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1.5. A gender lens on forced displacement

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icon for gender based discplacement

Sexual orientation, gender identity or expression, and sex characteristics (SOGIESC) may affect the safety of some people in the world and their path to seeking international protection. These factors might have a direct impact on a person's experience in the country of origin, may constitute the key reason for having to flee a country (i.e. gender-related persecution) and may impact the journey through transit countries in the pursuit of safety. These aspects can also have an impact on an asylum applicant’s experience in the destination country, and the need to receive effective protection in a manner suitable for the specific context and in full respect of their fundamental rights and human dignity is clear.

Women, girls and LGBTIQ persons throughout the world may be subjected to intense forms of cultural, structural and direct violence. Gender-based violence may include – but is by no means limited to – sexual abuse and exploitation, rape, female genital mutilation/cutting (FGM/C), human trafficking, harassment and domestic violence, as well as social stigmatisation and marginalisation, and related psychosocial consequences. Such traumatic experiences need to be taken into consideration while trying to understand and assess a person’s need for protection. Likewise, these realities need to be included in the development of protection solutions to properly cater to the needs of survivors of gender-based violence. It is fundamental that gender considerations are integrated into the asylum procedure, even when a specific asylum claim is not clearly gender-related per se.

A number of international and regional legal instruments are in place to safeguard the rights of women and girls, and prohibit traditions, cultural practices and religious customs that may be harmful to them.43 For LGBTIQ persons, no specialised, legal, international human rights instrument exists, but their rights are protected under other international human rights law. Nonetheless, recent legal interpretations have become increasingly protective of the rights of LGBTIQ persons.44 In the past, legislation related to international protection has not explicitly addressed the gender dimension of forced displacement, but it has evolved over the past two decades to recognise forms of gender-related persecution, and thus acknowledging that gender may be an essential element in asylum claims.45, [v]

To support this evolution, research, legal analysis, jurisprudence and policy discussions have focused on better understanding the gender dimension in the provision of protection solutions, and key recommendations and guidance have stressed the importance of including a gender

perspective in asylum procedures. European Parliament Resolutions,[46], [47] guidance produced by UNHCR[48], [49], [50] and the Council of Europe,[51] and frameworks such as the Yogyakarta Principles, in addition to relevant jurisprudence,[52] reflect well-established principles of international human rights law and have catalysed the interpretation and application of legal concepts in ways that increase protection in gender and SOGIESC-related asylum cases.

Clearly, the discussion on gender and SOGIESC considerations in the context of asylum is by no means new. While positive steps have been taken in expanding legal protection and mainstreaming gender-related considerations in the field of asylum, this aspect still needs greater attention today. According to UNHCR, one in five displaced women have faced sexual violence and, given the human rights and socio-economic impact of the COVID-19 pandemic, the situation has deteriorated.[53] UNHCR has reported a global surge in domestic violence, child marriages, human trafficking, sexual exploitation and abuse suffered by displaced women and girls. Displaced LGBTIQ persons still experience homophobic, bi-phobic and transphobic violence, both from people in host communities and from other displaced people; they may be subjected to abuse by or lack protection from security forces, face arbitrary detention, refoulement or exclusion from essential basic services[55] and traditional support networks.[56]

A number of initiatives in 2021 addressed gender- and SOGIESC-related issues in the context of asylum and provided recommendations to better sensitise protection responses. In June 2021, UNHCR and the Mandate of the UN Independent Expert on Protection against Violence and Discrimination Based on Sexual Orientation and Gender Identity (IE SOGI) co-convened the 2021 Global Roundtable on Protection and Solutions for LGBTIQ+ People in Forced Displacement.[57] The month-long roundtable included participants from national authorities, civil society organisations, the private sector and LGBTIQ persons who have experienced displacement. Discussions centred around specific practices that are salient to the experiences of forcibly-displaced and stateless LGBTIQ persons.[58] The roundtable culminated in a set of recommendations to all actors working in asylum, including developing and implementing regular training on SOGIESC, taking issues of identity intersectionality into account, ensuring and facilitating legal gender recognition to respect the fundamental right of self-determination, and increasing support and funding for LGBTIQ organisations on the ground.[59]

In 2021, UNHCR released an updated version of the Guidelines on Working with Lesbian, Gay, Bisexual, Transgender, Intersex and Queer Persons in Forced Displacement,[60] which contains guidance to professionals working with displaced LGBTIQ persons. The guidelines highlight shared protection needs among displaced LGBTIQ persons; identify distinct protection challenges; provide a set of key principles to guide the work of professionals; offer recommendations to address operational protection risks; and provide examples of cross-cutting actions to promote respect for diversity, creating safe spaces for self-disclosure, ensuring inclusiveness in accountability mechanisms and building partnerships with LGBTIQ-focused civil society organisations.

Regional initiatives have also gained ground over the past years. In the context of Europe, the AMIF-funded project “Identification of Trafficked International Protection Beneficiaries’ Special Needs (TRIPS)”, is a 2-year initiative which aims to identify and address specific integration needs of trafficked beneficiaries of international protection, both at the EU and national levels.[61]

The gender component of human trafficking cannot be overlooked as the majority of identified victims are women and young girls, most often victims of sexual exploitation.62 Accordingly, addressing trafficking requires gender-specific responses. As part of the project, a toolbox was produced to provide practitioners with guidance on dealing with the consequences of human trafficking within the wider international protection and integration context.63

The Mediterranean Institute of Gender Studies launched the COALESCE Project in January 2021 to provide support to female migrant survivors of trafficking in human beings for sexual exploitation in Europe. The project focuses on providing gender-specific psychosocial, legal and economic support to women, developing synergies, and improving transnational cooperation among frontline professionals and practitioners.64 In addition, the Trans Refugee Network highlighted issues surrounding trans refugees in Europe, with the purpose of creating a community to share good practices among practitioners.65.

Through systematic, multifaceted research, the SOGICA project, which was funded by the European Research Council, explored the social and legal experiences of asylum seekers across Europe who claimed international protection on the basis of their SOGI.66 SOGICA research also culminated in recommendations to effectively address SOGI-related issues in European asylum law, policy and practice *(see Section 5.4).*

In the Central American region, in autumn 2021 Refugees International and the Institute for LGBTIQ Migrants and Refugees in Central America (IRCA CASABIERTA), a Costa Rica-based NGO that is led by and provides services to LGBTIQ asylum seekers and refugees, held 15 consultation meetings with NGOs in seven Central American countries to discuss challenges that LGBTIQ-led organisations faced in their respective countries in providing services, including to LGBTIQ persons in displacement. Based on the consultations, a report was published with an analysis of the challenges and a set of recommendations on how authorities, NGOs and international organisations can support LGBTIQ-led organisations in their work.

In 2021, the Migration Council Australia (MCA) and the Forcibly Displaced People Network (FDPN) produced a report, in which they examined literature in the context of Australia, the United States and Canada to explore specific needs of LGBTIQ refugees beyond the broader refugee population. The report highlights multiple levels of disadvantages faced by LGBTIQ refugees, in addition to the experiences of persecution and discrimination, including the absence of social support. It also offers perspectives on more culturally-responsive and gender-inclusive approaches to support refugees in Australia.67

A strong message that comes out of these initiatives is that the focus is not on affording 'special' or 'new rights' to women, girls and LGBTIQ persons in the context of displacement, but rather on ensuring that they can access and exercise their rights on an equal basis with other asylum seekers.68, 69 What also becomes clear is that addressing gender-related issues in the context of displacement requires concerted responses which involve authorities, civil society partners, humanitarian organisations, academics and practitioners and, importantly, persons with lived experience of forced displacement.

Footnotes

[iv] While gender-related issues in the context of asylum are clustered under the same discussion in this section, identity intersectionality may shape the form, intensity and degree of individual experiences. The intention is to highlight a number of similar issues these groups may face.

[v] For example, the recast Qualification Directive (2011/95/EU) and the recast Asylum Procedures Directive (2013/32/EU) include provisions to consider issues arising from an applicant's gender, including gender identity and sexual orientation, when assessing the risk of persecution and when processing applications for protection, including providing special procedural guarantees.

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