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**GENDER EQUALITY COMMISSION
(GEC)**

**Drafting Committee to prepare a draft
Committee of Ministers Recommendation on migrant and refugee women
(GEC-MIG)**

Assessment of needs and gaps – discussion paper

Introduction

1. The Council of Europe Gender Equality Strategy 2018-2023 includes for the first time a new strategic objective to “Protect the rights of migrant, refugee and asylum-seeking women and girls”. The strategy also identifies the need to “update Recommendation No. R(79) 10 of the Committee of Ministers to member States concerning women migrants”. The Terms of Reference of the Council of Europe Gender Equality Commission (GEC) 2020-2021 also includes the preparation of a Committee of Ministers Recommendation on migrant and refugee women by a Drafting Committee on migrant women (GEC-MIG). CM Recommendation No. R(79)10 concerning women migrants is to serve as a basis on which to build the new recommendation.
2. Since the adoption of CM Recommendation No. R(79)10 concerning women migrants, there have been significant developments in international migration patterns, law and policy. Alongside a changing global system in which economic mobility and migrant work have increased, global challenges such as climate emergency, war and conflict have caused significant changes to the nature and scale of migration.
3. The needs and situation of migrant women have also significantly changed in the last decades, for example with a growing proportion of women migrating alone, and higher levels of labour market participation. Policies and legislation, as well as research on gender equality issues, have also progressed, including the development of new strategies and concepts, for example regarding gender-sensitive asylum policies; the fight against gender-based violence; gender mainstreaming; intersectionality or multiple discrimination.
4. Preliminary work by the GEC regarding migrant women resulted in the publication of a factsheet on “Protecting the rights of migrant, refugee and asylum-seeking women and girls” (2019). The Gender Equality Division of the Council of Europe also produced the study “Gender-Based Asylum Claims and Non-Refoulement: Articles 60 and 61 of the Istanbul Convention” (2020).
5. In order to prepare the work of the Drafting Committee on migrant women (GEC-MIG), a questionnaire was sent to GEC members in June 2020, and 19 replies were received from member States. A summary of replies to the questionnaire of June 2020 was compiled.
6. At its meeting on 8-9 July 2020, the GEC gave guidance on its expectations for the draft recommendation, including issues for consideration such as elimination of discrimination; availability of information related to human rights; access to justice in an accessible language so that migrant women can understand what their rights and entitlements are and how to access them; integration; employment; access to health and social services; recognition of qualifications, diplomas, education and training; social norms and stereotypes; intersectionality; protection against violence and trafficking; gender-sensitive asylum and

migration policies; political participation and the role of civil society; the impact of COVID-19 on migrant and refugee women; and the positive contribution that migrant women make to society.¹

7. During the same meeting, a useful exchange of views also took place with the Office of the Secretary General's Special Representative on Migration and Refugees (SRSG). Issues of gender-related vulnerabilities, access to justice, legal aid and health care, and the need for gender-sensitive asylum policies were important to the SRSG and the draft Action Plan currently under preparation aims to focus on protection and safeguards, access to justice and fostering democratic participation and inclusion.
8. This needs assessment will consider:
 - I. The scope and content of Recommendation No. R(79) 10 of the Committee of Ministers to member States concerning women migrants
 - II. Relevant policies and instruments at the European and international level.
 - III. Gaps and proposals for the new recommendation.

I. Scope and content of Recommendation No. R(79)10 of the Committee of Ministers to member States concerning Women Migrants

9. Recommendation No. R(79)10 was adopted on 29 May 1979 and it aimed at ensuring the 'effective exercise of the right of migrant workers and their families to protection and assistance', and 'equality of treatment of national and migrant women workers'. The recommendation states that 'member States could usefully formulate a migration policy providing for the implementation and development of preventive measures in the social, cultural and educational life of women migrants' and recommends a series of measures to member States.
10. Recommendation No. R(79)10 (1) calls on States to ensure that national legislation and regulations concerning women migrants be fully adapted to relevant international standards and that the equality of opportunity and treatment between migrant and national women is applied in practice by the efficient and systematic monitoring of the implementation of national legislation and regulation.
11. The 1979 recommendation asks States to take concrete measures to ensure that the reception, integration and legal and administrative rights of migrant women are protected without discrimination. This is to be achieved through the provision of information, legal, social and other support mechanisms to ensure that migrant women enjoy those rights on the same basis as local/'indigenous women', and are directed in particular to information and services

¹ [GEC \(2020\) Report July](#).

regarding conditions of residence and work, living conditions and socio-cultural development and basic training, vocational guidance and promotion.

II. Relevant policies and instruments at the European and international level

12. Since 1979, the Council of Europe has adopted the following key conventions which have particular relevance to migrant women and girls:

- ✓ European Social Charter (revised), ETS No. 163 (1996);
- ✓ Council of Europe Convention on Action against Trafficking in Human Beings, ETS No. 197 (2005);
- ✓ Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), ETS No. 201 (2007);
- ✓ Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), ETS No. 210 (2011).

13. Other relevant Council of Europe treaties are:

- ✓ Convention on the Recognition of Qualifications concerning Higher Education in the European Region, ETS No. 165;
- ✓ European Convention on Nationality, ETS No. 166;
- ✓ Convention on Cybercrime, ETS No. 185 and its protocols including the Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

14. Since 1979, there have been more than 30 Committee of Ministers recommendations in the field of equality between men and women² covering core themes of gender equality, such as combating violence against women, achieving the balanced participation of women and men in political and public decision making or gender equality in the field of health, media and sport. The most recent of these is Recommendation CM/Rec (2019)¹ of the Committee of Ministers on preventing and combating sexism.

15. A further 25 existing Committee of Ministers recommendations have been adopted, covering migration in relation to access to healthcare, welfare, integration including education and validating skills, the concept of membership of a particular social group for asylum claimants, family reunion, long term migration and chiefly groups of migrants in particularly vulnerable situations including children, the elderly, Roma and travellers.

16. The Parliamentary Assembly of the Council of Europe has issued numerous recommendations, resolutions, opinions and reports on migration-related issues, among which:

² The key recommendations can be found here: <https://www.coe.int/en/web/genderequality/standards-and-mechanisms>.

- ✓ [Resolution 2244\(2018\) Migration from a gender perspective: empowering women as key actors for integration](#)
- ✓ [Resolution 2159\(2017\) Protecting Refugee Women and Girls from gender-based violence](#)
- ✓ [Resolution 2176 \(2017\) Integration of refugees in times of critical pressure: learning from recent experience and examples of best practice](#)
- ✓ [Resolution 1765 \(2010\) Gender-related claims for asylum](#)

17. The Council of Europe's Commission against Racism and Intolerance (ECRI) General Policy Recommendation No. 16 on safeguarding irregularly present migrants from discrimination calls for the implementation of effective measures to prevent State and private sector actors from effectively denying the human rights of irregularly present migrants, through the development of firewalls and prohibition of sharing a migrant's personal data with immigration authorities for the purpose of immigration control and enforcement.

18. 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.

19. Key provisions at the international level include:

- ✓ United Nations Convention Relating to the Status of Refugee (1951)
- ✓ ILO Convention 189 on Domestic Work (2011)
- ✓ CEDAW General Recommendation No 19 on violence against women (1992)
- ✓ 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, updating general recommendation No. 19 (2017)
- ✓ UNHCR non-binding Guidelines on international protection from persecution related to gender (2002).³

III. Gaps and proposals for the new recommendation

20. Previous work by the Gender Equality Commission, including the Council of Europe Gender Equality Strategy 2018-2023, the factsheet on Protecting the rights of migrant, refugee and asylum-seeking women and girls, the July 2020 answers to the questionnaire by

³ UNHCR 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, HCR/GIP/02/01, 7 May 2002.

GEC members and the discussions at the July 2020 meeting of the GEC highlight the issues that could be included in the new recommendation (see paragraphs 6 and 7).

21. Some of the above issues are included in the 1979 recommendation but in a way that may require updating; other issues are new, due to changing migration patterns, to changes in the situation and needs of migrant women and to developments in policies and legal frameworks. GEC-MIG should also make choices in relation to definitions, language and scope of the new recommendation.

A. Use of terms, definitions and language

22. Decisions by GEC-MIG on use of terms and their definitions, in line with Council of Europe policies and standards, may be required, including for example: migrant, documented, undocumented, asylum seeker, refugee, victim of trafficking.
23. On a more general point, much of the language of the 1979 Recommendation is outdated, with a tendency to focus on women as wives and mothers. The new draft recommendation should use agreed and current terminology/language.

B. Scope of the new recommendation

24. The name of the drafting committee, as per its terms of reference,⁴ indicate that it is a drafting committee on 'migrant women'. However, its terms of reference require the committee to 'draft a recommendation on migrant and refugee women' on the basis of Recommendation No. R(79)10 concerning women migrants and on an analysis of needs and gaps that need to be addressed'. Strategic objective no. 5 of the Gender Equality Strategy 2018-2023 refers to 'Protect(ing) the rights of migrant, refugee and asylum-seeking women and girls' and includes a number of objectives to be sought through Council of Europe action in order to integrate a gender equality dimension in migration, asylum and integration policies and measures.⁵
25. The 1979 recommendation covers many of the thematic areas raised by the GEC questionnaire and related discussions at the GEC meeting in July 2020, but it does so exclusively from the perspective of migration within member States and therefore excludes the cohort of women arriving or being brought to those States as a consequence of the changing nature of global migration, including asylum seekers, victims of trafficking and (potentially) refugees. This has brought new and significant human rights challenges.
26. The drafting committee should consider whether to include all migrant, refugee and asylum-seeking women and girls in the scope of the new draft recommendation, or solely those

⁴ Adopted by the Committee of Ministers at its 1361st meeting, on 19-20 November 2019.

⁵ Adopted by the Committee of Ministers in March 2018.

women who have obtained authorised residence in a member State. Migration status is included as a prohibited ground of discrimination in the Istanbul Convention⁶; Parties to the European Convention on Human Rights (the Convention) must secure the human rights and fundamental freedoms included in the Convention “to everyone within their jurisdiction”⁷; and migrants are protected by the non-discrimination principles of the Convention.⁸

C. Issues covered by the 1979 recommendation which may require updating

Non-discrimination and the elimination of gender and cultural stereotyping

27. Since 1979, the understanding of the principles of equality, in particular those based on race, sex, gender, sexual orientation and gender identity and ‘other status’ - including migration status - have developed, which is not reflected in the 1979 recommendation. The 1979 text also does not address issues of multiple and compounded forms of discrimination of the types migrant women are particularly likely to experience. Some migrant women are members of additionally vulnerable groups, for example, based on their social status, age, disability or pregnancy, among other grounds.
28. As stressed by several member States during preparatory work, it may therefore be highly relevant to incorporate an intersectional approach to the elimination of discrimination and to issues related to social norms and gender/racial stereotypes, both within host countries and communities and the countries/communities of origin, through education and public information and awareness raising. This could include protection from hate speech and an emphasis on the positive contributions made by migrant women to society.

Information, awareness raising, and promotion of human rights

29. Recommendation R(79)10 calls on member States to provide information about legal rights and obligations, education and vocational training, but it does not specifically mention access to justice and securing human rights.
30. Preparatory input by the GEC included the broad issues of elimination of discrimination, awareness of rights, provision of appropriate information, ensuring access to justice and the empowerment on migrant women through information.

Reception facilities

31. The concept of ‘reception’ has changed over the years and is now more generally considered as the conditions immediately on, or closely after, arrival at a port or land border whilst migrants and irregular migrants are having their applications processed. This could include

⁶ Article 4(3) of the Istanbul Convention.

⁷ Article 1 of the European Convention of Human Rights.

⁸ Article 14 ECHR and Protocol 12 to the European Convention on Human Rights.

the situation of arrival by boat, whilst in camps, reception centres or other facilities designed to accommodate asylum seekers, victims of trafficking or migrants held at a border.

32. The 1979 recommendation recognises that the provision of better 'reception facilities' has the aim 'to assist women migrants to adapt to the social environment of the receiving country, notably by providing better reception facilities such as housing, hostels, crèches, schools, etc. suited to their needs and those of their families. In terms of accommodation existing relevant standards include Recommendation Rec(88)(14) on migrants' housing. These remain important and relevant for women migrant workers and their families, but the committee may also consider this under a section on integration.

Employment

33. The 1979 recommendation includes a provision on preventing discrimination between local and migrant women workers, but this is limited to cases of redundancy and reemployment. Key considerations identified by member States included eliminating discrimination in employment; promoting access to employment for migrant women at an early stage-potentially pre-arrival; adopting women specific employment policy and support frameworks; addressing the recognition of previous qualifications, including vocational training and work experience; regulating and improving migrant women's working conditions; challenging gender stereotypes in this area; and addressing gender inequalities related to work/life balance.
34. Some relevant Council of Europe instruments in this respect include Recommendation Rec(2004)2 on the access of non-nationals to employment in the public sector and Council of Europe Recommendation CM/Rec(2008)10 on improving access of migrants and persons of immigrant background to employment.

Education, training and vocational guidance and 'socio-cultural development'

35. The 1979 recommendation includes measures 'in respect of socio-cultural development', namely promoting the adjustment to receiving countries, access to childcare facilities, and public awareness and understanding among the population of the specific problems of migrant women.
36. The 1979 recommendation also recognises the importance of language, literacy and vocational training and education throughout the working life as factors for integration. There is scope to ensure that provisions on vocational training and higher education take into account the specific needs of migrant and refugee women and girls, as mentioned by several member States in the preparatory work. Some existing measures include Council of Europe Recommendation CM/Rec(2011)2 on validating migrants' skills; the European Qualifications Passport for Refugees; and the Convention on the Recognition of Qualifications concerning Higher Education in the European Region (ETS 165). Existing

measures for girls/children include Recommendation CM/Rec (2008)4 on strengthening the integration of children of migrants and of immigrant background, and Recommendation Rec (2007)9 on life projects for unaccompanied migrant minors.

Opportunities for protection and preparation for integration pre-arrival

37. The 1979 recommendation refers to information to be provided both pre-departure and during residence to enable women to know about living and working conditions in the receiving State. These provisions could be updated to include gender-sensitive immigration procedures, as stressed in some member States' contributions. This could include procedures before arrival, such as visa issuing procedures and measures to ensure that asylum seekers and victims or potential victims of trafficking or forms of sex or gender-based violence, for example, forced marriage, female genital mutilation, can be identified. Pre-arrival information about rights and obligations can also assist women to leave dangerous or violent situations.

Return measures

38. The 1979 recommendation makes very limited reference to return, it does uniquely in the context of promoting vocational retraining and rehabilitation facilities in order to ensure their resettlement in case of return to the country of origin. It should be noted that Recommendation No. R(79)10 does not refer to the fundamentally important obligation of *non-refoulement*.
39. Article 3 of the European Convention on Human Rights and Article 61 of the Istanbul Convention provide protection against *refoulement* and Article 16 of the Council of Europe Convention on Action against Trafficking in Human Beings makes provision for return of victims of trafficking.
40. It may therefore be useful to include a provision in respect of returns taking place in dignity and safety and ensuring that states comply with the principle of *non-refoulement*.

Co-operation with civil society

41. The 1979 recommendation mentions co-operation with migrant women's organisations, mostly related to socio-cultural advancement. As raised by several member States in the preparatory work, further co-operation with migrant women's organisations, migrant and refugee organisations (and migrants themselves), as well as with women's organisations and other NGOs and civil society groups with specialist knowledge and experience in protecting and empowering migrant and refugee women and girls, could be included in the new text.

D. Relevant topics not covered by the 1979 recommendation

Preamble

The preamble of the 1979 recommendation refers to various human rights instruments and policies, however the content does not reflect the changes to gender equality and migration law and policy at European and international level and across member States. The preamble of the new recommendation could refer to the most relevant standards so that all useful references are “codified” in a single instrument.

Social services and health

42. The 1979 recommendation includes reference to “providing better reception facilities” (see above paragraph 31), equality of access regarding child-care facilities and information about services available. However, the broad issue of access to all social services mentioned by member States in preparatory work, namely education and training; health, including sexual and reproductive health and rights; housing and shelters for survivors of gender-based violence, domestic violence and human trafficking, is not included in a comprehensive manner in the text. Council of Europe Recommendation CM/Rec 2011(13) on mobility, migration and access to health care, could be used in this regard.

Elimination of all forms of violence and human trafficking

43. Very significantly, the protection of migrant women and girls from gender-based violence, domestic violence and human trafficking, as well as the prevention of these forms of violence, was not included in the 1979 Recommendation. As raised by several member States and stakeholders during preparatory work, a new section on protection could be included in the new recommendation, bringing together the relevant conventions and policies of the Council or Europe. Consideration could be given to ECRI’s recommendation on the creation of firewalls to enable migrant women to obtain protection from violence.⁹

Asylum seeking and refugee women

44. The 1979 recommendation does not include opportunities to protect migrant, refugee (including those arriving under resettlement programmes) and asylum-seeking women and girls including victims of violence, human trafficking and abuse through the immigration process itself. As stressed by a number of member States in preparatory work and by other relevant stakeholders,¹⁰ many refugee and asylum seeking women and girls have been exposed to gender-based violence in the forms of rape or other sexual abuse and

⁹ ECRI’s General Policy Recommendation No. 16 on safeguarding irregularly present migrants from discrimination.

¹⁰ For example, the Council of Europe Parliamentary Assembly and the Office of the Secretary General Special Representative on Migration and Refugees.

exploitation, harassment or domestic violence, as well as trafficking in their countries of origin, during their journey, in transit and/or in destination countries. All migrant women, from those European women migrating between member States to those from outside Europe migrating to or staying in member States irregularly, are particularly vulnerable to trafficking.¹¹ The specific needs and concerns of these groups could be addressed through gender-sensitive migration and asylum policies including specific protection and support mechanisms.

45. There are also international instruments that address these issues, including Article 60 of the Istanbul Convention¹², Article 10 (Identification of the victims) and Article 17 (Gender equality) of the European Convention on Action against Trafficking in Human Beings, the June 2020 Guidance Note “on the entitlement of victims of trafficking, and persons at risk of being trafficked, to international protection”, issued by the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA), and the UNHCR 2002 non-binding Guidelines on international protection from persecution related to gender.¹³

Independent residence permit

46. Security of residence and, in particular, independent residence status can be important for women, particularly if experiencing abuse. There is no provision on this issue in the 1979 recommendation, but there is some recognition of this in the Istanbul Convention regarding women in “particularly difficult circumstances” (Article 59), in Recommendation Rec(2000)15 concerning the security of residence of long-term migrants, and in the case law of the European Court of Human Rights. Separate provision is made in Article 14 of the Anti-Trafficking Convention for a residence permit to be granted where personal circumstances so require, or on the basis of co-operation with criminal investigations.

Access to Justice

47. The 1979 recommendation recognises the need to provide migrant women with information and assistance with their legal rights and obligations in respect of various socio-economic, civil and employment rights. The relevance of this to access to justice could be made clearer in the new recommendation, including the importance of access to legal advice, assistance and legal aid.

¹¹ “Time to deliver on commitments to protect people on the move from human trafficking and exploitation”, Human Rights Comment, published on 12 September 2019, Commissioner for Human Rights, available here: <https://www.coe.int/en/web/commissioner/-/time-to-deliver-on-commitments-to-protect-people-on-the-move-from-human-trafficking-and-exploitation>

¹² For a more detailed analysis of those issues, see the paper ‘[Gender-based asylum claims and non-refoulement: Articles 60 and 61 of the Istanbul Convention.](#)’

¹³ UNHCR 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, HCR/GIP/02/01, 7 May 2002.

Family Reunification

48. Family reunification is not addressed by the 1979 recommendation, but it is an established principle of international and European human rights law, including on the basis of Article 8 of the Convention (Right to respect for private and family life) and related case-law by the European Court of Human Rights. Different Council of Europe bodies, for example the Parliamentary Assembly and the Commissioner for Human Rights, have stressed the need to safeguard this right.

Undocumented migrant women

49. 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. This topic was not included in the 1979 recommendation. Relevant policies in this respect include the Council of Europe's Commission against Racism and Intolerance (ECRI) recommendations on firewalls (mentioned in paragraph 17) preventing member States 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.

Data collection, research and monitoring

50. As mentioned by some member States during preparatory work, efficient and systemic monitoring could be enhanced through a requirement to support and adequately resource the following: research, monitoring and evaluation and the collection of age and sex disaggregated data on migration and equality issues.

Climate change/Pandemics/humanitarian crises

51. In preparatory work, member States raised the issue of the impact of the global pandemic on migrant women. The COVID-19 pandemic had an almost immediate discriminatory impact on women's rights generally and migrant women's rights specifically, including in relation to gender-based and domestic violence, but also as regards care work and women's economic empowerment and independence.
52. In light of the challenges posed by climate change, as well as health and humanitarian crisis and the increased likelihood of such events in the future, it would be useful to consider whether specific provisions should be included in the new recommendation for the protection of migrant women, included undocumented migrant women, during times of national emergency such as a pandemic or other public health emergency, or natural disaster.

Artificial Intelligence and automated decision making

53. Significant problems arise with bias and discrimination in the use and developments of new technologies, particularly in terms of algorithms, big data and applications of technology such as facial recognition. These are increasingly being documented and there is growing recognition of the need for reinforced human rights protection and the integration of a gender equality perspective in this area. Recommendation CM/Rec (2020)1 on the human rights impacts of algorithmic systems, for example, clearly outlines the dangers of discrimination at different stages of the development and deployment of artificial intelligence. As an example, women of colour are significantly more likely to be wrongly identified by facial recognition technology than white men.¹⁴ Migrant communities have also experienced discriminatory targeting by the use of algorithmic decision making by public authorities and there is emerging case law at the national level on this issue.
54. In light of the increasing use of artificial intelligence by public and private authorities in all areas of life, including employment, recruitment, social services and health provision, but also in immigration decision-making and at borders, this issue should be considered for inclusion in the new draft recommendation.

¹⁴ See <http://gendershades.org/>