

POLICY PAPER

MIGRATION EXPERIENCES OF PEOPLE WITH DIVERSE SOGIESC



Migration Experiences of People with Diverse SOGIESC. Policy Paper

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Acknowledgements

This publication was developed as part of the Making Migration Safe for Women project funded by the Federal Republic of Germany. It was drafted by Carly Fuglei and was further revised by Michael Stewart-Evans, Inkeri von Hase and Jocelyn Chu (UN Women, Economic Empowerment Section). A particular thanks goes to Sophie West-Browne (UN Women Policy Specialist on LGBTIQ+ Rights) who generously contributed her expertise to refine this paper.

The views expressed in this publication are those of the author(s) and do not necessarily represent the views of the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), the Government of Germany, the United Nations or any of its affiliated organizations.

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ECONOMIC EMPOWERMENT SECTION
UN WOMEN

New York, December 2023

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ACRONYMS

GCM	Global Compact for Safe, Orderly and Regular Migration
HIV	Human immunodeficiency virus
HRW	Human Rights Watch
ICE	United States Immigration and Customs Enforcement Agency
LGBTIQ+	Lesbian, gay, bisexual, transgender, intersex and queer
OECD	Organisation for Economic Co-operation and Development
NGO	Non-governmental organization
PTSD	Post-traumatic stress disorder
SOGIESC	Sexual orientation, gender identity and expression, and sex characteristics
UNHCR	United Nations High Commissioner for Refugees

EXECUTIVE SUMMARY

Lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ+) people face unique and specific risks at all stages of migration. Their experiences of migration are distinct from other migrants due to the multiple and intersecting forms of discrimination they may face, especially owing to their diverse sexual orientations, gender identities and expressions, and sex characteristics (SOGIESC). As part of a series of studies on the intersections of gender and migration, this paper aims to fill a considerable gap in literature on the experiences of LGBTIQ+ people globally at all stages of migration.

REASONS FOR MIGRATION

Many LGBTIQ+ migrants leave their countries of origin due to persecution and/or discrimination based on their SOGIESC. Systemic violence against LGBTIQ+ people is often state-sponsored and may result in profound traumatization, imprisonment or even death at the hands of state or non-state actors. As of July 2023, 62 UN Member States criminalize consensual same-sex acts, some of which are punishable by death and/or life in prison, and many countries also have laws criminalizing certain forms of gender expression. Consensual same-sex relations between women are still criminalized in at least 42

countries around the world, and LGBTIQ+ women face alarming rates of violence. Moreover, LGBTIQ+ people face high levels of discrimination in the labour market, greater difficulty in accessing decent work, and are often denied access to services such as healthcare and housing in their countries of origin. The extreme marginalization and abuse that many LGBTIQ+ people experience in society, including physical and sexual violence, family rejection, homelessness and employment discrimination are often key factors in their reasons for migrating.

HUMAN RIGHTS VIOLATIONS, DISCRIMINATION AND ABUSE IN TRANSIT

LGBTIQ+ migrants face distinct risks during the migration journey due to their diverse SOGIESC. These include significant physical and sexual violence from a variety of actors, unsafe shelters, harassment and violence in immigration detention centres, denial of access to adequate healthcare and other critical services, and discrimination by border agents, police, immigration officers and service providers. Such rights violations are widespread and sufficiently well-documented to provide evidence that LGBTIQ+ migrants are particularly at risk during transit. Transgender women may face especially high levels of violence and abuse during their migration journeys, including from traffickers, smugglers and other migrants.

Many LGBTIQ+ migrants travelling via irregular channels are detained in immigration detention centres in transit countries or in their intended countries of destination,

where they routinely face physical and sexual violence and discrimination. Transgender migrant women are especially vulnerable to abuse in detention centres because they are often detained in cisgender male spaces, as many immigration detention centres are not equipped to safely house transgender or gender-diverse people. In addition, they are often denied access to healthcare and other critical services.

For LGBTIQ+ migrants, above all transgender and gender-diverse people, the absence of accurate legal documentation can create additional challenges. Official documentation that does not match a person's gender identity or expression can lead to discrimination and ill treatment by border authorities, police officers, social service providers or other officials and individuals may be denied the right to pass through a border or checkpoint.

ARRIVAL AND INTEGRATION IN COUNTRIES OF DESTINATION

LGBTIQ+ migrants are likely to confront economic, health and protection risks and multiple and intersecting forms of discrimination in countries of destination. These risks are not only based on their SOGIESC, but also on migration status and other factors including race or ethnicity, religion and income. In some situations, LGBTIQ+ migrants end up in countries with anti-LGBTIQ+ laws.

Publicly available data on the participation of LGBTIQ+ migrants in labour markets in countries of destination are limited. However, research on the economic participation of LGBTIQ+ people in Organisation for Economic Co-operation and Development (OECD) countries, as well as several countries in the Asia-Pacific region, shows that LGBTIQ+ people face numerous forms of discrimination in labour markets. Hiring discrimination and the risk of being fired due to their SOGIESC means limited access to decent work. As alternatives, LGBTIQ+ people must find alternative employment in the informal sector, including sex work, or take jobs that are not aligned with their education and/or work experience.

Some LGBTIQ+ people migrate to countries with more accepting political and social environments and may feel a newfound sense of ease. But persistent racism, xenophobia and discrimination based on migration status and non-normative SOGIESC can limit or prevent access to services and contribute to further marginalization. In some contexts, LGBTIQ+ people have been denied access to housing or

faced serious discrimination while trying to secure it. Moreover, LGBTIQ+ migrants often face specific health risks in their countries of destination such as higher rates of depression, anxiety, post-traumatic stress disorder (PTSD), suicidality, dissociative disorders, panic disorders and substance abuse, particularly when their journeys are associated with displacement and detention or camp environments.



Photo: UN Women/Tara Milutis

RETURN

Little information exists on returned LGBTIQ+ migrants. What is available mostly focuses on cases of denied asylum applications. However, given that many LGBTIQ+ migrants would be returning to countries in which their

SOGIESC is criminalized or heavily stigmatized, it is likely they would encounter the same dangerous and/or discriminatory situations that underpinned their reasons for migrating in the first place.

LACK OF RESEARCH AND DATA

Lack of information on the situations of LGBTIQ+ people at all stages of migration is a major issue, largely owing to a lack of political will, capacity and financing to collect and use such data. Even in countries where data on SOGIESC are collected, analysis and publication of findings on SOGIESC are still not widely practised. Local and

international NGOs and human rights organizations carry out research on violations against LGBTIQ+ migrants that occur in transit, such as those perpetrated by smugglers, traffickers and border agents. However, given their vulnerable situations, many survivors do not report these violations.

INTRODUCTION

Lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ+)¹ people face systemic discrimination and high levels of violence, leading many to migrate to places that seem to offer better safety, protection and quality of life, including the freedom to openly express themselves. LGBTIQ+ people face specific risks and challenges at all stages of migration due to their actual or perceived sexual orientation, gender identity and expression, and sex characteristics (SOGIESC). As part of a series of studies on the intersections of gender and migration, this paper explores the migration experiences of LGBTIQ+ people globally. Specifically, it examines the risks to LGBTIQ+ people's safety, security and physical and mental health at all stages of migration, as well as their limited access to education and livelihood opportunities.² It also highlights the important contributions LGBTIQ+ migrants make to their new communities and calls for expanded and tailored support at all stages of migration.

This paper introduces the issues migrants with diverse SOGIESC face and is based on a literature review of some 100 publicly available English-language documents and secondary data analysis. Documents reviewed include academic research, studies undertaken by governments, international and local non-governmental organizations, and international human rights laws, conventions and covenants. Reliance on English-language sources poses significant limitations, and any future studies would

benefit from more comprehensive analysis of non-English language resources and literature from countries in the Global South. The shortfalls of discussing LGBTIQ+ migrants in a general sense are also recognized, as well as the need to shed light on the diverse and unique experiences of different groups in future studies, especially transgender, intersex and gender-diverse people, and lesbian, bisexual and queer women.



Photo: UN Women/UNFPA Thailand

KEY TERMS: SEXUAL ORIENTATION, GENDER IDENTITY AND EXPRESSION, AND SEX CHARACTERISTICS³

GENDER	Gender is enshrined in international human rights law as the term used to describe the sociocultural constructs that assign roles, behaviours, forms of expression, activities and attributes according to the meaning given to biological sex characteristics.
SEX	The classification of a person as having female, male and/or intersex sex characteristics. While infants are usually assigned the sex of male or female at birth, based on the appearance of their external anatomy alone, a person's sex is a combination of a range of bodily sex characteristics.
SOGIESC	An acronym for sexual orientation, gender identity and expression, and sex characteristics, which groups these distinct but related terms together for ease of use, to describe the factors that make some people different than others ('diverse') and subject to discrimination and exclusion.
SEXUAL ORIENTATION	Each person's enduring capacity for profound romantic, emotional and/or physical feelings for, or attraction to, other people. Encompasses hetero-, homo-, bi-, pan- and asexuality, as well as a wide range of other expressions of sexual orientation. This term is preferred over sexual preference, sexual behaviour, lifestyle and 'way of life' when describing an individual's feelings for or attraction to other people.
GENDER IDENTITY	While concepts of gender identity vary greatly across the world, it is generally defined as each person's deeply felt internal and individual experience of gender, which may or may not correspond with their sex assigned at birth or the gender attributed to them by society. It includes the personal sense of the body, which may or may not involve a desire for modification of appearance or function of the body by medical, surgical or other means.
GENDER EXPRESSION	The range of cues, such as names, pronouns, behaviour, clothing, voice, mannerisms and/or bodily characteristics, to express a person's gender. It can be the same or different from an individual's gender identity. One does not have to have a diverse sexual orientation, gender identity or sex characteristics to have a diverse gender expression.
SEX CHARACTERISTICS	Each person's physical features relating to sex, including genitalia and other sexual/reproductive anatomy, chromosomes, hormones and secondary physical features emerging from puberty. The term is often used to describe that intersex people have sex characteristics that do not fit typical binary notions of male or female bodies.
PEOPLE WITH DIVERSE SOGIESC	A term used to describe people whose SOGIESC places them outside culturally mainstream categories, expectations or rules, such as being heterosexual, cisgender and endosex (i.e. a person who has innate physical sex characteristics that match what is expected for female or male bodies). It can also capture those who do not relate to 'LGBTIQ+' and other Western terms.
LGBTIQ+	An acronym for lesbian, gay, bisexual, transgender, intersex and queer people. The plus sign represents people with diverse SOGIESC who identify using other terms or none.

LESBIAN	A woman whose enduring romantic, emotional and/or physical attraction is to women. It is primarily used as a noun and is thus not followed with 'woman' or 'person'.
GAY	A generic term for people whose enduring romantic, emotional and/or physical attraction is to people of the same gender. It is more commonly used by men in some cultures, but other people including women also use it.
BISEXUAL	A person who has the capacity for romantic, emotional and/or physical attraction to people of more than one gender. Bisexual+ and Bi+ are sometimes also used as umbrella terms for non-monosexual identities
TRANSGENDER	Terms used by some people whose gender identity differs from what is typically associated with the sex they were assigned at birth. Trans, transgender and non-binary are often treated as umbrella terms representing a variety of words that describe an internal sense of gender that differs from the sex assigned at birth and the gender attributed to the individual by society, whether the individual identifies as a man, woman or simply 'trans' or 'transgender', or with another gender or with no gender. A 'trans woman' is someone whose internal sense of gender is female. A 'trans man' is someone whose internal sense of gender is male.
INTERSEX	Intersex people are born with sex characteristics that do not fit typical binary definitions of male and female bodies. Intersex is an umbrella term used to describe a wide range of natural bodily variations. Some of these variations may be apparent before or at birth, while others are not apparent until after puberty or later or may not be physically apparent at all. Hence, intersex people embody a broad and diverse spectrum of sex characteristics, with statistics on their prevalence originating in medical contexts and rarely relying on self-definition.
QUEER	Traditionally a negative term, queer has been reclaimed by some people and is considered inclusive of a wide range of diverse sexual orientations, gender identities and expressions. It may be used as an umbrella term for people with diverse SOGIESC, or as an alternative to the phrase "people with diverse SOGIESC" or the acronym LGBT. Queer is used by many people who feel they do not conform to a given society's economic, social and political norms based on their sexual orientation, gender identity and/or gender expression.
+	The plus sign represents those who identify with other terms to describe their sexual orientation, gender identity, gender expression and/or sex characteristics. It seeks to include terms like pansexual and asexual and non-Western identities like hijra, two-spirit and muxe, among other manifestations of diverse SOGIESC that are typically excluded from acronyms.
GENDER-DIVERSE PEOPLE	This term is used specifically to refer to people who have gender identities or expressions that are not normative. It may be used alongside transgender, depending on the context.
CISGENDER/CIS	The term is used to refer to people whose experience of gender is, or is perceived to be, in conformity with the sex assigned at birth. It is often used in contrast to transgender.

RELEVANT HUMAN RIGHTS COVENANTS, LAWS AND TREATIES

Migrants with diverse SOGIESC are protected under international human rights law through covenants, laws and treaties that relate to their SOGIESC and their migration status. Protection relating to SOGIESC is primarily found in the International Bill of Rights, which includes the Universal Declaration of Human Rights,⁴ the International Covenant on Civil and Political Rights,⁵ and the International Covenant on Economic, Social and Cultural Rights.⁶ These conventions are legally binding and state signatories are obligated to reform their domestic laws to align with their international legal commitments.

Other conventions that offer frameworks for protecting the rights of individuals with diverse SOGIESC include the Convention on Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the International Convention on the Elimination of All Forms of Racial Discrimination.⁷ Additionally, regional organizations, such as the Organization of American States⁸ and the Council of Europe,⁹ have pledged their commitment to promoting and protecting equality and rights for people with diverse SOGIESC.

The **Yogyakarta Principles** merit special note. Due to the lack of coherence in the various international human rights law frameworks for people with diverse SOGIESC, human rights experts developed the Yogyakarta Principles, a set of international principles relating to sexual orientation and gender identity. Issued in 2007, the Yogyakarta Principles serve as a universal guide on the human rights of LGBTIQ+ people.¹⁰ As a soft law instrument, the principles themselves do not constitute an independent legally binding human rights mechanism, unlike an international treaty. However, the Yogyakarta Principles affirm the binding international conventions and legal standards to which all signatory states must comply.

In terms of the protection of the rights of migrants, the **Global Compact for Safe, Orderly and Regular Migration (GCM)**, adopted in December 2018 by the United Nations General Assembly, aims to enhance cooperation on international migration in all its dimensions. Gender-responsiveness is a key guiding principle of the GCM, such that the human rights of all migrants regardless of gender are respected at all stages of migration, their specific needs are properly understood and addressed, and they are empowered as agents of change. However, the GCM does not explicitly discuss the rights of migrants with diverse SOGIESC.

The **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**, entered into force in 2003. It is a comprehensive international treaty on the protection of migrant workers' rights. Similar to the GCM, the text of the convention does not explicitly reference people with diverse SOGIESC. However, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) and the Committee on the Rights of the Child (CRC) have expressed concern about violence targeted at LGBTIQ+ migrants and discriminatory provisions in migration laws and policies based on sexual orientation and gender identity.¹¹

People with diverse SOGIESC are entitled to the same protections as all refugees under international refugee law. The 1951 **UN Convention Relating to the Status of Refugees** and its 1967 Protocol state in article 1A(2) that individuals can seek asylum under five criteria, including race, religion, nationality, membership of a social group or political opinion. In 2008, the United Nations High Commission on Refugees (UNHCR) issued a guidance note defining “social group” to include sexual orientation and gender identity.¹² The guidance note was further updated in 2012.¹³

UNHCR estimates that at least 42 States have granted asylum to individuals with a well-founded fear of persecution owing to their sexual orientation or gender identity, although due to the discretion that States have in grounds for granting asylum, the precise figure is unclear.¹⁴ This paper focuses on the experiences of migrants with diverse SOGIESC more generally, and will not explore the protections that may be specifically afforded LGBTIQ+ people under international refugee law.



Photo: UN Women/Pathumporn Thongking

RISKS FOR LGBTIQ+ PEOPLE AT ALL STAGES OF MIGRATION

DECISION-MAKING AND REASONS FOR MIGRATION

Many LGBTIQ+ migrants leave their countries of origin because of discrimination and the risk of violence. Violence against LGBTIQ+ people is often state-sponsored and results in profound traumatization, imprisonment or even death at the hands of state or non-state actors. As of July 2023, 62 UN Member States criminalize consensual same-sex sexual acts, and in 6 of these countries, these acts are subject to the death penalty.¹⁵ Consensual same-sex relations between women are still criminalized in at least 42 countries around the world, and LGBTIQ+ women face alarming rates of violence.

Documented human rights violations specific¹⁶ to people with diverse SOGIESC include forced heterosexual marriage, forced anal examinations, conversion therapy and corrective rape, among other forms of humiliation and torture.¹⁷ In many countries around the world, particularly those where non-normative SOGIESC is criminalized, LGBTIQ+ migrants are seldom supported by their families. Family rejection is a leading cause of homelessness among LGBTIQ+ people, especially youth, who may be expelled from their homes if and when they reveal their SOGIESC. During the migration journey, many LGBTIQ+ migrants fear violence and reprisals from other migrants who might expose them, including authorities, putting them in danger of punishment, stigmatization or abuse.¹⁸

In addition to the criminalization of same-sex sexual acts, many countries have laws against certain forms of gender identity and/or gender expression, for example “impersonating the opposite sex,” that are used to persecute transgender or gender-diverse individuals.^{19, 20} This results in de facto criminalization and is linked to disproportionately high rates of violence, especially against transgender people. Since the start of the Trans Murder Monitoring project in 2009 until September 2022, 4,369

transgender and gender-diverse people were murdered globally, and 327 in the year between 1 October 2021 and 30 September 2022.²¹ The extreme marginalization of many transgender people, including physical and sexual violence, homelessness and discrimination, may not only underpin their reasons for migrating, but also increase the risk of being trafficked.²²

BOX 1: LGBTIQ+ rights defenders forced to flee

LGBTIQ+ people may be forced to migrate due to threats to their safety and security in response to their campaigning and activism for the rights and protections of their communities. For example, the leader of the organization Rainbow-Ethiopia, Dereje Teferi, fled the country after extreme backlash for talking about men who have sex with men at an international AIDS conference.²⁴ In 2017, Sarah Hegazi, a lesbian activist from Egypt was tortured after waving a rainbow flag at a concert in Cairo. She was forced to flee to Canada where she eventually committed suicide.²⁵

Lack of employment opportunities, healthcare and housing are common factors in many migrants' reasons to leave their countries of origin, but are salient for migrants with diverse SOGIESC due to the multiple and intersecting forms of discrimination they face. In addition to state-sanctioned and family violence, homophobic and transphobic social norms in some countries result in high levels of discrimination against LGBTIQ+ people in the labour market, including pervasive hiring discrimination, being confined to informal and high-risk work that is not protected by contracts and labour laws, and the risk of being fired due to their SOGIESC. Many are also denied access to services such as healthcare and housing in their countries of origin. In more than half of the world's countries, no legal labour protections are in place to prevent discrimination based on SOGIESC.²³



Photo: UN Women/Nicholas Axelrod

HUMAN RIGHTS VIOLATIONS, DISCRIMINATION AND ABUSE IN TRANSIT

LGBTIQ+ migrants face specific challenges and risks during the migration journey due to their non-normative SOGIESC. Although data continue to be lacking, cases are being reported of LGBTIQ+ migrants subjected to significant physical and sexual violence, including in immigration detention centres and unsafe shelters, as well as harassment, lack of access to adequate healthcare and other services, and discrimination by border agents, police, immigration officers and service providers.

During the migration journey

Transgender women in particular may face higher levels of violence and abuse during their migration journey, including from traffickers, smugglers and other migrants. Given the lack of sufficient reporting mechanisms and pervasive discrimination in many justice systems, it is likely that such abuse goes underreported. A number of reports have documented that transgender women migrating from South and Central America to the United States encounter persistent abuse and harassment in Mexico at the hands of drug traffickers, rogue immigration agents and other migrants.²⁶ Amnesty International found that two thirds of LGBTIQ+ migrants from Central America who were interviewed between 2016 and 2017 reported having experienced sexual and gender-based violence in

Mexico.²⁷ Similarly, a report by UNHCR on women fleeing Guatemala, El Salvador, Honduras and Mexico found almost all transgender women interviewed had experienced physical, and often sexual, violence during their journeys.²⁸ A 2015 report documented the journey of a transgender woman who fled from Syria to Jordan and was raped, assaulted and robbed by Jordanian police officers who threatened to return her and her transgender friends to Syria if they refused to have sex with them.²⁹ This is unfortunately not an isolated incident and may reflect a broader trend in the region.³⁰

In immigration detention centres

In addition to violence during the journey, many LGBTIQ+ migrants travelling via irregular channels are detained by border police in immigration detention centres in their intended countries of destination or in transit countries, where they face routine physical and sexual violence and discrimination. For example, staff members working in a detention centre in Ceuta, Spain, informed Human Rights Watch that other detainees often ridiculed, harassed and attacked LGBTIQ+ migrants.³¹ Analysis of data from the United States found that LGBTIQ+ migrants in federal detention centres were 97 times more likely to be sexually assaulted than other detainees.³²

Transgender migrant women are especially at risk of abuse in detention centres because they are often detained in cisgender-male spaces, as most immigration detention centres are not equipped to safely house transgender people. This has resulted in transgender women experiencing severe human rights violations, including sexual assault and routine harassment by cis-male detainees and guards.³³ Such violations are well-documented in the United States, and evidence indicates this is also occurring in Greece, Norway and the United Kingdom.³⁴ Given that transgender and gender-diverse people are at such elevated risk of violence in these facilities, they can be forced into solitary confinement, justified by authorities as a protective measure. However, solitary confinement is proven to be detrimental to physical and mental health, often leading to significant trauma.³⁵

Inaccurate legal documentation

For LGBTIQ+ migrants, particularly transgender and gender-diverse people, the inability to obtain accurate legal documentation can create additional barriers during migration. Only 17 countries legally allow people to self-determine their gender, while the remaining countries determine gender based only on the sex assigned at birth.³⁶ It is important to note that some countries that give transgender and gender-diverse people the right to legally change their gender have invasive requirements in place, such as forced sterilization, other medical interventions or mental health assessments.³⁷



Photo: UN Women/Felix Maia

Official documentation that does not match a person's gender identity or expression can lead to discrimination and ill treatment by border authorities, police officers, social service providers and other officials. Individuals may be denied the right to pass through a border or checkpoint. The inability to obtain accurate identity and travel documents may also lead migrants to turn to more dangerous irregular pathways, including soliciting the services of people smugglers. This increases risks of violence and exploitation, including trafficking in persons. In situations where a person's gender expression does not match their travel or identity documents, they are often subject to humiliating body searches at border crossings, as well as discrimination and abuse in their countries of destination. For example, Syrian transgender women who fled to Lebanon were unable to apply for legal residency as they did not have the necessary documentation and feared repercussions from authorities.³⁸ Lack of accurate legal identification can even prevent migrants from fleeing in the first place. As a recent example, in Ukraine, many transgender women have reported that they are unable to leave the country because their government identification still marks them as male—and men are forced to stay and fight under the country's conscription laws.³⁹

Lack of access to health and GBV services

LGBTIQ+ migrants often face considerable barriers when trying to access healthcare and essential services for survivors of gender-based violence. A study on the health of migrants with diverse SOGIESC found that depression, anxiety and post-traumatic stress disorder were highly prevalent among LGBTIQ+ migrants, particularly when migrants have spent time in detention or time in camp environments.⁴⁰ Mental health risks are also exacerbated by the social isolation migrants face in countries of destination in the absence of adequate healthcare and sexual health services, especially for transgender persons.⁴¹ Services are extremely limited in immigration detention centres, particularly for transgender women with specific medical needs, including gender-affirming hormone replacement therapy and life-sustaining human immunodeficiency virus (HIV) treatment. These services are typically structured to support heteronormative people, and tailored services for LGBTIQ+ people, especially survivors of gender-based violence, are practically non-existent.⁴²

Heightened risk of trafficking for the purpose of sexual exploitation

Evidence suggests that transgender women and gender-diverse people are at a high risk of being trafficked, especially for the purpose of sexual exploitation. The Counter-Trafficking Data Collaborative on human trafficking found that in 2018, 5 per cent of victims were transgender or gender-diverse, and 85 per cent of these trafficking cases were for sexual exploitation. This is much higher than the proportion of trafficking cases for sexual exploitation involving cisgender women (60 per cent) and cisgender men (9 per cent).⁴³ Moreover, the National Human Trafficking Resource Centre (USA) found that of the 304 cases of identified trafficking in persons reported by LGBTIQ+ people between 2011 and 2015, 241 cases (79 per cent) were for sexual exploitation.⁴⁴ The extreme marginalization many transgender people face—including physical and sexual violence, homelessness and employment discrimination—could also result in a disproportionate number engaging in sex work, heightening their risks of being trafficked.

Discrimination and re-traumatization in the asylum process

Many LGBTIQ+ people apply for asylum in another country as a means to escape daily violence and serious risks of harm or death. However, risk based on SOGIESC is only occasionally included in criteria for granting asylum. As of 2019, UNHCR estimated that 42 States have granted asylum to individuals with a well-founded fear of persecution based on their SOGIESC. People with diverse SOGIESC must navigate discriminatory asylum or migration processes, with the burden on the applicants to prove rights violations or the risk of persecution.⁴⁵ Advocates for LGBTIQ+ asylum seekers report that many are accused of lying. Many LGBTIQ+ people are forced to conceal their SOGIESC in their countries of origin for their own protection, making it difficult to “prove” their SOGIESC in asylum courts. For example, in 2019, an immigration judge in the United Kingdom rejected the asylum claim of a man because he did not have a gay “demeanour”.⁴⁶

Many LGBTIQ+ asylum seekers are reportedly returned to their country of origin because they “can prevent persecution by concealing their identity”.⁴⁷ Nevertheless, positive signs of policy change are emerging. For example, the German Federal Office for Migration and Refugees (BAMF) has recently introduced new guidance for determining whether someone is likely to face persecution if returned to their country of origin, based on whether the person could live openly and freely as an LGBTIQ+ person.⁴⁸

BOX 2: LGBTIQ+ people in situations of conflict and displacement

Existing discrimination and violence against LGBTIQ+ migrants can be exacerbated in times of conflict, violence and natural disasters. LGBTIQ+ people often face a very high risk of being killed in conflict situations and can be specific targets of violence and abuse. In times of increased lawlessness and/or pressure on scarce resources, homophobia, transphobia and anti-gender rhetoric rise to the surface and can be acted upon with impunity. Pre-existing stigma becomes amplified.⁴⁹ Countless examples have been documented of persecution against LGBTIQ+ people during times of conflict or in countries with limited rule of law.

LGBTIQ+ people in situations of conflict and displacement can also face discrimination during humanitarian responses. Though sex segregation is the standard operating procedure for many aspects of humanitarian aid, such as assistance delivery, shelters, safe shelters, health services, education and other community programming, it can endanger LGBTIQ+ people.⁵⁰ People with diverse SOGIESC face discrimination by aid workers and are routinely excluded from assistance programmes. For example, humanitarian operations deliver aid based on individual and household unit registration processes, which regularly exclude same-sex relationships and those identifying as non-binary.

CHALLENGES OF ARRIVAL AND INTEGRATION IN COUNTRIES OF DESTINATION

Although some LGBTIQ+ people migrate to countries with more accepting political and social environments, many LGBTIQ+ migrants experience multiple and intersecting forms of discrimination based on their migration status and non-normative SOGIESC. LGBTIQ+ migrants are likely to face specific economic, health and protection risks, including ending up in countries with anti-LGBTIQ+ laws. In a recent example, many Ukrainians fled to Poland and Hungary, where activists highlighted the challenges LGBTIQ+ Ukrainians face, given the European Union has condemned both countries for having anti-gay laws.⁵¹ Indeed, some LGBTIQ+ migrants may need to navigate new and different sets of anti-LGBTIQ+ laws, policies and social norms than in their countries of origin, and could still face significant persecution and discrimination in their countries of destination.



Photo: UN Women.

Numerous studies have found that depression, anxiety, post-traumatic stress disorder (PTSD), suicidality, dissociative disorders, panic disorders and substance abuse are prevalent among LGBTIQ+ migrants, particularly when associated with displacement and detention or camp environments. Studies of migrants with diverse SOGIESC in the United Kingdom found that their rates of suffering from these conditions are considerably higher than non-LGBTIQ+ migrants and non-migrant LGBTIQ+ people.⁵²

A review of studies on the mental health of LGBTIQ+ migrants highlighted that many had “complex PTSD”, which could lead to amnesia, intense shame, difficulties with intimacy, bodily pains in response to psychological distress, and despair about finding loving relationships.⁵³

Existing risks and marginalization can be compounded when migrants are undocumented. LGBTIQ+ and HIV-affected undocumented migrants in the United States were 3.4 times more likely to experience sexual violence and 3.5 times more likely to experience physical violence and more severe violence compared to the general LGBTIQ+ community.⁵⁴

Barriers to accessing employment, housing, health and other services

Homophobic and transphobic social norms mean that many LGBTIQ+ people face high levels of discrimination in the labour market and are often denied access to services such as healthcare, social protection and housing. In more than half of countries around the world, no legal protections are in place to prevent discrimination based on SOGIESC.⁵⁵ Employment, healthcare and housing discrimination are very common for LGBTIQ+ migrants, compounded by poverty, racism and xenophobia. LGBTIQ+ migrants are denied housing, experience discrimination and feel unsafe in their housing in their countries of destination. For example, a 2020 survey of LGBTIQ+ asylum seekers in Europe found that 41 per cent of respondents did not feel safe in their accommodation, whether it was in reception and accommodation centres, private rented accommodation, residences of family or friends, or other types of accommodation.⁵⁶

LGBTIQ+ migrants confront specific barriers to accessing healthcare and sexual and reproductive health services, especially for transgender persons, including the cost of care, lack of identification or proof of address to access services, and fear of arrest and deportation.⁵⁷ For example, transgender women in Kenya have reported denial of services provided by women’s organizations.⁵⁸ Moreover, migrants with diverse SOGIESC may be unwilling to disclose their SOGIESC to medical providers in fear of discrimination or receiving poorer quality care.⁵⁹

CHALLENGES OF RETURN AND REINTEGRATION

While information on barriers to reintegration among LGBTIQ+ migrants returning to their countries of origin is sparse, what is available largely focuses on denied asylum applications. Many LGBTIQ+ migrants do not have regular status or means to apply for asylum and, as such, the risks of being forcibly returned are high. In cases of forced return, it is likely that LGBTIQ+ migrants return to situations similar to those that prompted their migration in the first place, where their SOGIESC was criminalized or highly

stigmatized. Unfortunately, this happens regularly. In 2019, the United Kingdom denied 3,100 asylum claims from LGBTIQ+ people who came from countries where consensual same-sex sexual acts are criminalized.⁶⁰ While little information is available on the socioeconomic and health situations of returned migrants, at least two studies have found that migrants' mental health and anxiety worsened after being returned or deported, due to discrimination and economic insecurity.⁶¹

LACK OF RESEARCH AND DATA ON MIGRANTS WITH DIVERSE SOGIESC

Accurate and timely information is important at all stages of migration, as highlighted in Objective 3 of the Global Compact for Migration. However, the lack of information and disaggregated data on LGBTIQ+ migrants persists, not only because diverse SOGIESC is criminalized in many countries, but also due to a lack of political will, capacity, financing and/or interest on the part of governments and humanitarian and development agencies to collect and use such data.⁶² Even in countries where data are

available, analysis and publication of disaggregated data on people of diverse SOGIESC is still limited. Yet, despite data and information challenges, local and international NGOs and human rights organizations have carried out studies that discuss the high rates of abuse and human rights violations against LGBTIQ+ migrants that specifically occur during their journeys, including by smugglers, traffickers and border agents.



Photo: UN Women/Lina Etchesuri

CONCLUSIONS

The risks, rights violations and challenges LGBTIQ+ people face at all stages of migration are in part informed by their intersecting identities, including their migration status and SOGIESC. A large body of evidence shows that the criminalization of sexuality and gender identity in and of itself amounts to persecution, leading many LGBTIQ+ people to seek better conditions abroad. Addressing discrimination and rights violations against migrants with diverse SOGIESC requires reforms on multiple fronts, including at a minimum: decriminalization of non-normative sexualities and diverse gender expressions, provision or expansion of appropriate services, and advocacy efforts to increase tolerance and acceptance of LGBTIQ+ people worldwide.

Human rights violations against LGBTIQ+ people are commonplace during the migration journey, perpetrated by a variety of actors, including traffickers, other migrants, border guards and immigration agents. Tackling this issue requires the participation of all relevant stakeholders—governments, regional mechanisms, the United Nations and specialized NGOs—with the aim of strengthening policies and practices for migrants with diverse SOGIESC, and in turn increasing the availability of safe and regular migration pathways that are human rights-based and gender-responsive.

LGBTIQ+ migrants continue to face significant barriers in accessing employment, social protection, housing, healthcare and other services in countries of destination; the situation is exacerbated for undocumented migrants. Studies show LGBTIQ+ migrants have poor mental and physical health outcomes, and many are unable to access the specific healthcare services needed, including sexual and reproductive healthcare. The need to expand access to services in countries of destination, including for undocumented migrants, is clear.

Given the numbers of LGBTIQ+ people moving in search of safety and security, all states should promote and uphold the principle that persecution of people based on their SOGIESC is valid grounds for claiming asylum. States should ensure a respectful “do no harm” approach in the application assessment process. The serious implications for LGBTIQ+ people of being denied asylum or being deported should be recognized; LGBTIQ+ migrants who are forced to return to countries of origin or transit (or to an unsafe third country) are likely to find themselves in the same threatening and discriminatory environment they left.



Photo: UN Women/Kristina Godfrey

RECOMMENDATIONS

Concerted action by governments, policymakers, and national and local humanitarian and development actors is needed to protect and promote the rights of LGBTIQ+ people at all stages of migration and address the multiple and intersecting forms of discrimination they experience. Specific recommendations are outlined below according to the different stages of migration.

COUNTRIES OF ORIGIN: Create safe and equitable environments for LGBTIQ+ people in countries of origin to ensure migration can be a choice

- Adopt new or strengthen existing laws to ensure LGBTIQ+ people have full and equal enjoyment of legal and labour protections.
- Engage with and provide support to civil society organizations specializing in diverse SOGIESC issues to create services or enhance access to existing ones.
- Implement prevention and awareness-raising campaigns aimed at promoting respect for the rights of LGBTIQ+ people and preventing all forms of violence against them.

MIGRATION JOURNEY: Minimize risks during migration journeys

- Develop and implement gender-responsive and human rights–based migration laws and policies, and provide access to inclusive services that respond to the specific needs of LGBTIQ+ migrants.
- Eliminate all forms of violence against LGBTIQ+ migrants by:
 - Revising policies on gender-based violence and migration to include provisions to end violence against LGBTIQ+ people.
 - Conducting investigations into all crimes and human rights violations committed against LGBTIQ+ people, including victims and survivors of trafficking, with the aim of identifying, prosecuting and punishing those responsible.
 - Providing access to essential services, including justice, health and social services for LGBTIQ+ survivors of violence, including for victims and survivors of trafficking and those who have experienced violence at the hands of smugglers.
- Take measures to address human rights violations during transit such as by developing and improving gender-based violence reporting mechanisms available to LGBTIQ+ migrants.
- Review and revise immigration detention processes for LGBTIQ+ migrants by:
 - Developing and expanding any alternatives to detention for LGBTIQ+ migrants, especially transgender women and gender-diverse people, who are at a higher risk of discrimination and violence.
 - Ending the practice of detaining transgender women in men’s immigration detention centres and ensuring international standards are enforced, such as UNHCR’s Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers and Alternatives to Detention.
 - Ensuring prompt and uninterrupted access to HIV treatment and to hormone therapy for all individuals in immigration detention who require it.
- Strengthen the protection of LGBTIQ+ migrants by granting asylum or providing access to humanitarian visas for those fearing persecution based on their SOGIESC.

COUNTRIES OF DESTINATION: Fostering safe and inclusive communities

- Expand LGBTIQ+ migrants' access to community services for healthcare, food, financial assistance, legal services, housing, education, training and information.
- End discrimination against LGBTIQ+ people and migrants in the labour market by:
 - Ensuring programmes and policies to enhance economic, cultural and political participation that are tailored to address the specific needs of LGBTIQ+ migrants.
 - Increasing access to decent work by offering services such as skills training, supported employment programmes and community organizing efforts, targeting LGBTIQ+ migrants.
 - Reviewing social protection programmes to eliminate provisions that could discriminate against LGBTIQ+ people and migrants.
- Ensure adequate access to physical and mental healthcare, including sexual and reproductive healthcare, by ensuring providers are informed about the unique experiences and risks faced by LGBTIQ+ migrants.
- Support and fund LGBTIQ+ organizations to form alliances and create or sustain support networks.
- Support and fund community-based support groups for migrants with diverse SOGIESC.
- Advocate for comprehensive migration reforms that include pathways to citizenship for LGBTIQ+ migrants and their families, including by ending discrimination against same-sex couples.

RETURN: Create safe, gender-responsive and human rights–based return pathways

- Develop return and reintegration programmes that acknowledge the situations of vulnerability facing many LGBTIQ+ returnees and ensure they are tailored to their specific needs.
- Apply the principle of non-refoulement by guaranteeing that no one is returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm, including on the basis of their SOGIESC.



ENDNOTES

1. UN Women uses both “LGBTIQ+” and “diverse SOGIESC” where appropriate in global contexts, while respecting their distinctions. We note that neither term is universally applicable nor reflects the full diversity of sexual and gender formations, practices and identities that exist; that terms and their usage are constantly evolving; and that SOGIESC applies to all people. In practice, various culturally, linguistically and context-specific terms may be used, where appropriate.
2. As per [IOM’s Glossary on Migration \(2019\)](#), the stages of migration encompass the country of origin, transit and destination, as well as country of return where that refers to a third country (i.e. not the country of origin or transit) to which a migrant is returned (often against their will).
3. Terminology as per UN Women (2022), which also draws in part on the IOM SOGIESC glossary. UN Women. 2022. [LGBTIQ+ Equality and Rights: Internal Resource Guide](#).
4. Under Article 14(a) of the Universal Declaration for Human Rights, everyone has the right to seek and to enjoy in other countries asylum from persecution. Signatory States to the 1951 Refugee Convention have a duty to provide safe refuge to LGBTIQ+ individuals fleeing persecution, including on grounds of actual or perceived sexual orientation, gender identity or sex characteristics.
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