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3.11. Persons with diverse SOGIESC

COMMON ANALYSIS
Last update: June 2025

This profile refers to persons who are perceived as not conforming to religious and/or social norms because of their sexual orientation (SO) and/or gender identity and expression (GIE), and sex characteristics (SC), including the treatment of lesbian, gay, bi-sexual or trans-gender, intersex and queer, also commonly referred to as LGBTIQ+ individuals.

The analysis below is based on the following EUAA COI report: Country Focus 2025, 2.8.. Country Guidance should not be referred to as a source of COI.

Despite minor reforms same-sex relations in Sudan are criminalised under Section 148 of the Criminal Act of 1991, and additional laws criminalise ‘gross indecency’ and acts against ‘public morals’, further targeting individuals with diverse SOGIESC, while discrimination and violence against LGBTIQ+ people by authorities, family and society are common.

Step 1: Do the reported acts amount to persecution?

Some acts to which persons with diverse SOGIESC could be exposed are of such severe nature that they would amount to persecution. More specifically, the criminalisation of same-sex relations under Sudanese law, with penalties ranging from imprisonment to potential life sentences, along with the risk of arbitrary punishments such as flogging or even the death penalty, constitute severe legal and physical harm. The use of vague legal provisions like 'gross indecency’ and ‘acts contrary to public morals’ allows for arbitrary interpretation and enforcement, increasing the risk of persecution. Arbitrary punishments persist, with courts using digital evidence, such as private chats, to convict individuals. I nstances of physical violence, such as family abuse and torture by authorities are also reported.

The severity and/or repetitiveness of other acts to which persons with diverse SOGIESC could be subjected, and whether they occur as an accumulation of various measures, should be taken into account. Widespread societal discrimination, stigma, the association of LGBTIQ+ identities with mental illness or paedophilia and social exclusion are

reported. Transgender individuals struggle to obtain identity documents reflecting their gender and face difficulties crossing borders.

Step 2: What is the level of risk of persecution?

A well-founded fear of persecution would in general be substantiated for persons with diverse SOGIESC, given the severity of punishments regulated by the law along with the arbitrary nature of judicial decisions, and the lack of legal protections. They also face discrimination, stigmatisation, dismissal, social exclusion and mistreatment if their sexual orientation and/or gender identity were to become known, and in Sudanese society, the LGBTIQ+ community 'was associated with mental illness and paedophilia'.

It has to be noted that an applicant cannot be expected to conceal their sexual orientation13 or gender identity to avoid persecution.

Step 3: Is there a ground for persecution?

Persecution of individuals under this profile is highly likely to be for r**easons of membership of a particular social group**, based on a shared characteristic or belief that is so fundamental to the identity of the applicant, that they should not be forced to renounce it, and based on their distinct identity in Sudan, because they are perceived as being different by the surrounding society. Persecution of individuals under this profile may also be for reasons of **religion**, since in matters that are not governed by any legislative text, the courts apply the *Sharia*.

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  CJEU, Minister voor Immigratie en Asiel v X and Y and Z, joined cases C-199/12 to C-201/12 judgment of 7 November 2013, X and Y and Z, paras. 70-76,

  https://curia.europa.eu/juris/document/document.jsf?text=&docid=144215&pageIndex=0&doclan

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