**Questionnaire of the UN Special Rapporteur on “how to expand and diversify regularisation mechanisms and programs to enhance the protection of the human rights of migrants”**

**Submission of the Secretariat of the Council of Europe**

1. **Introduction**

The Secretariat of the Council of Europe hereby submits its contribution to the forthcoming report of the UN Special Rapporteur on the human rights of migrants, Mr Felipe González Morales, to be presented to the 53rd session of the Human Rights Council, examining how to expand and diversify regularisation mechanisms and programs to enhance the protection of the human rights of migrants in irregular situations.

This contribution compiles the existing relevant standards of the Council of Europe and has been coordinated by the Office of [the Special Representative of the Secretary General of the Council of Europe on Migration and Refugees](https://www.coe.int/en/web/special-representative-secretary-general-migration-refugees/home) (“the SRSG”).

The [mandate](https://www.coe.int/en/web/special-representative-secretary-general-migration-refugees/mandate) of the Special Representative was established in 2016 in response to the humanitarian crisis following the refugee and migration movements, and reiterated in response to the decisions of the Helsinki Ministerial Session in May 2019, where Council of Europe member States recalled the need to continue addressing the challenges arising from global migration. The mandate includes liaison and exchange of information with relevant international organisations and specialised agencies, as well as with national migration authorities, with the aim of enhancing the Council of Europe’s assistance to its member States in fulfilling their obligations under the European Convention on Human Rights (“the Convention”) and other Council of Europe standards.

1. **Overview of the Council of Europe standards relevant to human rights and regularisation mechanisms and programmes and thematic work published**

A summary of [**the European Court of Human Rights**](https://www.echr.coe.int/Pages/home.aspx?p=home)**’ (the Court) case-law on the prevention of human rights violations** can be found in the Court’s case-law guide on [**Immigration**](https://www.echr.coe.int/Documents/Guide_Immigration_ENG.pdf)**.** The case-law guide addresses “residence permits and possibility to regularise one’s legal status”.[[1]](#footnote-1)

[**The European Commission against Racism and Intolerance**](https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/home) **(ECRI)** addressed regularisation mechanisms and programs in the context of some of it Sixth-cycle monitoring report[[2]](#footnote-2), as well as in its conclusions on the implementation of the recommendations in respect of Switzerland[[3]](#footnote-3) and Malta[[4]](#footnote-4).

In its **Sixth-cycle**[**report**](https://rm.coe.int/ecri-sixth-report-on-france-adopted-28-june-2022-published-21-septembe/1680a81883)**on France**, **published in September 2022**, ECRI welcomes the fact that “in the field of education, […] the existing firewalls have been strengthened since 2020 with the simplification of school enrolment procedures for children up to sixteen-year-olds, regardless of the legality of their residence or that of their parents, which is a promising practice.”[[5]](#footnote-5)

**ECRI’s Sixth-cycle**[**report**](https://rm.coe.int/ecri-first-report-on-greece-adopted-on-28-june-2022-published-on-22-se/1680a818bf)**on Greece, published in September 2022**, highlights that “ECRI is pleased that Article 19 of the Migration and Social Integration Code (Law 4251/2014) provides for the possibility for a third country national to apply for a residence permit if s/he may prove her/his presence in the country for seven consecutive years and prove that s/he has developed “strong links” with Greek society. ECRI notes that thousands of irregularly present migrants have been able to regularise their stay in this way, among them migrants providing care in the private home of elderly people.”[[6]](#footnote-6)

**ECRI’s Sixth-cycle**[**report**](https://rm.coe.int/ecri-report-on-switzerland-sixth-monitoring-cycle-/16809ce4bd)**on Switzerland, published in March 2020**, notes that “the authorities informed ECRI that in June 2018 the National Council (parliament) requested the Federal Council to draw up a detailed report on the situation of undocumented migrants in the country by June 2020, focusing specifically on social security, access to schools, training, exchange of data between different authorities in contact with irregular migrants, application of criminal law, regularisation of status and work permits, and to propose solutions for the management of such persons.”[[7]](#footnote-7) ECRI also notes that “although GPR No. 16 does not call for regularisation of persons in an irregular situation, ECRI particularly applauds as good practice Operation Papyrus which was launched in Geneva from February 2017 to December 2018 to regularise well-integrated undocumented migrants who had been living in the canton for ten consecutive years (five years for families with children in school). To be eligible, persons had to demonstrate full financial independence, A2 level in French and the absence of a criminal record. Information was made widely available about the operation, including for employer on regularising the status of their employees and conforming with labour legislation. The authorities informed ECRI that some 1,700 people (many were female domestic workers from South America) obtained a residence permit under the operation, including around 500 children, and that another 1,500 cases are still pending a decision. The operation not only provided a state and secure future for those who had made efforts to integrate but also helped to combat irregular labour and exploitation of vulnerable migrants, notable in the domestic work sector.”[[8]](#footnote-8)

In the **ECRI Fifth-cycle**[**report**](https://rm.coe.int/fifth-report-on-malta/16808b592b)**on Malta, published in May 2018**, ECRI notes that “the authorities should continue to allow persons who cannot be returned to their country of origin to stay legally in Malta. For those who have resided in Malta for more than ten years, the authorities should consider a more permanent form of regularisation.”[[9]](#footnote-9)

**The** [**Committee of Parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse**](https://www.coe.int/en/web/children/lanzarote-committee) **(the Lanzarote Committee)**, established [to monitor](https://www.coe.int/en/web/children/monitoring1)  the **Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse** (also known as “[the Lanzarote Convention](http://www.coe.int/en/web/children/convention)) also provides insights on the situation of migrant children, especially those who are undocumented or otherwise in an irregular situation, who are at a higher risk of sexual exploitation and sexual abuse and of going missing. [Data gathered through the compliance procedure](https://rm.coe.int/compliance-report-concerning-recommendation-11-follow-up-given-by-part/1680a5e8ae) of the Lanzarote Committee showed that in at least 33 out of 41 Parties monitored provide adequate protection to child victims, including children affected by the refugee crisis, irrespective of where the abuse/exploitation occurred. (See [Recommendation 11 on the protection of child victims](https://www.coe.int/en/web/children/urgent-monitoring-round-follow-up-to-the-special-report-recommendations#:~:text=Compliance%20report%20concerning%20Recommendation%2011%C2%A0on%20protection%20to%20child%20victims)). However, whilst migrant children may have an equal right to protection, it is important to emphasise that identifying child sexual exploitation and sexual abuse occurring at different moments of the "migration journey" may be complex. [Recommendation 13 on the co-ordination and collaboration of the different actors who intervene for and with children affected by the refugee crisis to ensure that preventive measures in regards to protection from sexual exploitation and sexual abuse](http://rm.coe.int/compliance-report-concerning-recommendation-13-follow-up-given-by-part/1680a5e8f8) is of relevance in this respect. Lastly, it is important to ensure that the voices of children who have experienced migration, including examples from civil society organisations, be taken into account, as these can provide valuable insight, not only to human rights violations that go unnoticed, but also how national systems may be improved.

Migrants in irregular situation often fail to enjoy their fundamental human rights in fields such as education, health care, housing and social security due to fear of deportation. **The** [**Council of Europe Strategy for the Rights of the Child (2022-2027)**](http://rm.coe.int/council-of-europe-strategy-for-the-rights-of-the-child-2022-2027-child/1680a5ef27), covers the situations of vulnerability of children, among others, children affected by migration and recalls that an anti-discrimination approach in line with Article 14 of the European Convention on Human Rights should be applied to tackle these situations. Under its second Strategic Objective on equal opportunities and social inclusion for all children, the Strategy highlights the importance of equal access to rights, including quality education for all children. In a similar vein, the sixth Strategic Objective on children’s rights in crisis and emergency situations underlines the challenges experienced by migrant children and draws attention to the reduced access to education and health services in such situations. In this regard**, the Strategy also draws attention to the Council of Europe’s Committee of Ministers’** [**Recommendation CM/Rec(2019)11**](https://rm.coe.int/0900001680993db7) **on effective guardianship for unaccompanied and separated children in the context of migration.** As unaccompanied and separated children might be in an irregular situation, the Special Rapporteur could consider this Recommendation as a reference document.

**The recent** [**Recommendation CM/Rec(2022)17 of the Committee of Ministers to member States on protecting the rights of migrant, refugee and asylum-seeking women and girls**](https://rm.coe.int/prems-092222-gbr-2573-recommandation-cm-rec-2022-17-a5-bat-web-1-/1680a6ef9a) is relevant in different ways to the situation of migrant women in an irregular situation. It is a good practice because it codifies in a single document what the [**Council of Europe Gender Equality Commission**](https://www.coe.int/en/web/genderequality/gender-equality-commission?pk_campaign=newsletter) and the [**Committee of Ministers**](https://www.coe.int/en/web/cm/home) considered as “best” measures from existing Council of Europe standards, monitoring activities, UN standards and policy documents to protect the rights of migrant women and girls and to empower them. The [Recommendation](https://rm.coe.int/prems-092222-gbr-2573-recommandation-cm-rec-2022-17-a5-bat-web-1-/1680a6ef9a) focuses on the protection of rights and the fight against all forms of discrimination and violence against migrant, refugee and asylum-seeking women and girls. It looks at the range of relevant public policies (migration, asylum and integration policies) from a gender equality and women’s rights perspective.

The scope of the Recommendation is interesting from a regularisation perspective, as it **includes all migrant, refugee and asylum-seeking women and girls with an intersectional perspective**. The text also specifically addresses the needs of different groups: girls, women with disabilities, undocumented migrant women, victims of violence, etc.

With regard to the issue of undocumented migrant women and regularisation, **the Recommendation encourages member States to protect the human rights of this group, while indicating limitations related to migration status/undocumented migrant women. The most relevant provisions in this regard are** [**paragraphs 93 and 94**](https://rm.coe.int/prems-092222-gbr-2573-recommandation-cm-rec-2022-17-a5-bat-web-1-/1680a6ef9a)**:**

* § 93. “Member States are encouraged to provide security of residence on an independent basis to migrant and refugee women and girls present in a country for a long time, including stateless women and girls. Security of residence should be particularly ensured for victims of violence against women whose children are nationals of the host country, including when they lose custody of their children during separation/family law proceedings.
* § 94. “Member States are encouraged to provide pathways to naturalisation and to take measures to ensure that migrant and refugee women and girls are not faced with gender-related obstacles in this regard.”

**Regarding regularisation/ residence permits,** [**paragraphs 88 to 92**](https://rm.coe.int/prems-092222-gbr-2573-recommandation-cm-rec-2022-17-a5-bat-web-1-/1680a6ef9a) **are also relevant:**

* § 88. “Member States should ensure that migrant, refugee and asylum-seeking women and girls who are granted a residence permit on the basis of a family relationship are entitled to social, economic and labour-related rights and benefits in an autonomous capacity.”
* 89. “Member States should take the necessary measures to ensure that migrant, refugee and asylum-seeking women and girls who are victims of violence and whose residence status depends on that of the spouse or partner as recognised by internal law, in the event of the dissolution of the marriage or the relationship, are granted, in the event of particularly difficult circumstances, upon application, an autonomous residence permit irrespective of the duration of the marriage or the relationship. The conditions relating to the granting and duration of such autonomous residence permits are established by internal law. Migrant, refugee and asylum-seeking women and girls should be made aware of this entitlement.”
* § 90. “Member States should ensure that migrant, refugee and asylum-seeking women and girls who are victims of violence against women, including trafficking in human beings, are granted a renewable residence permit, where the competent authority considers that their stay is necessary owing to their personal situation, and/or where the competent authority considers that their stay is necessary for the purpose of their co-operation in an investigation or criminal proceedings.
* § 91. “The evidentiary criteria and threshold for the granting of residence permits should be realistic and sensitive to the individual situation of migrant, refugee and asylum-seeking women and girls. Responsible statutory agencies should be adequately trained to this effect.”
* § 92. “Member States should facilitate the possibility for victims of forced marriage brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, to regain that status. This should also apply, as appropriate, to those who may have lost their nationality.”

**Other relevant provisions of Recommendation CM/Rec(2022)17 regarding undocumented migrant women can** be found in paragraphs:

* § 1 “This recommendation is aimed at covering migrant, refugee and asylum-seeking women and girls.”
* § 5 “Member States should ensure that migrant, refugee and asylum-seeking women and girls do not face discrimination on any grounds.”
* §7 “Member States are encouraged to take measures to enhance the ability of undocumented migrant women and girls to access their fundamental rights, and for those of them who are victims of violence against women or trafficking in human beings, to report the crimes without fear of removal.”
* § 67 “Essential healthcare services, including primary care, urgent and immediate care, palliative care and treatment or assistance necessary for public health reasons, should be provided to all migrant, refugee and asylum-seeking women and girls.”
* § 68 “Member States should provide migrant, refugee and asylum-seeking women and girls who are legally present in their territory with effective access to quality, age- and gender-sensitive health services. This should encompass in particular mental health, sexual and reproductive health services and rights, health services during and after pregnancy and services related to experiences of violence against women. Member States should also seek to provide such services to migrant women and girls in an irregular situation.”
* §72 “Member States are encouraged to ensure that migration status is not used to discriminate in respect of access to housing and social assistance schemes for migrant, refugee and asylum-seeking women lawfully present in the country.
* §78 “Authorities should ensure that migrant, refugee and asylum-seeking girls have access to compulsory education equal to that of nationals and should take measures to reach those who may have been prevented from accessing education in their country of origin, ensuring the provision of education or day care, preferably within mainstream educational structures.”
* §82 “Access to the programmes and measures referred to in paragraphs 79, 80 and 81 [related to different aspects of education] for migrants in an irregular situation is subject to internal laws governing eligibility.

Based on a motion for a resolution on[**Integration of migrants and refugees: benefits for all parties involved**](https://rm.coe.int/traumatic-events-ukr-/1680a765d4), the CoE [**Parliamentary Assembly (PACE)**](https://pace.coe.int/en/) is currently preparing a report, the adoption of which is planned during the PACE Plenary Session in June 2023. The motion for a resolution emphasises that “*the lack of integration is a source of social injustice and social exclusion of individuals or groups in our societies. Therefore, migrants and refugees must be given the opportunity to integrate into their new host society, especially as successful integration enables immigrants to contribute to the economic and social progress of the host country as well as their country of origin.*”[[10]](#footnote-10)

1. [Guide on the case law of the European Court of Human Rights, Immigration, updated on 31 August 2022, paragraph 78](https://echr.coe.int/Pages/home.aspx?p=caselaw/analysis/guides&c=) [↑](#footnote-ref-1)
2. ECRI Sixth-cycle reports on France, Greece, Switzerland and Malta [↑](#footnote-ref-2)
3. [ECRI Conclusions on the Implementation of the Recommendations in Respect of Switzerland Subject to Interim Follow-up, adopted on 29 June 2022](https://rm.coe.int/ecri-conclusions-on-the-implementation-of-the-recommendations-in-respe/1680a807d1) [↑](#footnote-ref-3)
4. [ECRI Conclusions on the Implementation of the Recommendations in Respect of Malta Subject to Interim Follow-up, adopted on 30 March 2021](https://rm.coe.int/ecri-conclusions-on-the-implementation-of-the-recommendations-in-respe/1680a27d87) [↑](#footnote-ref-4)
5. [ECRI Report on France (sixth monitoring cycle), adopted on 28 June 2022, paragraph 18](https://rm.coe.int/ecri-sixth-report-on-france-adopted-28-june-2022-published-21-septembe/1680a81883) [↑](#footnote-ref-5)
6. [ECRI Report on Greece (sixth monitoring cycle), adopted on 28 June, paragraph 17](https://rm.coe.int/ecri-first-report-on-greece-adopted-on-28-june-2022-published-on-22-se/1680a818bf) [↑](#footnote-ref-6)
7. [ECRI Report on Switzerland, adopted on 10 December 2019, paragraph 15](https://rm.coe.int/ecri-report-on-switzerland-sixth-monitoring-cycle-/16809ce4bd) [↑](#footnote-ref-7)
8. [ECRI Report on Switzerland, adopted on 10 December 2019, paragraph 17](https://rm.coe.int/ecri-report-on-switzerland-sixth-monitoring-cycle-/16809ce4bd) [↑](#footnote-ref-8)
9. [ECRI Report on Malta (fifth monitoring cycle), adopted on 21 March 2018, paragraph 97](https://rm.coe.int/fifth-report-on-malta/16808b592b) [↑](#footnote-ref-9)
10. [Parliamentary Assembly, Motion for a resolution: Integration of migrants and refugees: benefits for all parties involved (25 June 2021), page 1](https://rm.coe.int/traumatic-events-ukr-/1680a765d4) [↑](#footnote-ref-10)