a pathway to a nationality.
69. Owing to persisting stereotypes and existing inequalities in access to civic rights and participation in political decision-making, which are even more serious for migrant, refugee and asylum-seeking women, member States should take steps to ensure that migrant, refugee and asylum-seeking women who are entitled to vote and stand for election in local, regional, national or European elections are aware of their rights and encouraged to participate without any form of discrimination.
70. Authorities should encourage and support initiatives aimed at empowering migrant, refugee and asylum-seeking 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 can include participation in local, cultural, women's or other associations, sports clubs, youth clubs and other organisations.
71. Public and private coaching, mentoring and other support programmes aimed at migrant and refugee women and girls should be set up and supported, notably in order to promote positive role models and promising practices of integration.
72. The positive contribution made by migrant and refugee women and girls to society and host communities, the economy and culture should be highlighted and encouraged.

Education, vocational training and life-long learning

73. Authorities should ensure that migrant, refugee and asylum-seeking children have access to education and take measures to reach those migrant, refugee, and asylum-seeking 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. Recognizing that the ability to communicate in the host country's language is essential for integration, member States should ensure access to an adequate number of hours of quality language training and integration programmes to migrant, refugee and asylum-seeking women and girls, to promote their empowerment and protection. Literacy and digital skills courses should also be provided to migrant, refugee and asylum-seeking women and girls corresponding to their needs and as soon as possible after their arrival in the host country.
75. Member States should take steps to facilitate the recognition and validation of migrant and refugee women and girls' existing vocational and academic qualifications and work experience in practice, including through initiatives such as the Council of Europe European Qualifications Passport for Refugees.
76. Migrant, refugee and asylum-seeking women and girls 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.
77. Access to the programmes and measures referred to in paragraphs 74, 75 and 76 for migrants in an irregular situation may be subject to national laws governing eligibility.

Employment

78. Member States should ~~try take specific and targeted measures~~ to prevent discrimination and promote access to employment for migrant and refugee women, at an early stage in the migration process, including safe and legal routes to employment pre-arrival.
79. Member States should comply with the obligations regarding the right to work and self-employment for refugee women and girls set out by the United Nations Convention Relating to the Status of Refugees and consider removing barriers to work, for other migrant women and girls after they have been present in the territory for a certain length of time.
80. In respect of *at least* those migrant, refugee, and asylum-seeking women and girls who are permitted to work under the national law of member States, the latter should ensure decent and dignified working conditions, including:
- 80.1. taking measures to regulate and improve migrant, refugee, and asylum-seeking women and girls' working conditions and to eliminate all forms of labour exploitation and discrimination, including when they are multiple and intersecting;

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- 80.2. supporting and assisting migrant, refugee, and asylum-seeking women and girls where appropriate 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, internships, apprenticeships and job placement programmes;
- 80.3 in order to facilitate access to the labour market, take steps to ensure that migrant, refugee and asylum-seeking workers have access to work/life balance measures including maternity, paternity and parental leave, flexible working conditions where possible, and ensure access to and enjoyment of child-care facilities on an equal footing with national workers; and
- 80.4 ensure that migrant, refugee, and asylum-seeking women 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.
81. Member States should implement the provisions of relevant national and international standards directed at protecting migrant, refugee and asylum-seeking women and girls carrying out domestic work from discrimination, exploitation and abuse.

Residence permits

82. Member States should ensure that migrant, refugee and asylum-seeking women and girls who are granted a residence permit on the basis of a family relationship are entitled to social, economic and labour-related rights and entitlements in an autonomous capacity.
83. Migrant, refugee and asylum-seeking women and girls should be made aware of any entitlement to a renewable autonomous residence permit, for example due to their own protection needs under the UN Refugee Convention, their status as a victim of violence against women, a victim of trafficking in human beings, relationship breakdown, or other particularly difficult circumstances
84. The evidentiary criteria and threshold for the granting of autonomous residence permits should be realistic and sensitive to the individual situation of migrant, refugee and asylum-seeking women and responsible statutory agencies should be adequately trained to ensure that migrant, refugee and asylum-seeking women and girls can benefit from these permits.
85. Member States should ensure that migrant, refugee and asylum-seeking women and girls and their dependents are granted a renewable residence permit if their stay is necessary for criminal investigations or proceedings and until at least their conclusions.
86. Member States should facilitate the possibility for victims of forced marriage brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, to regain such status.

87. Member States are encouraged to provide security of residence on an independent basis to migrant and refugee women and girls present in a country for a long time, including stateless women and girls.
88. Member States should provide pathways to naturalisation and take measures to ensure that migrant and refugee women and girls are not faced with gender-related obstacles in this regard.

Family reunion

89. Recognising that family reunion can be both a secure pathway to safety for migrant and refugee women and girls, and a protective factor in the host country, member States should safeguard the right to family reunion for migrant and refugee women and girls in accordance with obligations under the European Convention on Human Rights and international law. In this respect, member States should:
- 89.1. adopt a definition of family consistent with article 8 of the European Convention on Human Rights;
 - 89.2. ensure that women and girls are aware of their right to family reunion, including as migrant or refugee sponsors, and receive access to legal advice and assistance to pursue that right; and
 - 89.3. consider accepting or seeking the transfer of asylum claims to enable the family reunion of migrant, refugee and asylum-seeking women and girls separated on their journeys.
 - 89.4. Seek to provide within their national laws, gender-sensitive legal pathways to respect the family life of migrant women lawfully residing on their territory, in particular by providing the immediate and dependent family members with the possibly to migrate with or join them in the host country.

Detention

90. In respect of all forms of deprivation of liberty, member States should adopt an age- and gender-sensitive approach, which takes into account the individual situation and personal characteristics of migrant, refugee and asylum-seeking women and girls. Member States should also provide the following services to migrant, refugee and asylum-seeking women and girls deprived of their liberty:
- 90.1 access to law enforcement measures and reporting / complaints mechanisms including referral to and investigation of those complaints by police where relevant and access to legal aid;
 - 90.2 access to information about their rights, as set forth in paragraph 9 of this Appendix;
 - 90.3 access to health-care and hygiene services, telephone helplines and appropriate trauma support and counselling facilities;

- 90.4 access to a telephone, and/or Internet facility to inform a relative or third party of the fact of deprivation of liberty, as well as to consular assistance;
- 90.5 the opportunity to remain in meaningful contact with the outside world, including regular access to a telephone, to their mobile phones or to Internet facilities; and
- 90.6 the presence of women among border, migration and other police or custody staff, as well as among social workers and interpreters.
91. Member States should ensure that conditions in immigration detention centres reflect those listed in paragraphs 41-48 of this Appendix (Transit and reception facilities).
92. Member states should ensure that detention facilities, including administrative detention facilities, are subject to regular independent monitoring.
93. In the event that administrative detention under immigration legislation 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 women and girls within detention facilities, where their privacy is guaranteed and which cater adequately for their specific needs. Unaccompanied or separated girls should not, as a general rule, be detained.
94. Effective alternatives to administrative detention should be provided in any event for migrant, refugee and asylum-seeking women and girls who have been victims of torture, violence against women or trafficking in human beings, pregnant and nursing women, elderly women, and women with disabilities.
95. Migrant, refugee and asylum-seeking women and girls in administrative detention should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation. Care should be taken in the design and layout of such premises to avoid, as far as possible, any impression of a carceral environment. Within the detention centre, migrant refugee and asylum-seeking women and girls should be restricted in their freedom of movement as little as possible.
96. Migrant, refugee and asylum-seeking women and girls in administrative detention should be offered appropriate activities, and they should in principle have free access to outdoor exercise throughout the day (i.e. considerably more than one hour per day).

VI. Returns

97. Voluntary returns should be the preferred option. Returns should always be in safety and dignity, in line with the principle of *non-refoulement*. Member States should therefore ensure that migrant and asylum-seeking women and girls are not returned or removed to a country where their life would be at risk or where they might be subjected to acts of

torture or inhuman or degrading treatment or punishment, including those acts which disproportionately affect women or are directed at them because they are women.

98. In these situations, due regard should be given to relevant human rights obligations, notably the right to family life, in accordance with the case law of the European Court of Human Rights; the best interest of the child, if applicable; and to the state of health of the person, including for example pregnancy.
99. Recognising the particular difficulties that victims of violence against women and of trafficking in human beings and face in fully disclosing the grounds for their international protection claim, member States should:
 - 99.1 ensure a process that protects women and girls against the risk of *refoulement*;
 - 99.2 ensure that accelerated and non-suspensive procedures are not implemented under any circumstance, until such a process has been completed to guarantee an individual assessment of the international protection needs in conformity with the provisions of this Appendix, especially if there are any signs of violence against women or trafficking in human beings.
100. Member States should ensure the possibility of suspending expulsion measures of migrant women based on their dependent status on a spouse, partner, parent, or other family member, in order to enable them to apply for an independent residence permit.
101. In order to facilitate the reintegration of returnee women, member States should take the necessary measures to allow for the recognition of eventual diplomas or qualifications obtained.

2. Observer states

HOLY SEE

Flaminia VOLA

14/07/21



Strasbourg, 4 June 2021

GEC-MIG (2021) 3 rev 1

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

**Draft Recommendation on protecting the rights of migrant, refugee
and asylum-seeking women**

Working document in view of the internal and external consultation

04.06.2021- 16.07.2021

Draft Recommendation on protecting the rights of migrant, refugee, asylum-seeking women and girls

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 equality¹ 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. 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;
5. 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), and notably its strategic objective to identify and address vulnerabilities throughout asylum and migration procedures;
6. Bearing in mind the obligations and commitments undertaken by states, including 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 (CETS No. 126, 1987); 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);
7. 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; Recommendation CM/Rec(2019)4 on supporting

¹ Gender equality entails equal rights for women and men, girls and boys as well as the same visibility, empowerment, responsibility, and participation in all spheres of public and private life. It also implies equal access to and distribution of resources between women and men. (Council of Europe Gender Equality Strategy 2018-2023).

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;

8. Recalling the United Nations Convention Relating to the Status of Refugees (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); 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. Noting 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); CEDAW Recommendation No.38 on trafficking in women and girls in the context of global migration (2020); as well as 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 human beings, 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. Bearing in mind the importance of the overall application and impact of the United Nations 2030 Agenda for Sustainable Development, in particular Sustainable Development Goal 5 (“Achieve gender equality and empower all women and girls”); Sustainable Development Goal 10.7 (“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”);
12. 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;
13. Acknowledging the positive contribution that migrant, refugee and asylum-seeking women and girls may bring to European societies and communities;

Deleted: CEDAW General Recommendation No. 35 on gender-based violence against women; ...

14. Considering the profound changes in migration patterns and in the situation of migrant, refugee and asylum-seeking women and girls, the fact that their numbers have reached the highest ever in the 2010's and the significant developments in gender equality-, migration- and asylum-related concerns, policies and legal instruments at all levels;
15. Recognising that while existing international human rights standards apply to all persons, and bearing in mind the possible differences in legal status of the persons concerned, 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;
16. Underlining that women are exposed to a continuum of violence that is specific to them because they are women, or which affects them disproportionately, and that such violence is, in this sense, gender-based; recognising with grave concern, that migrant, refugee and asylum-seeking women and girls are particularly exposed to such forms of violence and exploitation in their countries of origin, during their journey, in transit and/or in destination countries, which may constitute a serious violation of their human rights, especially as migrant, refugee and asylum-seeking women and girls face difficulties and structural barriers in overcoming such violence and exploitation in their diverse forms;
17. 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 including, as appropriate, migrant Roma and Traveller women and girls.
18. Aware of the multiple and intersecting barriers that migrant, refugee and asylum-seeking women and girls face in terms of access to and exercise of rights, access to services, participation and leadership and of the need to facilitate their integration and full participation in the economic, social, civic, political and cultural life;
19. Wishing therefore to review and update its Recommendation No. R(79)10 to member States on women migrants, henceforth replaced by the present instrument;
20. Recommends that the governments of member States:
 1. Take all necessary measures to promote and apply the principles set out in the Recommendation and its appendix, aimed at ensuring that migrant, refugee and asylum-seeking women and girls can effectively access and exercise their rights;
 2. Ensure, by appropriate means and action, including where appropriate translation, a wide dissemination (in accessible formats) of this Recommendation among relevant authorities and stakeholders, which are encouraged to take measures to implement it;

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3. Examine periodically, within the competent Council of Europe steering committee(s) and bodies, the measures taken, 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 live in another, including citizens of Council of Europe member States with a migrant background, and stateless women and girls.

‘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 and elimination of stereotypes

- 2. Member States should ensure that migrant, refugee and asylum-seeking women and girls do not face discrimination on any ground.
- 3. Member States should apply an intersectional approach in all measures referred to in this Appendix, notably bearing in mind the different situations and individual characteristics of migrant, refugee and asylum-seeking women and girls.
- 4. Measures should be established to safeguard the fundamental rights of undocumented migrants and facilitate their access to essential services including, at a minimum, protection and complaint mechanisms and adequate support services for victims of violence against women and trafficking in human beings, without fearing any reporting to migration authorities.
- 5. Within both migrant and host countries and communities, member States should:
 - 5.1. pay special attention to measures aimed at dismantling all forms of stereotypes which have a negative impact on the rights of migrant, refugee and asylum-seeking women and girls;

Commented [a3]: “intersectional issues” remains an ambiguous expression, which has never been defined and on which there is no international consensus.

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- 5.2. implement awareness-raising and educational measures in respect of gender equality and human rights to promote dialogue.

Girls

- 6. Member States should adopt a child rights-based approach to migrant, refugee and asylum-seeking children, which takes account of the age and specific situations and needs of girls, including ensuring suitable and safe alternative care arrangements when they are separated from their parents or caregiver 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 migrant, refugee and asylum-seeking girls to support their transition to adulthood beyond the age of 18, including access to education and healthcare, as well as support for their integration and social participation.

Information, empowerment, awareness raising and promotion of human rights

- 9. To empower migrant, refugee and asylum-seeking women and girls and enable them to access their rights, they should be provided with relevant and accessible information and advice in a way and a language that they understand, covering, at least:
 - 9.1 Their fundamental human rights 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 violence or other violations of rights by State authorities or private contractors acting on behalf of the State, including rights to civil remedies and compensation;
 - 9.3 Protection services available in the host country against all forms of violence against women and trafficking in human beings, including access to general and specific support services, specialist support provided by NGOs and legal aid;
 - 9.4 Available and accessible public services in the host country, notably healthcare including mental and physical healthcare ↓ ↓ psycho-social support, education, language and digital training, vocational training, integration programmes, housing and employment.
- 10. Member States should provide resources and tools for the empowerment and support of migrant, refugee and asylum-seeking and women and girls, based on their needs and personal characteristics, in order for them to benefit to as great an extent possible from the social services and welfare available.

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

Access to justice including legal aid

12. Migrant, refugee and asylum-seeking women and girls should have access to the different national and international civil, administrative, and criminal remedies, as well as legal aid, to effectively exercise their rights and/or take action in cases of non-compliance with those rights.
13. Member States should ensure that refugee and asylum-seeking women and girls receive adequate support as claimants, defendants, or witnesses throughout civil, administrative, or criminal proceedings.
14. A gender-sensitive approach to individual migrant, refugee and asylum-seeking women and girls should be adopted when determining/assessing their credibility in civil, administrative, and criminal proceedings, particularly where decisions have an impact on their legal status.

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Artificial intelligence, automated decision-making, and data protection

15. 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.
16. 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:
 - 16.1 border and immigration control decision- making, including decisions relating to entry or return;
 - 16.2 migration management, including the use of biometric information, such as DNA testing
 - 16.3 policing and security of migrant, refugee and asylum-seeking women and girls, and services related to protection and prevention of crimes;
 - 16.4 the provision of services to migrant, refugee and asylum-seeking women and girls.
17. Migrant, refugee and asylum-seeking women and relevant civil society organisations should be given the opportunity to participate in discussions and decision-making around the development and deployment of new technologies affecting them.

18. Bearing in mind the particular situations of vulnerability of migrant, refugee and asylum-seeking women and girls, relevant authorities should:

18.1 ensure the confidentiality and security of personal data in accordance with their national legislation and applicable international obligations;

18.2 not transfer any such data to the country of origin without explaining to the affected person, in a language that they understand, which data is being transferred and under which conditions, including providing the affected person the opportunity to object.

Co-operation with civil society

19. Member States should co-operate with and support migrant and refugee women's organisations, women's rights organisations and other civil society organisations that uphold the universal human rights of migrant and refugee and asylum-seeking women and girls, and that defend and empower them.

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

Data collection, research and monitoring

21. Member States should support the collection of data, disaggregated notably by age and sex, on migration, refugee and asylum issues, including regarding victims of violence against women and of trafficking in human beings, and ensuring compliance with applicable data protection requirements.

22. 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.

23. 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 and support

24. Member States should protect migrant, refugee, and asylum-seeking women and girls from all forms of violence against women and trafficking in human beings.

25. Measures should be taken to protect migrant, refugee and asylum-seeking women and girls from hate speech and sexism.

26. Member States should develop specific measures to address the sexual exploitation of migrant, refugee and asylum-seeking women and girls, in particular the demand for such exploitation, including protective, punitive, preventive and educational measures.
27. Member States should ensure that culture, custom, religion, tradition or so-called 'honour' shall not be exploited and considered as justification for sexual exploitation, violence and abuse against women and girls.
28. Member States should ensure effective access for migrant, refugee and asylum-seeking women and girls, with or without children, to shelters for women victims of violence against women and trafficking in human beings, regardless of their legal status.
29. Access to free legal advice and free legal aid available in the language of the beneficiary, should be provided, in order to support migrant, refugee and asylum-seeking women and girls victims of all forms of violence against women and trafficking in human beings through criminal, administrative and civil proceedings, including the pursuit of compensation claims and legal redress against the perpetrators.
30. General and specialist support services should be provided to victims of violence against women and trafficking in human beings, including for those persons accommodated in transit, reception and accommodation facilities. This includes, at a minimum, short- and long-term psychological support and healthcare, including mental healthcare, sexual and reproductive healthcare, immediate medical support and the collection of forensic medical evidence in cases of rape and sexual assault.
31. Member States should allow migrant, refugee and asylum-seeking women and girls access to available compensation schemes, measures or other programmes aimed at the integration or reintegration of victims of violence against women or trafficking in human beings, on the same conditions as nationals.
32. Member States should ensure that migrant, refugee and asylum-seeking women and girls do not suffer any penalty, including loss of lawful migration or refugee status as a consequence of their exploitation as victims of trafficking in human beings or as a consequence of leaving an abusive sponsoring partner or spouse on whom their status was dependant or where they have been taken to another country against their will for the purpose of forced marriage.
33. A multi-agency, victim-centred approach, that prevents secondary victimisation and is aimed at the empowerment of migrant, refugee and asylum-seeking women and girls, inclusive of migrant and refugee women's organisations, should be adopted as regards matters relating to their protection and support.
34. Professional interpreters, legal assistants, and intercultural mediators, including women, should be available to assist migrant, refugee and asylum-seeking women and girls seeking protection, whilst making initial complaints, throughout the justice process and in seeking reparations, as well as in the context of the asylum determination procedures.

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35. Training in violence against women, trafficking in human beings, gender equality and intercultural issues should be adequately funded and provided to relevant authorities and staff including interpreters, legal assistants and intercultural mediators to enable them to:
- 35.1 promptly identify victims, where possible, in collaboration with relevant support organisations, conduct risk assessments, refer to relevant authorities and provide protection, treatment and care for migrant, refugee and asylum-seeking women and girls who are victims of all forms of violence and trafficking in human beings;
 - 35.2 be aware of the difficulties that migrant, refugee and asylum-seeking women and girls may face in disclosing incidents of violence against women and of trafficking in human beings, due to their insecure legal status, unavailability of quality interpretation services, lack of knowledge of their legal rights and lack of knowledge of the relevance of their experiences of violence in relation to migration/asylum decisions, social stigma, and lack of support to them in this regard.
36. Easily accessible mechanisms should be in place in State- and privately-run institutions, such as reception, transit and detention centres, police stations, prisons, childcare institutions, schools and hospitals, counselling centres and shelters, to enable incidents of violence against women and trafficking in human beings to be reported to staff and by staff. Member states should ensure access to age- and gender-sensitive telephone helplines, procedures for referral to other appropriate agencies, and medical and psychological treatment to facilitate reporting.
37. Risk assessment and risk management of violence against migrant, refugee and asylum-seeking women and girls should be conducted, taking specific account of their potential enhanced vulnerable situation owing to their insecure legal status.

State of emergency and crisis management

38. In situations of public health crisis, humanitarian crisis and crisis related to climate change, member States should take into account the increased risk of gender-based violence, trafficking in human beings, poverty and homelessness for migrant, refugee and asylum-seeking women and girls, and should therefore:
- 38.1 take into consideration the situation and needs of migrant, refugee and asylum-seeking women and girls in crisis management and recovery measures, including protection of rights, and notably the right to health, shelter, food security, water, economic empowerment and access to specialist support services for women victims of violence, by qualifying them as essential services and guaranteeing their continuity;
 - 38.2 ensure that measures taken during a crisis and ensuing state of emergency conform with international obligations related to the human rights of migrant, refugee and asylum-seeking women and girls;

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

IV. Arrival

Pre-arrival information

39. Member States should ensure that immigration procedures, including visa issuing procedures, take into account migrant, refugee and asylum-seeking women and girls' specific situations, needs and vulnerabilities and are age- and gender-sensitive.
40. Information should be provided to migrant, refugee and asylum-seeking women and girls about the conditions enabling the legal entry and stay in a member State's territory.

Transit and reception facilities

41. Relevant authorities should ensure that transit, reception, accommodation and screening arrangements are age- and gender-sensitive. The screening process should, in particular, facilitate the identification of victims of violence against women and trafficking in human beings at the earliest possible opportunity and ensure that women's protection claims are processed efficiently.
42. Reception and accommodation facilities should be located in areas where women and girls are safe and can access relevant services, with respect to health, and in particular sexual and reproductive health [care](#), social and legal assistance, education and shopping facilities.
43. The specific needs and safety concerns of victims of all forms of violence against women and trafficking in human beings 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 and clothing should be provided as needed.
44. Staff should be trained in women's human rights, gender equality-related and trauma issues as well as violence against women and the specific needs of migrant, refugee and asylum-seeking women and girls, and the presence of professional women social workers, intercultural mediators, interpreters, police officers and guards should be ensured in these facilities.
45. Migrant, refugee and asylum-seeking women and girls should be offered adequate safe living space. Separate sleeping areas, as well as other safe spaces should be provided for single women with or without children (up to age 18). Other elements to be provided include access to natural and artificial light, sufficient ventilation and heating, a clean bed and bedding, ready access to clean, separate, well-lit shower and toilet facilities, and the availability of a basic sanitary kit / hygiene products free of charge and on a regular basis.

46. Women in transit and reception facilities should have access to a complaint /reporting system, whereby complaints are investigated and referred to the police where relevant, including, where appropriate, access to legal aid.
47. Member states should ensure that transit, reception and accommodation facilities and services are subject to regular independent monitoring, including when provided by private contractors, to ensure compliance with the standards of protection of this Appendix.
48. If migrant, refugee or asylum-seeking women and girls are confined to transit, reception or accommodation centres, member States should also ensure compliance with the provisions contained in the paragraphs of this Appendix related to detention.

Asylum

49. Member States should adopt and implement age- and gender-sensitive-asylum laws, practices and procedures.
50. Women and girls should be entitled to access asylum and protection information and procedures at the borders and elsewhere.
51. The possibility for women and girls to lodge an independent asylum claim should be ensured and they should be made aware of this right.
52. To ensure that gender-based violence against women is properly assessed within the framework of the 1951 United Nations Convention Relating to the Status of Refugees member States should:
- 52.1 ensure that all forms of gender-based violence can be recognized as a form of persecution within the meaning of Article 1A(2) of the 1951 Convention;
 - 52.2 ensure a gender-sensitive interpretation of the 1951 Convention 'grounds' for asylum;
 - 52.3 develop comprehensive gender-sensitive guidelines at all stages of the asylum process, including reception and support services, screening, determination of 'safe' countries for the purpose of accelerated or suspensive procedures, detention, status determination, adjudication and returns; and ensure that border police, migration officials, asylum officers, decision-makers, intercultural mediators and interpreters receive training in respect of such guidelines
53. Women asylum officers should be available to women applicants, who should be informed about this possibility.
54. Separate interviews for women and men from the same family, in the absence of children, should be made possible and their confidentiality should be guaranteed.
55. In processing and determining asylum claims, regard should be given to:

Commented [a8]: - The GEC has no mandate to determine the interpretation that is to be done of an international Convention.

- In art 10 of the Preamble, reference is made to the related Guidelines by the UN High Commissioner for Refugees who is the "guardian" of this Convention. There is no need to interfere in his work nor to the one of Member States with further interpreting directions.

- Moreover, as Art. 1 of this appendix refers to the 1951 Convention so as to define the expressions "international protection" and "refugees", it would be absurd to pretend altering the interpretation of the same Convention in this Recommendation.

> therefore, this paragraph 52 cannot remain as is. Every reference to the 1951 Convention should be eliminated. Otherwise, we would kindly ask for the cancellation of this whole paragraph 52, while reminding that reference is already made to the 1951 Convention in Art.8 of this Recommendation (supra).

55.1 the applicant’s own personal circumstances and individual assessment of risk;

55.2 relevant country of origin information, including in relation to gender equality and women’s rights. This encompasses access to justice, the legal framework, and its implementation; available social, economic, and other support; and any form of multiple and intersecting discrimination and/or patriarchal attitudes that women are likely to encounter.

56. Member States should ensure that women and girls have access to complementary/subsidiary protection, where necessary, if the decision on their refugee status is negative.

Cross-border measures

57. Member States should seek to participate in resettlement and relocation programmes as well as reinforce and promote legal pathways to ensure safe transit for women and girls.

58. Member States are encouraged to fund specific assistance and humanitarian resettlement programmes for women and girls’ victims, or at risk, of violence against women and trafficking in human beings, including trafficking for the purpose of sexual exploitation.

59. The setting up and implementation of effective cross-border protection mechanisms for victims of violence against women or trafficking in human beings, including trafficking for the purpose of sexual exploitation should be encouraged.

V. Residence and Integration

Access to holistic and quality healthcare services

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60. Authorities should ensure that healthcare provision takes into account the situation and personal characteristics of migrant women and girls and is age- and gender sensitive.

61. Essential healthcare services including primary care, urgent and immediate care, palliative care and treatment or assistance necessary for public health reasons should be provided to all migrant, refugee and asylum-seeking women and girls, including migrant women and girls in an irregular situation.

62. Member States should also enable migrant, refugee and asylum-seeking women and girls to access free or affordable, comprehensive, quality, age- and gender-sensitive healthcare services encompassing mental and physical healthcare, including during pregnancy, as well as hygiene products. Member States should also seek to provide such healthcare services to migrant women and girls in an irregular situation.

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63. Migrant, refugee and asylum-seeking girls should be provided with access to age-appropriate healthcare and rights information in a language that they can understand.

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64. Access to available healthcare should not be dependent on obtaining the authorisation of the migration authority nor permission from any person other than the woman concerned. The treatment of minor girls may be subject to the consent of a parent or guardian.
65. Taking into account language and cultural barriers, member States should ensure that women give prior, free and informed consent to any medical treatment.

Social services, social security and housing

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

Integration, social, cultural and political participation

68. Member States should ensure that any child born in their territory is entitled to have their birth registered immediately after birth and is granted a pathway to a nationality.
69. Owing to persisting stereotypes and existing inequalities in access to civic rights and participation in political decision-making, which are even more serious for migrant, refugee and asylum-seeking women, member States should take steps to ensure that migrant, refugee and asylum-seeking women who are entitled to vote and stand for election in local, regional, national or European elections are aware of their rights and encouraged to participate without any form of discrimination.
70. Authorities should encourage and support initiatives aimed at empowering migrant, refugee and asylum-seeking 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 can include participation in local, cultural, women's or other associations, sports clubs, youth clubs and other organisations.
71. Public and private coaching, mentoring and other support programmes aimed at migrant and refugee women and girls should be set up and supported, notably in order to promote positive role models and promising practices of integration.
72. The positive contribution made by migrant and refugee women and girls to society and host communities, the economy and culture should be highlighted and encouraged.

Education, vocational training and life-long learning

73. Authorities should ensure that migrant, refugee and asylum-seeking children have access to education and take measures to reach those migrant, refugee, and asylum-seeking 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. Recognizing that the ability to communicate in the host country's language is essential for integration, member States should ensure access to an adequate number of hours of quality language training and integration programmes to migrant, refugee and asylum-seeking women and girls, to promote their empowerment and protection. Literacy and digital skills courses should also be provided to migrant, refugee and asylum-seeking women and girls corresponding to their needs and as soon as possible after their arrival in the host country.
75. Member States should take steps to facilitate the recognition and validation of migrant and refugee women and girls' existing vocational and academic qualifications and work experience in practice, including through initiatives such as the Council of Europe European Qualifications Passport for Refugees.
76. Migrant, refugee and asylum-seeking women and girls 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.
77. Access to the programmes and measures referred to in paragraphs 74, 75 and 76 for migrants in an irregular situation may be subject to national laws governing eligibility.

Employment

78. Member States should take specific and targeted measures to prevent discrimination and promote access to employment for migrant and refugee women, at an early stage in the migration process, including safe and legal routes to employment pre-arrival.
79. Member States should comply with the obligations regarding the right to work and self-employment for refugee women and girls set out by the United Nations Convention Relating to the Status of Refugees and consider removing barriers to work, for other migrant women and girls after they have been present in the territory for a certain length of time.
80. In respect of *at least* those migrant, refugee, and asylum-seeking women and girls who are permitted to work under the national law of member States, the latter should ensure decent and dignified working conditions, including:
 - 80.1. taking measures to regulate and improve migrant, refugee, and asylum-seeking women and girls' working conditions and to eliminate all forms of labour exploitation and discrimination, including when they are multiple and intersecting;
 - 80.2. supporting and assisting migrant, refugee, and asylum-seeking women and girls where appropriate 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, internships, apprenticeships and job placement programmes;

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

80.4 ensure that migrant, refugee, and asylum-seeking women 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.

81. Member States should implement the provisions of relevant national and international standards directed at protecting migrant, refugee and asylum-seeking women and girls carrying out domestic work from discrimination, exploitation and abuse.

Residence permits

82. Member States should ensure that migrant, refugee and asylum-seeking women and girls who are granted a residence permit on the basis of a family relationship are entitled to social, economic and labour-related rights and entitlements in an autonomous capacity.

83. Migrant, refugee and asylum-seeking women and girls should be made aware of any entitlement to a renewable autonomous residence permit, for example due to their own protection needs under the UN Refugee Convention, their status as a victim of violence against women, a victim of trafficking in human beings, relationship breakdown, or other particularly difficult circumstances

84. The evidentiary criteria and threshold for the granting of autonomous residence permits should be realistic and sensitive to the individual situation of migrant, refugee and asylum-seeking women and responsible statutory agencies should be adequately trained to ensure that migrant, refugee and asylum-seeking women and girls can benefit from these permits.

85. Member States should ensure that migrant, refugee and asylum-seeking women and girls and their dependents are granted a renewable residence permit if their stay is necessary for criminal investigations or proceedings and until at least their conclusions.

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

87. Member States are encouraged to provide security of residence on an independent basis to migrant and refugee women and girls present in a country for a long time, including stateless women and girls.

88. Member States should provide pathways to naturalisation and take measures to ensure that migrant and refugee women and girls are not faced with gender-related obstacles in this regard.

Family reunion

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

- 89.1. apply OR ensure OR refer to a definition of family consistent with article 8 of the European Convention on Human Rights;
- 89.2. ensure that women and girls are aware of their right to family reunion, including as migrant or refugee sponsors, and receive access to legal advice and assistance to pursue that right; and
- 89.3. consider accepting or seeking the transfer of asylum claims to enable the family reunion of migrant, refugee and asylum-seeking women and girls separated on their journeys.
- 89.4. Seek to provide within their national laws, gender-sensitive legal pathways to respect the family life of migrant women lawfully residing on their territory, in particular by providing the immediate and dependent family members with the possibly to migrate with or join them in the host country.

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Detention

90. In respect of all forms of deprivation of liberty, member States should adopt an age- and gender-sensitive approach, which takes into account the individual situation and personal characteristics of migrant, refugee and asylum-seeking women and girls. Member States should also provide the following services to migrant, refugee and asylum-seeking women and girls deprived of their liberty:

- 90.1 access to law enforcement measures and reporting / complaints mechanisms including referral to and investigation of those complaints by police where relevant and access to legal aid;
- 90.2 access to information about their rights, as set forth in paragraph 9 of this Appendix;
- 90.3 access to health-care and hygiene services, telephone helplines and appropriate trauma support and counselling facilities;
- 90.4 access to a telephone, and/or Internet facility to inform a relative or third party of the fact of deprivation of liberty, as well as to consular assistance;

- 90.5 the opportunity to remain in meaningful contact with the outside world, including regular access to a telephone, to their mobile phones or to Internet facilities; and
- 90.6 the presence of women among border, migration and other police or custody staff, as well as among social workers and interpreters.
91. Member States should ensure that conditions in immigration detention centres reflect those listed in paragraphs 41-48 of this Appendix (Transit and reception facilities).
92. Member states should ensure that detention facilities, including administrative detention facilities, are subject to regular independent monitoring.
93. In the event that administrative detention under immigration legislation 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 women and girls within detention facilities, where their privacy is guaranteed and which cater adequately for their specific needs. Unaccompanied or separated girls should not, as a general rule, be detained.
94. Effective alternatives to administrative detention should be provided in any event for migrant, refugee and asylum-seeking women and girls who have been victims of torture, violence against women or trafficking in human beings, pregnant and nursing women, elderly women, and women with disabilities.
95. Migrant, refugee and asylum-seeking women and girls in administrative detention should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation. Care should be taken in the design and layout of such premises to avoid, as far as possible, any impression of a carceral environment. Within the detention centre, migrant refugee and asylum-seeking women and girls should be restricted in their freedom of movement as little as possible.
96. Migrant, refugee and asylum-seeking women and girls in administrative detention should be offered appropriate activities, and they should in principle have free access to outdoor exercise throughout the day (i.e. considerably more than one hour per day).

VI. Returns

97. Voluntary returns should be the preferred option. Returns should always be in safety and dignity, in line with the principle of *non-refoulement*. Member States should therefore ensure that migrant and asylum-seeking women and girls are not returned or removed to a country where their life would be at risk or where they might be subjected to acts of torture or inhuman or degrading treatment or punishment, including those acts which disproportionately affect women or are directed at them because they are women.

98. In these situations, due regard should be given to relevant human rights obligations, notably the right to family life, in accordance with international law and the case law of the European Court of Human Rights; the best interest of the child, if applicable; and to the state of health of the person, including for example pregnancy.

99. Recognising the particular difficulties that victims of violence against women and of trafficking in human beings face in fully disclosing the grounds for their international protection claim, member States should:

99.1 ensure a process that protects women and girls against the risk of *refoulement*;

99.2 ensure that accelerated and non-suspensive procedures are not implemented under any circumstance, until such a process has been completed to guarantee an individual assessment of the international protection needs in conformity with the provisions of this Appendix, especially if there are any signs of violence against women or trafficking in human beings.

100. Member States should ensure the possibility of suspending expulsion measures of migrant women based on their dependent status on a spouse, partner, parent, or other family member, in order to enable them to apply for an independent residence permit.

101. In order to facilitate the reintegration of returnee women, member States should take the necessary measures to allow for the recognition of eventual diplomas or qualifications obtained.

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3. International organisations

UNICEF

Sheeba HARMA

07/07/2021



Strasbourg, 4 June 2021

GEC-MIG (2021) 3 rev 1

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

**Draft Recommendation on protecting the rights of migrant, refugee
and asylum-seeking women**

Working document in view of the internal and external consultation

04.06.2021- 16.07.2021

Draft Recommendation on protecting the rights of migrant, refugee, asylum-seeking women and girls

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 equality¹ 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. 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;
5. 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), and notably its strategic objective to identify and address vulnerabilities throughout asylum and migration procedures;
6. Bearing in mind the obligations and commitments undertaken by states, including 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 (CETS No. 126, 1987); 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);
7. 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; Recommendation CM/Rec(2019)4 on supporting

¹ Gender equality entails equal rights for women and men, girls and boys as well as the same visibility, empowerment, responsibility, and participation in all spheres of public and private life. It also implies equal access to and distribution of resources between women and men. (Council of Europe Gender Equality Strategy 2018-2023).

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;

8. Recalling the United Nations Convention Relating to the Status of Refugees (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); 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. Noting 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); CEDAW General Recommendation No. 35 on gender-based violence against women; CEDAW Recommendation No.38 on trafficking in women and girls in the context of global migration (2020); as well as 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 human beings, 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. Bearing in mind the importance of the overall application and impact of the United Nations 2030 Agenda for Sustainable Development, in particular Sustainable Development Goal 5 (“Achieve gender equality and empower all women and girls”); Sustainable Development Goal 10.7 (“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”);
12. 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;
13. Acknowledging the positive contribution that migrant, refugee and asylum-seeking women and girls may bring to European societies and communities;

14. Considering the profound changes in migration patterns and in the situation of migrant, refugee and asylum-seeking women and girls, the fact that their numbers have reached the highest ever in the 2010's and the significant developments in gender equality-, migration- and asylum-related concepts, policies and legal instruments at all levels;
15. Recognising that while existing international human rights standards apply to all persons, and bearing in mind the possible differences in legal status of the persons concerned, 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;
16. Recalling the joint A call to action – Protecting children on the move starts with better data by UNICEF, UNHCR, IOM, Eurostat and OECD which urges Member States to prioritize actions to address evidence gaps on their age and sex; where they come from, where they are going, whether they move with their families or alone, how they fare along the way, what their vulnerabilities are;
17. Noting that the migration phenomenon is gendered, with gender roles, relations and inequalities influencing who migrates, why and how;
18. Underlining that women are exposed to a continuum of violence that is specific to them because they are women, or which affects them disproportionately, and that such violence is, and it is rooted in gender inequalities, in this sense, gender-based; recognising with grave concern, that migrant, refugee and asylum-seeking women and girls are particularly exposed to such forms of violence and exploitation in their countries of origin, during their journey, in transit and/or in destination countries, which may constitute a serious violation of their human rights, especially as migrant, refugee and asylum-seeking women and girls face difficulties and structural barriers in overcoming such violence and exploitation in their diverse forms;
19. 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 including, as appropriate, migrant Roma and Traveller women and girls.
20. Considering that the migration to Europe is a dangerous journey, with refugees and migrants women and girls facing high levels of violence, and exploitation along the way, and those risks continue to be present upon arrival to Europe, exacerbated by the additional risks and vulnerabilities that COVID-19 has brought, often referred as 'shadow pandemic' to express the increase in all forms of GBV against women and girls, including refugees and migrants, many of whom were already facing economic hardship and poverty, limited access to basic services, and poor living conditions, and impacts

sexual and reproductive health issues (SRH), caregiving burden, disruption of education and economic distress and hindered access to lifesaving services;

21. Aware of the multiple and intersecting barriers further exacerbated by COVID-19 pandemic, that migrant, refugee and asylum-seeking women and girls face in terms of access to and exercise of rights, access to services, participation and leadership and of the need to facilitate their integration and full participation in the economic, social, civic, political and cultural life;
22. Wishing therefore to review and update its Recommendation No. R(79)10 to member States on women migrants, henceforth replaced by the present instrument;
23. Recommends that the governments of member States:
 1. Take all necessary measures to promote and apply the principles set out in the Recommendation and its appendix, aimed at ensuring that migrant, refugee and asylum-seeking women and girls can effectively access and exercise their rights;
 2. Ensure, by appropriate means and action, including where appropriate translation, a wide dissemination (in accessible formats) of this Recommendation among relevant authorities and stakeholders, which are encouraged to take measures to implement it;
 3. Examine periodically, within the competent Council of Europe steering committee(s) and bodies, the measures taken, 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 live in another, including citizens of Council of Europe member States with a migrant background, and stateless women and girls.

'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 migrant, refugee and asylum-seeking women and girls do not face discrimination on any ground.
3. Member States should apply an intersectional approach in all measures referred to in this Appendix, notably bearing in mind the different situations and individual characteristics of migrant, refugee and asylum-seeking women and girls.
4. Measures should be established to safeguard the fundamental rights of undocumented migrants and facilitate their access to essential services including, at a minimum, protection and complaint mechanisms and all support services for victims of violence against women and trafficking in human beings, without fearing any reporting to migration authorities.
5. Within both migrant and host countries and communities, member States should:
 - 5.1. pay special attention to measures aimed at dismantling all forms of stereotypes which have a negative impact on the rights of migrant, refugee and asylum-seeking women and girls;

- 5.2. implement awareness-raising and educational measures in respect of gender equality and human rights to promote dialogue.

Girls

6. Member States should adopt a child rights-based approach to migrant, refugee and asylum-seeking children, which takes account of the age and specific situations and needs of girls, including ensuring suitable and safe alternative care arrangements when they are separated from their parents or caregiver or when they are unaccompanied minors.
7. Member States should ensure that child protection welfare actors take primary responsibility for determining the most suitable age- and gender-appropriate continuum of care for all children on the move.
8. Members States should mainstream gender considerations across policies, guidance, and capacity building on unaccompanied and separated children in line with the scope and mandate of each national authority to:
- strengthen identification procedures, including age assessment when appropriate, in line with international standards
 - ensure full respect for the best interest of the child by considering the specific situation of every girl, whether she is visibly unaccompanied, travelling within another family, or married
 - ensure that reception systems are appropriate to the gender and age of unaccompanied and separated girls and boys, and include alternative care solutions
9. Member States should support the development, dissemination, uptake and harmonization of identification tools and mechanisms, as well as training materials, to enhance the skills of front-line workers and other specialists on the timely and adequate identification of unaccompanied and separated girls.
10. 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 an independent guardian. Spouses should never be appointed as guardian of an underage spouse.
11. Member States should promote the inter-sectoral and interinstitutional coordination of police forces, border-management, asylum offices and protection actors to ensure the timely referral of unaccompanied and separated girls to specialized, available and accessible social protection institutions.
12. Member States should ensure continued access to essential services for migrant, refugee and asylum-seeking girls to support their transition to adulthood beyond the age of 18, including access to education and healthcare, as well as support for their integration and social participation.

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Integrating specific needs and issues of girls

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UNICEF's analysis "Making the Invisible Visible: the identification of unaccompanied and separated girls in Bulgaria, Greece, Italy and Serbia" which aims to shed light on the situation of unaccompanied girls, revealed that under-age married girls have their spouses assigned as guardians which has a risk of conflict of interest, whereas they should be considered 'unaccompanied' and assigned to an independent guardian. Member States should conduct a Best Interest Assessment/ Determination (BIA/BID) and can, based on that, allow children to be treated as married.

13. Member States should improve and harmonize the collection, analysis and use of data on unaccompanied and separated children, including gender-specific considerations such as reported marital status, pregnancy, and children.

Information, empowerment, awareness raising and promotion of human rights

14. To empower migrant, refugee and asylum-seeking women and girls and enable them to access their rights, they should be provided with relevant and accessible gender and culturally-sensitive information and advice in a way and a language that they understand, covering, at least:

- 9.1 Their fundamental human rights 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 violence or other violations of rights by State authorities or private contractors acting on behalf of the State, including rights to civil remedies and compensation;
- 9.3 Protection services available in the host country against all forms of violence against women and trafficking in human beings, including access to general and specific support services, specialist support provided by NGOs and legal aid;
- 9.4 Available and accessible public services in the host country, notably healthcare including mental and sexual and reproductive health and rights, Covid-19 public health measures, comprehensive sexuality education, psycho-social support, education, language and digital training, vocational training, integration programmes, housing and employment.

15. Member States should provide resources and tools for the empowerment and support of migrant, refugee and asylum-seeking women and girls, based on their needs and personal characteristics, in order for them to benefit to as great an extent possible from the social services and welfare available.

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

17. Member States should ensure that child-friendly, gender and culturally sensitive information is available at the main entry and transit points to inform children and accompanying adults about their rights and responsibilities.

18. Member States should support the implementation of safe and confidential spaces where girls and boys can receive information and disclose any vulnerability in an appropriate manner.

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Access to justice including legal aid

12. Migrant, refugee and asylum-seeking women and girls should have access to the different national and international civil, administrative, and criminal remedies, as well as legal aid, to effectively exercise their rights and/or take action in cases of non-compliance with those rights.
13. Member States should ensure that refugee and asylum-seeking women and girls receive adequate support as claimants, defendants, or witnesses throughout civil, administrative, or criminal proceedings.
14. An intersectional and gender-sensitive approach to individual migrant, refugee and asylum-seeking women and girls should be adopted when determining/assessing their credibility in civil, administrative, and criminal proceedings, particularly where decisions have an impact on their legal status.

Artificial intelligence, automated decision-making, and data protection

15. 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.
16. 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:
 - 16.1 border and immigration control decision- making, including decisions relating to entry or return;
 - 16.2 migration management, including the use of biometric information, such as DNA testing
 - 16.3 policing and security of migrant, refugee and asylum-seeking women and girls, and services related to protection and prevention of crimes;
 - 16.4 the provision of services to migrant, refugee and asylum-seeking women and girls.
17. Migrant, refugee and asylum-seeking women and relevant civil society organisations should be given the opportunity to participate in discussions and decision-making around the development and deployment of new technologies affecting them.
18. Bearing in mind the particular situations of vulnerability of migrant, refugee and asylum-seeking women and girls, relevant authorities should:
 - 18.1 ensure the confidentiality and security of personal data in accordance with their national legislation and applicable international obligations;

18.2 not transfer any such data to the country of origin without explaining to the affected person, in a language that they understand, which data is being transferred and under which conditions, including providing the affected person the opportunity to object.

Co-operation with civil society

19. Member States should co-operate with and support with sustained funding for migrant and refugee women's organisations, women's rights organisations and other civil society organisations that uphold the universal human rights of migrant and refugee and asylum-seeking women and girls, and that defend and empower them.
20. Mechanisms should be established to ensure that migrant and refugee women's organisations, including where appropriate Roma and Travellers' women's organisations, are consulted, in particular when devising migration, asylum and integration policies which affect them.
21. Where member states rely on civil society to implement services for migrant and refugee women and girls, standards should be set and monitored, and funding should be provided with a long-term strategy.

Data collection, research and monitoring

21. Member States should support the collection of data, disaggregated notably by age and sex, on migration, refugee and asylum issues, including regarding victims of violence against women and of trafficking in human beings, and ensuring compliance with applicable data protection requirements.
22. 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.
23. 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.
24. Members States should promote further research and learning on the specific needs and concerns of unaccompanied girls beyond identification, including the documentation of best practices and the systematic use of sex- and age-disaggregated data on unaccompanied and separated children.

III. Protection and support

25. Member States should protect migrant, refugee, and asylum-seeking women and girls from all forms of violence against women and trafficking in human beings.

26. Measures should be taken to protect migrant, refugee and asylum-seeking women and girls from hate speech and sexism.
27. Member States should develop specific measures to address the sexual exploitation of migrant, refugee and asylum-seeking women and girls, in particular the demand for such exploitation, including protective, punitive, preventive and educational measures.
28. Member States should ensure that culture, custom, religion, tradition or so-called 'honour' shall not be considered as justification for any exploitation or acts of violence against women and girls.
29. Member States should ensure effective access for migrant, refugee and asylum-seeking women and girls, with or without children, to shelters for women victims of violence against women and trafficking in human beings, regardless of their legal status.
30. Member States, especially those that constitute a point of arrival for migrants, should ensure effective access to immediate sexual and reproductive health services, safe spaces and psychosocial support to support post-sexual violence recovery, giving the high incidence of women and girls suffering sexual violence in the migration routes to Europe.
31. Access to free legal advice and free legal aid available in the language of the beneficiary, should be provided, in order to support migrant, refugee and asylum-seeking women and girls victims of all forms of violence against women and trafficking in human beings through criminal, administrative and civil proceedings, including the pursuit of compensation claims and legal redress against the perpetrators.
32. General and specialist support services should be provided to victims of violence against women and trafficking in human beings, including for those persons accommodated in transit, reception and accommodation facilities. This includes, at a minimum, short- and long-term psychological support and healthcare, including mental healthcare, sexual and reproductive healthcare, immediate medical support and the collection of forensic medical evidence in cases of rape and sexual assault, if required and with the consent of the survivor. Member states should ensure programs to support women and girls who are pregnant as a result of rape.
33. Member States should invest in targeted campaigns to raise the awareness of migrant and refugee women and girls on the existence, functioning and modality to access the services mentioned above.
34. Member States should allow migrant, refugee and asylum-seeking women and girls access to available compensation schemes, measures or other programmes aimed at the integration or reintegration of victims of violence against women or trafficking in human beings, on the same conditions as nationals.
35. Member States should ensure that migrant, refugee and asylum-seeking women and girls do not suffer any penalty, including loss of lawful migration or refugee status as a consequence of their exploitation as victims of trafficking in human beings or as a consequence of leaving an abusive sponsoring partner or spouse on whom their status

was dependant or where they have been taken to another country against their will for the purpose of forced marriage.

36. A multi-agency, survivor-centred approach, that prevents secondary victimisation and is aimed at the empowerment of migrant, refugee and asylum-seeking women and girls, inclusive of migrant and refugee women's organisations, should be adopted as regards matters relating to their protection and support.
37. Professional interpreters, legal assistants, and intercultural mediators, including women, should be available to assist migrant, refugee and asylum-seeking women and girls seeking protection, whilst making initial complaints, throughout the justice process and in seeking reparations, as well as in the context of the asylum determination procedures.
38. Training in violence against women, trafficking in human beings, gender equality and intercultural issues should be adequately funded and provided to relevant authorities and staff including interpreters, professionals working in points of arrival/disembarkation and first assistance to migrants, reception centres, legal and judicial assistants, law enforcement actors, medical and psychological professionals and intercultural mediators to enable them to:
- 35.1 Within the informed consent and will of the survivor, foster an environment to facilitate disclosure of violence by survivors where possible, in collaboration with relevant support organisations, conduct risk assessments, refer to relevant authorities and provide protection, treatment and care for migrant, refugee and asylum-seeking women and girls who are victims of all forms of violence and trafficking in human beings;
- 35.2 be aware of the difficulties that migrant, refugee and asylum-seeking women and girls may face in disclosing incidents of violence against women and of trafficking in human beings, due to their insecure legal status, unavailability of quality interpretation services, lack of knowledge of their legal rights and lack of knowledge of the relevance of their experiences of violence in relation to migration/asylum decisions, social stigma, and lack of support to them in this regard, bearing in mind the criticality of survivor centered approach.
- 35.3 GBV first-responders, including those for women and girls survived to human trafficking, should be trained to provide services in a multi-cultural perspective, taking into account the specific needs of migrant and refugee women and girls, and collaborate with linguistic and cultural mediators, which should be an integral part of the service system.
36. Easily accessible mechanisms should be in place in State- and privately-run institutions, such as reception, transit and detention centres, police stations, prisons, childcare institutions, schools and hospitals, counselling centres and shelters, to enable incidents of violence against women and trafficking in human beings to be reported to staff and by staff. Member states should ensure access to age- and gender-sensitive telephone

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helplines, procedures for referral to other appropriate agencies, and medical and psychological treatment to facilitate reporting.

37. Risk assessment and risk management of violence against migrant, refugee and asylum-seeking women and girls should be conducted, taking specific account of their potential enhanced vulnerable situation owing to their insecure legal status.

State of emergency and crisis management

38. In situations of public health crisis, humanitarian crisis and crisis related to climate change, member States should take into account the increased risk of gender-based violence, trafficking in human beings, poverty and homelessness for migrant, refugee and asylum-seeking women and girls, and should therefore:

38.1 take into consideration the situation and needs of migrant, refugee and asylum-seeking women and girls in crisis management and recovery measures, including protection of rights, and notably the right to health, shelter, food security, water, economic empowerment, lifesaving information and access to specialist support services for women victims of violence, by qualifying them as essential services and guaranteeing their continuity;

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

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

IV. Arrival

Pre-arrival information

39. Member States should ensure that immigration procedures, including visa issuing procedures, take into account migrant, refugee and asylum-seeking women and girls' specific situations, needs and vulnerabilities and are age- and gender-sensitive.

40. Information should be provided to migrant, refugee and asylum-seeking women and girls about the conditions enabling the legal entry and stay in a member State's territory.

Transit and reception facilities

41. Relevant authorities should ensure that transit, reception, accommodation and screening arrangements are age-and gender-sensitive. The screening process should, in particular, be prepared to handle disclosures of violence in a safe, confidential and survivor centered manner, by victims of violence against women and trafficking in human beings at the earliest possible opportunity and ensure that women's protection claims are processed efficiently.

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42. Reception and accommodation facilities should be located in areas where women and girls are safe and can access relevant services, and information, with respect to health, and in particular sexual and reproductive health, social and legal assistance, education and shopping facilities. In light of the current COVID-19 PANDEMIC, quarantine facilities should also provide effective and safe access to information and to all the necessary services.
43. The specific needs and safety concerns of victims of all forms of violence against women and trafficking in human beings 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 and clothing should be provided as needed.
44. Staff should be trained in women's human rights, survivor centered approach, gender equality-related and trauma issues as well as violence against women and the specific needs of migrant, refugee and asylum-seeking women and girls, and the presence of professional women social workers, intercultural mediators, interpreters, police officers and guards should be ensured in these facilities.
45. Migrant, refugee and asylum-seeking women and girls should be offered adequate safe living space. Separate sleeping areas, as well as other safe spaces should be provided for single women with or without children (up to age 18). Other elements to be provided include access to natural and artificial light, sufficient ventilation and heating, a clean bed and bedding, ready access to clean, separate, well-lit shower and toilet facilities, and the availability of a basic sanitary kit / hygiene products free of charge and on a regular basis.
46. Women in transit and reception facilities should have access to a complaint /reporting system, whereby complaints are investigated and referred to the police where relevant, including, where appropriate, access to legal aid.
47. Member states should ensure that transit, reception and accommodation facilities and services are subject to regular independent monitoring, including when provided by private contractors, to ensure compliance with the standards of protection of this Appendix.
48. If migrant, refugee or asylum-seeking women and girls are confined to transit, reception or accommodation centres, member States should also ensure compliance with the provisions contained in the paragraphs of this Appendix related to detention.

Asylum

49. Member States should adopt and implement age- and gender-sensitive-asylum laws, practices and procedures.
50. Women and girls should be entitled to access asylum and protection information and procedures at the borders and elsewhere.

51. The possibility for women and girls to lodge an independent asylum claim should be ensured and they should be made aware of this right.
52. To ensure that gender-based violence against women is properly assessed within the framework of the 1951 United Nations Convention Relating to the Status of Refugees member States should:
 - 52.1 ensure that all forms of gender-based violence can be recognized as a form of persecution within the meaning of Article 1A(2) of the 1951 Convention;
 - 52.2 ensure a gender-sensitive interpretation of the 1951 Convention 'grounds' for asylum;
 - 52.3 develop comprehensive gender-sensitive guidelines at all stages of the asylum process, including reception and support services, screening, determination of 'safe' countries for the purpose of accelerated or suspensive procedures, detention, status determination, adjudication and returns; and ensure that border police, migration officials, asylum officers, decision-makers, intercultural mediators and interpreters receive training in respect of such guidelines
53. Women asylum officers should be available to women applicants, who should be informed about this possibility.
54. Separate interviews for women and men from the same family, in the absence of children, should be made possible and their confidentiality should be guaranteed. Same principle should be applied to underage married girls, whose spouse might be appointed as her guardian or who might be trafficked under the umbrella of an unrelated adult/family
55. In processing and determining asylum claims, regard should be given to:
 - 55.1 the applicant's own personal circumstances and individual assessment of risk;
 - 55.2 relevant country of origin information, including in relation to gender equality and women's rights. This encompasses access to justice, the legal framework, and its implementation; available social, economic, and other support; and any form of multiple and intersecting discrimination and/or patriarchal attitudes that women are likely to encounter.
56. Member States should ensure that women and girls have access to complementary/subsidiary protection, where necessary, if the decision on their refugee status is negative.

Cross-border measures

57. Member States should seek to participate in resettlement and relocation programmes as well as reinforce and promote legal pathways to ensure safe transit for women and girls.

58. Member States are encouraged to fund specific assistance and humanitarian resettlement programmes for women and girls' victims, or at risk, of violence against women and trafficking in human beings, including trafficking for the purpose of sexual exploitation.
59. The setting up and implementation of effective cross-border protection mechanisms for victims of violence against women or trafficking in human beings, including trafficking for the purpose of sexual exploitation should be encouraged.

V. Residence and Integration

Access to holistic and quality health services, including sexual and reproductive health and rights

60. Authorities should ensure that healthcare provision takes into account the situation and personal characteristics of migrant women and girls and is age- and gender sensitive.
61. Essential healthcare services including primary care, urgent and immediate care, post rape care, palliative care and treatment or assistance necessary for public health reasons should be provided to all migrant, refugee and asylum-seeking women and girls, including migrant women and girls in an irregular situation and temporarily residing in quarantine facilities.
62. Member States should also enable migrant, refugee and asylum-seeking women and girls to access free or affordable, comprehensive, quality, age- and gender-sensitive health services encompassing mental, sexual and reproductive health, including during pregnancy, as well as hygiene products. Member States should also seek to provide such health services to migrant women and girls in an irregular situation.
63. Migrant, refugee and asylum-seeking girls should be provided with access to age-appropriate and culturally sensitive sexual and reproductive health and rights information in a language that they can understand.
64. Access to available healthcare should not be dependent on obtaining the authorisation of the migration authority nor permission from any person other than the woman concerned. The treatment of minor girls may be subject to the consent of a parent or an independent guardian, always considering the best interest of the child.
65. Taking into account language and cultural barriers, member States should ensure that women give prior, free and informed consent to any medical treatment.
66. Member states should ensure that migrant and refugee women and girls regardless of their status have access to age and culturally appropriate violence (GBV) response services, including medical, psychosocial, security and legal services. Access to safe houses/shelters should be ensure to women and their children.

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Social services, social security and housing

67. In all decisions relating to the safety and welfare of migrant, refugee and asylum-seeking women and girls, including decisions taken by social services and in respect of social security, their needs should be a primary consideration.
68. Member States should ensure that migrant women lawfully residing in the country are given a treatment not less favourable than that accorded to nationals regarding access to housing and rents, [shelters, and social assistance schemes](#).

Integration, social, cultural and political participation

69. Member States should ensure that any child born in their territory is entitled to have their birth registered immediately after birth and is granted a pathway to a nationality.
70. Owing to persisting stereotypes and existing inequalities in access to civic rights and participation in political decision-making, which are even more serious for migrant, refugee and asylum-seeking women, member States should take steps to ensure that migrant, refugee and asylum-seeking women who are entitled to vote and stand for election in local, regional, national or European elections are aware of their rights and encouraged to participate without any form of discrimination.
71. Authorities should encourage and support initiatives aimed at empowering migrant, refugee and asylum-seeking 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 can include participation in local, cultural, women's or other associations, sports clubs, youth clubs and other organisations.
71. Public and private coaching, mentoring and other support programmes aimed at migrant and refugee women and girls should be set up and supported, notably in order to promote positive role models and promising practices of integration.
72. The positive contribution made by migrant and refugee women and girls to society and host communities, the economy and culture should be highlighted and encouraged.

Education, vocational training and life-long learning

73. Authorities should ensure that migrant, refugee and asylum-seeking children have access to education and take measures to reach those migrant, refugee, and asylum-seeking 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. Recognizing that the ability to communicate in the host country's language is essential for integration, member States should ensure access to an adequate number of hours of quality language training and integration programmes to migrant, refugee and asylum-seeking women and girls, to promote their empowerment and protection. Literacy and

digital skills courses should also be provided to migrant, refugee and asylum-seeking women and girls corresponding to their needs and as soon as possible after their arrival in the host country.

75. Member States should take steps to facilitate the recognition and validation of migrant and refugee women and girls' existing vocational and academic qualifications and work experience in practice, including through initiatives such as the Council of Europe European Qualifications Passport for Refugees.
76. Migrant, refugee and asylum-seeking women and girls 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.
77. Access to the programmes and measures referred to in paragraphs 74, 75 and 76 for migrants in an irregular situation may be subject to national laws governing eligibility.

Employment

78. Member States should take specific and targeted measures to prevent discrimination and promote access to employment for migrant and refugee women, at an early stage in the migration process, including safe and legal routes to employment pre-arrival.
79. Member States should comply with the obligations regarding the right to work and self-employment for refugee women and girls set out by the United Nations Convention Relating to the Status of Refugees and consider removing barriers to work, for other migrant women and girls after they have been present in the territory for a certain length of time.
80. In respect of *at least* those migrant, refugee, and asylum-seeking women and girls who are permitted to work under the national law of member States, the latter should ensure decent and dignified working conditions, including:
 - 80.1. taking measures to regulate and improve migrant, refugee, and asylum-seeking women and girls' working conditions and to eliminate all forms of labour exploitation and discrimination, including when they are multiple and intersecting;
 - 80.2. supporting and assisting migrant, refugee, and asylum-seeking women and girls where appropriate 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, internships, apprenticeships and job placement programmes;
 - 80.3. in order to facilitate access to the labour market, take steps to ensure that migrant, refugee and asylum-seeking workers have access to work/life balance measures including maternity, paternity and parental leave, flexible working conditions where possible, and ensure access to and enjoyment of child-care facilities on an equal footing with national workers; and

- 80.4 ensure that migrant, refugee, and asylum-seeking women 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.
81. Member States should implement the provisions of relevant national and international standards directed at protecting migrant, refugee and asylum-seeking women and girls carrying out domestic work from discrimination, exploitation and abuse.

Residence permits

82. Member States should ensure that migrant, refugee and asylum-seeking women and girls who are granted a residence permit on the basis of a family relationship are entitled to social, economic and labour-related rights and entitlements in an autonomous capacity.
83. Migrant, refugee and asylum-seeking women and girls should be made aware of any entitlement to a renewable autonomous residence permit, for example due to their own protection needs under the UN Refugee Convention, their status as a victim of violence against women, a victim of trafficking in human beings, relationship breakdown, or other particularly difficult circumstances
84. The evidentiary criteria and threshold for the granting of autonomous residence permits should be realistic and sensitive to the individual situation of migrant, refugee and asylum-seeking women and responsible statutory agencies should be adequately trained to ensure that migrant, refugee and asylum-seeking women and girls can benefit from these permits.
85. Member States should ensure that migrant, refugee and asylum-seeking women and girls and their dependents are granted a renewable residence permit if their stay is necessary for criminal investigations or proceedings and until at least their conclusions.
86. Member States should facilitate the possibility for victims of forced marriage brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, to regain such status.
87. Member States are encouraged to provide security of residence on an independent basis to migrant and refugee women and girls present in a country for a long time, including stateless women and girls.
88. Member States should provide pathways to naturalisation and take measures to ensure that migrant and refugee women and girls are not faced with gender-related obstacles in this regard.

Family reunion

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

- 89.1. adopt a definition of family consistent with article 8 of the European Convention on Human Rights;
- 89.2. ensure that women and girls are aware of their right to family reunion, including as migrant or refugee sponsors, and receive access to legal advice and assistance to pursue that right; and
- 89.3. consider accepting or seeking the transfer of asylum claims to enable the family reunion of migrant, refugee and asylum-seeking women and girls separated on their journeys.
- 89.4. Seek to provide within their national laws, gender-sensitive legal pathways to respect the family life of migrant women lawfully residing on their territory, in particular by providing the immediate and dependent family members with the possibly to migrate with or join them in the host country.
- 89.5. Ensure the right the right of women to remain legally in the country in cases in which separation from a spouse is necessary following family reunification in particular due to issues around domestic violence.
- 89.6.

Detention

90. In respect of all forms of deprivation of liberty, member States should adopt an age- and gender-sensitive approach, which takes into account the individual situation and personal characteristics of migrant, refugee and asylum-seeking women and girls. Member States should also provide the following services to migrant, refugee and asylum-seeking women and girls deprived of their liberty:
 - 90.1 access to law enforcement measures and reporting / complaints mechanisms including referral to and investigation of those complaints by police where relevant and access to legal aid;
 - 90.2 access to information about their rights, as set forth in paragraph 9 of this Appendix;
 - 90.3 access to health-care and hygiene services, telephone helplines and appropriate trauma support and counselling facilities;
 - 90.4 access to a telephone, and/or Internet facility to inform a relative or third party of the fact of deprivation of liberty, as well as to consular assistance;
 - 90.5 the opportunity to remain in meaningful contact with the outside world, including regular access to a telephone, to their mobile phones or to Internet facilities; and
 - 90.6 the presence of women among border, migration and other police or custody staff, as well as among social workers and interpreters.

91. Member States should ensure that conditions in immigration detention centres reflect those listed in paragraphs 41-48 of this Appendix (Transit and reception facilities).
92. Member states should ensure that detention facilities, including administrative detention facilities, are subject to regular independent monitoring.
93. In the event that administrative detention under immigration legislation 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 women and girls within detention facilities, where their privacy is guaranteed and which cater adequately for their specific needs. Unaccompanied or separated girls should not, as a general rule, be detained.
94. Effective alternatives to administrative detention should be provided in any event for migrant, refugee and asylum-seeking women and girls who have been victims of torture, violence against women or trafficking in human beings, pregnant and nursing women, elderly women, and women with disabilities.
95. Migrant, refugee and asylum-seeking women and girls in administrative detention should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation. Care should be taken in the design and layout of such premises to avoid, as far as possible, any impression of a carceral environment. Within the detention centre, migrant refugee and asylum-seeking women and girls should be restricted in their freedom of movement as little as possible.
96. Migrant, refugee and asylum-seeking women and girls in administrative detention should be offered appropriate activities, and they should in principle have free access to outdoor exercise throughout the day (i.e. considerably more than one hour per day).

VI. Returns

97. Voluntary returns should be the preferred option. Returns should always be in safety and dignity, in line with the principle of *non-refoulement*. Member States should therefore ensure that migrant and asylum-seeking women and girls are not returned or removed to a country where their life would be at risk or where they might be subjected to acts of torture or inhuman or degrading treatment or punishment, including those acts which disproportionately affect women or are directed at them because they are women.
98. In these situations, due regard should be given to relevant human rights obligations, notably the right to family life, in accordance with the case law of the European Court of Human Rights; the best interest of the child, if applicable; and to the state of health of the person, including for example pregnancy.

99. Recognising the particular difficulties that victims of violence against women and of trafficking in human beings and face in fully disclosing the grounds for their international protection claim, member States should:
- 99.1 ensure a process that protects women and girls against the risk of *refoulement*;
 - 99.2 ensure that accelerated and non-suspensive procedures are not implemented under any circumstance, until such a process has been completed to guarantee an individual assessment of the international protection needs in conformity with the provisions of this Appendix, especially if there are any signs of violence against women or trafficking in human beings.
100. Member States should ensure the possibility of suspending expulsion measures of migrant women based on their dependent status on a spouse, partner, parent, or other family member, in order to enable them to apply for an independent residence permit.
101. In order to facilitate the reintegration of returnee women, member States should take the necessary measures to allow for the recognition of eventual diplomas or qualifications obtained.

4. NGOs and other organisations



Strasbourg, le 4 juin 2021

GEC-MIG (2021)3 rev 1

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

**Projet de recommandation sur la protection des droits des femmes et
des filles migrantes, réfugiées et demandeuses d'asile**

Document de travail en vue de la consultation interne et externe

04.06.2021 – 16.07.2021

Projet de recommandation sur la protection des droits des femmes et des filles migrantes, réfugiées et demandeuses d'asile

1. Le Comité des Ministres, en vertu de l'article 15.b du Statut du Conseil de l'Europe,
2. Considérant que le but du Conseil de l'Europe est de réaliser une union plus étroite entre ses États membres, notamment en promouvant des normes communes et en développant des actions dans le domaine des droits humains ;
3. Rappelant que l'égalité entre les femmes et les hommes¹ est essentielle pour assurer la protection des droits humains, le fonctionnement de la démocratie et la bonne gouvernance, le respect de l'État de droit et la promotion du bien-être de toutes et tous;
4. Tenant compte de la Stratégie du Conseil de l'Europe pour l'égalité entre les femmes et les hommes 2018-2023 et de son objectif stratégique de protection des droits des femmes et des filles migrantes, réfugiées et demandeuses d'asile;
5. Agissant conformément au Plan d'action du Conseil de l'Europe sur la protection des personnes vulnérables dans le contexte des migrations et de l'asile en Europe (2021-2025) et notamment, à son objectif stratégique consistant à identifier les vulnérabilités et à y remédier tout au long des procédures d'asile et de migration.
6. Ayant à l'esprit les obligations et les engagements pris par les Etats, notamment, la Convention de sauvegarde des droits de l'homme et des libertés fondamentales (STE n° 5, 1950) et ses Protocoles, à la lumière de la jurisprudence pertinente de la Cour européenne des Droits de l'Homme ; la Charte sociale européenne (STE n° 35, 1961, révisée en 1996, STE n° 163) ; la Convention européenne pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (STCE n° 126, 1987) ; la Convention du Conseil de l'Europe sur la lutte contre la traite des êtres humains (STCE n° 197, 2005), la Convention du Conseil de l'Europe sur la protection des enfants contre l'exploitation et les abus sexuels (STCE n° 201, 2007) et la Convention du Conseil de l'Europe sur la prévention et la lutte contre la violence à l'égard des femmes et la violence domestique (STCE n° 210, Convention d'Istanbul, 2011);
7. Rappelant les recommandations suivantes du Comité des Ministres aux États membres du Conseil de l'Europe : Rec(2002)5 sur la protection des femmes contre la violence ; CM/Rec(2010)10 sur le rôle des femmes et des hommes dans la prévention et la résolution des conflits et la consolidation de la paix; CM/Rec(2015)1 sur l'intégration interculturelle ; CM/Rec(2019)1 sur la prévention et la lutte contre le sexisme ; CM/Rec(2019)4 sur l'aide

1 L'égalité entre les femmes et les hommes implique des droits égaux pour les femmes et les hommes, les filles et les garçons ainsi que la même visibilité, autonomisation, responsabilité et participation dans tous les domaines de la vie publique et privée. Elle implique également l'égalité des femmes et des hommes dans l'accès aux ressources et dans la distribution de celles-ci. (Stratégie pour l'égalité entre les femmes et les hommes 2018-2023 du Conseil de l'Europe).

aux jeunes réfugiés en transition vers l'âge adulte ; ainsi que les résolutions et recommandations pertinentes de l'Assemblée parlementaire, du Congrès des pouvoirs locaux et régionaux et de la Conférence des OING du Conseil de l'Europe;

8. Rappelant la Convention des Nations unies relative au statut des réfugiés (1951) ; la Convention 189 de l'Organisation internationale du travail sur le travail décent pour les travailleuses et travailleurs domestiques (2011); la Convention des Nations unies sur l'élimination de toutes les formes de discrimination à l'égard des femmes ("CEDEF", 1979) et son protocole facultatif (1999) ; la Convention des Nations Unies sur les droits de l'enfant (1989) et ses protocoles facultatifs (2000) ; et la Convention des Nations Unies relative aux droits des personnes handicapées (2006);
9. Notant la Recommandation générale n° 30 de la CEDEF sur les femmes dans la prévention des conflits, les situations de conflit et d'après-conflit (2013) ; la Recommandation générale n°32 de la CEDEF sur les dimensions sexospécifiques du statut de réfugié, de l'asile, de la nationalité et de l'apatridie des femmes (2014) ; la Recommandation générale n°35 de la CEDEF sur la violence à l'égard des femmes fondée sur le genre; la Recommandation générale n° 38 sur la traite des femmes et des filles dans le contexte des migrations mondiales (2020); ainsi que les mesures pertinentes contenues dans le Pacte mondial des Nations unies pour les réfugiés (2018) et dans le Pacte mondial des Nations unies pour des migrations sûres, ordonnées et régulières (2018), visant à « promouvoir l'égalité entre les sexes et de responsabiliser les femmes et les filles ; de mettre fin à toutes les formes de violences sexuelles et de genre, de traite d'êtres humains, d'exploitation et d'abus sexuels, ainsi que de pratiques néfastes »;
10. Vues les "Directives sur la protection internationale de l'Agence des Nations Unies pour les réfugiés : Persécution fondée sur le genre dans le contexte de l'article 1A(2) de la Convention de 1951 et/ou de son Protocole de 1967 relatif au statut des réfugiés", du 7 mai 2002 ;
11. Gardant à l'esprit l'importance d'une mise en œuvre et d'un impact généraux de l'Agenda 2030 des Nations unies pour le développement durable, notamment l'objectif 5 de développement durable ("Réaliser l'égalité des sexes et l'autonomisation de toutes les femmes et de toutes les filles"); l'objectif 10.7 de développement durable ("Réduire les inégalités dans les pays, et d'un pays à l'autre"), avec pour cible de "faciliter des migrations et une mobilité des personnes ordonnées, sûres, régulières et responsables, notamment par la mise en œuvre de politiques migratoires planifiées et bien gérées" ; et l'objectif 16 de développement durable ("Promouvoir l'avènement de sociétés pacifiques et inclusives aux fins du développement durable, assurer l'accès de tous à la justice et mettre en place, à tous les niveaux, des institutions efficaces, responsables et ouvertes à tous") ;
12. Réaffirmant que tous les droits humains et les libertés fondamentales sont universels, indivisibles, interdépendants et intimement liés, et qu'il est nécessaire de garantir leur pleine jouissance sans aucune discrimination, par les femmes et les filles migrantes, réfugiées et demandeuses d'asile ;

13. Reconnaissant la contribution positive que les femmes et les filles migrantes, réfugiées et demandeuses d'asile peuvent apporter aux sociétés et communautés en Europe;
14. Considérant les profonds changements dans les formes de migration et dans la situation des femmes et des filles migrantes, réfugiées et demandeuses d'asile, le fait que leur nombre a atteint un niveau record dans les années 2010 et les évolutions significatives dans les concepts, politiques et instruments juridiques liés à l'égalité entre les femmes et les hommes, à la migration et à l'asile à tous les niveaux;
15. Reconnaissant que si les normes internationales de protection des droits humains s'appliquent à toutes les personnes, tout en gardant à l'esprit les différences possibles en matière de statuts juridiques, des efforts supplémentaires devraient être entrepris pour évaluer les lacunes en matière de prévention et de protection résultant des insuffisances dans la mise en œuvre de ces normes, dans l'information concernant ces dernières et dans le suivi des normes et politiques existantes relatives aux femmes et aux filles migrantes, réfugiées et demandeuses d'asile ;
16. Soulignant que les femmes sont exposées à un continuum de violences qui leur sont spécifiques parce qu'elles sont des femmes, ou qui les touchent de manière disproportionnée en tant que femmes, et que ces violences sont, en ce sens, fondées sur le genre; reconnaissant avec une profonde préoccupation que les femmes et les filles migrantes, réfugiées et demandeuses d'asile sont particulièrement exposées à ces formes de violence et d'exploitation dans leur pays d'origine, au cours de leur voyage, en transit et/ou dans les pays de destination, ce qui peut constituer une grave violation de leurs droits humains d'autant plus que les femmes et les filles migrantes, réfugiées et demandeuses d'asile sont confrontées à des difficultés et des barrières structurelles pour surmonter cette violence et cette exploitation dans leurs différentes formes;
17. Notant avec inquiétude que les femmes et les filles migrantes, réfugiées et demandeuses d'asile peuvent être confrontées à des formes multiples et intersectionnelles de discrimination dans leur pays d'origine, au cours de leur voyage et dans leur pays de destination et soulignant la nécessité d'une approche inclusive et intersectionnelle qui tienne compte des différentes situations et caractéristiques personnelles des femmes et des filles migrantes, réfugiées et demandeuses d'asile, y compris, le cas échéant des femmes et des filles migrantes issues des communautés roms et des gens du voyage ;
18. Conscient des obstacles multiples et intersectionnels auxquels sont confrontées les femmes et les filles migrantes, réfugiées et demandeuses d'asile en termes d'accès aux droits et d'exercice des droits, d'accès aux services à la participation et à la prise de décision, et de la nécessité de faciliter leur intégration et leur pleine participation à la vie économique, sociale, civique, politique et culturelle;
19. Souhaitant de ce fait revoir et mettre à jour sa Recommandation n° R (79)10 aux États membres concernant les femmes migrantes, désormais remplacée par le présent instrument ;

20. Recommande aux gouvernements des États membres :

1. de prendre toutes les mesures nécessaires pour promouvoir et appliquer les principes énoncés dans la présente recommandation et son annexe, visant à garantir que les femmes et les filles migrantes, réfugiées et demandeuses d'asile puissent effectivement accéder à leurs droits et les exercer ;
2. d'assurer, par les moyens et actions appropriés, y compris, le cas échéant, la traduction, une large diffusion (dans des formats accessibles) de la présente recommandation auprès des autorités et parties prenantes concernées, qui sont encouragées à prendre des mesures pour la mettre en œuvre ;
3. d'examiner périodiquement, au sein du ou des comités directeurs et organes compétents du Conseil de l'Europe, les mesures prises et les progrès accomplis dans ce domaine.

Projet d'annexe

I. Définitions

[Aux fins de la présente recommandation :

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

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

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

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

Commented [NAV1]: Il serait recommandable d'éliminer région, cela peut prêter à confusion au sein des régions des pays membres du CoE, car il ne s'agit pas de déplacement interne .

II. Questions horizontales

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

Non-discrimination, intersectionnalité, élimination des stéréotypes

2. Les Etats membres devraient veiller à ce que les femmes et les filles migrantes, réfugiées et demandeuses d'asile ne soient confrontées à aucune discrimination, quel qu'en soit le motif.
3. Les États membres devraient appliquer une approche intersectionnelle à toutes les mesures visées dans la présente annexe, en tenant compte notamment des différentes situations et caractéristiques des femmes et des filles migrantes, réfugiées et demandeuses d'asile à titre individuel.
4. Des mesures devraient être mises en œuvre pour garantir les droits fondamentaux des personnes migrantes sans-papiers et faciliter leur accès aux services essentiels sans aucune crainte de rapport aux autorités d'immigration, y compris et au minimum les mécanismes de protection et de plainte et tous les services de soutien aux victimes de violence à l'égard des femmes et de traite des êtres humains.
5. Au sein des pays d'accueil et des communautés de personnes migrantes, les États membres devraient:

- 5.1 accorder une attention particulière aux mesures visant à démanteler toutes les formes de stéréotypes ayant un impact négatif sur les droits des femmes et des filles migrantes, réfugiées et demandeuses d'asile;
- 5.2 mener des campagnes de sensibilisation et d'éducation concernant l'égalité entre les femmes et les hommes et les droits humains, afin de promouvoir le dialogue.

Filles

6. Les États membres devraient adopter une approche fondée sur les droits de l'enfant à l'égard des enfants migrants, réfugiés et demandeurs d'asile, qui tienne compte de l'âge et de la situation et des besoins spécifiques des filles, y compris, garantir des solutions alternatives de prise en charge appropriées et sûres lorsqu'elles sont séparées de leurs parents ou de la personne qui s'occupe d'elles ou lorsqu'elles sont mineures non-accompagnées.
7. En raison de la vulnérabilité accrue des filles migrantes à l'exploitation et aux abus, les solutions de prise en charge devraient être alignées sur celles des enfants non-migrants dans les institutions ou services de protection de l'enfance classiques. Les enfants non accompagnés et séparés devraient se voir attribuer un-e tuteur/tutrice.
8. Les États membres devraient garantir un accès ininterrompu aux services essentiels aux filles migrantes, réfugiées et demandeuses d'asile, afin de les soutenir lors de la transition vers l'âge adulte au-delà de 18 ans, y compris l'accès à l'éducation, aux soins de santé ainsi que le soutien à l'intégration et à la participation sociale.

Information, autonomisation, sensibilisation et promotion des droits humains

9. Afin d'autonomiser les femmes et les filles migrantes, réfugiées et demandeuses d'asile et de leur permettre d'accéder à leurs droits, il convient de leur fournir des informations et des conseils pertinents, accessibles d'une façon et dans une langue qu'elles comprennent, couvrant :
 - 9.1 leurs droits humains fondamentaux tels qu'ils sont énoncés dans la Convention européenne des droits de l'homme et autres instruments pertinents, y compris lorsqu'elles se trouvent dans des structures de détention et d'accueil ;
 - 9.2 les mécanismes de signalement et de plainte pour toute forme de violence ou de violation des droits par des autorités publiques ou des entreprises privées agissant au nom de l'État, y compris les droits aux recours civils et à l'indemnisation ;
 - 9.3 les services de protection disponibles dans le pays d'accueil contre toutes les formes de violence à l'égard des femmes et de traite des êtres humains. Cela inclut l'accès aux services d'assistance généraux et spécifiques, aux services de soutien spécialisés fournis par les ONG et à l'aide juridique ;

- 9.4 les services publics disponibles et accessibles dans le pays d'accueil, notamment les soins de santé, y compris la santé mentale ainsi que la santé et les droits sexuels et génésiques, l'éducation complète à la sexualité, le soutien psycho-social, l'éducation, la formation linguistique et au numérique, la formation continue, les programmes d'intégration, le logement et l'emploi.
10. Les États membres devraient fournir des ressources et des outils pour l'autonomisation et le soutien aux femmes et aux filles migrantes, réfugiées et demandeuses d'asile, en fonction de leurs besoins et de leurs caractéristiques personnelles, afin qu'elles puissent bénéficier autant que possible des services sociaux et de l'assistance sociale disponibles.
11. Les États membres devraient faciliter l'accès des femmes et des filles migrantes, réfugiées et demandeuses d'asile aux services et connexions numériques, y compris l'Internet, en particulier si les services et informations sont disponibles uniquement ou en grande partie sous forme numérique.

Accès à la justice, y compris l'aide juridique

12. Les femmes et les filles migrantes, réfugiées et demandeuses d'asile devraient avoir accès aux différentes voies de recours civils, administratifs et pénaux, nationaux et internationaux, y compris à l'aide juridique pour exercer effectivement leurs droits et/ou agir en cas de non-respect de ces droits.
13. Les États membres devraient veiller à ce que les femmes et les filles réfugiées et demandeuses d'asile bénéficient d'un soutien adéquat en demande, en défense ou comme témoins tout au long des procédures civiles, administratives ou pénales.
14. Une approche intersectionnelle et sensible au genre devrait être adoptée pour déterminer /évaluer la crédibilité individuelle des femmes et des filles migrantes, réfugiées et demandeuses d'asile dans les procédures civiles, administratives et pénales, notamment lorsque les décisions ont un impact sur leur statut juridique.

Intelligence artificielle, prise de décision automatisée et protection des données

15. Les États membres devraient assurer qu'une évaluation de l'impact sur les droits humains incluant une perspective de genre soit réalisée avant l'introduction de systèmes liés à l'intelligence artificielle et de systèmes de prise de décision automatisée dans le domaine de la migration.
16. L'utilisation de l'intelligence artificielle et de systèmes automatisés de prise de décision par le secteur public et ses prestataires de services et entreprises sous contrat ne devrait entraîner aucune discrimination, être conforme aux principes de protection de la vie privée, transparente et s'accompagner de mécanismes de gouvernance clairs, dans le cadre de :
- 16.1 la prise de décision en matière de contrôle aux frontières et contrôle de la migration, y compris concernant les décisions en matière d'entrée ou de retour ;

- 16.2 la gestion des migrations, y compris l'utilisation d'informations biométriques, comme les tests ADN ;
- 16.3 le maintien de l'ordre et la sécurité en relation avec les femmes et les filles migrantes, réfugiées et demandeuses d'asile et les services liés à la protection ou à la prévention des crimes ;
- 16.4 la fourniture de services aux femmes et aux filles migrantes, réfugiées et demandeuses d'asile.
17. Les femmes migrantes, réfugiées et demandeuses d'asile ainsi que les organisations pertinentes de la société civile devraient avoir la possibilité de participer aux discussions et à la prise de décision sur le développement et le déploiement des nouvelles technologies qui les affectent.
18. Compte tenu des situations de vulnérabilité particulières des femmes et des filles migrantes, réfugiées et demandeuses d'asile, les autorités pertinentes devraient :
- 18.1. assurer la confidentialité et la sécurité de leurs données personnelles conformément à leur législation nationale et aux obligations internationales applicables;
- 18.2. ne pas transférer ces données personnelles vers le pays d'origine sans expliquer à la personne concernée, dans une langue qu'elle comprend, quelles données sont transférées et dans quelles conditions, y compris en donnant à la personne concernée la possibilité de s'y opposer.

Coopération avec la société civile

19. Les États membres devraient coopérer avec et soutenir les organisations de femmes migrantes et réfugiées et les organisations des droits des femmes et les autres organisations de la société civile qui défendent les droits humains universels des femmes et des filles migrantes, réfugiées et demandeuses d'asile, les soutiennent et travaillent à leur autonomisation.
20. Des mécanismes devraient être mis en place pour garantir que les organisations de femmes migrantes, y compris, le cas échéant, les organisations de femmes des communautés roms et du voyage, soient consultées, en particulier lors de l'élaboration des politiques en matière de migration, d'asile et d'intégration qui les concernent.

Collecte de données, recherche et suivi

21. Les États membres devraient soutenir la collecte de données ventilées notamment par âge et par sexe sur les questions de migration et d'asile, y compris pour ce qui concerne les victimes de violence à l'égard des femmes et de traite des êtres humains, en veillant au respect des exigences applicables en matière de protection des données.
22. La recherche, le suivi et l'évaluation des politiques de migration, d'intégration et d'asile dans une perspective d'égalité de genre devraient être soutenus et dotés de ressources adéquates à tous les niveaux, en particulier en ce qui concerne la prévention de toute violation des droits fondamentaux des femmes.
23. Les données collectées et les résultats de la recherche et de l'évaluation des politiques de migration, d'intégration et d'asile dans une perspective d'égalité de genre devraient être utilisés à tous les niveaux pour le développement et l'ajustement des politiques publiques dans ces domaines.

III. Protection et soutien

24. Les États membres devraient protéger les femmes et les filles migrantes, réfugiées et demandeuses d'asile contre toutes les formes de violence à l'égard des femmes et de traite des êtres humains.
25. Des mesures devraient être prises pour protéger les femmes et les filles migrantes, réfugiées et demandeuses d'asile contre le discours de haine et le sexisme.
26. Les États membres devraient élaborer des mesures spécifiques pour lutter contre l'exploitation sexuelle des femmes et des filles migrantes, réfugiées et demandeuses d'asile, en particulier contre la demande de cette exploitation, y compris des mesures en matière de protection, de répression, de prévention et d'éducation.
27. Les États membres devraient veiller à ce que la culture, la coutume, la religion, la tradition ou le prétendu "honneur" ne soient pas considérés comme justifiant toute exploitation ou acte de violence à l'égard des femmes et des filles.
28. Les États membres devraient garantir l'accès effectif des femmes et des filles migrantes, réfugiées et demandeuses d'asile, avec ou sans enfants, aux refuges pour femmes victimes de violence à l'égard des femmes et de traite des êtres humains, quel que soit leur statut juridique.

29. L'accès à des conseils juridiques et à une aide juridique gratuits et accessibles dans la langue des bénéficiaires, devrait être assuré dans le cadre des procédures pénales, administratives et civiles, y compris la poursuite des demandes d'indemnisation et de réparation juridique contre les auteur-e-s, afin de soutenir les femmes et les filles migrantes, réfugiées et demandeuses d'asile victimes de toute forme de violence à l'égard des femmes et de traite des êtres humains.
30. Il convient de fournir aux victimes de violence à l'égard des femmes et de la traite des êtres humains des services de soutien généraux et spécialisés, y compris pour les personnes hébergées dans des installations de transit, d'accueil et d'hébergement. Cela inclut au minimum le soutien psychologique et les soins de santé à court et à long terme, y compris les soins de santé mentale, les soins en matière de santé sexuelle et génésique, le soutien médical immédiat et la collecte de preuves médico-légales dans les cas de viols et d'agressions sexuelles.
31. Les États membres devraient permettre aux femmes et aux filles migrantes, réfugiées et demandeuses d'asile d'accéder aux régimes d'indemnisation, mesures ou autres programmes disponibles visant à l'intégration ou à la réintégration des victimes de violence à l'égard des femmes ou de traite des êtres humains, dans les mêmes conditions que les ressortissant-e-s nationaux/nationales.
32. Les États membres devraient veiller à ce que les femmes et les jeunes filles migrantes, réfugiées et demandeuses d'asile ne subissent aucune sanction, y compris la perte de leur statut légal de migrante ou de réfugiée, du fait de leur exploitation en tant que victimes de la traite des êtres humains ou du fait d'avoir quitté un partenaire ou un conjoint violent qui les avait parrainées et dont dépendait leur statut, ou lorsqu'elles ont été emmenées dans un autre pays contre leur gré à des fins de mariage forcé.
33. Une approche interinstitutionnelle, centrée sur la victime, qui prévient la victimisation secondaire et vise l'autonomisation des femmes et des filles migrantes, réfugiées et demandeuses d'asile, incluant les organisations de femmes migrantes et réfugiées, devrait être adoptée en ce qui concerne les questions relatives à leur protection et à leur soutien.
34. Des interprètes, des assistants juridiques et des médiateurs interculturels professionnels, y compris des femmes, devraient être disponibles pour soutenir les femmes et les filles migrantes, réfugiées et demandeuses d'asile qui cherchent une protection, lors du dépôt initial des plaintes, tout au long du processus judiciaire et lors des demandes de réparations, ainsi que dans le cadre des procédures de détermination de l'asile. Si possible tous ces services devraient être fournis par des professionnels femmes, dû au besoin d'établir un lien de confiance entre les femmes victimes et les personnes qui les assistent.
35. Les États membres devraient fournir et financer de manière adéquate des formations et sensibilisations sur les questions liées à la violence à l'égard des femmes, à la traite des

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êtres humains, à l'égalité entre les femmes et les hommes ainsi qu'aux questions interculturelles et intersectionnelles. Ces formations devraient être dispensées aux autorités administratives et judiciaires (juges, procureurs et avocats) et au personnel concernés, y compris aux interprètes, aux personnes fournissant l'assistance juridique et aux médiatrices/médiateurs interculturels, afin de leur permettre :

- 35.1. d'identifier rapidement les victimes, si possible en collaboration avec les organisations de soutien concernées, d'estimer le risque, de s'adresser aux autorités compétentes et de fournir une protection, un traitement et des soins aux femmes et aux filles migrantes, réfugiées et demandeuses d'asile victimes de toute forme de violence et de traite des êtres humains ;
 - 35.2. d'être conscient-e-s des difficultés que les femmes et les filles migrantes, réfugiées et demandeuses d'asile peuvent rencontrer pour révéler des incidents relatifs à la violence à l'égard des femmes sous toutes ses formes et de traite des êtres humains, en raison de leur statut juridique précaire, de l'absence de services d'interprétation de qualité, du manque de connaissance de leurs droits légaux et du manque de connaissances concernant la pertinence de leurs expériences de violence pour les décisions en matière de migration/d'asile, de la stigmatisation sociale et du manque de soutien à leur égard.
36. Des mécanismes facilement accessibles devraient être mis en place dans les institutions gérées par l'État et par le secteur privé, telles que les centres d'accueil, de transit et de détention, les postes de police, les prisons, les établissements de garde d'enfants, les écoles et les hôpitaux, les centres de conseil et les refuges, afin de permettre le signalement des incidents de violence à l'égard des femmes et de traite des êtres humains au personnel et par le personnel. Cela comprend également l'accès à des lignes d'assistance téléphonique sensibles à l'âge et au genre, des procédures d'orientation vers d'autres organismes appropriés, ainsi qu'un traitement médical et psychologique qui puisse faciliter le signalement.
37. Il convient de procéder à une évaluation et à une gestion des risques de violence à l'égard des femmes et des filles migrantes, réfugiées et demandeuses d'asile, en tenant spécifiquement compte de leur vulnérabilité potentiellement accrue du fait de leur statut juridique précaire.

Etat d'urgence et gestion des crises

38. Dans les situations de crises de santé publique, humanitaires et liées au changement climatique, les États membres devraient prendre en compte le risque accru de violence fondée sur le genre, de traite des êtres humains, de pauvreté et de sans-abrisme pour les femmes et les filles migrantes, réfugiées et demandeuses d'asile et adopter les mesures suivantes :
- 38.1 prendre en considération la situation et les besoins des femmes et des filles migrantes, réfugiées et demandeuses d'asile dans les mesures de gestion de crise et de relance, y compris la protection des droits, et notamment le droit à la santé,

au logement, à la sécurité alimentaire, à l'eau, à l'autonomisation économique et à l'accès à des services de soutien spécialisés pour les femmes victimes de violence, en les qualifiant de services essentiels et en garantissant leur continuité ;

- 38.2 veiller à ce que les mesures prises pendant une crise et pendant l'état d'urgence qui s'ensuit soient conformes aux obligations internationales relatives aux droits humains des femmes et des filles migrantes, réfugiées et demandeuses d'asile ;
- 38.3 assurer la participation des femmes et des filles migrantes, réfugiées et demandeuses d'asile et des organisations de la société civile concernées à la prise de décision et à l'élaboration des politiques dans ces situations.

IV. Arrivée

Informations préalables à l'arrivée

39. Les États membres devraient veiller à ce que les procédures d'immigration et de protection internationale, y compris les procédures de délivrance des visas, tiennent compte des situations et besoins spécifiques ainsi que des vulnérabilités des femmes et des filles migrantes, réfugiées et demandeuses d'asile et soient sensibles à l'âge et au genre.
40. Des informations devraient être fournies aux femmes et aux filles migrantes, réfugiées et demandeuses d'asile concernant les conditions permettant l'entrée et le séjour légaux sur le territoire d'un Etat membre.

Installations de transit et d'accueil

41. Les autorités compétentes devraient veiller à ce que les dispositions concernant le transit, l'accueil, l'hébergement et le filtrage tiennent compte des spécificités liées à l'âge et au genre. Le processus de filtrage devrait, en particulier, faciliter l'identification des victimes de violence à l'égard des femmes et de traite des êtres humains le plus tôt possible et assurer que les demandes de protection des femmes soient traitées avec diligence.
42. Les centres d'accueil et d'hébergement devraient être situés dans des zones où les femmes et les filles sont en sécurité et peuvent accéder aux services appropriés, concernant la santé, en particulier la santé sexuelle et génésique, l'assistance sociale et juridique, l'éducation et les commerces.
43. Les besoins particuliers et les préoccupations liées à la sécurité des victimes de toute forme de violence à l'égard des femmes et de traite des êtres humains, ainsi que d'autres besoins pertinents, par exemple en cas de grossesse, de handicap ou de besoins de santé spécifiques, devraient être pris en compte lors de la détermination des placements et de l'accès aux services. Une alimentation et des vêtements essentiels pour les nourrissons devraient être fournis le cas échéant.

44. Le personnel devrait être formé aux droits humains des femmes et aux questions liées à l'égalité entre les femmes et les hommes, aux traumatismes, ainsi qu'aux questions de violence envers les femmes et aux besoins spécifiques des femmes et des filles migrantes, réfugiées et demandeuses d'asile ; la présence de travailleuses sociales, médiatrices interculturelles, interprètes, officières de police, gardiennes professionnelles et des avocates devrait assurée dans ces établissements,

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45. Les femmes et les filles migrantes, réfugiées et demandeuses d'asile devraient se voir offrir des espaces de vie sûrs et adaptés. Des espaces de couchage séparés, ainsi que d'autres espaces sûrs, devraient être fournis aux femmes seules avec ou sans enfants (jusqu'à l'âge de 18 ans). Parmi les autres éléments à fournir figurent l'accès à la lumière naturelle et artificielle, une ventilation et un chauffage suffisants, un lit et une literie propres, un accès facile à des douches et à des toilettes propres, séparées et bien éclairées, ainsi que la mise à disposition gratuite et régulière de kits sanitaires de base / de produits d'hygiène.

46. Les femmes qui se trouvent dans des centres de transit et d'accueil devraient avoir accès à un système de plainte /signalement dans le cadre duquel les plaintes font l'objet d'une enquête et sont transmises à la police le cas échéant, y compris, s'il y a lieu, accès à l'aide juridique.

47. Les États membres devraient veiller à ce que les installations et services de transit, d'accueil et d'hébergement fassent l'objet d'un contrôle indépendant régulier, y compris lorsqu'ils sont fournis par des entreprises privées, afin de garantir le respect des normes de protection de la présente annexe.

48. Si des femmes et les filles migrantes, réfugiées ou demandeuses d'asile sont confinées dans des centres de transit, d'accueil ou d'hébergement, les Etats membres devraient également veiller au respect des dispositions contenues dans les paragraphes de la présente annexe relatifs à la détention.

Asile

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

50. Les femmes et les filles devraient avoir accès à l'information ainsi qu'aux procédures d'asile et de protection aux frontières et ailleurs.

51. La possibilité pour les femmes et les filles de déposer une demande d'asile indépendante devrait être garantie et elles devraient être informées de ce droit.

52. Pour assurer que la violence fondée sur le genre soit bien prise en compte dans le cadre de la Convention des Nations unies relative au statut des réfugiés de 1951, les Etats membres devraient :

- 52.1 veiller à ce que toutes les formes de violence fondée sur le genre puissent être reconnues comme une forme de persécution au sens de l'article 1A, paragraphe 2, de la Convention de 1951 ;
- 52.2 garantir une interprétation sensible au genre des "motifs" d'asile de la Convention de 1951;
- 52.3 développer des lignes directrices sensibles au genre complètes à toutes les étapes de la procédure d'asile, y compris les services d'accueil et de soutien, le filtrage, la détermination des pays "sûrs" aux fins de procédures accélérées ou suspensives, la détention, la détermination du statut, la décision et les retours; et veiller à ce que le personnel en charge de la police des frontières, de l'immigration, de l'asile, les responsables, les médiatrices/médiateurs interculturel-le-s et les interprètes, ainsi que toutes les autorités administratives et judiciaires et les praticiens juridiques reçoivent une formation concernant ces lignes directrices.
53. Des agentes d'asile devraient être à la disposition des demandeuses, qui devraient être informées de cette possibilité.
54. Des entretiens séparés pour les femmes et les hommes d'une même famille, en l'absence d'enfants, devraient être possibles et la confidentialité de ces entretiens assurée.
55. Lors du traitement et de la détermination des demandes d'asile, il convient de tenir compte des éléments suivants :
- 55.1 la situation personnelle de la personne faisant la demande et une évaluation individuelle des risques ;
- 55.2 les informations pertinentes sur le pays d'origine, y compris concernant l'égalité entre les femmes et les hommes et les droits des femmes. Cela inclut l'accès à la justice, y compris le cadre juridique et sa mise en œuvre, les aides sociales, économiques et autres aides disponibles, et toute les formes de discrimination multiple et intersectionnelle et/ou attitude patriarcale que les femmes sont susceptibles de rencontrer.
56. Les États membres devraient veiller à ce que les femmes et les filles aient accès à la protection complémentaire/subsidaire, si nécessaire, en cas de décision négative concernant leur statut de réfugiée.

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Mesures transfrontalières

57. Les États membres devraient s'efforcer de participer à des programmes de réinstallation et de relocalisation et de renforcer et promouvoir les voies légales pour garantir un transit sûr aux femmes et aux filles.
58. Les États membres sont encouragés à financer une assistance spécifique et des programmes humanitaires de réinstallation pour les femmes victimes à risque de violence à l'égard des femmes ou de traite des êtres humains, y compris la traite à des fins d'exploitation sexuelle.
59. Il convient d'encourager la création et la mise en œuvre de mécanismes efficaces de protection transfrontalière des victimes de violence à l'égard des femmes et de traite des êtres humains, y compris de traite à des fins d'exploitation sexuelle.

V. Résidence et intégration**Accès à des services de santé globaux et de qualité, y compris la santé et les droits sexuels et génésiques**

60. Les autorités devraient assurer la prise en compte de de la situation et des caractéristiques personnelles des femmes et des filles migrantes, réfugiées et demandeuses d'asile, ainsi que de l'âge et du genre, lors de la fourniture des soins de santé.
61. Les services de santé essentiels, y compris les soins primaires, les soins urgents et immédiats, les soins palliatifs et les traitements ou l'assistance nécessaires pour des raisons de santé publique, devraient être fournis à toutes les femmes et les filles migrantes, réfugiées et demandeuses d'asile, y compris les femmes et les filles en situation irrégulière.
62. Les États membres devraient également donner accès aux femmes et aux filles migrantes, réfugiées et demandeuses d'asile à des services de santé gratuits ou abordables, complets, de qualité et sensibles à l'âge et au genre ; cela inclut la santé mentale, la santé sexuelle et génésique, y compris pendant la grossesse, ainsi que les produits d'hygiène. Les États membres devraient également s'efforcer de fournir de tels soins aux femmes et aux filles en situation irrégulière
63. Les filles migrantes, réfugiées et demandeuses d'asile devraient avoir accès à des informations adaptées à leur âge et dans une langue qu'elles comprennent concernant la santé et les droits sexuels et génésiques
64. L'accès aux soins de santé disponibles ne devrait pas dépendre de l'obtention de l'autorisation de l'autorité migratoire ni de la permission d'une personne autre que la

femme concernée. Le traitement des filles mineures peut être soumis au consentement d'un parent ou d'un-e tuteur/tutrice.

65. En tenant compte des barrières linguistiques et culturelles, les Etats membres devraient veiller à ce que les femmes et les filles donnent leur consentement préalable, libre et éclairé à tout traitement médical.

Services sociaux, sécurité sociale et logement

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

Intégration, participation sociale, culturelle et politique

68. Les États membres devraient veiller à ce que tout enfant né sur leur territoire ait le droit de faire enregistrer sa naissance immédiatement après la naissance et de se voir accorder une possibilité d'accès à une nationalité.
69. Du fait des stéréotypes persistants et des inégalités existantes en matière d'accès aux droits civiques et de participation à la prise de décision politique, qui sont encore plus marqués pour les femmes migrantes, réfugiées et demandeuses d'asile, les Etats membres devraient prendre des mesures pour que les femmes migrantes, réfugiées et demandeuses d'asile qui ont le droit de voter et de se présenter aux élections locales, régionales, nationales ou européennes connaissent leurs droits et soient encouragées à participer sans aucune discrimination.
70. Les autorités devraient encourager et soutenir les initiatives visant à renforcer l'autonomie des femmes et des filles migrantes, réfugiées et demandeuses d'asile au sein de leurs familles, de leurs communautés et de la société dans son ensemble, en développant leur confiance en elles et leur autodétermination et en protégeant les femmes et les filles contre tout contrôle social négatif. Cela peut inclure la participation à des associations locales, culturelles, de femmes ou autres, à des clubs sportifs, à des clubs de jeunes et autres.
71. Des programmes publics et privés de coaching, de mentorat et d'autres formes de soutien visant les femmes et les filles migrantes et réfugiées devraient être mis en œuvre et soutenus, notamment pour promouvoir l'utilisation de modèles positifs et les pratiques prometteuses en matière d'intégration.

72. La contribution positive des femmes et des filles migrantes et réfugiées à la société et aux communautés d'accueil, à l'économie et à la culture devrait être mise en évidence et encouragée.

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

73. Les autorités devraient veiller à ce que les enfants migrants, réfugiés et demandeurs d'asile aient accès à l'éducation et prendre des mesures pour atteindre les filles migrantes, réfugiées et demandeuses d'asile qui ont pu être empêchées d'accéder à l'éducation dans leur pays d'origine, en fournissant des services éducatifs ou des crèches, de préférence dans les structures éducatives générales.

74. Reconnaissant que la capacité à communiquer dans la langue du pays d'accueil est essentielle à l'intégration sous tous ses aspects, les États membres devraient assurer l'accès des femmes et filles migrantes, réfugiées et demandeuses d'asile à un nombre adéquat d'heures de formation linguistique de qualité ainsi qu'à des programmes d'intégration, afin de promouvoir leur autonomisation et leur protection. Des cours d'alphabétisation et de compétences numériques adaptés à leurs besoins devraient également être fournis aux femmes et aux filles migrantes, réfugiées et demandeuses d'asile, le plus tôt possible après leur arrivée dans le pays d'accueil.

75. Les États membres devraient prendre des mesures pour faciliter la reconnaissance et la validation des qualifications professionnelles et universitaires ainsi que de l'expérience professionnelle existantes des femmes et des filles migrantes et réfugiées dans la pratique, y compris par le biais d'initiatives telles que le Passeport européen de qualifications pour les réfugié-e-s du Conseil de l'Europe.

76. Les femmes et les filles migrantes, réfugiées et demandeuses d'asile devraient bénéficier de toutes les possibilités d'éducation supérieure ou complémentaire, de formation professionnelle, de recyclage et de réadaptation offertes par les services compétents et disponibles pour les ressortissant-e-s nationaux/nationales.

77. L'accès aux programmes et mesures visés aux paragraphes 74, 75, 76 pour les personnes migrantes en situation irrégulière peut dépendre de la législation nationale régissant l'éligibilité.

Emploi

78. Les États membres devraient prendre des mesures spécifiques et ciblées pour prévenir la discrimination et promouvoir l'accès à l'emploi des femmes migrantes et réfugiées à un stade précoce du processus de migration, cela inclut des voies d'accès à l'emploi sûres et légales avant l'arrivée.

79. Les États membres devraient se conformer aux obligations relatives au droit au travail et à l'activité indépendante des femmes et des filles réfugiées énoncées par la Convention des Nations unies relative au statut des réfugiés et envisager de supprimer les obstacles au travail pour les autres femmes et filles migrantes, après qu'elles aient été présentes sur le territoire pendant un certain temps.
80. Concernant at minima les femmes et les filles migrantes, réfugiées et demandeuses d'asile qui sont autorisées à travailler en vertu de la législation nationale des Etats membres, ceux-ci devraient assurer des conditions de travail décentes et dignes, cela inclut:
- 80.1 des mesures pour réglementer et améliorer les conditions de travail des femmes et des filles migrantes, réfugiées et demandeuses d'asile, et pour éliminer toutes les formes d'exploitation et de discrimination, y compris lorsqu'elles sont multiples et intersectionnelles ;
- 80.2 de soutenir et d'aider les femmes et des filles migrantes, réfugiées et demandeuses d'asile à accéder au marché du travail par le biais du travail indépendant et de l'entreprenariat, en leur offrant les mêmes possibilités de formation continue, de programmes de microcrédit, de prêts de démarrage et de développement d'entreprise qu'aux travailleurs/travailleuses nationaux/nationales et de soutenir les programmes de volontariat, de stages, d'apprentissage et de placement ;
- 80.3 afin de faciliter l'accès au marché du travail, de prendre des mesures pour garantir que les travailleuses et travailleurs migrants, réfugiés et demandeurs d'asile aient accès aux mesures de conciliation de la vie privée et professionnelle, y compris le congé de maternité, de paternité et parental, des conditions de travail flexibles lorsque cela est possible, et de garantir l'accès et la jouissance des services de garde d'enfants sur un pied d'égalité avec les travailleurs/travailleuses nationaux/nationales ;
- 80.4 de veiller à ce que les travailleuses migrantes et réfugiées licenciées et contraintes de quitter le pays d'emploi ou de retourner dans leur pays d'origine conservent tous leurs droits acquis.
81. Les États membres devraient mettre en œuvre les dispositions des normes nationales et internationales pertinentes visant à protéger les femmes et les filles migrantes réfugiées et demandeuses d'asile travailleuses domestiques de la discrimination, de l'exploitation et des abus.

Permis de séjour

82. Les États membres devraient veiller à ce que les femmes et les filles migrantes qui se voient accorder un permis de séjour sur la base d'une relation familiale puissent bénéficier des droits et prestations sociaux, économiques et liés au travail à titre autonome.

83. Les femmes et les filles migrantes, réfugiées et demandeuses d'asile devraient être informées de leur droit à un permis de séjour autonome renouvelable, par exemple en raison de leurs propres besoins de protection en vertu de la Convention sur les réfugiés des Nations-Unies, de leur statut de victime de violence à l'égard des femmes, de victime de traite des êtres humains, de la rupture d'une relation ou d'autres circonstances particulièrement difficiles.
84. Les critères et le seuil de preuve requis pour l'octroi de permis de séjour autonomes devraient être réalistes et sensibles à la situation individuelle des femmes et des filles migrantes, réfugiées et demandeuses d'asile, et les organismes statutaires responsables devraient être formés de manière adéquate pour garantir que les femmes et les filles migrantes, réfugiées et demandeuses d'asile puissent bénéficier de ces permis.
85. Les États membres devraient veiller à ce que les femmes et les filles migrantes, réfugiées et demandeuses d'asile et leurs personnes à charge obtiennent un permis de séjour renouvelable si leur séjour est nécessaire pour les besoins d'enquêtes ou de procédures pénales, et ce au moins jusqu'à leur conclusion.
86. Les États membres devraient faciliter la possibilité pour les victimes de mariage forcé amenées dans un autre pays pour les besoins du mariage et qui, de ce fait, ont perdu leur statut de résidente dans le pays où elles résident habituellement, de retrouver ce statut.
87. Les États membres sont encouragés à accorder la sécurité de résidence sur une base indépendante aux femmes et filles migrantes présentes dans un pays depuis longtemps, y compris aux femmes et aux filles apatrides.
88. Les États membres devraient fournir des possibilités de naturalisation et prendre des mesures pour garantir que les femmes et les filles migrantes et réfugiées ne soient pas confrontées à des obstacles liés au genre à cet égard.
89. Il serait opportun de faciliter la libre circulation des femmes victimes de violence à l'égard des femmes en situation irrégulière (avec leurs enfants), le cas échéant, ou de leur permettre l'accès à un permis spécial pour pouvoir se déplacer entre les États membres du CoE au besoin de leur protection.

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Regroupement familial

89. Reconnaissant que le regroupement familial peut être à la fois une voie sûre vers la sécurité pour les femmes et les filles migrantes et réfugiées, et un facteur de protection dans le pays d'accueil, les États membres devraient assurer le droit au regroupement familial pour les femmes et les filles migrantes et réfugiées, conformément aux obligations découlant de la Convention européenne des droits de l'homme et du droit international. À cet égard, les États membres devraient :

- 89.1. adopter une définition de la famille conforme à l'article 8 de la Convention européenne des droits de l'homme ;
- 89.2. veiller à ce que les femmes et les filles soient informées de leur droit au regroupement familial, y compris en tant que requérantes, et qu'elles aient accès à une assistance et à des conseils juridiques pour faire valoir ce droit ;
- 89.3. envisager d'accepter ou de demander le transfert des demandes d'asile pour permettre la réunification familiale des femmes et des filles migrantes séparées au cours de leur voyage.
- 89.4. s'efforcer de prévoir dans leur législation nationale, des voies légales tenant compte de la dimension de genre afin de respecter la vie familiale des femmes migrantes résidant légalement dans le pays d'accueil, en particulier en offrant aux membres de la famille proches et à charge la possibilité de migrer avec elles ou de les rejoindre dans le pays d'accueil.

Détention

90. En ce qui concerne toutes les formes de privation de liberté, les États membres devraient adopter une approche sensible à l'âge et au genre, qui tienne compte de la situation individuelle et des caractéristiques personnelles des femmes et des filles migrantes, réfugiées et demandeuses d'asile. Les États membres devraient aussi fournir les services suivants aux femmes et aux filles migrantes, réfugiées et demandeuses d'asile privées de liberté :
 - 90.1 accès aux mesures d'application de la loi et aux mécanismes de signalement/plaintes, y compris le renvoi à la police et les enquêtes sur ces plaintes par la police, le cas échéant, et accès à l'aide juridique ;
 - 90.2 accès à l'informations sur leurs droits comme prévu au paragraphe 9 de la présente annexe;
 - 90.3 accès à des services de soins de santé et d'hygiène, à des lignes d'assistance téléphonique et des structures appropriées de soutien et de conseil en matière de traumatismes ;
 - 90.4 accès à un téléphone, et/ou à l'Internet pour informer un proche ou un tiers du fait de la privation de liberté, ainsi qu'à une assistance consulaire ;
 - 90.5 possibilité de rester en contact de manière significative avec le monde extérieur, y compris l'accès régulier à un téléphone, à leur téléphone portable ou à l'Internet;
 - 90.6 présence de femmes parmi le personnel chargé des frontières, des migrations et des autres services de police ou de garde à vue, ainsi que parmi les travailleurs sociaux et les interprètes.

91. Les États membres devraient veiller à ce que les conditions dans les centres de détention liés à l'immigration reflètent celles énumérées aux paragraphes 41 à 48 de la présente annexe (Installations de transit et d'accueil).
92. Les États membres devraient veiller à ce que les centres de détention, y compris les centres de détention administrative, fassent l'objet d'un contrôle indépendant régulier.
93. En cas de recours à la détention administrative en vertu de la législation sur l'immigration - qui devrait être une mesure de dernier recours - les familles ne devraient pas être séparées et des zones sûres distinctes devraient être prévues pour les femmes et les filles dans les centres de détention, où leur intimité est garantie et qui répondent de manière adéquate à leurs besoins spécifiques. Les filles non accompagnées ou séparées ne devraient, en règle générale, pas être placées en détention.
94. Des alternatives efficaces à la détention administrative devraient être prévues dans tous les cas pour les femmes et les filles migrantes, réfugiées et demandeuses d'asile qui ont été victimes de torture, de violence à l'égard des femmes ou de traite des êtres humains, les femmes enceintes et allaitantes, les femmes âgées et les femmes en situation de handicap.
95. Les femmes et les filles migrantes, réfugiées et demandeuses d'asile placées en détention administrative devraient être hébergées dans des centres spécifiquement conçus à cet effet, offrant des conditions matérielles et un régime adapté à leur situation juridique. Il convient de veiller à ce que la conception et l'aménagement de ces locaux évitent, dans la mesure du possible, toute impression d'environnement carcéral. À l'intérieur du centre de détention, les femmes et les filles migrantes réfugiées et demandeuses d'asile devraient le moins possible être limitées dans leur liberté de mouvement.
96. Les femmes et les filles migrantes, réfugiées et demandeuses d'asile placées en détention administrative devraient se voir proposer des activités appropriées, et elles devraient en principe avoir librement accès à des exercices en plein air tout au long de la journée (c'est-à-dire nettement plus d'une heure par jour).

VI. Retours

97. Les retours volontaires doivent être l'option privilégiée. Les retours devraient toujours se faire dans la sécurité et la dignité et conformément au principe de non-refoulement. Les États membres devraient donc veiller à ce que les femmes et les filles migrantes et demandeuses d'asile ne soient pas renvoyées ou éloignées vers un pays où leur vie serait en danger ou bien dans lequel elles pourraient être soumises à la torture ou à des peines ou traitements inhumains ou dégradants, y compris des actes qui affectent les femmes de manière disproportionnée ou qui sont dirigés contre elles en tant que femmes.
98. Dans ces situations, il convient de prendre dûment en considération les obligations pertinentes en matière de droits humains, notamment le droit à la vie familiale,

conformément à la jurisprudence de la Cour européenne des droits de l'homme, ainsi que l'intérêt supérieur de l'enfant, le cas échéant, et l'état de santé de la personne, y compris par exemple la grossesse.

99. Reconnaisant les difficultés particulières que rencontrent les victimes de violence à l'égard des femmes et de traite des êtres humains pour divulguer pleinement les motifs de leur demande de protection internationale, les États membres devraient :

99.1 garantir un processus qui protège les femmes et les filles contre le risque de *refoulement* ;

99.2 veiller à ce que des procédures accélérées et non suspensives ne soient en aucun cas mises en œuvre, tant qu'un processus garantissant une évaluation individuelle des besoins de protection internationale conformément aux dispositions de la présente annexe n'a pas été achevé, en particulier s'il existe des signes de violence à l'égard des femmes ou de traite des êtres humains.

100 Les États membres devraient garantir possibilité de suspension de mesures d'expulsion de femmes migrantes basées sur leur statut de personne à charge d'un conjoint, d'un partenaire ou d'un parent, afin de leur donner la possibilité de demander un titre de séjour indépendant.

101 Afin de faciliter la réintégration des femmes rapatriées, les États membres devraient prendre les mesures nécessaires pour permettre la reconnaissance des diplômes et qualifications éventuellement obtenus.



Strasbourg, 4 June 2021

GEC-MIG (2021) 3 rev 1

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

**Draft Recommendation on protecting the rights of migrant, refugee
and asylum-seeking women**

Working document in view of the internal and external consultation

04.06.2021- 16.07.2021

Draft Recommendation on protecting the rights of migrant, refugee, asylum-seeking women and girls

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 equality¹ 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. 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;
5. 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), and notably its strategic objective to identify and address vulnerabilities throughout asylum and migration procedures;
6. Bearing in mind the obligations and commitments undertaken by states, including 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 (CETS No. 126, 1987); 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);
7. 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; Recommendation CM/Rec(2019)4 on supporting

¹ Gender equality entails equal rights for women and men, girls and boys as well as the same visibility, empowerment, responsibility, and participation in all spheres of public and private life. It also implies equal access to and distribution of resources between women and men. (Council of Europe Gender Equality Strategy 2018-2023).

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;

8. Recalling the United Nations Convention Relating to the Status of Refugees (1951) and its 1967 Protocol; 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); 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. Noting 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); CEDAW General Recommendation No. 35 on gender-based violence against women; CEDAW Recommendation No.38 on trafficking in women and girls in the context of global migration (2020); as well as 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 human beings, 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. Bearing in mind the importance of the overall application and impact of the United Nations 2030 Agenda for Sustainable Development, in particular Sustainable Development Goal 5 ("Achieve gender equality and empower all women and girls"); Sustainable Development Goal 10.7 ("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");
12. 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;
13. Acknowledging the positive contribution that migrant, refugee and asylum-seeking women and girls may bring to European societies and communities;

Commented [NY1]: It is technically incorrect to cite the 1951 Convention without the 1967 Protocol that removed temporal and geographic limitations.

Commented [NY2]: UNHCR's full list of gender guidelines may be worth referencing: <https://www.refworld.org/women.html>.

Or at least mentioning UNHCR's *Handbook for the Protection of Women and Girls*, <https://www.refworld.org/docid/47cfc2962.html>

Commented [NY3]: There is significant evidence of their contribution. Suggest to remove the term 'may'. For example, see: p.6 OECD report 'Women Migrants and Refugees in the European Union' explaining the contribution of women to different sectors <https://www.oecd.org/migration/mig/15515792.pdf>.

14. Considering the profound changes in migration patterns and in the situation of migrant, refugee and asylum-seeking women and girls, the fact that their numbers have reached the highest ever in the 2010's and the significant developments in gender equality-, migration- and asylum-related concepts, policies and legal instruments at all levels;
15. Recognising that while existing international human rights standards apply to all persons, and bearing in mind the possible differences in legal status of the persons concerned, 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;
16. Underlining that women are exposed to a continuum of violence that is specific to them because they are women, or which affects them disproportionately, and that such violence is, in this sense, gender-based; recognising with grave concern, that migrant, refugee and asylum-seeking women and girls are particularly exposed to such forms of violence and exploitation in their countries of origin, during their journey, in transit and/or in destination countries, which may constitute a serious violation of their human rights, especially as migrant, refugee and asylum-seeking women and girls face difficulties and structural barriers in overcoming such violence and exploitation in their diverse forms;
17. 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 including, as appropriate, migrant Roma and Traveller women and girls.
18. Aware of the multiple and intersecting barriers that migrant, refugee and asylum-seeking women and girls face in terms of access to and exercise of rights, access to services, participation and leadership and of the need to facilitate their integration and full participation in the economic, social, civic, political and cultural life;
19. Wishing therefore to review and update its Recommendation No. R(79)10 to member States on women migrants, henceforth replaced by the present instrument;
20. Recommends that the governments of member States:
 1. Take all necessary measures to promote and apply the principles set out in the Recommendation and its appendix, aimed at ensuring that migrant, refugee and asylum-seeking women and girls can effectively access and exercise their rights;

2. Ensure, by appropriate means and action, including where appropriate translation, a wide dissemination (in accessible formats) of this Recommendation among relevant authorities and stakeholders, which are encouraged to take measures to implement it;
3. Examine periodically, within the competent Council of Europe steering committee(s) and bodies, the measures taken, 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 live in another, including citizens of Council of Europe member States with a migrant background, and stateless women and girls.

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

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

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

Commented [NY4]: Suggest to use this formulation first time the 1951 Refugee Convention mentioned.

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 migrant, refugee and asylum-seeking women and girls do not face discrimination on any ground.
3. Member States should apply an intersectional approach in all measures referred to in this Appendix, notably bearing in mind the different situations and individual characteristics of migrant, refugee and asylum-seeking women and girls.
4. Measures should be established to safeguard the fundamental rights of undocumented migrants and facilitate their access to essential services including, at a minimum, protection and complaint mechanisms and all support services for victims of violence against women and trafficking in human beings, without fearing any reporting to migration authorities.
5. Within both migrant and host countries and communities, member States should:
 - 5.1. pay special attention to measures aimed at dismantling all forms of stereotypes which have a negative impact on the rights of migrant, refugee and asylum-seeking women and girls;

Commented [NY5]: Suggest to use a broader term – perhaps 'authorities'?

- 5.2. implement awareness-raising and educational measures in respect of gender equality and human rights to promote dialogue.

Girls

6. Member States should adopt a child rights-based approach to migrant, refugee and asylum-seeking children, which takes account of the age and specific situations and needs of girls, including ensuring suitable and safe alternative care arrangements when they are separated from their parents or caregiver 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 migrant, refugee and asylum-seeking girls to support their transition to adulthood beyond the age of 18, including access to education and healthcare, as well as support for their integration and social participation.

Commented [NY6]: Suggest to say something about child appropriate means for girls to participate in identifying the risks and the ways to address it. Meaningful participation, that is.

Commented [NY7]: Suggest to add something about right to family reunion and measures to facilitate it, which can be tricky.

Information, empowerment, awareness raising and promotion of human rights

9. To empower migrant, refugee and asylum-seeking women and girls and enable them to access their rights, they should be provided with relevant and accessible information and advice in a way and a language that they understand, covering, at least:
 - 9.1 Their fundamental human rights 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 violence or other violations of rights by State authorities or private contractors acting on behalf of the State, including rights to civil remedies and compensation;
 - 9.3 Protection services available in the host country against all forms of violence against women and trafficking in human beings, including access to general and specific support services, specialist support provided by NGOs and legal aid;
 - 9.4 Available and accessible public services in the host country, notably healthcare including mental and sexual and reproductive health and rights, comprehensive sexuality education, psycho-social support, education, language and digital training, vocational training, integration programmes, housing and employment.
10. Member States should provide resources and tools for the empowerment and support of migrant, refugee and asylum-seeking women and girls, based on their needs and personal characteristics, in order for them to benefit to as great an extent possible from the social services and welfare available.

Commented [NY8]: Suggest to add something about giving women agency to participate in decision-making to identify the support they need.

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

Access to justice including legal aid

12. Migrant, refugee and asylum-seeking women and girls should have access to the different national and international civil, administrative, and criminal remedies, as well as legal aid, to effectively exercise their rights and/or take action in cases of non-compliance with those rights.
13. Member States should ensure that refugee and asylum-seeking women and girls receive adequate support as claimants, defendants, or witnesses throughout civil, administrative, or criminal proceedings.
14. An intersectional and gender-sensitive approach to individual migrant, refugee and asylum-seeking women and girls should be adopted when determining/assessing their **credibility** in civil, administrative, and criminal proceedings, particularly where decisions have an impact on their legal status.

Commented [NY9]: This should be broader than credibility. Suggest saying: 'procedural and substantive matters, including credibility'

Artificial intelligence, automated decision-making, and data protection

15. 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.
16. 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:
 - 16.1 border and immigration control decision-making, including decisions relating to entry or return;
 - 16.2 migration management, including the use of biometric information, such as DNA testing
 - 16.3 policing and security of migrant, refugee and asylum-seeking women and girls, and services related to protection and prevention of crimes;
 - 16.4 the provision of services to migrant, refugee and asylum-seeking women and girls.
17. Migrant, refugee and asylum-seeking women and relevant civil society organisations should be given the opportunity to participate in discussions and decision-making around the development and deployment of new technologies affecting them.

18. Bearing in mind the particular situations of vulnerability of migrant, refugee and asylum-seeking women and girls, relevant authorities should:

18.1 ensure the confidentiality and security of personal data in accordance with their national legislation and applicable international obligations;

18.2 not transfer any such data to the country of origin without explaining to the affected person, in a language that they understand, which data is being transferred and under which conditions, including providing the affected person the opportunity to object.

Co-operation with civil society

19. Member States should co-operate with and support migrant and refugee women's organisations, women's rights organisations and other civil society organisations that uphold the universal human rights of migrant and refugee and asylum-seeking women and girls, and that defend and empower them.

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

Data collection, research and monitoring

21. Member States should support the collection of data, disaggregated notably by age and sex, on migration, refugee and asylum issues, including regarding victims of violence against women and of trafficking in human beings, and ensuring compliance with applicable data protection requirements.

22. 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.

23. 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 and support

24. Member States should protect migrant, refugee, and asylum-seeking women and girls from all forms of violence against women and trafficking in human beings.

25. Measures should be taken to protect migrant, refugee and asylum-seeking women and girls from hate speech and sexism.

26. Member States should develop specific measures to address the sexual exploitation of migrant, refugee and asylum-seeking women and girls, in particular the demand for such exploitation, including protective, punitive, preventive and educational measures.
27. Member States should ensure that culture, custom, religion, tradition or so-called 'honour' shall not be considered as justification for any exploitation or acts of violence against women and girls.
28. Member States should ensure effective access for migrant, refugee and asylum-seeking women and girls, with or without children, to shelters for women victims of violence against women and trafficking in human beings, regardless of their legal status.
29. Access to free legal advice and free legal aid available in the language of the beneficiary, should be provided, in order to support migrant, refugee and asylum-seeking women and girls victims of all forms of violence against women and trafficking in human beings through criminal, administrative and civil proceedings, including the pursuit of compensation claims and legal redress against the perpetrators.
30. General and specialist support services should be provided to victims of violence against women and trafficking in human beings, including for those persons accommodated in transit, reception and accommodation facilities. This includes, at a minimum, short- and long-term psychological support and healthcare, including mental healthcare, sexual and reproductive healthcare, immediate medical support and the collection of forensic medical evidence in cases of rape and sexual assault.
31. Member States should allow migrant, refugee and asylum-seeking women and girls access to available compensation schemes, measures or other programmes aimed at the integration or reintegration of victims of violence against women or trafficking in human beings, on the same conditions as nationals.
32. Member States should ensure that migrant, refugee and asylum-seeking women and girls do not suffer any penalty, including loss of lawful migration or refugee status as a consequence of their exploitation as victims of trafficking in human beings or as a consequence of leaving an abusive sponsoring partner or spouse on whom their status was dependant or where they have been taken to another country against their will for the purpose of forced marriage.
33. A multi-agency, victim-centred approach, that prevents secondary victimisation and is aimed at the empowerment of migrant, refugee and asylum-seeking women and girls, inclusive of migrant and refugee women's organisations, should be adopted as regards matters relating to their protection and support.
34. Professional interpreters, legal assistants, and intercultural mediators, including women, should be available to assist migrant, refugee and asylum-seeking women and girls seeking protection, whilst making initial complaints, throughout the justice process and in seeking reparations, as well as in the context of the asylum determination procedures.

Commented [NY10]: Meaning unclear. Suggest to rephrase.

Commented [NY11]: survivors

35. Training in violence against women, trafficking in human beings, gender equality and intercultural issues should be adequately funded and provided to relevant authorities and staff including interpreters, legal assistants and intercultural mediators to enable them to:
- 35.1 promptly identify victims, where possible, in collaboration with relevant support organisations, conduct risk assessments, refer to relevant authorities and provide protection, treatment and care for migrant, refugee and asylum-seeking women and girls who are victims of all forms of violence and trafficking in human beings;
 - 35.2 be aware of the difficulties that migrant, refugee and asylum-seeking women and girls may face in disclosing incidents of violence against women and of trafficking in human beings, due to their insecure legal status, unavailability of quality interpretation services, lack of knowledge of their legal rights and lack of knowledge of the relevance of their experiences of violence in relation to migration/asylum decisions, social stigma, and lack of support to them in this regard.
36. Easily accessible mechanisms should be in place in State- and privately-run institutions, such as reception, transit and detention centres, police stations, prisons, childcare institutions, schools and hospitals, counselling centres and shelters, to enable incidents of violence against women and trafficking in human beings to be reported to staff and by staff. Member states should ensure access to age- and gender-sensitive telephone helplines, procedures for referral to other appropriate agencies, and medical and psychological treatment to facilitate reporting.
37. Risk assessment and risk management of violence against migrant, refugee and asylum-seeking women and girls should be conducted, taking specific account of their potential enhanced vulnerable situation owing to their insecure legal status.

State of emergency and crisis management

38. In situations of public health crisis, humanitarian crisis and crisis related to climate change, member States should take into account the increased risk of gender-based violence, trafficking in human beings, poverty and homelessness for migrant, refugee and asylum-seeking women and girls, and should therefore:
- 38.1 take into consideration the situation and needs of migrant, refugee and asylum-seeking women and girls in crisis management and recovery measures, including protection of rights, and notably the right to health, shelter, food security, water, economic empowerment and access to specialist support services for women victims of violence, by qualifying them as essential services and guaranteeing their continuity;
 - 38.2 ensure that measures taken during a crisis and ensuing state of emergency conform with international obligations related to the human rights of migrant, refugee and asylum-seeking women and girls;

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

IV. Arrival

Pre-arrival information

39. Member States should ensure that immigration procedures, including visa issuing procedures, take into account migrant, refugee and asylum-seeking women and girls' specific situations, needs and vulnerabilities and are age- and gender-sensitive.
40. Information should be provided to migrant, refugee and asylum-seeking women and girls about the conditions enabling the legal entry and stay in a member State's territory.

Transit and reception facilities

41. Relevant authorities should ensure that transit, reception, accommodation and screening arrangements are age- and gender-sensitive. The screening process should, in particular, facilitate the identification of victims of violence against women and trafficking in human beings at the earliest possible opportunity and ensure that women's protection claims are processed efficiently.
42. Reception and accommodation facilities should be located in areas where women and girls are safe and can access relevant services, with respect to health, and in particular sexual and reproductive health, social and legal assistance, education and shopping facilities.
43. The specific needs and safety concerns of victims of all forms of violence against women and trafficking in human beings 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 and clothing should be provided as needed.
44. Staff should be trained in women's human rights, gender equality-related and trauma issues as well as violence against women and the specific needs of migrant, refugee and asylum-seeking women and girls, and the presence of professional women social workers, intercultural mediators, interpreters, police officers and guards should be ensured in these facilities.
45. Migrant, refugee and asylum-seeking women and girls should be offered adequate safe living space. Separate sleeping areas, as well as other safe spaces should be provided for single women with or without children (up to age 18). Other elements to be provided include access to natural and artificial light, sufficient ventilation and heating, a clean bed and bedding, ready access to clean, separate, well-lit shower and toilet facilities, and the availability of a basic sanitary kit / hygiene products free of charge and on a regular basis.

46. Women in transit and reception facilities should have access to a complaint /reporting system, whereby complaints are investigated and referred to the police where relevant, including, where appropriate, access to legal aid.
47. Member states should ensure that transit, reception and accommodation facilities and services are subject to regular independent monitoring, including when provided by private contractors, to ensure compliance with the standards of protection of this Appendix.
48. If migrant, refugee or asylum-seeking women and girls are confined to transit, reception or accommodation centres, member States should also ensure compliance with the provisions contained in the paragraphs of this Appendix related to detention.

Asylum

49. Member States should adopt and implement age- and gender-sensitive-asylum laws, practices and procedures.
50. Women and girls should be entitled to access asylum and protection information and procedures at the borders and elsewhere.
51. The possibility for women and girls to lodge an independent asylum claim should be ensured and they should be made aware of this right.
52. To ensure that gender-based violence against women is properly assessed within the framework of the 1951 United Nations Convention Relating to the Status of Refugees member States should:
 - 52.1 ensure that all forms of gender-based violence can be recognized as a form of persecution within the meaning of Article 1A(2) of the 1951 Convention;
 - 52.2 ensure a gender-sensitive interpretation of the 1951 Convention 'grounds' for asylum;
 - 52.3 develop comprehensive gender-sensitive guidelines at all stages of the asylum process, including reception and support services, screening, determination of 'safe' countries for the purpose of accelerated or suspensive procedures, detention, status determination, adjudication and returns; and ensure that border police, migration officials, asylum officers, decision-makers, intercultural mediators and interpreters receive training in respect of such guidelines
53. Women asylum officers should be available to women applicants, who should be informed about this possibility.
54. Separate interviews for women and men from the same family, in the absence of children, should be made possible and their confidentiality should be guaranteed.
55. In processing and determining asylum claims, regard should be given to:

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- legal status and durable solutions should be determined in a reasonable time (EU regulation), given the detrimental impact of being left in legal limbo on psychological well-being
- women should not be transferred to territories for processing their asylum claims to places where their effective protection cannot be assured

- 55.1 the applicant's own personal circumstances and individual assessment of risk;
 - 55.2 relevant country of origin information, including in relation to gender equality and women's rights. This encompasses access to justice, the legal framework, and its implementation; available social, economic, and other support; and any form of multiple and intersecting discrimination and/or patriarchal attitudes that women are likely to encounter.
56. Member States should ensure that women and girls have access to complementary/subsidiary protection, where necessary, if the decision on their refugee status is negative.

Cross-border measures

57. Member States should seek to participate in resettlement and relocation programmes as well as reinforce and promote legal pathways to ensure safe transit for women and girls.
58. Member States are encouraged to fund specific assistance and humanitarian resettlement programmes for women and girls' victims, or at risk, of violence against women and trafficking in human beings, including trafficking for the purpose of sexual exploitation.
59. The setting up and implementation of effective cross-border protection mechanisms for victims of violence against women or trafficking in human beings, including trafficking for the purpose of sexual exploitation should be encouraged.

V. Residence and Integration

Access to holistic and quality health services, including sexual and reproductive health and rights

60. Authorities should ensure that healthcare provision takes into account the situation and personal characteristics of migrant women and girls and is age- and gender sensitive.
61. Essential healthcare services including primary care, urgent and immediate care, palliative care and treatment or assistance necessary for public health reasons should be provided to all migrant, refugee and asylum-seeking women and girls, including migrant women and girls in an irregular situation.
62. Member States should also enable migrant, refugee and asylum-seeking women and girls to access free or affordable, comprehensive, quality, age- and gender-sensitive health services encompassing mental, sexual and reproductive health, including during pregnancy, as well as hygiene products. Member States should also seek to provide such health services to migrant women and girls in an irregular situation.

63. Migrant, refugee and asylum-seeking girls should be provided with access to age-appropriate sexual and reproductive health and rights information in a language that they can understand.
64. Access to available healthcare should not be dependent on obtaining the authorisation of the migration authority nor permission from any person other than the woman concerned. The treatment of minor girls may be subject to the consent of a parent or guardian.
65. Taking into account language and cultural barriers, member States should ensure that women give prior, free and informed consent to any medical treatment.

Social services, social security and housing

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

Integration, social, cultural and political participation

68. Member States should ensure that any child born in their territory is entitled to have their birth registered immediately after birth and is granted a pathway to a nationality.
69. Owing to persisting stereotypes and existing inequalities in access to civic rights and participation in political decision-making, which are even more serious for migrant, refugee and asylum-seeking women, member States should take steps to ensure that migrant, refugee and asylum-seeking women who are entitled to vote and stand for election in local, regional, national or European elections are aware of their rights and encouraged to participate without any form of discrimination.
70. Authorities should encourage and support initiatives aimed at empowering migrant, refugee and asylum-seeking 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 can include participation in local, cultural, women's or other associations, sports clubs, youth clubs and other organisations.
71. Public and private coaching, mentoring and other support programmes aimed at migrant and refugee women and girls should be set up and supported, notably in order to promote positive role models and promising practices of integration.
72. The positive contribution made by migrant and refugee women and girls to society and host communities, the economy and culture should be highlighted and encouraged.

Education, vocational training and life-long learning

73. Authorities should ensure that migrant, refugee and asylum-seeking children have access to education and take measures to reach those migrant, refugee, and asylum-seeking 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. Recognizing that the ability to communicate in the host country's language is essential for integration, member States should ensure access to an adequate number of hours of quality language training and integration programmes to migrant, refugee and asylum-seeking women and girls, to promote their empowerment and protection. Literacy and digital skills courses should also be provided to migrant, refugee and asylum-seeking women and girls corresponding to their needs and as soon as possible after their arrival in the host country.
75. Member States should take steps to facilitate the recognition and validation of migrant and refugee women and girls' existing vocational and academic qualifications and work experience in practice, including through initiatives such as the Council of Europe European Qualifications Passport for Refugees.
76. Migrant, refugee and asylum-seeking women and girls 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.
77. Access to the programmes and measures referred to in paragraphs 74, 75 and 76 for migrants in an irregular situation may be subject to national laws governing eligibility.

Employment

78. Member States should take specific and targeted measures to prevent discrimination and promote access to employment for migrant and refugee women, at an early stage in the migration process, including safe and legal routes to employment pre-arrival.
79. Member States should comply with the obligations regarding the right to work and self-employment for refugee women and girls set out by the United Nations Convention Relating to the Status of Refugees and consider removing barriers to work, for other migrant women and girls after they have been present in the territory for a certain length of time.
80. In respect of *at least* those migrant, refugee, and asylum-seeking women and girls who are permitted to work under the national law of member States, the latter should ensure decent and dignified working conditions, including:
 - 80.1. taking measures to regulate and improve migrant, refugee, and asylum-seeking women and girls' working conditions and to eliminate all forms of labour exploitation and discrimination, including when they are multiple and intersecting;

- 80.2. supporting and assisting migrant, refugee, and asylum-seeking women and girls where appropriate 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, internships, apprenticeships and job placement programmes;
 - 80.3 in order to facilitate access to the labour market, take steps to ensure that migrant, refugee and asylum-seeking workers have access to work/life balance measures including maternity, paternity and parental leave, flexible working conditions where possible, and ensure access to and enjoyment of child-care facilities on an equal footing with national workers; and
 - 80.4 ensure that migrant, refugee, and asylum-seeking women 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.
81. Member States should implement the provisions of relevant national and international standards directed at protecting migrant, refugee and asylum-seeking women and girls carrying out domestic work from discrimination, exploitation and abuse.

Residence permits

82. Member States should ensure that migrant, refugee and asylum-seeking women and girls who are granted a residence permit on the basis of a family relationship are entitled to social, economic and labour-related rights and entitlements in an autonomous capacity.
83. Migrant, refugee and asylum-seeking women and girls should be made aware of any entitlement to a renewable autonomous residence permit, for example due to their own protection needs under the UN Refugee Convention, their status as a victim of violence against women, a victim of trafficking in human beings, relationship breakdown, or other particularly difficult circumstances
84. The evidentiary criteria and threshold for the granting of autonomous residence permits should be realistic and sensitive to the individual situation of migrant, refugee and asylum-seeking women and responsible statutory agencies should be adequately trained to ensure that migrant, refugee and asylum-seeking women and girls can benefit from these permits.
85. Member States should ensure that migrant, refugee and asylum-seeking women and girls and their dependents are granted a renewable residence permit if their stay is necessary for criminal investigations or proceedings and until at least their conclusions.
86. Member States should facilitate the possibility for victims of forced marriage brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, to regain such status.

87. Member States are encouraged to provide security of residence on an independent basis to migrant and refugee women and girls present in a country for a long time, including stateless women and girls.

88. Member States should provide pathways to naturalisation and take measures to ensure that migrant and refugee women and girls are not faced with gender-related obstacles in this regard.

Family reunion

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

- 89.1. adopt a definition of family consistent with article 8 of the European Convention on Human Rights;
- 89.2. ensure that women and girls are aware of their right to family reunion, including as migrant or refugee sponsors, and receive access to legal advice and assistance to pursue that right; and
- 89.3. consider accepting or seeking the transfer of asylum claims to enable the family reunion of migrant, refugee and asylum-seeking women and girls separated on their journeys.
- 89.4. Seek to provide within their national laws, gender-sensitive legal pathways to respect the family life of migrant women lawfully residing on their territory, in particular by providing the immediate and dependent family members with the possibly to migrate with or join them in the host country.

Detention

90. In respect of all forms of deprivation of liberty, member States should adopt an age- and gender-sensitive approach, which takes into account the individual situation and personal characteristics of migrant, refugee and asylum-seeking women and girls. Member States should also provide the following services to migrant, refugee and asylum-seeking women and girls deprived of their liberty:

- 90.1 access to law enforcement measures and reporting / complaints mechanisms including referral to and investigation of those complaints by police where relevant and access to legal aid;
- 90.2 access to information about their rights, as set forth in paragraph 9 of this Appendix;
- 90.3 access to health-care and hygiene services, telephone helplines and appropriate trauma support and counselling facilities;

Commented [NY13]:

Prohibit the separation of families as a punitive measure under Art 31 of the Refugee Convention (AUL does this, and I am not sure if Denmark and UK will try to emulate). It can be carried out on the territory or through offshore processing measures.

Commented [NY14]: Detention should be used as a last resort. It should be necessary and proportionate. Not mandatory, indefinite or arbitrary. In the instance of transfers offshore, the obligations of the transferring state will continue to apply (See UNHCR paper on multilateral and bilateral arrangements).

- 90.4 access to a telephone, and/or Internet facility to inform a relative or third party of the fact of deprivation of liberty, as well as to consular assistance;
 - 90.5 the opportunity to remain in meaningful contact with the outside world, including regular access to a telephone, to their mobile phones or to Internet facilities; and
 - 90.6 the presence of women among border, migration and other police or custody staff, as well as among social workers and interpreters.
91. Member States should ensure that conditions in immigration detention centres reflect those listed in paragraphs 41-48 of this Appendix (Transit and reception facilities).
 92. Member states should ensure that detention facilities, including administrative detention facilities, are subject to regular independent monitoring.
 93. In the event that administrative detention under immigration legislation 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 women and girls within detention facilities, where their privacy is guaranteed and which cater adequately for their specific needs. Unaccompanied or separated girls should not, as a general rule, be detained.
 94. Effective alternatives to administrative detention should be provided in any event for migrant, refugee and asylum-seeking women and girls who have been victims of torture, violence against women or trafficking in human beings, pregnant and nursing women, elderly women, and women with disabilities.
 95. Migrant, refugee and asylum-seeking women and girls in administrative detention should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation. Care should be taken in the design and layout of such premises to avoid, as far as possible, any impression of a carceral environment. Within the detention centre, migrant refugee and asylum-seeking women and girls should be restricted in their freedom of movement as little as possible.
 96. Migrant, refugee and asylum-seeking women and girls in administrative detention should be offered appropriate activities, and they should in principle have free access to outdoor exercise throughout the day (i.e. considerably more than one hour per day).

VI. Returns

97. Voluntary returns should be the preferred option. Returns should always be in safety and dignity, in line with the principle of *non-refoulement*. Member States should therefore ensure that migrant and asylum-seeking women and girls are not returned or removed to a country where their life would be at risk or where they might be subjected to acts of torture or inhuman or degrading treatment or punishment, including those acts which

Commented [NY15]: This is also the position of the GA. Is voluntary return the preferred option? For who?

A better approach is that a range of solutions are available to women based on protection criteria. Women will be forced to return where they are dependent on male family members or have no other options. And this may mean a return to gender based violence where gender issues are ignored in this assessment. Happy to discuss further. There is a lot written on this.

disproportionately affect women or are directed at them because they are women.

98. Gender -sensitive procedures for determining voluntariness must be adopted to ensure that women are able to freely express their opinion, and other options should be available to ensure voluntariness of decision-making.

99. In these situations, due regard should be given to relevant human rights obligations, notably the right to family life, in accordance with the case law of the European Court of Human Rights; the best interest of the child, if applicable; and to the state of health of the person, including for example pregnancy.

99. Recognising the particular difficulties that victims of violence against women and of trafficking in human beings and face in fully disclosing the grounds for their international protection claim, member States should:

99.1 ensure a process that protects women and girls against the risk of *refoulement*;

99.2 ensure that accelerated and non-suspensive procedures are not implemented under any circumstance, until such a process has been completed to guarantee an individual assessment of the international protection needs in conformity with the provisions of this Appendix, especially if there are any signs of violence against women or trafficking in human beings.

100. Member States should ensure the possibility of suspending expulsion measures of migrant women based on their dependent status on a spouse, partner, parent, or other family member, in order to enable them to apply for an independent residence permit.

101. In order to facilitate the reintegration of returnee women, member States should take the necessary measures to allow for the recognition of eventual diplomas or qualifications obtained.

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Commented [NY16]: Suggest to specifically add something about gender and refoulement in the context of women fleeing persecution by sea. See my recent paper on this from the Andaman Sea context:

<https://brill-com.proxy1.library.unsw.edu.au/view/journals/aphu/22/1/aphu.22.issue-1.xml>

5. Bodies and sectors of the Council of Europe

ADI-ROM

Petra NEUMANN

19/07/21



Strasbourg, 4 June 2021

GEC-MIG (2021) 3 rev 1

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

**Draft Recommendation on protecting the rights of migrant, refugee
and asylum-seeking women**

Working document in view of the internal and external consultation

04.06.2021- 16.07.2021

Draft Recommendation on protecting the rights of migrant, refugee, asylum-seeking women and girls

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 equality¹ 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. 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;
5. 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), and notably its strategic objective to identify and address vulnerabilities throughout asylum and migration procedures;
6. Bearing in mind the obligations and commitments undertaken by states, including 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 (CETS No. 126, 1987); 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);
7. 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; Recommendation CM/Rec(2019)4 on supporting

¹ Gender equality entails equal rights for women and men, girls and boys as well as the same visibility, empowerment, responsibility, and participation in all spheres of public and private life. It also implies equal access to and distribution of resources between women and men. (Council of Europe Gender Equality Strategy 2018-2023).

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;

8. Recalling the United Nations Convention Relating to the Status of Refugees (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); 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. Noting 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); CEDAW General Recommendation No. 35 on gender-based violence against women; CEDAW Recommendation No.38 on trafficking in women and girls in the context of global migration (2020); as well as 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 human beings, 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. Bearing in mind the importance of the overall application and impact of the United Nations 2030 Agenda for Sustainable Development, in particular Sustainable Development Goal 5 (“Achieve gender equality and empower all women and girls”); Sustainable Development Goal 10.7 (“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”);
12. 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;
13. Acknowledging the positive contribution that migrant, refugee and asylum-seeking women and girls may bring to European societies and communities; [including minority groups such as Roma and Traveller women.](#)

14. Considering the profound changes in migration patterns and in the situation of migrant, refugee and asylum-seeking women and girls, the fact that their numbers have reached the highest ever in the 2010's and the significant developments in gender equality-, migration- and asylum-related concepts, policies and legal instruments at all levels;
15. Recognising that while existing international human rights standards apply to all persons, and bearing in mind the possible differences in legal status of the persons concerned, 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;
16. Underlining that women are exposed to a continuum of violence that is specific to them because they are women, or which affects them disproportionately, and that such violence is, in this sense, gender-based; recognising with grave concern, that migrant, refugee and asylum-seeking women and girls are particularly exposed to such forms of violence and exploitation in their countries of origin, during their journey, in transit and/or in destination countries, which may constitute a serious violation of their human rights, especially as migrant, refugee and asylum-seeking women and girls face difficulties and structural barriers in overcoming such violence and exploitation in their diverse forms;
17. 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 including, as appropriate, migrant Roma and Traveller women and girls.
18. Aware of the multiple and intersecting barriers that migrant, refugee and asylum-seeking women and girls face in terms of access to and exercise of rights, access to services, participation and leadership and of the need to facilitate their integration and full participation in the economic, social, civic, political and cultural life;
19. Wishing therefore to review and update its Recommendation No. R(79)10 to member States on women migrants, henceforth replaced by the present instrument;
20. 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. The issue of statelessness is especially faced by Internally Displaced Persons, who face similar gaps in protection as migrants and refugees as they 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 but have not crossed an internationally recognized state border. This is particularly an issue for minority groups such as Roma and Travellers.

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21. Recommends that the governments of member States:

1. Take all necessary measures to promote and apply the principles set out in the Recommendation and its appendix, aimed at ensuring that migrant, refugee and asylum-seeking women and girls can effectively access and exercise their rights;
2. Ensure, by appropriate means and action, including where appropriate translation, a wide dissemination (in accessible formats) of this Recommendation among relevant authorities and stakeholders, which are encouraged to take measures to implement it;
3. Examine periodically, within the competent Council of Europe steering committee(s) and bodies, the measures taken, 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 live in another, including citizens of Council of Europe member States with a migrant background, and stateless women and girls.

'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 migrant, refugee and asylum-seeking women and girls do not face discrimination on any ground.
3. Member States should apply an intersectional approach in all measures referred to in this Appendix, notably bearing in mind the different situations and individual characteristics of migrant, refugee and asylum-seeking women and girls [including Roma and Traveller women](#).
4. Measures should be established to safeguard the fundamental rights of undocumented migrants and facilitate their access to essential services including, at a minimum, protection and complaint mechanisms and all support services for victims of violence against women and trafficking in human beings, without fearing any reporting to migration authorities.
5. Within both migrant and host countries and communities, member States should:
 - 5.1. pay special attention to measures aimed at dismantling all forms of stereotypes which have a negative impact on the rights of migrant, refugee and asylum-seeking women and girls;

- 5.2. implement awareness-raising and educational measures in respect of gender equality and human rights to promote dialogue.

Girls

6. Member States should adopt a child rights-based approach to migrant, refugee and asylum-seeking children, which takes account of the age and specific situations and needs of girls, including ensuring suitable and safe alternative care arrangements when they are separated from their parents or caregiver 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 migrant, refugee and asylum-seeking girls to support their transition to adulthood beyond the age of 18, including access to education and healthcare, as well as support for their integration and social participation.

Information, empowerment, awareness raising and promotion of human rights

9. To empower migrant, refugee and asylum-seeking women and girls and enable them to access their rights, they should be provided with relevant and accessible information and advice in a way and a language that they understand, covering, at least:
 - 9.1 Their fundamental human rights 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 violence or other violations of rights by State authorities or private contractors acting on behalf of the State, including rights to civil remedies and compensation;
 - 9.3 Protection services available in the host country against all forms of violence against women and trafficking in human beings, including access to general and specific support services, specialist support provided by NGOs and legal aid;
 - 9.4 Available and accessible public services in the host country, notably healthcare including mental and sexual and reproductive health and rights, comprehensive sexuality education, psycho-social support, education, language and digital training, vocational training, integration programmes, housing and employment.
10. Member States should provide resources and tools for the empowerment and support of migrant, refugee and asylum-seeking and women and girls, based on their needs and

personal characteristics, in order for them to benefit to as great an extent possible from the social services and welfare available.

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

Access to justice including legal aid

12. Migrant, refugee and asylum-seeking women and girls should have access to the different national and international civil, administrative, and criminal remedies, as well as legal aid, to effectively exercise their rights and/or take action in cases of non-compliance with those rights.
13. Member States should ensure that refugee and asylum-seeking women and girls receive adequate support as claimants, defendants, or witnesses throughout civil, administrative, or criminal proceedings.
14. An intersectional and gender-sensitive approach to individual migrant, refugee and asylum-seeking women and girls should be adopted when determining/assessing their credibility in civil, administrative, and criminal proceedings, particularly where decisions have an impact on their legal status.

Artificial intelligence, automated decision-making, and data protection

15. 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.
16. 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:
 - 16.1 border and immigration control decision-making, including decisions relating to entry or return;
 - 16.2 migration management, including the use of biometric information, such as DNA testing
 - 16.3 policing and security of migrant, refugee and asylum-seeking women and girls, and services related to protection and prevention of crimes;
 - 16.4 the provision of services to migrant, refugee and asylum-seeking women and girls.

17. Migrant, refugee and asylum-seeking women and relevant civil society organisations should be given the opportunity to participate in discussions and decision-making around the development and deployment of new technologies affecting them.
18. Bearing in mind the particular situations of vulnerability of migrant, refugee and asylum-seeking women and girls, relevant authorities should:
 - 18.1 ensure the confidentiality and security of personal data in accordance with their national legislation and applicable international obligations;
 - 18.2 not transfer any such data to the country of origin without explaining to the affected person, in a language that they understand, which data is being transferred and under which conditions, including providing the affected person the opportunity to object.

Co-operation with civil society

19. Member States should co-operate with and support migrant and refugee women's organisations, women's rights organisations and other civil society organisations that uphold the universal human rights of migrant and refugee and asylum-seeking women and girls, and that defend and empower them.
20. Mechanisms should be established to ensure that migrant and refugee women's organisations, including where appropriate Roma and Travellers' women's organisations, are consulted, in particular when devising migration, asylum and integration policies which affect them.

Data collection, research and monitoring

21. Member States should support the collection of data, disaggregated notably by age and sex, on migration, refugee and asylum issues, including regarding victims of violence against women and of trafficking in human beings, and ensuring compliance with applicable data protection requirements.
22. 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.
23. 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 and support

24. Member States should protect migrant, refugee, and asylum-seeking women and girls from all forms of violence against women and trafficking in human beings.
25. Measures should be taken to protect migrant, refugee and asylum-seeking women and girls from hate speech and sexism [including minority groups such as Roma and Traveller women](#).
26. Member States should develop specific measures to address the sexual exploitation of migrant, refugee and asylum-seeking women and girls, in particular the demand for such exploitation, including protective, punitive, preventive and educational measures.
27. Member States should ensure that culture, custom, religion, tradition or so-called 'honour' shall not be considered as justification for any exploitation or acts of violence against women and girls.
28. Member States should ensure effective access for migrant, refugee and asylum-seeking women and girls, with or without children, to shelters for women victims of violence against women and trafficking in human beings, regardless of their legal status.
29. Access to free legal advice and free legal aid available in the language of the beneficiary, should be provided, in order to support migrant, refugee and asylum-seeking women and girls victims of all forms of violence against women and trafficking in human beings through criminal, administrative and civil proceedings, including the pursuit of compensation claims and legal redress against the perpetrators.
30. General and specialist support services should be provided to victims of violence against women and trafficking in human beings, including for those persons accommodated in transit, reception and accommodation facilities. This includes, at a minimum, short- and long-term psychological support and healthcare, including mental healthcare, sexual and reproductive healthcare, immediate medical support and the collection of forensic medical evidence in cases of rape and sexual assault.
31. Member States should allow migrant, refugee and asylum-seeking women and girls access to available compensation schemes, measures or other programmes aimed at the integration or reintegration of victims of violence against women or trafficking in human beings, on the same conditions as nationals.
32. Member States should ensure that migrant, refugee and asylum-seeking women and girls do not suffer any penalty, including loss of lawful migration or refugee status as a consequence of their exploitation as victims of trafficking in human beings or as a consequence of leaving an abusive sponsoring partner or spouse on whom their status was dependant or where they have been taken to another country against their will for the purpose of forced marriage [and child marriage](#).
33. A multi-agency, victim-centred approach, that prevents secondary victimisation and is aimed at the empowerment of migrant, refugee and asylum-seeking women and girls,

inclusive of migrant and refugee women's organisations, should be adopted as regards matters relating to their protection and support.

34. Professional interpreters, legal assistants, and intercultural mediators, including women, should be available to assist migrant, refugee and asylum-seeking women and girls seeking protection, whilst making initial complaints, throughout the justice process and in seeking reparations, as well as in the context of the asylum determination procedures.
35. Training in violence against women, trafficking in human beings, gender equality and intercultural issues should be adequately funded and provided to relevant authorities and staff including interpreters, legal assistants and intercultural mediators to enable them to:
 - 35.1 promptly identify victims, where possible, in collaboration with relevant support organisations, conduct risk assessments, refer to relevant authorities and provide protection, treatment and care for migrant, refugee and asylum-seeking women and girls who are victims of all forms of violence and trafficking in human beings;
 - 35.2 be aware of the difficulties that migrant, refugee and asylum-seeking women and girls may face in disclosing incidents of violence against women and of trafficking in human beings, due to their insecure legal status, unavailability of quality interpretation services, lack of knowledge of their legal rights and lack of knowledge of the relevance of their experiences of violence in relation to migration/asylum decisions, social stigma, and lack of support to them in this regard.
36. Easily accessible mechanisms should be in place in State- and privately-run institutions, such as reception, transit and detention centres, police stations, prisons, childcare institutions, schools and hospitals, counselling centres and shelters, to enable incidents of violence against women and trafficking in human beings to be reported to staff and by staff. Member states should ensure access to age- and gender-sensitive telephone helplines, procedures for referral to other appropriate agencies, and medical and psychological treatment to facilitate reporting.
37. Risk assessment and risk management of violence against migrant, refugee and asylum-seeking women and girls should be conducted, taking specific account of their potential enhanced vulnerable situation owing to their insecure legal status.

State of emergency and crisis management

38. In situations of public health crisis, humanitarian crisis and crisis related to climate change, member States should take into account the increased risk of gender-based violence, trafficking in human beings, poverty and homelessness for migrant, refugee and asylum-seeking women and girls, and should therefore:
 - 38.1 take into consideration the situation and needs of migrant, refugee and asylum-seeking women and girls in crisis management and recovery measures, including

protection of rights, and notably the right to health, shelter, food security, water, economic empowerment and access to specialist support services for women victims of violence, by qualifying them as essential services and guaranteeing their continuity;

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

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

IV. Arrival

Pre-arrival information

39. Member States should ensure that immigration procedures, including visa issuing procedures, take into account migrant, refugee and asylum-seeking women and girls' specific situations, needs and vulnerabilities and are age- and gender-sensitive.

40. Information should be provided to migrant, refugee and asylum-seeking women and girls about the conditions enabling the legal entry and stay in a member State's territory.

Transit and reception facilities

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

42. Reception and accommodation facilities should be located in areas where women and girls are safe and can access relevant services, with respect to health, and in particular sexual and reproductive health, social and legal assistance, education and shopping facilities.

43. The specific needs and safety concerns of victims of all forms of violence against women and trafficking in human beings 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 and clothing should be provided as needed.

44. Staff should be trained in women's human rights, gender equality-related and trauma issues as well as violence against women and the specific needs of migrant, refugee and asylum-seeking women and girls, and the presence of professional women social workers, intercultural mediators, interpreters, police officers and guards should be ensured in these facilities.

45. Migrant, refugee and asylum-seeking women and girls should be offered adequate safe living space. Separate sleeping areas, as well as other safe spaces should be provided for single women with or without children (up to age 18). Other elements to be provided include access to natural and artificial light, sufficient ventilation and heating, a clean bed and bedding, ready access to clean, separate, well-lit shower and toilet facilities, and the availability of a basic sanitary kit / hygiene products free of charge and on a regular basis.
46. Women in transit and reception facilities should have access to a complaint /reporting system, whereby complaints are investigated and referred to the police where relevant, including, where appropriate, access to legal aid.
47. Member states should ensure that transit, reception and accommodation facilities and services are subject to regular independent monitoring, including when provided by private contractors, to ensure compliance with the standards of protection of this Appendix.
48. If migrant, refugee or asylum-seeking women and girls are confined to transit, reception or accommodation centres, member States should also ensure compliance with the provisions contained in the paragraphs of this Appendix related to detention.

Asylum

49. Member States should adopt and implement age- and gender-sensitive-asylum laws, practices and procedures.
50. Women and girls [including unaccompanied minors](#) should be entitled to access asylum and protection information and procedures at the borders and elsewhere.
51. The possibility for women and girls to lodge an independent asylum claim should be ensured and they should be made aware of this right.
52. To ensure that gender-based violence against women is properly assessed within the framework of the 1951 United Nations Convention Relating to the Status of Refugees member States should:
 - 52.1 ensure that all forms of gender-based violence can be recognized as a form of persecution within the meaning of Article 1A(2) of the 1951 Convention;
 - 52.2 ensure a gender-sensitive interpretation of the 1951 Convention 'grounds' for asylum;
 - 52.3 develop comprehensive gender-sensitive guidelines at all stages of the asylum process, including reception and support services, screening, determination of 'safe' countries for the purpose of accelerated or suspensive procedures, detention, status determination, adjudication and returns; and ensure that border police, migration officials, asylum officers, decision-makers, intercultural mediators and interpreters receive training in respect of such guidelines

53. Women asylum officers should be available to women applicants, who should be informed about this possibility.
54. Separate interviews for women and men from the same family, in the absence of children, should be made possible and their confidentiality should be guaranteed.
55. In processing and determining asylum claims, regard should be given to:
- 55.1 the applicant's own personal circumstances and individual assessment of risk;
 - 55.2 relevant country of origin information, including in relation to gender equality and women's rights. This encompasses access to justice, the legal framework, and its implementation; available social, economic, and other support; and any form of multiple and intersecting discrimination and/or patriarchal attitudes that women are likely to encounter.
56. Member States should ensure that women and girls have access to complementary/subsidiary protection, where necessary, if the decision on their refugee status is negative.

Cross-border measures

57. Member States should seek to participate in resettlement and relocation programmes as well as reinforce and promote legal pathways to ensure safe transit for women and girls.
58. Member States are encouraged to fund specific assistance and humanitarian resettlement programmes for women and girls' victims, or at risk, of violence against women and trafficking in human beings, including trafficking for the purpose of sexual exploitation.
59. The setting up and implementation of effective cross-border protection mechanisms for victims of violence against women or trafficking in human beings, including trafficking for the purpose of sexual exploitation should be encouraged.

V. Residence and Integration

Access to holistic and quality health services, including sexual and reproductive health and rights

60. Authorities should ensure that healthcare provision takes into account the situation and personal characteristics of migrant women and girls and is age- and gender sensitive.
61. Essential healthcare services including primary care, urgent and immediate care, palliative care and treatment or assistance necessary for public health reasons should be provided to all migrant, refugee and asylum-seeking women and girls, including migrant women and girls in an irregular situation.

62. Member States should also enable migrant, refugee and asylum-seeking women and girls to access free or affordable, comprehensive, quality, age- and gender-sensitive health services encompassing mental, sexual and reproductive health, including during pregnancy, as well as hygiene products. Member States should also seek to provide such health services to migrant women and girls in an irregular situation.
63. Migrant, refugee and asylum-seeking girls should be provided with access to age-appropriate sexual and reproductive health and rights information in a language that they can understand.
64. Access to available healthcare should not be dependent on obtaining the authorisation of the migration authority nor permission from any person other than the woman concerned. The treatment of minor girls may be subject to the consent of a parent or guardian.
65. Taking into account language and cultural barriers, member States should ensure that women give prior, free and informed consent to any medical treatment.

Social services, social security and housing

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

Integration, social, cultural and political participation

68. Member States should ensure that any child born in their territory is entitled to have their birth registered immediately after birth and is granted a pathway to a nationality.
69. Owing to persisting stereotypes and existing inequalities in access to civic rights and participation in political decision-making, which are even more serious for migrant, refugee and asylum-seeking women, member States should take steps to ensure that migrant, refugee and asylum-seeking women who are entitled to vote and stand for election in local, regional, national or European elections are aware of their rights and encouraged to participate without any form of discrimination.
70. Authorities should encourage and support initiatives aimed at empowering migrant, refugee and asylum-seeking 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 can include participation in local, cultural, women's or other associations, sports clubs, youth clubs and other organisations.

71. Public and private coaching, mentoring and other support programmes aimed at migrant and refugee women and girls should be set up and supported, notably in order to promote positive role models and promising practices of integration.
72. The positive contribution made by migrant and refugee women and girls to society and host communities, the economy and culture should be highlighted and encouraged.

Education, vocational training and life-long learning

73. Authorities should ensure that migrant, refugee and asylum-seeking children have access to education and take measures to reach those migrant, refugee, and asylum-seeking 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. Recognizing that the ability to communicate in the host country's language is essential for integration, member States should ensure access to an adequate number of hours of quality language training and integration programmes to migrant, refugee and asylum-seeking women and girls, to promote their empowerment and protection. Literacy and digital skills courses should also be provided to migrant, refugee and asylum-seeking women and girls corresponding to their needs and as soon as possible after their arrival in the host country.
75. Member States should take steps to facilitate the recognition and validation of migrant and refugee women and girls' existing vocational and academic qualifications and work experience in practice, including through initiatives such as the Council of Europe European Qualifications Passport for Refugees.
76. Migrant, refugee and asylum-seeking women and girls 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.
77. Access to the programmes and measures referred to in paragraphs 74, 75 and 76 for migrants in an irregular situation may be subject to national laws governing eligibility.

Employment

78. Member States should take specific and targeted measures to prevent discrimination and promote access to employment for migrant and refugee women, at an early stage in the migration process, including safe and legal routes to employment pre-arrival.
79. Member States should comply with the obligations regarding the right to work and self-employment for refugee women and girls set out by the United Nations Convention Relating to the Status of Refugees and consider removing barriers to work, for other migrant women and girls after they have been present in the territory for a certain length of time.

80. In respect of *at least* those migrant, refugee, and asylum-seeking women and girls who are permitted to work under the national law of member States, the latter should ensure decent and dignified working conditions, including:
- 80.1. taking measures to regulate and improve migrant, refugee, and asylum-seeking women and girls' working conditions and to eliminate all forms of labour exploitation and discrimination, including when they are multiple and intersecting;
 - 80.2. supporting and assisting migrant, refugee, and asylum-seeking women and girls where appropriate 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, internships, apprenticeships and job placement programmes;
 - 80.3. in order to facilitate access to the labour market, take steps to ensure that migrant, refugee and asylum-seeking workers have access to work/life balance measures including maternity, paternity and parental leave, flexible working conditions where possible, and ensure access to and enjoyment of child-care facilities on an equal footing with national workers; and
 - 80.4. ensure that migrant, refugee, and asylum-seeking women 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.
81. Member States should implement the provisions of relevant national and international standards directed at protecting migrant, refugee and asylum-seeking women and girls carrying out domestic work from discrimination, exploitation and abuse.

Residence permits

82. Member States should ensure that migrant, refugee and asylum-seeking women and girls who are granted a residence permit on the basis of a family relationship are entitled to social, economic and labour-related rights and entitlements in an autonomous capacity.
83. Migrant, refugee and asylum-seeking women and girls should be made aware of any entitlement to a renewable autonomous residence permit, for example due to their own protection needs under the UN Refugee Convention, their status as a victim of violence against women, a victim of trafficking in human beings, relationship breakdown, or other particularly difficult circumstances
84. The evidentiary criteria and threshold for the granting of autonomous residence permits should be realistic and sensitive to the individual situation of migrant, refugee and asylum-seeking women and responsible statutory agencies should be adequately trained to ensure that migrant, refugee and asylum-seeking women and girls can benefit from these permits.

85. Member States should ensure that migrant, refugee and asylum-seeking women and girls and their dependents are granted a renewable residence permit if their stay is necessary for criminal investigations or proceedings and until at least their conclusions.
86. Member States should facilitate the possibility for victims of forced marriage [or child 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 regain such status. [This should also apply to those who have lost their nationality and are faced with the issue of statelessness.](#)
87. Member States are encouraged to provide security of residence on an independent basis to migrant and refugee women and girls present in a country for a long time, including stateless women and girls.
88. Member States should provide pathways to naturalisation and take measures to ensure that migrant and refugee women and girls are not faced with gender-related obstacles in this regard.

Family reunion

89. Recognising that family reunion can be both a secure pathway to safety for migrant and refugee women and girls, and a protective factor in the host country, member States should safeguard the right to family reunion for migrant and refugee women and girls in accordance with obligations under the European Convention on Human Rights and international law. In this respect, member States should:
 - 89.1. adopt a definition of family consistent with article 8 of the European Convention on Human Rights;
 - 89.2. ensure that women and girls are aware of their right to family reunion, including as migrant or refugee sponsors, and receive access to legal advice and assistance to pursue that right; and
 - 89.3. consider accepting or seeking the transfer of asylum claims to enable the family reunion of migrant, refugee and asylum-seeking women and girls separated on their journeys.
 - 89.4. Seek to provide within their national laws, gender-sensitive legal pathways to respect the family life of migrant women lawfully residing on their territory, in particular by providing the immediate and dependent family members with the possibly to migrate with or join them in the host country.

Detention

90. In respect of all forms of deprivation of liberty, member States should adopt an age- and gender-sensitive approach, which takes into account the individual situation and personal characteristics of migrant, refugee and asylum-seeking women and girls. Member States should also provide the following services to migrant, refugee and asylum-seeking women and girls deprived of their liberty:

- 90.1 access to law enforcement measures and reporting / complaints mechanisms including referral to and investigation of those complaints by police where relevant and access to legal aid;
 - 90.2 access to information about their rights, as set forth in paragraph 9 of this Appendix;
 - 90.3 access to health-care and hygiene services, telephone helplines and appropriate trauma support and counselling facilities;
 - 90.4 access to a telephone, and/or Internet facility to inform a relative or third party of the fact of deprivation of liberty, as well as to consular assistance;
 - 90.5 the opportunity to remain in meaningful contact with the outside world, including regular access to a telephone, to their mobile phones or to Internet facilities; and
 - 90.6 the presence of women among border, migration and other police or custody staff, as well as among social workers and interpreters.
91. Member States should ensure that conditions in immigration detention centres reflect those listed in paragraphs 41-48 of this Appendix (Transit and reception facilities).
 92. Member states should ensure that detention facilities, including administrative detention facilities, are subject to regular independent monitoring.
 93. In the event that administrative detention under immigration legislation 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 women and girls within detention facilities, where their privacy is guaranteed and which cater adequately for their specific needs. Unaccompanied or separated girls should not, as a general rule, be detained.
 94. Effective alternatives to administrative detention should be provided in any event for migrant, refugee and asylum-seeking women and girls who have been victims of torture, violence against women or trafficking in human beings, pregnant and nursing women, elderly women, and women with disabilities.
 95. Migrant, refugee and asylum-seeking women and girls in administrative detention should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation. Care should be taken in the design and layout of such premises to avoid, as far as possible, any impression of a carceral environment. Within the detention centre, migrant refugee and asylum-seeking women and girls should be restricted in their freedom of movement as little as possible.
 96. Migrant, refugee and asylum-seeking women and girls in administrative detention should be offered appropriate activities, and they should in principle have free access to outdoor exercise throughout the day (i.e. considerably more than one hour per day).

VI. Returns

97. Voluntary returns should be the preferred option. Returns should always be in safety and dignity, in line with the principle of *non-refoulement*. Member States should therefore ensure that migrant and asylum-seeking women and girls are not returned or removed to a country where their life would be at risk or where they might be subjected to acts of torture or inhuman or degrading treatment or punishment, including those acts which disproportionately affect women or are directed at them because they are women.
98. In these situations, due regard should be given to relevant human rights obligations, notably the right to family life, in accordance with the case law of the European Court of Human Rights; the best interest of the child, if applicable; and to the state of health of the person, including for example pregnancy.
99. Recognising the particular difficulties that victims of violence against women and of trafficking in human beings and face in fully disclosing the grounds for their international protection claim, member States should:
- 99.1 ensure a process that protects women and girls against the risk of *refoulement*;
 - 99.2 ensure that accelerated and non-suspensive procedures are not implemented under any circumstance, until such a process has been completed to guarantee an individual assessment of the international protection needs in conformity with the provisions of this Appendix, especially if there are any signs of violence against women or trafficking in human beings.
100. Member States should ensure the possibility of suspending expulsion measures of migrant women based on their dependent status on a spouse, partner, parent, or other family member, in order to enable them to apply for an independent residence permit.
101. In order to facilitate the reintegration of returnee women, member States should take the necessary measures to allow for the recognition of eventual diplomas or qualifications obtained.

GREVIO

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08/07/2021



Strasbourg, 4 June 2021

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

**Draft Recommendation on protecting the rights of migrant, refugee
and asylum-seeking women**

Working document in view of the internal and external consultation

04.06.2021- 16.07.2021

Draft Recommendation on protecting the rights of migrant, refugee, asylum-seeking women and girls

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 equality¹ 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. 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;
5. 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), and notably its strategic objective to identify and address vulnerabilities throughout asylum and migration procedures;
6. Bearing in mind the obligations and commitments undertaken by states, including 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 (CETS No. 126, 1987); 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);
7. 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; Recommendation CM/Rec(2019)4 on supporting

¹ Gender equality entails equal rights for women and men, girls and boys as well as the same visibility, empowerment, responsibility, and participation in all spheres of public and private life. It also implies equal access to and distribution of resources between women and men. (Council of Europe Gender Equality Strategy 2018-2023).

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;

8. Recalling the United Nations Convention Relating to the Status of Refugees (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); 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. Noting 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); CEDAW General Recommendation No. 35 on gender-based violence against women; CEDAW Recommendation No.38 on trafficking in women and girls in the context of global migration (2020); as well as 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 human beings, 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. Bearing in mind the importance of the overall application and impact of the United Nations 2030 Agenda for Sustainable Development, in particular Sustainable Development Goal 5 (“Achieve gender equality and empower all women and girls”); Sustainable Development Goal 10.7 (“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”);
12. 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;
13. Acknowledging the positive contribution that migrant, refugee and asylum-seeking women and girls may bring to European societies and communities;

14. Considering the profound changes in migration patterns and in the situation of migrant, refugee and asylum-seeking women and girls, the fact that their numbers have reached the highest ever in the 2010's and the significant developments in gender equality-, migration- and asylum-related concepts, policies and legal instruments at all levels;
15. Recognising that while existing international human rights standards apply to all persons, and bearing in mind the possible differences in legal status of the persons concerned, 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;
16. Underlining that women are exposed to a continuum of violence that is specific to them because they are women, or which affects them disproportionately, and that such violence is, in this sense, gender-based; recognising with grave concern, that migrant, refugee and asylum-seeking women and girls are particularly exposed to such forms of violence and exploitation in their countries of origin, during their journey, in transit and/or in destination countries, which may constitute a serious violation of their human rights, especially as migrant, refugee and asylum-seeking women and girls face difficulties and structural barriers in overcoming such violence and exploitation in their diverse forms;
17. 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 including, as appropriate, migrant Roma and Traveller women and girls.
18. Aware of the multiple and intersecting barriers that migrant, refugee and asylum-seeking women and girls face in terms of access to and exercise of rights, access to services, participation and leadership and of the need to facilitate their integration and full participation in the economic, social, civic, political and cultural life;
19. Wishing therefore to review and update its Recommendation No. R(79)10 to member States on women migrants, henceforth replaced by the present instrument;
20. Recommends that the governments of member States:
 1. Take all necessary measures to promote and apply the principles set out in the Recommendation and its appendix, aimed at ensuring that migrant, refugee and asylum-seeking women and girls can effectively access and exercise their rights;

2. Ensure, by appropriate means and action, including where appropriate translation, a wide dissemination (in accessible formats) of this Recommendation among relevant authorities and stakeholders, which are encouraged to take measures to implement it;
3. Examine periodically, within the competent Council of Europe steering committee(s) and bodies, the measures taken, 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 live in another, including citizens of Council of Europe member States with a migrant background, and stateless women and girls.

'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 migrant, refugee and asylum-seeking women and girls do not face discrimination on any ground.
3. Member States should apply an intersectional approach in all measures referred to in this Appendix, notably bearing in mind the different situations and individual characteristics of migrant, refugee and asylum-seeking women and girls.
4. Measures should be established to safeguard the fundamental rights of undocumented migrants and facilitate their access to essential services including, at a minimum, protection and complaint mechanisms and all support services for victims of violence against women and trafficking in human beings, without fearing any reporting to migration authorities.
5. Within both migrant and host countries and communities, member States should:
 - 5.1. pay special attention to measures aimed at dismantling all forms of stereotypes which have a negative impact on the rights of migrant, refugee and asylum-seeking women and girls;

- 5.2. implement awareness-raising and educational measures in respect of gender equality and human rights to promote dialogue.

Girls

6. Member States should adopt a child rights-based approach to migrant, refugee and asylum-seeking children, which takes account of the age and specific situations and needs of girls, including ensuring suitable and safe alternative care arrangements when they are separated from their parents or caregiver or when they are unaccompanied minors, [while promoting the parenting abilities of migrant, refugee and asylum-seeking women and reducing alternative care arrangements on the basis of their social or legal status in the country.](#)
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 migrant, refugee and asylum-seeking girls to support their transition to adulthood beyond the age of 18, including access to education and healthcare, as well as support for their integration and social participation [in all aspects of life, based on an intercultural approach.](#)

Information, empowerment, awareness raising and promotion of human rights

9. To empower migrant, refugee and asylum-seeking women and girls and enable them to access their rights, they should be provided with relevant and accessible information and advice in a way and a language that they understand, covering, at least:
- 9.1 Their fundamental human rights 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 violence or other violations of rights by State authorities or private contractors acting on behalf of the State, including rights to civil remedies and compensation;
 - 9.3 Protection services available in the host country against all forms of violence against women and trafficking in human beings, including access to general and specific support services, specialist support provided by NGOs and legal aid;
 - 9.4 Available and accessible public services in the host country, notably healthcare including mental and sexual and reproductive health and rights, comprehensive sexuality education, psycho-social support, education, language and digital training, vocational training, integration programmes, housing and employment.
10. Member States should provide resources and tools for the empowerment and support of migrant, refugee and asylum-seeking [women and girls, based on their needs and personal](#)

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Intercultural awareness and cultural sensitivity is important in this and other aspects in relation to migrant and asylum seeking women because it interculturalism is a process of interactions between people from different cultures aimed at overcoming monoculturalism in the host country. This is developed through the acquisition of tools that lead to the recognition of the values belonging to different cultures, excluding those that admit violence. The process takes place by raising awareness and offering adequate tools to understand who the others are, with a confrontation aimed at understanding the differences, favouring as the ultimate goal the inclusion of migrants and asylum seekers but also changes among the host society.

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characteristics, in order for them to benefit to as great an extent possible from the social services and welfare available.

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

Access to justice including legal aid

12. Migrant, refugee and asylum-seeking women and girls should have access to the different national and international civil, administrative, and criminal remedies, as well as legal aid, to effectively exercise their rights and/or take action in cases of non-compliance with those rights.
13. Member States should ensure that refugee and asylum-seeking women and girls receive adequate support as claimants, defendants, or witnesses throughout civil, administrative, or criminal proceedings.
14. An intersectional, [intercultural](#) and gender-sensitive approach to individual migrant, refugee and asylum-seeking women and girls should be adopted when determining/assessing their credibility in civil, administrative, and criminal proceedings, particularly where decisions have an impact on their legal status.

Artificial intelligence, automated decision-making, and data protection

15. Member States should ensure that a human rights [intercultural](#) 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.
16. 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:
 - 16.1 border and immigration control decision-making, including decisions relating to entry or return;
 - 16.2 migration management, including the use of biometric information, such as DNA testing
 - 16.3 policing and security of migrant, refugee and asylum-seeking women and girls, and services related to protection and prevention of crimes;
 - 16.4 the provision of services to migrant, refugee and asylum-seeking women and girls.

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17. Migrant, refugee and asylum-seeking women and relevant civil society organisations should be given the opportunity to participate in discussions and decision-making around the development and deployment of new technologies affecting them.
18. Bearing in mind the particular situations of vulnerability of migrant, refugee and asylum-seeking women and girls, relevant authorities should:
- 18.1 ensure the confidentiality and security of personal data in accordance with their national legislation and applicable international obligations;
 - 18.2 not transfer any such data to the country of origin without explaining to the affected person, in a language that they understand, which data is being transferred and under which conditions, including providing the affected person the opportunity to object.

Co-operation with civil society

19. Member States should co-operate with and support migrant and refugee women's organisations, women's rights organisations and other civil society organisations that uphold the universal human rights of migrant and refugee and asylum-seeking women and girls, and that defend and empower them.
20. Mechanisms should be established to ensure that migrant and refugee women's organisations, including where appropriate Roma and Travellers' women's organisations, are consulted, in particular when devising migration, asylum and integration policies which affect them.

Data collection, research and monitoring

21. Member States should support the collection of data on migration, refugee and asylum issues, including by collecting information on the number of women and girls granted refugee status or subsidiary protection on the basis of experiences of gender-based violence and by collecting information on the number of women victims of domestic violence granted an independent residence permit or other leave to remain after separation from their abusive sponsoring spouse or partner, ensuring compliance with applicable data protection requirements.
22. 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, including in relation to preventing and protecting migrant and asylum-seeking women and girls victims of gender-based violence, should be supported and adequately resourced at all levels.

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23. 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 and support

24. Member States should protect migrant, refugee, and asylum-seeking women and girls from all forms of violence against women and trafficking in human beings.
25. Measures should be taken to protect migrant, refugee and asylum-seeking women and girls from hate speech and sexism.
26. Member States should develop specific measures to address the sexual exploitation of migrant, refugee and asylum-seeking women and girls, in particular the demand for such exploitation, including protective, punitive, preventive and educational measures.
27. Member States should ensure that culture, custom, religion, tradition or so-called 'honour' shall not be considered as justification for any exploitation or acts of violence against women and girls.
28. Member States should ensure effective access for migrant, refugee and asylum-seeking women and girls, with or without children, to shelters for women victims of violence against women and trafficking in human beings, regardless of their legal status.
29. Access to free legal advice and free legal aid available in the language of the beneficiary, should be provided, in order to support migrant, refugee and asylum-seeking women and girls victims of all forms of violence against women and trafficking in human beings through criminal, administrative and civil proceedings, including the pursuit of compensation claims and legal redress against the perpetrators.
30. General and specialist support services should be provided to victims of violence against women and trafficking in human beings, including for those persons accommodated in transit, reception and accommodation facilities. This includes, at a minimum, short- and long-term psychological support and healthcare, including mental healthcare, [trauma care](#), sexual and reproductive healthcare, immediate medical support and the collection of forensic medical evidence in cases of rape and sexual assault [as well as legal counselling and advice](#).
31. Member States should allow migrant, refugee and asylum-seeking women and girls access to available compensation schemes, measures or other programmes aimed at the integration or reintegration of victims of violence against women or trafficking in human beings, on the same conditions as nationals.
32. Member States should ensure that migrant, refugee and asylum-seeking women and girls do not suffer any penalty, including loss of lawful migration or refugee status as a consequence of their exploitation as victims of trafficking in human beings or as a consequence of leaving an abusive sponsoring partner or spouse on whom their status

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was dependant or where they have been taken to another country against their will for the purpose of forced marriage.

33. A multi-agency, victim-centred approach, that prevents secondary victimisation and is aimed at the empowerment of migrant, refugee and asylum-seeking women and girls, inclusive of migrant and refugee women's organisations, should be adopted as regards matters relating to their protection from and support for experiences of violence.
34. Professional interpreters, legal assistants, and intercultural mediators, including women, should be available to assist migrant, refugee and asylum-seeking women and girls seeking protection, whilst making initial complaints, throughout the justice process and in seeking reparations, as well as in the context of the asylum determination procedures.
35. Training in violence against women, trafficking in human beings, gender equality and intercultural issues should be adequately funded and provided to relevant authorities and staff, including asylum case managers, interpreters, legal assistants and intercultural mediators to enable them to:
- 35.1 promptly identify victims, where possible, in collaboration with relevant support organisations, conduct risk assessments, inform the victim about her rights and possibilities, refer to relevant authorities and provide protection, treatment and care for migrant, refugee and asylum-seeking women and girls who are victims of all forms of violence and/or trafficking in human beings;
- 35.2 be aware of the difficulties that migrant, refugee and asylum-seeking women and girls may face in disclosing incidents of violence against women and/or of trafficking in human beings, due to their insecure legal status, unavailability of quality interpretation services, lack of knowledge of their legal rights and lack of knowledge of the relevance of their experiences of violence in relation to migration/asylum decisions, social stigma, poverty and lack of support to them in this regard.
36. Easily accessible mechanisms should be in place in State- and privately-run institutions, such as reception, transit and detention centres, police stations, prisons, childcare institutions, schools and hospitals, counselling centres and shelters, to enable incidents of violence against women and trafficking in human beings to be reported to staff and by staff. Member states should ensure access to intercultural age- and gender-sensitive telephone helplines, procedures for referral to other appropriate agencies, and medical and psychological treatment to facilitate reporting.
37. Risk assessment and risk management of violence against migrant, refugee and asylum-seeking women and girls should be conducted, taking specific account of their potential enhanced vulnerable situation owing to their insecure legal status and economic situation.

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State of emergency and crisis management

38. In situations of public health crisis, humanitarian crisis and crisis related to climate change, member States should take into account the increased risk of gender-based violence, trafficking in human beings, poverty and homelessness for migrant, refugee and asylum-seeking women and girls, and should therefore:

38.1 take into consideration the situation and needs of migrant, refugee and asylum-seeking women and girls in crisis management and recovery measures, including protection of rights, and notably the right to health, shelter, food security, water, economic empowerment and access to specialist support services for women victims of violence, by qualifying them as essential services and guaranteeing their continuity;

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

38.3 ensure the participation of migrant, refugee and asylum-seeking women and girls and relevant civil society organisations, in decision, [peace dialogues](#) and policy-making in these situations.

IV. Arrival**Pre-arrival information**

[39.](#) Member States should ensure that immigration procedures, including visa issuing procedures, take into account migrant, refugee and asylum-seeking women and girls' specific situations, needs and vulnerabilities, [include information on their rights and obligations in the host country, including their rights in relation to experience of violence against women](#) and are age- and gender-sensitive.

40.

[41.](#) Information should be provided to migrant, refugee and asylum-seeking women and girls about the conditions enabling the legal entry and stay in a member State's territory.

[42.](#) [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.](#)

[43.](#) [Policies of abandoning sea rescue, together with the closure of domestic ports to any boat carrying rescued migrants poses a serious risk of refoulement of asylum seekers, including victims of violence against women.](#)

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Transit and reception facilities

45. Relevant authorities should ensure that transit, reception, accommodation and screening arrangements are age-and gender-sensitive. The screening process should, in particular, facilitate the identification of victims of violence against women and trafficking in human beings at the earliest possible opportunity and ensure that women's protection claims are processed efficiently.
46. Reception and accommodation facilities should be located in areas where women and girls are safe and can access relevant services, with respect to health, and in particular sexual and reproductive health, social and legal assistance, education and shopping facilities.
47. The specific needs and safety concerns of victims of all forms of violence against women and trafficking in human beings 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 and clothing should be provided as needed.
48. Staff should be trained in women's human rights, gender equality-related, intercultural approach and trauma issues as well as on the forms of violence against women and the specific needs of migrant, refugee and asylum-seeking women and girls, and the presence of professional women social workers, medical staff, intercultural mediators, interpreters, police officers and guards should be ensured in these facilities.
49. Migrant, refugee and asylum-seeking women and girls should be offered adequate safe living space. Separate safe, clean sleeping areas, as well as other spaces should be provided for single women with or without children (up to age 18). Other elements to be provided include access to natural and artificial light, sufficient ventilation and heating, a clean bed and bedding, ready access to clean, separate, well-lit shower and toilet facilities, and the availability of a basic gender based sanitary kit / hygiene products free of charge and on a regular basis.
46. Women in transit and reception facilities should have access to a complaint /reporting system, whereby complaints are investigated and referred to the police where relevant, including, where appropriate, access to legal aid.
47. Member states should ensure that transit, reception and accommodation facilities and services are subject to regular independent monitoring, including when provided by private contractors, to ensure compliance with the standards of protection of this Appendix.
48. If migrant, refugee or asylum-seeking women and girls are confined to transit, reception or accommodation centres, member States should also ensure compliance with the provisions contained in the paragraphs of this Appendix related to detention.

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Asylum

49. Member States should adopt and implement age- and gender-sensitive-asylum laws, practices and procedures.
50. Women and girls should be entitled to access asylum and protection information and procedures at the borders and elsewhere.
51. The possibility for women and girls to lodge an independent asylum claim should be ensured and they should be made aware of this right.
52. To ensure that gender-based violence against women is properly assessed within the framework of the 1951 United Nations Convention Relating to the Status of Refugees member States should:
 - 52.1 ensure that all forms of gender-based violence can be recognized as a form of persecution within the meaning of Article 1A(2) of the 1951 Convention;
 - 52.2 ensure a gender-sensitive interpretation of the 1951 Convention 'grounds' for asylum;
 - 52.3 develop comprehensive gender-sensitive guidelines at all stages of the asylum process, including reception and support services, screening, determination of 'safe' countries for the purpose of accelerated or suspensive procedures, detention, status determination, adjudication and returns; and ensure that border police, migration officials, asylum officers, decision-makers, intercultural mediators and interpreters receive training in respect of such guidelines
53. Women asylum officers should be available to women applicants, who should be informed about this possibility. Applicants should have the possibility to express a preference for the sex of the interpreter.
54. Separate interviews for women and men from the same family, in the absence of children, should be made possible and their confidentiality should be guaranteed.
55. In processing and determining asylum claims, regard should be given to:
 - 55.1 the applicant's own personal circumstances and individual assessment of risk;
 - 55.2 relevant country of origin information, including in relation to gender equality, women's rights and the prevalence of the different forms of gender-based violence against women and girls. This encompasses access to justice, the legal framework, and its implementation; available social, economic, and other support; and any form of multiple and intersecting discrimination and/or patriarchal attitudes that women are likely to encounter.
56. Member States should ensure that women and girls have access to complementary/subsidiary protection, where necessary, if the decision on their refugee status is negative.

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Cross-border measures

57. Member States should seek to participate in resettlement and relocation programmes as well as reinforce and promote legal pathways to ensure safe transit for women and girls.
58. Member States are encouraged to fund specific assistance and humanitarian resettlement programmes for women and girls' victims, or at risk, of violence against women and trafficking in human beings, including trafficking for the purpose of sexual exploitation.
59. The setting up and implementation of effective cross-border protection mechanisms for victims of violence against women or trafficking in human beings, including trafficking for the purpose of sexual exploitation should be encouraged.

V. Residence and Integration**Access to holistic and quality health services, including sexual and reproductive health and rights**

60. Authorities should ensure that healthcare provision takes into account the situation and personal characteristics of migrant women and girls and is age- and gender sensitive.
61. Essential healthcare services including primary care, urgent and immediate care, palliative care and treatment or assistance necessary for public health reasons should be provided to all migrant, refugee and asylum-seeking women and girls, including migrant women and girls in an irregular situation.
62. Member States should also enable migrant, refugee and asylum-seeking women and girls to access free or affordable, comprehensive, quality, intercultural, age- and gender-sensitive health services encompassing mental, sexual and reproductive health, including during pregnancy, as well as hygiene products, and also health care for immediate and longer-term health needs resulting from experiences of gender-based violence. Member States should also seek to provide such health services to migrant women and girls in an irregular situation.
63. Migrant, refugee and asylum-seeking girls should be provided with access to age-appropriate sexual and reproductive health and rights information in a language that they can understand.
64. Access to available healthcare should not be dependent on obtaining the authorisation of the migration authority nor permission from any person other than the woman concerned. The treatment of minor girls may be or may be not subject to the consent of a parent or guardian.
65. Taking into account language, cultural an economic barriers, member States should ensure that women give prior, free and informed consent to any free medical treatment.

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Social services, social security and housing

66. In all decisions relating to the safety and welfare of migrant, refugee and asylum-seeking women and girls, including decisions taken by social services and in respect of social security, their needs should be a primary consideration.

67. Member States should ensure that migrant women lawfully residing in the country are given a treatment not less favourable than that accorded to nationals regarding access to housing and rented accommodation,

68. Member states should ensure availability of the shelters for victims of domestic violence and their children, as well as for vulnerable single mothers, irrespective of their status in the country, which will be equipped with relevant provisions, such as foods, hygienic items, and support groups, legal and medical consultations.

69. Member states should provide a guardian/caregiver to a minor who has no legal representative and furthermore, ensure the respective accommodation in accordance with her/his best interests.

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Integration, social, cultural and political participation

70. Member States should ensure that any child born in their territory is entitled to have their birth registered immediately after birth and is granted a pathway to a nationality.

71. Owing to persisting stereotypes and existing inequalities in access to civic rights and participation in political decision-making, which are even more serious for migrant, refugee and asylum-seeking women, member States should take steps to ensure that migrant, refugee and asylum-seeking women who are entitled to vote and stand for election in local, regional, national or European elections are aware of their rights and encouraged to participate without any form of discrimination.

72. Authorities should encourage and support initiatives aimed at empowering migrant, refugee and asylum-seeking 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 can include participation in local, cultural, women's or other associations, sports clubs, youth clubs and other organisations.

71. Public and private coaching, mentoring and other support programmes aimed at migrant and refugee women and girls should be set up and supported, notably in order to promote positive role models and promising practices of integration.

72. The positive contribution made by migrant and refugee women and girls to society and host communities, the economy and culture should be highlighted and encouraged.

Education, vocational training and life-long learning

73. Authorities should ensure that migrant, refugee and asylum-seeking children have access to education and take measures to reach those migrant, refugee, and asylum-seeking 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. Recognizing that the ability to communicate in the host country's language is essential for integration, member States should ensure access to an adequate number of hours of quality language training and integration programmes to migrant, refugee and asylum-seeking women and girls, to promote their empowerment and protection. Literacy and digital skills courses should also be provided to migrant, refugee and asylum-seeking women and girls corresponding to their needs and as soon as possible after their arrival in the host country.
75. Member States should take steps to facilitate the recognition and validation of migrant and refugee women and girls' existing vocational and academic qualifications and work experience in practice, including through initiatives such as the Council of Europe European Qualifications Passport for Refugees.
76. Migrant, refugee and asylum-seeking women and girls 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.
77. Access to the programmes and measures referred to in paragraphs 74, 75 and 76 for migrants in an irregular situation may be subject to national laws governing eligibility.

Employment

78. Member States should take specific and targeted measures to prevent discrimination and promote access to employment for migrant and refugee women, at an early stage in the migration process, including safe and legal routes to employment pre-arrival.
79. Member States should comply with the obligations regarding the right to work and self-employment for refugee women and girls set out by the United Nations Convention Relating to the Status of Refugees and consider removing barriers to work, for other migrant women and girls after they have been present in the territory for a certain length of time.
80. In respect of *at least* those migrant, refugee, and asylum-seeking women and girls who are permitted to work under the national law of member States, the latter should ensure decent and dignified working conditions, including:
- 80.1. taking measures to regulate and improve migrant, refugee, and asylum-seeking women and girls' working conditions and to eliminate all forms of labour exploitation and discrimination, including when they are multiple and intersecting;

- 80.2. supporting and assisting migrant, refugee, and asylum-seeking women and girls where appropriate 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, internships, apprenticeships and job placement programmes;
- 80.3 in order to facilitate access to the labour market, take steps to ensure that migrant, refugee and asylum-seeking workers have access to work/life balance measures including maternity, paternity and parental leave, flexible working conditions where possible, and ensure access to and enjoyment of child-care facilities on an equal footing with national workers; and
- 80.4 ensure that migrant, refugee, and asylum-seeking women 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.
81. Member States should implement the provisions of relevant national and international standards directed at protecting migrant, refugee and asylum-seeking women and girls carrying out domestic work from discrimination, exploitation and abuse.

Residence permits

82. Member States should ensure that migrant, refugee and asylum-seeking women and girls who are granted a residence permit on the basis of a family relationship are entitled to social, economic and labour-related rights and entitlements in an autonomous capacity.
83. Migrant, refugee and asylum-seeking women and girls should be made aware of any entitlement to a renewable autonomous residence permit, for example due to their own protection needs under the UN Refugee Convention, their status as a victim of violence against women, a victim of trafficking in human beings, relationship breakdown, or other particularly difficult circumstances
84. The evidentiary criteria and threshold for the granting of autonomous residence permits should be realistic and sensitive to the individual situation of migrant, refugee and asylum-seeking women and responsible statutory agencies should be adequately trained to ensure that migrant, refugee and asylum-seeking women and girls can benefit from these permits.
85. Member States should ensure that migrant, refugee and asylum-seeking women and girls and their dependents are granted a renewable residence permit if their stay is necessary for criminal investigations or proceedings and until at least their conclusions.
86. Member States should facilitate the possibility for victims of forced marriage brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, to regain such status.
87. Member States are encouraged to provide security of residence on an independent basis to migrant and refugee women and girls present in a country for a long time, including

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stateless women and girls. Security of residence should be particularly ensured for migrant women, victims of violence against women, whose children are nationals of the host country, including when they lose custody over their children during separation/family proceedings.

88. Member States should provide pathways to naturalisation and take measures to ensure that migrant and refugee women and girls are not faced with gender-related obstacles in this regard.

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Family reunion

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

- 89.1. adopt a definition of family consistent with article 8 of the European Convention on Human Rights;
- 89.2. ensure that women and girls are aware of their right to family reunion, including as migrant or refugee sponsors, and receive access to legal advice and assistance to pursue that right; and
- 89.3. consider accepting or seeking the transfer of asylum claims to enable the family reunion of migrant, refugee and asylum-seeking women and girls separated on their journeys.

89.4. Seek to provide within their national laws, gender-sensitive legal pathways to respect the family life of migrant women lawfully residing on their territory, in particular by providing the immediate and dependent family members with the possibility to migrate with or join them in the host country.

89.5. 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.

Detention

90. In respect of all forms of deprivation of liberty, member States should adopt an age- and gender-sensitive approach, which takes into account the individual situation and personal characteristics of migrant, refugee and asylum-seeking women and girls. Member States should also provide the following services to migrant, refugee and asylum-seeking women and girls deprived of their liberty:

- 90.1 access to law enforcement measures and reporting / complaints mechanisms including referral to and investigation of those complaints by police where relevant and access to legal aid;

- 90.2 access to information about their rights, as set forth in paragraph 9 of this Appendix;
- 90.3 access to health-care and hygiene services, telephone helplines and appropriate trauma support and counselling facilities;
- 90.4 access to a telephone, and/or Internet facility to inform a relative or third party of the fact of deprivation of liberty, as well as to consular assistance;
- 90.5 the opportunity to remain in meaningful contact with the outside world, including regular access to a telephone, to their mobile phones or to Internet facilities; and
- 90.6 the presence of women among border, migration and other police or custody staff, as well as among social workers and interpreters.
91. Member States should ensure that conditions in immigration detention centres reflect those listed in paragraphs 41-48 of this Appendix (Transit and reception facilities).
92. Member states should ensure that detention facilities, including administrative detention facilities, are subject to regular independent monitoring.
93. In the event that administrative detention under immigration legislation 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 women and girls within detention facilities, where their privacy is guaranteed and which cater adequately for their specific needs. Unaccompanied or separated girls should not, as a general rule, be detained.
94. Effective alternatives to administrative detention should be provided in any event for migrant, refugee and asylum-seeking women and girls who have been victims of torture, violence against women or trafficking in human beings, pregnant and nursing women, elderly women, and women with disabilities [and/or diagnosed with a serious health condition](#).
95. Migrant, refugee and asylum-seeking women and girls in administrative detention should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation. Care should be taken in the design and layout of such premises to avoid, as far as possible, any impression of a carceral environment. Within the detention centre, migrant refugee and asylum-seeking women and girls should be restricted in their freedom of movement as little as possible.
96. Migrant, refugee and asylum-seeking women and girls in administrative detention should be offered appropriate activities, and they should in principle have free access to outdoor exercise throughout the day (i.e. considerably more than one hour per day).

VI. Returns

97. Voluntary returns should be the preferred option. Returns should always be in safety and dignity, in line with the principle of *non-refoulement*. Member States should therefore ensure that migrant and asylum-seeking women and girls are not returned or removed to a country where their life would be at risk or where they might be subjected to acts of torture or inhuman or degrading treatment or punishment, including those acts which disproportionately affect women or are directed at them because they are women.
98. In these situations, due regard should be given to relevant human rights obligations, notably the right to family life, in accordance with the case law of the European Court of Human Rights; the best interest of the child, if applicable; and to the state of health of the person, including for example pregnancy.
99. Recognising the particular difficulties that victims of violence against women and of trafficking in human beings face in fully disclosing the grounds for their international protection claim, member States should:
- 99.1 ensure a process that protects women and girls against the risk of *refoulement*;
 - 99.2 ensure that accelerated and non-suspensive procedures are not implemented under any circumstance, until such a process has been completed to guarantee an individual assessment of the international protection needs in conformity with the provisions of this Appendix, especially if there are any signs of violence against women or trafficking in human beings.
100. Member States should ensure the possibility of suspending expulsion measures of migrant women based on their dependent status on a spouse, partner, parent, or other family member, in order to enable them to apply for an independent residence permit.
101. In order to facilitate the reintegration of returnee women, member States should take the necessary measures to allow for the recognition of eventual diplomas or qualifications obtained.

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GRETA

Petya NESTOROVA

15/07/21



Strasbourg, 4 June 2021

GEC-MIG (2021) 3 rev 1

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

**Draft Recommendation on protecting the rights of migrant, refugee
and asylum-seeking women**

Working document in view of the internal and external consultation

04.06.2021- 16.07.2021

Draft Recommendation on protecting the rights of migrant, refugee, asylum-seeking women and girls

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 equality¹ 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. 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;
5. 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), and notably its strategic objective to identify and address vulnerabilities throughout asylum and migration procedures;
6. Bearing in mind the obligations and commitments undertaken by states, including 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 (CETS No. 126, 1987); 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);
7. 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; Recommendation CM/Rec(2019)4 on supporting

¹ Gender equality entails equal rights for women and men, girls and boys as well as the same visibility, empowerment, responsibility, and participation in all spheres of public and private life. It also implies equal access to and distribution of resources between women and men. (Council of Europe Gender Equality Strategy 2018-2023).

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;

8. Recalling the United Nations Convention Relating to the Status of Refugees (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); 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. Noting 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); CEDAW General Recommendation No. 35 on gender-based violence against women; CEDAW Recommendation No.38 on trafficking in women and girls in the context of global migration (2020); as well as 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 human beings, 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. Bearing in mind the importance of the overall application and impact of the United Nations 2030 Agenda for Sustainable Development, in particular Sustainable Development Goal 5 (“Achieve gender equality and empower all women and girls”); Sustainable Development Goal 10.7 (“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”);
12. 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;
13. Acknowledging the positive contribution that migrant, refugee and asylum-seeking women and girls may bring to European societies and communities;

14. Considering the profound changes in migration patterns and in the situation of migrant, refugee and asylum-seeking women and girls, the fact that their numbers have reached the highest ever in the 2010's and the significant developments in gender equality-, migration- and asylum-related concepts, policies and legal instruments at all levels;
15. Recognising that while existing international human rights standards apply to all persons, and bearing in mind the possible differences in legal status of the persons concerned, 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;
16. Underlining that women are exposed to a continuum of violence that is specific to them because they are women, or which affects them disproportionately, and that such violence is, in this sense, gender-based; recognising with grave concern, that migrant, refugee and asylum-seeking women and girls are particularly exposed to such forms of violence and exploitation in their countries of origin, during their journey, in transit and/or in destination countries, which may constitute a serious violation of their human rights, especially as migrant, refugee and asylum-seeking women and girls face difficulties and structural barriers in overcoming such violence and exploitation in their diverse forms;
17. 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 including, as appropriate, migrant Roma and Traveller women and girls.
18. Aware of the multiple and intersecting barriers that migrant, refugee and asylum-seeking women and girls face in terms of access to and exercise of rights, access to services, participation and leadership and of the need to facilitate their integration and full participation in the economic, social, civic, political and cultural life;
19. Wishing therefore to review and update its Recommendation No. R(79)10 to member States on women migrants, henceforth replaced by the present instrument;
20. Recommends that the governments of member States:
1. Take all necessary measures to promote and apply the principles set out in the Recommendation and its appendix, aimed at ensuring that migrant, refugee and asylum-seeking women and girls can effectively access and exercise their rights;

Commented [NP1]: While I know what you mean, this statement could be made clearer by specifying the forms of violence which concern women and girls (as opposed to violence which concerns men)

Commented [NP2]: "Such forms" – what forms?

Commented [NP3]: "Exploitation" as a term is not used before – the preceding text talks about "violence". The two are not the same and "exploitation" is not defined as such.

Commented [NP4]: What forms?

2. Ensure, by appropriate means and action, including where appropriate translation, a wide dissemination (in accessible formats) of this Recommendation among relevant authorities and stakeholders, which are encouraged to take measures to implement it;
3. Examine periodically, within the competent Council of Europe steering committee(s) and bodies, the measures taken, 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 live in another, including citizens of Council of Europe member States with a migrant background, and stateless women and girls.

Commented [NP5]: Better to write stateless persons, as the term is "migrant", not migrant women.

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

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

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

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II. Horizontal issues

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

Non-discrimination, intersectional issues, elimination of stereotypes

2. Member States should ensure that migrant, refugee and asylum-seeking women and girls do not face discrimination on any ground.
3. Member States should apply an intersectional approach in all measures referred to in this Appendix, notably bearing in mind the different situations and individual characteristics of migrant, refugee and asylum-seeking women and girls.
4. Measures should be established to safeguard the fundamental rights of undocumented migrants and facilitate their access to essential services including, at a minimum, protection and complaint mechanisms and all support services for victims of violence against women and victims of trafficking in human beings, without fearing any reporting to migration authorities.
5. Within both migrant and host countries and communities, member States should:
 - 5.1. pay special attention to measures aimed at dismantling all forms of stereotypes which have a negative impact on the rights of migrant, refugee and asylum-seeking women and girls;

Commented [NP6]: While I understand what is meant, the text could be made clearer, e.g. complaints mechanism against what (below under 9.2 this is clearer)? Not all undocumented migrants are victims of trafficking so not all will have the rights related to such victims; they would have to be identified as victims of trafficking in order to benefit from rights as such. "Without fearing any reporting to migration authorities" could also be made clearer – reporting by whom and in what cases? I suppose you mean that if an undocumented migrant turns for help because they are exposed to violence or trafficking, they should be treated as victims and not expelled.

- 5.2. implement awareness-raising and educational measures in respect of gender equality and human rights to promote dialogue.

Girls

6. Member States should adopt a child rights-based approach to migrant, refugee and asylum-seeking children, which takes account of the age and specific situations and needs of girls, including ensuring suitable and safe alternative care arrangements when they are separated from their parents or caregiver, 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 migrant, refugee and asylum-seeking girls to support their transition to adulthood beyond the age of 18, including access to education and healthcare, as well as support for their integration and social participation.

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Commented [NP7]: More could be said about the role of legal guardians and the importance of timely appointment and effective fulfilment of their duties.

Information, empowerment, awareness raising and promotion of human rights

9. To empower migrant, refugee and asylum-seeking women and girls and enable them to access their rights, they should be provided with relevant and accessible information and advice in a way and a language that they understand, covering, at least:
- 9.1 Their fundamental human rights 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 violence or other violations of rights by State authorities or private contractors acting on behalf of the State, including rights to civil remedies and compensation;
- 9.3 Protection services available in the host country against all forms of violence against women and trafficking in human beings, including access to general and specific support services, specialist support provided by NGOs and legal aid;
- 9.4 Available and accessible public services in the host country, notably healthcare including mental and sexual and reproductive health and rights, comprehensive sexuality education, psycho-social support, education, language and digital training, vocational training, integration programmes, housing and employment.
10. Member States should provide resources and tools for the empowerment and support of migrant, refugee and asylum-seeking women and girls, based on their needs and personal characteristics, in order for them to benefit to as great an extent possible from the social services and welfare available.

Commented [NP8]: The European Social Charter is not mentioned deliberately?

Commented [NP9]: Trafficking is considered a form of violence against women, therefore "and" is rather "including".

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

Access to justice, including legal aid

12. Migrant, refugee and asylum-seeking women and girls should have access to the different national and international civil, administrative, and criminal remedies, as well as legal aid, to effectively exercise their rights and/or take action in cases of non-compliance with those rights.

Commented [NP10]: In many countries, access to free legal aid is means-tested and there are also other illegibility criteria. I suppose what is meant here is free (State funded) legal aid. Free legal aid is not always available for all types of proceedings for anyone, not just migrant women.

13. Member States should ensure that refugee and asylum-seeking women and girls receive adequate support as claimants, defendants, or witnesses throughout civil, administrative, or criminal proceedings.

14. An intersectional and gender-sensitive approach to individual migrant, refugee and asylum-seeking women and girls should be adopted when determining/assessing their credibility in civil, administrative, and criminal proceedings, particularly where decisions have an impact on their legal status.

Commented [NP11]: Why "individual"?

Commented [NP12]: I understand the issue of credibility in asylum proceedings, but the reference to criminal proceedings is related to what scenarios – when a migrant woman is suspected to be the perpetrator of which criminal offences?

Artificial intelligence, automated decision-making, and data protection

15. 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.

16. 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:

16.1 border and immigration control decision-making, including decisions relating to entry or return;

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16.2 migration management, including the use of biometric information, such as DNA testing;

16.3 policing and security of migrant, refugee and asylum-seeking women and girls, and services related to protection and prevention of crimes;

Commented [NP13]: Are these services different from the ones under 16.4? They appear to be related to crimes so I am not sure what is meant.

16.4 the provision of services to migrant, refugee and asylum-seeking women and girls.

17. Migrant, refugee and asylum-seeking women and relevant civil society organisations should be given the opportunity to participate in discussions and decision-making around the development and deployment of new technologies affecting them.

18. Bearing in mind the particular situations of vulnerability of migrant, refugee and asylum-seeking women and girls, relevant authorities should:

18.1 ensure the confidentiality and security of personal data in accordance with their national legislation and applicable international obligations;

18.2 not transfer any such data to the country of origin without explaining to the affected person, in a language that they understand, which data is being transferred and under which conditions, including providing the affected person the opportunity to object.

Commented [NP14]: Person concerned?

Co-operation with civil society

19. Member States should co-operate with and support migrant and refugee women's organisations, women's rights organisations and other civil society organisations that uphold the universal human rights of migrant and refugee and asylum-seeking women and girls, and that defend and empower them.

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

Data collection, research and monitoring

21. Member States should support the collection of data, disaggregated notably by age and sex, on migration, refugee and asylum issues, including regarding victims of violence against women and of trafficking in human beings, and ensuring compliance with applicable data protection requirements.

22. 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.

23. 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 and support

24. Member States should protect migrant, refugee, and asylum-seeking women and girls from all forms of violence against women and trafficking in human beings.

Commented [NP15]: Same comment as above.

25. Measures should be taken to protect migrant, refugee and asylum-seeking women and girls from hate speech and sexism.

26. Member States should develop specific measures to address the sexual exploitation of migrant, refugee and asylum-seeking women and girls, in particular the demand for such exploitation, including protective, punitive, preventive and educational measures.
27. Member States should ensure that culture, custom, religion, tradition or so-called 'honour' shall not be considered as justification for any exploitation or acts of violence against women and girls.
28. Member States should ensure effective access for migrant, refugee and asylum-seeking women and girls, with or without children, to shelters for women victims of violence against women and shelters for victims of trafficking in human beings, regardless of their legal status.
29. Access to free legal advice and free legal aid available in the language of the beneficiary, should be provided, in order to support migrant, refugee and asylum-seeking women and girls victims of all forms of violence against women and trafficking in human beings through criminal, administrative and civil proceedings, including the pursuit of compensation claims and legal redress against the perpetrators.
30. General and specialist support services should be provided to victims of violence against women and victims of trafficking in human beings, including for those persons accommodated in transit, reception and accommodation facilities. This includes, at a minimum, short- and long-term psychological support and healthcare, including mental healthcare, sexual and reproductive healthcare, immediate medical support and the collection of forensic medical evidence in cases of rape and sexual assault.
31. Member States should ensure migrant, refugee and asylum-seeking women and girls access to available compensation schemes, measures or other programmes aimed at the integration or reintegration of victims of violence against women or trafficking in human beings, on the same conditions as nationals.
32. Member States should ensure that migrant, refugee and asylum-seeking women and girls do not suffer any penalty, including loss of lawful migration or refugee status as a consequence of their exploitation as victims of trafficking in human beings or as a consequence of leaving an abusive sponsoring partner or spouse on whom their status was dependant or where they have been taken to another country against their will for the purpose of forced marriage.
33. A multi-agency, victim-centred approach, that prevents secondary victimisation and is aimed at the empowerment of migrant, refugee and asylum-seeking women and girls, inclusive of migrant and refugee women's organisations, should be adopted as regards matters relating to their protection and support.
34. Professional interpreters, legal assistants, and intercultural mediators, including women, should be available to assist migrant, refugee and asylum-seeking women and girls seeking protection, whilst making initial complaints, throughout the justice process and in seeking reparations, as well as in the context of the asylum determination procedures.

Commented [NP16]: Including rather than in particular.

Commented [NP17]: These two types of shelters should be distinct.

Commented [NP18]:

Commented [NP19R18]: See com

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Commented [NP20]: This is not precise. The risk of penalty is when they are not recognised as victims of trafficking and the non-punishment provision is not applied, hence they are treated as irregular migrants. Loss of refugee status is unlikely due to exploitation as victim of trafficking.

Commented [NP21]: As a preference, the interpreters and cultural mediators should be women.

35. Training in violence against women, trafficking in human beings, gender equality and intercultural issues should be adequately funded and provided to relevant authorities and staff including interpreters, legal assistants and intercultural mediators to enable them to:

Commented [NP22]: Training in? or on combating/preventing?

35.1 promptly identify victims, where possible, in collaboration with relevant support organisations, conduct risk assessments, refer to relevant authorities and provide protection, treatment and care for migrant, refugee and asylum-seeking women and girls who are victims of all forms of violence, including trafficking in human beings;

Commented [NP23]: Detect rather than identify. Identification of victims is a procedure which has a different meaning.

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35.2 be aware of the difficulties that migrant, refugee and asylum-seeking women and girls may face in disclosing incidents of violence against women and of trafficking in human beings, due to their insecure legal status, unavailability of quality interpretation services, lack of knowledge of their legal rights and lack of knowledge of the relevance of their experiences of violence in relation to migration/asylum decisions, social stigma, and lack of support to them in this regard.

36. Easily accessible mechanisms should be in place in State- and privately-run institutions, such as reception, transit and detention centres, police stations, prisons, childcare institutions, schools and hospitals, counselling centres and shelters, to enable incidents of violence against women and trafficking in human beings to be reported to staff and by staff. Member states should ensure access to age- and gender-sensitive telephone helplines, procedures for referral to other appropriate agencies, and medical and psychological treatment to facilitate reporting.

37. Risk assessment and risk management of violence against migrant, refugee and asylum-seeking women and girls should be conducted, taking specific account of their potential enhanced vulnerable situation owing to their insecure legal status.

State of emergency and crisis management

38. In situations of public health crisis, humanitarian crisis and crisis related to climate change, member States should take into account the increased risk of gender-based violence, trafficking in human beings, poverty and homelessness for migrant, refugee and asylum-seeking women and girls, and should therefore:

38.1 take into consideration the situation and needs of migrant, refugee and asylum-seeking women and girls in crisis management and recovery measures, including protection of rights, and notably the right to health, shelter, food security, water, economic empowerment and access to specialist support services for women victims of violence, by qualifying them as essential services and guaranteeing their continuity;

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

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

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IV. Arrival

Pre-arrival information

39. Member States should ensure that immigration procedures, including visa issuing procedures, take into account migrant, refugee and asylum-seeking women and girls' specific situations, needs and vulnerabilities and are age- and gender-sensitive.

40. Information should be provided to migrant, refugee and asylum-seeking women and girls about the conditions enabling the legal entry and stay in a member State's territory.

Transit and reception facilities

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

42. Reception and accommodation facilities should be located in areas where women and girls are safe and can access relevant services, with respect to health, and in particular sexual and reproductive health, social and legal assistance, education and shopping facilities.

43. The specific needs and safety concerns of victims of all forms of violence against women and trafficking in human beings 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 and clothing should be provided as needed.

44. Staff should be trained in women's human rights, gender equality-related and trauma issues as well as violence against women and the specific needs of migrant, refugee and asylum-seeking women and girls, and the presence of professional women social workers, intercultural mediators, interpreters, police officers and guards should be ensured in these facilities.

45. Migrant, refugee and asylum-seeking women and girls should be offered adequate safe living space. Separate sleeping areas, as well as other safe spaces should be provided for single women with or without children (up to age 18). Other elements to be provided include access to natural and artificial light, sufficient ventilation and heating, a clean bed

Commented [NP24]: Victims of human trafficking should be provided with safe, appropriate accommodation which is separate from the immigration system accommodation. Perhaps a separate bullet point could be created specifically about victims of THB, and their rights as such.

and bedding, ready access to clean, separate, well-lit shower and toilet facilities, and the availability of a basic sanitary kit / hygiene products free of charge and on a regular basis.

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46. Women in transit and reception facilities should have access to a complaint /reporting system, whereby complaints are investigated and referred to the police where relevant, including, where appropriate, access to legal aid.

Commented [NP25]: Not clear what sort of complaints are meant and why they are to be referred to the police. I suppose complaints about violence/abuse? Or complaint against decision making in asylum procedure?

47. Member states should ensure that transit, reception and accommodation facilities and services are subject to regular independent monitoring, including when provided by private contractors, to ensure compliance with the standards of protection of this Appendix.

48. If migrant, refugee or asylum-seeking women and girls are confined to transit, reception or accommodation centres, member States should also ensure compliance with the provisions contained in the paragraphs of this Appendix related to detention.

Commented [NP26]: Do you mean deprived of their liberty? Confined is not the best verb.

Asylum

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

50. Women and girls should be entitled to access asylum and protection information and procedures at the borders and elsewhere.

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

Commented [NP27]: Independent of their husband/parents – add this specification?

52. To ensure that gender-based violence against women is properly assessed within the framework of the 1951 United Nations Convention Relating to the Status of Refugees member States should:

52.1 ensure that all forms of gender-based violence, including all forms of trafficking in women and girls, can be recognized as a form of persecution within the meaning of Article 1A(2) of the 1951 Convention;

52.2 ensure a gender-sensitive interpretation of the 1951 Convention ‘grounds’ for asylum;

52.3 develop comprehensive gender-sensitive guidelines at all stages of the asylum process, including reception and support services, screening, determination of ‘safe’ countries for the purpose of accelerated or suspensive procedures, detention, status determination, adjudication and returns; and ensure that border police, migration officials, asylum officers, decision-makers, intercultural mediators and interpreters receive training in respect of such guidelines.

53. Women asylum officers should be available to women applicants, who should be informed about this possibility.

54. Separate interviews for women and men from the same family, in the absence of children, should be made possible and their confidentiality should be guaranteed.
55. In processing and determining asylum claims, regard should be given to:
- 55.1 the applicant's own personal circumstances and individual assessment of risk;
 - 55.2 relevant country of origin information, including in relation to gender equality and women's rights. This encompasses access to justice, the legal framework, and its implementation; available social, economic, and other support; and any form of multiple and intersecting discrimination and/or patriarchal attitudes that women are likely to encounter.
56. Member States should ensure that women and girls have access to complementary/subsidiary protection, where necessary, if the decision on their refugee status is negative.

Cross-border measures

57. Member States should seek to participate in resettlement and relocation programmes as well as reinforce and promote legal pathways to ensure safe transit for women and girls.
58. Member States are encouraged to fund specific assistance and humanitarian resettlement programmes for women and girls' victims, or at risk, of violence against women and trafficking in human beings, including trafficking for the purpose of sexual exploitation.
59. The setting up and implementation of effective cross-border protection mechanisms for victims of violence against women or trafficking in human beings, should be encouraged.

V. Residence and Integration

Access to holistic and quality health services, including sexual and reproductive health and rights

60. Authorities should ensure that healthcare provision takes into account the situation and personal characteristics of migrant women and girls and is age- and gender sensitive.
61. Essential healthcare services including primary care, urgent and immediate care, palliative care and treatment or assistance necessary for public health reasons should be provided to all migrant, refugee and asylum-seeking women and girls, including migrant women and girls in an irregular situation.
62. Member States should also enable migrant, refugee and asylum-seeking women and girls to access free or affordable, comprehensive, quality, age- and gender-sensitive health services encompassing mental, sexual and reproductive health, including during pregnancy, as well as hygiene products. Member States should also seek to provide such health services to migrant women and girls in an irregular situation.

Commented [NP28]: ????

Commented [NP29]: If you are at risk of trafficking and not a victim of trafficking, humanitarian resettlement is probably unlikely. Why trafficking for sexual exploitation is singled out? I suggest deleting. All victims of trafficking can experience violence, even in domestic work.

Deleted: , including trafficking for the purpose of sexual exploitation...

63. Migrant, refugee and asylum-seeking girls should be provided with access to age-appropriate sexual and reproductive health and rights information in a language that they can understand.
64. Access to available healthcare should not be dependent on obtaining the authorisation of the migration authority nor permission from any person other than the woman concerned. The treatment of **minor girls** may be subject to the consent of a parent or guardian.
65. Taking into account language and cultural barriers, member States should ensure that women give prior, free and informed consent to any medical treatment.

Commented [NP30]: A girl is a minor (child), i.e. up to the age of 18.

Social services, social security and housing

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

Integration, social, cultural and political participation

68. Member States should ensure that any child born in their territory is entitled to have their birth registered immediately after birth and is granted a pathway to a nationality.
69. Owing to persisting stereotypes and existing inequalities in access to civic rights and participation in political decision-making, which are even more serious for migrant, refugee and asylum-seeking women, member States should take steps to ensure that migrant, refugee and asylum-seeking women who are entitled to vote and stand for election in local, regional, national or European elections are aware of their rights and encouraged to participate without any form of discrimination.
70. Authorities should encourage and support initiatives aimed at empowering migrant, refugee and asylum-seeking 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 can include participation in local, cultural, women's or other associations, sports clubs, youth clubs and other organisations.
71. Public and private coaching, mentoring and other support programmes aimed at migrant and refugee women and girls should be set up and supported, notably in order to promote positive role models and promising practices of integration.
72. The positive contribution made by migrant and refugee women and girls to society and host communities, the economy and culture should be highlighted and encouraged.

Education, vocational training and life-long learning

73. Authorities should ensure that migrant, refugee and asylum-seeking children have access to education and take measures to reach those migrant, refugee, and asylum-seeking 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. Recognizing that the ability to communicate in the host country's language is essential for integration, member States should ensure access to an adequate number of hours of quality language training and integration programmes to migrant, refugee and asylum-seeking women and girls, to promote their empowerment and protection. Literacy and digital skills courses should also be provided to migrant, refugee and asylum-seeking women and girls corresponding to their needs and as soon as possible after their arrival in the host country.
75. Member States should take steps to facilitate the recognition and validation of migrant and refugee women and girls' existing vocational and academic qualifications and work experience in practice, including through initiatives such as the Council of Europe European Qualifications Passport for Refugees.
76. Migrant, refugee and asylum-seeking women and girls 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.
77. Access to the programmes and measures referred to in paragraphs 74, 75 and 76 for migrants in an irregular situation may be subject to national laws governing eligibility.

Employment

78. Member States should take specific and targeted measures to prevent discrimination and promote access to employment for migrant and refugee women, at an early stage in the migration process, including safe and legal routes to employment pre-arrival.
79. Member States should comply with the obligations regarding the right to work and self-employment for refugee women and girls set out by the United Nations Convention Relating to the Status of Refugees and consider removing barriers to work, for other migrant women and girls after they have been present in the territory for a certain length of time.
80. In respect of *at least* those migrant, refugee, and asylum-seeking women and girls who are permitted to work under the national law of member States, the latter should ensure decent and dignified working conditions, including:
- 80.1. taking measures to regulate and improve migrant, refugee, and asylum-seeking women and girls' working conditions and to eliminate all forms of labour exploitation and discrimination, including when they are multiple and intersecting;

80.2. supporting and assisting migrant, refugee, and asylum-seeking women and girls where appropriate 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, internships, apprenticeships and job placement programmes;

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

80.4 ensure that migrant, refugee, and asylum-seeking women 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.

81. Member States should implement the provisions of relevant national and international standards directed at protecting migrant, refugee and asylum-seeking women and girls carrying out domestic work from discrimination, exploitation and abuse.

Residence permits

82. Member States should ensure that migrant, refugee and asylum-seeking women and girls who are granted a residence permit on the basis of a family relationship are entitled to social, economic and labour-related rights and entitlements in an autonomous capacity.

83. Migrant, refugee and asylum-seeking women and girls should be made aware of any entitlement to a renewable autonomous residence permit, for example due to their own protection needs under the UN Refugee Convention, their status as a victim of violence against women, a victim of trafficking in human beings, relationship breakdown, or other particularly difficult circumstances

84. The evidentiary criteria and threshold for the granting of residence permits should be realistic and sensitive to the individual situation of migrant, refugee and asylum-seeking women and responsible statutory agencies should be adequately trained to ensure that migrant, refugee and asylum-seeking women and girls can benefit from these permits.

85. Member States are invited to consider granting temporary residence permits to victims of trafficking on the basis of their personal situation and not only for the purpose of the victims' co-operation in the investigation or criminal proceedings.

85. Member States should ensure that migrant, refugee and asylum-seeking women and girls and their dependents are granted a renewable residence permit if their stay is necessary for criminal investigations or proceedings and until at least their conclusions.

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

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87. Member States are encouraged to provide security of residence on an independent basis to migrant and refugee women and girls present in a country for a long time, including stateless women and girls.

88. Member States should provide pathways to naturalisation and take measures to ensure that migrant and refugee women and girls are not faced with gender-related obstacles in this regard.

Family reunion

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

89.1. adopt a definition of family consistent with Article 8 of the European Convention on Human Rights;

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89.2. ensure that women and girls are aware of their right to family reunion, including as migrant or refugee sponsors, and receive access to legal advice and assistance to pursue that right;

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89.3. consider accepting or seeking the transfer of asylum claims to enable the family reunion of migrant, refugee and asylum-seeking women and girls separated on their journeys;

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89.4. seek to provide within their national laws gender-sensitive legal pathways to respect the family life of migrant women lawfully residing on their territory, in particular by providing the immediate and dependent family members with the possibly to migrate with or join them in the host country.

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Detention

90. In respect of all forms of deprivation of liberty, member States should adopt an age- and gender-sensitive approach, which takes into account the individual situation and personal characteristics of migrant, refugee and asylum-seeking women and girls. Member States should also provide the following services to migrant, refugee and asylum-seeking women and girls deprived of their liberty:

90.1 access to law enforcement measures and reporting / complaints mechanisms including referral to and investigation of those complaints by police where relevant and access to legal aid;

90.2 access to information about their rights, as set forth in paragraph 9 of this Appendix;

90.3 access to health-care and hygiene services, telephone helplines and appropriate trauma support and counselling facilities;

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- 90.4 access to a telephone, and/or Internet facility to inform a relative or third party of the fact of deprivation of liberty, as well as to consular assistance;
- 90.5 the opportunity to remain in meaningful contact with the outside world, including regular access to a telephone, to their mobile phones or to Internet facilities; and
- 90.6 the presence of women among border, migration and other police or custody staff, as well as among social workers and interpreters.
91. Member States should ensure that conditions in immigration detention centres reflect those listed in paragraphs 41-48 of this Appendix (Transit and reception facilities).
92. Member states should ensure that detention facilities, including administrative detention facilities, are subject to regular independent monitoring.
93. In the event that administrative detention under immigration legislation 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 women and girls within detention facilities, where their privacy is guaranteed and which cater adequately for their specific needs. Unaccompanied or separated girls should not, as a general rule, be detained.
94. Effective alternatives to administrative detention should be provided in any event for migrant, refugee and asylum-seeking women and girls who have been victims of torture, violence against women or trafficking in human beings, pregnant and nursing women, elderly women, and women with disabilities.
95. Migrant, refugee and asylum-seeking women and girls in administrative detention should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation. Care should be taken in the design and layout of such premises to avoid, as far as possible, any impression of a carceral environment. Within the detention centre, migrant refugee and asylum-seeking women and girls should be restricted in their freedom of movement as little as possible.
96. Migrant, refugee and asylum-seeking women and girls in administrative detention should be offered appropriate activities, and they should in principle have free access to outdoor exercise throughout the day (i.e. considerably more than one hour per day).

VI. Returns

97. Voluntary returns should be the preferred option. Returns should always be in safety and dignity, in line with the principle of *non-refoulement*. Member States should therefore ensure that migrant and asylum-seeking women and girls are not returned or removed to a country where their life would be at risk or where they might be subjected to acts of

torture or inhuman or degrading treatment or punishment, including those acts which disproportionately affect women or are directed at them because they are women.

98. In these situations, due regard should be given to relevant human rights obligations, notably the right to family life, in accordance with the case law of the European Court of Human Rights, the best interest of the child, if applicable, and to the state of health of the person, including for example pregnancy.

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99. Recognising the particular difficulties that victims of violence against women and of trafficking in human beings face in fully disclosing the grounds for their international protection claim, member States should:

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99.1 ensure a process that protects women and girls against the risk of *refoulement*;

99.2 ensure that accelerated and non-suspensive procedures are not implemented under any circumstance, until such a process has been completed to guarantee an individual assessment of the international protection needs in conformity with the provisions of this Appendix, especially if there are any signs of violence against women or trafficking in human beings.

100. Member States should ensure the possibility of suspending expulsion measures of migrant women based on their dependent status on a spouse, partner, parent, or other family member, in order to enable them to apply for an independent residence permit.

101. In order to facilitate the reintegration of returnee women, member States should take the necessary measures to allow for the recognition of eventual diplomas or qualifications obtained.

Office of the Secretary General's Special Representative on Migration and Refugees of
the Council of Europe Carolina LASÉN-DÍAZ 13/07/21



Strasbourg, 4 June 2021

GEC-MIG (2021) 3 rev 1

Drafting Committee
on Migrant Women (GEC-MIG)

**Draft Recommendation on protecting the rights of migrant, refugee
and asylum-seeking women**

Working document in view of the internal and external consultation

04.06.2021- 16.07.2021

Draft Recommendation on protecting the rights of migrant, refugee, asylum-seeking women and girls

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 equality¹ 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. 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;
5. 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), and notably its aim, to identify and respond to vulnerabilities throughout asylum and migration procedures;
6. Bearing in mind the obligations and commitments undertaken by States, including 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 (CETS No. 126, 1987); 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);
7. 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; Recommendation CM/Rec(2019)4 on supporting

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¹ Gender equality entails equal rights for women and men, girls and boys as well as the same visibility, empowerment, responsibility, and participation in all spheres of public and private life. It also implies equal access to and distribution of resources between women and men. (Council of Europe Gender Equality Strategy 2018-2023).

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;

8. Recalling the United Nations Convention Relating to the Status of Refugees (1951) and its Protocol (1967); 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); 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. Noting 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); CEDAW General Recommendation No. 35 on gender-based violence against women; CEDAW Recommendation No. 38 on trafficking in women and girls in the context of global migration (2020); as well as 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 human beings, 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. Bearing in mind the importance of the overall application and impact of the United Nations 2030 Agenda for Sustainable Development, in particular Sustainable Development Goal 5 ("Achieve gender equality and empower all women and girls"); Sustainable Development Goal 10.7 ("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");
12. 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;

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13. Acknowledging the positive contribution that migrant, refugee and asylum-seeking women and girls may bring to European societies and communities;
14. Considering the profound changes in migration patterns and in the situation of migrant, refugee and asylum-seeking women and girls, the fact that their numbers have reached the highest ever in the 2010's and the significant developments in gender equality-, migration- and asylum-related concepts, policies and legal instruments at all levels;
15. Recognising that while existing international human rights standards apply to all persons, and bearing in mind the possible differences in legal status of the persons concerned, 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;
16. Underlining that women are exposed to a continuum of violence that is specific to them because they are women, or which affects them disproportionately, and that such violence is, in this sense, gender-based; recognising with grave concern, that migrant, refugee and asylum-seeking women and girls are particularly exposed to such violence and exploitation in their countries of origin, during their journey, in transit and/or in destination countries, which may constitute a serious violation of their human rights, especially as migrant, refugee and asylum-seeking women and girls face difficulties and structural barriers in overcoming such violence and exploitation in their diverse forms;
17. 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 including, as appropriate, migrant Roma and Traveller women and girls.
18. Aware of the multiple and intersecting barriers that migrant, refugee and asylum-seeking women and girls face in terms of access to and exercise of rights, access to services, participation and leadership, and aware of the need to facilitate their integration and full participation in the economic, social, civic, political and cultural life;
19. Wishing therefore to review and update its Recommendation No. R(79)10 to member States on women migrants, henceforth replaced by the present instrument;
20. Recommends that the governments of member States:
 1. Take all necessary measures to promote and apply the principles set out in this Recommendation and its Appendix, aimed at ensuring that migrant, refugee and asylum-seeking women and girls can effectively access and exercise their rights;

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2. Ensure, by appropriate means and action, including translation, a wide dissemination (in accessible formats) of this Recommendation among relevant authorities and stakeholders, which are encouraged to take measures to implement it;
3. Examine periodically, within the competent Council of Europe steering committee(s) and bodies, the measures taken, 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 live in another, including citizens of Council of Europe member States with a migrant background, and stateless persons,

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'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 in the implementation of all measures put forward in this Appendix.

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Non-discrimination, intersectional issues, elimination of stereotypes

2. Member States should ensure that migrant, refugee and asylum-seeking women and girls do not face discrimination on any ground.
3. Member States should apply an intersectional approach in all measures referred to in this Appendix, notably bearing in mind the different situations and individual characteristics of migrant, refugee and asylum-seeking women and girls.
4. Measures should be established to safeguard the fundamental rights of undocumented migrants and facilitate their access to essential services including, at a minimum, protection and complaint mechanisms and all support services for victims of violence against women and trafficking in human beings, without being reported to migration authorities.
5. Within both migrant and host countries and communities, member States should:
 - 5.1. pay special attention to measures aimed at dismantling all forms of stereotypes which have a negative impact on the rights of migrant, refugee and asylum-seeking women and girls;

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- 5.2. implement awareness-raising and educational measures in respect of gender equality and human rights,

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Girls

6. Member States should adopt a child rights-based approach to migrant, refugee and asylum-seeking children, which takes account of the age and specific situations and needs of girls, including ensuring suitable and safe alternative care arrangements when they are separated from their parents or caregiver, or when they are unaccompanied children,
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 migrant, refugee and asylum-seeking girls to support their transition to adulthood beyond the age of 18, including access to education and healthcare, as well as support for their integration and social participation.

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Information, empowerment, awareness raising and promotion of human rights

9. To empower migrant, refugee and asylum-seeking women and girls and enable them to access their rights, they should be provided with relevant and accessible information and advice in a way and a language that they understand, covering, at least:
 - 9.1 Their fundamental human rights 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 violence or other violations of rights by State authorities or private contractors acting on behalf of the State, including rights to civil remedies and compensation;
 - 9.3 Protection services available in the host country against all forms of violence against women and trafficking in human beings, including access to general and specific support services, specialist support provided by NGOs and legal aid;
 - 9.4 Available and accessible public services in the host country, notably healthcare including mental and sexual and reproductive health and rights, comprehensive sexuality education, psycho-social support, education, language and digital training, vocational training, integration programmes, housing and employment.
10. Member States should provide resources and tools for the empowerment and support of migrant, refugee and asylum-seeking women and girls, based on their needs and personal

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characteristics, in order for them to benefit in the greatest extent possible from the social services and welfare available.

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

Access to justice including legal aid

12. Migrant, refugee and asylum-seeking women and girls should have access to the different national and international civil, administrative, and criminal remedies, as well as legal aid, to effectively exercise their rights and/or take action in cases of non-compliance with those rights.
13. Member States should ensure that refugee and asylum-seeking women and girls receive adequate support as claimants, defendants, or witnesses throughout civil, administrative, or criminal proceedings.
14. An intersectional and gender-sensitive approach to individual migrant, refugee and asylum-seeking women and girls should be adopted when determining/assessing their credibility in civil, administrative, and criminal proceedings, particularly where decisions have an impact on their legal status.

Artificial intelligence, automated decision-making, and data protection

15. 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.
16. 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:
 - 16.1 border and immigration control decision-making, including decisions relating to entry or return;
 - 16.2 migration management, including the use of biometric information, such as DNA testing;
 - 16.3 policing and security of migrant, refugee and asylum-seeking women and girls, and services related to their protection and the prevention of crimes;
 - 16.4 the provision of services to migrant, refugee and asylum-seeking women and girls.

17. Migrant, refugee and asylum-seeking women and relevant civil society organisations should be given the opportunity to participate in discussions and decision-making around the development and deployment of new technologies affecting them.
18. Bearing in mind the particular situations of vulnerability of migrant, refugee and asylum-seeking women and girls, relevant authorities should:
 - 18.1 ensure the confidentiality and security of personal data in accordance with their national legislation and applicable international obligations;
 - 18.2 not transfer any such data to the country of origin without explaining to the affected person, in a language that they understand, which data is being transferred, for what purpose and under which conditions, including providing the affected person the opportunity to object.

Co-operation with civil society

19. Member States should co-operate with and support migrant and refugee women's organisations, women's rights organisations and other civil society organisations that uphold the universal human rights of migrant, refugee and asylum-seeking women and girls, and that defend and empower them.
20. Mechanisms should be established to ensure that migrant and refugee women's organisations, including where appropriate Roma and Travellers' women's organisations, are consulted, in particular when devising migration, asylum and integration policies which affect them.

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Data collection, research and monitoring

21. Member States should support the collection of data, disaggregated notably by age and sex, on migration, refugee and asylum issues, including regarding victims of violence against women and of trafficking in human beings, and ensuring compliance with applicable data protection requirements.
22. 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.
23. 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 and support

24. Member States should protect migrant, refugee, and asylum-seeking women and girls from all forms of violence against women and trafficking in human beings.
25. Measures should be taken to protect migrant, refugee and asylum-seeking women and girls from hate speech and sexism.
26. Member States should develop specific measures to address the sexual exploitation of migrant, refugee and asylum-seeking women and girls, in particular the demand for such exploitation, including protective, punitive, preventive and educational measures.
27. Member States should ensure that culture, custom, religion, tradition or so-called 'honour' shall not be considered as justification for any exploitation or acts of violence against women and girls.
28. Member States should ensure effective access for migrant, refugee and asylum-seeking women and girls, with or without children, to shelters for women victims of violence against women and trafficking in human beings, regardless of their legal status.
29. Access to free legal advice and free legal aid available in the language of the beneficiary, should be provided, in order to support migrant, refugee and asylum-seeking women and girls victims of all forms of violence against women and trafficking in human beings through criminal, administrative and civil proceedings, including the pursuit of compensation claims and legal redress against the perpetrators.
30. General and specialist support services should be provided to victims of violence against women and trafficking in human beings, including for those persons accommodated in transit, reception and accommodation facilities. This includes, at a minimum, short- and long-term psychological support and healthcare, including mental healthcare, sexual and reproductive healthcare, immediate medical support and the collection of forensic medical evidence in cases of rape and sexual assault.
31. Member States should provide migrant, refugee and asylum-seeking women and girls with access to available compensation schemes, measures or other programmes aimed at the integration or reintegration of victims of violence against women or trafficking in human beings, on the same conditions as nationals.
32. Member States should ensure that migrant, refugee and asylum-seeking women and girls do not suffer any penalty, including loss of lawful migration or refugee status as a consequence of their exploitation as victims of trafficking in human beings or as a consequence of leaving an abusive sponsoring partner or spouse on whom their status was dependant, or where they have been taken to another country against their will for the purpose of forced marriage.
33. A multi-agency, victim-centred approach, that prevents secondary victimisation and is aimed at the empowerment of migrant, refugee and asylum-seeking women and girls,

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inclusive of migrant and refugee women's organisations, should be adopted as regards matters relating to their protection and support.

34. Professional interpreters, legal assistants, and intercultural mediators, including women, should be available to assist migrant, refugee and asylum-seeking women and girls seeking protection, whilst making initial complaints, throughout the justice process and in seeking reparations, as well as in the context of the asylum determination procedures.
35. Training in violence against women, trafficking in human beings, gender equality and intercultural issues should be adequately funded and provided to relevant authorities and staff including interpreters, legal assistants and intercultural mediators to enable them to:
 - 35.1 promptly identify victims, where possible, in collaboration with relevant support organisations, conduct risk assessments, refer to relevant authorities and provide protection, treatment and care for migrant, refugee and asylum-seeking women and girls who are victims of any form of violence and trafficking in human beings;
 - 35.2 be aware of the difficulties that migrant, refugee and asylum-seeking women and girls may face in disclosing incidents of violence against women and of trafficking in human beings, due to their insecure legal status, unavailability of quality interpretation services, lack of knowledge of their legal rights and lack of knowledge of the relevance of their experiences of violence in relation to migration/asylum decisions, social stigma, and lack of support to them in this regard.
36. Easily accessible mechanisms should be in place in State- and privately-run institutions, such as reception, transit and detention centres, police stations, prisons, childcare institutions, schools and hospitals, counselling centres and shelters, to enable incidents of violence against women and trafficking in human beings to be reported to staff and by staff. Member states should ensure access to age- and gender-sensitive telephone helplines, procedures for referral to other appropriate agencies, and medical and psychological treatment to facilitate reporting.
37. Risk assessment and risk management of violence against migrant, refugee and asylum-seeking women and girls should be conducted, taking specific account of their potentially enhanced vulnerable situation owing to their insecure legal status.

State of emergency and crisis management

38. In situations of public health crisis, humanitarian and climate change-related crisis, member States should take into account the increased risk of gender-based violence, trafficking in human beings, poverty and homelessness for migrant, refugee and asylum-seeking women and girls, and should therefore:
 - 38.1 take into consideration the situation and needs of migrant, refugee and asylum-seeking women and girls in crisis management and recovery measures, including

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protection of rights, and notably the right to health, shelter, food security, water, economic empowerment and access to specialist support services for women victims of violence, by qualifying them as essential services and guaranteeing their continued availability;

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

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

IV. Arrival

Pre-arrival information

39. Member States should ensure that immigration procedures, including visa issuing procedures, take into account migrant, refugee and asylum-seeking women and girls' specific situations, needs and vulnerabilities and are age- and gender-sensitive.

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40. Information should be provided to migrant, refugee and asylum-seeking women and girls about the conditions enabling the legal entry and stay in a member State's territory.

Transit and reception facilities

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

42. Reception and accommodation facilities should be located in areas where women and girls are safe and can access relevant services, with respect to health, and in particular sexual and reproductive health, social and legal assistance, education and shopping facilities.

43. The specific needs and safety concerns of victims of all forms of violence against women and trafficking in human beings, 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 and clothing should be provided as needed.

44. Staff should be trained in women's human rights, gender equality-related and trauma issues as well as on violence against women and the specific needs of migrant, refugee and asylum-seeking women and girls. The presence of professional women social workers, intercultural mediators, interpreters, police officers and guards should be ensured in these facilities.

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45. Migrant, refugee and asylum-seeking women and girls should be offered adequate safe living spaces. Separate sleeping areas, as well as other safe spaces should be provided for single women with or without children (up to age 18). Other elements to be provided include access to natural and artificial light, sufficient ventilation and heating, a clean bed and bedding, ready access to clean, separate, well-lit shower and toilet facilities, and the availability of a basic sanitary kit / hygiene products, free of charge and on a regular basis.
46. Women in transit and reception facilities should have access to a complaint /reporting system, whereby complaints are investigated and referred to the police where relevant, including, where appropriate, access to legal aid.
47. Member states should ensure that transit, reception and accommodation facilities and services are subject to regular independent monitoring, including when provided by private contractors, to ensure compliance with the standards of protection of this Appendix.
48. If migrant, refugee or asylum-seeking women and girls are confined to transit, reception or accommodation centres, member States should also ensure compliance with the provisions contained in the paragraphs of this Appendix related to detention.

Asylum

49. Member States should adopt and implement age- and gender-sensitive-asylum laws, practices and procedures.
50. Women and girls should be entitled to access asylum and protection information and procedures at the borders and elsewhere.
51. The possibility for women and girls to lodge an independent asylum claim should be ensured and they should be made aware of this right.
52. To ensure that gender-based violence against women is properly assessed within the framework of the 1951 United Nations Convention Relating to the Status of Refugees member States should:
 - 52.1 ensure that all forms of gender-based violence can be recognized as a form of persecution within the meaning of Article 1A(2) of the 1951 Convention;
 - 52.2 ensure a gender-sensitive interpretation of the 1951 Convention 'grounds' for asylum;
 - 52.3 develop comprehensive gender-sensitive guidelines at all stages of the asylum process, including reception and support services, screening, determination of 'safe' countries for the purpose of accelerated or suspensive procedures, detention, status determination, adjudication and returns; and ensure that border police, migration officials, asylum officers, decision-makers, intercultural mediators and interpreters receive training in respect of such guidelines

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53. Women asylum officers should be available to women applicants, who should be informed about this possibility.
54. Separate interviews for women and men from the same family, in the absence of children, should be made possible and their confidentiality should be guaranteed.
55. In processing and determining asylum claims, regard should be given to:
 - 55.1 the applicant's own personal circumstances and individual assessment of risk;
 - 55.2 relevant country of origin information, including in relation to gender equality and women's rights. This encompasses access to justice, the legal framework, and its implementation; available social, economic, and other support; and any form of multiple and intersecting discrimination and/or patriarchal attitudes that women are likely to encounter.
56. Member States should ensure that women and girls have access to complementary/subsidiary protection, where necessary, if the decision on their refugee status is negative.

Cross-border measures

57. Member States should seek to participate in resettlement and relocation programmes as well as reinforce and promote legal pathways to ensure safe transit for women and girls.
58. Member States are encouraged to fund specific assistance and humanitarian resettlement programmes for women and girls' victims, or at risk, of violence against women and trafficking in human beings, including trafficking for the purpose of sexual exploitation.
59. The setting up and implementation of effective cross-border protection mechanisms for victims of violence against women or trafficking in human beings, including trafficking for the purpose of sexual exploitation should be encouraged.

V. Residence and Integration

Access to holistic and quality health services, including sexual and reproductive health and rights

60. Authorities should ensure that healthcare provision takes into account the situation and personal characteristics of migrant women and girls and is age- and gender sensitive.
61. Essential healthcare services including primary care, urgent and immediate care, palliative care and treatment or assistance necessary for public health reasons should be provided to all migrant, refugee and asylum-seeking women and girls, including migrant women and girls in an irregular situation.
62. Member States should also enable migrant, refugee and asylum-seeking women and girls to access free or affordable, comprehensive, quality, age- and gender-sensitive health services encompassing mental, sexual and reproductive health, including during

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pregnancy, as well as hygiene products. Member States should also seek to provide such health services to migrant women and girls in an irregular situation.

63. Migrant, refugee and asylum-seeking girls should be provided with access to age-appropriate sexual and reproductive health and rights information in a language that they understand.
64. Access to available healthcare should not be dependent on obtaining the authorisation of the migration authority nor permission from any person other than the woman concerned. The treatment of minor girls may be subject to the consent of a parent or guardian.
65. Taking into account language and cultural barriers, member States should ensure that women give prior, free and informed consent to any medical treatment.

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Social services, social security and housing

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

Integration, social, cultural and political participation

68. Member States should ensure that any child born in their territory is entitled to have their birth registered immediately after birth and is granted a pathway to a nationality.
69. Owing to persisting stereotypes and existing inequalities in access to civic rights and participation in political decision-making, which are even more serious for migrant, refugee and asylum-seeking women, member States should take steps to ensure that migrant, refugee and asylum-seeking women who are entitled to vote and stand for election in local, regional, national or European elections are aware of their rights and encouraged to participate without any form of discrimination.
70. Authorities should encourage and support initiatives aimed at empowering migrant, refugee and asylum-seeking 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 can include participation in local, cultural, women's or other associations, sports clubs, youth clubs and other organisations.
71. Public and private coaching, mentoring and other support programmes aimed at migrant and refugee women and girls should be set up and supported, notably in order to promote positive role models and promising practices of integration.

72. The positive contribution made by migrant and refugee women and girls to society and host communities, the economy and culture should be highlighted and encouraged.

Education, vocational training and life-long learning

73. Authorities should ensure that migrant, refugee and asylum-seeking children have access to education and take measures to reach those migrant, refugee, and asylum-seeking 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. Recognising that the ability to communicate in the host country's language is essential for integration, member States should ensure access to an adequate number of hours of quality language training and integration programmes to migrant, refugee and asylum-seeking women and girls, to promote their empowerment and protection. Literacy and digital skills courses should also be provided to migrant, refugee and asylum-seeking women and girls corresponding to their needs and as soon as possible after their arrival in the host country.

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

76. Migrant, refugee and asylum-seeking women and girls 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.

77. Access to the programmes and measures referred to in paragraphs 74, 75 and 76 for migrants in an irregular situation may be subject to national laws governing eligibility.

Employment

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

79. Member States should comply with the obligations regarding the right to work and self-employment for refugee women and girls set out by the United Nations Convention Relating to the Status of Refugees, and consider removing barriers to work for other migrant women and girls after they have been present in the territory for a certain length of time.

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80. In respect of *at least* those migrant, refugee, and asylum-seeking women and girls who are permitted to work under the national law of member States, the latter should ensure decent and dignified working conditions, including:

- 80.1. taking measures to regulate and improve migrant, refugee, and asylum-seeking women and girls' working conditions and to eliminate all forms of labour exploitation and discrimination, including when they are multiple and intersecting;
 - 80.2. supporting and assisting migrant, refugee, and asylum-seeking women and girls where appropriate 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, internships, apprenticeships and job placement programmes;
 - 80.3. in order to facilitate access to the labour market, take steps to ensure that migrant, refugee and asylum-seeking workers have access to work/life balance measures including maternity, paternity and parental leave, flexible working conditions where possible, and ensure access to and enjoyment of child-care facilities on an equal footing with national workers; and
 - 80.4. ensure that migrant, refugee, and asylum-seeking women 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.
81. Member States should implement the provisions of relevant national and international standards directed at protecting migrant, refugee and asylum-seeking women and girls carrying out domestic work from discrimination, exploitation and abuse.

Residence permits

82. Member States should ensure that migrant, refugee and asylum-seeking women and girls who are granted a residence permit on the basis of a family relationship are entitled to social, economic and labour-related rights and entitlements in an autonomous capacity.
83. Migrant, refugee and asylum-seeking women and girls should be made aware of any entitlement to a renewable autonomous residence permit, for example due to their own protection needs under the [United Nations Convention Relating to the Status of Refugees](#), their status as a victim of violence against women, a victim of trafficking in human beings, relationship breakdown, or other particularly difficult circumstances
84. The evidentiary criteria and threshold for the granting of autonomous residence permits should be realistic and sensitive to the individual situation of migrant, refugee and asylum-seeking women and responsible statutory agencies should be adequately trained to ensure that migrant, refugee and asylum-seeking women and girls can benefit from these permits.
85. Member States should ensure that migrant, refugee and asylum-seeking women and girls and their dependents are granted a renewable residence permit if their stay is necessary for criminal investigations or proceedings and, at least [until they are completed](#),

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- 86. Member States should facilitate the possibility for victims of forced marriage brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, to regain such status.
- 87. Member States are encouraged to provide security of residence on an independent basis to migrant and refugee women and girls present in a country for a long time, including stateless women and girls.
- 88. Member States should provide pathways to naturalisation and take measures to ensure that migrant and refugee women and girls are not faced with gender-related obstacles in this regard.

Family reunion

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

- 89.1. adopt a definition of family consistent with Article 8 of the European Convention on Human Rights;
- 89.2. ensure that women and girls are aware of their right to family reunion, including as migrant or refugee sponsors, and receive access to legal advice and assistance to pursue that right;
- 89.3. consider accepting or seeking the transfer of asylum claims to enable the family reunion of migrant, refugee and asylum-seeking women and girls separated on their journeys; and,
- 89.4. seek to provide within their national laws, gender-sensitive legal pathways to respect the family life of migrant women lawfully residing on their territory, in particular by providing the immediate and dependent family members with the possibility to migrate with them, or join them in the host country.

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Detention

90. In respect of all forms of deprivation of liberty, member States should adopt an age- and gender-sensitive approach, which takes into account the individual situation and personal characteristics of migrant, refugee and asylum-seeking women and girls. Member States should also provide the following services to migrant, refugee and asylum-seeking women and girls deprived of their liberty:

- 90.1 access to law enforcement measures and reporting / complaints mechanisms including referral to and investigation of those complaints by police where relevant and access to legal aid;

- 90.2 access to information about their rights, as set forth in paragraph 9 of this Appendix;
 - 90.3 access to health-care and hygiene services, telephone helplines and appropriate trauma support and counselling facilities;
 - 90.4 access to a telephone, and/or Internet facility to inform a relative or third party of the fact of deprivation of liberty, as well as to consular assistance;
 - 90.5 the opportunity to remain in meaningful contact with the outside world, including regular access to a telephone, to their mobile phones or to Internet facilities; and
 - 90.6 the presence of women among border, migration and other police or custody staff, as well as among social workers and interpreters.
91. Member States should ensure that conditions in immigration detention centres reflect those listed in paragraphs 41-48 of this Appendix (Transit and reception facilities).
92. Member states should ensure that detention facilities, including administrative detention facilities, are subject to regular independent monitoring.
93. In the event that administrative detention under immigration legislation 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 women and girls within detention facilities, where their privacy is guaranteed and which cater adequately for their specific needs. Unaccompanied or separated girls should not, as a general rule, be detained.
94. Effective alternatives to administrative detention should be provided in any event for migrant, refugee and asylum-seeking women and girls who have been victims of torture, violence against women or trafficking in human beings, pregnant and nursing women, elderly women, and women with disabilities.
95. Migrant, refugee and asylum-seeking women and girls in administrative detention should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation. Care should be taken in the design and layout of such premises to avoid, as far as possible, any impression of a carceral environment. Within the detention centre, migrant refugee and asylum-seeking women and girls should be restricted in their freedom of movement as little as possible.
96. Migrant, refugee and asylum-seeking women and girls in administrative detention should be offered appropriate activities, and they should in principle have free access to outdoor exercise throughout the day (i.e. considerably more than one hour per day).

Commented [LDC1]: These groups of vulnerable women are not mentioned in any other paragraph of the Appendix, including section III on Protection and Support, which does refer to victims of violence and human trafficking. It could be worth considering whether to add a reference to them, as and where appropriate?

VI. Returns

97. Voluntary returns should be the preferred option. Returns should always be in safety and dignity, in line with the principle of *non-refoulement*. Member States should therefore ensure that migrant and asylum-seeking women and girls are not returned or removed to a country where their life would be at risk or where they might be subjected to acts of torture or inhuman or degrading treatment or punishment, including those acts which disproportionately affect women or are directed at them because they are women.
98. In these situations, due regard should be given to relevant human rights obligations, notably the right to family life, in accordance with the case law of the European Court of Human Rights; the best interest of the child, if applicable; and to the state of health of the person, including for example pregnancy.
99. Recognising the particular difficulties that victims of violence against women and of trafficking in human beings face in fully disclosing the grounds for their international protection claim, member States should:
- 99.1 ensure a process that protects women and girls against the risk of *refoulement*;
 - 99.2 ensure that accelerated and non-suspensive procedures are not implemented under any circumstance, until such a process has been completed to guarantee an individual assessment of the international protection needs in conformity with the provisions of this Appendix, especially if there are any signs of violence against women or trafficking in human beings.
100. Member States should ensure the possibility of suspending expulsion measures of migrant women based on their dependent status on a spouse, partner, parent, or other family member, in order to enable them to apply for an independent residence permit.
101. In order to facilitate the reintegration of returnee women, member States should take the necessary measures to allow for the recognition of eventual diplomas or qualifications obtained.

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