

Recommendations on drafting guidelines for the care and protection of migrant women, girls and sex/gender diverse people in South America



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Introduction

International migration has become one of the priority issues on the international and regional agendas. Its relation with human rights, sustainable development and geopolitics, and the impact that the pandemic has had on migrants are undeniable and, for that reason, it is a highly sensitive issue for States. From various international and regional fora of States, international agencies and civil society organisations, progress has been made towards understanding migration, as well as the challenges and development opportunities that it represents, and towards taking on a common commitment to it. Building on the adoption of legal instruments on rights, the Regional Conferences on Population and Development in Latin America and the Caribbean, and subregional bodies, such as the South American Conference on Migration (SACM), and a wide array of study centres and non-governmental organisations have contributed, as never before, to knowing the complexities that it involves. To this, multilateral agreements that geographically group countries, for instance, the Residence Agreement endorsed by the Southern Common Market (MERCOSUR), and bilateral agreements that have contributed to labour migration, reducing, at the same time, irregular migration in the subregion, are also added. These progressive efforts have, in turn, translated into better governance and cooperation among States at a global level with the creation of the United Nations Network on Migration and the endorsement of the Global Compact for Safe, Orderly and Regular Migration and the Global Compact on Refugees.

In spite of this progress and the growing commitment of States to migrants, women, girls and sex/gender diverse persons who migrate are still insufficiently protected and they are the link that is most exposed to discrimination and violence when it comes to exercising and guaranteeing their rights. The causes and multiple factors which underlie the structural gender-based discrimination throughout their migration journey require a comprehensive understanding by States and, in particular, by those responsible for devising and implementing migration policies in order to break with exclusion and overcome the risks and inequalities that these populations encounter. Based on this realisation, the community of regional States has started a process intended to adopt measures aimed at recognising the migration vulnerability of migrant women, girls and sex diverse and dissident persons and at creating guidelines making it possible to improve the situation of this population.

The 2016 Declaration of Asunción, adopted within the framework of the SACM, highlighted the special importance of engendering the migration policies with a view to ensuring access to rights by migrant women, girls and adolescents and their families. In addition, countries were urged to recognise their contribution to development in the countries of origin and destination, to promote their autonomy and empowerment, and to fight against any practice of discrimination and violence to which they may be exposed. Such Declaration reinforces the legacy that the region has in terms of the promotion of human rights of women and gender equality. The Regional Conferences on Women in Latin America and the Caribbean and their Gender Agendas, the Regional Conferences on Population and Development, as well as the resolutions adopted at the Meeting of Ministers and High-Level Authorities on Women's Affairs of MERCOSUR, have made it possible to reaffirm the Sustainable Development Goals and the 2030 Agenda, which consider gender equality and the full realisation of women's rights as an irreplaceable factor to achieve sustainable development.

In 2019 and under the Presidency Pro Tempore (PPT), the Plurinational State of Bolivia convened the Regional Workshop on gender perspective in migration policies. At this workshop, the present delegations agreed on the need to foster a set of gender-related actions for South America. In addition, during the XIV Regional Conference on Women in Latin America and the Caribbean in January 2020, a workshop was conducted on the challenges and responses for engendering the migration policies at a regional level. There, the regional and subregional situation of migrant women, as well as the legal instruments and policies; the recommendations on migration policies aimed at promoting gender equality and women's autonomy; and the good practices and actions for promoting and shedding light on the reality of migrant women within the framework of regional consultative processes, such as the Regional Conference on Migration (RCM) and the South American Conference on Migration (SACM), were discussed.

In addition, in 2015, at the Meeting of High-Level Human Rights Authorities (RAADH, in Spanish), the Working Group on Gender, Diversity and Identity¹ acquired the status of Permanent Commission on LGBTI+, approving its respective Work Plan and Schedule of Activities. The plan stated the urgent need to work so as to eradicate discrimination based on sexual orientation and gender identity/expression in the countries of the region and to recognise sexual diversity rights as fundamental human rights. In 2015, during the XXVI RAADH in Brasilia, the work plan, schedule of activities and internal rules of procedure of the Permanent Commission on LGBTI+ were approved; with a view to fostering the integration of public policies for the promotion and protection of the rights of the LGBTI+ population, and to fighting homo-lesbian-transphobia.

During the current Argentine Republic's Presidency Pro Tempore of the South American Conference on Migration (SACM) and with the commitment to continue contributing to the construction of migration policies with a gender perspective, the Gender and Migration network was created, made up of representatives of each member country of the Conference, with the technical assistance of the International Organization for Migration (IOM). One of the objectives was to identify, share and deepen those actions which contribute to the engendering of migration policies, especially emphasising on the reality of migrant women, girls and sex/gender diverse people, and the actions to make progress on gender equality and the respect for and guarantee of their human rights. This document is a first step to share the actions carried out by the SACM member countries to incorporate the gender perspective in migration policies and to identify lines of action for the care and protection of migrant women, girls and sex/gender diverse people while respecting and guaranteeing their human rights.

I. Gender, migrant women, girls and sex/gender diverse persons in South America

1. Brief South American context of the migration of women, girls and sex/gender diverse persons

Women have been present in all migration processes, even though they have not always been considered in the studies and research addressing this topic. However, in the last decades, this tendency has had to change due to the growing female presence in migration flows and due to their increasingly active role in the economic and social sphere. In effect, since the 70s, migration studies have focused on migration patterns as part of the wave aimed at shedding light on economic, social and political inequalities affecting the various groups of women. To that end, it was necessary to supersede existing theoretical frameworks with others that incorporate the gender perspective making it possible to survey the differentiated experiences and impacts that women face in migration processes, in the countries of origin as well as in the transit and host ones.² To this, the rapid development of human rights, with the adoption of the Convention on the Elimination of all Forms of Discrimination Against Women and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, and the gradual mainstreaming of the gender approach in the main legal instruments on human rights, through the progressive preparation of various treaty supervisory bodies, should be added.³

In Latin America, the presence of women in migration flows is a characteristic feature. Migrants in the region move across countries mainly seeking better employment opportunities, but also fleeing from poverty and internal conflicts, situations of violence and, to a lesser extent, disasters. The share of migrant women residing in the region tends to be slightly predominant, but it is even more marked in the case of intraregional immigrants. In the region, the proportion of

¹ The Working Group on Gender, Diversity and LGTBIQ Identity had begun in 2007, in Montevideo, during the IX Meeting of High-Level Human Rights Authorities.

² Fries, Lorena. "Las mujeres migrantes en las legislaciones de América Latina, Análisis del repositorio de normativas sobre migración internacional [Migrant women in the Latin American legislation, Analysis of the repository of regulations on international migration] of the Gender Equality Observatory for Latin America and the Caribbean, Serie División de Género [Gender division series], ECLAC.

³ General Recommendation No. 1 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW:2010, para.7) and General Recommendation No. 26 of the CEDAW (CEDAW:2008, para.2).

international migrant men (50.5%) in 2020 was slightly higher than that of migrant women (49.5%) and it has increased more rapidly in the last two decades.⁴ For their part, in South America in 2020, women accounted for 50.8% of migrants.

Even though, in terms of labour migration, the percentage of men and women is almost the same (2.5% women and 2.9% men), the reality in each of these countries differs.⁵ In effect, in several Latin American countries, the proportion of migrant women for work purposes is larger, as is the case of the Argentine Republic (54.0% women vs 46.0% men), the Republic of Chile (54.6% vs 45.4%) and the Eastern Republic of Uruguay (55.4% vs 44.6%), while in the case of Brazil and the Dominican Republic, this situation is inverted, with a larger presence of a male labour migrant population, namely 59.6% vs 40.4% and 61.5% and 38.5%, respectively.⁶ As regards the age group of the people who migrate, according to the census data of the countries in the region, older groups are overrepresented among immigrants in some countries, which would suggest that they were destinations, above all, of past migration flows that would have diminished more recently or that there is a significant immigration of older people, promoted, in some cases, by tax incentives. Among those countries, the Argentine Republic, the Federative Republic of Brazil and the Eastern Republic of Uruguay outstand, together with the Bolivarian Republic of Venezuela, where the proportion of immigrants in the age group of 60+ is much higher than that of the population as a whole, with a range between 25.6% in the Bolivarian Republic of Venezuela and 46.5% in the Federative Republic of Brazil. In contrast, in the Republic of Costa Rica and the Dominican Republic, this age group only accounts for 9.7% and 6.7%, respectively, of the immigrant population.⁷

In the Republic of Peru, according to the 2018 ENPOVE Survey for the Venezuelan population, conducted by Instituto Nacional de Estadística e Informática (INEI, National Statistics and Information Institute), the demographic composition of migrants from Venezuela was as follows:

- Fifty-two point three per cent of the Venezuelan population residing in the country are men and 47.7% are women. They are predominantly working-age young people. Fifty-two per cent are between 20 and 34 years of age.
- With regard to life cycles, 7.9% of the Venezuelan population is in the period of early childhood (0 to 5 years of age); 6.3% are children between 6 and 11 years of age; 4.5% belongs to the adolescent population (12 to 17 years of age); 42.0% are young people (18 to 29 years of age); 29.8% are young adults (30 to 44 years of age); 8.0% is adult population and 1.6% is older adult population.
- Fifty-five point nine per cent has a spouse, either in a capacity as live-in partner (37.1%) or husband/wife (18.8%); 40.1% stated being single.

One of the most serious situations that migrants face is trafficking and smuggling of persons. Trafficking in human beings has diverse purposes, with sexual and labour exploitation as the main forms detected. Even though figures indicate that trafficking in persons for sexual exploitation purposes mainly affects women and girls, in the last years there has been an increase in men and boys. It is an internationally punished crime and States have made significant efforts for its prevention and punishment and the protection of persons by adopting legal frameworks and public policies. In effect, between 2003, when the United Nations Convention against Transnational Organized Crime and its protocols⁸ entered into force, and 2020, nearly all the countries adopted criminal classifications to punish domestic and international trafficking and smuggling of persons. This has led to an increase in the cases detected, even though it is not possible to determine whether this is due to an increase in the number of victims or an enhanced capacity of States to produce information. In a high proportion, it is found that the origin and destination of the victims of trafficking and smuggling of persons are in a same

⁴ United Nations DESA, 2019.

⁵ ILO, 2018.

⁶ ECLAC/ILO. La inmigración laboral en América Latina [Labour immigration in Latin America] in Coyuntura laboral en América Latina y el Caribe [Employment situation in Latin America and the Caribbean], No. 16, 2017, p.18.

⁷ Op. cit. p.18.

⁸ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the United Nations Convention against Transnational Organized Crime and the Protocol against the Smuggling of Migrants by Land, Sea and Air, which supplements the United Nations Convention against Transnational Organized Crime.

region and, frequently, in a same subregion, and they are moved from poorer to richer countries. In the poorest countries, the trafficking and smuggling of persons are usually internal or within the same subregion.⁹

Human trafficking varies in terms of sex, age and purpose —sexual or labour exploitation— in the various regions of the world.¹⁰ In South America, the level of trafficking of women and girls is, however, one of the highest in relation to the total population trafficked globally.¹¹ In effect, among the main forms of trafficking in South America, 58% is for sexual exploitation purposes; 32%, for labour exploitation and forced labour purposes; and 10% for other forms of trafficking, among which trafficking for the adoption of children arises as a feature in the Plurinational State of Bolivia, the Republic of Peru and, to a lesser extent, the Republic of Ecuador.¹² More than 80% of the victims of trafficking for sexual exploitation purposes that are detected are women and girls. Out of the total of victims identified, 51% accounts for women and 37%, for girls and boys (31% girls and 6% boys), with over 60% in the Republic of Chile, the Argentine Republic and the Eastern Republic of Uruguay, followed by the Republic of Colombia and the Bolivarian Republic of Venezuela.

Refugees and asylum seekers in the region move to neighbouring countries. These flows depend on specific events that change over time.

Unfortunately, there is little refugee information disaggregated by sex/gender and age for South America, which is, undoubtedly, a challenge for the States in the region. The Argentine Republic is among the countries with reference information, specifying that, out of the total refugee status applicants between 1985 and 2020, 67% were men and 33%, women.¹³

2. Gender and migration

Gender¹⁴ is a structural variable influencing all social processes at macro and micro levels in the various dimensions of the migration phenomenon and in all its stages. Thus, the gender roles that are culturally assigned in each society and the dominant gender stereotypes influence the decision to migrate; families who, for example, determine that women should migrate because it is easier for them to find low-skilled jobs or because they maintain, unlike men, the bond with their families in their respective countries of origin, which ensures the transfer of remittances. On other occasions, factors such as gender-based violence, forced marriage, social rejection for being single mothers, the need to break free from stereotypes and opening up to less oppressive forms in other cultures, or discrimination on the basis of ethnicity or sexual orientation and/or gender identity influence the decisions of migrant women and/or their families.¹⁵ Migration also has a strong impact, in this case, at a macro level, on labour markets, on the definition of migration policies and even on the imagination built around such population. Sex/gender works as a conditioning factor of the capacities socially attributed to men and women, the access to social benefits and the way in which the media treat this phenomenon and the characteristics of the migrant population. Migration can also contribute to transforming the gender relations in family relationships, modifying the traditional male roles in terms of the distribution of care tasks, and to promoting processes for the empowerment of women and girls.

Nevertheless, gender is not the only decisive variable in migration processes. There are other regulatory social orders that define the situations and positions of such groups and that are intertwined with sex/gender. Ethnicity, race, age and class come together, building identities that usually reinforce the inequalities and vulnerabilities of migrant populations, in the countries of origin as well as in the transit and host ones. The intersection between gender and one or more of these factors determines, in many cases, the experiences, expectations, resources and challenges that they will have to face. In

⁹ UNODOC, 2016, p. 7.

¹⁰ Global Data Hub on Human Trafficking: www.ctdatacollaborative.org/

¹¹ Global Data Hub on Human Trafficking: www.ctdatacollaborative.org/

¹² Op. cit. 16, p.75

¹³ Comisión Nacional para los Refugiados (CONARE, National Commission for Refugees). 2020 Statistics.

¹⁴ Assumed as a hierarchical cultural construction that, upon the sex at birth, determines roles, relations, attitudes and subjectivities, throughout the life cycle in all the cultures, varying over time and in culture itself. As a concept, it involves unequal power relations for women, girls and sex/gender diverse people vis-à-vis men and hegemonic sexuality, constraining or annulling the access and exercise of their rights as persons.

¹⁵ Quoted in “La migración desde una perspectiva de género: ideas operativas para su integración en proyectos de Desarrollo” [Migration from a gender perspective: operational ideas for its integration in development projects]. Migration Unit and Gender and Diversity Division, Inter-American Development Bank, 2020. p.13

Latin America, racism, discrimination and violence against sex and/or gender non-conforming persons are part of the common hegemonic cultural matrix. The legal recognition of the rights of indigenous peoples and the step forward in the visibility, promotion and protection of sex diverse people are relatively recent. This accounts, in part, for the little information regarding migrant gender diverse persons and is one of the main deficits to meet the specific needs of this population. The members of indigenous peoples in the region are considered based on their nationality and not on their belonging to a people or nation. This also limits the possibilities to identify migration movements that, as a people, they make across borders or as part of greater migration flows due to specific events or situations in their countries of origin. In this sense, the Republic of Ecuador and the Eastern Republic of Uruguay stand out, as their national policies for the recognition and protection of the rights of LGBTBI+ people have resulted in the inclusion of gender diverse migrants as part of their national development plans.

Not considering the specific needs and experiences that women and girls have simply because of being so, or an intersectional approach making it possible to account for the specific problems that they face, including sex diverse people and those who belong to indigenous peoples, has contributed, to a large extent, to the reproduction, and, in some cases, to the reinforcement, of inequalities. As a consequence, they are subjected to multiple human rights violations and are preferred victims of transnational organised crime for the trafficking and smuggling of persons.

2.1 Main challenges for the guarantee and protection of the rights of migrant women, girls and sex/gender diverse persons

Equality and non-discrimination are the cornerstone of human rights and create a framework of obligations for the promotion, respect, guarantee and protection of all persons. These concepts have evolved from their formal origins to their current statements, including the various situations and conditions of human rights holders. Thus, formal equality as a mere statement of will has progressed, first towards equal opportunities, creating affirmative actions that accelerate the path to real equality, and subsequently towards substantive equality aimed at changing the reality of the most disadvantaged groups and communities. On their part, discrimination and its prohibition as the other side of the principle of and right to equality, have also shifted towards a wider understanding, from a case-by-case approach based on concrete situations to one that considers that such situations result from historical patterns and contexts of human rights violations to the prejudice of vulnerable groups on the basis of their condition, and social, economic and cultural status. Structural discrimination ultimately results from a situation of social exclusion or 'subjugation' of disadvantaged groups by others, systematically and due to complex social practices, prejudices and belief systems incorporating historical and social data that account for inequalities.¹⁶ In this sense, all the historically excluded groups share a feature that identifies them: there is a history of discrimination, of negative stereotypes against them that are reinforced by norms, institutions and their practices, and that reduces the possibility to defend their collective interests.¹⁷ Therefore, substantive equality to overcome systemic discrimination requires an active role from the State so as to generate social balances and to provide special protection for groups undergoing historical discrimination processes. A State which abandons its neutrality and develops tools to diagnose the social situation in order to know which groups or sectors must receive, at a certain historic moment, urgent and special protection measures, is presupposed.¹⁸

Discrimination on the basis of sex/gender, nationality and migration status is one of the main challenges that women, girls and sex/gender diverse people face. As a consequence of it, the exercise of the rights that are recognised on account of being persons and belonging to specific groups is constrained or annulled. This multiple discrimination has specific manifestations that are expressed in all migration stages and in connection with each right. On many occasions, gender stereotypes and the legal and social rules that embody them can be determining factors in the decision to migrate to more culturally open destinations, either to escape from socioeconomic dependence or violence. In the countries of destination, discrimination based on sex/gender also plays a significant role as women and sex/gender diverse people tend to move

¹⁶ Pelletier, Paola. *La "discriminación estructural" en la evolución jurisprudencial de la Corte Interamericana de Derechos Humanos* ['Structural discrimination' in the jurisprudential evolution of the Inter-American Court of Human Rights]. *Revista Instituto Interamericano de Derechos Humanos*, Vol.60. San José de Costa Rica, 2014, p. 207.

¹⁷ Gimenez Gluk, D. *Juicio de igualdad y Tribunal Constitucional* [Equality proceedings and constitutional court]. Edit. Bosch, Barcelona, 2004, pp. 232-235.

¹⁸ Abramovich, Víctor. *De las violaciones masivas a los patrones estructurales: nuevos enfoques y clásicas tensiones en el Sistema Interamericano de Derechos Humanos* [Massive Violations to Structural Patterns: New Approaches and Classic Tensions in the Inter-American Human Rights System]. V. 6 No. 11, *Revista SUR Revista Internacional de Derechos Humanos*, 2009. Available at: October, 2014.

seeking independence and greater autonomy, to places offering them a wider range of job opportunities free of discrimination.¹⁹

States must continue contributing to creating the concrete conditions for migrant women, girls and sex/gender diverse people to fully exercise their rights, eradicating all forms of discrimination. This means identifying the specific causes and manifestations affecting them based on the structural sex/gender inequalities that they experience due to their migrant status and the constraints that they imply for their autonomy, understanding it as the set of concrete capacities and conditions necessary to freely make the decisions that affect their lives. Human rights are an expression of this autonomy and enable its realisation through the creation of conditions in various spheres. Thus, physical, economic and decision-making autonomy, in addition to accounting for concrete spheres where people's capacities are developed or constrained, is translated into specific rights. These autonomy dimensions link the agency of individuals and their social interdependence with the role of the State in the basic creation of conditions through their protection and the formulation of public policies for their realisation. It is a comprehensive approach that makes it possible to order and prioritise the pending challenges for States in terms of gender, migration and human rights.

2.1.1 Economic autonomy²⁰

At present, a significant number of women who migrate do so on their own and not as a part of a family group. In spite of that, the economic opportunities for these women, in terms of labour integration in the region, has been and continues to be linked with poorer quality jobs, in the area of services and domestic work and caregiving, with high informality levels, severely constraining their access to basic social protection levels. Therefore, a predominant feature in Latin America and the Caribbean is the proportion of intraregional migrant domestic workers (35.3%), far above the average of North America, with only 3.3% of migrants doing it. To this, a significant number of migrants who perform tasks that do not reflect their skills and academic training should be added as a trend. In the Republic of Chile, for example, 34% of migrant women with secondary or higher education levels took on basic jobs compared with 22% of migrant male workers, and only 15% in relation to non-migrant women in 2018.²¹ Differences are also expressed in the wage gap between migrant men and women, which is wider than the wage gap between non-migrant men and women. This situation worsens with the more frequent denial of work and residence permits for immigrant women, which leads them to be inserted into increasingly precarious economies.²²

One of the structural obstacles to advance gender equality is the rigid sexual division particularly characterising Latin American societies. It impacts on the economic opportunities of women and girls, limiting their autonomy and the full exercise of their human rights. It is a way of organising life based on traditional gender roles, assigning the responsibility for paid and unpaid caregiving work to women. This type of work is, in a large part of our countries, still invisible in policies, statistics, economic calculations, and political discourse, and it has been undervalued by the society and decision-makers, in spite of the fact that its monetary value in many cases exceeds the GDP percentage contributed by the so-called productive employment. This reality, which was historically and culturally assigned to women within the family and subsequently to other women from the country, who were paid for their work, is now increasingly being assumed by migrant women in the countries of destination.

In effect, in the last decades, in the countries of Latin America and the Caribbean, there have been significant female migration flows to perform domestic and caregiving work, especially caring for children, older adults and disabled or ill people. Many women migrate from Latin America to take charge of the care of third parties, leaving behind their own dependents, who remain under the care of other women, resulting in the so-called 'global care chains'.²³ Even though the main displacements are towards European countries —mostly Spain—, intraregional care chains can be found in South America, particularly of Bolivian and Paraguayan women who travel to the Argentine Republic, and of Peruvian women

¹⁹ Granada, Ortiz, Muñoz *et al.* "La migración desde una perspectiva de género: ideas operativas para su integración en proyectos de Desarrollo" [Migration from a gender perspective: operational ideas for its integration in development projects]. Migration Unit and Gender and Diversity Division, Inter-American Bank, 2020, p. 25.

²⁰ Economic autonomy refers to women's capacity to generate income and resources of their own, based on access to paid work. It takes account of time use, and of women's contribution to the economy. It is associated with the creation of minimum conditions by States for the exercise and enjoyment of social and economic rights.

²¹ Op. cit. 25, pp. 21 and 22.

²² Castilla-Vázquez, 2017.

²³ IACHR. <http://www.oas.org/es/cidh/informes/pdfs/MovilidadHumana.pdf>

who travel to the Republic of Chile to perform childcare tasks.²⁴ It is a new phenomenon, of a transnational nature, which, due to the rapid expansion of markets outside national borders, the understanding of time and space resulting from the new technologies and transport, the transformation of production methods and their globalised value chains and demographical changes, among others, have led to a greater demand and crisis of care tasks. Thus, the social reproduction work that used to abide by roles assigned to women in their nuclear families and subsequently to other women from the same city or country, at present falls on migrant women, leading to an intersection between gender, ethnicity, class and/or place of origin which places them at the most precarious link in such chain.²⁵

As regards the income of migrant women resulting from their integration into the labour market in the countries of destination, gender plays a decisive role. Not only do they send most of their income to their countries of origin through remittances, but also privilege the family wellbeing, investing in health and education when they do have savings capacity, unlike migrant men, who save for risk management to supplement their income. In addition, studies suggest that, when men migrate, women are the ones left in charge of their children's care, whereas, when women migrate, other women generally replace them.²⁶ As regards migrants' children, gender roles also tend to be reproduced. It has been certainly proven that the size and frequency of remittances impact on children's retention in the educational system, avoiding their early integration into the labour market, but there is also a tendency to put boys first, and only when education is ensured are girls included.²⁷ In any case, these are case studies that do not make it possible to generalise the gender differences in terms of savings, use and purpose of remittances.

2.1.2 Decision-making autonomy²⁸

Historically, States have naturalised the sex/gender relations and subtracted the gender inequality issue from the political sphere. It is an exclusion that is sustained in the culture of privilege and in the persistence of opposing and hierarchical spheres —public/private— that prevent the sex/gender diversity from being accounted for and that assign spaces based on hegemonic gender roles. Migrants have limitations in South American States for the full exercise of their right to political participation, which depends on their migration status and also on the permanence and residence requirements established by the States. Nevertheless, this should not become a premise encompassing all forms of participation, even more so when it could help States to identify the needs of this population group. Such participation depends, in part, on the hegemonic gender relations in the country of origin and inside the nuclear family, but also on the social norms and gender roles that prevail in the countries of destination. In this sense, the countries of destination in South America have mostly assumed the principle of family unification as part of their migration policies, that is, they have given precedence, over the sovereignty that States have to decide who enters their country, to the entry of people with family members in the country of destination. This is a relevant family protection policy, especially for children. Still, the concept of family can also be a factor that influences the decision to migrate when the countries that receive migrants and apply the principle of family reunification do so on the basis of a nuclear, heterosexual and married-based family model. There is no information making it possible to see the composition of family groups that rely on the principle of family unification to enter the country, but it is evident that those countries which recognise various types of family and the rights of LGTBIQ+ people are destination countries of choice.

In migration expectations, gender relations shape decisions. On the one hand, they can reproduce stereotypes and gender roles understanding that it is mainly men in their character as providers that must migrate in search of opportunities outside the national borders or else it is young men that have more chances to do so as women and young women are

²⁴ Granada, Ortiz, Muñoz *et al.* "La migración desde una perspectiva de género: Ideas operativas para su integración en proyectos de desarrollo" [Migration from a gender perspective: operational ideas for its integration in development projects]. Migration Unit and Gender and Diversity Division, Inter-American Development Bank. 2021, p. 18.

²⁵ Op. cit. 25, p.35.

²⁶ Op. cit. 28, p.38

²⁷ Granada, Ortiz, Muñoz *et al.* "La migración desde una perspectiva de género: ideas operativas para su integración en proyectos de Desarrollo" [Migration from a gender perspective: operational ideas for its integration in development projects]. Migration Unit and Gender and Diversity Division, Inter-American Development Bank. 2020, p. 39.

²⁸ Decision-making autonomy is referred to women's involvement in decision-making at various levels of the different branches of government, and to measures designed to promote women's full participation under conditions of equality. Gender Equality Observatory for Latin America and the Caribbean CEPAL. <https://oig.cepal.org/es/autonomias/autonomia-la-toma-decisiones>

considered to be exposed to risks that oppose the roles learnt. However, migration can also contribute to changes in gender roles as a consequence, for example, of the forced migration of men and young men which may affect their expectations as providers or protectors of their families as they are less likely to access stable economic opportunities. For women and girls, labour migration can create spaces of greater autonomy if they flee from cultural contexts where gender rules and roles are more restrictive, in particular, for women.²⁹

The increased migration of women and girls has changed the scenario of migration flows and also women themselves. Even though the decision to migrate responds to the cultural gender dynamics in their countries of origin and their nuclear families, and, in spite of the fact that, when integrating into the countries of destination, the gender bias also contributes to determining how real or remote their possibilities can be, migrating is a transforming experience. Hence, at present women who migrate do so more on their own than as a companion in the nuclear family, which allows for the development of empowerment processes that give them greater control and resources to define their life projects.

2.1.3 Physical autonomy³⁰

Women, girls and sex/gender diverse persons are exposed to different manifestations of gender-based violence throughout the migration stages. It is one of the reasons to migrate and escape from abusive family or social environments, but it can also define the place of destination and/or the means of displacement. Younger women and girls, as well as some sex/gender diverse people, are more exposed than others to sexual violence and sexually transmitted diseases, including HIV. In addition, the financial, family and legal situation of these populations is decisive for the types of hazards and vulnerabilities that they face. Thus, for instance, the legal and/or economic dependence or poor-quality employment are factors that increase the possibility of domestic violence.

In Latin America, an increase in the cases of gender-based violence has been documented in the migrant population, mainly against women and girls.

In Peru, the Centros Emergencia Mujer (CEMs in Spanish, Women's Emergency Centres) of the Ministry for Women and Vulnerable Populations registered around 250 cases of violence in 2017 and 759 cases in 2018, out of which 91% were cases of violence against women, and 9%, against men, with an average of 48% of moderate violence cases and 23% of severe violence cases.

In 2019, one year before the COVID-19 pandemic, the CEMs registered 2,022 cases of violence against foreigners, out of which 88% was against women, and 12%, against men.

In 2020, in spite of the restriction on movement, the CEMs registered a total of 1,490 cases of violence against migrants, out of which 90% of the cases was against women and 9.7%, against men.

In addition, the level of risk shows that 47.12% of the cases (703) was moderate, followed by 35.1% of severe cases (523) and 17.7% of mild cases (264). As regards the type of violence that prevails against migrants, physical violence stands out with 47.1% (702 cases), followed by psychological violence with 40% (596 cases), sexual violence with 12.8% (191 cases) and economic violence with 0.1%.

Of the total cases of violence against foreigners, namely 1,490, 1,346 were against women and 144, against men.

As regards migration status, its variables were incorporated into the records, including: asylum seekers, refugees, stateless persons and others who do not fall within these categories or who would not provide their details, showing a high percentage —39.4%— of foreigners.

²⁹ Granada, Ortiz, Muños *et al.* "La migración desde una perspectiva de género: Ideas operativas para su integración en proyectos de desarrollo" [Migration from a gender perspective: operational ideas for its integration in development projects]. Migration Unit and Gender and Diversity Division, Inter-American Development Bank, 2021, p. 31.

³⁰ Physical autonomy is measured through two dimensions that reflect major social problems in the region: women's reproductive rights and gender-related violence. ECLAC, Gender Equality Observatory for Latin America and the Caribbean. <https://oig.cepal.org/es/autonomias>

In terms of nationality, of the total 1,346 women's cases, 1,102 were against Venezuelans, followed by Ecuador, Colombia, and Argentina, ranging between 35 and 42 cases.

From January to July 2021, 1,368 cases were registered at the CEMs (as at August 2021, there were 424 CEMs at a national level), out of which 88.9% was against women (1,216) and 11.1%, against men (152), with 51.5% of moderate violence cases, but 46.8% of physical violence cases, which predominate in the group of foreigners. Additionally, of such total cases of violence, 1106 were against Venezuelans, out of which 989 were women and 117, men.

As regards sexual and reproductive health, which encompasses the physical, mental and social wellbeing of women, girls and sex/gender diverse persons in relation to their reproductive system, as well as the possibility to have a satisfying sex life free of coercion, the access to adequate and quality information, and to medical and family planning services, is one of the greatest constraints for the exercise of their sexual and reproductive rights, and exposes women and girls to higher risks of unwanted pregnancy, sexually transmitted diseases, unsafe abortions and extreme maternal morbidity.³¹ In the cases of the Republic of Chile and the Republic of Ecuador, records of 2018 show that migrant women have higher hospitalisation rates than natives in connection with deliveries, and lower perinatal care rates, accounting for a lower access to preventive care and an increase in the need for postpartum hospitalisation. According to a study conducted by PROFAMILIA in the Republic of Colombia, Venezuelan migrants arriving in the country have a large number of unmet needs in terms of their sexual and reproductive rights; their main needs include access to planning services; prevention of sexually transmitted diseases; comprehensive sexuality education; effective access to maternal and child health care services; information on services for victims of sexual violence; and the protection of teenage pregnancy, and special youth services, among others.³²

II. Impact of the pandemic on migrant women, girls and sex/gender diverse persons in South America

It is difficult to measure the impact that the pandemic has had since its beginnings in the first quarter of 2020 in South America. Its rapid spread and case-fatality rate, as well as the lack of experience and a historical context where the role of the State and its social benefits have been reduced, added to the insufficient installed capacity to face it, have turned the quantification of its impacts into a real gap for the adoption of policies for the most affected groups, among them, migrants. However, at an early stage, international and regional multilateral agencies warned against the impact of the pandemic on the human rights of the most vulnerable populations.³³ The Inter-American Commission on Human Rights, following the Secretary-General of the United Nations, warned of the need to address the pandemic with a comprehensive, inalienable, universal, indivisible and interdependent approach so as to do so in the framework of full respect for human rights, and to focus on equality and non-discrimination together with a gender and intersectional perspective, in the context of respect for the rule of law and collaboration among States. It also stated that, in terms of the groups in a special situation of vulnerability, it was necessary for States to promote the elimination of stigmas and negative stereotypes that may arise in relation to certain groups of people, such as persons deprived of their liberty, women, indigenous peoples, people of African descent, disabled people, people living in poverty and extreme poverty, people in street situations, human rights defenders, including migrants and refugees and LGTBI+ people, in the context of the pandemic.

In particular, as regards women, the resolution raises the mainstreaming of a gender perspective into all the actions and policies implemented by States and governments, "taking into account the different contexts and conditions that could increase the vulnerability to which women are exposed, such as, *inter alia*, economic difficulties, age, status as a migrant or displaced person, disability, incarceration, ethnic or racial origin, sexual orientation, and gender identity and/or

³¹ Profamilia Colombia .USAID. at <https://www.profamilia.org.co/wp-content/uploads/2020/04/Desigualdades-en-salud-de-la-población-migrante-y-refugiada-venezolana-en-Colombia-Como-manejar-la-respuesta-local-dentro-de-la-emergencia-humanitaria.pdf>

³² Profamilia Colombia and IPPF at <https://profamilia.org.co/wp-content/uploads/2019/05/LIBRO-Evaluación-de-las-necesidades-insatisfechas-SSR-y-Migrantes-Venezolanos-Digital.pdf>

³³ Resolution No. 01/20 "Pandemic and Human Rights", adopted on April 10, 2020 in Washington D.C.

expression”, among others. This perspective should also be mainstreamed in committees and working groups in response to the COVID-19 health crisis, considering the needs of those with a migrant or displaced person status.

As regards migrants, UNHCR, IOM and UN-Women have suggested a set of lines of action that can be carried out by countries to ensure the rights of migrant and refugee women in the context of the pandemic. Therefore, they call upon governments to offer official and reliable information about COVID-19 and the prevention measures adopted; to guarantee access to sexual health care regardless of nationality or migration status, and to ensure access to COVID-19 detection tests at migrant holding centres. In addition, States are called upon to support civil society shelters with food and hygiene supplies in keeping with the WHO/PAHO recommendations, and to have safe shelters for women and girls who are survivors of sexual and gender-based violence, in special, migrant and refugee women, regardless of their migration status. Countries must consider gender-based violence response services for asylum seekers, refugees and migrants during the contingency, as well as the speeding up, as far as possible, of the processes and procedures for the definition of the migration and/or asylum status.³⁴ ECLAC, on its part, has reaffirmed the need “to adopt and strengthen gender, ethno-racial, generational, territorial and cross-cutting human rights approaches in all initiatives and policies. This is imperative in the context of the current pandemic —the direct and indirect effects of which are still unknown, as are the measures to deal with them— either through increased social spending or through the implementation of countercyclical initiatives involving some type of public debt”.³⁵ Nevertheless, the response to these recommendations has not been strong or efficient enough to avoid the problems stated for migrants and refugees, in particular, women, girls and sex/gender diverse persons. To administrative registration problems, pandemic-related ones are added, placing these groups in a situation of crisis and helplessness, in particular, in transit and destination countries.

In South America, the pandemic has brought about two equally complex effects: on the one hand, the decrease in migration flows due to the countries’ border closures and, on the other, the increase in the vulnerability of the population mentioned above as they are the most unemployment-prone population; they have fewer support networks, greater difficulty accessing the health system and —double— risk of COVID-19 infection than the rest of the population.³⁶ In South America, the pandemic has come at a time characterized by growing intraregional movements, resulting, according to ECLAC, in a migrant population estimated at more than 40 million, with increased emigration from the Bolivarian Republic of Venezuela, and “a new migration route from Haiti to South America, and various vulnerabilities associated with the route that crosses Central America, Mexico and the United States”.³⁷

The closure of borders in South American countries has not prevented the spread of COVID-19; quite the contrary, it has prevented its management and traceability as an increased entry of migrants through unauthorised border crossing points is verified. This situation has resulted in crises in the borders of several countries, ultimately with people waiting to return to their countries of origin. Temporary shelters in inhospitable places or outside consulates, overcrowding, lack of services, and situations of greater insecurity, in particular, of sexual violence, are some of the serious situations that migrant women, girls and sex/gender diverse people especially face and that increase the probability of COVID-19 infections. Thus, the pandemic leads to an exponential increase in the risks that migrants face throughout the migration cycle. “The vulnerabilities that pervade the migration cycle are heightened, such as the risks of job losses; declines in paid domestic employment for women; overrepresentation of migrant workers in front-line jobs; indefinite detention; a lack of prompt access to documentation needed for health care; poor housing conditions; and stigmatization of returnees in their communities of origin.”³⁸

In the countries of origin, the problems for family reunification and the potential reduction in income from remittances affect families and, especially, women. Higher exposure levels to trafficking and smuggling of persons, particularly of women and girls, the closure and militarisation of borders, arbitrary expulsions, the interruption of the journeys of those

³⁴IOM; UNHCR; UN-Women “Mujeres migrantes y refugiadas en el contexto de la COVID-19”, 2020, revised at <https://www.acnur.org/es-mx/5eb5ac714.pdf>

³⁵ ECLAC.COVID-19 Reports. The impact of COVID-19: an opportunity to reaffirm the central role of migrants’ human rights in sustainable development, Santiago, 2020. Revised at https://repositorio.cepal.org/bitstream/handle/11362/46353/4/S2000618_es.pdf

³⁶ Op. cit. 46.

³⁷ Op. cit. 46.

³⁸ Op. cit. 46.

people who seek refuge, and the transience and uncertainty in transit countries are some of the challenging situations that they are faced with.

In the countries of destination, the pandemic has brought about various types of difficulties for women, girls and sex/gender diverse people, including the fact that the measures adopted for health management and COVID-19 control are not always available, in particular, to migrants with an irregular status. In addition, the economic crisis and the resulting losses of jobs or income reduction seriously impact on migrants, who, in many cases, have been evicted from their homes as it was impossible for them to pay the rent. In Chile, the 80% increase in camps —public sites that are occupied by people who do not have access to housing— is mainly a migrant-related phenomenon. The concentration of migrant workers in low-productivity sectors —overrepresentation of men in construction work and of women in care work—, obstacles for the recognition of migrants' studies in the field of health, the uncertainty and fear translated into greater intolerance, racism, xenophobia and discrimination against lesbian, gay, bisexual, transgender, transsexual and intersex (LGBTIQ+) persons all increase risks and expose them to the virus to a larger extent. To this, forced return processes and the subsequent stigmatisation in their countries of origin for presupposing them to be infected are also added.

The pandemic has increased poverty and extreme poverty in Latin America and the Caribbean, and, according to ECLAC, migrant women and lesbian, gay, bisexual, transgender and intersex (LGBTI) persons fall within the most vulnerable groups in South America.³⁹ In particular, international agencies note that, due to the diverse forms of social and economic discrimination that LGBTI migrants encounter, they are in the informal sector of the economy, which prevents them from accessing labour benefits, as well as other kinds of assistance from governments.

A report by the UNDP notes that migrant women, particularly those involved in domestic care, face a higher likelihood of exposure to the disease when they remain economically active, and when unable to do so, as a consequence of movement restrictions, one of the consequences of the quarantine implemented in many countries in the wake of COVID-19 has been the increment in the unpaid work for women and girls within their homes, who experience harsh socioeconomic effects derived from income losses. Unequal power relations and discriminatory social norms may impose additional risks for migrants in contexts where xenophobia and discrimination may prevent them from accessing employment, livelihoods or services.⁴⁰

Migrant and refugee women have high levels of economic precariousness and their labour integration is mostly associated with domestic and care work. In the context of the pandemic, this type of work was the first to decline, along with the informal sector. An irregular migration status, in addition, limits the access of migrant women to the benefits and responses of governments in the face of the pandemic, as warned by ECLAC. Furthermore, IOM has stressed the situation of violence to which migrant women are exposed, as well as the increased trafficking and smuggling of women, stating that lockdowns obscure these crimes, on many occasions in addition to the unawareness of the mechanisms to report a crime and the fear of deportation experienced by women with an irregular status. As regards the participation of women in the decision-making processes that affect them and considering the experience of Ebola in 2014, the Inter-American Commission of Women (IACW) has stressed the need to include women in pandemic-related processes so that their necessities are not underrepresented.⁴¹

III. Legal frameworks and assistance and protection policies for women, girls and sex/gender diverse persons in South America

1 Legal frameworks

³⁹ ECLAC, 2020a).

⁴⁰ UNDP. The Economic Impacts of COVID-19 and Gender Inequality: Recommendations for Policymaking. Gender Area of the UNDP for Latin America. Available at https://equidaddegenero.mineduc.cl/assets/pdf/Webinar1_MR%C3%ADos.pdf

⁴¹ OAS-IACW OEA- CIM "COVID-19 en la vida de las mujeres Razones para reconocer los impactos diferenciados" [COVID-19 in Women's Lives: Reasons to Recognize the Differential Impacts], 2020 revised at <https://www.oas.org/es/cim/docs/ArgumentarioCOVID19-ES.pdf>

1.1 Principles and guidelines

All international human rights treaties make an important contribution to the respect, guarantee and protection of the rights of migrants. They create the obligation to adopt measures —legislative, judicial and administrative, among others— so as not to hinder or interfere in the exercise of rights, to guarantee them or to investigate, punish or redress their violation, and to protect the population from the infringement of rights by third parties. However, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Elimination of All Forms of Discrimination against Women constitute the specific international framework applicable to the situation of migrant women and girls and their rights. The States of South America, with only one exception, have ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and all of them, with no exception, the Convention on the Elimination of All Forms of Discrimination against Women; the Protocol relating to the Status of Refugees; and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. The Inter-American Convention against All Forms of Discrimination and Intolerance, which, for the first time, aims at creating a protection framework for LGBTI+ persons, should be added to these legal instruments.

Certain key principles are derived from this set of treaties, which guide the interpretation and application of the rights of migrants, such as the principle of non-discrimination, the principle of non-refoulement and the principle of family reunification. These principles, together with the progressive development of human rights by means of the interpretation of their compliance according to oversight bodies, have made it possible to address situations of multiple discrimination and the special need for protection of certain groups, such as migrant women, girls and sex/gender diverse persons, during the migration journey.⁴²

Non-discrimination clauses have evolved over time and based on different realities to protect the various historically discriminated groups. Sex/gender and nationality are two factors or categories whose incorporation into the non-discrimination principle is relevant to migrant women and girls. It is at the intersection of both categories that migrant women and girls gain visibility and become subjects with specific rights. The legal protection of sex/gender diverse persons is weaker, as the lack of explicit reference to a variable or category such as sexual orientation and gender⁴³ may lead to an interpretation or application which, in practice, reproduces heteronormative patterns.

The Plurinational State of Bolivia and Ecuador, in South America, incorporate in their respective constitutions provisions that acknowledge discrimination on the basis of migration status and sex/gender. In the case of Ecuador, reference is made to non-discrimination based on sexual orientation and gender identity, in addition to discrimination based on sex in its Constitution (Art. 11). In these cases, the constitutional hierarchy contributes to greater protection and conditions the entire legal system for this purpose. This is done by means of equality and non-discrimination clauses, and also by referring to special vulnerability situations. The Argentine Republic incorporates sex, gender and nationality in its migration legal framework, while (the Plurinational State of) Bolivia only mentions sex and nationality, similarly to the Eastern Republic of Uruguay. The Republic of Ecuador, on its part, incorporates the categories of sex, gender, sexual orientation and nationality in its respective framework laws on migration. In the case of the Republic of Chile, with the recent adoption of a law regulating migration and acknowledging the rights and duties of migrant persons, this principle is established, including migrants with an irregular status, but without referring to sex/gender as a non-discrimination factor. (The Bol.

⁴²General Recommendation No. 1 of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW:2010, para.7) and General Recommendation No. 26 of the CEDAW Committee (CEDAW:2008, para. 2).

⁴³According to the *United Nations Global Campaign against Homophobia and Transphobia*, **sexual orientation** refers to a person's physical, romantic and/or emotional attraction towards other people. Everyone has a sexual orientation, which is part of their identity. Gay men and lesbians are attracted to individuals of the same sex as themselves. Heterosexual people are attracted to individuals of a different sex from themselves. Bisexual (sometimes shortened to "bi") people may be attracted to individuals of the same or different sex. Sexual orientation is not related to gender identity and sex characteristics. **Gender identity** reflects a deeply felt and experienced sense of one's own gender. Everyone has a gender identity, which is part of their overall identity. A person's gender identity is typically aligned with the sex assigned to them at birth. Transgender (sometimes shortened to "trans") is an umbrella term used to describe people with a wide range of identities – including transsexual people, cross-dressers (sometimes referred to as "transvestites"), people who identify as third gender, and others whose appearance and characteristics are seen as gender atypical and whose sense of their own gender is different to the sex that they were assigned at birth. Trans women identify as women but were classified as males when they were born. Trans men identify as men but were classified female when they were born. Cisgender is a term used to describe people whose sense of their own gender is aligned with the sex that they were assigned at birth. Gender identity is distinct from sexual orientation and sex characteristics. (<https://www.unfe.org/es/definitions/>)

Rep. of) Venezuela does not refer to it either. The other countries make reference to it, but in regulations of a lower legal hierarchy or in other legal frameworks, for example, laws on the prevention and punishment of violence, including migrant women.⁴⁴

The Republic of Peru acknowledges, in its legislation on migration and the specific laws on gender-based violence and violence against women, concepts, principles, approaches and prohibitions to protect the migrant and refugee population. An example of that is the Migration Law, Legislative Decree No. 1350, which was enacted on January 6, 2017, after 20 years of the previous law, updating and adapting the regulations to the reality. Thus, the vulnerability of migrants due to family violence, among other reasons, is recognised in its Art. 11.

The following principles are also acknowledged: integration of migrants where the State guarantees the family unit of foreigners and nationals; family migration unit; best interest of children and adolescents; non-criminalisation of irregular migration; migration formalisation; and the principle of non-discrimination, among others. Victims of family and sexual violence are included in the group of migrants in a vulnerability situation.

In this same sense, the 2017-2025 National Migration Policy⁴⁵ included the gender perspective as one of its approaches, and incorporated the concepts of gender-based violence; violence against women; violence against members of the family unit; smuggling of migrants and gender discrimination, and included the following in the general objective of national standards to be enforced: promoting the human development of the border population, (...), guaranteeing human rights, establishing (...) specialised and multidisciplinary public services for the comprehensive assistance of victims of physical, sexual, psychological and economic violence.

In addition, Law No. 30364 —Law on the prevention, punishment and eradication of violence against women and members of the family group— explicitly includes the Intersectionality Approach in its Art. 3, para. 5, recognising the impact of gender-based violence on immigrant and refugee women.

The 2016-2021 National Plan against Gender-based Violence (D.S. No. 008-2016-MIMP) recognises violence against migrant women as one of the forms of gender-based violence.

Both instruments recognised violence against migrant women as one of the forms of gender-based violence, thus making it possible to shed light on the situation of vulnerability and the legal protection for migrant women, regardless of their migration status.

In the same vein, the 2018-2021 National Plan on Human Rights devoted, for the first time, an entire chapter to human mobility in all its forms, including stateless persons and refugees. In addition, it considers that, in order to prevent and address situations that create vulnerabilities among migrants, family violence, irregular status, etc., must be considered.

The National Policy on Gender Equality (D.S. No. 008-2019-MIMP) recognises that the term “women in their diversity” includes girls, adolescents, adults and older adults; indigenous, native, Afro-descendant and metis women; urban and rural women; heterosexual, lesbian, bisexual, transgender and intersex women; women with physical or mental disabilities; migrant, refugee and internally-displaced women; women living with HIV; women deprived of their liberty; women in prostitution, among others, who receive the gender-based violence prevention and assistance services.

Additionally, in the framework of the COVID-19 health emergency, Legislative Decree No. 1470⁴⁶ states that operators with responsibilities under Law No. 30364 must act with an unrestricted respect for human rights, therefore any act of

⁴⁴ Fries, Lorena. *Las Mujeres Migrantes en las Legislaciones de América Latina y el Caribe: Análisis del repositorio de normativas sobre migración internacional del Observatorio de Igualdad de Género de América Latina y el Caribe* [Migrant women in the Latin American and Caribbean legislation: Analysis of the repository of regulations on international migration of the Gender Equality Observatory for Latin America and the Caribbean], Gender Division, ECLAC. Santiago 2019, p. 26.

⁴⁵ Supreme Decree No. 015-2017-RE, issued on April 27, 2017.

⁴⁶ Issued in April 2020.

discrimination on the basis of sex, gender identity, sexual orientation, nationality, ethnic-racial and/or cultural identity, age, disability, among others, is strictly forbidden.

The trafficking in persons and the smuggling of migrants are international crimes and a serious violation of the human rights of migrant persons. All the States of South America have ratified the United Nations Convention against Transnational Organized Crime (the Palermo Convention) and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and have adopted special laws or the principle of non-discrimination in their migration laws. Bolivia and Brazil include nationality, sex and sexual orientation as reasons for discrimination. Colombia includes gender identity, sexual orientation and nationality. Ecuador, in keeping with its migration law, includes sex, gender and sexual orientation, in addition to nationality, in the law on trafficking and smuggling of persons. In Uruguay's framework law, reference is only made to sex as a category whose discrimination is prohibited.⁴⁷

Peru passed on July 26, 2021 the National Policy against Trafficking in Persons and its Exploitation Forms by 2030 (D.S. N°009-2021-IN), which incorporates the gender and intersectionality approaches, with considerable details about the effects on women, girls, boys and adolescents, establishing multiple services with indicators for its measurement and achievement of goals.

In addition, it has several instruments against trafficking in persons, such as the 2017-2021 National Plan against Trafficking in Persons, the Protocol for Accrediting the Vulnerability Situation of Victims of Trafficking in Persons⁴⁸, the Intra-Sectoral Protocol for the Care of Victims of Trafficking in Persons published by the Ministry for Women and Vulnerable Populations (MIMP, in Spanish), among other administrative rules for their assistance.

Additionally, as at July 2021, the "Action Guides for Operators of the National Peruvian Police, the Office of the Public Prosecutor and CEMs" was drafted for the application of gender and intersectionality approaches, with a focus on victims and human rights, applied to the investigation of the crime of trafficking in persons.

In relation to the principle of best interest of children and adolescents, Chile and Ecuador incorporate it and the latter, in addition, sets forth the principle of non-refoulement in its Human Mobility Law, stating that: "*People may not be returned or expelled to another country, whether it is their country of origin or not, where their rights to life, freedom or integrity and those of their family members are at risk of being infringed due to their ethnicity, religion, nationality, ideology, gender, sexual orientation, belonging to a certain social group, political opinions, or when there is substantial evidence that they would be at risk of being subjected to serious human rights violations in accordance with this Law and the international human rights instruments.*"⁴⁹ The formula used by Ecuador is a step forward which goes beyond the international standards of International Human Rights Law and, particularly, Refugee and Asylum-Seeker Law, as it includes attacks upon life, freedom or integrity arising from discriminatory acts, or serious human rights violations, granting protection against gender-based violence which may be suffered by migrant women, girls and sex/gender diverse persons.⁵⁰ On its part, the principle of family reunification is included in the migration legislation in Argentina, Ecuador and Uruguay, either as part of the principle of best interest, in this case of children, or separately from it. Notwithstanding the foregoing, in general, in all the countries of the South American Conference on Migration, this is a practice assumed as part of the public migration policy.⁵¹

Along with these principles, migration regulations and those which prevent and punish trafficking and smuggling of persons incorporate, in some cases, orientations and guidelines for the interpretation and application of those principles. They are "cutting-edge" rules in the sense that they seek to articulate the regulatory sphere with the design and implementation of public policies, providing coherence to the public action. Ecuador and Chile, for example, incorporate the *pro-homine* principle, granting a mandate to the public powers so that, in their interpretation and application, they

⁴⁷ Op. Cit. 54. P. 33.

⁴⁸ Passed through Decision of the Office of the Attorney-General No. 002636-2018-MP-FN, dated July, 18, 2018.

⁴⁹ Art.2, Chapter I of Human Mobility Law, Republic of Ecuador.

⁵⁰ Op. cit, 54, p. 34

⁵¹ Op. cit 54, p. 31

guarantee the rights of migrants in the broadest manner and restrict, as far as possible, the limits for their exercise.⁵² Peru, on its part, includes the gender approach in its regulations on trafficking and smuggling of persons, which implies “*acknowledging the situations of disadvantage and difference that exist between men and women when accessing resources and making decisions*”, and promotes the creation of special conditions to facilitate their participation and empowerment.

1.2 Rights of migrants

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families acknowledges a set of rights that are applicable to migrants regardless of their migration status, and extends such range of rights to migrant workers with an irregular status. Nevertheless, there are countries which establish differences in the access to the exercise of rights —particularly social rights— depending on their migration status. In effect, an irregular status decreases the guarantees and protection of migrants, particularly as regards social rights, especially having an impact on the most vulnerable populations, such as women, girls and sex/gender diverse persons. Even though the guarantee and protection to which the State is obliged, under international standards, is progressive and, therefore, somewhat flexible in its application, this flexibility is not absolute because immediate obligations of progressive development, non-deterioration and non-discrimination have been acquired in the adoption and implementation of legal, judicial and administrative measures. Still, countries make differences in relation to the access to and exercise of some rights, in particular for people with an irregular status, especially as regards the right to healthcare and housing rather than the right to education, given that access to basic and middle education has consolidated regardless of migration status. This is the case of Argentina, Bolivia, Brazil, Chile, Peru, Uruguay and Venezuela, which acknowledge so in their legal migration frameworks (See Annex I). In the particular case of Argentina and Bolivia, access also covers higher education. Ecuador, specifically, establishes equal access to social rights, regardless of migration status.

In terms of healthcare, Argentina and Peru generally set forth healthcare access for migrants, regardless of their migration status, in their respective migration laws and regulations. Bolivia specifies that such access is for sexual and reproductive health. Chile, on its part, includes healthcare for people with an irregular status and their dependants subject to the requirements established by the authorities. There are still few countries which guarantee access to housing, and which, together with the right to healthcare and education, establish a minimum standard of social protection. Bolivia, Brazil and Uruguay acknowledge it in their migration laws.

In addition, and in relation to each of the rights acknowledged for migrants, States tend to incorporate, in their legal migration frameworks, special protection rules for those populations who are in a greater vulnerability situation; pregnant women, victims of sexual and domestic violence or gender-based violence, such as the case of Bolivia, Chile and Ecuador. These provisions, along with the non-discrimination clauses, give rise to a care and protection framework for women, girls and sex/gender diverse persons, which compels States to set all their public actions within the international human rights framework.

The regulatory frameworks that aim at preventing, punishing and eradicating smuggling and trafficking are coordinated with the same logic, but they are far more explicit with respect to the measures to be adopted by States. They seek, above all, to protect victims ensuring confidentiality and/or anonymity, defence and legal advice —including their family members—, access to information or the right to participate in the various instances of the process, such as the case of Bolivia, Brazil, Colombia and Peru. Other countries grant stay permits, which may be temporary or permanent, such as Bolivia and Brazil, respectively. Among the immediate or middle-term measures in connection with the provision of material conditions to trafficking and smuggling victims for their stay during and after the investigations and prosecutions, Bolivia, Brazil, Colombia and Ecuador include physical and psychological health care, adequate and safe accommodation, and coverage of basic food and clothing needs. Colombia and Brazil incorporate access to education for victims, reinforcing the guarantee of this right in the migration regulatory frameworks.

Similarly to the framework laws regulating migration flows and guaranteeing rights for the migrant population, the framework laws on trafficking and smuggling of persons also consider the special vulnerability of certain groups of people,

⁵² Op. cit 54, p. 36

such as the particular case, in all countries, of children and adolescents. States like Brazil recognise the specific needs, especially in relation to gender, sexual orientation, nationality, ethnic or social origin, background, race, religion, age, migration status, social or family ties, among others, allowing for a broader perspective about the potential victims, or the Bolivarian Republic of Venezuela, which provides for an aggravating circumstance for criminal liability when there is violence, intimidation, deceit or abuse of the needy condition or gender of victims or vulnerable groups.⁵³

2. Policies, plans and programmes with a gender perspective

Based on the regulatory frameworks, States, through the different powers, are compelled to adopt legislative, administrative, judicial or other measures to meet their human rights obligations towards the migrant population. That translates into the design, implementation and assessment of public policies, plans, programmes, as well as the generation of institutional capacities to execute them in a timely and effective manner. The intersectoral coordination, as well as the permanent participation of the affected populations in the implementation and adoption of measures, contributes to achieving the human rights perspective and, therefore, the respect for and guarantee of the rights of migrants, without discrimination.

It is in relation to the measures informed by the countries that the States' response is analysed in terms of the key areas for the care and protection of migrant women, girls and sex/gender diverse persons.⁵⁴ From a methodological point of view, it is not possible to make comparisons among countries as regards the items being analysed. The responses to the questions initially sent to the countries by the Technical Secretariat of the SACM are very dissimilar and the information does not always have the same level of depth. However, it is possible to identify good practices and challenges for the care and protection of migrant populations.

2.1 Levels of coordination and intersectorality

As regards gender perspective inclusion, the States in the region show a dissimilar institutional architecture and different levels and degrees of intersectorality. In some cases, such as Uruguay, the National Migration Board, which is the presidential advisory body that coordinates migration policies, is made up of the Ministry of Foreign Affairs, Ministry of Labour and Social Security, Ministry of the Interior, and Ministry of Social Development, and it operates under the guiding principle of gender equality in public policies. That means that each of the ministries that are part of the National Migration Board has, within its respective structures, mechanisms to mainstream the gender perspective in the policies, plans and programmes developed. Even though the national gender equality mechanism is not part of such body, it is coordinated with the migration authorities to articulate a gender-responsive policy. This makes it possible to have a response system for the care and protection of migrant women and trans people, refugees and asylum-seekers, and for their prompt referral if cases of gender-based violence, or trafficking and smuggling of persons are detected. In addition, the National Migration Board includes the migrant department of the human rights division under the Ministry of Social Development, which has a sexual diversity department providing assistance to migrant trans persons who may have specific needs based on their gender identity.

In Ecuador, on its part, the 2008 Constitution recognises equality and non-discrimination based on gender, as well as the international migrant rights framework, and this is mainstreamed in all public policies, including the human mobility policy, especially considering migrant women and LGTBQ+ groups throughout their life cycles. The 2018-2021 National Agenda for the Equality of Women and LGTBQ Persons, aligned with the National Development Plan (2017-2021) explicitly acknowledges women, girls and LGTBQ persons as rights holders throughout their life cycle, including women and sex/gender diverse population in a human mobility situation. The National Council for Gender Equality has powers to draft, mainstream, enforce, follow-up and assess the human rights of women and LGTBQ persons, explicitly including women and sex/gender diverse persons in a mobility situation, without making any distinctions based on their migration status. It also provides technical guidance to the State's institutions and functions to incorporate the gender approach from an intersectoral perspective. In Paraguay, the concept that articulates the migration policy is that of gender equality,

⁵³ Op. Cit. 54, p. 42.

⁵⁴ To this end, the Technical Secretariat of the SACM sent the States that are part of the conference a set of questions and a survey to be able to establish good practices and challenges in the region in relation to the care and protection of migrant women and sex/gender diverse people.

which acknowledges women's right to personal development on an equal footing with men, and their right to play autonomous roles as the main protagonists in those spheres, including the migration movements in the societies of origin and destination. Although they have intersectoral bodies where the Ministry of Women's Affairs participates, they do not inform about migration policies, plans and programmes which account for how and where the incorporation of the gender perspective is applied.

(The Bol. Rep. of) Venezuela, in its response to the Technical Secretariat, does not refer specifically to the coordination or intersectoral work, but points out that the Convention on the Elimination of All Forms of Discrimination against Women is part of its legal system and is reflected in its constitutional principles, government plans and organic laws with a direct and immediate enforcement by all governmental bodies. The "Mamá Rosa" Gender Equality and Equity Plan is an example of the inclusion and mainstreaming of the gender perspective, built with the active and key participation of people's organisations.

Brazil has a National Migration Board, which is the State body in charge of the cooperation, coordination, communication and information of migration policies and actions. It is made up of the Ministries of Justice and Public Security; Foreign Affairs, Citizenship; Economy; Education; Science, Technology, Innovation; and Communications⁵⁵, in addition to representatives from trade unions and professional associations, who, based on their powers, may call other public entities as required. The Technical Secretariat of the National Migration Council is the coordination body and has a technical team of professionals and specialists to fulfil the tasks assigned by the Council in terms of public migration policies. Moreover, the National Committee for Refugees (CONARE) is the body in charge of providing care and support to asylum-seekers and refugees, who, by registering their status, may access protection measures.

Argentina adopted Migration Law No. 25.871 in 2003, and Regulatory Decree No. 616/2010 in 2010, which constitute its regulatory basis for the migration policy development. It guarantees equal rights with nationals, providing they meet the conditions for entry and stay determined by the law. The National Directorate for Migration, under the Ministry of the Interior, is the body in charge of enforcing the migration rules and it is responsible for drafting and implementing public policies on this matter.

Peru has a permanent multi-sector Commission, the "Intersectoral Board for Migration Management" (MTIGM, in Spanish)⁵⁶, whose Presidency and Technical Secretariat are under the responsibility of the Ministry of Foreign Affairs (MRE in Spanish)⁵⁷. In addition, it has more than 15 similar Boards presided by Decentralised Offices of the MRE.

It is in charge of the National Migration Policy, including the crosscutting gender perspective.

From this space, several actions and regulations have been coordinated for the benefit of migrants and refugees with the Technical Secretariat, under the Ministry of Foreign Affairs, whose representative is a member of the Board.

2.2 Information and administrative records about the migrant population

Since 2008, the Migrant Department of Uruguay has systematized the information on the procedures carried out by migrants, as well as on the people who apply for them, and since 2003 it has implemented a process to improve the registration of information, including variables broken down by sex and gender identity, sociodemographic data and country of origin, among others, at all levels. The mechanism for the advancement of women (INMUJERES) has also been involved, which incorporated the same variables in its own administrative records at its direct assistance units.

In the Republic of Ecuador, the migration status information is obtained from population and housing censuses. It has a Statistical Entry and Exit Registry of Ecuadorians and foreigners, which aims at quantifying the international movements in the country, based on the transport routes used. Individual information is collected by migration control offices, which operate in the national territory through the Migration Undersecretariat of the Ministry of the Interior. The information is published on a yearly basis. Since 2006, the information has been channelled in the Migration System (SIMIEC), which

⁵⁵ <https://portaldeimigracao.mj.gov.br/pt/>

⁵⁶ The MTIGM was created by means of Supreme Decree No. 067-2011-PCM.

⁵⁷ The Technical Secretariat of MTIGM was assumed by the Subdirectorate for Migration Policy of the MRE, in keeping R.M. No. 0947-2014/RE.

incorporates the variables of sex, including an undefined category, age, country of origin, migration regular and irregular status, reasons for migrating, and belonging to indigenous population, among others. They report that, due to the high migration flow from Venezuela, they have implemented a biometric registration which breaks down information by age, sex, place of residence, migration status, occupation, level of education, intention to stay for a long time in the country, working characteristics and health, among others. In addition, since 2010, the Commission on Gender and Priority Groups has been in charge of promoting the collection of information including migrant women, girls and LGBTI persons.

The Federative Republic of Brazil has a system referred to as Sisconare, through which the refugee status recognition is applied for, and the Observatory of International Migration. The information recorded is broken down by race, age, sex, nationality, income, etc. Although the gender identity variable is not included there, it is recorded at the interview (use of the social name). Paraguay only incorporates the sex and nationality variables, in addition to more traditional information about the person (date of birth, ID number, country of origin, profession). Venezuela does not report information.

In the Eastern Republic of Uruguay, the gender variable is considered in the records of the Migrant Department, including the breaking down of people with a trans gender identity. This breaking down is relevant for the purposes of referral, making it possible to identify situations and needs to be addressed. From an intersectoral perspective, and considering that the Human Rights Division is also made up of the Sexual Diversity Department, at the time of providing care to migrant trans persons who have other requirements related to their gender identity (healthcare, economic services such as the “Tarjeta Uruguay Social”, etc.), actions are coordinated with such department and people are referred to it.

In the case of the Argentine Republic, the National Directorate for Migration has information about residence applications and migration movements of migrants. Although it does not have updated information about the number of migrant women and girls in the country, the administrative records are broken down by sexual identity and country of origin, in the case of migrants with a regular status. In the Plurinational State of Bolivia, the Migration Directorate recognises the need to improve the indicators which make it possible to disaggregate the information by ethnicity and sex/gender diverse identity.

2.3 Gender-based violence: Migrant women and femicide, transvesticide and transfemicide registration systems

All countries have some kind of legislation to prevent, punish and eradicate gender-based violence, and policies aimed at providing care and protection to victims. The bodies responsible for implementing these policies are the national mechanisms of gender equality; therefore, they should include migrant women in their mandates with the necessary coordination with agencies specialised in policies on and assistance of women, girls and sex/gender diverse persons, for their comprehensive approach.

The Republic of Ecuador, which has adopted the Comprehensive Organic Law to Prevent and Eradicate Violence against Women (LOIPEVCM, in Spanish), including all forms of gender-violence and the protection of sex/gender diverse people, has created a Single Violence Register (RUV) and determined that it must reflect the variables which make it possible to characterise this problem and validate, process and update the information generated by the entities that are part of the National Comprehensive System for the Prevention and Eradication of Violence against Women. In compliance with such mandate, the Technical Board for the RUV construction, currently in its design and construction phase, provides for the “migration status” variable in one of its preliminary technical documents.⁵⁸ The Strengthening Group of the femicide indicator updates and reports, on a weekly basis, information about the number of victims and the status of femicide cases brought to court. The register includes variables such as areas, causes, perpetrators and figures or case files, geographical disaggregation by area, province, district, division, the alleged murderer/perpetrator variable and the status of the proceedings and preliminary stage, and the presumptive crime. However, they do not inform transvesticides and transfemicides. As regards asylum-seekers, they are prioritised in the case of detection or report of sexual abuse or gender-based violence and they can choose the sex of their interviewer in such cases.

⁵⁸ Migration status variable: it is the resident or temporary visitor status granted by the Ecuadorian State so that foreigners can transit or reside in its territory through a permit to stay in the country. Foreigners may acquire the following migration statuses: resident or temporary visitor. (Organic Law on Human Mobility, 2017). (Dictionary of variables in construction, MDG 2021).

In the framework of Law No. 19.580 on Gender-Based Violence against Women, the National Women's Institute (INMUJERES) of the Eastern Republic of Uruguay has established a gender-based violence response system, consisting of various mechanisms including all women above 18 years of age, and among them, Afro-descendant, trans, disabled, migrant, refugee and asylum-seeking women. Such law empowers the Executive Power to grant legal residence to foreigners who remain in the country with an irregular status and who are in a special vulnerability situation. Moreover, the Migrant Department coordinates and makes the corresponding referrals to INMUJERES when gender-based violence cases or trafficking situations are identified. In relation to the registers, they report that, in the framework of the agreement between the Ministry of the Interior and the National Women's Institute of the Ministry of Social Development, research was conducted by an interagency group, coordinated by the Gender Policies Division of the Ministry of the Interior and made up of the Gender-based Violence Division of Inmujeres with the aim of establishing criteria to categorise the various modalities that result in the murder of a woman because she is a woman, and to have information making it possible to categorise, from a sociological point of view, femicides between 2012 and 2018.

On its part, the Bolivarian Republic of Venezuela has a Gender-based Violence Observatory System, including variables such as the victim's type of death, relationship between the femicide perpetrator and the victim, aggravating circumstances of the case, characteristics of the victim, type of femicide and femicide perpetrator's status. In addition, they include an ethnic variable: if the population is black, of African descent, indigenous, if there is a disability situation, if they are part of the LGBTI+ community, and migrants or people mobilised in an unsafe situation.

In Peru, in 2019, 166 femicides were registered; in 2020 there were 131 femicides; and from January to July 2021, there were 84 femicides, out of which 13.1% were girls and adolescents, 82.1%, adult women, and 4.8%, older adult women.

The Office of the Public Prosecutor noted 3 cases of femicides against Venezuelans and a type-I⁵⁹ case against an Ecuadorian, in 2019. In 2020, it also noted 3 cases of femicides against Venezuelans and 6 type-I cases against Venezuelans; as well as 1 case of femicide against an Ecuadorian; and 3 type-I cases without nationality details.

As regards attempted femicides, in 2019, there were 3 cases against Venezuelans and 4 type-I cases against Venezuelans; 1 attempted femicide against a Colombian; and 17 cases of attempted femicides against a foreigner whose nationality was not registered. In 2020, there were two cases of attempted femicide against Venezuelans and one type-I case against a Venezuelan; 1 case of attempted femicide against a Bolivian and 10 cases of attempted femicide against foreigners whose nationality was not registered.

By means of an Emergency Decree,⁶⁰ the provision of economic assistance was established to contribute to the social protection and comprehensive development of indirect victims of femicide, and the Regulations thereof were also approved in 2020.⁶¹

In addition, in the various Protocols for assistance and protection from gender-based violence, the care of migrants, asylum seekers and refugees has been explicitly included, thus migrants in a situation of violence can access justice and equality before the law, receiving assistance and protection regardless of the regular or irregular migration status. Hence, they have the Violence Assistance Protocol for operators of the National Peruvian Police and the CEMs. The 100 Hotline Protocol⁶² (for violence cases) includes differentiated treatment with specific guidelines for: internal and external migrants; LGBTI persons; older adults; disabled people; girls, boys and adolescents; indigenous and Afro-descendant people; missing persons or people in a situation of vulnerability; people exposing their descendants to risks. Gender-based violence is also included in the Care Protocol for CEMs⁶³, the Protocol for the Joint Action of CEMs and Health Centres,

⁵⁹ Prosecutorial investigations following the death of women, launched for the alleged crime of femicide, but which are in a preliminary investigation stage upon the updating of the Register of Femicides (cutoff date).

⁶⁰ D.U. 005-2020.

⁶¹ D.S. N° 001-2020-MIMP.

⁶² Approved in June 2021 by the national programme Aurora –MIMP.

⁶³ Approved in March 2021 by the national programme Aurora –MIMP.

and the Base Joint Action Protocol for Comprehensive Assistance and Protection from Violence against Women and Members of the Family Group (2019).

Additionally, the Interagency Action Protocol for Femicides, Attempted Femicides and High-Risk Partner Violence⁶⁴ has a specific provision on migrant women.

The Argentine Republic has broken down information about women, girls, adolescents and sex/gender diverse persons affected by domestic violence. In the case of the Plurinational State of Bolivia, the information could be articulated with various governmental bodies to obtain specific data that may make it possible to collate indicators, especially when it comes to violence and femicide.

2.4 Health care services available, including sexual and reproductive health care

Health care access has been considered as it is one of the factors determining the living conditions of women, girls and sex/gender diverse population. It is in this sphere that both a State's openness to a broader understanding of the identities involved in relation to sexual and reproductive health, and its capacity to respond to the needs, in particular, of sex/gender diverse and migrant persons, may be identified.

The Bolivarian Republic of Venezuela has developed training and education programmes on sexual and reproductive health. Thus, through the Canaima Educativo Project and the Bicentenary Collection, it has developed digital resources and texts providing information about various topics in the area of sexuality and reproductive health. It has plans and programmes to prevent teenage pregnancy, and, through the Ministry of People's Power for Women and Gender Equality, in coordination with the Ministry of People's Power for Health, it has a national plan for the protection of sexual rights and reproductive rights of women, especially addressed to those who are in a greater vulnerability situation.

The Eastern Republic of Uruguay has mechanisms for allowing migrant women, LGTBI + persons and the trans population to access the right to health care, including sexual and reproductive health. In 2019, 222 memberships were processed in the State's Healthcare Services Administration (ASSE), providing care to migrants without documentation. In relation to the LGTBIQ+ population, in the same year, the Ministry of Social Development, together with the Municipality of Montevideo, drafted the LGTBIQ+ Resource Guide, for the purposes of systematising a set of national, departmental and local resources —benefits, friendly services, committed institutions, social organisations, and others—which may be accessed by LGBTIQ persons in the city of Montevideo, strengthening the capacities to support national, departmental and municipal social operators in meeting the rights of this population. Access to social benefits, including health care, is guaranteed through the access to temporary documentation, prior to the granting of permanent residence, by the Ministry of Foreign Affairs or the National Directorate for Migration of the Ministry of the Interior, as applicable.

Ecuador has the 2017-2021 National Sexual and Reproductive Health Plan, and the 2018-2025 Intersectoral Policy on Pregnancy Prevention in Girls and Adolescents (PIPENA), whose main objective is to contribute to the adolescents' universal access to information, education including comprehensive sexual education, sexual and reproductive health care services, so as to be able to make free, responsible and healthy decisions on their sexuality and reproduction.

The Federative Republic of Brazil guarantees equal rights for migrants, asylum-seekers and refugees acknowledged by CONARE, and this acknowledgement is what enables them to access free public services, including specialised areas for women and LGTBIQ+ groups. In the case of the Republic of Paraguay, the General Directorate for Migration does not have mechanisms guaranteeing access to information about the health care services available, including sexual and reproductive health for migrant women, LGBTI+ persons, adolescents and girls, and the access to comprehensive hormone treatment for the LGBTI+ population.

The Argentine Republic, through National Migration Law No. 25.871, guarantees the right to health care for all migrants, regardless of their migration status. In addition, sexual and reproductive rights are protected by the National Constitution, International Human Rights Treaties and by National Laws. Furthermore, there are resolutions and recommendations of

⁶⁴ On June 13, 2018, by means of Supreme Decree No. 004-2018-MIMP, the updating of such Protocol was approved.

the National Health Ministry and of each jurisdiction which determine how health care institutions should act to respect the rights of this population. In this framework, on January 24, 2021, Law No. 27.610 came into effect, which extended the rights related to termination of pregnancy.

The Plurinational State of Bolivia does not record any information.

In the context of the pandemic, Peru determined, through Legislative Decree No. 1466, the protection of all persons infected or at risk of being infected with COVID-19, regardless of their migration status or documentation for the state-supported insurance.

It is necessary to recall that it is legally obligatory to deliver emergency kits in cases of rape for the population in general. This is established by Supreme Decree No. 008-2019-SA, which approved the Action Protocol for CEMs and health centres, as well as the Health Directive No. 083-MINSA/2019/DGIESP “Health Directive for the use of kits in cases of rape”, approved through Ministerial Resolution No. 227-2019/MINSA, dated March 7, 2019.

The Ministry of Health approved Health Technical Standard No. 164-MINSA/2020/DGIESP “Health Technical Standard for the Comprehensive Care of Women and Members of the Family Group Affected by Sexual Violence” through R.M. No. 649-2020-MINSA.

2.5 Participation of women, girls and sex/gender diverse persons

In general, and based on national processes and the alignment of the countries’ national development plans with the SDGs, mechanisms for participation are increasingly being consolidated in the countries in the region, in keeping with a human rights approach, in the design and implementation of public policies, in general, and migration policies, in particular.

Thus, the Republic of Ecuador, for example, reports the existence of a National Gender Equality Council (CNIG, in Spanish), which is the gender mechanism of the Ecuadorian State. This Council appointed an AD-HOC Advisory Council,⁶⁵ which included the participation of a female delegate from migrant women organisations. The objective of this Council was to draft the regulations for the creation of the Women Advisory Council and the LGBTI Advisory Body.

The CNIG is currently conducting all the necessary actions prior to the call for establishing the Advisory Councils. The regulations of the women’s Advisory Council set forth that it shall be composed, among other women, of: a woman leader and/or representative of *de facto* or *de jure* organisations of migrant women, with her respective alternate member; a woman leader and/or representative of *de facto* or *de jure* organisations of refugee women, with her respective alternate member. In addition, within the scope of human mobility, since 2018, National Human Mobility Boards⁶⁶ have been implemented, which make it possible to inform about the public policies adopted and to hold a dialogue over time among international agencies, Decentralised Autonomous Governments and civil society, for the purpose of finding solutions to different migration issues. Women and LGBTI groups in a human mobility situation participate in these boards.

The Eastern Republic of Uruguay, on its part, informs about the Migration Consultative and Advisory Council (CCAM), created in the framework of Migration Law No. 18.250, made up of social and union organisations related to this matter, aiming at advising the National Migration Board in the design of migration policies and the follow-up of the enforcement of the rules in effect in this area. In addition, the governing body for the advancement of women, INMUJERES, has a Multiple Discrimination Department, which, through its Development and Autonomy Division, aims at strengthening the link with civil society organisations, particularly organisations for migrant women, who are a priority.

⁶⁵ It is an *ad hoc* body, prior to the official creation of the Advisory Council, whose establishment is determined by Ecuadorian regulations. It was created for the purpose of drafting the regulations for the creation of the Women Advisory Council and the LGBTI Advisory Body.

⁶⁶ The Human Mobility Boards are developed at 3 levels: National Boards, Intersectoral Boards and Regional Boards.

The Federative Republic of Brazil describes that consultation processes addressed to sex/gender diverse persons have been conducted, in particular with respect to the drafting of the Manual on the Assistance of LGBTBIQ+ Persons who are asylum-seekers and refugees.

(The Bol. Rep. of) Venezuela stresses the generation of consultation processes for women, including migrant women, whose results are part of the Annual Operating Plans (POA, in Spanish) of public institutions.

In the case of the Argentine Republic, the National Directorate for Migration and the National Population Directorate are empowered to convene migration-related organisations so that they propose concrete plans and initiatives making it possible to meet the objectives established by the law.

The Republic of Paraguay informs that, although the Directorate General for Migration has not established spaces for the dialogue with civil society organisations, the Ministry for Women's Affairs engages in dialogue with members of non-governmental organisations (NGOs) and main political female referents.

2.6 Training and skills development

The training and skills development of public officers is an essential tool for promoting, guaranteeing and respecting the rights of migrants. In effect, in their capacity as State agents, at all levels, from the direct care of migrants to migration policy making, and regardless of the migration stage in which people in a human mobility situation are, they are responsible for the realisation of these rights and the protection from violations and risks to which they may be exposed. In particular, in relation to women, girls and sex/gender diverse persons, training requires the understanding of the various forms of expression of the structural discrimination based on sex/gender, ethnicity and nationality, assuming a gender and intersectional perspective accounting for the various expressions of discrimination, as well as the different factors that justify and reproduce it, and which the State takes part of.

The Argentine Republic and the Republic of Ecuador report that in 2020 they focused their training sessions for police/customs officers and Armed Forces personnel on the assistance of LGBTBI+ women and trans women from a rights perspective. In the case of the Federative Republic of Brazil, the training sessions reported are focused on the humanitarian response and its access, considering the rights of asylum-seeking and refugee women. Finally, the Republic of Paraguay refers to training in the assistance of women and girls who are victims of trafficking and smuggling.

In the case of the Republic of Peru, in terms of the Protocols for gender-based violence assistance, a series of guidelines for migrants, LGBTI persons, disabled people, Afro-descendants, and indigenous people have been included. Training is provided to operators of the 424 CEMs at a national level, which deal with violence cases. In addition, justice workers at a national level also receive training.

3. Policies, plans and programmes during the pandemic

COVID-19 has forced all the countries in the region to adopt health, economic and social measures. The urgency to apply them has not always been accompanied by an action addressing how the pandemic impacts migrant women, girls and sex/gender diverse persons. The pandemic may contribute to increasing migration flows and/or exposing migrants, and particularly the most vulnerable groups, to a greater lack of protection. Despite the emergency situation in the countries of South America, and the little statistical information, special attention was paid to the collection of information about the adoption of measures including migrant women, girls and sex/gender diverse persons. All the countries have informed about the measures adopted to respond to the health emergency and its resulting social and economic crisis. However, it is not always possible to identify specific actions accounting for the intersectionality or collating of discriminatory variables affecting such migrant populations.

In all the countries, it is seen that public policies, plans and programmes addressed to refugees, asylum-seekers or victims of trafficking and smuggling of persons are much more robust. There are circuits allowing for the registration and priority care of this population, even when the information is not necessarily disaggregated by sex/gender.

Based on the development of a diagnosis of the COVID-19 impact on women, including migrant women, the Republic of Ecuador adopted a set of measures to guarantee fulfilment of the human rights of women, girls and LGBTIQ+ persons during the pandemic and once the State of Emergency is lifted in the country.⁶⁷ It has sought to place on the public agenda the debate not only about the care of dependant people, but also about the life that, in this health emergency, women are leading, as they are suffering from the worsening of social inequities in highly complex and violent settings. The gender perspective and the inclusion of migrant women and sex/gender diverse persons are among the measures adopted. The Humanitarian Assistance and Temporary Shelters Board of the Emergency Operations Committee (COE) is in charge of coordinating the guidelines for caring and protecting the population and it has protocols and guidelines for people in a human mobility situation, including women, children, girls and adolescents, LGBTIQ+ persons, and other groups in a vulnerability situation. During 2020, the COE conducted information dissemination actions for the registration of the contingency bonus and the delivery of a complementary food kit, and interviewed women and children arriving in humanitarian flights, in order to identify potential cases of violence and provide adequate care, among other actions. In addition, the Ministry of Economic and Social Inclusion implemented the care service for people in a human mobility context and in a vulnerability situation, with an emphasis on children and adolescents, by means of procedures for the referral to social services and the coordination at an interagency and intersectoral level, for the purpose of preventing other infringements and restoring their rights, in particular of migrant children who are unaccompanied or have been separated from their family environment, foreign people in a human mobility context who are in a vulnerability situation, such as the elderly, pregnant women, people with a catastrophic illness, disabled people, people in a begging situation, victims of violence and LGBTIQ+ persons, including vulnerable people in transit. To reach the target population, a strategy has been developed to communicate the risks and provide information through campaigns and implementing telephone and online service systems, coordinated by the Communications Secretary for all the media. Finally, and considering the pandemic impact on the worsening of gender-based violence situations, Ecuador reports the sustained organisation of prevention and care campaigns for gender-based violence victims, as well as the activation of alert systems.

The Republic of Uruguay, through the Ministry of Social Development, provides social services to address the needs of the most vulnerable populations, who are especially at risk in the face of COVID-19. Along this line, the Migrant Department has applied a contingency plan since the health emergency declaration on March 13, 2020, taking into account the particular characteristics of the migrant population. They report that care has been provided to this population by an institutional Whatsapp chat and by email, and that referrals are made through a free landline telephone, avoiding face-to-face contact, and health care services have been reinforced. They stress the maintenance of advice and support to migrants for the online application for documentation. The Ministry of Social Development, considering the special vulnerability of migrants with an irregular status, has implemented food provisions for those people who needed them and had no other income, using online platforms for communication. The Migrant Department, on its part, developed an action for the delivery of baskets through a separate mechanism, which implied the registration, management and face-to-face delivery of baskets throughout 2020. Finally, the Eastern Republic of Uruguay is initiating a special registration system for migrants who have no ID and need to access the National COVID-19 Vaccination Plan.

The Argentine Republic, since the beginning of the pandemic, has implemented coordination mechanisms with other countries with a view to enabling the return by air and land of Argentineans and residents, as well as of those who wanted to return to their places of origin. In these operations, priority was given to people in a vulnerability situation due to the lack of financial resources, old age or families with minor children, even facilitating the entry of foreign relatives to be able to accompany those who are in that kind of situations in their return journey.

⁶⁷ Strategic actions were also provided by the Women's Ad-Hoc Advisory Council and the LGBTI Ad-Hoc Advisory Council of the CNIG, which operated until June 25, 2020. For the time being, the process is in a stage of selection of the final Advisory Councils to be approved by the Plenary Session of the CNIG. <https://www.igualdadgenero.gob.ec/acciones-estrategicas-covid-19-sector-publico-2020-2021/>

(The Bol. Rep. of) Venezuela reports the strengthening of voluntary repatriation plans considering the high migration flow towards other countries in the region and the entry problems affecting people as a consequence of the closure of borders or the slow response for entry by the transit or destination countries. In that framework, the programme “Vuelta a la Patria varados” (Getting back home – stranded people), added to the already existing programme “Vuelta a la Patria vulnerables” (Getting back home – vulnerable people), was created.

The Federative Republic of Brazil, on its part, by means of CONARE’s acknowledgement of the migrant, asylum-seeker or refugee status, has adopted emergency aid measures in the context of COVID-19, as well as measures for the access to social policies, including health and social assistance, with specialised areas for women and LGBTQI people. In addition, and in keeping with the World Health Organisation’s public declaration of the pandemic and its Declaration of Public Health Emergency of International Concern on January 30, 2020, the terms for migration regularisation were extended up to September 2021. Asylum-seekers are provided care and interviewed remotely.

In Peru, at the beginning of the pandemic, in April 2020, Legislative Decree No. 1470 was adopted, establishing specific measures to reinforce the State’s action so as to guarantee assistance in cases of violence against women and members of the family group during the health emergency caused by COVID-19. They ensure the immediate attention of violence cases within 24 hours, and protection measures shall be immediately executed regardless of the risk level (mild, moderate, severe). The protection measures provided for before the health emergency shall also be immediately executed, with the use of technology-based messaging, the immediate reception of complaints, promptness and immediacy.

A key feature of this rule is that it prohibited discrimination based on diverse aspects, such as sexual orientation, gender identity, sex, nationality, etc. and it established that services for violence cases may not be suspended and that technological means and messaging should be used to provide protection measures and solve cases of violence.

Mechanisms for the Prevention of Violence against Women and Members of the Group Family, with the input of criminal records, were created.⁶⁸ Provisions for the prevention and protection of disabled people⁶⁹ in the face of the health emergency caused by COVID-19 were stipulated. Mechanisms and actions for the prevention, care and protection of older adults during the health emergency caused by COVID-19 were strengthened⁷⁰.

In addition, the Ministry of Health coordinated with the Ministry of Transport and Communications the use of the messaging system to inform the national population of the availability of services for the assistance and protection of women and member of the family group who are victims of violence. Thus, the citizens in general became aware of the services available. More than 22 million mobile phone users were reached.

Several communication campaigns, such as “Vivamos sin violencia también en emergencia” [let’s live without violence also during the emergency], “En tiempo de emergencia, no estás sola” [in times of emergency, you’re not alone], “Vivamos el aislamiento con igualdad” [Lockdown with equality], etc., were performed.

4. Areas with a serious lack of protection

4.1 Strengthening of the State’s capacities for an effective and timely response in the provision of care and protection to migrant women, girls and sex/gender diverse persons

Although the legal frameworks enshrine the principle of non-discrimination and consider various factors of prohibition, such as sex, gender, nationality, migration status, among the most relevant ones, these are not necessarily reflected in the institutional designs and migration policies. There is still, with a few exceptions, a significant gap between the acknowledgement and guarantee of rights and the public policy mechanisms to fulfil them. This is a gap that has recently started to narrow with interagency arrangements which aim at incorporating the gender perspective and human rights

⁶⁸ D.U. No. 023-2020.

⁶⁹ Legislative Decree No. 1468 (2020).

⁷⁰ Legislative Decree No. 1474 (2020).

approach in the policies, plans and programmes adopted, and which seek to identify and not leave behind those groups that have been historically neglected, such as women, girls and sexually dissident and diverse people. In this framework, the tools allowing for the production of information based on administrative records, as well as the intersectoral coordination, are intermediate mechanisms that would enable a better identification of the needs and barriers faced by these groups in their migration journey.

The disparity and, in many cases, the lack of information disaggregated by sex and gender identity in the migration records of women, girls and sex/gender diverse persons is an issue arising in most South American countries. Various public institutions have information on women and girls, and there is even certain capacity for administrative registration regarding LGTBQI+ persons, but this information is not collated with migration or other variables so as to identify people and the situations in which they are unprotected. Thus, as a consequence of the diversity of sources and/or the lack of coordination among the sectoral institutions which have records, needs do not gain visibility and the effectiveness and timeliness of the measures adopted are restricted.

Furthermore, even when levels of coordination are identified, in particular between the migration authority and the lead gender equality authority, if they do not form part of broader intersectoral bodies, the incorporation of the gender perspective in practice becomes more difficult, also considering that, in the structural inequalities affecting migrant women, girls and sex/gender diverse persons, the inequalities that these populations bring from their countries of origin coexist with those which they may possibly face in the countries of destination, having an impact on all the spheres of life: economic, social, cultural and political.

These challenges affect both the access to and guarantee of social rights, particularly in terms of health care, and the assistance and protection against violence. In effect, the countries inform about policies that, by means of their national gender equality mechanisms, provide care to violence victims, and about referral systems in some cases, but they do not refer to their interaction with the migration authority, or they solely point out that it is the former's competence and that it covers the needs of the entire population, including women, girls, and sex/gender diverse persons. However, policies addressed to victims of trafficking and smuggling of persons, as well as those aimed at caring and protecting refugees and asylum-seekers, are much clearer in their circuits, they have more detailed information and more efficient mechanisms of intersectoral coordination, according to the information submitted.

4.2 Irregular status and social rights

One of the serious problems that the pandemic has unveiled is the lack of protection suffered by migrant women and sex/gender diverse persons with an irregular status, as not all the countries have information about the migration status in their respective registers, thus hindering, on many occasions, the access to basic social benefits. An irregular status may lead migrants to avoid getting in contact with public services for fear of being expelled from the country, thus making it necessary to have a robust, permanent and accessible communication strategy which details the benefits to which they have access regardless of their migration status, or even the access restrictions as a result of such status. Moreover, the only way to discourage the fear of applying for the various benefits provided by the State is through processes to regularise such status and to facilitate the access to temporary documentation.

The right to health care, including sexual and reproductive health, with a different scope in the laws and public policies of South American countries, appears as one of the main needs for the migrant population, followed by the access to education and housing. In any case, in the health sphere, the care and protection of sex/gender diverse persons is present only in some countries; most countries provide binary health care reproducing the traditional priorities when it comes to assisting women and girls.

4.3 Gender-based violence and discrimination

The design, implementation and assessment of the policies for the prevention, care and protection of victims of gender-based violence are guided by the national gender equality mechanisms, and they are incorporated in the gender equality plans of the various countries. All of them have estimates on gender-based violence and femicides, and the nationality

and migration variables are included in their respective registers. However, with a few exceptions, there are no adjusted mechanisms that would have made it possible to inform and compare the impact of gender-based violence and its most brutal expression, femicide, on migrant women and girls. Referral mechanisms for providing timely care are also reported, but there is no coordination with judicial officials providing protection as a response to such situations, except for victims of trafficking and smuggling of persons.

As violence is a problem which impacts the safeguarding of all human rights, its approach in terms of immediate response also requires a logic of comprehensive intervention focused on prevention and the solution of the economic and social problems that are part of the violence circle, particularly with respect to people in a vulnerability situation. Special attention should be paid to women and girls with an irregular status, whose violence situation is not detected in the countries which do not collect information about them.

As regards transvesticides and transfemicides, the information is not sufficient and illustrates the need to incorporate, in the characterisation of gender-related murders, elements making it possible to identify this type of violence to provide a timely response.

In Peru, according to the system for the registration of complaints of the National Peruvian Police (SIDPOL), in 2019, 2,875 complaints of violence against migrants were reported. In 2020, 3,564 complaints were registered.

Additionally, there is also the register of the Office of the Public Prosecutor, which reported, in 2019, 1,939 cases of foreign victims of serious injuries caused by violence and attacks against women and members of their family group. In 2020, these cases amounted to 1,503, with the highest number of cases in Lima, Lambayeque and Loreto.

In addition, in the CEM records of the Ministry for Women and Vulnerable Populations, in 2019, there were 2,022 cases of assistance/support to migrants in cases of violence; in 2020 there was a total of 1,490 cases, and from January to July 2021, a total of 1,368.

Likewise, in terms of girls, boys and adolescents, in 2019, 169 complaints were recorded in SIDPOL for cases of violence involving foreign girls, boys and adolescents, of whom 104 are female and 65, male.

In 2020, 264 complaints were recorded in SIDPOL for cases of violence involving foreign girls, boys and adolescents, of whom 168 are female and 126, male. As can be seen, one of the features of the registers is that they are not unified or interoperable, which may reflect overlapped or duplicated data. This is due to the fact that some registers process information of the total women, girls and adolescents, and others do so separately, such as SIDPOL, and, on many occasions, these cases have had the legal support of a CEM, a complaint has been filed with the National Police and got to the Office of the Public Prosecutor, but, on others, they have faltered along the way. Thus, a case may be repeated three times or, to the contrary, its process may not be recorded until the end, evidencing the pending task to standardise administrative records and implement the interoperability of systems so that cases can be identified with a national identity card number, with a single register, or clearing them in order to have not only the exact number of complaints but also a coordinated follow-up.

In addition, it should be considered that, according to the ENDES surveys conducted every year by INEI, of the total people surveyed who declared to have suffered from violence in that year, only 29% goes to an institution to file a complaint or ask for help, and that percentage is repeated every year, with a $\pm 0.1\%$ or 1% difference. This suggests that there is another 70% who do not receive support to escape from violence, which is why more prevention and dissemination actions need to be strengthened, and services need to reach citizens. Therefore, CEMs started to be created within police stations; at present there are more than 100 CEMs inside police stations with round-the-clock assistance. In addition, three shifts a day were established, with opening hours for weekends and public holidays in the regions or districts with the highest number of violence cases.

4.4 Caregiving

Women account for 92% of the migrant paid domestic workers in Latin America, a much higher figure than the percentage of women (74%) among migrant paid domestic workers at a global level (ILO, 2015). They face obstacles for employment, above all in the services area and, in particular, in the provision of care.⁷¹ The levels of labour precariousness and informality where they work have worsened during the pandemic, and this sector is one of the most severely hit during the confinement periods, as evidenced by the answers of the countries to the survey conducted. In addition, a relevant part of their income is sent through remittances to support their families in their countries of origin, thus, affecting them. However, and despite the impact caused by this situation, there is no information about it, or about permanent follow-up mechanisms which may encourage emergency plans for this segment, only identifying humanitarian emergency measures to face the lack of income and food suffered by many sectors of the population. Only one country reports policies aimed at shedding light on the caregiving work and, in any case, there is no reference to self-care policies, plans and programmes, which is the category into which migrant women workers who perform this kind of paid work fall.

Migrant sex/gender diverse persons are more unprotected. Their access to a quality job faces obstacles related to gender stereotypes and stigmatisation due to their migrant status. No information is available about the type of jobs that they have access to and their conditions, but it is feasible to suppose that they are at a higher risk of being victims of violence and discrimination, in particular, in the countries of destination where the heteronormativity is stricter.

4.5 Pandemic and post-pandemic

One of the great challenges for the countries in the region is to implement a specific policy for the protection of migrant women and sex/gender diverse persons in contexts of extreme vulnerability, such as the pandemic. International research on this topic shows the differentiated impact of COVID-19 on women and, in general, on the most vulnerable groups, such as sex/gender diverse persons, indigenous people and Afro-descendants. This implies diagnosing the main problems affecting such populations during the pandemic and considering the strengthening of consultation processes with migrant organisations which are aware of the needs and risks to which they are exposed. These are populations that face the highest levels of defencelessness due to the lack of information, fear of being expelled when in an irregular situation, added to the fact that they have no support networks and a high rate of labour precariousness, and they are subject to an increased intolerance in the face of a situation of fear and uncertainty such as those generated by the pandemic.

Undoubtedly, the closure of borders as a consequence of COVID-19 has given rise to humanitarian emergency situations in some countries and encouraged responses which prioritise the national population. Migration during a pandemic still requires the international collaboration and joint work so that the countries of origin, transit and destination can respond to the needs, in particular of migrant women, girls and sex/gender diverse groups which exponentially increase the risks that they face. The initiatives and arrangements contributing to the entry of migrants, particularly under the principles of family unification and best interest of children, or facilitating the entry of women and LGBTIQ+ persons affected by sexual and gender-based violence situations, and pregnant women contribute to their protection. Return plans are also reported, which, when provided in terms of election and without future constraints, contribute to alternatives in times of emergency.

Moreover, prompt access to vaccines, sexual and reproductive health care and mental health care services are central for migrant women and sex/gender diverse persons in a pandemic situation, in particular, for people with an irregular status. The pandemic in the entire continent has shown its impact on the most vulnerable populations and an increase in

⁷¹ M. E. Valenzuela, M. L. Scuro and I. Vaca Trigo, “Desigualdad, crisis de los cuidados y migración del trabajo doméstico remunerado en América Latina” [Inequality, care crisis and migration of the paid domestic work in Latin America], *serie Asuntos de Género* (Gender Affairs series), No. 158 (LC/TS.2020/179), Santiago, Economic Commission for Latin America and the Caribbean (ECLAC), 2020, p. 25 onwards.

inequality. Special attention must be then paid to humanitarian emergencies at borders as a result of their closure and under conditions that increase the risk of being victims of violence and discrimination.

But emergency response must not leave aside the need to anticipate post-pandemic social and economic impacts. It is necessary to understand that, upon opening the borders, the migration flow, as suggested by experts, will increase in countries with a more dynamic economy, as well as with higher levels of population immunity resulting from mass vaccination, thus border units will have to facilitate access and avoid the use of unauthorized border crossing points which only create a greater hazard for migrant women and sex/gender diverse persons.

In Peru, vaccines were given to migrants, regardless of their regular or irregular migration status, in keeping with the age groups, under the same conditions as Peruvians.

4.6 Training and skills development

The training and skills development reported by countries reflects the need for a training and skills development policy. Training and skills development sessions for police/customs officers and Armed Forces personnel in the humanitarian assistance of migrant women and sex/gender diverse persons is highly relevant, as they are the ones who first provide care and information to such population. It is also essential for them to receive training on international human rights law with respect to women seeking asylum and refuge, as well as women who are victims of trafficking and smuggling. The training and skills development must be extended to all public administration officers, especially health care and education personnel, who work at the housing and labour ministries, and those in charge of providing financial aid to face the pandemic and post-pandemic.

Also through training and skills development will countries succeed in meeting their international and national juridical obligations. These training sessions must also replace existing theoretical frameworks for others incorporating gender perspective making it possible to survey the experiences and differentiated impacts faced by women in migration processes, both in the countries of origin and transit, and in the host countries.⁷² It is also important for this gender perspective to assume gender diversity, as well as the mainstreaming with diverse identities, and to incorporate race and ethnicity.

For migrant women, girls and sex/gender diverse persons to be able to fully exercise their rights, eradicating all forms of discrimination, States must promote on-going training and skills development in their public policies, focusing on vulnerable populations and incorporating in them the experience of civil society, particularly organisations with expertise on migration and gender, and with an intersectional perspective.

5. Recommendations to draft guidelines for the care and protection of migrant women, girls and sex/gender diverse persons

a) Establishing a regional observatory (South America) of good practices related to migration and gender policy, with the participation of women and LGTBI groups' organisations, following up the efforts of the various countries in this area.

b) Installing permanent consultative bodies to address issues related to migrant women, girls and LGBTI+ persons — particularly between the SACM and the Regional Conference on Migration (RCM)— to advance the development of migration policies with a gender approach and an intersectional and intercultural perspective considering the work of the Regional Observatory.

⁷² Fries, Lorena. "Las mujeres migrantes en las legislaciones de América Latina, Análisis del repositorio de normativas sobre migración internacional del Observatorio de Igualdad de Género de América Latina y el Caribe", Serie División de Género (Gender Affairs series), ECLAC.

- c) Generating spaces for intersectoral coordination making it possible to address the complexity of sex/gender and migration relationships beyond the migration authority and the national mechanisms for gender equality, including, by way of example, Ministries of Economy, Labour, Health, etc.
- d) Incorporating regularisation processes in the countries of destination for the purposes of including, in practice, the needs of migrants in the various social benefits provided by each country, particularly in the areas of health care and gender-based violence.
- e) Moving towards a single register of statistical data and records of migrants, integrating variables such as sex, sex/gender identity, age, ethnic-racial origin, national origin, migration or residence status, and work, which includes, at least, information on health care provisions and gender-based violence reports, keeping the information confidentiality in these cases.
- f) Strengthening campaigns to prevent discrimination and xenophobia, particularly against migrant women and sex/gender diverse persons so as to contribute to the integration of these groups in the country of destination.
- g) Providing more information in the countries of origin about the countries of destination, including relevant cultural and regulatory aspects concerning gender gaps, so as to facilitate informed migration-related decisions, particularly with respect to gender-based violence, delivering information about assistance mechanisms in these situations.
- h) Considering the humanitarian crisis caused by the pandemic and the greater risk faced by women, girls and sex/gender diverse persons in their migration journeys in this context, promoting the authorisation of assistance points at border crossings in countries of transit, origin and destination to address hunger, health care and sexual violence situations.
- i) Providing the COVID-19 vaccine to migrants on the same terms as nationals, regardless of their migration status.
- j) Enabling plans for the return of migrants from countries of transit and destination without any conditions which may limit their possibility to migrate again, with a special emphasis on the principle of family reunification and the best interest of children.
- k) Considering gender-based violence as a factor to which the principle of non-refoulement of migrant women, girls and LGTBQ+ persons who suffer from it is applied, and granting temporary documentation to facilitate their referral to care and protection circuits and their follow-up.
- l) Broadening the offer of training in non-discrimination and sex and gender identity-based violence for the migration police. These training sessions need to be incorporated as part of the curriculum and intensified in emergency situations at borders. In addition, training must be provided to the police, resulting in trained officers to identify women, girls and LGTBQ+ persons who are victims of sexual violence and gender-based violence.
- m) Training the entities responsible for migration policy making for greater protection and guarantee of rights related to gender and migration, as well as public officers of sectors such as health care, education, labour and housing with respect to the national and international regulations enabling the exercise and enjoyment of economic, social and cultural rights by migrant women, girls and sex/gender diverse persons.
- n) Seeking to include sexual and reproductive health care for LGTBQ+ people in the health care provisions for migrants.
- o) Moving forward to the organisation of national campaigns about paid domestic and caregiving work, and the role of migrant women in the care chain for their recognition, and moving forward to legal frameworks adapting this kind of work to the general rule regarding employment contracts.

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Annex I. Social rights of South American countries which acknowledge migrants in their legal migration frameworks:

Country	Rights and scopes of protection
Argentina	<p><u>Article 4:</u> The right to migration is a fundamental and inalienable human right which is guaranteed by the Argentine Republic on the basis of the principles of equality and universality.</p> <p><u>Article 5:</u> The State shall ensure conditions of effective equality of treatment so that foreigners may enjoy their rights and fulfil their obligations, as long as they meet the conditions established for their entry and stay, according to the laws in force.</p> <p><u>Article 6:</u> The State, in all areas falling within its jurisdiction, shall guarantee migrants and their families equal access under the same conditions with regard to protection and rights as those enjoyed by nationals, particularly with respect to social services, public goods, health, education, justice, employment and social security.</p> <p><u>Article 7:</u> In no case shall a foreigner's irregular migrant status prevent him or her from being accepted as a student in a public or private national, provincial or municipal educational establishment at the primary, secondary, tertiary or university level. The authorities of educational establishments shall provide guidance and advice concerning the procedures for resolving irregularities in migrant status.</p> <p><u>Article 8:</u> The right to health, social assistance and health care shall not be restricted or denied to any foreigner, regardless of his or her migrant status. The authorities of health care facilities shall provide guidance and advice concerning the procedures for resolving irregularities in migrant status.</p> <p><u>Article 9:</u> Migrants and their families are entitled to receive information from the State regarding their rights and the requirements pertaining to their entry, presence and departure.</p> <p><u>Article 16:</u> The States shall take all adequate and effective measures to eliminate employment in the national territory of migrant workers in an irregular situation, including, sanctions on employers of such workers. The rights of migrant workers vis-à-vis their employer arising from employment shall not be impaired by these measures.</p> <p><u>Article 18:</u> The State shall provide for the adoption and implementation of measures aiming at regularising the migration status of foreigners.</p>
Plur. State of Bolivia	<p><u>Article 12:</u> The State guarantees to foreign migrants the exercise and enjoyment of the following rights:</p> <ol style="list-style-type: none"> 1. To migration based on the principles of equality, universality and reciprocity. 2. To health care, sexual and reproductive rights. 3. To adequate habitat and housing. 4. To work, social security, basic social services and benefits; to paid employment or self-employment, according to the provisions of this Law. 5. To the access to basic and higher education. 6. To making an individual or collective, oral or written request for a prompt and timely response.

	<p>7. To freedom of residence, stay and movement in the entire Bolivian territory, in the framework of the legal system.</p> <p>8. To family reunification with parents, spouses, dependent children or children of age with disabilities.</p> <p>9. To vote in municipal elections in accordance with the specific regulations.</p> <p>10. To seek and receive refuge, in the framework of the legal system, and the international treaties and conventions ratified by the Plurinational State of Bolivia.</p> <p>11. To freedom of thought, spirituality, religion and worship.</p> <p>12. To freely express and disseminate thoughts or opinions.</p> <p>13. To access information in keeping with the law.</p> <p>14. To create and be part of associations with the limitations established in the Political Constitution of the State, the laws and rules in force.</p> <p>15. To prevent gender-based violence and vulnerability situations that may be suffered by women because of their migrant status.</p>
Brazil	<p>Article 7: These are priority actions in the implementation of the Municipal Policy for the Migrant Population of Sao Paulo:</p> <p>I. Guaranteeing social assistance, ensuring access to social rights and providing shelter services to immigrants in a social vulnerability situation.</p> <p>II. Guaranteeing universal access to health care for the migrant population according to the special needs of the migration process, the differences in epidemiological profiles and the characteristics of the health system in the country of origin.</p> <p>III. Promoting the immigrants' right to decent work, meeting the following conditions: equal treatment, inclusion of the migrant population in the formal labour market and promotion of entrepreneurship.</p> <p>IV. Guaranteeing to all child, adolescent and adult immigrants the right to education in the public and municipal network.</p> <p>V. Valuing the cultural diversity, guaranteeing the participation of the migrant population in the Municipality's cultural agenda.</p> <p>VI: Coordinating actions aiming at providing the migrant population with access to housing programs, promoting their right to a decent house, whether it is temporary, short- or middle-term or definitive.</p>
Chile	<p>Circular 6.232</p> <ul style="list-style-type: none"> -Access to primary health care for migrant women, including those in an irregular situation, who are pregnant. -Access to basic and middle education for migrants' children, including those with an irregular status. - Access to justice for migrants in cases where they are a party and for persons deprived of their liberty.



Ecuador	<p>Ecuadorian people abroad</p> <p><u>Article 5.</u> Right to access plans, programmes and projects abroad.</p> <p><u>Article 6.</u> Right to send and receive remittances.</p> <p><u>Article 7.</u> Right to the confidentiality of their data.</p> <p><u>Article 8.</u> Right to consular protection.</p> <p><u>Article 9.</u> Right to information.</p> <p><u>Article 10.</u> Right to Ecuadorian cultural identity.</p> <p><u>Article 11.</u> Right to health.</p> <p><u>Article 12.</u> Right to access justice.</p> <p><u>Article 13.</u> Right to political participation.</p> <p><u>Article 14.</u> Right to request the localisation of missing or isolated Ecuadorian relatives abroad.</p> <p><u>Article 16.</u> Right to civil registry and identity services.</p> <p><u>Article 17.</u> Right to middle and higher education, and access to scholarships abroad.</p> <p><u>Article 18.</u> Right of association.</p> <p><u>Article 19.</u> Right to access the National System of Public Data Registration.</p> <p><u>Article 20.</u> Right to social security.</p> <p><u>Article 21.</u> Identification of vulnerability. 4. Being elderly, a pregnant woman, a person with disability, or with a catastrophic or high-complexity illness who, without guardians, family members or sufficient economic resources are at serious risk; 5. Being a victim of domestic or gender-based violence.</p> <p>Foreign people in Ecuador</p> <p><u>Article 43.</u> Right of free responsible mobility and safe migration</p> <p><u>Article 44.</u> Right to apply for a migration status.</p> <p><u>Article 45.</u> Right to migration-related information.</p> <p><u>Article 46.</u> Right of social participation and organisation, regardless of the migration status.</p> <p><u>Article 48.</u> Right of children and adolescents to integration.</p> <p><u>Article 49.</u> Right to political participation.</p> <p><u>Article 50.</u> Right to registration of titles.</p> <p><u>Article 51.</u> Right to work and social security of resident workers.</p> <p><u>Article 52.</u> Right to health. Public or private institutions providing health care services may not, in any case, deny emergency care based on a person's nationality or migration condition.</p>
Peru	<p><u>Article 7.</u> Access to public health care services, regardless of the migration status.</p> <p><u>Article 8.</u> Access to public education services, regardless of the migration status.</p> <p><u>Article 9.</u> Access to justice without discrimination due to migration status.</p> <p><u>Article 10.</u> Access to social programmes and services for foreigners in a vulnerability situation.</p> <p><u>Article 11.</u> Protection of labour rights subject to the private regime, even when they are in an irregular situation. The irregular status does not prevent actions in defence of their rights.</p>



Uruguay	<p><u>Article 7.</u> The Uruguayan State guarantees to foreigners entering and staying in the national territory in the manners and conditions established in this law the right to equal treatment with respect to nationals as subjects with rights and obligations.</p> <p><u>Article 8.</u> Migrants and their relatives shall enjoy rights to health, work, social security, housing and education on an equal footing with nationals. Such rights shall be similarly protected in either case.</p> <p><u>Article 9.</u> An irregular migration status shall not prevent, in any case, foreign persons from having free access to justice and health care facilities. The authorities of those centres shall implement the necessary services to provide migrants with the information which enables their regularisation in the country.</p> <p><u>Article 10.</u> The Uruguayan State shall guarantee the right of migrants to family reunification with their parents, spouses, cohabitants, single minor children or children of age with disabilities, according to article 40 of the Constitution of the Republic.</p> <p><u>Article 11.</u> The children of migrants shall enjoy the fundamental right of access to education receiving the same treatment as nationals. The access of migrant workers' children to public or private education institutions shall not be denied or limited based on their parents' irregular status.</p> <p><u>Article 12.</u> All migrants shall have the right to receive from the State information related to their rights, duties and guarantees, especially regarding their migration status.</p> <p><u>Article 13.</u> The State shall implement actions to foster the sociocultural integration of migrants in the national territory and their participation in the public life decisions.</p> <p><u>Article 14.</u> The State shall ensure respect for the cultural identity of migrants and their family members, and shall foster their ties with their States of origin.</p>
Bol. Rep. of Venezuela	<p><u>Article 13.</u> Foreigners who are in the territory of the Republic shall have the same rights as nationals, without further limitations than those established in the Constitution of the Bolivarian Republic of Venezuela and the laws.</p>