



# LGBTIQ+ PERSONS IN FORCED DISPLACEMENT AND STATELESSNESS: PROTECTION AND SOLUTIONS

## Discussion Paper

Prepared for a UNHCR-UN IE SOGI Global Roundtable on Protection and  
Solutions for Lesbian, Gay, Bisexual, Transgender, Intersex and Queer  
(LGBTIQ+) Persons in Forced Displacement

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## I. INTRODUCTION

1. In many parts of the world, individuals are subject to serious human rights abuses because of their real or perceived sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC), particularly when these do not conform to dominant social and cultural norms. As of this writing, nearly 70 United Nations Member States criminalize consensual same-sex sexual acts *de jure* or *de facto*. Six States impose the death penalty, and sources indicate that the death penalty may be prescribed in five additional States, though with less legal certainty.<sup>1</sup>
2. Severe persecution and discrimination from both State and non-State actors force lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ+) persons – including children and older persons, with and without disabilities – to leave their places of habitual residence in search of a safe environment in which they can fully exercise their rights. They may or may not be forced to cross an internationally recognized national border in order to access a safer environment. They may also be stateless - not considered as a national of any State under the operation of its laws.
3. LGBTIQ+ people frequently experience continued harm during the onset of an emergency situation,<sup>2</sup> while in transit and upon arrival in places of asylum. This harm includes but is not limited to: Stigmatization, sexual and gender-based violence, abuse by or lack of protection from security forces, arbitrary detention, refoulement, and exclusion from access to essential basic services. LGBTIQ+ persons who do cross a national border may arrive in countries where they face similar or higher risks of homophobic, bi-phobic and transphobic violence from both nationals of the host country as well as from other displaced people. These risks are exacerbated by other factors, such as xenophobic hostility, misogyny, irregular migration status, socioeconomic marginalization, isolation from traditional support networks and trauma-induced emotional duress.
4. Concomitantly, the treatment of LGBTIQ+ persons has been the subject of increasing attention among a growing diversity of actors within the UN system,<sup>3</sup> as well as among States, civil society and academia. The establishment of Yogyakarta Principles,<sup>4</sup> the Yogyakarta Principles Plus 10<sup>5</sup> and the mandate of the UN Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity (UN IE SOGI)<sup>6</sup> are key cornerstones in multilateral efforts to end the abuse and advance the protection of LGBTIQ+ people through policy provisions for their protection and the full realization of their rights. Robust programmes are being developed by a range of multilateral agencies to address the rights and wellbeing of LGBTIQ+ persons.<sup>7</sup> Moreover, a growing number of States have also recognized the need to protect LGBTIQ+ people through specific legislation ensuring their right to asylum and full inclusion in national social welfare systems.
5. For its part, UNHCR has undertaken the following measures:
  - a. **2010:** UNHCR organized the first Roundtable on Asylum-Seekers and Refugees Seeking Protection on Account of Their Sexual Orientation and Gender Identity, examining State practices and the legal basis of sexual orientation and gender identity (SOGI)-based protection claims under the Refugee Convention.

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<sup>1</sup> International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), *State Sponsored Homophobia: Global Legislation Overview Update*. December 2020 Updated Edition. Geneva: ILGA.

<sup>2</sup> An emergency situation is a large-scale forced displacement situation which requires an immediate response. See *UNHCR Emergency Handbook*, 4<sup>th</sup> edition (2015), <https://emergency.unhcr.org/about>

<sup>3</sup> UN Office of the High Commissioner for Human Rights (OHCHR), *Joint UN Statement on Ending Violence and Discrimination Against Lesbian, Gay, Bisexual, Transgender and Intersex People*, September 2015.

<sup>4</sup> *Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity*, March 2007. Geneva: International Commission of Jurists.

<sup>5</sup> *Yogyakarta Principles Plus 10: Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression, and Sex Characteristics to Complement the Yogyakarta Principles*, November 2017. Geneva: International Commission of Jurists.

<sup>6</sup> UN Human Rights Council, *Resolution A/HRC/RES/32/2, Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity*, 30 June 2016.

<sup>7</sup> OHCHR, *The Role of the United Nations in Combatting Discrimination and Violence Against Lesbian, Gay, Bisexual, Transgender and Intersex People: A Programmatic Overview*, September 2019.

- b. **2011:** UNHCR released its first operational [Guidelines on Working with Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Forced Displacement](#).
  - c. **2012:** UNHCR published its [Guidelines on International Protection Number 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A\(2\) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees](#). These guidelines set forth legal interpretative guidance for governments, legal practitioners, decision makers and the judiciary, as well as UNHCR staff carrying out refugee status determination under its mandate.
  - d. **2015:** UNHCR launched [“Protecting Persons with Diverse Sexual Orientations and Gender Identities”](#), the first global overview of concrete operational measures taken by UNHCR to protect LGBTIQ+ asylum-seekers and refugees, highlighting gaps and significant opportunities for strengthening protection programming and response for LGBTIQ+ persons in forced displacement. As well, an ongoing staff training package on protecting forcibly displaced LGBTIQ+ persons was created in partnership with the UN International Organization for Migration (IOM), and doctrinal issues pertinent to UNHCR’s mandate were advanced.
  - e. **2019 - present:** UNHCR organized internal discussions with its newly established Regional Bureaus<sup>8</sup> to take stock of protection contexts and to identify how to better respond to the needs of LGBTIQ+ displaced people. During these discussions, it was agreed that a second Roundtable would be organized in 2020, which has since been re-scheduled to an online convening in 2021, due to the global COVID-19 pandemic.
  - f. **2021:** UNHCR releases the updated internal version of *Guidelines on Working with Lesbian, Gay, Bisexual, Transgender, Intersex and Queer Persons in Forced Displacement*.
  - g. **UNHCR undertakes continuous engagement with human rights mechanisms and advocacy on behalf of LGBTIQ+ persons** – including through the Mandate of the UN Independent Expert on SOGI, the Universal Periodic Mechanisms and Treaty Bodies.
  - h. **UNHCR provides sexual and reproductive health (SRH)-related guidance** which specifically includes considerations for LGBTIQ+ persons of concern to UNHCR.<sup>9</sup>
6. UNHCR will co-host a second **Global Roundtable on Protection and Solutions for LGBTIQ+ People in Forced Displacement online, from 07-29 June 2021**. The event is co-convened by **UNHCR** and the **Mandate of the UN Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity**.
7. To guide the 2021 Roundtable’s scope, thematic focus and methodology, UNHCR has conducted desk research, stakeholder interviews and field consultations throughout the world with staff at UNHCR and other UN agencies, multi-sectoral humanitarian NGOs, LGBTIQ+ support and advocacy organizations, at all scales, academic experts and LGBTIQ+ persons with lived experience of forced displacement. These consultations aimed to identify current protection and solutions challenges faced by forcibly displaced LGBTIQ+ persons, as well as priority action areas for UNHCR and its partners.
8. Stakeholders consulted during these consultations (heretofore referred to as “respondents”) include: LGBTIQ+ persons with lived experience of forced displacement; staff at UNHCR and other UN agencies; multi-sectoral humanitarian NGOs; global, national and sub-national LGBTIQ+ rights advocacy organisations; philanthropic and private-sector representatives, and academic experts.

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<sup>8</sup> UNHCR’s Regional Bureaus are based in Nairobi (East and Horn of Africa), Dakar (West and Central Africa), Pretoria (Southern Africa), Panama (Americas), Bangkok (Asia and the Pacific), Geneva (Europe/CIS), and Amman (Middle East and North Africa).

<sup>9</sup> UNHCR, *Adolescent Sexual and Reproductive Health in Refugee Situations: A Practical Guide to Launching Interventions in Public Health Programmes*, 2019, <https://www.unhcr.org/5d52bcbd4>. See also Inter-Agency Working Group on Reproductive Health in Crises, *Inter-agency Field Manual on Reproductive Health in Humanitarian Settings*, <https://iawgfieldmanual.com/manual>

9. The purpose of this paper is to inform the discussions to be held during the 2021 Roundtable. Towards this end, the paper draws upon the [Discussion Paper](#)<sup>10</sup> and [Summary Conclusions](#)<sup>11</sup> for UNHCR's 2010 Roundtable on Asylum-Seekers and Refugees Seeking Protection on Account of Their Sexual Orientation and Gender Identity, which serve as references for UNHCR's institutional evolution on its work to protect LGBTIQ+ persons in forced displacement.
10. The current paper provides an overview of SOGIESC-specific terminology, highlights situations unique to lesbian women, gay men, bisexuals, transgender, gender non-conforming, intersex and queer persons, outlines the evolution of existing legal and policy frameworks and describes protection and solutions challenges for forcibly displaced and stateless LGBTIQ+ people, including but not limited to challenges brought on by the ongoing COVID-19 pandemic. It concludes with summary observations and proposed areas for further discussion during the Roundtable.

## II. IDENTIFICATION OF TERMS USED

11. The *UNHCR Guidelines for International Protection N°9*, the *UNHCR Guidelines for Working with Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Forced Displacement* and the *Yogyakarta Principles Plus 10: Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression, and Sex Characteristics to Complement the Yogyakarta Principles* (hereafter "Yogyakarta Principles Plus 10") include definitions of relevant terms such as "sexual orientation", "gender identity", "gender expression", "sex characteristics", "cisgender", "transgender", "lesbian", "gay", "bisexual", "intersex" and "queer". LGBTIQ+ individuals are also sometimes referred to under the umbrella term of "sexual and gender minorities".
12. However, the applicability of "sexual and gender minorities" as an accurate descriptor of *intersex persons* is disputed. Being intersex is neither a sexual orientation nor a gender identity but rather refers to having been born with biological sex characteristics (including genitals, gonads and chromosome patterns) that do not fit typical binary notions of male or female bodies. Some people consider an intersex condition to be a medical disorder treatable with biomedical intervention, while others consider such interventions to be violations of bodily integrity and human rights, particularly when conducted on children who are not able to provide informed consent for such interventions. Although debate exists as to whether and in what circumstances intersex individuals should be categorized alongside LGBT persons, "LGBTIQ+" is used here to describe all persons of concern to UNHCR who seek protection based on their diverse SOGIESC, as the needs and protection risks experienced by forcibly displaced intersex people are often similar to those experienced by forcibly displaced LGBTIQ people.
13. Within the past 10 years, policy literature addressing LGBTIQ+ persons has referred to both their sexual orientation and gender identity and, more recently, to their sexual orientation, gender identity, gender expression and sex characteristics. This reflects significant developments in international human rights law and jurisprudence, as well as in the understanding that human sexuality encompasses not only diverse sexual orientations and gender identities but also a range of gender expressions and sex characteristics.<sup>12</sup> These terminologies are derived from Northern/Western conceptions of human sexuality and gender and do not necessarily represent how people of diverse SOGIESC self-identify in a range of non-Northern, non-Western contexts.
14. Given the importance of using terminology that reflects a more nuanced understanding of how LGBTIQ+ persons describe themselves, UNHCR has developed a Glossary of Sexual Orientation and

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<sup>10</sup> UNHCR, *Discussion Paper: UNHCR Roundtable on Asylum-Seekers and Refugees Seeking Protection on Account of Their Sexual Orientation and Gender Identity*, September 2010.

<sup>11</sup> UNHCR, *Summary Conclusions: UNHCR Roundtable on Asylum-Seekers and Refugees Seeking Protection on Account of Their Sexual Orientation and Gender Identity*, November 2010.

<sup>12</sup> See *Yogyakarta Principles Plus 10: Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression, and Sex Characteristics to Complement the Yogyakarta Principles*, Preamble.

Gender Identity-Related Terms (“Glossary”) that is closely modelled on the *Media Reference Guide* developed by the Gay and Lesbian Alliance Against Defamation (“GLAAD”) and definitions in the Yogyakarta Principles and Principles Plus 10. An updated version of the original Glossary is attached hereto in Annex III.

### III. PARTICULAR RISKS FOR LGBTIQ+ PERSONS AS DISTINCT GROUPS

15. All respondents commented on specific assistance, protection and solutions issues related to the different positions of lesbians, gay men, bisexual, transgender and intersex persons. Although LGBTIQ+ displaced persons share some experiences of abuse, they also exist as distinct groups with unique experiences that differ due to age, gender, ethnic and national origin, health status, disability, educational level and the particular region of the world in which they live.
16. **Cisgender gay and bisexual men:** Among LGBTIQ+ persons, cisgender gay and bisexual men are among the most visible targets of both positive and negative discrimination. Although they may enjoy relative social advantage as cisgender males in patriarchal societies, they may also have difficulties disclosing incidents of sexual violence experienced in their countries of origin and asylum, which hinders their ability to make a viable asylum claim. Within sexual and reproductive health contexts, gay and bisexual men may also be identified as part of the broader category of men who have sex with men (MSM), although not all MSM self-identify as gay or bisexual. Gay and bisexual men may not be believed by asylum adjudicators if they do not present in a stereotypically feminine manner. If they do present in such a manner, they are more likely to be attacked in public. At the same time, gay and bisexual men tend to be more visible in advocating for LGBTIQ+ rights and in administering LGBTIQ-focused support services, particularly on HIV-related health issues. They may feel more empowered to assert themselves in LGBTIQ-refugee-led organizations and to speak on behalf of all LGBTIQ+ displaced people.
17. **Cisgender lesbian and bisexual women:** Women’s generally inferior socioeconomic status in many contexts makes it more difficult for lesbian and bisexual women to flee persecution in their country of origin, to access asylum processes, and to protect and support themselves in a new country. Forcibly displaced lesbians and bisexual women have experienced family and community rejection, assault, corrective rape, and forced heterosexual marriage. They may have children, including as a result of rape or forced marriages. Like other women, they have difficulty obtaining State protection when they are abused by family or community members. Yet because harm perpetrated against lesbian and bisexual women is often at the hand of private actors, this is not always accepted as grounds warranting international protection, and adjudicators may not believe them if they do not present in a stereotypically masculine way. Single women living alone are particularly vulnerable to attack in countries where women are expected to live with male partners in traditional family arrangements. They may be isolated from male-dominated LGBTIQ+ support structures and have difficulty participating in them.
18. **Transgender and gender-nonconforming persons:** Forcibly displaced transgender and gender non-conforming persons suffer particularly acute forms of multiple discrimination based on their gender identity or gender expression. In some countries, this group of people is frequently at particular risk of being physically assaulted if they self-present in public.<sup>13</sup> Respondents reported that transgender persons experience severe marginalization throughout the entire displacement cycle, as they are subject to sexual violence, discrimination and exclusion from formal education, health care, legal employment and housing, leading many to turn to survival sex work. Transgender persons experience difficulties in transit and at borders when their legal documents do not match their identities. This often leads to invasive body searches, detention and further abuse. Transgender persons may also be unable to access gender-affirming hormone treatments while in asylum countries. However, without an accurate understanding of the situation faced by transgender and gender non-conforming people, asylum adjudicators may regard transgender persons as opportunistic cisgender “cross-dressers” without serious protection needs. Furthermore, mainstream transgender rights organizations may not prioritize their concerns and have been reported to provide them with less support than is available

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<sup>13</sup> TvT research project (2021) *Trans Murder Monitoring*, “Transrespect versus Transphobia Worldwide”, <http://transrespect.org/en/research/trans-murder-monitoring/>

from mainstream umbrella LGBTIQ+ support organizations who work with displaced and stateless people<sup>14</sup>.

19. **Intersex persons:** Intersex persons are born with biological sex characteristics that do not fit typical binary notions of male or female bodies. In some countries, intersex persons and their families are considered inherently evil and are subject to harmful ritual purification ceremonies. They may be persecuted for not confirming to binary gender norms, especially if they elect to remain in a non-binary gender status<sup>15</sup>. Some are subject to involuntary sex reassignment surgery that amounts to genital mutilation. Intersex persons also experience difficulties in obtaining accurate legal identification documents and are subject to invasive body searches by security forces. Although intersex persons have serious protection needs, debate exists as to whether and in what circumstances intersex individuals should be categorized alongside LGBT persons, and not all intersex people choose to align themselves with these communities.

#### IV. LEGAL AND POLICY FRAMEWORK

20. UNHCR's *Guidelines for International Protection No. 9* ("Guidelines No. 9") is the agency's authoritative source of doctrinal guidance on adjudicating claims for international protection from SOGI-based persecution. It states that the UNHCR's 1951 *Convention Relating to Status of Refugees* ("1951 Refugee Convention") and its 1967 Protocol must be interpreted and applied in a non-discriminatory way. It also affirms that sexual orientation and gender identity are factors that can influence or dictate the form of persecution or harm experienced by forcibly displaced LGBTIQ+ persons:

*"As respect for fundamental rights as well as the principle of non-discrimination are core aspects of the 1951 Convention and international refugee law, the refugee definition must be interpreted and applied with due regard to them, including the prohibition on discrimination on the basis of sexual orientation and gender identity."*<sup>16</sup>

21. As reflected in the Guidelines No. 9, the human rights guarantees outlined in international legal instruments constitute a significant part of the protection framework for forcibly displaced LGBTIQ+ persons and are complementary to those set forth in UNHCR's 1951 Refugee Convention and its 1967 Protocol.
  - a. According to the original 29 Yogyakarta Principles, "international human rights law affirms that all persons, regardless of their sexual orientation or gender identity, are entitled to full enjoyment of all human rights, and the application of existing human rights entitlements should take account of the specific situations and experiences of people of diverse sexual orientations and gender identities."<sup>17</sup>
  - b. Furthermore, the Yogyakarta Principles Plus 10, intended to complement the original 29 Yogyakarta Principles, emphasize that "gender expression" and "sex characteristics" are to be recognized as explicit grounds for international protection from violations of human rights.

Thus, the right to non-discrimination is essential for the international protection of all forcibly displaced LGBTIQ+ persons, including refugees, asylum-seekers, internally displaced and stateless persons.

22. Since then, the Guidelines No. 9 have been widely applied and referenced by regional and national asylum authorities when adjudicating SOGI-based claims for international protection, even if the

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<sup>14</sup> Transgender Europe (2020), *Transgender Refugee Network Consultation: A 2020 Report by Suma Abdelsamie and B Camminga*, 2020. Sponsored by the European Rights, Equality and Citizenship Programme of the European Union.

<sup>15</sup> OHCHR (2016), *Background Note on Human Rights Violations Against Intersex People*.

<https://www.ohchr.org/Documents/Issues/Discrimination/LGBT/BackgroundNoteHumanRightsViolationsagainstIntersexPeople.pdf>

<sup>16</sup> UNHCR, *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 23 October 2012, HCR/GIP/12/01, para. 6. <https://www.refworld.org/docid/50348afc2.html>

<sup>17</sup> Yogyakarta Principles, above footnote 3, Preamble.



manner of interpretation and implementation vary among states. Furthermore, when LGBTIQ+ individuals request asylum in a country where same-sex relations and gender non-conformity are criminalized, the Guidelines also serve as the legal and procedural reference for UNHCR when conducting refugee status determination assessments under its mandate.

23. LGBTIQ+ persons who flee persecution in their places of habitual residence but who have not crossed an internationally recognized national border are recognized by UNHCR and others as *internally displaced persons*, per the Guiding Principles on Internal Displacement.<sup>18</sup> While the Guiding Principles were developed in 1998 by the Representative of the Secretary General and do not contain language specific to the SOGIESC of internally displaced persons (IDPs), UNHCR personnel adhere to the agency's policy on engagement in situations of internal displacement to ensure a community-based protection and solutions approach, working with government-led efforts to put in place transition strategies that link humanitarian and development action and that take into full account age, gender, disability and diversity elements such as sexual orientation and gender identity.
24. LGBTIQ+ persons who seek international protection but who do not have a nationality are regarded as *stateless*. Article 1 (1) of the 1954 Convention relating to the Status of Stateless Persons defines a stateless person as 'a person who is not considered as a national by any State under the operation of its law'.<sup>19</sup> Statelessness is often combined with other forms of discrimination and human rights violations, and it is a cause of forced displacement.
  - a. Though most stateless people remain in the country of their birth, some leave and become asylum-seekers or refugees. Stateless persons who are refugees under the 1951 Refugee Convention and its 1967 Protocol are entitled to protection under that instrument. When an individual is both a refugee and stateless, UNHCR advocates that both types of status should be explicitly recognized.
  - b. Similarly, where standards of treatment are provided for a complementary form of protection, including protection against *refoulement*, UNHCR advocates that States apply these standards to stateless individuals who qualify for that protection.
  - c. Though the 1951 Refugee Convention and its 1967 Protocol generally entitle individuals to more rights than the 1954 Convention (including protection against *refoulement*), a person whose refugee status ceases may not always have acquired a nationality and may continue to require international protection under the 1954 Convention. Recognition as a stateless person by the State authorities can also facilitate exercise of other rights.
  - d. Refugee status determination and determinations to assess statelessness and the right to a nationality may be conducted by jurisdictions either as a joined procedure or as separate procedures, undertaken by the same or by different agencies.<sup>20</sup>

Respondents report that LGBTIQ+ persons at particular risk of being stateless include:

- (1) Persons who live in their country of long-term residence or even birth without having ever been legally considered a national of that country;
- (2) Persons who have a nationality at birth but who are not recognized as a national of that country after they cross a national border – this is of particular concern for *transgender and gender non-conforming asylum-seekers* whose gender identity and expression do not correspond to what is listed as their natal sex marker on official identity documents.

25. *UNHCR Guidelines on Working with Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Forced Displacement*<sup>21</sup> set forth the agency's primary guidance for how its field offices and operational partners are to implement the agency's mandate for stateless and forcibly displaced LGBTIQ+ persons,

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<sup>18</sup> UN High Commissioner for Refugees (UNHCR), *Guiding Principles on Internal Displacement*, 22 July 1998, ADM 1.1,PRL 12.1, PR00/98/109. <https://www.refworld.org/docid/3c3da07f7.html>

<sup>19</sup> UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117. <https://www.refworld.org/docid/3ae6b3840.html>

<sup>20</sup> UNHCR, *Handbook on Protection of Stateless Persons*, 2014, para. 78-82. <https://www.refworld.org/docid/53b676aa4.html>

<sup>21</sup> UNHCR, *UNHCR Guidelines for Working with Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Forced Displacement*, 2011.



including internally displaced persons. These operational guidelines are situated within the framework of UNHCR's *Age, Gender and Diversity Policy* ("AGD Policy")<sup>22</sup> and its commitment to upholding *Accountability to Affected Populations* ("AAP")<sup>23</sup>. They are complemented by ongoing staff training on SOGIESC-specific protection operational best practice, co-designed and implemented by UNHCR and the UN International Organization for Migration (IOM) for their respective personnel.

26. Both the *UNHCR Age, Gender and Diversity Policy* and the humanitarian sector's principle of *Accountability to Affected Populations* are based on an understanding that displaced persons do not all have the same needs and that their specific vulnerabilities may be in fact be intensified by overlapping indicators of social difference that can contribute to discriminatory and even persecutory behaviour. These factors include but are not limited to: nationality or lack thereof, ethnicity, gender, age, socioeconomic class/caste, religion, marital status, educational background, physical appearance, disability status and – importantly for the purposes of this discussion paper – *sexual orientation, gender identity, gender expression and sex characteristics*. Institutionalized stigmatization and discrimination on the basis of one or more of these factors creates multiple hardships for LGBTIQ+ displaced people. Towards this end:

- a. The *UNHCR Age, Gender and Diversity Policy* disaggregates protection assessment and response on the basis of age, sex, and other diversity considerations, as contextually appropriate and possible, for the purposes of analysis and programming. Sexual orientation and gender identity are among the characteristics of social differentiation considered under the Diversity heading.
- b. *Accountability to Affected Populations* is widely used by humanitarian practitioners to refer to commitments and mechanisms that humanitarian agencies have put into place to ensure that displaced communities are meaningfully and continuously involved in shaping decisions that directly affect their lives, families and communities.

These policies aim to ensure that LGBTIQ+ persons of concern to UNHCR can enjoy their rights on equal footing, through their meaningful participation in humanitarian programming decisions that directly affect their wellbeing.

27. To assess the protection needs of LGBTIQ+ displaced persons, including for potential third-country resettlement, UNHCR employs tools such as the [Heightened Risk Identification Tool](#)<sup>24</sup>, which links community-based participatory assessments with individual assessment methodologies in order to identify at-risk LGBTIQ+ persons who may require specific protection responses. It highlights five categories of heightened risk:

- a. Older People
- b. Children and Adolescents
- c. Women and Girls at Risk
- d. Legal and Physical Protection
- e. Health and Disability

While LGBTIQ+ persons do not constitute a separate category of risk in this assessment tool, they are frequently identified through the risk indicators of the aforementioned categories, particularly Legal and Physical Protection, as well as for Women and Girls at Risk, Children and Adolescents, and Health and Disability.

28. LGBTIQ+ applicants for international protection who are referred by UNHCR for potential third-country resettlement may be assessed using the [UNHCR Resettlement Tool: Lesbian, Gay, Bisexual, Transgender and Intersex Refugees](#)<sup>25</sup>. The current version uses conceptual terminology from the first iteration of the

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<sup>22</sup> UNHCR, *UNHCR Policy on Age, Gender and Diversity*, 8 March 2018.

<sup>23</sup> Inter-Agency Standing Committee, *Protection and Accountability to Affected Populations in the Humanitarian Programme Cycle*, 2016.

<sup>24</sup> UNHCR, *Heightened Risk Identification Tool, Second Edition*, June 2010.

<sup>25</sup> UNHCR, *Resettlement Assessment Tool: Lesbian, Gay, Bisexual, Transgender and Intersex Persons*, April 2013.

Yogyakarta Principles. This resettlement tool and the *UNHCR Resettlement Handbook* are in the process of being updated.

29. The past decade has witnessed significant advances in international human rights and refugee-specific jurisprudence, as well as a growing acknowledgement that people with diverse SOGIESC are entitled to full protection under these legal instruments.<sup>26</sup> International and national judiciaries have found that laws criminalizing same-sex relations between consenting adults are not in line with international legal standards.
30. Laws criminalizing consensual same-sex relations between adults remain in force in nearly 70 countries, severely impacting the ability of LGBTIQ+ people to live freely, safely and to fully realize their rights, whether in countries of origin, transit, or destination. Because fewer than 1% of the UNHCR's total population of concern are granted third-country resettlement and over 80% reside in neighboring countries of first asylum, the majority of forcibly displaced LGBTIQ+ people are at high risk of experiencing recurring human rights violations throughout their entire displacement cycle and may be compelled to flee multiple times in order to obtain protection.
31. LGBTIQ+ people face myriad forms of discrimination and persecution in their countries of origin and asylum. Fleeing their place of origin does not necessarily mean that discrimination or persecution against them ceases; LGBTIQ+ people may experience the same kinds of discrimination and persecution throughout the entire displacement cycle. This means that they are particularly vulnerable because they are separated from the communities that most people of concern to UNHCR rely on for support. As displacement can last months, years or decades, LGBTIQ+ people may have evolving needs throughout the displacement cycle.
32. Discrimination can be compounded and multidimensional, relating to a variety of factors, including but not limited to gender, race, ethnicity, age, socioeconomic condition, class, caste, disability status, marital and family status, literacy and educational level, sexual orientation, gender identity and expression, and sex characteristics. This discrimination may be experienced in a variety of ways, such as their ability to access safe housing, health care, education and employment. Thus, the rights of LGBTIQ+ persons may be impacted in multifaceted ways while they are forcibly displaced or stateless, both for reasons of their SOGIESC as well as for other reasons.

## V. KEY PROTECTION AND SOLUTIONS CHALLENGES

33. This section seeks to identify some of the key assistance and protection challenges that LGBTIQ+ persons experience throughout the cycle of displacement, as well to longer-term solutions for ensuring the full and equal enjoyment of their rights. It is based on a desk review of existing UNHCR policy and programme literature, as well as on information collected by UNHCR in 2019 and 2020 during field and online consultations with key informants throughout the world. Respondents include: LGBTIQ+ persons with lived experience of forced displacement; staff at UNHCR and other UN agencies; multi-sectoral humanitarian NGOs; global, national and sub-national LGBTIQ+ advocacy organisations; and academic experts.

Needs specific to each sub-identity group within the LGBTIQ+ umbrella are addressed above in Section III. Trends in particular geographic regions are summarized in Annex II.

34. As of this writing, the *COVID-19 pandemic* is present in 216 states and territories across the world.<sup>27</sup> The pandemic has created challenges unprecedented in scope, duration and intensity for all persons -

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<sup>26</sup> Forced Migration Review, *Sexual Orientation and Gender Identity and the Protection of Forced Migrants*, Issue 42: April 2013, <https://www.fmreview.org/sogi>

<sup>27</sup> WHO, *Coronavirus (COVID-19) Disease Outbreak Situation*, <https://www.who.int/emergencies/diseases/novel-coronavirus-2019> [Accessed 17 May 2021]

including forcibly displaced and stateless persons, LGBTIQ+ persons<sup>28</sup> and forcibly displaced and stateless persons who self-identify as lesbian, gay, bisexual, transgender, intersex and/or queer.

- a. Given that longer-term implications for international security, mobility, the protection of displaced persons and their full inclusion in national health and welfare systems are yet to be identified, the protection challenges outlined below take into account the fluidity and precarity of the situations in which LGBTIQ+ displaced and stateless persons now find themselves.
  - b. However, while the COVID-19 pandemic has highlighted the acute vulnerabilities that LGBTIQ+ displaced and stateless people experience, it must be noted that their protection challenges existed long before the onset of the pandemic. The current public health emergency and various governmental responses to it exacerbate social inequalities and discriminatory exclusions that have long been the lived reality of many LGBTIQ+ refugees, asylum-seekers, internally displaced and stateless people.
35. What follows below is a brief summary of the key protection risks encountered by LGBTIQ+ persons in situations of forced displacement or statelessness, disaggregated by thematic focus. Some protection risks are unique to LGBTIQ+ displaced and stateless persons, some are shared with other minority groups or individuals at heightened risk, and yet other risks are similar to those faced by forcibly displaced and stateless persons at large.

#### **A. Drivers of Forced Displacement**

Stakeholder consultations investigated the extent to which SOGIESC-relevant legislation, contemporary political climate, media influence, and prevailing cultural norms shape drivers of forced displacement for LGBTIQ+ persons in countries of origin, transit and destination.

36. In many parts of the world, individuals experience discrimination, harassment and abuse on the basis of their real or imputed sexual orientation, gender identity, gender expression and biological sex characteristics. LGBTIQ+ persons experience significant social pressure to conceal and/or deny their authentic SOGIESC, a shaming and dehumanizing practice which renders them invisible and vulnerable to rejection, isolation, poor self-worth and self-harm.
37. Consensual same-sex relations are currently criminalized in nearly 70 countries and are considered capital crimes in six.
- a. The presence of such legislation, regardless of the degree to which it is enforced, can lead to impunity for crimes committed against LGBTIQ+ individuals and against their supporters, particularly when the crimes are committed by non-State actors.
  - b. Such legislation can prevent LGBTIQ+ persons from meaningfully accessing State protection, including the right to asylum. It may also prevent the registration of non-governmental organizations that seek to advocate for the rights of LGBTIQ+ persons.
  - c. Yet even in countries where consensual same-sex relations between adults are not criminalized, prevailing sociopolitical conditions may be such that the presence of non-conforming SOGIESC is regarded as a serious threat to the stability of dominant social, cultural and religious values.
38. Perpetrators of violations include both State and non-State actors, such as police officers and members of the security forces; family and community members; neighbors, peers, employers and co-workers; educational, medical and faith-based and other cultural authorities; gangs and militias. Discrimination and abuse at the hands of the aforementioned persons may force LGBTIQ+ people and their children

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<sup>28</sup> United Nations Human Rights Council, *Report by the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, on the Impact of the COVID-19 Pandemic on the Rights of LGBT Persons, A/75/258*, June 2020. <https://undocs.org/A/75/258>

to cease their participation in public spaces, pushing them further into isolation, marginalization and economic precarity.

39. LGBTIQ+ persons may be subject to more extreme forms of physical, emotional, and sexual violence, including but not limited to murder, rape, torture, psychiatric and psychological “so-called conversion therapies”,<sup>29 30</sup> honor crimes, incest, and forced heterosexual marriages. LGBTIQ+ minors and children of LGBTIQ+ people are often at risk of discrimination, violence and bullying by adults and peers. The absence of state protection from the above violations is sometimes accompanied by instances of arbitrary detention, during which LGBTIQ+ persons may be subject to further deprivation, violence and abuse at the hands of security forces and fellow detainees.
40. Across geographic regions, non-conforming SOGIESC has become a flashpoint issue leveraged by actors across the political spectrum during electoral seasons, with cyclic fluctuations in the heightened and often adverse attention directed at LGBTIQ+ persons.
41. *The diffusion of homophobic and transphobic messages* through a range of communication channels has also emerged as a powerful instigator of hate crimes perpetrated against LGBTIQ+ persons. These channels include newspapers, magazines, television, radio, Internet websites, social media platforms and personal networks.
  - a. Non-consensual disclosure of one’s SOGIESC (“outing”) or the threat to do so by blackmail are used by both non-state actors and state security forces to publicly humiliate LGBTIQ+ persons and their children and to deter people from openly expressing their SOGIESC.
  - b. In some countries, social media data is also used as incriminating evidence to convict LGBTIQ+ persons of so-called morality crimes.
  - c. Perpetrators of social media-influenced hate messages can be physically located anywhere in the world and thus also include members of a LGBTIQ+ person’s ethnic or faith-based diaspora outside their countries of origin.

The rapidity with which such messages are diffused, as well as their potential for containing an LGBTIQ+ person’s geo-locational and other personal data, have very adverse consequences on their safety and wellbeing.

## **B. Reception Conditions, Data Collection and Outreach to LGBTIQ+ Displaced and Stateless Persons**

42. Many LGBTIQ+ persons are forced to flee their country of origin or place of habitual residence in order to avoid persecution or to protect their children from harm. Due to the particular circumstances related to their SOGIESC, LGBTIQ+ refugees, asylum seekers, internally displaced and stateless people face multiple forms of discrimination not necessarily experienced by other displaced and stateless people. During flight and after arrival in asylum countries, LGBTIQ+ individuals often continue to be subject to the same abuse from which they fled. Importantly, they are often unable to access support or protection from other displaced people with whom they share a common national, ethnic, political or religious background.
43. Upon arrival to the country of asylum, some LGBTIQ+ persons are forced into isolation to protect themselves and have no adequate or timely access to accurate information on how and where they can claim asylum. LGBTIQ+ children and youth, older persons and those in compulsory heterosexual marriages who arrive in asylum countries with their family members may not be aware that their request for international protection can be considered on SOGIESC grounds, separately from the grounds used by other family members.

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<sup>29</sup> Outright Action International, *Harmful Treatment: The Global Reach of So-Called Conversion Therapy*, 2019, [https://outrightinternational.org/sites/default/files/ConversionFINAL\\_1.pdf](https://outrightinternational.org/sites/default/files/ConversionFINAL_1.pdf)

<sup>30</sup> United Nations Human Rights Council, *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, on Conversion Therapy, A/HRC/44/53*, June 2020. <https://undocs.org/A/HRC/44/53>

44. Some LGBTIQ+ persons of concern to UNHCR seek protection due to non-SOGIESC-related persecution but find themselves in situations that are very difficult and sometimes worse than the ones they fled.
- a. For example, forcibly displaced or stateless LGBTIQ+ people may have departed an environment where LGBTIQ+ rights were protected, but due to forced displacement on various grounds, they subsequently find themselves in an environment which criminalizes consensual same-sex relationships between adults.
  - b. Some forcibly displaced or stateless LGBTIQ+ people claim protection *sur place*, such as when a child flees a place of origin with their family but cannot return due to SOGIESC-related protection risks.
45. Although UNHCR has been continually upgrading its registration systems and procedures for refugees, asylum-seekers and other persons of concern to UNHCR, respondents share that these systems do not yet consistently capture critical data needed to appropriately identify an LGBTIQ+ person's SOGIESC.<sup>31</sup>
- a. UNHCR's proprietary registration databases are not employed in the same way throughout all of its field operations, as the manner of their deployment is at the discretion of each operation, based on local contexts.
  - b. The current core registration database contains fields for only two gender markers, with no separate field available to register the gender marker of a trans, intersex or gender non-conforming applicant.
  - c. Existing vulnerability codes do not include categories specifically addressing SOGIESC-specific data, nor are these codes systematically restricted so that only relevant UNHCR staff would have access to an LGBTIQ+ person's personal data.
  - d. Respondents report that some frontline registration staff require further support in registering sensitive case data.
46. Respondents also report that LGBTIQ+ displaced and stateless persons often feel unable to approach or discuss their situation with designated authorities, whether UNHCR personnel, national authorities or frontline humanitarian protection staff. LGBTIQ+ persons frequently perceive that authorities and other humanitarian actors traditionally responsible for ensuring refugee protection have no experience with or exposure to LGBTIQ-specific issues and may additionally be unable or unwilling to protect them.
- a. Reception conditions are frequently not adapted for LGBTIQ+ persons. Confidentiality and discretion are not always assured for LGBTIQ+ applicants for international protection, whether in communal waiting areas or during discussions with personnel in UNHCR or partner NGO premises. Abusive behaviour from other asylum-seekers is common.
  - b. Frontline registration and protection staff may not always be aware of and/or use respectful terminology or behaviour when speaking to LGBTIQ+ displaced persons about their SOGIESC. Transgender persons are frequently mis-gendered.
  - c. In extreme cases, security and reception personnel managing access to UNHCR premises may exhibit hostile behaviour to LGBTIQ+ persons.
  - d. To date, there is no systematic monitoring in place across UNHCR field operations to ensure that forcibly displaced LGBTIQ+ are consulted during the creation of procedures to ensure their safety in reception centres.

In such circumstances, LGBTIQ+ persons who are already hesitant to articulate a SOGIESC-based claim feel even less safe disclosing their SOGIESC and their reasons for seeking international protection, particularly in countries where consensual same-sex relations are criminalized.

47. Where possible, many LGBTIQ+ persons turn to local assistance and advocacy organizations for support, often disclosing their SOGIESC to them before doing so with UNHCR and partner personnel. In a number of countries, local LGBTIQ+ support and advocacy organizations are the primary providers of direct relief

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<sup>31</sup> This includes other sensitive information such as an HIV-positive health condition.

services to LGBTIQ+ displaced persons, although they do not always have the mandate, political will, financial resources or familiarity with LGBTIQ+ asylum law to fully assist them.

48. The degree to which LGBTIQ+ support and advocacy organizations collaborate with protection agencies such as UNHCR varies widely by country. In some countries, they coordinate quite closely, while in others, they operate in parallel.
  - a. Smaller LGBTIQ+ support organizations that assist forcibly displaced and stateless LGBTIQ+ people may not be able to register as NGOs and are not able to enter into formal partnership agreements with UN agencies.
  - b. Other grassroots LGBTIQ+ support organizations that assist forcibly displaced and stateless LGBTIQ+ people operate in a low-profile manner and thus may not be known to organizations that would be interested in supporting them. Accessing funding to operate remains a key perennial problem for all such organizations.

### **C. Access to the Asylum Procedure, Including in Detention**

49. Although SOGIESC-based persecution merits international protection under the 1951 Refugee Convention and its 1967 Protocol, as set forth in its Guidelines for International Protection No. 9, LGBTIQ+ displaced people may not always be well-informed of their right to claim this protection. Respondents noted that LGBTIQ+ displaced people do not consistently have access to UNHCR and partner organizations as to the available services and legal assistance relevant to refugee status determination (RSD) and asylum procedures.
50. RSD procedures for LGBTIQ+ persons, as well as for other categories of asylum-seekers, can be quite protracted due mainly to large backlogs in many countries, and information about the status of their cases is not always regularly transmitted in a timely manner while they await the outcomes of their asylum applications. While LGBTIQ+ asylum claims in many situations are prioritized due to the protection risks they experience, LGBTIQ+ applicants, like other asylum-seekers, do not have access to the formal labour market in countries of first asylum. Given that they risk being subjected to arbitrary detention and/or other hurdles and violations of their rights, many opt for onward movement before a decision on their asylum claim has been communicated.

#### **Refugee Status Determination (RSD)**

51. Within the past decade, tremendous progress has been made concerning the right of LGBTIQ+ persons to obtain asylum due to SOGIESC-based persecution. Governments in the majority of industrialized states and a number of middle-income states now recognize that LGBTIQ+ people may be eligible for international protection under the 1951 Refugee Convention and its 1967 Protocol. The rights of LGBTIQ+ persons are also highlighted by a number of regional human rights bodies, although they do not necessarily focus on the situation of forcibly displaced and stateless LGBTIQ+ people.<sup>32</sup>
52. However, lack of systematic and comprehensive data on SOGIESC-based protection claims makes it difficult to assess overall recognition rates by country or region. According to respondents, practices vary, and some jurisdictions are more restrictive than others. The proportion of cisgender gay men and transgender women seeking asylum is higher than that of cisgender lesbian women, with comparatively fewer claims submitted by bisexual individuals and even fewer by intersex persons.<sup>33</sup>

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<sup>32</sup> The European Union Agency for Fundamental Rights (FRA) has published [studies](https://fra.europa.eu/en/publication/2020/eu-lgbti-survey-results) on the protection of LGBTI persons as well as of forcibly displaced persons, pursuant to EU Charter of Fundamental Rights, Articles 21 and 23. The most recent EU-wide survey on LGBTI persons was released in 2020: EU FRA, *A Long Way to Go for LGBTI Equality*. <https://fra.europa.eu/en/publication/2020/eu-lgbti-survey-results>  
See also: African Commission for Human and People's Rights, Inter-American Human Rights Commission and UN Human Rights Mechanisms, *Joint Thematic Dialogue on Sexual Orientation, Gender Identity and Intersex Issues*, March 2018. [https://www.ohchr.org/Documents/Issues/SexualOrientation/ReportSecondTrilateralDialogue\\_InterAmericanAfricanExperts\\_EN.pdf](https://www.ohchr.org/Documents/Issues/SexualOrientation/ReportSecondTrilateralDialogue_InterAmericanAfricanExperts_EN.pdf)

<sup>33</sup>As reported by UNHCR operations personnel during regional consultations held in the Asia and the Pacific, Middle East and North Africa, West and Central Africa and the Americas.

53. Respondents noted that some caseworkers, lawyers and asylum adjudicators lack a sufficiently nuanced understanding of what sexual orientation, gender identity, gender expression and sex characteristics entail. For example:
- a. *Sexual orientation* is not always understood as being a much broader concept than just one's history of sexual interactions, but rather of one's capacity to fully express one's authentic sexuality in community, without fear of experiencing harm.
  - b. *Gender identity* and *gender expression* are not systematically understood as characteristics that are distinct from one's sexual orientation. Persons who self-identify as having a non-binary gender identity have found that asylum adjudicators, who are accustomed to working with more fixed conceptions of gender identity, struggle to understand their identity. Transgender and gender non-conforming persons are particularly prone to being misunderstood.
  - c. *Possessing non-conforming sex characteristics* may be even more perplexing for asylum adjudicators, some of whom may regard this as a strictly medical condition that does not intrinsically contribute to a well-founded fear of persecution.<sup>34</sup>
  - d. *The gender identity of LGBTIQ+ children* may still be evolving, which presents challenges for children with non-normative SOGIESC in contexts where asylum procedures are not always child friendly and are not adequately geared to work with LGBTIQ+ children in a sensitive way.
54. Respondents have raised concerns that there is a lack of detailed, SOGIESC-specific and current country of origin information necessary to support asylum claims by LGBTIQ+ persons. Frequently, this dearth of accurate country information applies to the most repressive states, in which LGBTIQ+ persons seek to remain invisible and public discussion of their existence and mistreatment is suppressed. However, in such cases, adjudicators have been known to instead consult the travel guidance issued by their national foreign ministries, rather than referring to country of origin information on SOGIESC rights in the country of origin or transit.
55. The existence of laws that criminalize consensual same-sex relations between adults or that proscribe against demonstrations of public indecency is not considered to be, in and of itself, sufficient to establish a well-founded fear of persecution.<sup>35</sup> A facts-based assessment is required to assess whether the existence of such laws gives rise to an intolerable predicament for LGBTIQ+ persons.<sup>36</sup> However:
- a. Laws criminalizing consensual same-sex relations between adults and non-normative SOGIESC may impede the ability of LGBTIQ+ persons to access State protection, particularly when persecutory violence is perpetrated by the victim's own family, neighbors, colleagues, faith community or other non-state actors.
  - b. Such violence includes rape, domestic violence, incest and forced marriages and occur in the home or outside public view. It may be very difficult for survivors to seek State protection and to provide proof of having done so.

Some jurisdictions have found that the applicant ought not be required to show that they have sought State protection in such situations.

56. States that recognize SOGIESC-based asylum claims often grant LGBTIQ+ persons refugee status on the basis of the 1951 Refugee Convention ground, "membership of a particular social group (MPSG)."

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<sup>34</sup> In some countries, transgender and intersex support groups distance themselves from SOGI advocacy groups in order to avoid further stigmatization.

<sup>35</sup> UNHCR, *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 23 October 2012, HCR/GIP/12/01, paras. 26-29. <https://www.refworld.org/docid/50348afc2.html>. See also *UNHCR intervention before the Court of Justice of the European Union in the cases of Minister voor Immigratie en Asiel v. X, Y and Z*, 28 September 2012, C-199/12, C-200/12, C-201/12, [www.refworld.org/docid/5065c0bd2.html](http://www.refworld.org/docid/5065c0bd2.html).

<sup>36</sup> *Idem*. The *Guidelines on International Protection No.9* limits the discussion of laws criminalizing consensual same-sex relations between adults to lesbian, gay and bisexual persons.



However, some States require that LGBTIQ+ applicants show that they are a member of a group with sufficient social visibility to warrant international protection. While this requirement is troublesome for all MSPG claimants, it is particularly grave for LGBTIQ+ persons, given the fact that many conceal their SOGIESC in countries of origin, in order to avoid negative attention.

57. Furthermore, whereas the “discretion requirement”<sup>37</sup> and “internal flight alternatives”<sup>38</sup> were more frequently cited ten years ago by asylum adjudicators as reasons for denying SOGIESC-based claims for international protection, respondents report that new jurisprudential challenges have also arisen for LGBTIQ+ applicants, upon whom the evidentiary burden remains high.
- a. Early self-disclosure of a claimant’s SOGIESC is expected, even though many LGBTIQ+ persons do not feel safe enough to openly discuss this during their registration, screening and even initial asylum interviews.
  - b. Some asylum systems and jurisdictions require additional evidential basis to confirm that the applicant belongs to the LGBTIQ+ category. Evidence may include medical tests and certifications, which may be relevant for certain categories of LGBTIQ+ persons, but completely inappropriate for other categories of LGBTIQ+ persons.
  - c. Narratorial *credibility* has emerged as significant grounds of contestation for SOGIESC-based asylum claims.<sup>39</sup> LGBTIQ+ persons’ narratives are usually expected to conform to a sexual identity developmental arc consistent with the *Difference-Stigma-Shame-Harm (DSSH) model*.<sup>40</sup> While the DSSH model is widely used by national jurisdictions to assess the credibility of all SOGIESC asylum claims, it has also been described by advocates as a model that does not reflect the lived realities of cisgender lesbian women, transgender and intersex persons, and of any LGBTIQ+ person whose understanding of their SOGIESC does not conform to this developmental arc.
  - d. When LGBTIQ+ applicants’ narratives do not conform to the DSSH model, adjudicators may rely on their implicit bias and on stereotypical images of how LGBTIQ+ persons act, without regard to regional, cultural and gendered differences. Claims from intersex applicants are not necessarily addressed in a similar manner.

Respondents suggest that the DSSH model as an assessment rubric for determining the credibility of all SOGIESC claims be reviewed and amended to reflect the diversity of lived experiences among LGBTIQ+ persons. Certain LGBTIQ+ asylum advocates recommend that applicants’ self-identification be taken as a suitable and reliable assessment method.<sup>41</sup>

58. *Family Reunification*: While family reunification is not part of the asylum procedure as such, several States recognize same-sex partners and spouses of LGBTIQ+ refugees are recognized as family members for the purposes of family reunification, provided that the relationship is stable. Other States require official proof of partnership or cohabitation from the country of origin. These requirements are especially difficult to meet for LGBTIQ+ persons who come from countries where such relationships are prohibited.<sup>42</sup>

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<sup>37</sup> *HJ (Iran) and HT (Cameroon) v. Secretary of State for the Home Department*, [2010] UKSC 31, United Kingdom: Supreme Court, 7 July 2010, [https://www.refworld.org/cases/UK\\_SC/4c3456752.html](https://www.refworld.org/cases/UK_SC/4c3456752.html).

<sup>38</sup> International Commission of Jurists, *Refugee Status Claims Based on Sexual Orientation and Gender Identity: A Practitioner’s Guide*, 2016, Chapter 7, <https://www.icj.org/wp-content/uploads/2016/10/Universal-PG-11-Asylum-Claims-SOGI-Publications-Practitioners-Guide-Series-2016-ENG.pdf>

<sup>39</sup> UK Lesbian and Gay Immigration Group, *Still Falling Short: The Standard of Home Office Decision-Making in Asylum Claims Based on Sexual Orientation and Gender Identity*, July 2018, <https://uklgig.org.uk/wp-content/uploads/2018/07/Still-Falling-Short.pdf>

<sup>40</sup> UNHCR, Summary Report: *Informal Meeting of Experts on Refugee Claims relating to Sexual Orientation and Gender Identity*, 10 September 2011, para. 32, <https://www.refworld.org/docid/4fa910f92.html>. Also UNHCR, *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 23 October 2012, HCR/GIP/12/01, para. 62. <https://www.refworld.org/docid/50348afc2.html>

<sup>41</sup> For UNHCR’s position, see UNHCR’s intervention in the case of A, B and C: UNHCR, *Written Observations of the United Nations High Commissioner for Refugees in the cases of A and Others (C-148/13, 149/13 and 150/13)*, 21 August 2013, C-148/13, C-149/13 & C-150/13, [www.refworld.org/docid/5215e58b4.html](https://www.refworld.org/docid/5215e58b4.html)

<sup>42</sup> Ferreira, N. and Danisi, S. (2021) *Legal Violence and (In)visible Families*. University of Sussex, Sexual Orientation and Gender Identity Claims for Asylum (SOGICA) Project. Brighton, UK: University of Sussex.

## Detention

59. LGBTIQ+ persons and those perceived to be such may be at risk of arbitrary detention by security forces, whether on the basis of their irregular immigration status, their real or perceived SOGIESC, or a combination of the above.
- a. Respondents report that among LGBTIQ+ displaced people, transgender and visibly gender non-conforming persons face acute risks of being arbitrarily detained simply for the way they dress, speak and comport themselves, particularly in countries of asylum that criminalize consensual same-sex relations.
  - b. In some countries of asylum, LGBTIQ+ persons whose countries of origin have historically had a low asylum recognition rate within the host country are immediately placed in administrative detention upon entry into the territory, without recourse to legal assistance unless UNHCR intervenes.<sup>43</sup> While this practice appears to target all asylum seekers certain countries broadly, LGBTIQ+ people are more disadvantaged by this approach, as they are already marginalized within the general population of asylum-seekers.
  - c. While in detention, LGBTIQ+ persons face further harassment and abuse within detention spaces, including rape and other forms of sexual and gender-based violence, “protective isolation”<sup>44</sup> and denial of necessary medical and, in the case of transgender persons, gender-affirming hormone treatments.
  - d. In such conditions, LGBTIQ+ persons may be very reluctant to disclose their SOGIESC to authorities, even if doing so would allow them to substantiate their conditions of heightened vulnerability. This places them at considerable risk of refoulement.

## Procedural Issues

60. Respondents report incidents of bias, invasive questioning by interviewers, a lack of confidentiality and privacy during the interview itself and use of insensitive or prejudiced interpreters in interview procedures. Respondents emphasized the need for interview tools and techniques that incorporate an understanding of diverse SOGIESC, as well as continuous staff training, a more nuanced selection and training of interpreters, and the mainstreaming of SOGIESC understanding into the refugee status determination process.
61. The use of tests such as “plethysmography” and “vaginal photoplethysmography” to ascertain an applicant’s sexual orientation is of particular concern. These methods use instruments attached to the genitals in an attempt to test for sexual arousal. This type of invasive testing is inconsistent with international human rights, including the right to privacy and bodily integrity.<sup>45</sup> Due process rights are also threatened, as the reliability of such tests is highly questionable.
62. When national asylum authorities are preparing to assume full responsibility for asylum adjudication procedures after a period of having them conducted by UNHCR through its mandate, respondents suggest that UNHCR and partner organizations work together with national judiciaries to treat SOGIESC-based asylum claims in a manner consistent with international refugee and human rights law.

## D. Access to Essential Services

Respondents state that LGBTIQ+ displaced persons – particularly transgender and gender non-conforming persons - experience widespread discrimination in obtaining accurate legal identity

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<sup>43</sup> HIAS, *Locked Up Without Rights: Nationality-Based Detention in the Moria Refugee Camp*, December 2019, [https://www.hias.org/sites/default/files/report\\_on\\_low\\_profile\\_detention\\_in\\_greece\\_hias\\_dec\\_2019.pdf](https://www.hias.org/sites/default/files/report_on_low_profile_detention_in_greece_hias_dec_2019.pdf)

<sup>44</sup> Human Rights Watch, “Abuse Against Transgender Women in US Immigration Detention”, 23 March 2016, <https://www.hrw.org/report/2016/03/23/do-you-see-how-much-im-suffering-here/abuse-against-transgender-women-us>

<sup>45</sup> UNHCR, *Written Observations of the United Nations High Commissioner for Refugees in the cases of A and Others (C-148/13, 149/13 and 150/13)*, 21 August 2013, C-148/13, C-149/13 & C-150/13, [www.refworld.org/docid/5215e58b4.html](http://www.refworld.org/docid/5215e58b4.html); See also UNHCR’s Comments on the Practice of Phallometry in the Czech Republic to Determine the Credibility of Asylum Claims based on Persecution due to Sexual Orientation, April 2011, <https://www.refworld.org/docid/4daeb07b2.html>

documents and in accessing safe and dignified housing, health care, education and opportunities for economic self-sufficiency in asylum countries.

The presence of the COVID-19 pandemic has intensified these challenges, given that many States are choosing to prioritize their own citizens for inclusion in social services and may de-prioritize the provision of these services to displaced persons. While this is also true for other categories of refugees, asylum-seekers, internally displaced and stateless persons, this renders LGBTIQ+ displaced persons particularly vulnerable to intensified discrimination and stigmatization<sup>46</sup>.

#### **i. Legal Documentation**

63. Many forcibly displaced LGBTIQ+ persons arrive in countries of asylum without birth certificates, passports and/or other national identification documents that accurately reflect their gender marker<sup>47</sup>. However, acquiring accurate legal documentation is particularly challenging for transgender, gender non-conforming and intersex persons whose gender identity is not reflected in official documents issued by UNHCR or by government authorities. In countries where non-nationals are not permitted to make legal changes to their gender marker in official documentation, this creates serious problems for them when they must present identification, such as at checkpoints, ports of entry, entrances to government premises, or when applying for residence permits, rental accommodation and access to national social services.

#### **ii. Shelter and Housing**

64. Availability of safe and dignified shelter for LGBTIQ+ displaced persons is a fundamental concern. Unlike members of other displaced communities, LGBTIQ+ persons often arrive in a country of asylum with no support networks in place, and they often cannot turn to other members of their ethnolinguistic or faith diaspora for assistance. Homophobic and transphobic attitudes among both host nationals and other forcibly displaced and stateless people create significant challenges for LGBTIQ+ displaced persons.
- a. In countries that enforce *compulsory encampment* for all refugees and asylum-seekers, LGBTIQ+ persons living in these facilities may be vulnerable to violence from other displaced people as well as to stigmatization from camp management staff. Violence experienced can range from harassment to theft, assault, rape and murder.
  - b. Thus, some LGBTIQ+ persons choose to live together in their own section inside a camp, which may create risks, while others attempt to minimize their visibility to avoid being targeted.
  - c. Yet others out-migrate to urban areas, as camps are frequently located in conservative rural areas with few support networks for LGBTIQ+ persons.
  - d. LGBTIQ+ displaced persons who do not feel secure in either camp or urban shelters are at risk of homelessness, forcing some engage in *exchange of sex*.
  - e. *Existing public shelter systems* in many countries of asylum are poorly adapted to receive LGBTIQ+ people and are frequently unsafe for them. Shelters for survivors of sexual and gender-based violence are usually set up to accommodate cisgender heterosexual women who may not be comfortable living alongside LGBTIQ+ persons. In some countries, no public shelters exist for GB men.
  - f. In *urban contexts*, UNHCR may refer LGBTIQ+ displaced persons to shelters or safe houses administered by partner NGOs. The shelters may be for only LGBTIQ+ persons of concern, or they may be mixed with residents who possess a range of vulnerabilities.<sup>48</sup>

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<sup>46</sup> OHCHR, *Topics in Focus: Covid-19 and the Human Rights of LGBTI People*, 17 April 2020.

<sup>47</sup> In this context, gender marker refers to the gender with which the person of concern to UNHCR self-identifies. This may or may not be the same as the gender to which they were assigned at birth, based on their sex characteristics.

<sup>48</sup> Refuge Point, *Challenges Related to LGBTIQ+ Refugees and Shelter in Urban Contexts*, January 2020, [https://www.refugepoint.org/wp-content/uploads/bsk-pdf-manager/2020/02/ShelterChallenges\\_Moore.pdf](https://www.refugepoint.org/wp-content/uploads/bsk-pdf-manager/2020/02/ShelterChallenges_Moore.pdf)

- g. In several countries of asylum, UNHCR and partners have established *trustworthy referral networks with private landlords* who are willing to host small numbers of LGBTIQ+ tenants in shared accommodation. As LGBTIQ+ displaced persons often live in lower-income areas where they may be evicted by hostile landlords once their SOGIESC is revealed, some operations help them move to safer neighborhoods.
- h. During the COVID-19 pandemic, it is frequently not possible for forcibly displaced persons to maintain adequate physical distancing in communal accommodations. These risks may be exacerbated for LGBTIQ+ displaced persons, especially those with disabilities who may face additional physical and information barriers, and who may have increased reliance on other persons to access basic services. Furthermore, these risks may also be exacerbated for LGBTIQ+ children and children of LGBTIQ+ persons.

Respondents noted that most shelter arrangements put in place by UNHCR and partners for LGBTIQ+ persons are short-term and are not necessarily linked to longer-term economic self-sufficiency initiatives that would help LGBTIQ+ displaced persons sustain their shelter arrangement or move on to safer living conditions.

It is the experience of UNHCR and partner organizations that the provision of scattered housing remains the most effective approach to ensure safe and dignified accommodation for LGBTIQ+ forcibly displaced and stateless people.

### iii. Health and Psychosocial Wellbeing

65. Although the **COVID-19 pandemic** has created new health concerns for LGBTIQ+ displaced persons, many of their health challenges pre-date the emergence of the pandemic and attendant government responses to suppress viral transmission through hygiene measures, physical distancing, quarantine and medical treatment. Drawing from OHCHR research on the impacts of COVID-19 on LGBTIQ+ persons in general, this section outlines key health challenges that are especially relevant for LGBTIQ+ displaced persons.

#### **Access to Essential Health Services**

66. In many humanitarian settings, existing health services are weak, and access is difficult for nationals in countries hosting forcibly displaced people of concern to UNHCR. The additional influx of displaced persons creates surplus pressures on already fragile health systems. In such environments, international minimum humanitarian standards for medical care and other basic needs can be challenging to reach. Essential services may remain unavailable for a prolonged time, if they existed in the area at all; these include, *inter alia*, access to contraception, support related to unintended pregnancies, adolescent sexual and reproductive health services, HIV care, and access to condoms and HIV pre-exposure prophylaxis for men who have sex with men.

#### **De-prioritization of Access to Health Services<sup>49</sup>**

67. From a human rights perspective, LGBTIQ+ persons regularly experience stigma and discrimination while seeking health services, leading to disparities in access, quality and availability of healthcare. Laws that criminalize same-sex relations or that target transgender persons due to their gender identity or expression exacerbate negative health outcomes for LGBTIQ+ people. LGBTIQ+ people who are forcibly displaced or who do not have national identity documents are even more stigmatized when attempting to access health services.
68. Given overloaded health systems, treatment of LGBTIQ+ people may be interrupted or deprioritized, including HIV treatment and testing, hormonal treatment and gender affirming treatments for trans people. Many forcibly displaced people are already de-prioritized for medical treatment, and LGBTIQ+ displaced people are a marginalized and often poorly visible subset within this group. Decisions about

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<sup>49</sup> OHCHR, *Topics in Focus: Covid-19 and the Human Rights of LGBTI People*, 17 April 2020, <https://www.ohchr.org/Documents/Issues/LGBT/LGBTIpeople.pdf>

scaling back services may reflect bias against LGBTIQ+ people, especially forcibly displaced LGBTIQ+ persons.

### **Gender-Based Violence (GBV)**

69. LGBTIQ+ displaced and stateless persons are at particularly high risk of experiencing discrimination, gender-related persecution and gender-based violence particularly against diverse women and girls. According to respondents, many displaced and stateless persons of diverse sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC) have experienced gender-based violence in either or both the country of origin and asylum. The physiological, emotional, and social repercussions can be devastating and life-threatening. It can be the reason for flight and seeking asylum.
70. In particular, displaced persons may encounter disproportionate barriers to essential health care services and a significant lack of survivor-centered care. Survivors of sexual violence may not have access to specialized and non-stigmatizing services, including clinical management of rape, tailored to their specific needs. Male survivors of sexual violence may face specific barriers due to lack of availability or trained appropriate service providers.
71. Legal obstacles create significant barriers. In some countries of asylum, anyone seeking clinical management of rape services at public health facilities are required by health officials to get a police report prior to seeking services. Mandatory reporting is a significant barrier for GBV survivors in accessing health care. In some locations there is criminalization of same-sex relations and forms of gender expression creating further barriers. Even if non-consensual this could lead to arrest for having *engaged* in same-sex sexual activity, even if non-consensually. Thus, they may avoid seeking necessary treatment and face increased health risks.
72. Due to mandatory stay-at-home restrictions enforced during the COVID-19 pandemic, many LGBTIQ+ displaced persons are sometimes confined in hostile environments with unsupportive co-habitants. LGBTIQ+ displaced youth face exposure to violence, anxiety and depression
73. It is recognized that ‘women and girls with diverse sexual orientations and gender identities may be among the most isolated and at-risk individuals in a community due to discrimination and threats of family and community rejection and harm.’<sup>50</sup> Stakeholders report that violence targeted against trans women tends to occur in public spaces, while sexual violence against cis women of any sexual orientation occurs more commonly in private spaces.
74. Male survivors of sexual violence in conflict and displacement settings are frequently reluctant to disclose this as such or seek help from health authorities. According to multi-country studies conducted among displaced communities<sup>51</sup>, sexual violence perpetrated against men and boys of all ages may take the form of forced witnessing of sexual violence, genital violence, anal rape and sexual exploitation. Groups particularly exposed to sexual victimization in refugee settings included young and adolescent boys, persons selling sex, and persons with diverse SOGIESC. Perpetrators were reported to be predominantly male and included other refugees (including family members), members of the host community, landlords, taxi drivers, and state authorities such as the police.
75. Trans and gender non-conforming displaced persons are at particular risk of experiencing GBV, including but not limited to social stigmatization, emotional harassment, physical violence and sexual abuse. Recent research notes that ‘transmen and non-binary individuals who are (incorrectly) perceived to present as female by a perpetrator may be at risk of targeted violence in multiple ways<sup>52</sup>. For

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<sup>50</sup> GBV AoR Minimum Standards, 2019, p.7, available from [https://gbvaor.net/gbviems/wp-content/uploads/2020/11/19-200\\_Minimun\\_Standards\\_Report\\_ENGLISH-Nov.FINAL\\_.pdf](https://gbvaor.net/gbviems/wp-content/uploads/2020/11/19-200_Minimun_Standards_Report_ENGLISH-Nov.FINAL_.pdf).

<sup>51</sup> Women’s Refugee Commission, *Sexual Violence Against Men and Boys in Conflict and Displacement: Findings from A Qualitative Study in Bangladesh, Italy and Kenya*, 2020.

<sup>52</sup> Veronica Ahlenbeck and Danielle Cornish-Spencer, *Gender Based Violence in Emergencies Area of Responsibility Helpdesk: Research Query: Responding to violence against women based on their diverse sexual orientations, gender identities and expressions – an annotated bibliography of resources*, 2021.

example, transmen can be perceived as (gender non-conforming) women, and/or as lesbians or bisexual women, and/or as (gender non-conforming men), therefore being at risk of intersecting gender-based, transphobic and homophobic violence.

#### **Immuno-compromised Persons**

76. LGBTIQ+ forcibly displaced and stateless people with immune-compromised systems, including people with chronic diseases such as HIV/AIDS, cancer, systemic lupus, multiple sclerosis, Type I diabetes, tuberculosis and hepatitis *inter alia*, are at particular risk of exposure to COVID-19. The discontinuation of access to treatment for chronic diseases during the pandemic increases their risk.

#### **Persons Living with HIV**

77. The World Health Organization (WHO) and the Joint United Nations Programme on HIV/AIDS (UNAIDS) consider transgender people and men who have sex with men, including gay and bisexual men, to be among the key populations at risk of contracting HIV.<sup>53</sup>

The degree of access to confidential HIV screening, prevention and treatment for members of these communities who are forcibly displaced or stateless varies among countries. State and civil society organizations that include forcibly displaced and stateless persons in their sexual and reproductive health programming are key actors in assisting and protecting forcibly displaced and stateless gay and bisexual men and transgender people, particularly in contexts where consensual same-sex relations are criminalized. Respondents note that the majority of these HIV services target cisgender men and transgender women, through shared or separate referral pathways.

#### **Transgender, Gender Non-conforming and Intersex Persons**

78. In many countries, forcibly displaced and stateless transgender, gender non-conforming and intersex persons experience intensified stigmatization, socioeconomic marginalization, and criminalization. This presents serious barriers when they seek to access essential medical care, mental health support and gender-affirming hormone treatments.<sup>54</sup>

- a. To date, gender-affirming cross-sex hormone therapies are not comprehensively included in the Inter-agency Emergency Health Kits developed by WHO for populations in emergency situations, nor are they comprehensively included in essential medicines lists for NGOs operating in emergency contexts.
- b. Some humanitarian actors express concern that providing these hormones could expose transgender displaced and stateless persons to intensified protection risks in transphobic environments.

79. Transgender people are also one of five groups identified by WHO and UNAIDS as particularly vulnerable to HIV,<sup>55</sup> and transgender women are 49 times more likely to be living with HIV than other adults of reproductive age with an estimated worldwide HIV prevalence of 19%.<sup>56</sup>

80. Respondents report that in some countries of asylum, transgender women face additional discrimination if they test positive for HIV. This may lead to the revocation of their work permits or visas, placing them at immediate risk of refoulement.

#### **Mental Health and Psychosocial Services (MHPSS)**

81. Mental health and psychosocial wellbeing are critical concerns for forcibly displaced and stateless LGBTIQ+ persons, who may have especially high rates of depression, anxiety, post-traumatic stress

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<sup>53</sup> WHO, *Policy Brief: Transgender People and HIV*, 2015; UNAIDS, *2016-2021 Strategy*.

<sup>54</sup> See for example Oxfam, Save the Children and Action Contre le Faim, *Rohingya Refugee Response: Gender Analysis*, 2018, <https://reliefweb.int/sites/reliefweb.int/files/resources/rr-rohingya-refugee-response-gender-analysis-010818-en.pdf>; See also Transgender Europe, *Asylum Seekers' Needs for Trans-specific Healthcare: Trans-specific Health Care in Reception Conditions*, 2018, [https://tgeu.org/wp-content/uploads/2018/08/TGEU\\_Trans-Healthcare-in-Asylum-Reception-Conditions.pdf](https://tgeu.org/wp-content/uploads/2018/08/TGEU_Trans-Healthcare-in-Asylum-Reception-Conditions.pdf).

<sup>55</sup> WHO, *Policy Brief: Transgender People and HIV*, 2015. The five key populations are men who have sex with men, people who inject drugs, people in prisons and other closed settings, sex workers and transgender people.

<sup>56</sup> Idem.



disorder, suicidal ideation and other mental health challenges due to the rejection, shaming and abuse they have experienced on the basis of their SOGIESC.

82. MHPSS, in the form of individual and group counseling as well as through community-based support groups managed by UNHCR partner NGOs and LGBTIQ+ support organizations, are critical lifelines for LGBTIQ+ displaced and stateless persons.
83. In some countries, there is a lack of local expertise among traditional MHPSS providers in addressing SOGIESC concerns, and LGBTIQ-focused MHPSS tailored specifically for forcibly displaced and stateless people are weak or non-existent.
84. Moreover, due to social distancing requirements in place during the COVID-19 pandemic, in-person MHPSS has ceased in many locations, and displaced and stateless persons would need computer or mobile phone technologies and reliable internet access in order to benefit from any MHPSS offered online. Forcibly displaced and stateless LGBTIQ+ persons who are observing social distancing measures while living in communal accommodation may not have adequate privacy to fully benefit from these services.

#### **iv. Livelihoods and Economic Self-Sufficiency**

While the majority of displaced persons encounter difficulties in accessing opportunities for education, training and employment in countries of asylum, certain factors impact LGBTIQ+ displaced persons especially acutely.

85. *Cash-Based Interventions (CBI)*: In many countries, asylum seekers are not permitted to work legally while their asylum claims are being considered.
  - a. During this period, UNHCR may provide emergency cash assistance for LGBTIQ+ persons of concern. In some operations, the CBI allocation amount has been provisionally increased to help LGBTIQ+ persons of concern meet their needs. Other operations discourage this form of positive discrimination and means-test LGBTIQ+ displaced persons as they do with other categories of vulnerable persons.
  - b. Respondents report that the cash assistance, while appreciated, is often insufficient to cover real costs of living, including housing, food, transportation and digital connectivity to access services and community support activities.
  - c. When the provision of CBI is not programmatically linked to longer-term livelihood and economic self-sufficiency initiatives, recipients can become dependent on receiving the CBI and struggle to support themselves if it is reduced or withdrawn.
86. *Lack of Access to the Formal Labor Market*: LGBTIQ+ displaced persons, especially those who dropped out of primary or secondary school studies due to bullying, are disproportionately represented in the informal workforce in asylum countries.<sup>57</sup>
  - a. Forcibly displaced LGBTIQ+ persons are concentrated in manual or low-skilled service trades where they are required to be physically present, thus exposing them to health risks.

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<sup>57</sup> According to the International Labour Organization (ILO), regular data compilation on the labour market situation for LGBTI persons is rare. As of 2019, no country asks for SOGIESC information in its population census, and only 15 OECD countries have identified LGBTI people in nationally representative sampling surveys - these figures may not include asylum-seekers and stateless persons who are LGBTI. See OECD, "The LGBTI Challenge: How to Better Include Sexual and Gender Minorities", in *Society at a Glance 2019: OECD Social Indicators* (2019), <https://www.oecd-ilibrary.org/sites/c64c3d3f-en/index.html?itemId=/content/component/c64c3d3f-en#wrapper>; See also ILO, "Inclusion and Diversity in the Labour Market: A Call for Statistics", <https://ilostat.ilo.org/2019/12/09/inclusion-and-diversity-in-the-labour-market-a-call-for-lgbt-labour-statistics/>



- b. Lack of labor protections for LGBTIQ+ persons in the informal sector puts them at high risk of exploitation from co-workers, employers and clients. They may be fired if their employer discovers that they are LGBTIQ+.
87. *Transactional Sex as a Coping Strategy*: Long asylum adjudication waiting times subject LGBTIQ+ displaced persons, including adolescents, to severe economic pressures. Many LGBTIQ+ forcibly displaced and stateless persons, especially transgender women and LGBTIQ+ youth, resort to high-risk sex work as part of a strategy to meet their basic needs, thus facing health and security risks.
88. *Livelihood Initiatives*: In a number of countries, UNHCR and partners propose short-to-mid-term livelihood initiatives to assist LGBTIQ+ persons of concern in becoming economically self-sufficient. This ranges from employment in factories, farms, restaurants and hotels, to short-term entrepreneurship training to set up small businesses selling livestock, produce, handicrafts or fabrics in public markets.
- a. The majority of proposed livelihoods opportunities are scaled towards the low end of the value chain and do not provide paths for LGBTIQ+ refugees and asylum-seekers (among other categories of refugees and asylum-seekers) to upskill and move out of poverty.
  - b. Livelihoods opportunities can also be poorly fit for transgender and gender non-conforming persons: in countries where work assignments are established along binary gender lines, transgender men have been assigned to perform heavy manual labour in factories, while transgender women have been assigned to produce handicrafts with cisgender women who do not welcome their presence.
89. Respondents share that successful livelihoods initiatives demonstrate the following characteristics:
- a. They offer LGBTIQ+ displaced persons the opportunity to self-organize and manage their enterprise and work together cooperatively, often with transgender persons producing merchandise in safe locations out of the public eye, while gender-conforming persons interface with the public.
  - b. They offer training whose completion and accreditation is recognized by employers in the country of asylum.
  - c. They offer LGBTIQ+ persons, especially multilingual persons, an opportunity to upskill into the digital knowledge economy, often through training in digital literacy and e-commerce.
90. Given the unfolding economic impacts of the COVID-19 pandemic, it is likely that many LGBTIQ+ displaced people will be de-prioritized for inclusion in national formal labor markets in the short term. Innovative and complementary solutions would need to be created.

## **E. Solutions**

As of this writing, over 80% of the 29.4 million refugees, persons in refugee-like situations and asylum-seekers who have been forcibly displaced outside their countries of origin reside in asylum countries within the same region as their countries of origin. 41.3 million people are internally displaced, and UNHCR has data on 3.9 million stateless people, although there are thought to be millions more.

91. To ensure that forcibly displaced and stateless LGBTIQ+ people have equal access to their rights, UNHCR and its partners operationalize the following pathways to solutions:
- a. For forcibly displaced and stateless LGBTIQ+ persons residing outside their country of origin, UNHCR and partner personnel assess their suitability for the following:
    - (1) Voluntary repatriation, (2) Local integration in countries of asylum, (3) Third-country resettlement (4) Complementary pathways for admission to third countries.

- b. For internally displaced LGBTIQ+ persons residing inside their country of origin, UNHCR and partner personnel adhere to the agency's policy on engagement in situations of internal displacement to ensure a community-based protection and solutions approach, working with government-led efforts to put in place transition strategies that link humanitarian and development action and that take into full account age, gender, disability and diversity elements such as SOGIESC.<sup>58</sup>
- c. For stateless LGBTIQ+ persons who seek international protection, UNHCR personnel adhere to the 1954 Convention Related to the Status of Stateless Persons, as well as to the agency's policy on the protection of stateless persons.<sup>59</sup> A stateless person may be a refugee, asylum-seeker or an internally displaced person.

### **Voluntary Repatriation**

92. Voluntary repatriation is a practice whereby displaced persons of concern voluntarily return to their countries of origin. As homophobic and transphobic prejudice remains deeply entrenched in many LGBTIQ+ persons' countries of origin, voluntary repatriation may not be a viable option for the majority of LGBTIQ+ displaced people.

### **Local Integration in Countries of First Asylum**

93. Currently, LGBTIQ+ displaced persons may spend years in a country of first asylum that may not offer significantly better legal protections or social acceptance of non-conforming SOGIESC than what they left behind. As outlined in the preceding section, LGBTIQ+ displaced persons often experience homophobic, transphobic and xenophobic attitudes in countries of first asylum, where serious protection gaps remain.
94. However, LGBTIQ+ persons in a number of asylum countries have been able to obtain refugee status, appropriate medical care, legal employment and local community support for sustainable longer-term integration.
95. Places for third-country resettlement in traditionally LGBTIQ-friendly States are decreasing. Local integration is being explored as a viable longer-term solution for LGBTIQ+ persons who may not be offered an opportunity to be resettled through traditional mechanisms.
96. A number of middle-income States have demonstrated willingness to grant permanent residence to LGBTIQ+ displaced persons. These States would benefit from enhanced support in order to ensure that LGBTIQ+ displaced persons in their territory are fully mainstreamed into national social service systems and integrated into host communities.

### **Third-Country Resettlement**

97. Resettlement to an LGBTIQ-friendly third country is the preferred solution requested by LGBTIQ+ refugees, as this appears to offer them the most secure chances of a pathway to long-term safety, integration and citizenship in the destination country. Some LGBTIQ+ refugees expect to automatically be considered for this option, despite the fact that fewer than 1% of UNHCR's total population of concern are resettled, and resettlement is not guaranteed for even highly vulnerable categories of refugees.
98. The decision to refer a lesbian, gay, bisexual, transgender and/or intersex refugee for resettlement is taken after a careful internal assessment of their vulnerabilities and protection needs in countries of origin and asylum, as well as of the likelihood that they would be able to access appropriate protection in the resettlement State. UNHCR personnel refer to the agency's *Heightened Risk Identification Tool*, its *Resettlement Assessment Tool for LGBTI Persons* and other referral mechanisms to assess their

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<sup>58</sup> UNHCR, *Policy on UNHCR's Engagement in Situations of Internal Displacement*, UNHCR/HCP/2019/1; UNHCR, *Guidance Package for UNHCR's Engagement in Situations of Internal Displacement, Version 1*, 2019.

<sup>59</sup> UNHCR, Handbook on Protection of Stateless Persons, 2014, <https://www.refworld.org/docid/53b676aa4.html>

suitability for third-country resettlement. A *Best Interest Determination (BID)* is undertaken for unaccompanied LGBTIQ+ children and for separated LGBTIQ+ children where there are additional significant risk factors and protection concerns.

99. UNHCR advocates and negotiates with resettlement States for resettlement quotas, in order to provide durable solutions for refugees in need of resettlement, including LGBTIQ+ refugees. Resettlement is not a right and refugees are not able to choose their destination country.
100. After UNHCR recommends LGBTIQ+ refugees for potential resettlement, Resettlement States undertake their own thorough screening and review processes, including security checks. An LGBTIQ+ refugee accepted for third-country resettlement may, like all refugees in the resettlement process, be vetted by numerous government agencies in the resettlement country before actually departing to their destination. While processing times vary among resettlement countries, UNHCR continues to advocate for expedited processing of resettlement for LGBTIQ+ refugees, as they often continue to live in precarious conditions in the country of first asylum while they wait for a durable solution.
101. Up to 15 States with a longstanding history of welcoming LGBTIQ+ refugees participate in UNHCR's resettlement initiatives. Some States may explicitly request to receive LGBTIQ+ refugees. Others may not ask to receive refugees with an LGBTIQ+ profile, but UNHCR will make all efforts to submit refugees most in need of resettlement, including LGBTIQ+ refugees.
102. The past five years have witnessed an overall decrease in third-country refugee admissions, as a number of resettlement States have amended their policies to restrict numbers of new refugee arrivals. Despite the decrease in global resettlement places, UNHCR continues to advocate for and submit cases of LGBTIQ+ refugees, including LGBTIQ+ youth.
103. With such conditions in mind, respondents suggest that UNHCR and States begin provisionally exploring other potential third-country resettlement destinations for LGBTIQ+ persons of concern, such as emerging resettlement States that are LGBTIQ-friendly, both within and outside of the same region as the country of first asylum.
104. In March 2020, when countries had drastically reduced entry into their territories owing to the COVID-19 global health crisis, and restrictions around international air travel were introduced, travel arrangements for resettling refugees became subject to severe disruptions. Some States had also placed a hold on resettlement arrivals, given their public health situation. In addition, UNHCR and IOM were concerned that international air travel could increase exposure of refugees to the virus. It was therefore decided to temporarily put on hold resettlement travel until the situation would improve. As mobility restrictions begin to change in May 2021, it remains to be seen how long COVID-19-related mobility restrictions will remain in place and what impacts this will have on refugee resettlement globally.

#### **Complementary Pathways for Admission to Third Countries**

105. Complementary pathways are safe, regulated avenues for persons in need of international protection, including LGBTIQ+ persons. This is not meant to replace the protection afforded to LGBTIQ+ refugees under the international protection regime, but rather to offer them a safe pathway for admission to a third country where their protection needs would be met and where they are provided an opportunity towards reaching a sustainable solution.
106. Complementary pathways are designed collaboratively between a myriad of actors, including UNHCR, States, civil society, private sector, academia, non-governmental organizations and refugees.
107. Complementary pathway channels can be accessed by LGBTIQ+ refugees on their own, provided that they meet the criteria of the particular programme. A complementary pathway can take the following forms:
  - a. *Humanitarian admission programmes*: Used for emergency evacuation of refugees, including LGBTIQ+ persons who face grave security risks in countries of first asylum.

These programmes are run by civil society organizations with some UNHCR engagement in identification processes.

- b. *Humanitarian visas*: Allow refugees, including LGBTIQ+ persons in need of protection, access to a third country's territory, where they may then officially apply for asylum. The humanitarian visas are very few in number and are awarded by the State at its full discretion. Such programmes exist only in a few countries where humanitarian visas are permitted by the legislative framework.
- c. *Community sponsorship pathways of refugees*: Individuals, groups of individuals, or organizations are tasked with identification and sponsoring of individual refugees. They are also to provide financial, emotional, social and/or settlement support to help newly arrived refugees integrate in a third country. As of this writing, such programmes are limited to Canada and Australia only.
- d. *Labor mobility pathways*: Allow refugees with specific skillsets to move to third countries for work opportunities. These are specifically based on the refugees' qualifications and experience in a given industry/job sector and are not based on refugees' vulnerability.
- e. *Education*: Allows refugees with specific skillsets to move to third countries for study/scholarship opportunities, typically at the tertiary level. These are specifically based on the refugees' academic qualifications.
- f. *Family reunification* for partners and family members of refugees, including LGBTIQ+ refugees.

108. Complementary pathways are already used by a number of LGBTIQ+ refugees to secure protection in third countries. Some of these opportunities, notably through community sponsorship, are made possible through active support of engaged citizens and LGBTIQ+ advocacy organizations in these countries. Respondents suggest that complementary pathways options offer significant potential for LGBTIQ+ refugees and must be further explored.

109. *Integration Challenges*: Arrival in a third country does not remove all barriers to integration for LGBTIQ+ refugees. While UNHCR and the IOM do provide guidance to resettlement States on how to best integrate LGBTIQ+ refugees, LGBTIQ+ displaced persons may still be additionally marginalized on the basis of their SOGIESC, refugee status, ethnicity, language skills and other factors.<sup>60</sup>

- a. Having survived trauma and disconnection from family support, they may require psychosocial and medical assistance.
- b. LGBTIQ+ refugees may also find themselves in locations where homophobic and transphobic attitudes prevail, where services are neither supportive nor appropriate for them, and where they do not feel welcome.

Adequate support structures are advisable to meet the needs of refugees, particularly LGBTIQ+ persons, to ensure that such integration challenges are countered by the receiving community.

## VI. ORGANIZATIONAL ROLES

110. Respondents acknowledged that humanitarian, LGBTIQ+ human rights and development organizations, while complementary in many ways, do have distinct mandates, operational strategies and cultures. Yet these communities need to work together much more closely in order to protect LGBTIQ+ displaced persons, particularly in situations of protracted displacement.

111. UNHCR recognizes the need to strengthen its own staff capacity on SOGIESC protection and is training personnel to increase their understanding of LGBTIQ-specific protection topics, as well as to address attitudes. Efforts to maintain continuous positive visibility on LGBTIQ+ persons of concern and protection themes have also improved protection outcomes.

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<sup>60</sup> Australian National University, *Queer Displacements: Sexuality, Migration and Exile – 2019 Conference Report*, 2019, <https://hrc.cass.anu.edu.au/events/queer-displacements-sexuality-migration-exile>

## Humanitarian Organizations

112. Mainstreaming of SOGIESC competencies across humanitarian organizations varies widely.

- a. Respondents noted the presence of discriminatory attitudes among refugee-assistance and social service staff in several asylum and resettlement countries. Negative attitudes range from unawareness on how to interact with and assist LGBTIQ+ people, which was noted to be widespread in humanitarian settings, to avoidance, refusal to discharge duties professionally, or explicit mockery and hostility.
- b. Both frontline service providers and senior management in humanitarian organizations have been observed making homophobic or transphobic comments. These attitudes were found to be especially prevalent in countries where consensual same-sex relations between adults are criminalized and where the overall climate is unfavorable for all LGBTIQ+ persons.

## Human Rights Organizations Focused on LGBTIQ+ Advocacy and Support

113. LGBTIQ+ support and advocacy organizations tend to have closer linkages to human rights bodies than to humanitarian organizations *per se*. The majority of those interviewed report that their primary focus is on supporting citizens of the country in which they are active, and that providing emergency support to LGBTIQ+ refugees, asylum seekers and persons with an irregular migration status is not part of their core work.

114. However, particularly in countries of asylum, many LGBTIQ+ support organizations are actively engaged in providing frontline protection and essential services to LGBTI displaced people, who often seek them out in lieu of traditional refugee-assistance actors. These organizations may be led either by nationals of the host country or by displaced LGBTIQ+ people themselves.

115. While LGBTIQ-focused organizations usually have a much more nuanced understanding of the challenges faced by LGBTIQ+ persons, the degree to which they are familiar with refugee/asylum issues varies.

- a. Even when there is political will to assist LGBTIQ+ displaced persons, most LGBTIQ+ support organizations were initially established to advocate for the rights of LGBTIQ+ nationals in their country. They may not have experience, competence, training or dedicated funding to work with LGBTIQ+ displaced people on their territory.
- b. LGBTIQ+ support organizations who assist asylum-seekers and refugees may be penalized by their government for aiding and abetting illegal migration.
- c. Funds allocated by LGBTIQ+ rights organizations to facilitate the emergency evacuation of LGBTIQ+ human rights defenders cannot always be used to support LGBTIQ+ displaced persons who are not human rights defenders.

## Development Organizations

116. The degree to which development organizations have mainstreamed SOGIESC competency also varies, although it is generally stronger in organizations that focus on sexual health, HIV/AIDS counseling and treatment, and gender-based violence. For UNHCR and humanitarian actors, they have potential to be strong partners who support essential government services, and have specific expertise in designing livelihoods programmes. The *Global Compact for Refugees*, *Comprehensive Refugee Response Framework* and the *Humanitarian-Development Nexus* are frameworks that envision how humanitarian and development organizations already collaborate to support displaced populations, and how they can work more closely together to assist LGBTIQ+ displaced communities.

## VII. SUMMARY OBSERVATIONS AND THEMES FOR FURTHER DISCUSSION

117. The observations below summarize the most salient opportunities for improving protection and solutions for LGBTIQ+ people in forced displacement. They are articulated with the understanding that the ongoing COVID-19 pandemic may have large-scale impacts on global mobility, rights protection and economic regimes, the contours of which are yet unclear.

**A. Centrality of Protection and Accountability to Affected Populations**

LGBTIQ+ persons are entitled to all human rights on an equal basis with other human beings. The human rights principles of non-discrimination in relation to sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC), as set forth in the Yogyakarta Principles Plus 10, are fully applicable in the context of forced displacement and international refugee protection under the 1951 Refugee Convention and its 1967 Protocol. States have a duty to protect refugees, asylum seekers, internally displaced and stateless persons regardless of their SOGIESC, recognizing that these identities can intersect with multiple other factors of discrimination such as age, ethnicity, disability *inter alia*, requiring additional and specific measures to ensure their protection. Organizations working with forcibly displaced LGBTIQ+ people have a duty to include them in protection efforts. *What is working well, and what is not, to identify and address multiple and intersecting factors of discrimination faced by LGBTIQ+ persons?*

**B. Transgender, Gender Non-conforming and Intersex Persons**

Transgender and gender non-conforming people face especially acute dangers and protection risks throughout the entire displacement cycle, due to misunderstanding and prejudice about their gender identity and gender expression. They are also least likely to be able to meaningfully access State protection. Protection programming for LGBTIQ+ persons must take into account that transgender, gender non-conforming and intersex persons have needs and challenges that are distinct from those of cisgender gay men, lesbians and bisexual people. *What is working well, and how can organizations better protect forcibly displaced transgender and gender non-conforming persons?*

**C. Drivers of Forced Displacement**

Drivers of forced displacement for LGBTIQ+ persons on the move include but are not limited to political climates, the presence or absence of legislation that protects LGBTIQ+ persons, economic conditions, and prevailing sociocultural norms – all of which influence the degree to which LGBTIQ+ persons experience persecution and protection in countries of origin, transit and destination. Roundtable participants are invited to contribute their deep understanding of dynamics in specific parts of the world to map key trends that affect LGBTIQ+ persons in countries of origin, asylum and resettlement. *What are the main threats to ensuring the wellbeing of LGBTIQ+ people so that they can fully realize their rights? What are entry points for further improvement?*

**D. Identification and Reception of LGBTIQ+ Displaced and Stateless Persons**

Respondents have identified protection gaps for LGBTIQ+ displaced persons that are related to challenges in creating welcoming environments in which they feel safe in sharing their stories and protection concerns, supporting them comprehensively and compassionately through initial reception and registration processes, and protecting them when detained. Challenges are related to structural concerns (eg, database systems), the need to build staff awareness and response capacity, the need to strengthen referral systems and protect LGBTIQ+ persons who have been arbitrarily detained. *What is working poorly, what is working well, and how can these processes be improved? How can LGBTIQ+ displaced persons, including LGBTIQ+ children and children of LGBTIQ+ parents, play a more central role in designing these processes?*

**E. Access to the Asylum Procedure, Including in Detention**

The UNHCR Guidelines for International Protection N°9, underpinned by the 1951 Refugee Convention and by numerous international human rights instruments, continue to serve as authoritative references for national asylum adjudicators when determining whether an LGBTIQ+ person is in need of international protection due to SOGIESC-based persecution. However, these Guidelines are not used by all States. *How can stakeholders assure that States continue to uphold their obligations to respect LGBTIQ+ persons' right to seek asylum on their territory, and how can human rights instruments support this, particularly in asylum countries that criminalize consensual*

*same-sex relations? When examining trends in how SOGIESC asylum claims are currently adjudicated, can additional topics be identified on which UNHCR guidance would be helpful?*

**F. Access to Essential Services**

The majority of forcibly displaced LGBTIQ+ refugees are more likely to remain within the same continent as their country of origin and to seek international protection regionally, sometimes circulating among multiple countries in the region. They are also more likely to remain for long periods of time in asylum countries where protections for LGBTIQ+ people may not be strong. *How can host States be better supported to include LGBTIQ+ displaced persons in their national social service systems and to permit them to contribute to the host State's society and economy? What roles can civil society organizations, philanthropic donors and international organizations play?*

**G. Solutions**

Although many LGBTIQ+ refugees aspire to relocate to third countries with strong legal protections for LGBTIQ+ people, resettlement places in these countries are becoming less available, with reduced resettlement quotas globally impacting all refugees in need of resettlement. Yet new States in every region are emerging as strong advocates for the protection of forcibly displaced LGBTIQ+ refugees. Complementary pathways are also emerging as an innovative, practical solution which gives both host communities and LGBTIQ+ displaced persons more agency in determining their future. *What solutions are working well, and where are entry points for further exploration?*

**H. Organizational Roles**

Respondents observed that the protection of LGBTIQ+ displaced persons cannot be fully achieved by any single organization or even sector by itself, but rather requires greater investment by all concerned actors in the areas of organizational policy, guidance and staff capacity, information-sharing, coordination and, where possible, collaboration between humanitarian, human rights and development agencies. *Where are entry points to encourage greater investment by a broader range of actors, and how can organizations with different mandates better collaborate?. What is needed to support collaboration?*



## ANNEX I: HUMAN RIGHTS-BASED APPROACH TO LGBTI FORCIBLY DISPLACED AND STATELESS PERSONS<sup>61</sup>

### **What are human rights and why do they matter?**

Human rights are universal legal guarantees protecting individuals and groups against actions and omissions that interfere with fundamental freedoms, entitlements and human dignity. Human rights law obliges governments and other duty-bearers to do certain things and prevents them from doing others.

Some of the most important characteristics of human rights are that they:

- Are universal—the birth right of all human beings
- Focus on the inherent dignity and equal worth of all human beings
- Are equal, indivisible and interdependent
- Impose obligations of action and omission, particularly on States and State actors
- Have been internationally guaranteed
- Are legally protected
- Protect individuals and, to some extent, groups.

Human rights standards have become increasingly well defined in recent years. Codified in international, regional and national legal systems, they constitute a set of performance standards against which duty-bearers at all levels of society—but especially organs of the State—can be held accountable. The fulfilment of commitments under international human rights treaties is monitored by independent expert committees called “treaty bodies,” which also help to clarify the meaning of particular human rights. Their meaning is also elaborated by individuals and expert bodies appointed by the United Nations Commission on Human Rights (a Geneva-based body composed of 53 United Nations Member States), known as “special procedures” – the most relevant one being the Mandate of the UN Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity (UN IE for SOGI).

Among the rights guaranteed to all human beings under international treaties, without any discrimination on grounds such as race, colour, sex, language, political or other opinion, national or social origin, property, birth or other status, are:

- The right to life, liberty and security of person
- Freedom of association, expression, assembly and movement
- The right to the highest attainable standard of health
- Freedom from arbitrary arrest or detention
- The right to a fair trial
- The right to just and favourable working conditions
- The right to adequate food, housing and social security
- The right to education
- The right to equal protection of the law
- Freedom from arbitrary interference with privacy, family, home or correspondence
- Freedom from torture and cruel, inhuman or degrading treatment or punishment
- Freedom from slavery
- The right to a nationality
- Freedom of thought, conscience and religion
- The right to vote and take part in the conduct of public affairs
- The right to participate in cultural life.

### **Human Rights-based Approach**

Mere charity is not enough from a human rights perspective. Under a human rights-based approach, the plans, policies and processes of humanitarian assistance, protection and development are anchored in a system of

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<sup>61</sup> UNHCR, Division of International Protection, Human Rights Liaison Unit, 2021.

rights and corresponding obligations established by international law. This helps to empower people - especially the most marginalized people - to participate in policy formulation and hold accountable those who have a duty to act.

A human rights-based approach identifies rightsholders and their entitlements and corresponding duty-bearers and their obligations. It works towards strengthening the capacities of rights-holders to make their claims and of duty-bearers to meet their obligations. A human rights-based approach focuses on the realization of the rights of the excluded and marginalized populations, and those whose rights are at risk of being violated, building on the premise that a country cannot achieve sustained progress without recognizing human rights principles (especially universality) as core principles of governance. Universality means that all people have human rights, even if resource constraints imply prioritization. It does not mean that all problems of all people must be tackled at once.

### **Intersectionality**

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) emphasizes that discrimination of women based on sex and gender can be linked to other types of discrimination based on other factors, such as class, ethnicity, age, disability and health status. A man who is gay, living with HIV and without a secondary school diploma might experience discrimination due to his sexual orientation, gender identity, health condition and socioeconomic status as linked to educational background. A transgender woman who is deaf, of a particular ethnicity and a refugee may face discrimination and barriers due to any of these factors. Each of these types of discrimination is based on different but interlinked power structures and asymmetries that interact to create multi-faceted or inter-linked discrimination, which can lead to stigmatization, exclusion, abuse, and violence.

### **LGBTI Children**

The Committee on the Rights of the Child, in its General Comment, No 5 of 2003 identified articles 2, 3 (1), 6 and 12 of the Convention on the Right of the Child as general principles and rights in the CRC that are fundamental to the enjoyment of all rights enshrined in the CRC.<sup>62</sup> Article 2 relates to the obligation of States to respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind. Article 3 (1) requires that the best interests of the child as a primary consideration in all actions concerning children. Article 6 relates to the child's inherent right to life and States parties' obligation to ensure to the maximum extent possible the survival and development of the child. And Article 12 guarantees the child's right to express his or her views freely in "all matters affecting the child", those views being given due weight. Although not specifically stated, these rights also apply to LGBTI children.

### **Identified relevant good practice on human rights engagement:**

#### ***Refugee status determination and asylum claims submitted by persons alleging discrimination and persecution based on sexual orientation and gender identity***

***Where:*** Regional Office for Southern Africa (ROSA), Pretoria, South Africa

***Human Rights Mechanism:*** Human Rights Committee, Committee against Torture

After UNHCR closed its office in Namibia in December 2016, its Regional Office for Southern Africa (ROSA) decided to engage more systematically with the UN Treaty Bodies and the Universal Periodic Review as strategic partners in support of its advocacy towards fair and efficient RSD in the region. ROSA provided confidential comments to the Human Rights Committee on the consideration of the second periodic report of Namibia in 2016. The Concluding Observations issued by the Human Rights Committee reflected UNHCR's recommendations regarding the need to develop guidelines for sexual orientation and gender identity claims and providing legal representation for unaccompanied and separated children.

Further, ROSA reinforced its engagement by submitting confidential comments to the Committee against Torture during the consideration of the second periodic report of Namibia. The Committee against Torture

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<sup>62</sup> UN Committee on the Rights of the Child, *Convention on the Rights of the Child, CRC/GC/2003/5*, <https://www.refworld.org/docid/4538834f11.html>

reiterated the recommendations on the development of guidelines to address SOGI claims and stressed Namibia's obligation to ensure that individuals at risk of persecution owing to their sexual orientation or gender identity are not subject to refoulement and have equal access to asylum without discrimination. ROSA is currently using these recommendations to persuade the Namibian Government to halt the rejection of asylum claims based on sexual orientation and halt refoulement.

**UN Independent Expert on SOGI highlighting rights of forcibly displaced and stateless LGBTI persons:**

"Refugees living in the camp are subjected to several layers of discrimination. [...] In addition, a significant proportion of the refugees come from countries in which armed conflict is taking place and where populations are confronted with high levels of violence, including sexual and gender-based violence."

"In these circumstances, the level of prejudice and sexual violence that lesbian, gay, bisexual and trans refugees face in the camp is much higher than in the general population. [...] refugees hide their diverse sexual orientation or gender identity, they become invisible for fear of being ostracized, abandoned or subjected to abuse, including "corrective rapes", by their community"

"Increase the presence of the police in the Maratane refugee camp in order to provide better protection to the refugee population, including lesbian, gay, bisexual and trans refugees, and accountability for human rights violations."

**A/HRC/41/45/Add.2, Visit to Mozambique - Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, 17 May 2019, paras. 56 to 58 and 82e**

"[...] information to the effect that hate incidents based on sexual orientation and gender identity have increased and intolerance has become more acute, which might be due to the application of laws criminalizing so-called "propaganda of same-sex relationships." As a result, many LGBT persons would have fled the said regions to become internally displaced persons."

**End of mission statement on country visit to Ukraine, 30 April to 10 May 2019, para. 14**

"Promote research on the intersectionality of violence and discrimination in relation to sexual orientation and gender identity, for instance in regard to patriarchy, gender and hetero-normality, indigenous peoples, minorities, detainees and migrant workers and refugees, learning also from the wisdom of local cultures, in addition to research on the economic dividend of integrating sexual orientation and gender identity into the world of work."

**A/HRC/38/43/Add.1, Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity on his mission to Argentina, 9 April 2018, para. 81f**

"As an example, the multiple, intersecting and aggravated forms of violence and discrimination based on sexual orientation and gender identity are clearly visible in the refugee and migration context, especially where a person has to flee dangers or persecution. As the Office of the United Nations High Commissioner for Refugees (UNHCR) observes: Lesbian, gay, bisexual, transgender and intersex (LGBTI) persons of concern can suffer a wide range of discrimination and violence because of their sexual orientation or gender identity. Displaced LGBTI persons may face continued or additional discrimination in the country in which they seek asylum or as internally displaced within their country of origin."

"There might be tints of patriarchy impacting on women, which also impact negatively on lesbians and women who have sex with women. There might be traces of racism, which also impact negatively on refugees and migrants who are lesbian, gay, bisexual or transgender."

**A/HRC/35/36, Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, 19 April 2017, paras. 40 and 56**

## ANNEX II: SELECT REGIONAL SNAPSHOTS

### AFRICA (WEST AND CENTRAL)

**People of concern:** 11.5 million | 12% refugees | 7% returnees | 72% IDPs | 1% asylum seekers | 14% stateless

No country in the region disaggregates official statistics on asylum applications filed and asylum recognition rates by age, gender, diversity or SOGIESC.

10 countries in the region have legislation criminalizing same sex relationships ([State-Sponsored Homophobia 2020: Global Legislation Overview Update, Geneva: ILGA, December 2020](#))

**Drivers of forced displacement:** Protracted intra-state violence and regional violence with non-State actors, drought, physical and food insecurity, economic hardship, human trafficking along Libya-Mediterranean route

**Drivers of forced displacement for LGBTIQ+ persons:** SOGIESC-based discrimination, xenophobia, rejection by family, honour killings by family who may pursue LGBTI persons across national borders, lack of access to essential services, harassment, labor exploitation, gender-based violence, murder. Influence of religious fundamentalists on political discourse.

14 out of 15 States in this region criminalize consensual same-sex relations between adults, with 2 States applying the death penalty and 7 presenting barriers to the legal registration of LGBTI-focused civil society organizations. All States are parties to the 1951 Refugee Convention and 1967 Protocol. UNHCR conducts mandate refugee status determination on SOGIESC asylum cases in a majority of countries.

#### **International Protection of Forcibly Displaced LGBTIQ+ Persons**

- **2014:** African Commission on Human and People's Rights: *Article 2, Resolution 275: Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity.*
- **2018:** African Commission on Human and People's Rights: *Ending Violence and Other Human Rights Violations based on Sexual Orientation and Gender Identity: A Joint Dialogue of the African Commission on Human and People's Rights, the Inter-American Human Rights Commission and United Nations.*
- The region hosts a high concentration of circular flows among displaced LGBTIQ+ persons.
- Considerable socio-cultural and legislative diversity within the region, combined with social intolerance, the influence of religious beliefs and the application of Islamic Shari'a laws alongside secular jurisprudence create significant protection challenges for LGBTIQ+ people.
- Persons thought to be LGBTIQ+ are arbitrarily detained and prosecuted due to their real or perceived SOGIESC. Few State actors provide protection, and some perpetrate hate crimes against LGBTIQ+ persons.
- Although the HIV/AIDS epidemic has created strong civil society networks to protect LGBTIQ+ people through public health entry points, this tends to focus heavily on HIV+ men who have sex with men. Transgender people, lesbians and bisexual women experience acute hardships but receive less visibility and support.

## **AFRICA (EAST, HORN OF AFRICA AND GREAT LAKES)**

**People of concern:** 18.6 million | 26% refugees | 12% returnees | 47% IDPs | 1% asylum seekers | 0.1% stateless

Most countries in the region do not disaggregate official statistics on asylum applications filed and asylum recognition rates by age, gender, diversity or SOGIESC.

9 countries in the region have legislation criminalizing same sex relationships ([State-Sponsored Homophobia 2020: Global Legislation Overview Update, Geneva: ILGA, December 2020](#))

**Drivers of forced displacement:** Protracted intra-state violence and regional violence with State and non-State actors, legislative reform criminalizing consensual same-sex relations between adults, drought, physical and food insecurity, economic hardship

**Drivers of forced displacement for LGBTIQ+ persons:** SOGIESC-based discrimination, xenophobia, ostracization and rejection by family, honour killings by family who may pursue LGBTIQ+ persons across national borders, lack of access to essential services, lack of legal remedies, harassment, labor exploitation, gender-based violence including but not limited to correctional rape, and murder. Influence of religious fundamentalists on political discourse.

9 out of 11 States in this region criminalize consensual same-sex relations between adults, with 1 State attempting to apply the death penalty and at least 6 presenting barriers to the legal registration of LGBTIQ+ focused civil society organizations. Absence of criminalizing legislation does not mean that the social environment is non-discriminatory.

All but three States are parties to the 1951 Refugee Convention and 1967 Protocol.

1 State grants asylum to LGBTIQ+ persons fleeing SOGIESC-based persecution.

### **International Protection of Forcibly Displaced LGBTIQ+ Persons**

- **2014:** African Commission on Human and People's Rights: *Article 2, Resolution 275: Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity.*
- **2018:** African Commission on Human and People's Rights: *Ending Violence and Other Human Rights Violations based on Sexual Orientation and Gender Identity: A Joint Dialogue of the African Commission on Human and People's Rights, the Inter-American Human Rights Commission and United Nations.*
- The region hosts a high concentration of circular flows among displaced LGBTIQ+ persons.
- It is also one of the regions whose protection issues for LGBTIQ+ persons are the most visible in international media, due to advocacy by LGBTQ refugees, asylum seekers, and supporters.
- Considerable socio-cultural and legislative diversity within the region, combined with social intolerance and the influence of religious beliefs, create significant protection challenges for LGBTIQ+ people.
- Persons are arbitrarily detained and prosecuted due to their real or perceived SOGIESC. Few State actors provide protection, and some perpetrate hate crimes against LGBTIQ+ persons.
- Although the HIV/AIDS epidemic has created strong civil society networks to protect LGBTIQ+ people through public health entry points, this tends to focus heavily on HIV+ men who have sex with men. Transgender people, lesbians and bisexual women experience acute hardships but receive less visibility and support.
- Intersex advocacy groups in this region do not always link with SOGIESC rights actors.

## AFRICA (SOUTHERN)

**People of concern** 7.5 million | 10.1% refugees | 4% asylum seekers | 85% IDPs

Statistics on the number of stateless persons in the region do not exist. However, and more importantly, at the Global Refugee Forum, 9 countries in Southern Africa pledged to collect data in the forthcoming censuses. The World Bank estimated that 137 million people in the region lack adequate identity documents.

Most countries in the region do not disaggregate official statistics on asylum applications filed and asylum recognition rates by SOGIESC.

6 countries in the region have legislation criminalizing same sex relationships ([State-Sponsored Homophobia 2020: Global Legislation Overview Update, Geneva: ILGA, December 2020](#))

**Drivers of forced displacement:** Protracted intra-state violence and violence of non-State actors coupled with drought, food insecurity, economic hardship and, for a small number of persons, legislative frameworks criminalizing consensual same-sex relations between adults.

**Drivers of forced displacement for LGBTIQ+ persons:** SOGIESC-based discrimination, xenophobia in other countries of asylum, rejection by the family, constant threats including of death by community and family in several countries within or surrounding Southern Africa, lack of access to essential services, harassment, labor exploitation, gender-based violence, threats, murder. Influence of religious fundamentalists on political discourse.

6 out of 16 States in this region criminalize consensual same-sex relations between adults, with 2 States invoking public decency laws to criminalize LGBTIQ+ persons and at least 5 presenting barriers to the legal registration of LGBTIQ-focused civil society organizations. Absence of criminalizing legislation does not mean that the social environment is non-discriminatory.

While nearly all countries are party to international and regional refugee instruments, Angola, Botswana, Malawi, Mozambique, Madagascar, Namibia, Zimbabwe, have made reservations. The asylum space ranges from refugees being able to live with free movement to strict encampment. Encampment policies are firmly enforced in Botswana and Namibia. UNHCR continues to advocate for the Government to bring forward the pledges made at the Global Refugee Forum (GRF). At the other end of the spectrum, South Africa and other countries like Eswatini and Lesotho, refugees and asylum-seekers in principle, have freedom of movement, can access employment, access public services and assistance.

At least one State grants asylum to LGBTIQ+ persons fleeing SOGIESC-based persecution.

### **International Protection of Forcibly Displaced LGBTIQ+ Persons**

- **2014:** African Commission on Human and People's Rights: *Article 2, Resolution 275: Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity.*
- **2018:** African Commission on Human and People's Rights: *Ending Violence and Other Human Rights Violations based on Sexual Orientation and Gender Identity: A Joint Dialogue of the African Commission on Human and People's Rights, the Inter-American Human Rights Commission and United Nations.*
- In the region LGBTIQ+ persons of concern and other displaced, do move in search of better protection conditions, thus creating circular flows among displaced LGBTIQ+ persons.
- Southern Africa is also one of the regions whose protection issues for LGBTIQ+ persons are the most visible in international media, thanks to the advocacy of LGBTIQ+ supporters and civil society organizations, which are vocal especially in South Africa.

- Considerable socio-cultural and legislative diversity within the region, combined with intolerance, social norms, widespread violence in marginalized communities, religious beliefs, create significant protection challenges for LGBTIQ+ people.
- Some States have discriminatory legislations but these are generally not enforced.
- In addition, discrimination and negative attitudes in communities and amongst law enforcement are widespread and acute. Few State actors provide adequate protection; legislation and actions against hate crimes are limited.
- Other than resettlement persons of concern who are LGBTIQ+ have few options for solutions, and local integration remains challenging.
- The HIV/AIDS epidemic has created strong civil society networks to protect LGBTIQ+ people through public health entry points. Outreach tends to focus on HIV+ men who have sex with men.

### AMERICAS

**People of concern (end 2020):** 18.3 million | 4% refugees | 0.1% returnees | 47% IDPs | 11.5% asylum seekers | 17% Other | 21% Venezuelans Displaced Abroad

Most countries in the region do not disaggregate official statistics on asylum applications file nor on refugee recognition rates by age, gender, diversity or SOGIESC.

9 countries in the region have legislation criminalizing same sex relationships ([State-Sponsored Homophobia 2020: Global Legislation Overview Update, Geneva: ILGA, December 2020](#))

**Drivers of forced displacement:** Escalating violence from gangs, armed groups and State, persecution, gender-based violence, human rights violations, physical and food insecurity, economic hardship.

**Drivers of forced displacement for LGBTIQ+ persons:** SOGIESC-based discrimination, xenophobia, rejection by family and the community, lack of access to essential services, harassment, labor exploitation, gender-based violence, torture, murder, laws criminalizing and concealment.

#### **International Protection of Forcibly Displaced LGBTIQ+ persons**

- [Inter-American Court of Human Rights Advisory Opinion OC-24/17](#) (Spanish only) provides protections for persons in the Americas based on their SOGIESC.
- The protection needs of LGBTIQ+ displaced persons with high vulnerabilities are included in the region's Comprehensive Protection and Solutions Framework (MIRPS). The protection needs of LGBTIQ+ displaced persons with high vulnerabilities are included in the region's Refugee and Migrant Response Plan for the Venezuela Situation.
- At least 5 states consider asylum claims on the basis of SOGIE-based persecution, honor family reunification for same-sex unions, and include asylum seekers' auto-perceived gender identities in immigration identity documents. At least 4 states, including resettlement states in South America, have implemented complementary pathways and third country solutions for LGBTIQ+ persons: USA, Canada, Australia and Uruguay.
- Despite of important progress in protection of LGBTIQ+ persons, the region has the world's highest murder rate of transgender persons.

#### **Key Regional Initiatives**

##### ***Regional LGBTI+ Network (Red Regional de Protección de personas LGBTI+ refugiadas, solicitantes de asilo y migrantes de las Americas)***

Led by 17 member NGOs in 9 countries across Central, North and South America and supported by UNHCR, the Regional LGBTI+ Network coordinates with the Regional Interagency Coordination Platform for Refugees and Migrants from Venezuela (R4V Platform) and has developed an action plan to respond immediately to the needs of LGBTIQ+ persons forcibly displaced from Venezuela. It is also part of the regional Support Spaces Network an interagency initiative of the R4V Platform, where 188 Support Spaces in 8 countries have



been established. Located along key transit routes, at border areas and in destination, these Support Spaces<sup>63</sup> provide LGBTIQ+ refugees, migrants and displaced persons with information and emergency services. More and more the network includes structures providing safe and specialized services for the protection of LGBTIQ+ persons.

#### **Regional Safe Spaces Network**

Established by UNHCR and partners, this is a network of vetted and specialized service providers who offer case management, psychological support, safe accommodation and sexual and reproductive health services to LGBTIQ+ displaced persons in Venezuela, Colombia and Guatemala.

#### **High-Level Business Summit on LGBTQ Refugees**

Co-hosted by the Tent Partnership for Refugees, ORAM, and the Human Rights Campaign, this high-level business summit has launched collective corporate commitments with 23 multi-national companies to mentor and hire 1000 LGBTIQ+ resettled refugees in Brazil, Canada, Colombia, Mexico, and the United States of America by 2023.

### **ASIA AND THE PACIFIC (INCLUDES WEST AND CENTRAL ASIA)**

**People of concern:** 9.2 million | 46% refugees | 1% returnees | 36% IDPs | 2% asylum seekers | 25% stateless

Most countries in the region do not disaggregate official statistics on asylum applications filed and asylum recognition rates by age, gender, diversity or SOGIESC.

19 countries in the region have legislation criminalizing same sex relationships ([State-Sponsored Homophobia 2020: Global Legislation Overview Update, Geneva: ILGA, December 2020](#))

**Drivers of forced displacement:** Protracted intra-state violence, State expulsion of ethnic minorities, physical and food insecurity, adverse climate impacts, economic hardship

**Drivers of forced displacement for LGBTIQ+ persons:** SOGIESC-based discrimination, xenophobia, rejection by family, honour killings by family who may pursue LGBTIQ+ persons across national borders, lack of access to essential services, harassment, labor exploitation, gender-based violence, murder. Influence of religious fundamentalists on political discourse.

21 out of 45 States in this region criminalize consensual same-sex relations between adults, with 2 States applying the death penalty and 11 presenting barriers to the legal registration of LGBTI-focused civil society organizations.

Only 20 States are parties to the 1951 Refugee Convention and 1967 Protocol. Many of the countries hosting significant LGBTIQ+ displaced populations are not signatories.

#### **International Protection of Forcibly Displaced LGBTIQ+ Persons**

- 7 States enforce broad protections against SOGIESC-based discrimination, 2 provide constitutional protection for LGBTIQ+ people and 2 have legalized same-sex marriage.
- While the risk of physical and emotional harm to LGBTIQ+ displaced persons may be lower in this region than it is in others, there is no legal framework in place to protect refugees or the rights of forcibly displaced LGBTIQ+ people at either regional or national levels.
- SOGIESC-based discrimination remains a protection challenge in many asylum countries, where LGBTIQ+ asylum seekers risk arbitrary arrest, detention and further abuse.

#### **Key Regional Initiatives**

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<sup>63</sup> To learn more about the Support Spaces and where they are, please visit the following links: <https://r4v.info/es/working-group/234?sv=39&geo=0> and <https://espacios.r4v.info/es/map>

### **Pride in the Humanitarian System (2018)**

Co-organized by UN Women and 5 NGOs and attended by UNHCR, this four-day Bangkok consultation brought together 120 representatives from diverse SOGIESC CSOs, communities, and other stakeholders in the humanitarian system, including international NGOs, United Nations agencies, and donors. Participants explored: Humanitarian architecture and processes, case studies of past diverse SOGIESC exclusion from preparedness and response, thematic focus areas for diverse SOGIESC inclusion, barriers to and enablers of diverse SOGIESC inclusion, and tools for achieving diverse SOGIESC inclusion. While the consultation did not focus exclusively on LGBTIQ+ forced displacement, it was considered an area of humanitarian intervention where SOGIESC-competent responses can be strengthened.

### **EUROPE**

**People of concern:** 12.1 million | 58% refugees | 0.1% returnees | 16% IDPs | 8% asylum seekers | 4% stateless

2 countries in the region disaggregate official statistics on asylum applications filed and asylum recognition rates by age, gender, diversity or SOGIESC.

**Drivers of forced displacement:** Protracted intra-state violence, State expulsion of ethnic minorities, physical insecurity, economic hardship

**Drivers of forced displacement for LGBTIQ+ persons:** SOGIESC-based discrimination, xenophobia, rejection by family and community, lack of access to essential services, harassment, labor exploitation, gender-based violence, murder. Influence of negative political and media discourse related to LGBTIQ+ persons in certain countries.

Consensual same-sex relations between adults are legal in all States in this region. However, 1 enforces morality laws, 3 present barriers to freedom of expression on SOGIESC topics, and 2 ban the legal registration of LGBTI-focused civil society organizations. All States are parties to the 1951 Refugee Convention and 1967 Protocol.

### **International Protection of Forcibly Displaced LGBTI Persons**

- All but one state is party to the *European Convention on Human Rights*.
- *Recommendation CM/Rec (2010)5*: Recommended by the Council of Europe (CoE) Committee of Ministers to European Union member states, these measures advise on combatting discrimination on grounds of sexual orientation or gender identity.
- This region hosts two complementary adjudication regimes that provide guidance on national asylum decisions for LGBTIQ+ protection applicants: (1) *European Court of Human Rights*, with numerous SOGI-based case law interventions; (2) *Court of Justice of the European Union*.
- Dedicated departments on SOGI(ESC) issues are active in several EU institutions, including the Council of Europe, EU Parliamentary Assembly and European Asylum Support Office (EASO).
- However, 12 states do not allow possibility of name and gender change. 20 states require sterilization as a pre-condition for legal gender change.
- A municipality in one state has indefinitely banned public LGBTIQ-focused gatherings.
- At least 2 of the states which restrict freedom of expression on LGBTIQ+ topics also host significant numbers of LGBTIQ+ asylum seekers who arrive from outside Europe.
- In most of the countries in Europe, state authorities assume responsibility for the asylum and reception system. UNHCR operations and partners focus primarily on monitoring, advocacy and capacity building, with limited direct contact with LGBTIQ+ displaced persons. LGBTIQ+ persons are, however, systematically included in participatory assessments and UNHCR works with several LGBTIQ+-led and refugee-leg organisations in several countries.
- Main protection challenges for LGBTIQ+ displaced persons in Europe concern: Inadequate reception conditions (lack of confidential and dedicated spaces, security concerns),

inadequate identification of LGBTIQ+ persons of concern and lack of vulnerability screenings for SOGIESC-specific protection issues, and challenges in the asylum procedures (skills and attitudes of adjudicators, inappropriate interview techniques, use of terminology and credibility assessments).

- Following recognition, LGBTIQ+ refugees often face difficulties in finding accommodation and work due to discrimination, both as refugees and as LGBTIQ+ persons.

Inclusive reception and integration of LGBTIQ+ refugees and asylum seekers, as well as advocacy and capacity building regarding SOGI asylum applications, are among the priorities in the region.

### **MIDDLE EAST AND NORTH AFRICA (MENA)**

**People of concern:** 17.4 million | 13% refugees | 14% returnees | 69% IDPs | 2% asylum seekers | 2% stateless

Most countries in the region do not disaggregate official statistics on asylum applications filed and asylum recognition rates by age, gender, diversity or SOGIESC.

16 countries in the region have legislation criminalizing same sex relationships ([State-Sponsored Homophobia 2020: Global Legislation Overview Update, Geneva: ILGA, December 2020](#))

**Drivers of forced displacement:** Protracted cross-border intra-state violence, State expulsion of ethnic and religious minorities, physical and food insecurity, economic hardship

**Drivers of forced displacement for LGBTIQ+ persons:** SOGIESC-based discrimination, xenophobia, rejection by family, retributive honour killings by family who may pursue LGBTIQ+ persons across national borders, State-sponsored digital surveillance and blackmailing targeting LGBTIQ+ in MENA leading to extortion and public exposure of their intimate private lives, lack of access to and, in some cases, express deprivation of essential services, harassment, labour exploitation, gender-based violence, trafficking for purposes of sexual exploitation, murder. Influence of religious fundamentalists on political discourse.

18 out of 20 States in this region criminalize consensual same-sex relations between adults, with 5 imposing the death penalty and at least 14 presenting barriers to the legal registration of LGBTIQ+ focused civil society organizations. 7 States are parties to the 1951 Refugee Convention and 1967 Protocol. Many of the countries hosting significant LGBTIQ+ displaced populations are not signatories.

### **International Protection of Forcibly Displaced LGBTIQ+ Persons**

- No known regional human rights instruments protecting persons from SOGIESC-based discrimination.
- Socio-cultural and legislative diversity within the region, combined with social intolerance and the influence of religious beliefs, create significant protection challenges for LGBTIQ+ people.
- Targeted killings against persons based on their real or imputed SOGIESC have been carried out by non-State actors (Islamic State in the Levant).
- People are arbitrarily detained and prosecuted due to their real or perceived SOGIESC. Few State actors provide protection, and some perpetrate hate crimes against LGBTIQ+ persons as well as impose invasive medical examinations on persons suspected to be LGBTIQ+.
- Although the HIV/AIDS epidemic has created strong civil society networks to protect LGBTIQ+ people through public health entry points, this tends to focus heavily on HIV+ men who have sex with men. Transgender people, lesbians and bisexual women experience acute hardships but receive less visibility and support.
- In certain countries, confidentiality is compromised when HIV+ persons report to public hospitals, which are also required to report data on LGBTIQ+ sexual violence survivors to police. Data collection related to the intimate life of HIV+ and LGBTIQ+ individuals may also be overreaching and outside of recommended data protection standards. Many MENA

countries still allow involuntary 'conversion therapies' for LGBTIQ+ to change their SOGIESC. In other countries, public hospitals refuse to treat LGBTIQ+ GBV survivors.

- Transgender and gender non-conforming persons face acute discrimination and may be deported from certain countries if they test positive for HIV.
- In several countries, transgender youth account for a high proportion of displaced children.
- Although many resettlement States request to resettle LGBTIQ+ displaced persons from this region, access to these opportunities is restricted to the most vulnerable cases. Some gay men and transgender women are reported to intentionally try to infect themselves with HIV in order to be prioritized for third-country resettlement.

ANNEX III: GLOSSARY OF KEY SOGIESC TERMS<sup>64 65</sup>

<b>Biphobia</b>	Fear of bisexuals, often based on stereotypes, including inaccurate associations with infidelity, promiscuity, and transmission of sexually transmitted infections. Intolerance or prejudice is a more accurate description of antipathy toward bisexual people.
<b>Bisexual</b>	Individuals who sexually, physically and romantically feel attracted to individuals of more than one gender
<b>Cisgender</b>	People who are not transgender/trans persons. Cisgender persons' gender identity corresponds with the sex that was assigned to them at birth.
<b>Closeted</b>	Describes a person who is not open about their sexual orientation, gender identity, gender expression or sex characteristics. Some individuals may be out to some people in their life, but not out to others due to fear of rejection, harassment, violence, losing one's job, or other concerns.
<b>Coming Out</b>	A lifelong process of self-acceptance. People develop lesbian, gay, bisexual or transgender identity first to themselves and then may reveal it to others. Publicly disclosing one's SOGIESC may or may be part of coming out.
<b>Cross-Dresser</b>	While anyone may wear clothes associated with a different sex, the term cross-dresser is typically used to refer to men who occasionally wear clothes, makeup, and accessories culturally associated with women. Those men typically identify as heterosexual. This activity is a form of gender expression and not done for entertainment purposes. Cross-dressers do not wish to permanently change their sex or live fulltime as women.
<b>Gay</b>	A man who sexually, physically and romantically feels attracted to individuals of the same gender.
<b>Gender</b>	Refers to the relationship between men and women based on socially or culturally constructed and defined identities, status, roles and responsibilities that are assigned to one sex or another. Sex, on the other hand, is a biological determination.
<b>Gender-Based Violence (GBV)</b>	Any act of violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to persons on the basis of their sex or gender, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life. Gender-based violence encompasses violence against women and men because of how they experience and express their gender and sexualities.
<b>Gender expression</b>	External manifestations of gender, expressed through one's name, pronouns, clothing, haircut, behavior, voice, or body characteristics. Society identifies these cues as masculine and feminine, although what is considered masculine and feminine changes over time and varies by culture. Typically, transgender people seek to make their gender expression align with their gender identity, rather than the sex they were assigned at birth.
<b>Gender identity</b>	Gender identity is understood to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.
<b>Gender non-conforming, Genderqueer</b>	People whose gender expression is different from conventional expectations of masculinity and femininity. Not all gender non-conforming people identify as transgender; nor are all transgender people gender non-conforming. Genderqueer or gender-fluid or non-binary describe a person who does not identify with the

<sup>64</sup> The terminology in this Glossary was adapted from the following sources: Gay and Lesbian Alliance Against Defamation (GLAAD), *Media Reference Guide*, 10<sup>th</sup> edition, October 2016, <https://www.glaad.org/sites/default/files/GLAAD-Media-Reference-Guide-Tenth-Edition.pdf>, and the *Yogyakarta Principles Plus 10: Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression, and Sex Characteristics to Complement the Yogyakarta Principles*, November 2017, available at: [https://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5\\_yogyakartaWEB-2.pdf](https://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf).

<sup>65</sup> A useful multilingual glossary of SOGIESC terms for refugee-assistance practitioners is available at: ORAM, *Sexual Orientation, Gender Identity and Gender Expression: Essential Terminology for the Humanitarian Sector*, 2016, <https://oramrefugee.org/wp-content/uploads/2019/12/Glossary-PDF.pdf>

	male/female binary but somewhere outside or between. Some gender non-conforming people use neutral pronouns like “they” and “them”.
<b>Heterosexual</b>	An adjective used to describe people whose enduring physical, romantic, and/ or emotional attraction is to people of the opposite sex. Also straight.
<b>Homosexual</b>	Outdated clinical term considered derogatory and offensive. Describes a man or a woman who sexually, physically and romantically feels attracted to individuals of the same gender.
<b>Homophobia</b>	Fear of lesbians and gay men. Prejudice and intolerance are usually more accurate descriptions of hatred or antipathy towards LGBTI people.
<b>Intersex</b>	Intersex people are born with physical sex characteristics that do not fit medical norms for female or male bodies’ or as earlier defined ‘intersex people are born with physical, hormonal or genetic features that are neither wholly female nor wholly male; or a combination of female and male; or neither female nor male.
<b>Lesbian</b>	A woman whose enduring physical, romantic, and/or emotional attraction is to other women. Some lesbians may prefer to identify as <i>gay</i> (adj.) or as <i>gay women</i> .
<b>LGBTI</b>	Lesbian, Gay, Bisexual, Transgender and Intersex
<b>Out</b>	A person who self-identifies as LGBT in their personal, public, and/or professional lives.
<b>Outing</b>	The act of publicly declaring (sometimes based on rumor and/or speculation) or revealing another person's sexual orientation or gender identity without that person's consent. Considered inappropriate by a large portion of the LGBTI community.
<b>Queer</b>	Queer can refer to people who are not heterosexual/straight or cisgender or who do not see themselves as belonging to the socially accepted binary categories of sexual orientation and gender identity; rather, queer people see both as a spectrum and identities as fluid.
<b>Sex</b>	The classification of a person as male or female. At birth, infants are assigned a sex, usually based on the appearance of their external anatomy. A person's sex, however, is actually a combination of bodily characteristics including: chromosomes, hormones, internal and external reproductive organs, and secondary sex characteristics.
<b>Sex characteristics</b>	Each person's physical features relating to sex, including chromosomes, gonads, sex hormones, genitals and secondary physical features emerging from puberty.
<b>Sexual minorities</b>	An umbrella term used to describe persons subject to discrimination and abuse due to their non-conformance with prevailing gender norms.
<b>Sexual orientation</b>	Sexual orientation is understood to refer to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.
<b>Sodomy Laws</b>	Laws that were historically used to selectively punish gay men, lesbians and bisexuals. These laws have been struck down in many countries.
<b>SOGIESC</b>	Sexual Orientation, Gender Identity and Sex Characteristics
<b>Straight</b>	A term used to describe people with a heterosexual orientation.
<b>Transgender, Trans</b>	An umbrella term for people whose gender identity and/or gender expression differs from what is typically associated with the sex they were assigned at birth. Many transgender people are prescribed hormones by their doctors to change their bodies. Some undergo surgery as well. But not all transgender people can or will take those steps, and a transgender identity is not dependent upon medical procedures.
<b>Transphobia</b>	Fear of transgender persons. Prejudice and intolerance are usually more accurate descriptions of hatred or antipathy towards LGBTI people.
<b>Transition</b>	Altering one's birth sex is not a one-step procedure; it is a complex process that occurs over a long period of time. Transition can include some or all of the following personal, medical, and legal steps: telling one's family, friends, and co-workers; using a different name and new pronouns; dressing differently; changing one's name and/or sex on legal documents; hormone therapy; and possibly (though not always) one or more types of surgery. The exact steps involved in transition vary from person to person.