

Presentation of the GREVIO Secretariat to the GEC Committee on migrant women

Good afternoon and thank you for giving the GREVIO Secretariat the opportunity to provide input to the important work that this committee is undertaking. The aim of this presentation is:

- to give you an overview of the provisions of the Istanbul Convention that are relevant to asylum seeking and migrant women and girls,
- provide information on the results of the monitoring carried out by GREVIO thus far
- and explore ways in which the prospective recommendation on migrant and refugee women can complement and further the work of the Istanbul Convention. The standards of the IC in this area are in fact quite general and do not always go into detail. I will thus highlight issues that derive from these standards but that could be reflected on or developed in more detail in the deliberations of this Committee

As you may know, the Istanbul Convention is referred to as the gold standard in the area of violence against women due to its unique and comprehensive approach in preventing violence against women, protecting its victims and punishing their perpetrators. Violence against women is defined by the Convention as a violation of human rights and a form of discrimination against women and means all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological, or economic harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or in private life. Conducts that the convention requires to be criminalised include psychological violence, stalking, physical violence, sexual violence, including rape, forced marriage, FGM, forced abortion and forced sterilization, sexual harassment and domestic violence. GREVIO is the specialised independent body responsible for monitoring the implementation of the Istanbul Convention and it has carried out monitoring missions in respect of 18 States and has published 14 first baseline evaluation reports.

For the purposes of the draft Recommendation on migrant woman and asylum seekers, I will focus only on a selection of provisions - these include:

- The **non-discrimination clause enshrined Article 4 paragraph three** of the Convention
- **Chapter 7, Articles 59 to 61 on migration and asylum**
- **The articles of the convention contained in Chapter IV** which deal with access to general and specialised services for victims of violence against women.

As regards the non-discrimination clause, this introduces the principle of non-discrimination in the implementation of the provisions of the convention on any grounds, including, migrant or refugee status, or other status. In other words, under this article the provisions of the Convention apply in their entirety to all women irrespective of their migrant or refugee status. This means that asylum seeking/migrant women should receive the same protection, support and treatment as nationals of the country at issue.

As regards Chapter IV of the convention, it requires that States Parties ensure both general support services and specialised support services for victims of vaw. The first includes services offered by public authorities such as social services, health services, employment services and are not exclusively designed for the benefit of victims only but serve the public at large. Specialist support services provide, instead, support and assistance tailored to the needs of victims, such as the provision of shelter, immediate medical support, the collection of forensic medical evidence in cases of rape, short and long-term psychological counselling, trauma care, legal counselling and telephone helplines.

The monitoring carried out thus far shows that a recurrent problem is the limited access to support services for *migrant women without a residence permit*. In Denmark and in Sweden, for example, the support available to these women is extremely limited as they cannot access any of the general social services or specialised support services such as shelters. IN some countries, victims are required to “regularise” their stay in order to access a shelter. Likewise, *asylum seeking women* also often do not have access to specialised services for victims of violence against women or to domestic violence shelters outside of reception facilities, where necessary, in breach of article 4 paragraph 3 of the convention.

The monitoring has also highlighted that almost in all countries, specialised services for FGM and forced marriage are scarce and this impacts particularly on asylum seeking women and migrant women from certain regions of the world. Moreover, with only a few exceptions, *general and specialised services are often only available in national languages*. This runs counter to Article 4 paragraph 3.

The Committee on migrant women could perhaps discuss how to reinforce the obligation for States to ensure that access to domestic violence shelters and other specialised services, as well as general services, be provided and made available to victims of vaw irrespective of migrant, residence or asylum seeking status and without conditions that may be prohibitive, in a language that they understand and that cater to their specific needs.

Chapter VII

Article 59 on residence status – Most GREVIO reports principally focus on the obligation provided under paragraph 1. This *requires Parties to the Convention to take the necessary legislative or other measures to ensure that migrant victims whose residence status is conditional on marriage or on being in a relationship, are granted an autonomous residence permit of a limited validity in the event of the dissolution of the marriage or the relationship in the event of particularly difficult circumstances such as in the case of violence against women and domestic violence committed by the spouse.*

This provision was drafted in response to a pressing need as in most countries women held out in abusive relationships for far too long in order to secure an independent residence permit. Indeed, most Council of Europe member states require spouses or partners to remain married or in a relationship for a period ranging from one to three years in order to be granted an autonomous residence status.

In its monitoring practice, GREVIO has observed that many States have introduced this possibility in legislation; however, barriers persist in practice. First of all, in several Sates Parties, insufficient information is made publicly available or provided directly to migrant women and, as a result, women in abusive relationships are unaware that they can apply for an independent residence permit. Secondly, whereas *the explanatory report to the IC Convention explains that evidence of violence “may include, for example, police records, a court conviction, a barring or protection order, medical evidence, an order of divorce, social services records or reports from women’s NGOs, to name a few”*, a high evidentiary threshold is required by many States. In a number of States monitored by GREVIO, for instance, the evidentiary requirement is considered to be satisfied only where a police report has been lodged or conviction of the perpetrator has been handed down. Reports by other entities such as social services, domestic violence shelters or Victim Support Offices are not recognised. This presents difficulties for women of migrant background who, for a wide range of reasons, do not report or disclose their exposure to violence to the authorities but turn to NGO-run services instead. There are other countries, such as **Italy** which provide for additional conditions such as the need to prove that the victim *be routinely exposed to acts of violence*

and/or that she face an incumbent risk to her safety – which is far more restrictive than the requirement of the Convention.

Another problem that may arise is that, even where a victim obtains a residency permit, the permit may be very short and may not grant her the right to work and will eventually force her to leave the country, even without her children. This seems to arise as a problem in situations where the victim is a third country national and the child has the nationality of the country (obtained via the father, for example). The issue of residence permits for third-country migrant women wishing to leave an abusive spouse thus remains an obstacle to separation – because of the uncertainty involved and the prospect of economic insecurity. I am bringing this to the attention of your committee because although much progress has been made since the entry into force of Convention, not all problems seem to be solved. The Convention does not require ensuring a long-term residence permit, but the spirit of the convention would of course require solutions that aim at the empowerment of a migrant women who is a victim of domestic violence.

The Committee may therefore wish to discuss the importance of providing all migrant women who enter States Parties with information on the possibility to obtain an autonomous residence permit on the grounds of being a victim of domestic violence, irrespective of the duration of the relationship. It could, moreover strive to ensure that women victims of vaw can actually secure an autonomous residence permit, without being confronted with evidentiary requirements impossible to satisfy (such as a conviction/protection order etc) and of a nature that will not lead to separation from children.

Article 60 on Gender-based asylum claims provides for a number of obligations. Firstly, *the need to ensure that gender-based violence against women may be recognised as a form of persecution within the meaning of the 1951 Geneva Convention and as a form of serious harm giving rise to complementary/ subsidiary protection.* Secondly, *the need to ensure that a gender-sensitive interpretation is given to each of the Convention grounds.* Thirdly, to develop gender-sensitive:

- reception procedures
- support services for asylum-seekers
- gender guidelines and
- gender-sensitive asylum procedures, including refugee status determination and application for international protection.

As regards ***the need to ensure that gender-based violence against women may be recognised as a form of persecution***, asylum law has long failed to address the difference between women and men in terms of why and how they experience persecution. This gender blindness in the establishment of refugee status and of international protection has resulted in situations where claims of women fleeing from gender-based violence such as female genital mutilation, dowry related violence, serious domestic violence, have gone unrecognised.

Under the Geneva convention the well-founded fear of persecution must be related to one or more of the grounds specified therein - the Istanbul Convention requires that Parties ensure that a gender-sensitive interpretation is given to each of those grounds. In the examination of the grounds for persecution, gender-based violence is often seen to fall within the ground of “membership of a particular social group”, overlooking the other grounds. Ensuring a gender-sensitive interpretation implies recognising and understanding how gender can have an impact on the reasons behind the type of persecution or harm suffered. Regarding persecution on the grounds of race or on the grounds of nationality, for example, women may face certain types of persecution that specifically affect them. Examples are sexual violence and control of

reproduction in cases of racial and ethnic “cleansing”. Concerning persecution on the grounds of religion, women may be persecuted for not conforming to religious norms and customs of acceptable behaviour.

From the monitoring carried out by GREVIO thus far emerges that most States Parties have broadened the grounds on the basis of which refugee status can be granted to encompass persecution based on gender/gender-based violence and sexual orientation. This notwithstanding, in a number of reports, GREVIO has noted that implementation remains insufficient. Also, in several other States, the absence of data does not allow to identify the number of women who are granted asylum and the related grounds of persecution.

The Committee may wish to explore the need for States to collect data on the annual numbers of asylum applications based on gender-related persecution, and the numbers of such applications granted and rejected. This would allow to see whether in practice refugee status is granted due to persecution on grounds of gender-based violence.

As regards **the requirement to develop gender-sensitive reception procedures**, Article 60(3) requires states to develop procedures that take into account women’s and men’s differences in terms of specific protection needs, to ensure their right to safety. Examples of gender-sensitive reception procedures may include, inter alia: the identification of victims of violence against women as early in the process as possible; the separate accommodation of single men and women; separate toilet facilities, or at a minimum, different timetables; rooms that can be locked by their occupants; adequate lighting throughout the reception centre; guard protection, including female guards, trained on the gender-specific needs of residents; training of reception centre staff; formal arrangements for intervention and protection in instances of gender-based violence; provision of information to women and girls on gender-based violence and available assistance services.

As regards **the requirement to develop gender sensitive support services**, Article 60(3) requires that States provide assistance in a gender-sensitive manner and that cater to their particular needs. In addition to ensuring that asylum seeking women and girls have the same access to affordable and adequate health services as the general population, States should take measure such as providing additional psycho-social and crisis counselling, as well as medical care for survivors of trauma since for example, many female asylum-seekers have been exposed to sexual or other forms of abuse and are therefore particularly vulnerable.

From the monitoring carried out by GREVIO thus far, GREVIO has noted difficulties experienced by many states parties in ensuring gender-sensitive reception facilities and gender sensitive support services. Women-only accommodation and hygiene facilities are in effect not always provided, creating safety concerns for single women, as well as girls and women travelling with their families. This has led to many cases of sexual harassment as well as physical and sexual violence, including isolated cases of women killed, as observed in Sweden, for example. As noted before, asylum seeking women also often do not have access to specialised services for victims of violence against women or to domestic violence shelters outside of reception facilities where necessary, and this is matched by insufficient support services within the reception centres.

Noting the insufficient implementation of the convention with regards to reception facilities and support services for asylum seeking women, the Committee could perhaps explore ways to address and surmount these difficulties.

As regards the requirement to ensure gender-sensitive asylum procedures, including refugee status determination, Article 60 of the convention aims to ensure that women are able to access protection in their own right, rather than be dependent on a husband. The

explanatory report to the Convention explains that this encompasses inter alia: the provision of information on asylum procedures; the opportunity for women dependents to have a personal interview separately and without the presence of family members. On this point, some women who have experienced and/or fear gender-based violence may not, disclose in front of family members, including small children. This gives them the opportunity to raise independent needs for protection and gender specific grounds leading to a separate application for international protection. The explanatory report also refers to the importance of elaborating gender guidelines on the adjudication of asylum claims, training, gender-sensitive interviews and the possibility for the applicant to express a preference for the sex of their interviewer and interpreter.

From the monitoring carried out by GREVIO thus far, GREVIO has noted that women who lodge asylum requests are often ill-informed about the procedure, their rights, the support available to them. Cultural and gender bias are still a reality and training of asylum case managers on the different forms of violence against women and gender-based persecution is necessary. In countries such as Belgium and other countries recently monitored, even where individual preliminary interviews take place, GREVIO observed lack of confidentiality and gender-sensitiveness. This hampers disclosure of violence and undermines initial efforts to identify women and girls who have suffered gender-based violence. In one country that has been recently monitored, the use of accelerated procedures has also constituted a barrier to the identification of victims of gender based violence. Concerning legal aid, while it is provided in countries like Austria, Finland and Sweden, asylum-seeking women are often unaware of the possibility to request a lawyer or, in some countries that have been recently monitored, are provided with free legal aid only at the appeals' stage, which can be too late. The quality of legal aid available to women has also been observed as being particularly problematic.

The Committee could perhaps discuss the importance of providing asylum seeking women with information on their rights and the support available to them upon arrival. The possibility of being interviewed separately from their family both at screening and during any substantive claim and with strict respect of confidentiality should also be prioritised. Late disclosure in the asylum process can also be addressed, clarifying that it does not necessarily represent an indication of lack of credibility.

As concerns the requirement to develop gender sensitive guidelines, the Convention's explanatory report explains that Guidelines provide an essential reference to enhance awareness of special protection needs of women asylum-seekers that have been victims or are at risk of gender-based violence. The explanatory report does not describe at length the content of the gender-guidelines.

From the monitoring carried out by GREVIO thus far GREVIO has noted that Gender Guidelines are lacking in many countries that it has monitored such as Montenegro, Turkey, The Netherlands, Serbia, Belgium and Italy. More must therefore be done to ensure a gender-sensitive asylum process from arrival at the border to the moment of either granting protection or removal from the State.

The Committee, could perhaps, discuss in more detail the content and importance of gender-guidelines as well as training of case-workers and all actors involved in the asylum determination procedure on violence against women, guided by Expert reports, including those commissioned by the Council of Europe.

Article 61 of the convention entails the obligation under international law for states to respect the principle of non-refoulement in relation to victims of gender-based violence who may fear persecution if returned. According to this principle, states shall not expel or return an asylum seeker or refugee to any country where their life or freedom would be threatened. Article 3 of the European Convention of Human Rights also prevents a person

being returned to a place where they would be at real risk of being subjected to torture or inhuman or degrading treatment or punishment. The non-refoulement principle also includes not prohibiting access to the territory of a country to asylum seekers who have arrived at its borders or who are prevented from accessing its borders. The obligation to respect the non-refoulement principle applies equally to victims of violence against women, irrespective of the status or residence of the women concerned. Even if their claim for asylum is refused, states should ensure that these persons will not be expelled/deported to a country where there is a real risk to that they will be subject to torture or inhuman or degrading treatment or punishment.

Recent reports drafted by GREVIO, including Italy, have addressed the recent policies and practices of abandoning sea rescue, closing of ports to boats carrying rescued migrants, and relinquishing responsibility for search and rescue operations to authorities which are unwilling or unable to protect rescued migrants from torture or inhuman or degrading treatment or are in a state of civil war. GREVIO has noted that these practices pose a serious risk of refoulement of women migrants who have experienced violence. Other recent reports have noted that failure to carry out vulnerability assessments, in particular those in the framework of accelerated procedures, with a view to properly detecting victims of gender-based violence can also lead to deportations or returns in violation of the obligation of non-refoulement.

The Committee may wish to look into these issues in more depth.

Thank you for your time and I wish the Committee fruitful discussions.