



# General Assembly

Distr.: General  
18 July 2019

Original: English

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## Seventy-fourth session

Item 72 (b) of the preliminary list\*

**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

## **Human rights of migrants: good practices and initiatives on gender-responsive migration legislation and policies**

### **Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the human rights of migrants, Felipe González Morales, in accordance with Human Rights Council resolution [34/21](#).

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\* [A/74/50](#).



## **Report of the Special Rapporteur on the human rights of migrants: good practices and initiatives on gender-responsive migration legislation and policies**

### *Summary*

The present report, which outlines the main activities undertaken by the Special Rapporteur on the human rights of migrants since his most recent report to the General Assembly ([A/73/178/Rev.1](#)), contains a study on good practices of gender-responsive migration legislation and policies. The study compiles information on existing migration legislation and policies at the national level. Based on submissions of States, civil society, national human rights institutions and other stakeholders and their analysis, the report identifies good practices, discusses challenges and provides recommendations to States on how to enhance gender responsiveness in their governance on migration.

## I. Introduction

1. The present report is submitted to the General Assembly by the Special Rapporteur on the human rights of migrants pursuant to Human Rights Council resolution 34/21.

## II. Activities<sup>1</sup>

2. From 22 to 26 April 2019, the Special Rapporteur was the keynote speaker at a workshop with defenders of the human rights of migrants organized by the Ibero-American University in Mexico City and conducted a series of other activities. On 13 May, in Madrid, he gave a lecture on the jurisprudence on migration of the Inter-American Court of Human Rights at University Carlos III; and on 5 June he spoke at a panel about the Global Compact for Safe, Orderly and Regular Migration at the American Society of International Law, in Washington, D.C.

3. On 7 June 2019, the Special Rapporteur and the Chair of the Committee on the Protection of All Migrant Workers and Members of Their Families sent a letter to the co-facilitators for the intergovernmental consultations and negotiations on the modalities for the International Migration Review Forum, which is to be convened in 2022, emphasizing the importance of the involvement of international human rights mechanisms as stakeholders in the global review process and asking the co-facilitators to consider establishing avenues for the engagement of the mechanisms.

4. During the week of 17 June 2019, the Special Rapporteur attended the annual meeting of the mandate holders of the special procedures of the Human Rights Council in Geneva. On 20 June, he convened a meeting between relevant mandate holders of the special procedures and representatives of United Nations entities on the Executive Committee of the United Nations Network on Migration, at which it was decided that the mandate holders and the members of the Network should enhance their cooperation through regular exchanges, including round tables to be organized during their respective annual meetings.

5. The Special Rapporteur, in cooperation with United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), launched his report on the impact of migration on migrant women and girls (A/HRC/41/38) at a Human Rights Council side event on 25 June 2019. The event provided an opportunity for an exchange of views among different actors, including migrant women.

6. On 27 June 2019, the Special Rapporteur participated in a panel on “Universal human rights for migrants and refugees: challenge or chance?” as part of the conference on “Human rights in times of contestation”, organized by the Centre for Human Rights Erlangen-Nuremberg, of Friedrich-Alexander-University Erlangen-Nuremberg, the City of Nuremberg and Nuremberg Human Rights Centre, Germany. On 3 July he gave a lecture on current trends and challenges on migration at the University of Bristol, United Kingdom of Great Britain and Northern Ireland, and on 5 July he held a webinar with representatives of civil society and other stakeholders from the Asia-Pacific region about the human rights of migrants in that part of the world.

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<sup>1</sup> For activities between August 2018 and April 2019, see [A/HRC/41/38](#).

### **III. Good practices and initiatives of gender-responsive migration legislation, policies and practices**

#### **A. Introduction**

7. In his above-mentioned recent report to the Human Rights Council (A/HRC/41/38) on the impact of migration on migrant women and girls, the Special Rapporteur stressed that existing discriminatory social and cultural norms and policies continue to contribute to the specific situations of vulnerability migrant women and girls face throughout all stages of the migration process. By presenting information gathered on current practices and initiatives with regard to the gender responsiveness of migration governance, the Special Rapporteur intends to identify good practices and to provide recommendations to States on how to better protect the rights of migrant women and girls.

8. In preparing the report, the Special Rapporteur sent out questionnaires to Member States, national human rights institutions, civil society organizations and relevant stakeholders, including United Nations entities, to request information on good practices on gender-responsive migration legislation and policies. In the questionnaire, the Special Rapporteur requested information, inter alia, on any existing or forthcoming good practices or initiatives on gender-responsive migration legislation and policies, as well as the challenges faced in their implementation. Twenty-seven States responded to the questionnaire and provided useful information. The Special Rapporteur is also grateful for the observations and information shared by 14 national human rights institutions, 14 civil society organizations and two United Nations entities, as well as one regional intergovernmental human rights organization. The responses received are posted on the official website of the mandate (<https://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/Gender.aspx#submissions>). On 21 May 2019, the Special Rapporteur held a webinar consultation on the subject of the present report.

9. The report is primarily based on the inputs provided through the questionnaires and complemented by additional research. It does not claim to cover all existing gender-responsive migration legislation and policies in an exhaustive manner, but aims to provide an overview to allow for discussion.

#### **B. Definition of gender responsiveness**

10. There is no internationally agreed definition of “gender responsiveness” in legislation, policies and practices, although efforts have been made to devise one. In general, to address the subject, international organizations and States have used variants of the term “gender responsiveness”, such as “gender mainstreaming” or “gender sensitive.”

11. According to the European Institute for Gender Equality, a gender-responsive policy ensures that the needs of all individuals are equally addressed. To do that, it is necessary to: take into account the differentiated needs and interests of women and men; identify gender inequalities in access to and control of resources; consider the impact of gender-based stereotypes and traditional gender roles, and to anticipate the different effects of them on women and men; and to ensure gender equality.<sup>2</sup> According to UN-Women, to make migration governance gender-responsive, gender-based barriers must be identified and proactively addressed. Recognizing and responding specifically to women’s needs through migration policies is the most

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<sup>2</sup> See submission of the Platform for International Cooperation on Undocumented Migrants.

effective way to ensure equitable and positive migration outcomes.<sup>3</sup> In addition, gender-responsive policies should not re-victimize, discriminate or stigmatize migrants. The inclusion of a gender-responsive framework in migration governance should not include the assumption that migrant women and girls are inherently vulnerable, but should rather recognize their agency and strive to empower them to claim their rights.<sup>4</sup>

12. “Gender responsive budgeting” has been defined by a number of States and United Nations organizations. According to UN-Women, this is a form of budgeting that “seeks to ensure that the collection and allocation of public resources is carried out in ways that are effective and contribute to advancing gender equality and women’s empowerment”. It should be based on “in-depth analysis that identifies effective interventions for implementing policies and laws that advance women’s rights. It provides tools to assess the different needs and contributions of men and women, and boys and girls within the existing revenues, expenditures and allocations and calls for adjusting budget policies to benefit all groups”.<sup>5</sup>

### C. International human rights framework

13. By virtue of being human beings, all migrants, regardless of their status, are entitled to all human rights. Non-discrimination and equality before the law constitute fundamental principles of the international human rights framework. States are obliged to promote and protect the rights of everyone in their territory or within their jurisdiction, including migrants, without discrimination. The obligation of States to respect, protect and fulfil the rights of migrants applies equally to all migrants, including migrant women and girls, regardless of their sexual orientation or gender identity.

14. Migration is never a gender-neutral phenomenon. Since women account for approximately half of all international migrants, it is imperative that the specific needs and challenges of all migrants are analysed from a gender perspective, in particular the gender inequalities prevalent in countries of origin, transit and destination. Gender-based discrimination, which is often one of the root causes of migration, is exacerbated through the migration process, and the conditions in which women migrants live and work in the countries of destination. Migrant girls are particularly vulnerable, as they may often face discrimination based on the combined factors of their migratory status, their age and their gender. Gender-based discrimination intersects with discrimination based on other factors, including age, migratory status but also ethnicity, religion and race.<sup>6</sup>

15. To comply with their obligations under international human rights law, particularly with respect to the elimination of all forms of discrimination and the promotion of gender equality in the area of migration governance, States should develop gender-responsive migration policies. In this regard, the Global Compact for Safe, Orderly and Regular Migration sets out a road map for gender-responsive migration governance. The Global Compact is guided by the need to promote gender equality and the empowerment of women and girls, as well as the recognition of

<sup>3</sup> See submission of the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women).

<sup>4</sup> See submission of Alianza Americas.

<sup>5</sup> UN-Women, National Committee Australia, «Gender Responsive Budgeting» (<https://unwomen.org.au/our-work/focus-areas/what-is-gender-responsive-budgeting/>).

<sup>6</sup> Terres des hommes, “Rights of migrant women: A child rights perspective”, Second edition, Bridging Paper 1, January 2017 ([https://www.terredeshommes.org/wp-content/uploads/2017/02/BP-4-Rights-of-migrant-women\\_web3.pdf](https://www.terredeshommes.org/wp-content/uploads/2017/02/BP-4-Rights-of-migrant-women_web3.pdf)).

women as agents and drivers of change.<sup>7</sup> In the Global Compact, States are encouraged to apply a gender-responsive lens to review their policies and practices, with a view to reducing vulnerabilities.<sup>8</sup>

16. The 2030 Agenda for Sustainable Development also sets a clear time frame for the achievement of gender equality: Sustainable Development Goal 5 requires that all forms of discrimination against women and girls be eliminated by 2030. The inclusion of this Goal in the 2030 Agenda attests to the fact that while gender equality is a fundamental human right, it remains a challenge, as women and girls still suffer disproportionately from discriminatory practices and violence worldwide.<sup>9</sup>

#### **D. Gender responsiveness in migration legislation, policies and practices**

17. The majority of gender-responsive legislation, policies and practices have been adopted by States quite recently, and some have been only partially implemented. In this regard, it has to be noted that the items listed below have different degrees of effectiveness.

##### **1. General legislation applying to all those residing in the territory of a State irrespective of their background**

18. A review of national human rights legislation and policies based on information received from States was undertaken to gauge the extent to which national legislation reflects a gender-responsive approach. Many States have constitutions that promote the equality of all persons and outlaw discrimination on any grounds, including sex and gender. By virtue of the fact that such legislation seeks to define and protect the rights of all persons staying in their territory, some States are of the view that their legislation applies implicitly to migrants, including migrant women and girls; however it does not always include references to the multiple and intersecting forms of discrimination that migrant women and girls experience or their specific needs.

19. Albania is an example in point. Its constitution enshrines gender equality and non-discrimination (article 18).<sup>10</sup> In addition, its Law No. 9970 of 2008 on “Gender equality in society” aims to ensure effective protection from gender discrimination and defines measures guaranteeing equal opportunities among men and women.<sup>10</sup> Similarly, article 25 of the constitution of Azerbaijan guarantees the rights and liberties of everyone without discrimination.<sup>11</sup>

20. In Brazil, Law 13.445/2017 provides migrants on national territory the same protections as it provides to its citizens, including the inviolable rights to life, liberty, equality, safety and property, as well as the right to family reunion. In addition, Decree No. 8.727 of 8 April 2016 entitles any person to have his or her gender identity

<sup>7</sup> Carolina Gottardo and Paola Cyment (2019), “The Global Compact for Migration: what could it mean for women and gender relations?”, *Gender & Development*, vol. 27, No.1, pp. 67–83.

<sup>8</sup> UN-Women, “Policies and Practice: A guide for gender-responsive implementation of the Global Compact for Migration”; the brief provides clear, concrete and practical guidance to governments and other stakeholders for a gender-responsive implementation of the Global Compact on Migration.

<sup>9</sup> See Ludvik Girard, “Achieving Gender Equality Through Migration Governance: Opportunities and Solutions in Support of the Sustainable Development Agenda”, in edited by Gervias Appave and Neha Sinha eds., *Migration in the 2030 Agenda*, International Organization for Migration, 2017 ([http://publications.iom.int/system/files/pdf/migration\\_in\\_the\\_2030\\_agenda.pdf](http://publications.iom.int/system/files/pdf/migration_in_the_2030_agenda.pdf)).

<sup>10</sup> See submission of the Permanent Mission of Albania to the United Nations.

<sup>11</sup> See submission of the Permanent Mission of Azerbaijan to the United Nations.

recognized and registered in public information systems, as well as any assumed name (*nome social* in Portuguese).<sup>12</sup>

21. Ireland does not have a specific definition for “gender responsiveness” in this context. Instead, there are individual pieces of legislation that cover gender equality, including the Employment Equality Act 1998, which outlaws discrimination on the basis of gender in employment.<sup>13</sup> Furthermore, the National Strategy for Women and Girls 2017–2020 specifically acknowledges that there is a “need to ensure that disadvantaged women, older women, women with disabilities, traveller and Roma women, and migrant women can participate in key decisions concerning their lives”.<sup>14</sup>

22. Portugal, through its National Strategy for Equality and Non-Discrimination 2018–2030, reaffirmed its support for equality between men and women, sought to eliminate violence against women, including domestic violence, and to eradicate discrimination on the basis of sexual orientation, gender identity and expression.<sup>15</sup>

## 2. National legislation and policy that specifically stresses gender responsiveness

23. Other States have gone further to define and include “gender mainstreaming” in their national legislation. For instance, in its National Strategy for Gender Equality 2014–2019,<sup>16</sup> Slovakia defined the different elements of “gender mainstreaming”, and set out the goals of applying the principle of gender mainstreaming and taking the perspective of gender equality and gender responsiveness into account in all decision-making processes in this regard.<sup>17</sup>

24. Ukraine has not only enshrined the equal rights and opportunities for men and women in its legislation,<sup>18</sup> it has also decided to conduct a gender-based legal examination of its current legislation and draft laws and regulations concerning human rights.<sup>19</sup>

25. In its Plan of Action: Women, Peace and Security 2017–2022, El Salvador stated as one of its objectives, under pillar 3 on protection, that attention will be provided to migrant women, with special attention given to victims of trafficking.<sup>20</sup> In addition, the strategic plan of the Salvadorian Institute for the Rights of Women of 2015–2019 commits the Institute to provide attention to displaced and migrant women.<sup>21</sup>

<sup>12</sup> See submission of the Permanent Mission of Brazil to the United Nations.

<sup>13</sup> See submission of the Permanent Mission of Ireland to the United Nations.

<sup>14</sup> Ireland, Department of Justice and Equality, *National Strategy for Women and Girls 2017–2020: creating a better society for all* ([http://justice.ie/en/JELR/National\\_Strategy\\_for\\_Women\\_and\\_Girls\\_2017\\_-\\_2020.pdf/Files/National\\_Strategy\\_for\\_Women\\_and\\_Girls\\_2017\\_-\\_2020.pdf](http://justice.ie/en/JELR/National_Strategy_for_Women_and_Girls_2017_-_2020.pdf/Files/National_Strategy_for_Women_and_Girls_2017_-_2020.pdf)).

<sup>15</sup> See submission of the Permanent Mission of Portugal to the United Nations.

<sup>16</sup> See submission of the Permanent Mission of Slovakia to the United Nations.

<sup>17</sup> *Ibid.*, in which gender mainstreaming was defined as the “systematic integration and consideration of the situation, priorities and needs of women and men in all policies as a way of promoting equality between men and women”.

<sup>18</sup> Ukraine, Law No. 2866-IV of 2005, entitled «On ensuring equal rights and opportunities for women and men».

<sup>19</sup> Ukraine, resolution of the Cabinet of Ministers of Ukraine No. 504 (submission of the Permanent Mission of Ukraine to the United Nations).

<sup>20</sup> See submission of the Permanent Mission of El Salvador to the United Nations and El Salvador, Ministry of Foreign Affairs, National Plan of Action on Women, Peace and Security, 2017–2022 (<https://reee.gob.sv/wp-content/uploads/2018/04/plan-de-accion1325-octubre-final.pdf>).

<sup>21</sup> Salvadorian Institute for the Rights of Women, strategic plan: 2015–2019 (<https://webcache.googleusercontent.com/search?q=cache:wvTne37oFhQJ:https://www.transparencia.gob.sv/instituciones/instituto-salvadoreno-para-el-desarrollo-de-la-mujer/documents/109567/download+%&cd=3&hl=en&ct=clnk&gl=be&client=safari>).

26. The Law on Gender Equality of Bosnia and Herzegovina of 2003 stipulates that existing laws will be revised to harmonize them with international and national standards on gender equality, as well as allocating budgets for related activities.<sup>22</sup>

27. The Commissariat for Refugees and Migration of Serbia has established a gender-responsive budgeting committee, which is responsible for collecting gender-sensitive data, conducting gender analysis and following up on corresponding programming objectives.<sup>23</sup>

28. Since 1984, more than 40 countries have introduced some form of gender budgeting, with different rates of success.<sup>24</sup> For example, in Romania, Law No. 202/2002 requires the mainstreaming of gender and gender-responsive budgeting in all governmental strategies and institutions.<sup>25</sup> Andorra has established that gender mainstreaming is required in all public actions, in accordance with Law No. 6/2014, including the provision of social services and health care.<sup>26</sup>

### 3. Gender-responsive foreign policy

29. A number of countries have prioritized gender responsiveness in their foreign policies. Sweden, for example, became the first country to formulate and pursue a feminist foreign policy. In its *Handbook on Sweden's feminist foreign policy*, Sweden indicated that it “has also prioritized the issue of safe workforce migration with decent conditions, particularly for women”.<sup>27</sup>

### 4. Gender responsiveness in migration-related legislation and policies

30. References to the specific needs of migrant women and girls appear more frequently in the context of asylum legislation and policies. Such references were less systematic in general migration-related legislation and policies.

#### *Migration-related legislation and policies that appear to be gender neutral*

31. Many migration legislation and policies are gender neutral, limiting themselves to implying that migrants have equal rights that they are able to access irrespective of their gender, race, colour or ethnic origin.<sup>28</sup> However, gender-neutral legislation or policies can still have gender-specific impacts or be experienced differently by different genders.

32. This is the case of Argentina, where Law No. 25.871 of 2004, formalized through the Decree 616 of 2010, established that everyone has the right to migrate. In addition, it provides fundamental freedoms for all migrants, such as equal access to social services, including health and education, justice and work, independent of migratory status. It also establishes the right to family reunification with parents,

<sup>22</sup> See submission of the Human Rights Ombudsman of Bosnia and Herzegovina.

<sup>23</sup> See submission of the Permanent Mission of Serbia to the United Nations.

<sup>24</sup> Janet Stotsky, “Budgeting with women in mind”, *Finance & Development*, June 2007, vol. 44, No. 2.

<sup>25</sup> See submission of the Romanian Institute for Human Rights.

<sup>26</sup> See submission of the Permanent Mission of Andorra to the United Nations.

<sup>27</sup> See submission of the Permanent Mission of Sweden to the United Nations and Government of Sweden, Ministry of Foreign Affairs, *Handbook: Sweden's feminist foreign policy*, 2014 (<https://www.government.se/4abf3b/contentassets/fc115607a4ad4bca913cd8d11c2339dc/handbook-swedens-feminist-foreign-policy>), p. 83.

<sup>28</sup> Like other countries, Slovenia has incorporated the need for gender mainstreaming in its Asylum Act No. 480/2002. It requires that bodily search and interview of asylum applicants be undertaken by a member of the same sex (see submission of the Permanent Mission of Slovenia to the United Nations).

partners and children.<sup>29</sup> The same conditions apply in El Salvador, which has a comprehensive national policy on childhood and adolescence for 2013–2023. Its aim is to highlight the multiplicity of vulnerable situations faced by children and adolescents, in particular those who are migrating or are children of migrant parents, and to put in place identification and referral systems to better assist and protect them.<sup>30</sup>

*Migration-related legislation and policies viewing women and girls through a lens of vulnerability*

33. Other countries have migration-related legislation and policies that place migrant women and girls primarily in the “vulnerable” category, such as pregnant women, single parents with underage children, persons subjected to torture, rape, or other serious forms of physical, or sexual violence.<sup>31</sup> This is particularly the case when it comes to legislation and policies that relate to the detention of third country nationals. Such an approach falls short of being “gender-responsive”. To date, there is no internationally recognized definition of “vulnerable groups”,<sup>32</sup> moreover a comprehensive list of vulnerable persons is rarely provided, nor are the specific protection needs that should apply to women and girls in immigration detention elaborated.<sup>33</sup> Such categories of vulnerable persons do not fit into the existing predefined categories, including persons of different sexual orientation and gender identity. It should be kept in mind that situations of vulnerability are not static, but can also evolve and develop over time, as in cases of extended detention.<sup>34</sup>

34. For example, the Alien Law of 1980 adopted by Belgium illustrates these limitations: article 1 defines “vulnerable groups” as including accompanied and non-accompanied children, pregnant women, elderly persons, victims of torture, rape and other forms of psychological, physical or sexual violence.<sup>35</sup> It does not, however, spell out any standards of treatment that follow on from the designation of individuals and groups as vulnerable, with the exception of cases involving minors.

35. In Chile, a pregnant migrant woman is considered to be vulnerable and in need of assistance. She can obtain a visa and can obtain access to medical care, ensuring that pregnancy and child birth do not become a high risk. This same visa is available for any person undergoing medical treatment.<sup>36</sup>

36. In Mexico, a technical group for the incorporation of the gender perspective into policies for the care and protection of migrant women has been created within the framework of the Advisory Council on Migration Policy of the Ministry of the Interior. The purpose of the group is to guarantee migrant women effective access to their rights through the incorporation of a gender perspective in and to create affirmative action through administrative rules and procedures and public policies

<sup>29</sup> Mentioned in both the submission of the Permanent Mission of Argentina and that of the Ombudsperson of Argentina.

<sup>30</sup> See submission of the Permanent Mission of El Salvador to the United Nations.

<sup>31</sup> See submission of the Permanent Mission of Slovakia to the United Nations.

<sup>32</sup> See OHCHR and Global Migration Group, «Principles and Guidelines, supported by practical guidance on the human rights protection of migrants in vulnerable situations» (<https://www.ohchr.org/EN/Issues/Migration/Pages/VulnerableSituations.aspx>). See also A/HRC/37/34/Add.1.

<sup>33</sup> See submission of the Global Detention Project.

<sup>34</sup> European Parliament, Briefing “Arbitrary detention of women and children for immigration-related purposes”, March 2016 ([http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/577991/EPRS\\_BRI\(2016\)577991\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/577991/EPRS_BRI(2016)577991_EN.pdf)).

<sup>35</sup> See Belgian Alien Law, 15 December 1980 ([http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&cn=1980121530&table\\_name=loi](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1980121530&table_name=loi)).

<sup>36</sup> See submission of the Women in Migration Network.

that affect their human development. In addition, the Mexican Government has established an official migration policy for 2018–2024, which places migrants at the centre; the policy has a multisectoral, pluridimensional, transversal, inclusive and intersectional approach, including a gender perspective.<sup>37</sup>

## **E. Good practices of gender-responsive migration legislation, policies and other initiatives by States**

### **1. Equality and prohibition of discrimination**

37. Several States have taken specific initiatives to enforce non-discrimination policies to protect groups of migrant women and girls that are particularly vulnerable, for example, victims of trafficking in persons, victims of gender-based violence and women migrant workers.

38. In 2018, Ecuador adopted its National Plan on Human Mobility, the objective of which is to enshrine the constitutional principles of human mobility in inter-sectoral public policies, with a focus on rights and gender vision, with an emphasis on priority groups.<sup>38</sup>

39. In Uruguay, resolution 576, known as the main migration policy of the State, advocates gender equality and the comprehensive protection of migrants, with particular emphasis on the integration of migrant women and the equality of opportunities between women and men.<sup>39</sup>

40. Moreover, a number of countries in the European Union have also strengthened their legislative and policy frameworks for the protection of migrant and refugee children through a better safeguarding of the best interests of the child. Luxembourg, for example, has adopted guidelines on the treatment of children, including unaccompanied minors: under these guidelines, unaccompanied girls are usually assigned to live in houses for women at risk (*Meederchershaus*), where they may stay until they are 21 years of age.<sup>40</sup>

### **2. Protection from violence, including gender-based violence, trafficking in persons and other crimes**

41. The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (also known as the Istanbul Convention) is a fine example of regional legislative achievements to protect migrant women against violence and abuse. A growing number of member States of the Council of Europe have ratified the Istanbul Convention, thus agreeing to recognize gender-based violence against women as a form of persecution and serious harm, requiring complementary or subsidiary protection.<sup>41</sup>

<sup>37</sup> See submission of the Permanent Mission of Mexico to the United Nations.

<sup>38</sup> See Ecuador Ministry of Foreign Affairs and Human Mobility, “The Foreign Ministry launches the Human Mobility National Plan” (<https://www.cancilleria.gob.ec/en/the-foreign-ministry-launches-the-human-mobility-national-plan-and-makes-the-delivery-of-credits-scholarships-and-certificates-by-competences/>).

<sup>39</sup> Economic Commission for Latin America and the Caribbean, *Normativas sobre migración internacional*, Uruguay, 2016 (<https://oig.cepal.org/es/laws/6/country/uruguay-22>).

<sup>40</sup> European Migration Network, Luxembourg, *Policies, practices, and data on unaccompanied minors in 2014* ([https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/unaccompanied-minors/luxembourg\\_national\\_report\\_uams\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/unaccompanied-minors/luxembourg_national_report_uams_en.pdf)), 2014, p. 53.

<sup>41</sup> See submission of the Council of Europe.

42. At the national level, a number of countries have adopted specific legislation and policies to strengthen efforts to protect women from violence. The majority of such legislation is nation-wide in application, thus providing protection to both nationals and non-nationals.

43. Law No. 6284 adopted by Turkey on the protection of family and the prevention of violence against women aims to protect women, children, family members and victims of stalking who have been subjected to violence or are at risk of violence, and to regulate procedures and principles with regard to measures for the prevention of violence against them.<sup>42</sup> Anyone, whether foreign or national of Turkey may benefit from the services provided by the Violence Prevention and Protection Centres, Women's Shelters, and Provincial Directorates of Family, Labour and Social Services, without discrimination.<sup>43</sup>

44. Law No. 1/2004 of Spain on comprehensive protection measures on violence against women stipulates, in article 17, that any woman who has experienced violence can benefit from these measures, regardless of her origins. In addition, the National Strategy for the Eradication of Violence Against Women 2013–2016 recognized the need to make significant progress in combating other forms of violence against women.<sup>44</sup>

45. In its second National Action Plan on Women, Peace and Security (2015–2018), Ireland dedicated the third pillar to the protection from gender-based violence and sexual exploitation, in part through strengthening outreach to women and girls, including migrant women.<sup>45</sup>

46. Norway drew up a national action plan entitled “The right to decide about one’s own life (2017–2020)”, which aims to combat negative social controls, forced marriage and female genital mutilation. The plan, which also targets migrant women and girls, contains a number of objectives, including: the strengthening of legal protections for vulnerable people; strengthening of assistance to people who break contact with their family and network; and changing attitudes and practices in relevant communities.<sup>46</sup>

47. In Ecuador, the National Agenda on Women and Gender Equality 2014–2017, entitled “Free from violence”, aims at increasing coverage for all victims of violence, irrespective of their nationality; declares femicide as a crime, as well as sets out measures for saving victims of trafficking in persons, regardless of who they are.<sup>47</sup>

48. The European Commission, in the context of the ongoing reform of the Common European Asylum System, has proposed the strengthening of the provisions for applicants with special needs, including victims of gender-based violence. The proposal for the new Asylum Procedures Regulation advocates gender-sensitive international protection procedures. A large number of countries, particularly from the European Union, focused on improving the protection of victims of trafficking. Among the advances made on this front is the collection of gender-disaggregated data

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<sup>42</sup> Turkey, Law to Protect Family and Prevent Violence against Women (<http://www.lawsturkey.com/law/law-to-protect-family-and-prevent-violence-against-woman-6284>), 8 March 2012.

<sup>43</sup> See submission of the Permanent Mission of Turkey to the United Nations.

<sup>44</sup> See submission of the Permanent Mission of Spain to the United Nations.

<sup>45</sup> See submission of the Permanent Mission of Ireland to the United Nations.

<sup>46</sup> For more information about the plan, see: <https://www.regjeringen.no/en/dokumenter/the-right-to-decide-about-ones-own-life/id2542163/>.

<sup>47</sup> Agenda Nacional de las Mujeres y la Igualdad de Género 2014–2017, ([https://issuu.com/comisiondetransicionec/docs/agenda\\_de\\_las\\_mujeres\\_y\\_la\\_igualdad/](https://issuu.com/comisiondetransicionec/docs/agenda_de_las_mujeres_y_la_igualdad/)).

of registered victims.<sup>48</sup> At the national level, a number of countries have improved assistance made available to victims of trafficking. For example, in 2018 Austria issued a decree seeking to aid victims anywhere in the country and to ensure that they had access to their rights.<sup>49</sup> In Italy, victims of trafficking can receive a special residence permit for social protection purposes to allow them to participate in a programme of assistance and integration.<sup>50</sup>

49. Related to these efforts, training activities were carried out in a large majority of member States of the European Union, with many focused on the early detection and identification of victims, as well as ensuring that referral mechanisms are in place. There is widespread recognition that service providers in contact with actual or potential victims should strive to: avoid actions or language that could lead to re-victimization; be sensitive to the specific needs of each person; and understand how the victims' cultural backgrounds and unique experiences influences their current situation.<sup>51</sup>

50. To encourage the reporting of serious crimes, including gender-based violence and trafficking, the police in the United Kingdom adopted a policy whereby, as of December 2018, they no longer engage in immigration enforcement against victims of crimes.<sup>52</sup>

### 3. Issuance of residence permit and settlement arrangement as a means of protection

51. Experience shows that suspending deportation orders and/or issuing temporary residence permits for migrants in relation to ongoing criminal proceedings for those who have an irregular status increases their access to and enjoyment of protection.<sup>53</sup> Additionally, by granting permission for victims of trafficking for sexual exploitation or other grave crimes to remain in the country, even if the criminal proceedings have been completed, helps the victims to access compensation or to participate in additional criminal investigations against perpetrators, if they so wish to do so.<sup>54</sup>

52. Belgium, France, Greece, Italy, Spain and Switzerland, recognizing the positive results achieved by regularizing the status of migrant women and girls who are victims of or at risk of gender-based violence, have adopted national legislation that makes it possible for migrant women in spouse-dependent status to obtain at least a temporary visa if she has been the victim of domestic violence.<sup>55</sup>

<sup>48</sup> See submission of the European Union and European Commission, *Data Collection on Trafficking in Human Beings in the EU*, 2018, ([https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20181204\\_data-collection-study.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20181204_data-collection-study.pdf)), p. 18.

<sup>49</sup> European Migration Network, *Annual Report on Migration and Asylum 2018*, May 2019 ([https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00\\_arm2018\\_synthesis\\_report\\_final\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00_arm2018_synthesis_report_final_en.pdf)), p. 67.

<sup>50</sup> See submission of the Permanent Mission of Italy to the United Nations.

<sup>51</sup> See European Institute for Gender Equality, *Gender specific measures in anti-trafficking actions: report*, 2018 (on <https://eige.europa.eu/publications/gender-specific-measures-anti-trafficking-actions-report>).

<sup>52</sup> See submission of the Platform for International Cooperation on Undocumented Migrants.

<sup>53</sup> See European Union, Directorate General for Justice, "Guidance document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

<sup>54</sup> See European Institute for Gender Equality, "Gender-specific measures", p. 60.

<sup>55</sup> See submission of the Platform for International Cooperation on Undocumented Migrants.

53. Under the Violence Against Women Act, the United States of America offers visas for victims of domestic violence so that they may obtain migratory status independent from a partner or spouse who has aggressed them.<sup>56</sup>

54. In Montenegro, a national law stipulates that foreigners whose permanent residence has been terminated may have it reinstated if it is established that they stayed outside Montenegro for longer than 1 year as a victim of trafficking in persons.<sup>57</sup>

55. Turkey provides avenues for an independent residence permit for a foreign spouse of a Turkish national. Where relevant courts establish that the foreign spouse has been a victim of domestic violence, the usual prerequisite, that she has a previous residence permit for at least three years, is waived.<sup>58</sup>

56. Decree No. 1350 of 2017 on migration, adopted by Peru, grants a legal avenue to regularization for migrants, providing expansive protections to a wide group, including women and girls. Article 29.2 k of the Decree establishes that residency is authorized for migrants who face a life-threatening situation or one of great vulnerability if they leave Peru, or for individuals who require protection in response to a serious threat or human rights violation. This avenue also applies to those who have migrated due to natural disasters, for victims of human trafficking, for unaccompanied minors and for stateless persons. Even persons who are not resident in Peru but who request protection in Peru based on an internationally recognized humanitarian crisis can be granted regular status.<sup>59</sup>

57. A number of countries have integrated protection and assistance for women victims of violence who are not physically present within their national jurisdiction. One of the most emblematic of such programmes continues to be the “Women at Risk” programme of Canada, which provides protection and assistance to refugee women who are at heightened risk for their safety and security through their resettlement in Canada.<sup>60</sup> This applies to “women without the normal protection of a family who find themselves in precarious situations and who are in a place where local authorities cannot ensure their safety”.<sup>61</sup>

58. Similar efforts have been taken by the Government of France to resettle and provide protection for Yazidi families, who are particularly vulnerable because of the trauma they have suffered during abductions by the so-called Islamic State in Iraq and the Levant. In cooperation with the International Organization for Migration, Yazidi families have been resettled from Iraq to France, where they have been received and supported in their integration into the host communities by local non-governmental organizations.<sup>62</sup>

<sup>56</sup> See submission of Alianza Americas.

<sup>57</sup> See submission of the Permanent Mission of Montenegro to the United Nations.

<sup>58</sup> Council of Europe, Group of Experts on Action against Violence against Women and Domestic Violence, Comments submitted by Turkey on the final report of the Group of Experts on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Council of Europe, Baseline Report, 15 October 2018, p. 59: <https://rm.coe.int/turkey-s-final-comments-to-greivio-report/16808e5298>).

<sup>59</sup> See submission of the Women in Migration Network.

<sup>60</sup> This definition also includes women who experience harassment by local authorities or by members of their own communities. To be eligible for this programme, women at risk must be Convention refugees under the Convention or members of the humanitarian-protected persons abroad class (see UNHCR, Resettlement Handbook: Canada, 2017) (<https://www.unhcr.org/protection/resettlement/3c5e55594/unhcr-resettlement-handbook-country-chapter-canada.html?query=Program%20for%20Women%20at%20Risk%20Canada>).

<sup>61</sup> Ibid., p. 10.

<sup>62</sup> International Organization for Migration (IOM), “IOM assists over 130 Yazidis to resettle from Iraq to France” (<https://iraq.iom.int/news/iom-assists-over-130-yazidis-resettle-iraq-france>).

#### 4. Protection from exploitation in the economic sphere

59. The Migrant Workers and Overseas Filipino Act adopted in the Philippines, which is considered to be a positive piece of legislation, aims to guarantee protection through certification, penalize illegal recruitment and provide free access to skill-building and livelihood programmes, as well as compulsory medical and life insurance, for agency-hired workers.<sup>63</sup> The Government works on different fronts for the protection of migrant workers, and also for domestic workers, who are often female. In addition, it has deployed additional female personnel to overseas labour offices and has installed gender focal point officers at its consulates and embassies.<sup>64</sup>

60. Focusing also on the issue of exploitation in the economic field, the employment ordinance adopted in China regulating the conditions of employment applies to all workers, including migrant workers, domestic workers and those employed in the informal economy.<sup>65</sup>

61. Malaysia has adopted legislation focused on combating exploitation and abuse in the employment sector. According to the Private Employment Agencies Act of 1981, private employment agencies must have a paid up capital of 100,000 Malaysian ringgits<sup>66</sup> and a financial guarantee of the same value.<sup>67</sup> By limiting permission to companies with the necessary capital, the Government intends to filter out those that are careless regarding the rights of domestic workers.<sup>68</sup>

62. Sweden has passed a new legislation giving the police extended rights to conduct workplace inspections in sectors where there is an elevated risk of individuals working without the necessary work or residence permits in order to prevent the exploitation of migrants, particularly those with irregular migration status.<sup>69</sup>

63. Other countries, be they countries from which domestic workers have originated (such as the Philippines) or countries of destination (such as China and Jordan), have provisions in place for standard employment contracts, especially for domestic workers.<sup>70</sup>

#### 5. Support for integration

64. Some States have taken a number of initiatives to support the integration of migrants into countries of destination. What sets these initiatives apart is that they are based on a better understanding of the gendered needs of migrant women, men, girls, boys and those who identify with other genders, and the specific challenges that they may face.

65. Working on the principal that the regularization of residence for migrants with irregular status increases their protection and integration, the regularization of 23,096 persons, 44 per cent of whom were women, by Morocco in 2014 deserves mention.

<sup>63</sup> Bandita Sijapati, "Women's labour migration from Asia and the Pacific: opportunities and challenges" (IOM Regional Office for Asia and the Pacific and Migration Policy Institute, 2015), p. 9.

<sup>64</sup> See submission of Migrant Forum Asia.

<sup>65</sup> Bandita Sijapati, "Women's labour migration", p. 7.

<sup>66</sup> Approximately \$24,000 (as at 8 July 2019).

<sup>67</sup> See submission of the Permanent Mission of Malaysia to the United Nations.

<sup>68</sup> Hemananthani Sivanandam, only 543 employment agencies left, *The Star Online*, 20 December 2018 (<https://www.thestar.com.my/news/nation/2018/12/20/only-453-employment-agencies-left/>).

<sup>69</sup> European Migration Network, *Annual Report 2018*, p. 62.

<sup>70</sup> Bandita Sijapati, "Women's labour migration", p. 10.

Additional phases of regularization of migrants' residence in the country have also been initiated.<sup>71</sup>

66. In Vienna, "Mum learns German" is a programme providing German language courses for migrant mothers at their children's schools. In London, the "Parents' integration through partnership" programme is designed to support the language learning and integration of mothers of schoolchildren from States outside the European Union.<sup>72</sup>

67. The European Social Fund has financed many projects aimed at integrating migrant women into the labour market, including: the "Strong at work – mothers with a migration background are entering the labour market" project in Germany, which provides career orientation and individual support to mothers with a migrant background;<sup>73</sup> the "Mirjam" project in Sweden, which provides job-related guidance for newly arrived refugee women; the "Building Better Futures" project in Ireland, which supports migrant women who face extra barriers to entrepreneurship; and the "Razkirte roke 3" project in Slovenia, which brings migrant women together to help them set up a business while improving their language skills.<sup>74</sup>

68. Sweden offers short supplementary courses as part of its programme so that newly arrived migrants with tertiary education can be swiftly matched with available jobs in the labour market. Employers can also benefit from financial support when recruiting a person who is new in Sweden. Experience with this programme demonstrates its validity as well as the need to focus more on reaching migrants with lower levels of education and skills.<sup>75</sup>

69. In addition, in 2018, Immigration, Refugees, and Citizenship Canada launched the Visible Minority Newcomer Women pilot to improve the employment and career advancement of visible minority newcomer women in Canada by addressing the barriers they may face, including gender- and race-based discrimination, precarious or low income employment, lack of affordable childcare and weak social support. As part of the pilot, the Government will provide funding of up to \$7 million for new, innovative programmes and services to support women from visible minorities in gaining access to the labour market and to build capacity of smaller organizations that serve or are led by women from visible minorities.<sup>76</sup>

70. In an innovative approach to supporting the integration of self-employed migrants, Argentina created two programmes for the regularization for migrants from Senegal and the Dominican Republic. Through the programme, between 2004 and 2013, temporary residencies were obtained for 60 per cent of applicants from the Dominican Republic. Since Dominican migration to Argentina is feminized (75 per cent of Dominican migrants are women), the programme is mainly of benefit to women who were able to start their own small businesses (from a total of 2,000 Dominicans that achieved regularisation, 1,460 were women). In this way, Dominican women were able to access social protection and to become more autonomous.<sup>77</sup>

<sup>71</sup> See submission of the National Human Rights Council of Morocco.

<sup>72</sup> European Commission, "Integration of migrant women: A key challenge with limited policy resources", 12 November 2018 (<https://ec.europa.eu/migrant-integration/feature/integration-of-migrant-women>).

<sup>73</sup> For more information about the programme see: <https://www.starkimberuf.de>.

<sup>74</sup> See European Commission, "Integration of migrant women".

<sup>75</sup> Council of Europe, "Human rights aspects of immigrant and refugee integration policies", Issue Paper (<https://rm.coe.int/168093de2c>), pp. 36–37.

<sup>76</sup> Government of Canada, news release, "New pilot to address multiple barriers to success for women in Canada's job market", 5 December 2018 (<https://www.canada.ca/en/immigration-refugees-citizenship/news/2018/12/supporting-visible-minority-newcomer-women.html>).

<sup>77</sup> International Organization for Migration-Comisión Argentina de Refugiados, *La migración dominicana en Argentina. Trayectorias en el nuevo siglo (2000–2015)*, Buenos Aires, December 2015.

## 6. Family life and impact on family unity

71. In Mexico, parents of a child born in the country, who is granted citizenship by birth, are granted a resident visa on the basis of their relationship to their child. This is particularly important for mothers of new-borns who may not be able to work due to their childcare responsibilities.<sup>78</sup>

## 7. Livelihood and economic empowerment in countries of origin

72. There has been an increasing focus on supporting efforts to ensure livelihoods and economic empowerment in a gender-sensitive manner. These interventions are taking place in countries of origin as well as destination.

73. In 2018, Belgium agreed to a project that aims at supporting economic development and employment with Guinea. By strengthening the employability of local populations, the project is focused on reaching potential migrants, in particular women and youth, to increase their prospects of finding work.<sup>79</sup>

74. The External Investment Plan launched by the European Union in September 2017 is expected to leverage €44 billion in investments for sustainable development for countries in Africa and near the European Union by 2020. It aims to promote inclusive growth, job creation and sustainable development and in this way to tackle some of the root causes of irregular migration. Part of this will be spent through blended operations that will support the “Women in Business” programme, in recognition of the fact that while female entrepreneurs play a key role in creating jobs and driving economic growth, banks are often reluctant to lend to them as they are perceived higher-risk customers.<sup>80</sup>

## 8. Representation and political participation

75. Within the framework of its 2017 Migrant Integration Strategy, Ireland has implemented specific activities to promote the political engagement of third-country nationals, including an event which brought together over 100 leaders of migrant communities, including migrant women.<sup>81</sup>

## 9. Access of migrant women and girls to information

76. The Philippines has instated pre-departure seminars to educate migrants, of whom more than half are women,<sup>82</sup> on a range of issues, including the causes of HIV, means of prevention and its consequences.<sup>83</sup>

77. Malaysia has organized training programmes for domestic migrant workers coming to work in the country. The inclusion of such training in bilateral agreements with the countries from which domestic migrant workers (many of whom are women) originate, has proven to be most effective. The purpose of the training is to raise the awareness of domestic workers of their rights under Malaysian labour laws, to introduce the basics of the Malay language and to highlight cultural differences.<sup>84</sup> In

<sup>78</sup> See submission of the Women in Migration Network, p. 2.

<sup>79</sup> European Migration Network, *Annual Report 2018*, p. 78.

<sup>80</sup> European Commission, Questions and Answers – EU External Investment Plan, [http://europa.eu/rapid/press-release\\_MEMO-18-4425\\_en.htm](http://europa.eu/rapid/press-release_MEMO-18-4425_en.htm).

<sup>81</sup> European Migration Network, *Annual Report 2018*, p. 46.

<sup>82</sup> Rina Chadran, “Philippine migration takes on a female face”, CNN, 30 March 2018 (<https://news.abs-cbn.com/focus/03/30/18/philippine-migration-takes-on-a-female-face>).

<sup>83</sup> Maria Amparita, « An analysis of the Philippine legal and policy frameworks for the protection of women migrant workers, particularly the domestic workers and entertainers, from vulnerability to HIV/AIDS », thesis (LL.M), University of Toronto, 2005, p. 4.

<sup>84</sup> See submission of the Permanent Mission of Malaysia to the United Nations.

2016, the Ministry of Human Resources of Malaysia published “Guidelines and Tips for Employers of Foreign Domestic Helpers”<sup>85</sup> to raise awareness among employers about the laws and modalities for the recruitment and employment of domestic workers and to ensure their adequate protection.

78. The Strategic Plan for Migration (2015–2020) adopted by Portugal aims, inter alia, at promoting the participation of immigrant women in the associative movement, in part by informing them about their rights and duties, while also promoting partnerships with immigrant communities and associations.<sup>86</sup>

79. In 2018, in Sweden, 10 study associations were granted Government funding for outreach and motivation initiatives to inform migrant women about possible paths to further education and to diversify their skills.<sup>87</sup> Other countries, such as Switzerland, have focused on disseminating information among migrant communities, particularly women, about the dangers and illegality of female genital mutilation, given its prevalence among migrant communities in Switzerland.

80. The provision of information to migrants, including migrant women, about their rights and how to claim them has been stepped up by a number of Governments. Some countries, such as China, Jordan and Singapore, have put measures in place to obtain information, receive calls and provide support to migrant workers in distress.<sup>88</sup>

## 10. Access to health care, including sexual and reproductive health

81. Article 52 of the Human Mobility Law of Ecuador stipulates that all migrants present in Ecuador have the right to access the health-care system, both private and public. The law emphasizes that access to emergency health care cannot be denied in any case, nor is discrimination based on nationality allowed.<sup>89</sup> Similarly, in Albania, migrants enjoy the same access as nationals to Government-funded health services or medical emergencies – irrespective of their status.<sup>90</sup>

82. In Spain, under article 12 of the Organic Law on Rights and Liberties of Foreigners in Spain and their Social Integration (Law No. 4/2000), foreigners who are registered with the municipality may receive medical care. Furthermore, a pregnant woman is entitled to support before, during and after delivery.<sup>91</sup> In 2018, in a milestone decision, Spain approved universal access to the national health system, under the same conditions, for all people in Spain, regardless of their administrative situation, including their migratory status.<sup>92</sup>

83. In Brazil, Amparo Maternal, an institution accredited to the public national health care system, is dedicated to providing humane medical care. It receives migrant

<sup>85</sup> <http://apmigration.ilo.org/resources/guidelines-and-tips-for-employers-of-foreign-domestic-helpers>.

<sup>86</sup> Portugal, Strategic Plan for Migration ([https://www.acm.gov.pt/documents/10181/222357/PEM\\_ACM\\_final.pdf](https://www.acm.gov.pt/documents/10181/222357/PEM_ACM_final.pdf)), p. 29.

<sup>87</sup> European Migration Network, *Annual Report 2018*, p. 43

<sup>88</sup> See Bandita Sijapati, “Women’s labour migration”.

<sup>89</sup> Ecuador Ministry of Foreign Affairs and Human Mobility, Human Mobility National Plan, 2018, p. 49. [https://www.cancilleria.gob.ec/wp-content/uploads/2018/06/plan\\_nacional\\_de\\_movilidad\\_humana.pdf](https://www.cancilleria.gob.ec/wp-content/uploads/2018/06/plan_nacional_de_movilidad_humana.pdf).

<sup>90</sup> See submission of the Permanent Mission of Albania to the United Nations.

<sup>91</sup> Official Bulletin of the Spanish Government, Organic Law on Rights and Liberties of Foreigners in Spain and their Social Integration 4/2000, [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2000-544# analisis](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2000-544# analisis).

<sup>92</sup> European Migration Network, *Annual Report 2018*, p. 44

and refugee women and provides them with care during pregnancy and after delivery.<sup>93</sup>

## **F. Main challenges among States in gender-responsive migration legislation, policies, and practices**

84. Despite gender-sensitive initiatives being developed, such as those described above, a series of challenges remain with regard to fully gender-responsive migration legislation, policies and practices and their implementation.

### **1. Lack of a strong gender-responsive approach in migration governance**

85. A number of countries have overall weak gender-responsive approaches in their migration policies. This is particularly the case in the area of integration. Other countries seem to lack concrete action-oriented plans to translate general commitments that were made at a higher political level. For example, in some cases a government has a stated commitment to establish a comprehensive migration policy to protect and fulfil the rights of all migrants, but its national human rights strategy may mention migrants only in general terms, without consideration of gender aspects.

86. In some countries, reduced funding for national budgets has affected the ability of States to fulfil their obligations in relation to the elimination of all forms of discrimination and the promotion of gender equality in the area of migration governance.

87. Other challenges involve the lack of respect and gender-responsive approach on the part of personnel, including social workers, who regularly deal with migrant women and girls. Concerns were raised over unwelcoming messages given to migrant women by social workers, encouraging them to “just go home” or “leave their children behind and go back home”.

88. Furthermore, while some laws are written in neutral terms, in others the language used may lead to an unfavourable interpretation. For instance, in French law the term “migrant” is often employed in its masculine form (*le migrant*) instead of a more neutral term (such as *la personne migrante*), which would ensure a gender-responsive applicability of the law.<sup>94</sup>

### **2. Lack of gender statistics and disaggregated data in migration**

89. The challenge of obtaining sex- and gender-disaggregated data persists at a global level. The visibility of migrant girls in available research and data is markedly lacking. Gender- and sex-disaggregated data is particularly weak in the context of detention. There are very few statistics on exactly how many women, girls and lesbian, gay, bisexual, transgender and intersex persons are languishing in immigration detention centres or what the conditions of their detention are.<sup>95</sup>

### **3. Inadequate reception conditions**

90. Migrant women and girls in reception facilities in many countries continue to be at serious risk of gender-based violence and trafficking in persons, and unaccompanied girls are particularly vulnerable to sexual exploitation and abuse.<sup>96</sup> In

<sup>93</sup> See *O Sao Paulo*, 17 June 2018 (<http://www.osaopaulo.org.br/noticias/amparo-maternal-e-referencia-de-parto-normal-em-sao-paulo>).

<sup>94</sup> See submission of La Cimade.

<sup>95</sup> See submission by the Global Detention Project.

<sup>96</sup> Gender Equality Commission, *Protecting the rights of migrant, refugee and asylum-seeking women and girls*, Strasbourg, 2018 (preliminary draft factsheet available at:

some facilities migrant girls are co-located with adult men without access to social workers who are knowledgeable and experienced regarding their needs and vulnerabilities.

#### 4. Push-back and forced return

91. With the push-back against migrants on the rise, there have been documented cases of the forced return of pregnant mothers, new mothers and transgender migrants at international borders.<sup>97</sup> This kind of push-back is sometimes accompanied by the excessive use of force, including against pregnant women.<sup>98</sup>

92. In a number of cases, forced return to countries of origin have been proven to be particularly dangerous. Women who are forced to return to their countries of origin are often forced to resettle internally, and they may remain socially anonymous for fear of detection by the criminal gangs or partners they fled in the first instance. There have been documented cases of women being revictimized and stigmatized upon return.

#### 5. Negative impact on the right to family unit

93. Regrettably, some countries have adopted measures that set up obstacles to the reunification of migrant women with their family members, for example, by providing quotas for the spouses of migrants. Other countries have increased requirements for language tests, raised fees or placed additional restrictions on access to social benefits for children wishing to join their migrant parents. Such practices force many migrant women to live in the country of destination without their children or spouse.

#### 6. Lack of timely access to relevant and up-to-date information

94. Providing relevant up-to-date information in a manner that migrant women can understand continues to be a challenge in some countries. Pre-departure programmes in a number of countries, while commendable, do not sufficiently address the underlying causes for the discrimination and subordination of women and girls within patriarchal systems, and how they are intrinsically linked to their situations of vulnerability.<sup>99</sup>

#### 7. Insufficient access to health, including sexual and reproductive health

95. Many migrants, including women and girls, continue to lack access to health-care services, including health promotion, disease prevention, treatment and care, as well as financial protections in this regard. Sometimes nationality or legal status is a determinant for who is entitled to access health-care services. The specific situations, demands, views and needs of migrant women in detention are often unmet, in particular concerning menstrual hygiene and their sexual and reproductive health and rights. For instance, pregnant women in detention centres may have to deliver their children in inadequate conditions, or may suffer miscarriages.<sup>100</sup> The detention of

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<https://rm.coe.int/gec-2018-12-protecting-the-rights-of-migrant-and-refugee-asylum-seekin/16808fde22>).

<sup>97</sup> Molly Hennesse-Fiske, “Pregnant women, other vulnerable asylum seekers are returned to Mexico to await hearings”, *Los Angeles Times*, 19 May 2019 (<https://www.latimes.com/nation/la-na-migrant-remain-in-mexico-20190519-story.html>).

<sup>98</sup> Belgrade Center for Human Rights, Macedonian Young Lawyers Association and Oxfam, “A Dangerous ‘Game’: The pushback of migrants, including refugees, at Europe’s Borders”, April 2017 ([https://www-cdn.oxfam.org/s3fs-public/file\\_attachments/bp-dangerous-game-pushback-migrants-refugees-060417-en\\_0.pdf](https://www-cdn.oxfam.org/s3fs-public/file_attachments/bp-dangerous-game-pushback-migrants-refugees-060417-en_0.pdf)).

<sup>99</sup> Maria Amparita, “An analysis of the Philippine legal and policy frameworks”, p. 49.

<sup>100</sup> See submission of the Global Detention Project.

single migrant women with children can also result in the children being left without support or care, thus endangering their well-being.<sup>101</sup>

## 8. Restrictions on the freedom of movement

96. The freedom of movement of migrant women and girls has suffered several setbacks in a number of countries where the share and number of migrant women taken into custody at the border has been on the rise.

97. As a result, it is reported that migrant women who are in irregular situations within those countries have been less willing to walk their children to school or to take them for doctor's visits as they worry they could be detained while performing otherwise routine activities.

## 9. Discrimination with an impact on labour rights

98. Challenges in rooting out discrimination against migrant workers, including migrant women, persists in a number of countries. One area where discrimination remains very evident is the requirement for mandatory HIV testing still in place in many countries.<sup>102</sup> Even in cases when countries of origin prohibit mandatory HIV testing, migrant workers may continue to be obliged to take such tests in order to gain access job opportunities in countries of destination.<sup>103</sup>

99. Mandatory testing is particularly problematic when it comes to women migrant workers. In many cases, because of the mandatory HIV testing, migrant women who are HIV positive will simply be passed over for many jobs and may be forced to work in the commercial sex industry.<sup>102</sup>

100. Discrimination in employment continues to take place against migrant women because of their dual status as migrants and as women. Female migrant workers who are discovered to be pregnant have been discriminated against by being forced to leave their jobs against their will because of pregnancy, child birth and marriage."<sup>104</sup> Furthermore, women migrant workers with seasonal contracts may not report abuse in order not to lose the chance of re-employment in the following season.<sup>105</sup>

## 10. Decreased protection of rights and protection from all forms of violence, exploitation and abuse

101. Sexual violence and specific forms of harm disproportionately affecting women, such as trafficking for sexual exploitation and female genital mutilation, are not always regarded as persecution, giving rise to justifiable asylum claims.<sup>106</sup> Moreover, sexual and gender-based violence against men and boys is often ignored.

102. In addition, when migrant women and girls are in irregular status they are less likely to report that they or members of their family have been subjected to violence

<sup>101</sup> Michelle Brané and Lee Wang, "Women: the invisible detainees", *Forced Migration Review*, September 2013, <https://www.fmreview.org/sites/fmr/files/FMRdownloads/en/detention/brane-wang.pdf>, pp. 37–38.

<sup>102</sup> At a 2003 conference on migrant labour practices in Asia, an ILO specialist expressed alarm that mandatory HIV testing was prescribed in 60 countries as a condition for hiring and re-hiring, and classifying migrants as a high risk group (Marwan Macan-Markar, "HIV Testing of Migrant Workers Fuels Pandemic", 2 July 2003).

<sup>103</sup> Maria Amparita, "An analysis of the Philippine legal and policy frameworks", p. 24.

<sup>104</sup> See submission of the Solidarity Network with Migrants, Japan, p. 1.

<sup>105</sup> See submission of the Women's Link Worldwide.

<sup>106</sup> Gender Equality Commission, *Protecting the rights of migrant, refugee and asylum-seeking women and girls*, Strasbourg, 2018 (preliminary draft factsheet available at: <https://rm.coe.int/gec-2018-12-protecting-the-rights-of-migrant-and-refugee-asylum-seekin/16808fde22>).

as they fear detention and deportation. It is evident that when States fail to consider the lived experiences of migrant women and do not apply an intersectional analysis, migrant women face significant barriers when trying to report gender-based abuse.<sup>107</sup> In other situations, making the acquisition of a regular migratory status dependent on cooperation with law enforcement or government officials also reduces the ability of migrant women and girls to ask for and acquire protection. This lack of a firewall results in a significant underreporting of violence against migrants.<sup>108</sup>

103. Migrant women and girls continue to be exploited economically in a number of countries. The failure to protect migrant women stems primarily from the continued resistance in certain sectors to recognize them as workers with rights. They are therefore excluded from key protections granted under the law for other workers. Instead, in a number of countries, the primary mechanism for outlining the obligations of employers and the rights of workers are contractual arrangements. Under such conditions, migrant domestic workers, many of whom are women, may be confronted with a hostile network of regulations and find themselves in a situation where their dependency on their “sponsor” makes them particularly vulnerable to arrest and deportation.<sup>109,110</sup>

#### IV. Conclusions and recommendations

104. **Under international law, strengthening the gender-responsive approach in migration governance is a responsibility of States, notwithstanding the fact that a multi-stakeholder approach is necessary to protect the rights of all migrants, including migrant women and girls. This is reflected in the Global Compact for Safe, Orderly and Regular Migration, which advocates a whole-of-society approach that includes migrants, the diaspora of migratory populations, local communities, civil society, academia, the private sector, parliamentarians, trade unions, national human rights institutions, the media and governments.**

105. **An overview of the information provided by States and other relevant stakeholders demonstrates that many States have taken measures to protect and promote the rights of migrant women and girls. However, in many countries these measures are quite recent, and thus special efforts to ensure their implementation and effectiveness are required. Gender responsiveness in national migration governance is best achieved when situated within larger overall human rights-based and gender-responsive policies and commitments towards the achievement of gender equality.**

106. **Regarding the human rights frameworks: in a number of countries such frameworks are applicable to all persons present on national territory, or that fall under State jurisdiction, regardless as to whether they are nationals or not. These States tend to emphasize gender equality and non-discrimination, as well as to protect migrant women and girls against gender-based violence. Other States have legislation that explicitly incorporates the concept of gender responsiveness or variations of the concept. Some also require government**

<sup>107</sup> See submission of Women’s Link Worldwide.

<sup>108</sup> See submission of the Platform for International Cooperation on Undocumented Migrants.

<sup>109</sup> Global Detention Project, Lebanon Immigration Detention (<https://www.globaldetentionproject.org/countries/middle-east/lebanon>).

<sup>110</sup> See submission of UN-Women: the Entity’s Asia-Pacific Regional Office has developed a useful toolkit with comprehensive guidance for the protection and promotion of the human rights of migrant women (<http://asiapacific.unwomen.org/en/digital-library/publications/2019/03/empowering-women-migrant-workers-from-south-asia#view>).

agencies and institutions to examine current legislation expressly through a gender lens, as well as to pay attention to the needs of migrant women and girls.

107. In terms of gender-responsive migration policies, the picture is more mixed. Based on the information received, great strides have been made in trying to understand the specific needs, challenges, views and realities pertaining to migrant women and girls in different countries and to incorporate those gender-specific needs into the different integration policies, making the prospects for the integration of migrant women and girls more effective. For example, when offering migrant women and girls the opportunity to take language classes, the courses were structured in such a way that women could attend with their children. Some language courses were adjusted for women with lower literacy levels. A number of countries have also offered training programmes in specific skills and have provided support to migrant women so that they can participate in the labour market. However, it is noted that migration policies in many countries appear to be gender neutral, with particularly negative consequences for the rights and well-being of migrant women and girls. Furthermore, this often falls short of recognizing that truly gender-responsive migration laws, policies and practices should take equally into account the specific situations and challenges of migrants of all genders.

108. A number of States have also made significant efforts to ensure the provision of information to migrant women and girls on a range of issues, most notably on the risk of falling victims of trafficking and where to find additional help. Such efforts have been taken in recognition of the fact that migrant women and girls are in situations of serious vulnerability when they do not have sufficient information about their rights, the means to claim them and the support available to them.

109. In addition, some States have indicated that they adhere to a gender-responsive way of budgeting, and some are also committed to promoting gender responsiveness in their foreign policy and their engagement with other States.

110. While the present report is focused primarily on good practices, it is evident that the continued strengthening of gender-responsive migration legislation and policies is indispensable for the protection of the human rights of migrant women and girls. For example, the needs of migrant women and girls who return to their countries of origin are insufficiently reflected in reintegration policies. There is also a lack of gender-responsive care and specific procedures to meet the needs of migrant women, as well as lesbian, gay, bisexual, transgender and gender-diverse persons, particularly in detention. Moreover, boys and girls are still being detained for immigration-related purposes, in clear violation of relevant international human rights standards.

111. States have made limited advances in collecting gender and age disaggregated data in the context of international migration, in particular data on the migrant population in detention. The current knowledge of international migration is still limited by data gaps, lack of reliability and the irregularity of data collection. These are all obstacles to the establishment of strong monitoring systems.

## **Recommendations**

112. A strong national human rights framework that guarantees gender equality and non-discrimination and protects the rights of all women and girls is an important starting point for the protection and promotion of the rights of migrant women and girls. With a view to strengthening the national legislative

framework and increasing the gender responsiveness of national laws and policies related to migration governance, States are urged to sign and ratify relevant international human rights treaties, including, in particular, the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

113. Gender-responsive approaches in migration legislation and policies need to remain a priority at all levels. The adoption of the Global Compact for Safe, Orderly and Regular Migration has advanced global recognition among States in this regard. It is vital that a human rights-based, gender-responsive and child-sensitive implementation of the Global Compact be ensured.

114. States should increase regular channels of entry and stay for migrant women and girls so as to enhance their enjoyment of rights. Evidence shows that women and girls who migrate through irregular migration routes face a heightened risk of violence, exploitation and discrimination.

115. States should also develop human rights-based, gender-responsive and child-sensitive migration policies that recognize the independence and agency of migrant women and girls and promote their empowerment and leadership. Considering that migrant women and men face different challenges, such policies should address the specific needs and challenges of all migrants, including migrant women and girls. States are therefore required, *inter alia*, to:

(a) Improve the availability of accurate and disaggregated migration data by sex, age and other characteristics and to invest in research and analysis on gender-related trends and challenges in the context of international migration: such efforts can foster evidence-based migration policymaking, which is also essential for the development of gender-responsive migration policies;

(b) Involve migrant women and girls, as well as their representatives, including civil society organizations, in migration policymaking processes and decision-making;

(c) Improve understanding of the different realities faced by migrant women, men, girls and boys, as well as their specific needs, through actively engaging with migrants;

(d) Lift gender-specific barriers to the labour market, for example by providing migrant women with legal status, independent of their families, spouses and employers;

(e) Ensure that migration-related legislation, policies and programmes are designed to respond to the specific needs of all migrants, including women and girls, as also ensure that they are sufficiently funded;

(f) Carry out a robust and timely gender-sensitive analysis of the differentiated impacts of laws and policies on migrants, and revise any migration-related laws and policies that fail to respect gender equality and have a proven negative impact on the enjoyment and protection of human rights of all migrants, particularly migrant women and girls;

(g) Ensure that information about the civil, cultural, economic, political and social rights of migrant women and girls, as well as information on complaint mechanisms and available remedies in case of violation, is available and accessible at all stages of migration;

(h) Take affirmative action to actively recruit women among social workers, law enforcement officers and service providers, particularly in reception and detention facilities, and also at borders;

(i) Provide protection sensitive pre-departure training to all migrants, including migrant women and girls: such training should focus on reducing vulnerability and should include information on gender-based violence, as well as the gender dimension of trafficking in persons, particularly for purposes of sexual exploitation, as well as practical measures, such as awareness of cultural differences from a gender perspective, language skills, the provision of emergency telephone numbers and clarification of local laws, regulations, and systems;

(j) Integrate gender-responsive approaches into training programmes provided to relevant policymakers, immigration and asylum authorities, border police and other law enforcement personnel, social workers and service providers who work with migrant women and girls: such information should be provided with regard to indicators of vulnerabilities, including the identification of appropriate referral mechanisms;

(k) Undertake the early identification of migrant women and girls who may be victims of gender-based violence or trafficking in persons, focusing on detecting vulnerabilities, beginning at the locations of first arrival, lower the threshold for the level of evidence to be used in identification processes and provide assistance and protection as soon as there is reason to suspect that a person is a victim of gender-based violence or trafficking: such assistance should be provided regardless of whether the offender is identified, prosecuted or convicted, and irrespective of the person's legal status, ethnicity, nationality or level of cooperation in the criminal proceedings;

(l) Ensure access to health services, including comprehensive sexual and reproductive health services: firewalls need to be established between health services and immigration authorities so that migrant women and girls are not discouraged from effectively accessing such services;

(m) Ensure that there is a clear firewall between local police and immigration authorities in order to encourage the reporting of crimes, particularly gender-based violence: it is important that survivors of violence, including gender-based violence, are provided with unconditional assistance, as well as integrated support, regardless of whether the offender is identified, prosecuted or convicted and irrespective of the person's migratory status.

116. While States are encouraged to progressively abolish the practice of administrative detention of migrants in the context of international migration, immediate measures should be taken to ensure that conditions of detention meet minimum international standards and respect the human rights of all migrants, including women, regardless of their sexual orientation and gender identity. In the meantime, States are urged to explore alternatives to detention, including community-based care arrangements and protection-based institutions for migrants.

117. In the case of girls and boys, States should terminate the practice of detention based on their migratory status because detention is never in the best interest of the child.

118. Reception facilities for migrants should be adapted to the gender-specific needs of all migrants, which include well lit, safe and segregated water, hygiene and sanitation facilities.