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**GENDER EQUALITY COMMISSION
(GEC)**

**Protecting the rights of migrant, refugee and
asylum-seeking women and girls**

Preliminary draft factsheet prepared by the Secretariat

What is the situation of migrant, refugee and asylum-seeking women and girls in Europe?

Europe is a destination for women and girls seeking international protection due to violence, armed conflicts or political crises or in order to escape poverty. The inequalities between women and men in terms of access to resources, property, education, the labour market and decision-making have an impact on women's migration experiences both in countries of origin and in destination countries. Although migrant, refugee and asylum-seeking women and girls are a very diverse group both as regards their nationality, age, legal status and professional situation and also the reasons why they leave their countries, they are often in vulnerable situations and are overexposed to different forms of gender-based violence and discrimination at various stages in the migratory process.

Since 2010, and in particular since 2015, Europe has experienced new migration flows following wars and conflicts in Africa, the Middle East and Central Asia. The migrants mainly come from Afghanistan, Nigeria and Syria. This new migration challenge has brought new problems, including the often dramatic situation of refugees and migrants on Europe's doorsteps or actually in Europe. Women, who used often to arrive in Europe under family reunification policies, are migrating more and more on their own and in greater numbers. While fleeing to a better life, it is mainly women and girls who are the victims of trafficking, forced marriages, systematic sexual abuse and gender-based or racist discrimination and violence. The risks are particularly high for female unaccompanied minors, pregnant women or those with small children or who are subjected to intersectional discrimination.

Despite the fact that there are standards and commitments in this field, quite often, the measures put in place are inadequate or do not meet their specific needs at all. The protection, integration and empowerment of migrant, refugee and asylum-seeking women and girls should be at the centre of the migration, asylum and integration policies of European countries. That is why the Council of Europe Gender Equality Strategy 2018-2023 has, for the first time, incorporated this issue in its six strategic objectives.

Definitions

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.

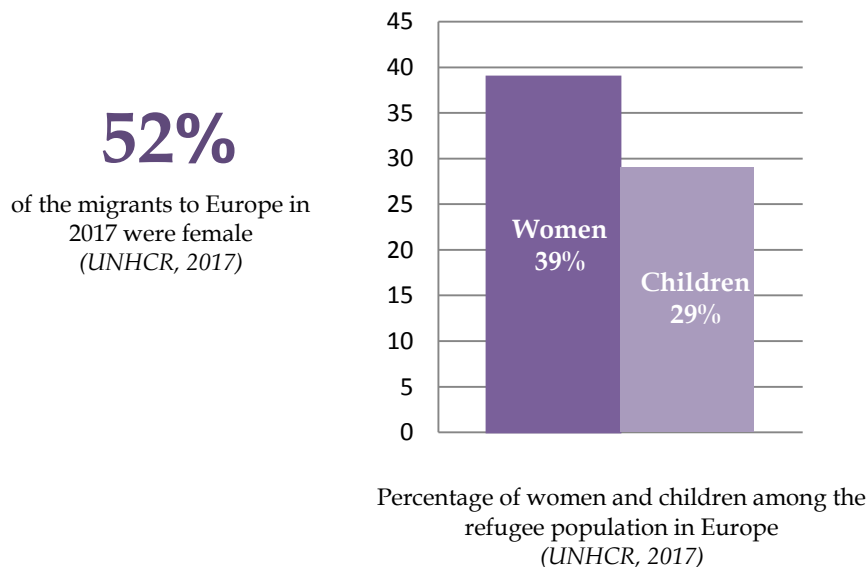
Women refugees are women who are outside their country of origin for reasons of (feared) persecution, conflict, violence (including gender-based violence), or other circumstances that have seriously disturbed public order and, as a result, require international protection.

Women refugees are initially **asylum seekers** until their situation has been examined and if it fulfils the criteria of the 1951 Geneva Convention on refugees, they then acquire refugee status. For that, they must have been persecuted or exposed to a high risk of individual persecution in their country.

The need for gender-sensitive migration and asylum policies

The 1951 Convention Relating to the Status of Refugees as amended by the 1967 protocol remains the basic instrument for the international protection of refugees. The convention was drafted before women's rights were recognised as a fundamental principle in international law, and the original text did not take into account gender issues in particular, nor are gender and sexual orientation included in the international definition of refugees. Therefore, for a long time, the persecution suffered by women and the types of harm which affect them only or most often were excluded from the dominant interpretation of the convention and women were unable to benefit from its protection consistently or fairly. However, following the adoption in 2002 by the Office of the United Nations High Commissioner for Refugees (UNHCR) of the (non-binding) Guidelines on International Protection on Gender-Related Persecution within the context of Article 1A (2) of the 1951 Convention, it is now recognised that a correct interpretation of the definition of refugee status should cover gender-based applications, in particular, gender-based violence against women (domestic violence, rape, forced marriage, female genital mutilation (FGM) and trafficking). Equally, discrimination based "on cumulative grounds" or penalties or punishment that are "disproportionately severe" (for example, towards women who transgress social mores or traditions) may be tantamount to persecution in the context of an asylum application, regardless of whether committed by public or private bodies. This makes it possible to take into account the types of persecution which had been ignored until now and which mainly affect women, including persecution occurring in the domestic sphere. The Guiding Principles also include a series of procedural recommendations on how to ensure a gender-sensitive environment in asylum procedures.

Migrant, refugee and asylum-seeking women and girls in figures



However, in the recent migration situation, reports from international organisations, human rights organisations and women's and refugees' rights organisations have highlighted the systemic weaknesses in the responses to the risks faced by women travelling to and within Europe. Some non-governmental organisations have also condemned the disappearance of large numbers of girls in trafficking and prostitution networks and the fact that the term "children" used in statistics makes girls invisible.

Regarding asylum, there are differences between European countries concerning the issue of gender mainstreaming in asylum policies and practices. Not all countries recognise women as members of a social group within the meaning of the 1951 Geneva Convention. Sexual violence and specific forms of harm such as trafficking and FGM are not always regarded as persecution giving rise to the right to asylum.

In order to fill the gaps in the protection and to reduce the risks migrant, refugee and asylum-seeking women and girls face, gender-sensitive migration and asylum policies are needed, and in particular, the following measures should be adopted:

- ✓ The UNHCR's Guidelines on International Protection on Gender-Related Persecution within the context of Article 1A (2) of the 1951 Convention Relating to the Status of Refugees should be fully implemented, both regarding the recognition of gender-based persecution and concerning the procedures (adapted and separate interviews, attitudes, information on their rights, security and confidentiality).
- ✓ The measures contained in the Istanbul Convention relating to the human rights of migrant, refugee and asylum-seeking women should be ratified and fully implemented.
- ✓ Victims of trafficking and gender-based violence among migrant, refugee and asylum-seeking women and girls need to be promptly identified as such and provided with adequate protection, treatment and care.
- ✓ Access to sexual and reproductive health services, hygiene products and healthcare specific to women and girls, including during pregnancy and breastfeeding, should be ensured.
- ✓ Separate zones should be provided for men and women in administrative detention facilities, in particular separate sleeping areas for single women with or without children, and separate, well-lit bathrooms for women should also be provided.
- ✓ There should be female social workers, interpreters, police officers and guards in these facilities.
- ✓ Social workers, police officers and guards working in the facilities should be trained in identifying and assisting victims of gender-based violence.

The principle of non-refoulement, which provides that no state shall return, under any circumstances, a refugee to a country where their life or freedom would be at risk, is central to the case law of the European Court of Human Rights relating to migration. Protection against arbitrary detention and the protection of the most vulnerable are equally important. The Council of Europe's European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has always required that asylum seekers only be detained as a last resort and that they enjoy a wide range of safeguards extending beyond those applicable to irregular migrants. These principles should be rigorously applied to women and girls because of their great vulnerability and the initial inequalities between men and women. Migrants who are detained should not be treated like criminals – accommodation should be suited to their specific circumstances. The detention of minors, whether accompanied or not, can only rarely be justified, unless it is a measure of last resort for which there is no alternative.

Equally, a gender perspective needs to be taken into account in return policies. The inequalities between women and men in terms of discriminatory laws in certain countries of origin such as those concerning property rights, for example, can constitute a major obstacle to the return of women to some countries of origin.

The Istanbul Convention and the protection of migrant, refugee and asylum-seeking women and girls

In 2011, the Committee of Ministers of the Council of Europe adopted the Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). This convention is an important, legally binding instrument for the protection of migrant and refugee women in Europe.

- ✓ **Unacceptable justification for crimes, including crimes committed in the name of so-called “honour” (Article 42):** ensure that culture, custom, tradition or so-called “honour” shall not be considered as justification for any acts of violence, negative social control or any violation of their human rights.
- ✓ **Residence status (Article 59):** provision on granting an autonomous residence permit in the event of the dissolution of a marriage or relationship when the woman’s status depends on her husband or partner.
- ✓ **Gender-based asylum claims (Article 60):** ensure that gender-based violence against women is recognised as a form of persecution and of serious harm giving rise to complementary or subsidiary protection.
- ✓ **Gender-sensitive reception procedures (Article 60):** develop gender sensitive reception procedures and support services for asylum seekers, as well as gender guidelines and gender-sensitive asylum procedures.
- ✓ **Principle of non-refoulement (Article 61):** ensure that victims of violence against women who are in need of protection, regardless of their status or residence, are not returned to a country where their life would be at risk or where they might be subjected to torture or degrading treatment or punishment.

The integration of migrant, refugee and asylum-seeking women and girls

The well-being of migrants and refugees and their ability to become a resource and an asset for the host country and to contribute to its economic and cultural enrichment depend on their level of integration. Due to the inequalities faced by women and girls, and also to their role within their families and communities, particular emphasis should be placed on the empowerment of migrant, asylum-seeking and refugee women and girls as key players in integration. Mainstreaming gender equality in all integration measures also makes it possible to ensure that both migrant women and men are aware of the need to respect and uphold gender equality laws and policies. This also fosters their integration in European societies and in the labour market. Several measures concerning gender-sensitive integration programmes can be put in place:

- ✓ Providing language lessons specific to women, as soon as possible after their arrival in the host country.
- ✓ Informing migrant and refugee women of their rights, in particular regarding their health, including sexual and reproductive health, access to education, housing and employment, participation in social, economic and cultural life, protection against all forms of violence and access to justice.
- ✓ Providing vocational training and higher education taking into account the specific needs of migrant and refugee women and ensuring the recognition of diplomas and professional qualifications.
- ✓ Supporting and setting up mechanisms to ensure that migrant and refugee women’s organisations, as well as organisations representing them, are systematically consulted, in particular when devising migration, asylum and integration policies.
- ✓ Supporting and closely co-operating with civil society and all stakeholders working to defend and empower migrant and refugee women and girls, including the social partners.

Measures recommended by the Council of Europe Gender Equality Strategy:

- ✓ Support member states to implement Council of Europe and other relevant instruments, including the Organisation's Action Plan on Protecting Refugee and Migrant Children in Europe, taking into account CEDAW General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, and the United Nations Sustainable Development Goals (SDGs);
- ✓ Support the systematic integration of a gender equality dimension in policies and measures regarding migration, asylum and integration, in order to secure the human rights and fundamental freedoms of migrant, refugee and asylum-seeking women and girls, men and boys, regardless of traditional or cultural attitudes.
- ✓ Support the implementation of existing standards aimed at preventing migrant, refugee and asylum-seeking women and children from falling victim to gender-based violence, sexual abuse, trafficking, exploitation and negative social control, including by addressing these risks through adequate identification, reporting and referral mechanisms at the national level. The vulnerability of women accompanying minors should be acknowledged to ensure that appropriate care and support are available to these women and children.
- ✓ Develop tools to support the appropriate treatment of migrant, refugee and asylum-seeking women and children victims of violence, having regard to the measures included in the Istanbul, Anti-Trafficking and Lanzarote Conventions.
- ✓ Encourage the economic empowerment, and respect for the social rights, of migrant, refugee and asylum-seeking women and girls, in particular with regard to employment, health, housing and education and address the multiple discrimination that they may be confronted with.
- ✓ Update Recommendation No. R (79) 10 of the Committee of Ministers to member states concerning migrant women, and regularly review its implementation.
- ✓ Support member states in the preparation and dissemination of information documents in different languages (such as factsheets) on the main Council of Europe instruments to protect the human rights of migrant, refugee and asylum-seeking women and men, including information on the support structures, services, NGOs and legal aid available in their country of residence. Specific factsheets should be prepared for women victims of violence.
- ✓ Encourage independent Council of Europe monitoring mechanisms to address the gender-specific needs of migrants, refugees and asylum seekers, including girls and boys, in their monitoring work, where applicable, and to make recommendations in this regard.
- ✓ Promote action targeting men and boys in order to change stereotypical norms and practices for the advancement of gender equality benefiting both women and men.
- ✓ Collect and produce detailed gender-specific statistical data on female migrants and refugees, in order to define the most pressing needs, and to detect specific vulnerabilities and strengths.

Other relevant Council of Europe standards and policies:

- ✓ The **European Convention on Human Rights** prohibits discrimination on the ground of sex (Article 14).
- ✓ Many articles of the **European Social Charter** (1961), in particular, the right to housing (Article 31§2), right to health protection (Articles 7, 8, 11, 19§2), right to education (Articles 9, 10, 15, 17, 19§§11-12), protection of the family and right to family reunification (Articles 16, 17, 19§6) and the right to protection of maternity (Article 8).
- ✓ **Recommendation No. R(79)10 of the Committee of Ministers concerning women migrants** addresses the particular social, cultural and educational needs of migrant women, including their living and working conditions in the territory of member states.
- ✓ The **Anti-Trafficking Convention** (2005) requires states parties to take a gender equality approach in the fight against human trafficking (Articles 1§1, 5§3, 6§d and 17). Victims of trafficking must have access to fair and efficient asylum procedures, as well as be able to access a number of rights in terms of assistance, protection and compensation (Articles 10 to 16).
- ✓ The **Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse** (Lanzarote Convention, 2007) aims to prevent and combat sexual exploitation and sexual abuse of children and to protect the rights of child victims without any discrimination, in particular on the ground of sex.
- ✓ In the **Issue Paper on “Realising the right to family reunification of refugees in Europe” (2017)**, the **Council of Europe Human Rights Commissioner** points out that residence permits for family members enable legal protection and autonomy, and recommends granting “autonomous residence permits to spouses in accordance with the best practices and legal measures relating to violence against women and children”.
- ✓ The **First Report on the activities of the Secretary General’s Special Representative on Migration and Refugees** (February 2018) underlines that the Council of Europe should ensure that the human rights of migrants and refugees are respected during the migratory process.
- ✓ The **Council of Europe report** entitled “**Child-friendly information for children in migration**” (February 2018) recommends that information materials should be adapted to gender in their content and distribution methods, taking into account the specific vulnerabilities of girls to trafficking, sexual and gender-based violence and sexual exploitation.
- ✓ Parliamentary Assembly of the Council of Europe **Resolution 2244 (2018) on “Migration from a gender perspective: empowering women as key actors for integration”** stresses that member states should ensure gender sensitivity in the design, implementation, evaluation and follow-up of all integration policies for migrant and refugee women.