



Strasbourg, 14 May 2019

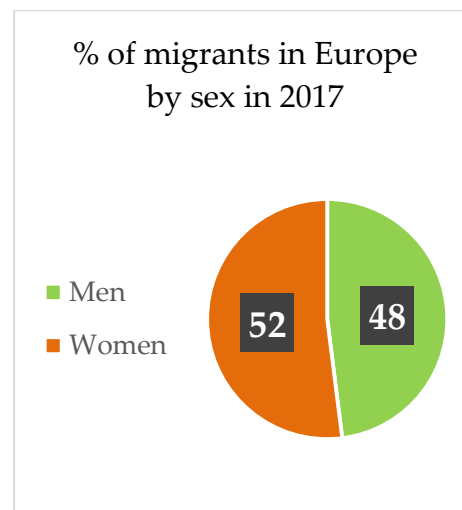
GEC(2018)12 revised

GENDER EQUALITY COMMISSION (GEC)

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

Draft factsheet prepared by the Secretariat

Migrant, refugee and asylum-seeking women and girls form a diverse group as regards nationality, age, legal and social status, professional and personal situation and characteristics, as well as the reasons why they leave their countries of origin. Persisting unequal access for women to resources, property, education, protection, justice, the labour market and decision-making in both countries of origin and destination have an impact on their migration experiences. While fleeing to safety or in the process of migration in search of a better life, women and girls are often confronted with trafficking, forced marriage, gender-based and sexual violence and abuse and gender-based or racist discrimination. The risks are particularly high for unaccompanied girls, pregnant women, those with small children or women experiencing intersectional discrimination. Despite the standards established, quite often the measures put in place are inadequate or do not meet the protection and integration needs of migrant, refugee and asylum-seeking women and girls.



*Source: United Nations,
Department of Economic and Social Affairs, 2017.
International Migration Report 2017: Highlights.*

Women on the move: The need for gender-sensitive migration and asylum policies

The specific needs and situation of migrant women and girls can only be addressed through gender-sensitive migration and asylum policies, including specific protection and support mechanisms.

The universal instruments governing the international protection of refugees, the 1951 *Convention Relating to the Status of Refugees* and its 1967 *Protocol*, do not refer to 'sex' or 'gender' or 'sexual orientation' in the refugee definition. For several decades, the scope and nature of gender or sex-specific persecution experienced by women and girls were absent from the dominant interpretation of the 1951 *Refugee Convention*, and as a result women were unable to benefit from international protection consistently or fairly. Following adoption in 2002 by the UNHCR of non-binding *Guidelines on international protection from persecution related to gender*, as well as subsequent interpretative guidelines, it is now recognised that the definition of refugee should take into account the particular harm or persecution women may experience.

Ratified by a growing number of states, the 2011 *Council of Europe Convention on preventing and combating violence against women and domestic violence* (Istanbul Convention) sets an important standard as regards the protection of migrant, refugee and asylum-seeking women. It requires states parties to ensure that gender-based violence against women may be recognised as a form of persecution within the meaning of the 1951 *Refugee Convention*. It also requires states parties to ensure that the grounds for asylum listed in the 1951 *Refugee Convention* are interpreted in a gender-sensitive manner:

- Persecution on the grounds of race or on the grounds of nationality: women may face certain types of persecution that specifically affect them such as sexual violence and control of reproduction in cases of racial and ethnic "cleansing";

- Persecution on the grounds of religion: women may be persecuted for not conforming to religious norms and customs of “acceptable behaviour”. This is particularly true in cases of crimes committed in the name of so-called “honour”, which affect women disproportionately;
- Persecution on the grounds of membership of a particular social group has increasingly been put forward in gender-related claims and has gradually acquired international support. If one considers women fleeing from gender-related persecution such as female genital mutilation (FGM), forced marriage and even serious domestic violence as forming a “particular social group”, women may be granted asylum;
- Persecution on the grounds of political opinion can include persecution on the grounds of opinions regarding gender roles. Some women may be persecuted, for example, for not conforming to society’s roles and norms of acceptable behaviour and for speaking out against traditional gender roles.

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

- ✓ **Article 4 – Fundamental rights, equality and non-discrimination** – requires the fundamental rights of all women to be upheld without discrimination on grounds of migration or refugee status.
- ✓ **Article 59 – Residence status** - concerns the granting of an autonomous residence permit in the event of the dissolution of a marriage or relationship when the woman’s status in the country depends on that of her husband or partner.
- ✓ **Article 60 paragraphs 1 and 2 – Gender-based asylum claims** - aims at ensuring that gender-based violence against women is recognised as a form of persecution and of serious harm giving rise to complementary or subsidiary protection, and that a gender-sensitive interpretation is given to each of the grounds for protection of the *Refugee Convention*.
- ✓ **Article 60 paragraph 3** requires the development of **gender-sensitive reception and asylum procedures** (including refugee status and international protection) and support services, as well as gender guidelines.
- ✓ **Article 61** aims at ensuring that the **principle of non-refoulement** applies equally to victims of violence against women who are in need of protection: regardless of their status or residence, such persons must not be returned to a country where their life would be at risk or where they might be subjected to torture or inhuman or degrading treatment or punishment.

Other relevant articles of the Istanbul Convention

- ✓ **Articles 33-39** – require criminalisation of forms of gender-based violence that may disproportionately affect migrant women such as female genital mutilation (FGM) and forced marriage.
- ✓ **Article 42 - Unacceptable justification for crimes, including crimes committed in the name of so-called “honour”** – aims to ensure that in criminal proceedings culture, customs, tradition or so-called “honour” are not considered as justification for any acts of violence, negative social control or any violation of women’s human rights.

Different international and regional bodies, including the United Nations, the Council of Europe and the European Union, have developed specific guidance, procedural standards and recommendations to promote gender-sensitive migration and asylum policies. One of six strategic objectives of the Council of Europe Gender Equality Strategy for 2018-2023 is the protection of the human rights of migrant, refugee and asylum-seeking women and girls.

Threats and gaps in the protection of women travelling to and within Europe

Despite the existence of gender-sensitive norms and policies, reports from international and civil society organisations have highlighted systemic weaknesses in the responses to the risks faced by women migrating to and within Europe, notably in the last years. Many women and girls have been and are subjected to severe forms of violence against women in accommodation, reception and detention facilities throughout Europe. Gender-sensitive measures to address this violence, including gender-sensitive law enforcement measures, shelters, counselling services and prevention programmes are absent, and a lack of sanitary facilities, sex-segregated spaces and safe spaces is also observed. As evidenced during on-site visits and monitoring reports, the risk of abuse in some facilities is so high that refugee women take precautionary measures for example by not leaving their tents during the night.

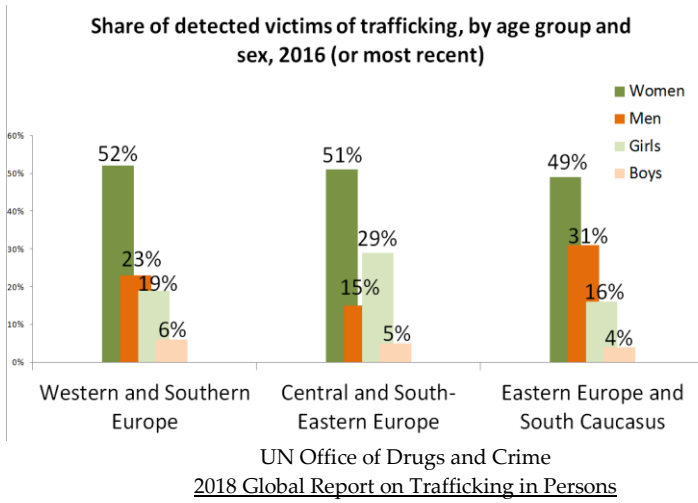
Unaccompanied girls are particularly vulnerable to sexual exploitation or sexual abuse. In certain cases reception centres do not have programmes to help identifying victims of trafficking in human beings, they lack support measures including psychological assistance, the possibility to refer migrants to assistance services. In addition, reception centres often lack vocational or training programmes for women and girls.

Communicating information in a gender-sensitive language is an important element to ensuring gender-sensitive practices and procedures. The Committee of the Parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse points out that information and advice concerning prevention of and protection from sexual exploitation and sexual abuse should be provided to children affected by the refugee crisis in a manner adapted to their age and maturity, in a language they understand and which is sensitive to gender and culture.

Monitoring reports adopted by the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) on the implementation of relevant provisions of the Istanbul Convention point to a lack of gender-sensitive migration and asylum policies and procedures and a lack of training. Even when laws and procedures are in place, women are not provided with enough information about the elements necessary to present their asylum claim. GREVIO reports also highlight the lack of gender-sensitive reception procedures, support services and safe facilities. This includes the need for systematic separate interviews of women and girls as well as culturally-sensitive training and procedures to identify victims of different forms of gender-based violence, taking into account the fact that women victims may not be aware of their rights or even of the fact that their experience qualifies as persecution or violence.

Some international and non-governmental organisations have also expressed serious concern about the disappearance of large numbers of girls in trafficking for different purposes including sexual exploitation. The International Organisation for Migration (IOM) notes the knowledge gap about so-called “missing migrants”, notably missing migrant women. Another challenge concerns the invisibility of girls in migration-related data collection and research, as they are aggregated into the category of “children”, which undermines the meaningful monitoring and analysis of their numbers and situation, including in terms of sexual exploitation and gender-based violence.

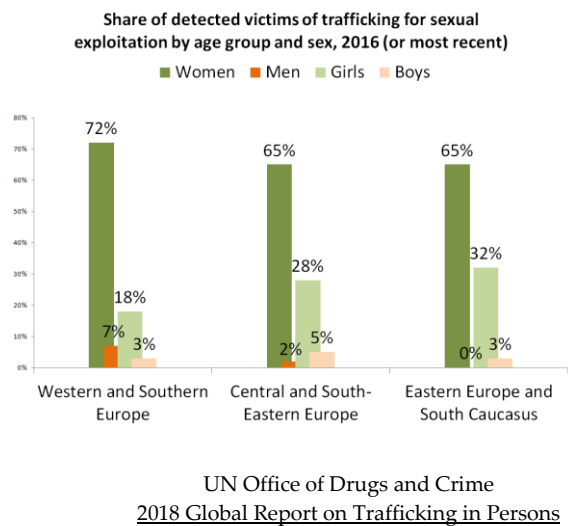
This happens against the background of increased numbers of detected trafficking victims over the last few years, 72% of whom globally were women and girls, with a growing number of girls being reported as victims.



The Council of Europe’s anti-trafficking body, GRETA, has also stressed the need for developing and maintaining comprehensive and coherent statistics regarding victims, which should be collected from all main actors and allow disaggregation concerning sex, age, type of exploitation, country of origin and/or destination.

In 2016, 66% of detected victims were trafficked for sexual exploitation in Western and Southern Europe and 70% in Central and South-Eastern Europe. Women and girls made up 94% of the detected victims trafficked for sexual exploitation globally and 35% of those trafficked for forced labour.

In the thematic chapter on trafficking in children from GRETA’s annual report from 2016, national data referred to in GRETA monitoring reports showed that girls were most often trafficked for the purpose of sexual exploitation.



By way of example, in 2017 the IOM reported that Italy had experienced an almost 600% increase since 2014 in the number of potential victims of trafficking for the purpose of sexual exploitation arriving through the Central Mediterranean route, mostly Nigerian girls aged 15 to 17 years.

European countries vary considerably in the gender-sensitivity of their asylum policies, procedures and practices. For example, not all national legal systems recognise women as “members of a particular social group” within the meaning of the 1951 *Refugee Convention*. Moreover, sexual violence and specific forms of harm disproportionately affecting women, such as trafficking and FGM, are not always regarded as persecution giving rise to a justiciable asylum claim.

Detention is used in Europe as an integral part of the response to migration flows. However, the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has consistently required that asylum seekers only be detained as a last resort, and that they enjoy safeguards extending beyond those applicable to irregular migrants. Both the CPT and the United Nations Committee on the Rights of the Child consider that unaccompanied or separated children should not, as a general rule, be detained. When, exceptionally, children are held with their parents in a detention centre, the deprivation of liberty should be for the shortest possible period of time. Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof. Migrants and asylum seekers, who are nevertheless detained, are not criminals and should not be treated like criminals, and accommodation should be suited to their specific circumstances. These principles should be rigorously applied to all women and girls because of their particularly vulnerable situation while on the move.

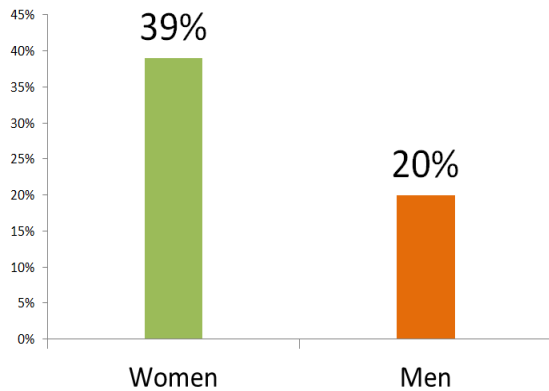
More fundamentally, family reunification, return and development aid policies all need to integrate a gender equality perspective, in order to avoid risks of re-victimisation and to ensure the protection of human rights. A major factor to prevent some migration flows and to facilitate women's return would be for European countries to support gender equality policies and the fight against violence against women in the countries of origin, notably through development policies, as encouraged by the Istanbul Convention. This includes protection against the violation of women's human rights and the elimination of inequalities between women and men, for example in terms of discriminatory laws concerning personal status, property rights or child custody.

Challenges and opportunities for the integration of migrant, refugee and asylum-seeking women and girls

Migration can have both a positive and a negative impact on women. It can give them a higher degree of economic and personal independence, or it can push them into a situation of legal and economic dependency (most often on a spouse or on an employer), resulting in decreased skills and increased poverty risks. Whether a woman finds herself empowered through her migration and integration journey largely depends on the migration, integration and asylum laws and practice in each particular State. For example, some allow refugees to work, others do not; some pursue the line of "family migration", i.e. not granting refugee women resident or other status which is independent from that of their husbands. The long-term impact of migration on women and their ability to become a resource and an asset for the host country will also depend on their personal situation and characteristics (socio-economic status, age, etc.). Due to the inequalities faced by women and girls, and their role within families and communities, particular emphasis should be placed on their empowerment.

Mainstreaming gender equality in all integration measures also makes it possible to ensure that migrant women and men alike are aware of the need to respect and uphold gender equality laws and policies. This fosters their integration in European societies and labour markets.

Inactivity rate of women and men born outside the EU (2014)



Poverty, gender and intersecting inequalities in the EU,
European Institute for Gender Equality, 2018

Despite an increasingly large number of highly qualified migrant women arriving in Europe, migrant women constitute the largest over-qualified and under-employed group in Europe, partly due to greater difficulties in getting their skills recognised.

In addition, care and household work remains largely performed by women generally. Women of migrant background, both from outside Europe and those migrating within Europe, perform a considerable proportion of this work as domestic workers. Such work is rarely remunerated or protected in accordance with international and European labour standards, which leads to highly discriminatory and potentially exploitative and /or violent, conditions.

The social and economic integration of migrant, refugee and asylum-seeking women and girls also depends on their access to health, housing, education as well as language courses and other integration programmes.

Yet women's access to these rights is often difficult. Barriers relate to their level of education and in certain cases, illiteracy, to confusion between rights attached to different migration statuses among migrants and officials alike, to the accessibility of services, to lack of information regarding the organisation of health services and to the cost of these services. Health care professionals working with migrant women also need to be trained in order to respond to specific needs, such as caring for women and girls having undergone FGM or having been confronted with multiple forms of violence. Poor knowledge of migrants' rights or discrimination because of their status can also significantly hamper migrants' access to housing.

Additionally, age requirements and in many European countries mean young refugees not recognised as minors risk abruptly losing access to essential protection and support services (education, health and integration services).

Gender stereotypes, culture and racism

Eliminating harmful gender stereotypes lying at the roots of violence and discrimination against women is one of the key obligations laid out in the Istanbul Convention and in the 2019 Council of Europe Recommendation on combating and preventing sexism. Women of ethnic minorities, migrant and refugee women in Europe face particular challenges, including in relation to violence, access to justice, precariousness and related risks of poverty and social exclusion. Migrant refugee and asylum-seeking women and girls also often face double discrimination: they are sometimes restricted within their own communities by cultural codes, customs, religion or tradition and by different stereotypes and institutional barriers in host countries. The full and meaningful participation in economic and civic life of women from different ethnic minority groups is often challenging because they are perceived as different from European culture(s). While it is important

to acknowledge cultural differences in order to engage effectively with different ethnic groups in Europe, this should never justify discrimination against ethnic minority and migrant women.

Similarly, racism and stereotypes play a role in relation to the sexual violence, exploitation and objectification of migrant, refugee and asylum-seeking women. They are affected to a greater extent than men by modern slavery (for instance, as unremunerated or grossly underpaid employees of a household or business), trafficking for sexual exploitation, or being pushed and groomed into prostitution or online pornography.

Undocumented migrant women

Women with irregular, undocumented migrant status face a heightened risk of violence, exploitation and discrimination. They often have no access to health services and do not report the discrimination and crimes they are confronted with, for fear of being deported and because of threats and blackmail from those who exploit them (family/partner, employers, handlers, loan sharks, etc.).

In this regard, the Council of Europe's Commission against Racism and Intolerance recommends that member states implement effective measures ("firewalls") to prevent State and private sector actors from effectively denying the human rights of irregularly present migrants by clearly prohibiting those actors from sharing any personal data or other information about persons suspected of irregular presence or work with the immigration authorities, for the purpose of immigration control and enforcement. These measures are particularly useful to protect the rights of undocumented migrant women who face (sexual) violence and abuse, including sexual exploitation and labour exploitation as well as in relation to maternal health. In practice, member States should require civil registries, police services, labour authorities, health-care providers and professionals, educational institutions and professionals not to report undocumented migrants to (migration) law enforcement authorities when they seek access to these services and not to deny them access to such protection or services on account of their undocumented status.

Recommended actions

✓ Ratify/implement all pertinent instruments:

- a) the UNHCR 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, as well as other relevant guidance, both by recognising gender- and sex-specific persecution in asylum claims and by adopting specific gender-sensitive procedures and practices. This also includes adapted and separate interviews, training of interpreters and asylum officials, ensuring security and confidentiality of the process, disclosure of accessible information relevant to determining the asylum claim, providing reasons for decisions and access to legal advice and representation;*
- b) the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention);*
- c) the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*
- d) the Council of Europe Social Charter;*
- e) the Council of Europe Convention on Action against Trafficking in Human Beings;*
- f) UN CEDAW General Recommendations No. 19, No. 30, No. 32 and No. 35;*

g) ILO Convention 189 on Domestic Work and extend the provisions of labour codes to the sector of domestic work in accordance with the standards laid out in Convention 189.

- ✓ Fully integrate a gender equality perspective in family reunification, aid and development, peace and security, and return policies.
- ✓ Adopt a child-rights-based approach that includes the specific situation and needs of girls including suitable alternative care arrangements, removing any barriers preventing children from accessing fundamental social rights and protecting them from any form of exploitation.
- ✓ Unaccompanied girls are in a situation of heightened vulnerability and should be placed in child protection institutions in order to prevent possible sexual exploitation or sexual abuse against them.
- ✓ Promptly identify, refer to relevant authorities and provide prioritised access to protection, treatment and care to migrant, refugee and asylum-seeking women and girls victims of trafficking and gender-based violence.
- ✓ Ensure access to sexual and reproductive health services, hygiene products and healthcare services specific to women and girls, including during pregnancy and breastfeeding in all facilities receiving migrant, refugee and asylum-seeking women and girls.
- ✓ Ensure that accommodation and reception facilities put in place, including by local and regional authorities, are safe and adapted to the needs of women and girls and that they provide separate sleeping areas for single women with or without children as well as clean, separate, well-lit and safe bathrooms.
- ✓ Alternatives to administrative detention should always be considered. In the event that it is used as a measure of last resort, adequate services and accommodation should be provided to women and girls (see above). Ensure meaningful activities for the time they spend in detention.
- ✓ Ensure the existence of gender-sensitive law enforcement measures in accommodation, reception and detention facilities, including the presence of women police officers and help-phone-lines/contacts to law enforcement outside the facilities.
- ✓ Ensure the presence of women social workers, interpreters and guards as applicable in accommodation, reception and detention facilities.
- ✓ Train social workers, interpreters, officials working on asylum claims and migration police officers and guards in gender equality issues and in identifying and assisting victims of gender-based violence and put in place mechanisms to enable discussing incidents of sexual and gender-based violence, including ensuring appropriate referral and treatment.
- ✓ Create “firewalls” between the legal status of undocumented persons and their rights to access to justice, protection, health and education.
- ✓ Provide migrant and refugee women with accessible information about their rights, in particular regarding 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.
- ✓ Ensure continued access to essential services to young refugees as they enter adulthood in order to avoid abrupt interruption of access to education, care and integration services in host communities where refugees are subject to strict age assessments.
- ✓ Ensure that local and regional integration programmes integrate a gender equality perspective.
- ✓ Provide language courses to women as soon as possible after their arrival in the host country.
- ✓ Provide vocational training and higher education taking into account the specific needs of migrant and refugee women.

- ✓ Lift barriers to the active labour market participation of migrant women, inter alia by providing them with an independent legal status, facilitating the recognition of their skills, diploma and professional qualifications and adopting women-specific employment policy and support frameworks.
- ✓ Facilitate migrant women's access to the labour market through measures for volunteering, internship and job placement programmes.
- ✓ Develop specific measures to address the link between the demand for the sexual exploitation of migrant women and gender/racial stereotypes related to their objectification as well as their sexual availability. In particular measures should be developed to address the demand for such exploitation, including punitive, preventive and educational measures.
- ✓ Pay special attention to measures aimed at dismantling gender stereotypes, including those supposedly based on culture, tradition and religion, and actively engage with migrant women and feminist organisations which uphold the universal human rights of women within ethnic minority groups.
- ✓ Establish and support mechanisms to ensure that migrant and refugee women's organisations are systematically consulted, in particular when devising migration, asylum and integration policies which affect their lives.
- ✓ Support and closely co-operate with civil society stakeholders who are working to defend and empower migrant and refugee women and girls.
- ✓ Support and adequately finance research as well as age and sex-disaggregated data collection on migration issues.

Relevant Council of Europe standards:

- ✓ The **European Convention on Human Rights** prohibits discrimination on the ground of sex (Article 14).
- ✓ Many provisions of the **European Social Charter** (1961) are of relevance, 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), right to 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 **Convention on Action against Trafficking in Human Beings** (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 **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.
- ✓ The **Convention on Preventing and Combating Violence against Women and Domestic Violence** (Istanbul Convention, 2011) provides specific measures for the protection of migrant, refugee and asylum seeking women (see above).

- ✓ The **Recommendation CM/Rec(2019)1 of the Committee of Ministers on preventing and combating sexism** comprises a comprehensive catalogue of measures both to prevent and to condemn sexism; it includes specific references to addressing the multiple and intersecting forms of sexism that affect notably migrant women.
- ✓ Resolution 2244 (2018) of the Parliamentary Assembly of the Council of Europe on **Migration from a gender perspective: empowering women as key actors for integration** recommends a series of measures to facilitate the integration of migrant women.
- ✓ The Resolution 1765 (2010) of the Parliamentary Assembly of the Council of Europe on **Gender-related claims for asylum** recommends a series of measures for the integration of a gender equality perspective in relation to asylum claims.

Further reading:

- ✓ **The Council of Europe Gender Equality Strategy 2018-2023** recommends the adoption of measures to ensure that migrant, refugee and asylum-seeking women have access to their human and social rights in relation to employment, health, housing, education legal aid and support structures.
- ✓ In the **Issue Paper on “Realising the right to family reunification of refugees in Europe” (2017), the Council of Europe Human Rights Commissioner** recommends granting “autonomous residence permits to spouses in accordance with the best practices and legal measures relating to violence against women and children”.
- ✓ The **Factsheet on “Protecting migrant women, refugee women and women asylum seekers from gender-based violence”** provides information on the relevant provisions of the Istanbul Convention in this area.
- ✓ Annual and country reports of **the Secretary General’s Special Representative on Migration and Refugees** provide useful guidance, as well as the Issue Paper on ‘Human rights aspects of immigrant and refugee integration policies’.