



# ***Global Report***

*Mapping and Research to Strengthen  
Protection and Assistance Measures  
for Migrants with diverse SOGIESC*

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Strengthen Protection and  
Assistance Measures for  
Migrants with diverse SOGIESC

January 2023



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## List of acronyms

AP	Asia and the Pacific
AVRR	Assisted Voluntary Return and Reintegration
COVID-19	Coronavirus Disease 2019
CBO	Community-Based Organization
CSO	Civil Society Organization
DoMV	Determinants of Migrant Vulnerability
EEA	European Economic Area
HIV	Human Immunodeficiency Virus
ICCPR	International Covenant on Civil and Political Rights
IDP	Internally Displaced Person
INGO	International Non-Governmental Organization
IOM	International Organization for Migration
KII	Key Informant Interview
LGBTIQ+	Lesbian, Gay, Bisexual, Transgender, Intersex and Queer persons and persons with other diverse sexual orientation, gender identity and expression, or sex characteristics who self-identify using other terms
MENA	Middle East and North Africa
NGO	Non-Governmental Organization
PrEP	Pre-exposure Prophylaxis
RSD	Refugee Status Determination
SA	South America
SSI	Semi-Structured Interview
SOGIESC	Sexual Orientation, Gender Identity and Expression and Sex Characteristics
SGBV	Sexual and Gender-Based Violence
SSI	Semi-Structured Interview
UNHCR	United Nations High Commissioner for Refugees



## Glossary

CISGENDER	Cisgender (sometimes cissexual or shortened to cis) describes a person whose gender identity and the sex they were assigned at birth align. <sup>1</sup> The prefix cis- is not an acronym or abbreviation of another word; it is derived from Latin meaning "on this side of." Coined in 1994, cisgender began to be added to dictionaries in 2015 as a result of changes in the way gender is conceived in popular Western discourse.
COUNTRY OF DESTINATION/ HOST COUNTRY	A country that is the destination for a person or a group of persons, irrespective of whether they migrate regularly or irregularly. <sup>2</sup>
COUNTRY OF ORIGIN	A country of nationality or of former habitual residence of a person or group of persons who have migrated abroad, irrespective of whether they migrate regularly or irregularly. <sup>3</sup>
ENDOSEX	A term describing a person who was born with sex characteristics that fit typical binary notions of male or female bodies. An endosex person may identify with any gender identity or sexual orientation. <sup>4</sup>
GENDER	The socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for individuals, typically based on the sex they were assigned at birth. <sup>5</sup>
SEXUAL AND GENDER-BASED VIOLENCE	Any act that is perpetrated against a person's will and is based on gender norms and unequal power relationships. It includes physical, emotional or psychological and sexual violence and denial of resources or access to services. Violence includes threats of violence and coercion. Sexual and gender-based violence inflicts harm on people of all genders and ages and is a severe violation of several human rights. <sup>6</sup>
HOMO-, BI-, TRANS- AND INTERSEXPHOBIA	Hatred or dislike of gay or lesbian people, bisexual people, transgender people, or intersex people, respectively, that may manifest in exclusionary behaviour, stigma, harassment, discrimination and/or violence. <sup>7</sup>
INTERSECTIONALITY	A concept, often understood as an approach, lens, or framework, that recognizes how social identities, relationships and other factors may combine to create multiple and overlapping forms of privilege and inequality and can operate together and exacerbate each other. <sup>8</sup>
INVISIBILIZATION	From a legal perspective and for the purposes of this research, the terminology invisibilization is employed to feature a sociological human behaviour. Overall and generally, the concept itself of invisibility (or any similar term as marginalization, etc.) should be analysed in different layers depending on the purposes and goals of the research and/or action: social, political, cultural, religious and also "legal invisibility". This layer would then bring to human rights in the analysed context and to the importance of not only ensuring the protection of these rights but refraining from affecting them and actively seeking their fulfilment. <sup>9</sup>

<sup>1</sup> IOM, *SOGIESC: Full Glossary of Terms*, 2020.

<sup>2</sup> IOM, *Glossary on Migration*, 2019.

<sup>3</sup> Ibid.

<sup>4</sup> IOM, *SOGIESC: Full Glossary of Terms*, 2020.

<sup>5</sup> Ibid.

<sup>6</sup> UNHCR, *Emergency Handbook: Sexual and gender-based violence (SGBV) prevention and response*, n.d.

<sup>7</sup> IOM, *SOGIESC: Full Glossary of Terms*, 2020.

<sup>8</sup> UNPRPD and UN-Women, *Intersectionality Resource Guide and Toolkit: An Intersectional Approach to Leave No One Behind*, n.d.

<sup>9</sup> The definition of "invisibilization" provided in the glossary was agreed upon with the IOM focal points for this study and only applies to the specific purpose of this research.

LGBTIQ+	An acronym for lesbian, gay, bisexual, transgender and intersex and queer persons. The plus sign represents people with diverse SOGIESC who self-identify using other terms. In some contexts, LGB, LGBT or LGBTI are used to refer to particular populations. LGBTI is sometimes used as a shorthand for persons of diverse sex, sexual orientation and gender identity (SSOGI). Because of perceived sexual orientation and/or gender identity, LGBTIQ+ persons might face diverse forms of discrimination and violations of human rights in their country of origin or, as migrants, in countries of transit or destination. Sexual orientation and gender identity are also recognized as grounds for persecution (i.e. under membership of a particular social group) to grant refugee status (see, e.g. United Nations High Commissioner for Refugees, 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) United Nations Doc. HCR/GIP/12/09).
MIGRANT	An umbrella term, not defined under international law, reflecting the common lay understanding of a person who moves away from [their] place of usual residence, whether within a country or across an international border, temporarily or permanently and for a variety of reasons. The term includes several well-defined legal categories of people, such as migrant workers; persons whose particular types of movements are legally defined, such as smuggled migrants; as well as those whose status or means of movement are not specifically defined under international law, such as international students. <sup>10</sup> At the international level, no universally accepted definition for “migrant” exists. The present definition was developed by IOM for its own purposes and it is not meant to imply or create any new legal category.
SEX	The classification of a person as having female, male and/or intersex sex characteristics. While infants are usually assigned the sex of male or female at birth based on the appearance of their external anatomy alone, a person's sex is a combination of a range of bodily sex characteristics. <sup>11</sup>
SEX CHARACTERISTICS	Each person's physical features relating to sex, including chromosomes, gonads, sex hormones, genitals and secondary physical features emerging from puberty. <sup>12</sup>
PEOPLE WITH DIVERSE SOGIESC	Umbrella term for all people whose sexual orientations, gender identities, gender expressions and/or sex characteristics place them outside culturally mainstream categories. <sup>13</sup>
SEXUAL ORIENTATION	Each person's enduring capacity for profound romantic, emotional and/or physical feelings for, or attraction to, other people. Encompasses hetero-, homo-, bi-, pan- and asexuality, as well as a wide range of other expressions of sexual orientation. This term is preferred over sexual preference, sexual behaviour, lifestyle and way of life when describing an individual's feelings for or attraction to other people. <sup>14</sup>
GENDER IDENTITY	Each person's deeply felt internal and individual experience of gender, which may or may not correspond with their sex assigned at birth or the gender attributed to them by society. This includes the personal sense of the body, which may or may not involve a desire for modification of the appearance or function of the body by medical, surgical, or other means. <sup>15</sup>
GENDER EXPRESSION	Individuals use a range of cues, such as names, pronouns, behaviour, clothing, voice, mannerisms and/or bodily characteristics, to interpret other individuals' genders. Gender expression is not necessarily an accurate reflection of gender identity. People with diverse SOGIESC do not necessarily have a diverse gender expression. Likewise, people who do not have a diverse SOGIESC may have a diverse gender expression. <sup>16</sup>

<sup>10</sup> IOM, *Glossary on Migration*, 2019.

<sup>11</sup> IOM, *SOGIESC: Full Glossary of Terms*, 2020.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

# 1

### MIGRANTS WITH DIVERSE SOGIESC ARE A HETEROGENOUS GROUP

Migrants' sociopolitical status in terms of race, gender, gender identity/ expression, sex characteristic, ethnicity, religion, physical and mental ability and class structure impact how vulnerabilities manifest themselves during pre-departure, transit, while in the host country and upon return to countries of origin. For instance, while cisgender, gay and bisexual men are among the most visible targets of public discrimination, they may enjoy relative social advantages as male-identifying individuals – such as greater freedom of movement – in patriarchal societies.

The populations of interest in the report include two groups:

- Those whose motivation for migration is related to their diverse SOGIESC;
- Those whose reasons for migration are unrelated to their diverse SOGIESC.

These two groups share similar vulnerabilities and opportunities in migration contexts. The majority of the migrants interviewed migrated for reasons related to their diverse SOGIESC. In cases where SOGIESC-related persecution did not take place, their diverse SOGIESC was a contributing factor to migration.



# 2

## TRANSGENDER MIGRANTS ARE THE MOST VULNERABLE SUBGROUP

Transgender migrants are the most vulnerable group within the broad category of migrants with diverse SOGIESC and face difficulties at most stages of migration:

- During transit and on arrival, legal documents and difficulties changing names and gender, caused problems, as they were often at odds with the migrants' identity;
- Reception centres are often organized along gender binary divisions, with transgender individuals assigned accommodation and living quarters according to their sex assigned at birth, leaving them vulnerable to abuse within these contexts;
- Trans- and xenophobia in working environments mean transgender migrants can struggle to find employment;
- In countries of origin, transit or host countries, the medical needs of transgender individuals (i.e. hormone therapy), were sometimes unknown, causing disruption in care, while mental health needs were insufficiently addressed.



# 3

## MIGRANTS WITH DIVERSE SOGIESC'S PRIMARY PROTECTION NEEDS ARE ACCESS TO PHYSICAL AND MATERIAL SAFETY, LEGAL SAFETY AND HEALTH CARE

The study identified the following primary protection needs and areas for protection strengthening:

- Access to physical and material safety: when migrating, individuals with diverse SOGIESC were at increased risk of physical abuse, harassment, violence and exploitation. This was true during the journey, from border guards and other officials; on arrival, transit, or upon return, at reception centres which are set up around gendered divisions; and within host countries, particularly against individuals engaged in sex work.
- Access to legal safety: barriers to legal regularization determined by migrants'irregular status and/or their diverse SOGIESC, in case of transgender individuals, hindered basic rights.
- Across contexts, access to accommodation, employment, education and comprehensive physical and mental health care often depended on migrants' ability to obtain legal status in their country of transit or residence. Migrants who did not qualify as refugees (largely if they did not belong to a persecuted "group" within their host country) faced challenges to obtain protection in the host country.
- Access to health care, including physical and mental health: homophobia and transphobia contributed to limiting access to health care for migrants with diverse SOGIESC, with some opting out of treatment to avoid discrimination. Much of the health care they received was limited to emergency care and basic needs, while ignorance of intersex and trans needs also added to a risk of mal- or ill-treatment.

<sup>a</sup> IOM. *International Standards on the Protection of People with diverse Sexual Orientation, Gender Identity, Gender Expression and Sexual Characteristics (SOGIESC) in the context of Migration. International Migration Law, Information Note. 2021.*

# 4

## KNOWLEDGE OF AND ATTITUDES TOWARDS MIGRANTS WITH DIVERSE SOGIESC AMONG PROTECTION ACTORS IS KEY YET OFTEN LACKING AND POTENTIALLY DISCRIMINATORY

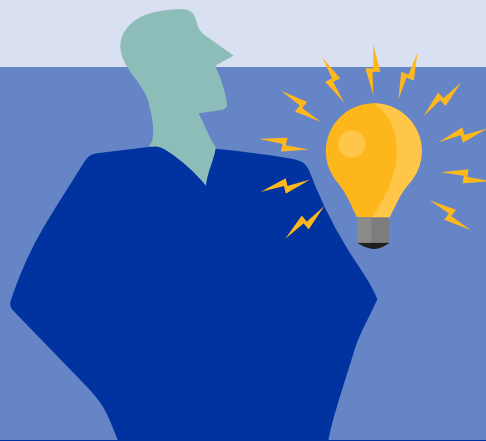
The knowledge of SOGIESC diversity and the generalized institutional and societal attitudes towards LGBTIQ+ migrants shaped migrants' experiences in origin, transit and host countries. Inadequate services and responses to meet the needs of migrants with diverse SOGIESC, stereotyped expectations surrounding LGBTIQ+ lifestyles and behaviours and discrimination from actors involved in protection, law enforcement,

service providers, international organizations and NGOs staff were all reported during the study. The lack of awareness and discriminatory attitudes towards migrants with diverse SOGIESC resulted in worsening the situational vulnerability commonly faced by migrants, given the external context's inability to understand the needs of migrants with diverse SOGIESC.

# 5

## GOOD PRACTICES IDENTIFIED CAN BE SCALED UP AND REPLICATED ACROSS CONTEXTS

- The study identified good practices across contexts that serve as a solid foundation for the development of future protection programming and assistance to migrants with diverse SOGIESC. CSOs that participated in this research established successful models of cooperation bringing together international organizations, local municipalities and civil society groups, to provide economic resources to support migrants with diverse SOGIESC. CSOs, in some contexts, also integrated psychosocial health care that responded to the unique vulnerabilities and post-traumatic stress disorders led by migrants with diverse SOGIESC.
- Partnerships between international organizations and NGOs reinforced the potential for synergies and protection. In one case study, an independent public institution and monitoring mechanism provided an available resource and reporting mechanism for anyone who had been a witness or target of discrimination. This institution provided information about rights to victims of discrimination and mounted campaigns for equal opportunities and against discrimination, formulated recommendations for government authorities and generated tools, publications and statistics to reinforce the protection response for migrants with diverse SOGIESC.
- Other good practices include CSOs and activists supporting and defending migrants with diverse SOGIESC when they were detained or threatened by police and State authorities. In some instances, people accompanied migrants with diverse SOGIESC to medical appointments, a practice which was highlighted as pivotal.



# 6

## CSOs AND CBOs ARE CENTRAL ACTORS FOR THE PROTECTION OF MIGRANTS WITH DIVERSE SOGIESC

CSOs and community-based organizations (CBOs) have emerged as central actors in the provision of services to migrants with diverse SOGIESC, often in partnership with United Nations agencies, such as UNHCR. Across contexts, respondents voiced the need to integrate the work of these stakeholders by establishing or strengthening safe referral mechanisms and developing shared

procedures. Respondents stressed that referral systems needed to be constantly updated and enough resources – both human and financial – needed to be invested. In some cases, the more formal referral systems were considered too slow, therefore causing delays in the referral process and respondents recommended simplifying them to make them more accessible to the different actors involved.

# 7

## MIGRANTS WITH DIVERSE SOGIESC ARE INDIVIDUALS AND RIGHTS HOLDERS CAPABLE OF ASSESSING THEIR NEEDS AND PARTICIPATING IN THE DESIGN OF SOLUTIONS TAILORED TO THEIR NEEDS

When designing and implementing programmes for migrants with diverse SOGIESC, stakeholders should be mindful to offer them democratic spaces for their participation as active subjects. Migrants with diverse SOGIESC need to be given a space to voice their needs and knowledge production should be supported and linked to the efforts of protection stakeholders. LGBTIQ+ migrants already deploy self-protection mechanisms in the absence of formal institutional protection systems, including through LGBTIQ+ community networks. Protection actors should ensure that any supplementary protection services recognize, preserve and support these existing self-protection mechanisms, as opposed to disrupting or dismantling them.



# 8

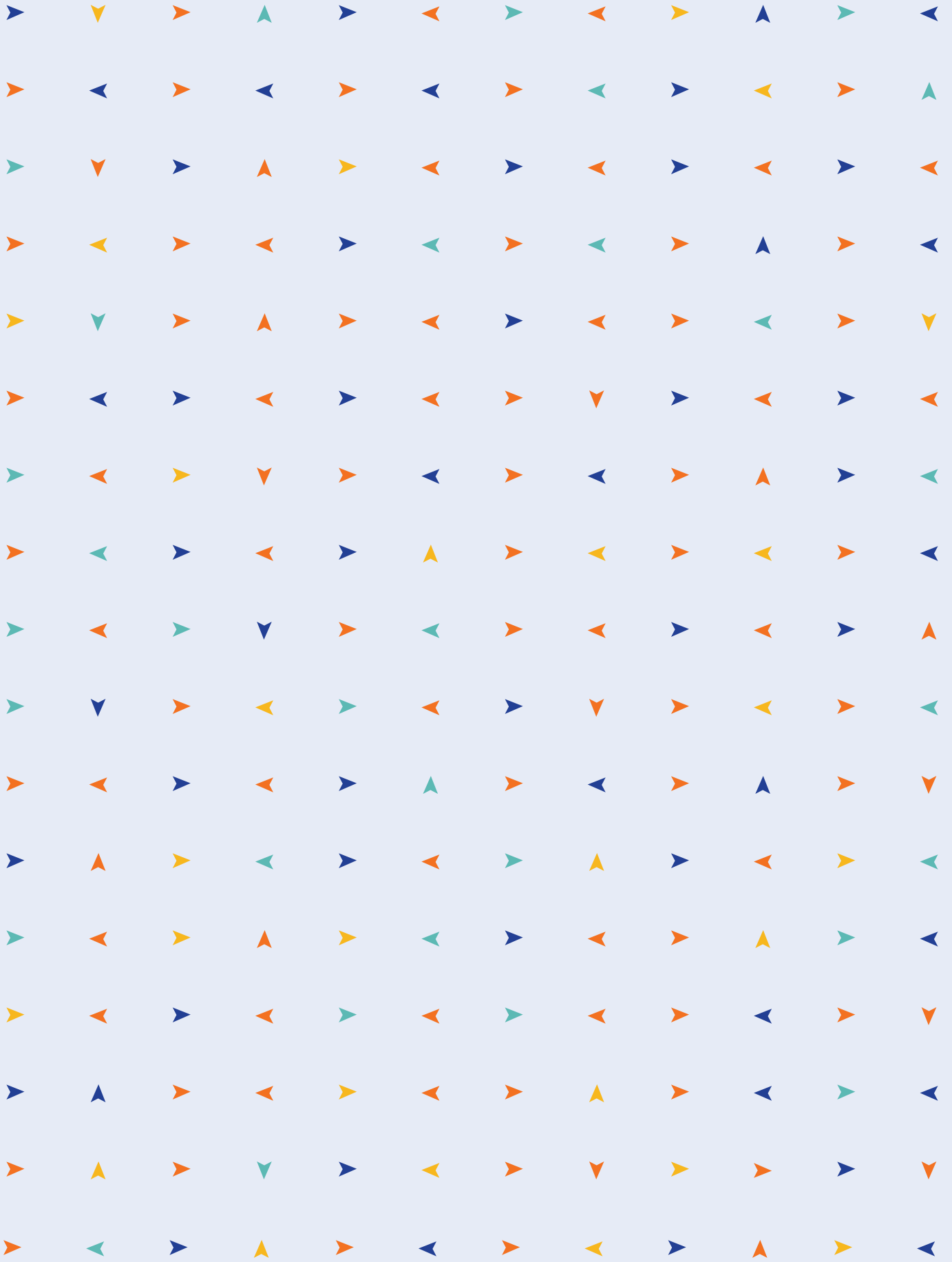
## RETURN AND REINTEGRATION OUTCOMES ARE INFLUENCED BY SOCIETAL NORMS WHICH CONTRIBUTE TO THE ORIGINAL DRIVERS OF MIGRATION

Return and reintegration outcomes for LGBTIQ+ migrants were influenced by societal expectations and norms associated with diverse SOGIESC, which interfered with returnees' ability to start their lives anew or go back to their lives with the experiences gained through their migration.<sup>b</sup> When returning to their countries of origin, migrants with diverse SOGIESC tended to face the same challenges they experienced pre- or during their migration; family rejection, discrimination within their communities and difficulties accessing support, employment or housing.

<sup>b</sup>IOM. *IOM Guidance on Referral Mechanisms for the Protection and Assistance of Migrants Vulnerable to Violence, Exploitation and Abuse and Victims of Trafficking*, 2019.







# INTRODUCTION

## 1.1. CONTEXT

This report focuses on migrants with diverse sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC) and their inclusion in protection programming, including in the context of return and reintegration.

Efforts to improve the protection of migrants with diverse SOGIESC are gaining increasing attention and support, from State governments, the humanitarian community and human rights defenders: these include international and intergovernmental organizations, international and national NGOs, civil society organizations (CSOs), associations and activists. However, research on these issues remains limited and where it exists, focuses disproportionately on the experiences of refugees and asylum-seekers, who represent only a small percentage of migrants and on European and North American reception and resettlement countries. The research presented in this report aims to support the development of inclusive measures for migrants with diverse SOGIESC to benefit from protection programming across their migration journey, as well as in return and reintegration.

Based on empirical and desk research conducted by Samuel Hall's research team between February and July 2022, the International organization for Migration (IOM) aims to better:

1. **Address the knowledge gap on the situation of migrants** with diverse SOGIESC;
2. **Understand the specific risk factors that contribute to vulnerability** in specific regional and national contexts;
3. **Identify ways to support migrants** with diverse SOGIESC to avoid, cope and recover from harm.

### IOM's previous engagement with SOGIESC issues

To achieve IOM's programming goals of inclusion of all migrants<sup>17</sup> and address the notable lack of resources on topics related to migrants' diverse SOGIESC, IOM has collaborated with the United Nations High Commissioner for Refugees (UNHCR) to develop guidance material on SOGIESC diversity in the context of migration, most notably a 2015 training package updated in 2021. This material is aimed toward IOM staff, as well as the broader humanitarian community and covers social inclusion topics applicable to a wide variety of IOM programmes. Internally within IOM, there is a network of LGBTIQ+ trainers who provide training across the organization, while webinars provide further information on diverse SOGIESC and are available to all staff.<sup>18</sup>

Globally, IOM engages with actors to raise awareness and increase the protection of migrants with diverse SOGIESC. In the Mesoamerican region (of Central America and southern United States), the IOM has established regional programmes in support of migrants with diverse SOGIESC: these include initiatives undertaken in alliance with the Inter-American Institute of Human rights (IILHR) and discussions and events held with the participation of government authorities, representatives of CSOs and SOGIESC organizations, at a regional and national level. These fora have encouraged dialogue and reflection on migratory experiences, offered insights on the specificity of their mobility and helped identify their protection and assistance needs. In coordination with national authorities and first responders, the IOM Equality Project served to equip local frontline services in Brussels, Luxembourg, Rome and Gothenburg with practical training tools and awareness-raising material on sexual and gender-based violence, including specific tools related to supporting migrants with diverse SOGIESC. Welcoming migrants to share their diverse SOGIESC is a critical component of IOM's approach to create safe spaces and provide the most appropriate referral pathways.<sup>19</sup>

<sup>17</sup> IOM's programming is inclusive of migrants of diverse ages, gender identities, gender expressions, ancestries, ethnicities, socioeconomic backgrounds, sexual orientations, sex characteristics, family structures, marital statuses and physical and mental abilities. In all of the assistance provided to migrants, IOM strives to be inclusive and respectful and to ensure that the services offered are appropriate, accessible and dignified. See also: IOM. "Social Inclusion in IOM Programming". (n.d.)

<sup>18</sup> P\_KII.5.

<sup>19</sup> IOM. *Equality project*. Consulted on 30 August 2022.

Also in Europe, in 2019 IOM launched PROTECT - Preventing Sexual and Gender-Based Violence against Migrants and Strengthening Support to Victims, a project for the coordination and adaptation of support services to victims of sexual and gender-based violence (SGBV) among refugees, migrants and asylum-seekers.<sup>20</sup> This project was implemented for an 18-month cycle in 12 countries: Belgium, Bulgaria, Croatia, Greece, Hungary, Ireland, Italy, Malta, the Netherlands, Poland, Slovenia and Spain and most activities were tailored to specific national contexts.<sup>21</sup> As part of this project, IOM developed interactive tools to train professionals who come into contact with migrants regularly, (e.g. social workers, police officers, interpreters, teachers, health-care professionals) and country-specific information on SGBV tailored to adults' and children's needs. IOM country offices and national project partners also conducted country-wide mapping on the existing legislative frameworks and available services to migrant victims of sexual and gender-based violence.<sup>22</sup>

## 1.2. OBJECTIVES AND METHODOLOGY

### Objectives

---

This report provides an in-depth understanding of the risk factors, protection and assistance needs facing migrants with diverse SOGIESC. It contributes to IOM's efforts to strengthen protection and assistance to migrants with diverse SOGIESC within programming and institutional training, including in the context of return and reintegration. The objectives are visualized below.



The data for this report was guided by research questions in table 1.

<sup>20</sup> IOM. PROTECT - Preventing sexual and gender-based violence against migrants and strengthening support to victims. Consulted on 30 August 2022.

<sup>21</sup> Ibid.

<sup>22</sup> IOM. (2019). Mapping report on legal frameworks and assistance available to migrant victims of sexual and gender-based violence. PROTECT - Preventing Sexual and Gender-Based Violence against Migrants and Strengthening Support to Victims.

Table 1: Research objectives and their corresponding research question and data collection tools

Objectives	Research subquestions	Data collection tools
Literature Review and Mapping of existing evidence	(1) What does existing evidence tell about the levels of inclusion of migrants with diverse SOGIESC?	<ul style="list-style-type: none"> <li>Key informant interviews</li> </ul>
Capturing "voices from the field"	(2) How can the experiences of migrants with diverse SOGIESC add nuance to the findings above? (3) What gaps do these experiences highlight throughout stages of migration, including in the context of return and reintegration?	<ul style="list-style-type: none"> <li>Key informant interviews</li> <li>Semi-structured interviews</li> </ul>
Identifying best practices and recommendations	(4) What can IOM – and other actors – do to strengthen their approach to supporting migrants with diverse SOGIESC?	<ul style="list-style-type: none"> <li>Expert national and global workshops</li> </ul>

## Methodology

The methodological framework focused on following elements:

- 1. A targeted literature review** of existing external research and resources, tools and practices.
- 2. Collecting data and "voices from the field" from 156 respondents in 6 target countries and globally:** including local and global experts, key stakeholders and migrants, including asylum-seekers and refugees, with diverse SOGIESC in six countries.
- 3. Mapping best practices to inform recommendations** for IOM and other stakeholders on how to effectively support migrants with diverse SOGIESC.

Table 2: Overview of the data collection

REGIONS	KIIs	SSIs with service providers	SSIs with migrants	Validation workshops	Total
Asia and the Pacific	7	5	12	1	25
European Economic Area (EEA) 1	5	6	10	1	22
European Economic Area (EEA) 2	6	10	9	1	26
Middle East and North Africa (MENA)	11	5	9	1	26
South America	10	7	10	1	28
West and Central Africa	10	7	8	1	26
Global	2	-	-	1	1
<b>TOTAL</b>	<b>51</b>	<b>40</b>	<b>58</b>	<b>7</b>	<b>156</b>

The research team collected primary data through key informant interviews (KIIs) and semi-structured interviews (SSIs) with migrants and with service providers. National workshops in focus countries and one global workshop (online) acted as a review and validation process.

**Key Informant Interviews (KIIs)** explored the unique needs and vulnerabilities of migrants with diverse SOGIESC. They included IOM country office staff, thematic experts and members of civil society and community-based organizations (CBOs) who provide programmes and services to people with diverse SOGIESC; and specialized staff from international organizations.

**Semi-Structured Interviews (SSIs) with Migrants with Diverse SOGIESC** focused on the stories, experiences and perspectives of migrants with diverse SOGIESC. The interview guidelines followed the PEACE model,<sup>23</sup> created to conduct interviews with migrants with diverse SOGIESC in a sensitive and respectful way.

**Semi-Structured Interviews with Service Providers** focused on issues related to the vulnerabilities and risks faced by migrants with diverse SOGIESC in their respective fields of activity. The interview guide was designed to collect first-hand narratives on: (1) the strengths and weaknesses of the services and protection provided by different stakeholders to migrants with diverse SOGIESC, (2) their self-assessment of their capacities in addressing the needs of the population in question, and (3) the generalized institutional and societal attitudes towards migrants with diverse SOGIESC in each stakeholder/national context.

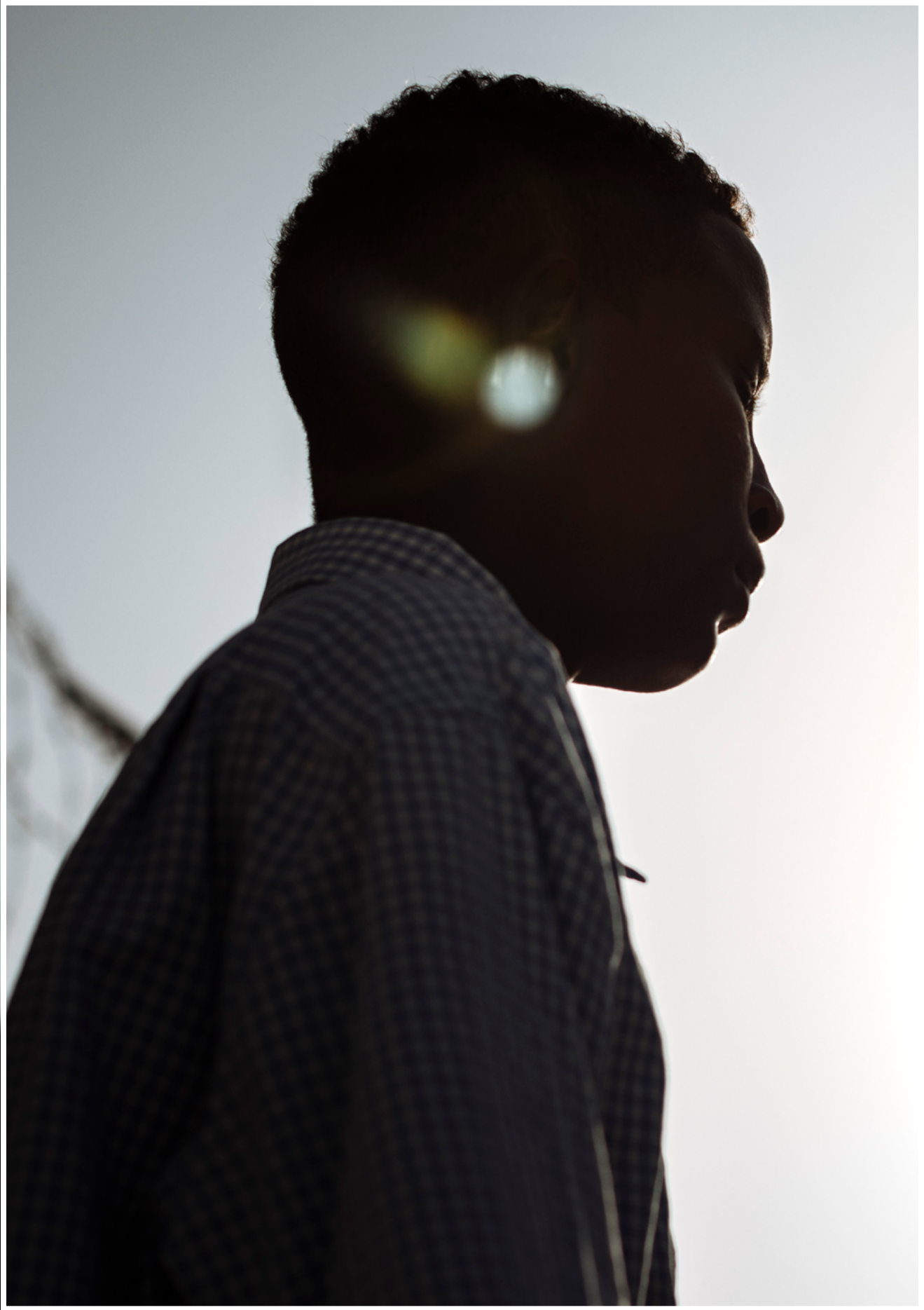
**National and Global Workshops:** Six country-level workshops and one global-level workshop, held at the end of the fieldwork in each country, followed Chatham House Rule to increase the openness of discussions.<sup>24</sup> The workshops provided an opportunity to validate key findings and receive feedback on recommendations and good practices from local, national and global level experts, academics and other key stakeholders.

**Sampling:** Purposeful and snowball sampling were used to identify research participants. Accessing participants through local organizations and national researchers was decisive. This research included both migrant returnees with diverse SOGIESC, as well as migrants with diverse SOGIESC in transit or in the countries of destination or habitual residence that met the research selection criteria. The research sample aimed to reflect the full spectrum of non-mainstream SOGIESC diversity and to include under-researched categories (bisexual persons, lesbian women, non-binary and genderqueer persons), to avoid the overrepresentation of other groups (gay men and trans women) and to elicit a broad range of perspectives.

*Note:* In this report, the names of the focus countries of the study have not been shared but the regions are mentioned to highlight contextual factors that contribute to the situational vulnerability of migrants with diverse SOGIESC.

<sup>23</sup> The PEACE model builds on best practice from the Difference, Stigma, Shame, Harm (DSSH) model by S. Chelvan in the United Kingdom of Great Britain and Northern Ireland. The PEACE model is an interview technique, based on an acronym that stands for Preparation and planning, Engage and explain, Account, Closure and Evaluation. This technique consists of a set of guiding principles on how to design and conduct interviews in a way that creates comfortable and supportive space for interviewees and obtains reliable information. It presents tools and techniques which interviewers may use to facilitate communication and assist individuals in providing information. The model can be used in all interview contexts and has been adapted by UNHCR to the context of international protection.

<sup>24</sup> When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.



Minors at the TAS centre in Bossaso are all Ethiopian unaccompanied children. © IOM 2020/Muse MOHAMMED

## II. UNDERSTANDING MIGRANTS WITH DIVERSE SOGIESC AND THE CHALLENGES THEY ARE FACING

### 2.1 INTRODUCTION TO MIGRANTS WITH DIVERSE SOGIESC AND THEIR VULNERABILITIES

Every human being has a sexual orientation, gender identity and expression and sex characteristic (SOGIESC). The category of persons with "diverse" SOGIESC refers specifically to people whose SOGIESC places them outside culturally mainstream categories.<sup>25</sup> These include, among others, those whose identities, bodies, relationships, or forms of expression differ from those of cisgender, heterosexual and endosex persons. Migrants with diverse SOGIESC are susceptible to different forms of vulnerabilities and challenges in the country of origin, during transit and in the country of arrival at the intersection of race, gender identity, sexual orientation, sex characteristics, class, ethnicity and age.

Migrants with diverse SOGIESC are a heterogeneous group. This subsection clarifies the complexity of the LGBTIQ+ and SOGIESC terminology and definitions, whether legal or operational according to United Nations treaties and treaty bodies' language.

#### Terminology of Diverse SOGIESC

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The language used to describe people with "diverse" SOGIESC has been used in international law for 25 years. However, **it is only within the past ten years that United Nations agencies have meaningfully integrated SOGIESC diversity issues** in their human rights programming, including humanitarian affairs, migration and asylum. At the beginning of the 21st century, advocacy groups raised concerns that the terminology of LGBTIQ+ and SOGIESC as developed in the context of the global response to the HIV/AIDS epidemic (with its focus on men having sex with men), risked excluding lesbian, bisexual and queer women, transgender men and intersex people.<sup>26</sup>

United Nations agencies then broadened their programming on SOGIESC beyond HIV response. The first example of this shift is the United Nations' Development Programme (UNDP)'s work on SOGIESC in Asia in 2010, with the launch of the United Nations' first multi-country programme targeting persons with diverse SOGIESC, providing grants to non-governmental organizations (NGOs) led by LGBTIQ+ individuals to advocate for legal and policy change and collect data on the topic, alongside providing HIV-related services.<sup>27</sup>

Although gains have been made in programmatic terms within the United Nations, there is increasing criticism that **these identity categories are limited in that they reflect Western views and understandings of gender and sexuality.**<sup>28</sup> Not all persons with diverse SOGIESC will self-identify as LGBTIQ+, especially in migration contexts outside of Europe and North America.<sup>29</sup> So, while a single acronym cannot capture the diversity of SOGIESC experiences, this report follows existing research and international guidelines in using the acronym "LGBTIQ+" to inclusively refer to persons of diverse SOGIESC across cultural and geographical contexts, including people with diverse SOGIESC who do not use LGBTIQ+ terminology and use other terminology or none at all.<sup>30</sup>

<sup>25</sup> IOM, (2020).

<sup>26</sup> Albert Trithart, *A United Nations for All? United Nations Policy and Programming on Sexual Orientation, Gender Identity and Expression and Sex Characteristics*. United Nations Policy and Programming on Sexual Orientation, Gender Identity and Expression and Sex Characteristics, (2021).

<sup>27</sup> Ibid.

<sup>28</sup> Jena McGill, *SOGL... So What? Sexual Orientation, Gender Identity and Human Rights Discourse at the United Nations*, *Canadian Journal of Human Rights* 3(1):21, (2014).

<sup>29</sup> Nishin Nathwani, *Protecting Persons with Diverse Sexual Orientations and Gender Identities: A Global Report on UNHCR's Efforts to Protect Lesbian, Gay, Bisexual, Transgender and Intersex Asylum-Seekers and Refugees* Division of International Protection, (2015).

<sup>30</sup> IOM, *SOGIESC: Full Glossary of Terms*, (2020); 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*, (2012); Nishin Nathwani, *Protecting Persons with Diverse Sexual Orientations and Gender Identities: A Global Report on UNHCR's Efforts to Protect Lesbian, Gay, Bisexual, Transgender and Intersex Asylum-Seekers and Refugees* Division of International Protection, (2015).



**This report uses the term SOGIESC to refer to enduring characteristics of an individual rather than their short-term behaviour.** This corresponds with common understandings of SOGIESC diversity among national and international human rights and humanitarian institutions.<sup>31</sup> While behavioural stereotypes frequently shape perceptions of persons with diverse SOGIESC, each SOGIESC characteristic is compatible with unlimited individual behaviours.

This report recognizes sexual orientation, gender identity, gender expression and sex characteristics as separate aspects of a person that do not determine one another. For instance, a person's sexual orientation does not indicate their gender identity, gender expression, or sexual characteristics and vice versa. Similarly, an individual's gender expression does not indicate their gender identity. Researchers and practitioners ought to avoid assuming the totality of a person's SOGIESC based on knowledge of one or more characteristics.

### BOX 1 - IOM FULL GLOSSARY OF TERMS ON SOGIESC

In 2021, IOM developed a training package on the protection of people with diverse SOGIESC. This package includes a detailed glossary of terms on the language used to describe sexual orientation, gender identity and expression and sex characteristics as well as diverse SOGIESC terms from around the world. The glossary also introduces terms related to personal development, legal issues and recognition, prejudice and research and public health regarding people with diverse SOGIESC.

– IOM, *SOGIESC: Full Glossary of Terms*, (2020).

## Protection of People with Diverse SOGIESC under International Human Rights and Refugee Law

United Nations treaty bodies State that the principles of equality and non-discrimination are applicable to individuals irrespective of nationality or migration status, as well as diverse SOGIESC.<sup>32</sup> In the asylum and refugee context, United Nations and UNHCR guidelines represent the most comprehensive instruments for the protection of the rights of people with diverse SOGIESC. The terminology LGBTIQ+ and SOGIESC was first integrated into asylum and refugee law in 2002, with the adoption of the International Protection Guideline No. 2 "Membership of a Particular Social Group"<sup>33</sup> – in the context of Article 1A (2) of the 1951 Refugee Convention. In this guideline, UNHCR recognizes persecution based on sexual orientation of gays and lesbians as "belonging to a particular social group".

The International Protection Guideline No. 2 "Membership of a Particular Social Group" was backed up by the Yogyakarta Principles<sup>34</sup> on the Application of Human Rights to Sexual Orientation and Gender Identity in 2007. Guideline No. 9 "On applications for refugee status based on sexual orientation and gender identity" – written in 2008 and revised in 2012 – marks a turning point for forcibly displaced LGBTIQ+ people on the move. It recognizes sexual orientation or gender identity as fundamental aspects of human identity – inherent or otherwise immutable – and that no one should be forced to give them up or hide them.

However, while the terminologies of LGBTIQ+ and SOGIESC diversity have found resonance in international and national asylum/refugee legislation and policies, as of 2016, only 37 States globally grant asylum based on persecution due to SOGIESC.<sup>35</sup>

<sup>31</sup> Human Rights Campaign, *Sexual Orientation and Gender Identity Definitions*, n.d.; 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*, (2012); Yogyakarta Principles. *Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity*. (2007).

<sup>32</sup> IOM, *International Standards On The Protection Of People With Diverse Sexual Orientation, Gender Identity, Gender Expression And Sex Characteristics (SOGIESC) In The Context Of Migration*, International migration law. Information note, (2021).

<sup>33</sup> Guidelines on International Protection No. 2: *Membership of a Particular Social group* within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (HCR/GIP/02/02). Available [here](#). Consulted on 30 August 2022.

<sup>34</sup> The Yogyakarta Principles are available in English, Arabic, Spanish and French [here](#). Consulted on 30 August 2022.

<sup>35</sup> UNHCR, "Need to Know" *Guidance 2: Working with Lesbian, Gay, Bisexual, Transgender, Intersex and Queer (LGBTIQ+) Persons in Forced Displacement*, (2021).

Key vulnerabilities and resulting risks of migrants with diverse SOGIESC include exclusion from, or lack of access to; safe accommodation, health care, education, the labour market, visas and citizenship; higher instances of sexual and gender-based violence and being trafficked. However, not all migrants with diverse SOGIESC experience risks and vulnerabilities in the same way. Their sociopolitical status in terms of race, gender, sexual orientation, gender identity/expression, sex characteristics, ethnicity, religion, physical and mental ability and class structure impact the ways in which these vulnerabilities manifest themselves during stages of pre-departure, transit, while in the country of destination and in the instance of a return to their country of origin. For instance, while cisgender gay and bisexual men have more access to public spaces and are among the most visible targets of public discrimination, they may enjoy relative social advantages as males – such as greater freedom of movement – in patriarchal societies.<sup>36</sup>

### CASE STUDY 1

#### The case of a bisexual woman in transit in West and Central Africa

F. is a bisexual woman from the West and Central Africa region. Married with two children, she had to flee her city and then her country when her husband discovered her relationship with a woman. She had to leave her children behind amid death threats and physical violence from her husband and her own family. On her journey, she travelled through several countries in North and West Africa, where she experienced a great deal of sexual and gender-based violence at the hands of police officers and traffickers, particularly at border crossings. In one transit country in North Africa, she resorted to survival sex. She explained to us how the police chased after migrants like her:

*“When we say no, we want to leave, they take us. They oblige us to sleep with them. They forced us. They had unprotected sex with us. They showed us money at the beginning to give us and in the end, they didn't hand over [...] We arrived in another place, they said men on one side, women on other. They asked us who are the single ones and who are married? We explained to them what happened to us there, that when the car left with us, it was to rape us.”*

To grasp the complexity of people's lives within diverse social and political contexts, this report adopts an intersectional approach, which considers a collection of factors that affect an individual in combination, rather than considering each factor in isolation, to understand risks and vulnerabilities faced by migrants with diverse SOGIESC. **Migrants with diverse SOGIESC's vulnerabilities, when using the intersectional approach, are shaped by multiple identities of race, sexual orientation, gender identity/expression, sex characteristics, class, ethnicity, age, mental and physical ability and religion.** These can result in different forms of marginalization and discrimination.

- 1. For female migrants**, there are compounded vulnerabilities of identifying as LGBTQ+ – discrimination against gender and sexual orientation within patriarchal societies can mean women have fewer options to access legal aid or flee persecutors. There is also evidence to suggest that women identifying as LGBTQ+ are more likely to become victims of sexual and gender-based violence during migration,<sup>37</sup> and in reception centres, refugee camps or during other stages of their migration journeys.<sup>38</sup> This finding also emerged from interviews throughout the study.<sup>39</sup>

<sup>36</sup> Ibid.

<sup>37</sup> Rainbow Railroad, (2021) *Annual Report. Understanding the State of global LGBTQ+ persecution*, (2021).

<sup>38</sup> Eithne Luibhéid, Migrant and Refugee Lesbians: Lives That Resist the Telling, *Journal of Lesbian Studies* 24(2):1–20, (2019). Amy Shuman and Carol Bohmer, Mengia Tschalaer, Victimhood and femininities in Black lesbian asylum cases in Germany, *Journal of Ethnic and Migration Studies* 47(15):3531–3548, (2021). Mengia Tschalaer, Queer motherhood in the context of legal precarity: experiences of lesbian mothers seeking asylum in Germany, *Ethnic and Racial Studies* (2022). Stefan Vogler, Determining Transgender: Adjudicating Gender Identity in U.S. Asylum Law, *Gender & Society* 33(3):439–462, (2019).

<sup>39</sup> SSI\_MG\_WCA\_10.

Finally, transgender women and transfeminine non-binary people experience a unique form of discrimination, "transmisogyny", at the intersection of transphobia and misogyny.<sup>40</sup>

2. **Discrimination against people with unique gender identities and gender expressions is common**, throughout childhood and through to adulthood. During migration journeys, gender non-conformists are vulnerable to physical and verbal violence: the most obvious example being for transgender people who do not identify with their official gender on documents, leading to abuse by border guards.<sup>41</sup>
3. **Intersex** people, who are born with **sex characteristics** that do not fit typical binary notions of male or female bodies, are vulnerable to discrimination or because of this – they do not align with binary gender norms of femininity and masculinity. They can also be subject to involuntary sex reassignment surgery that might result in genital mutilation. In the asylum and refugee context, intersex people tend to remain invisible.<sup>42</sup> None of the participants self-identified or identified as intersex.
4. Migrants with diverse SOGIESC experience **racism** during transit and in the country of arrival which can limit their access to social and legal services, community support, housing, education and employment. As a result of their race, they feel reported marginalised within mainstream society as well as within LGBTIQ+ spaces due to being considered as different from the dominant racial and/or ethnic group.<sup>43, 44</sup>
5. **Religion** is yet another factor that contributes to the creation of vulnerabilities. For instance, in sociopolitical contexts particularly in Europe and the United States where anti-Muslim attitudes are currently on the rise, Muslim LGBTIQ+ people on the move may face Islamophobia within institutional contexts, when attempting to access to health care, employment, the labour market and accommodation, etc. Homo- and transphobia and racism further exacerbate these vulnerabilities. Moreover, the SOGIESC of LGBTIQ+ people who identify as Muslims is often not believed to be "authentic" in the asylum and refugee context due to stereotypical assumptions that posit Islam as incompatible with LGBTIQ+ identities and "lifestyle".<sup>45</sup>
6. **Class, which defines a group of people within a society who have the same socioeconomic position**, is another factor that intersects with the above-mentioned categories. Existing literature suggest that LGBTIQ+ people who move to Europe and Northern America are of middle- and upper-middle class backgrounds,<sup>46</sup> which was confirmed through the interviews with migrants conducted in the Western part of the EEA within the scope of this study.<sup>47</sup> Class privilege is reflected in LGBTIQ+ people's ability to pay for either expensive visas and/or journeys to destination countries. In addition, LGBTIQ+ people from middle- and upper-middle class backgrounds generally have a degree from a higher education institution. In this sense, class and education background can be instrumental for a successful asylum claim.<sup>48</sup>
7. **Mental and physical disability** affects migrants with diverse SOGIESC in an important way. With their access to health care often being curtailed by strict immigration/asylum laws and policies excluding non-nationals, migrants with diverse SOGIESC are further reluctant to seek medical health support due to fear of homo-/transphobia and re-traumatization. This contributes to their isolation and exacerbates mental health challenges.

<sup>40</sup>Transmisogyny describes the intersecting oppressions and discriminations of transphobia and misogyny (Sojka, 2017). Transphobia is the discrimination and oppression of trans people for their gender expression. Misogyny is the hatred and devaluation of women and of femininity (Kacere, 2018). Transmisogyny primarily affects trans women and transfeminine people (Sojka, 2017). However, it also affects trans and non-binary folks who may be perceived as feminine (Kacere, 2018). Thus, transmisogyny works to portray trans women and transfeminine people as less than, questions and devalues their gender identity and sexualizes their femininity (Sojka, 2017). Source: UC Santa Barbara Resource Center for Sexual and Gender Diversity. "Transmisogyny Education", n.d.

<sup>41</sup> UNHCR, *Need to Know Guidance 2: Working with Lesbian, Gay, Bisexual, Transgender, Intersex and Queer (LGBTIQ+) Persons in Forced Displacement*, (2021).

<sup>42</sup> IOM, *International Standards on The Protection of People with Diverse Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics (SOGIESC) In the Context of Migration*, (2021).

<sup>43</sup> Nina Held, "As queer refugees, we are out of category, we do not belong to one, or the other": LGBTIQ+ refugees' experiences in "ambivalent" queer spaces, *Ethnic and Racial Studies*, (2022).

<sup>44</sup> Mengia Tschalaer, Victimhood and femininities in Black lesbian asylum cases in Germany. *Journal of Ethnic and Migration Studies*. 47(15):3531–3548, (2021).

<sup>45</sup> Calogero Giametta, 'Rescued' subjects: The Question of Religiosity for non-Heteronormative Asylum Seekers in the UK. *Sexualities*. 17(5–6):583–599, (2014); Aydan Greatrick, LGBTIQ+ asylum and transformative accommodations between religion, faith and sexuality in the UK. *Ethnic and Racial Studies*. 1-21, (2022).

<sup>46</sup> Mengia Tschalaer, *The Recognition of Black Lesbian Asylum Claims in Germany*, (2020).

<sup>47</sup> SSI\_MG\_EEA2\_6; SSI\_MG\_EEA2\_11.

<sup>48</sup> Mengia Tschalaer, *The Recognition of Black Lesbian Asylum Claims in Germany*, (2020).

## CASE STUDY 2

### The case of a pansexual refugee in the MENA Region

R. is a refugee who fled her country of origin due to conflict and political persecution. She arrived in the country of destination with financial means and did not register with UNHCR because she did not need assistance and was living a comfortable life. When her socioeconomic status changed, she started identifying and perceiving herself as a refugee and reflected on how this shift in class determined a shift in her attitude and overall experience in the country of destination.

*"I am going to go back to the issue of class, because it is very important. There is a saying that goes, you are not a refugee unless you are a poor refugee and similarly you are not a queer refugee unless you are a poor queer refugee."*

## 2.2 MIGRATION DRIVERS FOR LGBTIQ+ MIGRANTS IN COUNTRIES OF ORIGIN

The populations of interest in this report included two groups:

1. Those whose motivation for migration was related to their diverse SOGIESC, including persons migrating in search of legal, political, economic and social environments conducive to the safe expression of diverse SOGIESC. This included refugees and internally displaced persons (IDPs) escaping SOGIESC-related persecution, but also other groups of migrants whose reasons for movement are not related to persecution.
1. Those whose reasons for migration were unrelated to their diverse SOGIESC, but for whom SOGIESC becomes a factor of vulnerability during migration. This included refugees and IDPs with diverse SOGIESC fleeing from generalized violence or persecution on other grounds, as well as those migrating for education, employment, or leisure in contexts where diverse SOGIESC identity, association, or expression is unprotected or proscribed.

### Criminalization and Political Persecution of LGBTIQ+ Persons

**Forced displacement of people who identify as LGBTIQ+ is on the rise.** At the United Nations' Human Rights Council in June 2021, a United Nations independent expert on protection against violence and discrimination based on sexual orientation and gender identity declared that 2,000 million people live in criminalized environment.<sup>49</sup> They experience State and/or social persecution solely because of their sexual orientation, their gender identity or expression, or their sex characteristics. As of 2022, homosexuality remains a criminal offense in 70 countries. The death penalty is prescribed by law in the Islamic Republic of Iran, Yemen, Saudi Arabia, Nigeria, the Sudan and parts of Somalia. An execution can also be imposed in Mauritania, United Arab Emirates, Qatar, Pakistan, Brunei Darussalam and Afghanistan. In the other 58 States, prison sentences range from three to ten years.<sup>50</sup> In 55 countries, however, there is no explicit legal criminalization of same sex intimacy, nor are there any State protections such as anti-discrimination laws. In these countries, LGBTIQ+ people often cannot trust State authorities and do not feel safe and experience persecution, violence and discrimination from the police, society and family.<sup>51</sup>

**The criminalization of same-sex intimacy has steadily declined globally over the past two decades, however it is now on the rise again.** In large parts of Europe, the Middle East, Africa, Central Asia, South-East Asia and Northern America, the rise of populist politics and the growing popularity of authoritarian politicians and parties is once again leading to an increasingly anti-LGBTIQ+ climate.<sup>52</sup>

<sup>49</sup> United Nations Expert: *Criminalization of Same Sex Unions Violates Human Rights Law and Must End*, 26 June 2021. Consulted on 31 August 2022. See also: *Protection against violence and discrimination based on sexual orientation and gender identity. Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity*, Victor Madrigal-Borloz. A/76/152. 15 July 2021. Consulted on 31 August 2022.

<sup>50</sup> See the *ILGA World map* that visualises sexual orientation laws worldwide.

<sup>51</sup> *Queerarmnesty, Geflüchtete LGBTI-Menschen. Praxisleitfaden für eine auf Integration und Gleichbehandlung ausgerichtete Aufnahme*, (2019).

<sup>52</sup> Nishin Nathwani, *Laws, Legal Frameworks and the Displacement of LGBTI Persons*, (2019).

Even in countries where diverse SOGIESC identity, association and expression are not criminalized, where steps were taken in terms of policy and legislation and case-law development to advance inclusivity of LGBTIQ+ people, **migrants with diverse SOGIESC can face stigmatization and persecution**. For instance although there are no explicit laws against same-sex relationships or sexual activity, the law can be applied to target LGBTIQ+ people in five main ways: (1) by using laws proscribing various types of sexual crimes (but not explicitly same-sex sexual activity); (2) by using laws of general application; (3) by using so-called “cross-dressing”, “impersonation” and disguise laws that ultimately criminalize gender identity and/or expression; (4) by denying access to legal remedies for violations of anti-discrimination laws; and (5) by using laws which refer to morality.<sup>53</sup> Asylum and State authorities issuing international protection should therefore provide extensive interpretation of the applicable norms in the country of origin to determine which LGBTIQ+ persons are in need of protection and to ensure sufficient level of protection to those individuals.

## Social Stigmatization of LGBTIQ+ Persons in their Country of Origin

### CASE STUDY 3

#### The case of a transgender woman in the MENA region

S. is a trans woman who fled her country when she was 26. In her country of origin, she was not accepted by her family and society and was the victim of several episodes of physical and psychological violence by her family members. Among other factors, this contributed to her choice of migrating.

*“I was feeling bad about myself, but at the same time I wanted to find myself, but could not find myself in my family. And the troubles started, I would get kicked out of the house if I didn't man up, but I'm not a man like other men. I was insulted and beaten multiple times by my parents, so I left them. I stayed at people's places from one to another with my friends and I became 26 I started thinking of leaving the country, as we were asked to join the military then.”*

**Violence and abuse toward migrants with diverse SOGIESC** often begin in childhood by their families, neighbours, teachers and peers and can determine decisions to migrate. **Key forms of pre-departure violence** include: physical beatings and burnings, psychological abuse, isolation by family members, blackmail and community harassment (including forced “outing”<sup>54</sup> via social media), theft, arbitrary detention, gang violence, forced heterosexual marriage and medical or religious efforts to change SOGIESC (also called “conversion” therapy).<sup>55</sup> Key perpetrators of violence against LGBTIQ+ persons include parents and family members, religious authorities or authorities invoking religious justifications and law enforcement.<sup>56</sup> In some of the States where the research was conducted, LGBTIQ+ people are facing increasing societal violence and marginalization, even in the absence of laws explicitly criminalising same-sex intimacies or diverse gender identities and expressions.

<sup>53</sup> Nishin Nathwani, *Laws, Legal Frameworks and the Displacement of LGBTI Persons*, 2019; UNFE, “Fact Sheet: Criminalization”, n.d.

<sup>54</sup> A person's SOGIESC being made public without their consent or knowledge, often for malicious purposes. See: *IOM SOGIESC: Full Glossary of Terms*, (2021).

<sup>55</sup> Edward J. Alessi, Shannon Cheung, Sarilee Kahn and Melanie Yu. A Scoping Review of the Experiences of Violence and Abuse Among Sexual and Gender Minority Migrants Across the Migration Trajectory. *Trauma, Violence, & Abuse*. 22(5):1339–1355, (2021).

<sup>56</sup> Svenska Arensburg-Castelli, Jaime Barrientos-Delgado, Pablo Astudillo-Lizama and Daniel Venegas. Police Violence: Sexual Political Dehumanisation Strategies Used by Chilean Gendered Institutions. *Social Identities* 27(5):593–607, (2021); Rachele Girardi, It's Easy to Mistrust Police When They Keep on Killing Us: A Queer Exploration of Police Violence and LGBTQ+ Victimization. *Journal of Gender Studies*, 1–11, (2021); Sulaimon Abiodun Olawale Giwa, Carmen H. Logie, Karun K. Karki, Olumide F. Makanjuola and Chinonye Edmund Obiagwu, Police Violence Targeting LGBTIQ+ People in Nigeria: Advancing Solutions for a 21st Century Challenge. *Greenwich Social Work Review* 1, no. 1:36–49, (2020). Ahmed Shaheed, Gender-Based Violence and Discrimination in the Name of Religion or Belief: Report of the Special Rapporteur on Freedom of Religion or Belief. A/HRC/43/48. 2020. New York: U.N. Human Rights Council.

**Although increasingly common, not all LGBTIQ+ migrants leave their country of origin due to criminalization and/or social stigmatization.** Other reasons include and are not limited to: study, leisure or work opportunities abroad, family reunification and armed conflict, socioeconomic crisis or climate related disasters in home countries. LGBTIQ+ migrants also include people who come from countries where same-sex intimacies and non-binary and non-cisnormative gender identities and expressions are not criminalized and may even be protected by societal norms. Nonetheless, the present field research suggests that LGBTIQ+ migrants shared common vulnerabilities to intersectional forms of discrimination in the country of origin and at different stages of the migration journey, whether or not the original impetus for migration was SOGIESC-related. Based on the field research, these two groups share similar vulnerabilities, opportunities and trajectories in migration contexts.

### BOX 2 - KEY FINDING RELATED TO DRIVERS OF MIGRATION

**The majority of the migrants interviewed in this study migrated for reasons related to their SOGIESC diversity.** Even in cases in which SOGIESC-related persecution did not take place, migrants' SOGIESC diversity contributed to the decision to flee.

*"We have conducted mappings, especially in border areas; something that has caught our attention is that LGBTIQ+ people have integrated and accepted that they have been discriminated against historically and when you interview people they tell you: "I migrated because there was no work in my country", "because I had no food", or even because of more specific needs such as "I am a person living with HIV and I needed antiretroviral treatment". A transgender woman told us that she was no longer paid for the sex work she did, but when we asked them about discrimination she said "well, they discriminated against me there, just as they discriminate against me here", as if it was normal or natural. It has been so engrained historically that people do not identify it, but we have realised it is one of the main reasons, above all." (KII\_SA\_11)*

## 2.3 VULNERABILITIES DURING TRANSIT AND AT DESTINATION – STRUCTURAL FORMS OF MARGINALIZATION

Intersectional vulnerabilities affect the safety and dignity of all migrants, particularly increasing the risks of specific groups, including those with diverse SOGIESC during transit and in the country of destination. Migrants with diverse SOGIESC are also disproportionately subjected to violence and harassment across gender lines, social stigmatizations based on racism, homo- and transphobia, sexual and gender-based violence and survival sex.<sup>57</sup> This section offers a short overview of some of the structural forms that lead to the marginalization of migrants with diverse SOGIESC during transit and in the country of destination.

### Trafficking in Persons and Gender-Based Violence During Transit

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**Some major challenges that render migrants with diverse SOGIESC particularly vulnerable to being trafficked include persecution based on sexual orientation or gender identity, discrimination in the workplace and language access, which expose them to further vulnerabilities.**<sup>58</sup> Persons with diverse SOGIESC who experience homelessness, lack of social support and/or who are engaged in sex work are particularly vulnerable. The social stigma against persons with diverse SOGIESC and the taboo associated with sexual exploitation and abuse against men and boys in particular, often prevents them from reporting cases of trafficking in persons, or from accessing services for victim's rights.<sup>59</sup>

<sup>57</sup> Nathwani, N. *Protecting Persons with Diverse Sexual Orientations and Gender Identities: A Global Report on UNHCR's Efforts to Protect Lesbian, Gay, Bisexual, Transgender and Intersex Asylum-Seekers and Refugees* Division of International Protection, (2015).

<sup>58</sup> Polaris. *Why LGBTQ Trafficking Cases are Underreported*. (2017).

<sup>59</sup> United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons*, (2020).

LGBTIQ+ youth<sup>60</sup> are at a high risk of being trafficked for the purpose of sexual exploitation and gender-based violence in their country of origin, during transit and upon their arrival in the host country, as they face higher rates of discrimination, economic instability and often lack solid support networks, especially in cases of family rejection due to their diverse SOGIESC.<sup>61</sup> LGBTIQ+ youths are also less likely to report being victims of trafficking for fear of discrimination, prejudice and violence.<sup>62</sup>

**Migrants with diverse SOGIESC are also particularly vulnerable to SGBV during transit and upon arrival to the country of destination.** This includes rape and sexual violence in refugee camps, reception and detention centres and while in transit, becoming victims of "honour" crimes, being forced into sex work by traffickers and harassment by immigration officials and society at large. The risk of sexual and gender-based violence is further increased for single women – lesbian, bisexual, queer and transgender women are more likely to be single for fear of discrimination towards same-sex partners during their journeys.<sup>63</sup>

## Social Stigmatization During Transit and in the Country of Destination

During transit, many LGBTIQ+ migrants tend to distrust border authorities, the police and decision-makers in the refugee/asylum context due to **fear of discrimination, harm, shame and rejection**. During transit and in the country of destination, migrants with diverse SOGIESC face disproportionate risks of violence, discrimination and exploitation in humanitarian camps, group receptions and immigration detention settings, particularly where accommodation is organized based on a binary gender classification.<sup>64</sup> Migrants with diverse SOGIESC with precarious legal status also tend to experience limited access to local or national justice mechanisms in transit and destination countries.

IOM has highlighted that “LGBT[IQ+] individuals who fall victim to hate crimes” are often unable to “report these offences or they refrain from doing so because of mistrust in the authorities and the justice system”.<sup>65</sup>

LGBTIQ+ people on the move further tend to lack (or understandably choose not to) **access to health care** due to (1) intrusive personal questions by health-care workers upon disclosure of diverse SOGIESC, (2) lack of knowledge among primary care physicians about transgender care, including gender-affirming procedures and hormone therapy and (3) lack of appropriate sexual orientation/gender identity vocabulary among health-care providers.<sup>66</sup> **This is particularly relevant for LGBTIQ+ migrants** as they are especially vulnerable to anxiety, depression, post-traumatic stress disorder and complex trauma syndromes owing to the compounded stresses of migration and SOGIESC-related marginalization and violence.<sup>67</sup> Lastly, it is safe to assume that migrants and, particularly, forcibly displaced people with diverse SOGIESC find it **difficult to establish material safety**.<sup>68</sup> They are more likely to engage in informal employment, where they lack legal protection and are prone to exploitation and discrimination.<sup>69</sup>

<sup>60</sup> There is no single accepted definition of “youth” or “young people” in research or policymaking, according to an IOM Migration Research Report on Defining and Mapping Youth Migration. The United Nations and Global Migration Group define youth as any individual aged from 15 to 24 (Global Migration Group, 2014). IOM. (2019). *Migration Research Series. Searching for Clarity: Defining and Mapping youth migration*. Consulted on 31 August 2022.

<sup>61</sup> Polaris. *Sex Trafficking and LGBTQ Youth*, (2019).

<sup>62</sup> Polaris. *Why LGBTQ Trafficking Cases are Underreported*. (2017).

<sup>63</sup> United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons*, (2020).

<sup>64</sup> Nuno Ferreira, C. Danisi, M. Dustin and N. Held, *32 Recommendations to the European Commission on the New EU LGBTI+ Equality Strategy. Project Report*, (2020); Georgia Matheson, *The Rights and Experiences of LGBTI Refugees in Europe: A Comparative Study of Procedures and Practices in Italy and Sweden*, 2019, Uppsala University, Uppsala.

<sup>65</sup> IOM, *Access to Justice: A Migrant's Right. International Migration Law Information Note*, (2019).

<sup>66</sup> Yudit Namer and Oliver Razum. 2018. *Access to Primary Care and Preventive Health Services of LGBTIQ+ Migrants, Refugees and Asylum Seekers*, 2018:43–55 in *Access to Primary Care and Preventive Health Services of Migrants*, Springer Briefs in Public Health, edited by A. Rosano. Cham: Springer International Publishing; Christopher Pullen and Mengia Tschalaer, *Equality in the UK Asylum Process*, (2021).

<sup>67</sup> Samara D. Fox, Randi H. Griffin and John E. Pachankis, *Minority Stress, Social Integration and the Mental Health Needs of LGBTQ Asylum Seekers in North America*, *Social Science & Medicine*, 2020: 246. Carlos Gerena, *Clinical Implications for LGBT Asylum Seekers in U.S. Detention Centers*, *Journal of Gay & Lesbian Social Services*, (2022: 1–13).

<sup>68</sup> OECD, *The LGBTI Challenge: How to Better Include Sexual and Gender Minorities, in Society at a Glance 2019: OECD Social Indicators* (2019); See also ILO, *Inclusion and Diversity in the Labour Market: A Call for Statistics*.

<sup>69</sup> UNHCR, *LGBTIQ+ Persons in Forced Displacement and Statelessness: Protection and Solutions*, (2021).

## Challenges During the Refugee Status Determination Process

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In 2012, UNHCR provided guidelines for refugee status claimed on the grounds of diverse SOGIESC.<sup>70</sup> The guidelines explain that the majority of migrants' claims based on diverse SOGIESC are recognized under the protection of "membership of a particular social group". Other grounds may also be relevant depending on the political, religious and cultural context of the claim. For example, LGBTIQ+ activists and human rights defenders may have their claims based on political opinion or religion if their advocacy is seen as going against prevailing political or religious views and/or practices.<sup>71</sup>

However, in general, **LGBTIQ+ asylum claimants tend to be denied refugee status in country at a fairly high rate within the European Economic Area and South Africa due to a lack of understanding** of (1) LGBTIQ+ persons' lived experiences with violence and marginalization and the attitudes in the home countries, (2) the systemic racism and homophobia and transphobia within the asylum system and (3) a Western bias when assessing the credibility of diverse expressions of sexual orientation and gender identity.<sup>72</sup>

In terms of official records, unless LGBTIQ+ asylum-seekers self-identify, it is unlikely that their diverse SOGIESC will be included in asylum documentation: many people choose to conceal their sexuality and gender identity as a result of family situation, marriage and attitudes in their communities. Others lack safe accommodation or spaces that would allow them to be open in relation to their diverse SOGIESC. In addition, **lesbian, bisexual and queer identifying women are at higher risk of remaining invisible because they are often not believed to have a diverse sexual orientation**, particularly if they have been married with children and if their biographies lack long-term same-sex relationships and/or if such relationships have been lived secretly.<sup>73</sup>

## Challenges of Social Inclusion and Integration in the Country of Destination

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**The prospect of social integration for LGBTIQ+ migrants in their countries of destination is closely linked to the extent to which its legal framework protects diverse SOGIESC identity, expression, association and intimacy.** Research suggests that additional factors, including host language proficiency, or improved legal protection, improves social integration and mental health outcomes.<sup>74</sup>

<sup>70</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. HCR/GIP/12/09. (23 October 2012).

<sup>71</sup> Ibid. Para 40.

<sup>72</sup> Moira Dustin and Nina Held, In or out? A Queer Intersectional Approach to "Particular Social Group" Membership and Credibility in SOGI Asylum Claims in Germany and the UK. *GenLUS – Rivista di Studi Giuridici Sull'orientamento Sessuale e Sull'identità di Genere*, 2:74–87, (2018). Legal Resources Centre (LRC); PASSOP; Women's Legal Centre, ACMS. *LGBTI+ Asylum Seekers in South Africa: A review of refugee status denials involving sexual orientation and gender identity*. (2021).

<sup>73</sup> Mengia Tschalaer, Queer motherhood in the context of legal precarity: experiences of lesbian mothers seeking asylum in Germany. *Ethnic and Racial Studies*, (2022); Mengia Tschalaer, Victimhood and femininities in Black lesbian asylum cases in Germany. *Journal of Ethnic and Migration Studies*, 47(15):3531–3548, (2021). Claire Bennett and Felicity Thomas, Seeking Asylum in the UK: Lesbian Perspectives. *Forced Migration Review*, 42: 25–28, (2013). Eithne Luibhéid, Migrant and Refugee Lesbians: Lives That Resist the Telling. *Journal of Lesbian Studies*, 24(2):1–20, (2019).

<sup>74</sup> Samara D. Fox, Randi H. Griffin and John E. Pachankis, Minority Stress, Social Integration and the Mental Health Needs of LGBTQ Asylum Seekers in North America. *Social Science & Medicine*, 246, (2020).





Mouna went to a Gulf country with the help of a recruitment agency, she was lied to, she found herself in the trafficking network of human beings. © IOM 2018/Sibylle DESJARDINS

### III. ADDRESSING PROTECTION AND ASSISTANCE NEEDS OF MIGRANTS WITH DIVERSE SOGIESC

IOM works to promote and uphold the rights of migrants and displaced people and their communities and support Governments to manage migration.<sup>75</sup> IOM's Protection Division provides specialized protection support and assistance, both in humanitarian and non-humanitarian settings and includes a return and reintegration unit. Its objective is to respond to the protection needs of beneficiaries and develop their capacity to access and exercise their rights along the entire process of migration or displacement, as well as improve knowledge of and ensure inclusive access to direct assistance and protection support for migrants.

In the context of this study, IOM respondents pointed to the protection gaps faced by this demographic and highlighted the limitations and discrimination migrants with diverse SOGIESC experience in accessing services – including those provided by IOM. IOM staff reflected on the negative impact of the gender binary logic that guides IOM shelter assistance or the provision of cash-based interventions, as this does not account for the specific needs of migrants with diverse SOGIESC. IOM respondents also noted that the protection needs of migrants with diverse SOGIESC are different from those of people who have fled persecution in their countries of origin. Lastly, the outcomes of standard needs assessment were found to not sufficiently identify the needs of migrants with diverse SOGIESC, failing to consider the factors that intersect to create their vulnerability.

Based on empirical data, this chapter reviews the challenges faced by migrants with diverse SOGIESC in six country contexts. A lack of protection services for people with diverse SOGIESC was noted across all country contexts. This chapter breaks down the discussion by presenting evidence on:

- Accommodation, shelters, reception and detention centres in countries of transit and destination;
- Barriers and limitations to access legal employment and the risks related to informal work, particularly sex work;
- Access to legal pathways and barriers to obtaining a legal status, accessing justice and legal protection mechanisms and social support services;
- Risks related to access to health care, including physical and mental health.

#### 3.1. PHYSICAL AND MATERIAL SAFETY

##### Access to Safe and Secure Accommodation

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“Access to services supporting an adequate standard of living for people with diverse SOGIESC during migration and displacement is often exceedingly difficult”.<sup>76</sup> The right to an adequate standard of living under the International Covenant on Economic, Social and Cultural Rights entails the right to adequate food, clothing and housing and to the continuous improvement of living conditions. The Yogyakarta Principles (Principle 14) further add that States shall take all necessary legislative, administrative and other measures to ensure equal access, without discrimination on the basis of sexual orientation, gender identity, gender expression or sex characteristics, to adequate food, safe drinking water, adequate sanitation and clothing.

**Access to a safe and secure accommodation was cited by respondents as a crucial basis for further assistance** and should thus be considered a primary protection need for migrants with diverse SOGIESC. Depending on their legal status and services available in transit or destination countries, interviewees highlighted the lack of shelter and/or reception centres for irregular migrants and refugees

<sup>75</sup> IOM, Handbook on Protection and Assistance to Migrants Vulnerable to Violence, Exploitation and Abuse (2019).

<sup>76</sup> IOM, International standards on the protection of people with diverse sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC) in the context of migration. International Migration Law. Information note (2021).

and in particular the lack of facilities with protection services sensitive to diverse SOGIESC needs.

**Many migrants found themselves homeless for a prolonged duration as they arrived in the country of transit or destination.** Across the contexts of this study, migrants with diverse SOGIESC faced barriers to accessing shelter and other accommodation. Barriers were heightened if they did not have legal status. This was the case in instances where migrants could not or were not yet registered as asylum-seekers, their asylum claim was rejected, or because their reason for migrating failed to justify obtaining a residence permit.

Additionally, migrants with diverse SOGIESC faced "hidden homelessness", meaning that they stayed for short periods in temporary housing – such as living with friends– but ultimately faced homelessness.<sup>77</sup>

**Access to accommodation was found to be highly dependent on one's legal status in the country.** For instance, in the country of focus in the Asia and the Pacific region, there was no protection in terms of accommodation or shelter for migrants with or without legal status, except when their employer sought to provide secure accommodation for them. Landlords who provided cheap rooms for rent were not normally attentive to the profile of their tenant if they were able to pay rent periodically. Migrants, therefore, were forced to rely on the informal labour sector and accept precarious conditions for accommodation. This applied particularly to migrants who did not have the economic resources to pay for accommodation.

**Most migrants interviewed for this study lived in precarious – unsafe and/or temporary – accommodation.** These living conditions were either due to their migration journey and status in transit and/or destination countries, or from being rejected by their families due to their diverse SOGIESC. In addition to trauma linked to their migratory journey and/or identity, homelessness and precarious housing conditions also endangered their physical safety and increase their vulnerabilities, such as risk of sexual and gender-based violence or forced sex work posed by landlords for those lacking regular legal status. In one country of the EEA, for example, State authorities focused on fighting homelessness, funded a CSO working with sex workers as the majority of their beneficiaries were homeless or living under precarious conditions.

*“The majority of our public, we’ll say 80%, are homeless, not specifically sleeping on the street but in precarious buildings, overcrowded flats, paying exorbitant rents, so yes, the question of housing is a big issue for us. Now access to housing [...] is increasingly complicated, it’s very complicated to have a lease if you don’t have payslips. Well, if you can get a lease, but then [they are] sleep sellers, [they are] exorbitant rents.” – SSI with CSO in the EEA.<sup>78</sup>*

Shelters and reception centres for migrants, including for asylum-seekers and refugees, were identified in all countries where the study took place. Several shelters tailored to migrants with diverse SOGIESC were identified in one of the country where the research took place in the EEA and one in the country of study in South America, while in countries where the research took place in West and Central Africa, MENA, Asia and the Pacific and the other country of focus in the EEA, migrants with diverse SOGIESC were only able to access general shelters, or reception centres for migrants not designed specifically for individuals with diverse SOGIESC.

## Organization of Shelters and Reception Centres

Countries in the Western part of the EEA are generally viewed as LGBTQ+-friendly.<sup>79</sup> However, **asylum-seekers with diverse SOGIESC noted that reception centres did not (or were unable to) adapt to their needs** – many of the centres were deemed non-inclusive, as they only offered collective bedrooms split by binary gender division into male and female sections. For those whose gender identities differ to their gender assigned at birth, this experience could be difficult. Respondents also expressed the need to improve the shelters'

<sup>77</sup> Ibid.

<sup>78</sup> SSI\_SP\_EEA2\_7.

<sup>79</sup> See Rainbow Europe Website. Consulted on 27 June 2022.

infrastructures in terms of safety and sanitation, as explained by a staff member of IOM country office in South America:

*“And there are gaps in shelters that did not want to receive an LGBTIQ+ couple because they have really strict rules. They have shelters like a female and male section for sleeping, so they couldn't allow people of the same gender sleeping together. Also, a lot of the shelter spaces are thought of as for families. So, a trans person that is in a situation of vulnerability, or living on the street, cannot access it because they do not necessarily have a family. The logic of shelters needs to change.”* – IOM Country office in South America.<sup>80</sup>

In addition, migrants with diverse SOGIESC interviewed in the EEA mentioned facing stigma and discrimination from the other migrants and staff, similar to what they faced in their country of origin. These included expectations of gender roles according to custom and religion and encompassed problematic conceptions of masculinity.

A study of queer asylum-seekers in reception centres in Belgium suggests that they were exposed to both hypervisibility – at the very individual level – and invisibility – at the more structural level within the asylum system itself: “In such circumstances, queer asylum-seekers become particularly vulnerable and might finally decide not to come out when requested to substantiate their asylum application.”<sup>81</sup> Respondents advocated for awareness-raising of migrants in shelters and reception centres, to promote acceptance of other migrants with diverse SOGIESC and to improve their condition and status in centres by normalising and making visible the subject of SOGIESC diversity.

Some migrants expressed the challenges of having to go to asylum centres away from larger hubs, where there were more chances of LGBTIQ+ support groups. On the other hand, as mentioned by a CSO during a workshop,<sup>82</sup> centres in larger cities also presented disadvantages in terms of protection of migrants with diverse SOGIESC as they were usually large centres, with less privacy for accommodated migrants and potential for increased victimization.

In one country in West and Central Africa, migrants with diverse SOGIESC asking for international protection – when identified by staff or when confident enough to disclose their identity – were referred by IOM or other organizations to UNHCR or one of its partners to be included in their international protection programmes. In contexts in which the vulnerability of LGBTIQ+ persons was not recognized by State authorities, this assistance was often the only degree of protection.

Migrants with diverse SOGIESC were often targeted by other migrants from the same origin country or community when they shared the same accommodation. Years could be spent in transit centres, during which migrants with diverse SOGIESC can be subjected to prolonged abuse both inside and outside the centre, due to the non-acceptance of other members of the community hosted in the same centre and of the host community outside the centres, as well as prejudice against SOGIESC diversity from staff. According to an INGO in charge of centres, most of LGBTIQ+ migrants suffered from anxiety or stress disorders.<sup>83</sup> Indeed, for migrants with diverse SOGIESC in West and Central Africa, the best chance of living a normal life was through a resettlement programme, usually to Europe, for which places are scarce and procedures long.<sup>84</sup>

Although largely in shared accommodation, some organizations and authorities had put in place protection solutions for migrants with diverse SOGIESC, mainly by transferring the persons concerned to individual rooms or accommodation. Many interviewees regretted that **migrants with diverse SOGIESC were being excluded from shelters and transferred to alternative accommodation**: although they appreciated the positive intention to protect, they pointed out that this "solution" further excluded migrants with diverse SOGIESC. They called for a fundamental change in the existing structure of shelters and centres to promote inclusivity. Findings point to **the lack of specialized shelters for migrants and refugees with diverse SOGIESC** in all the contexts studied.

<sup>80</sup> P\_KII\_1.

<sup>81</sup> Ropianyik, Anna; D'Agostino, Serena. Queer Asylum Seekers in Belgium: Navigating Reception Centers. Published in: *DiGeSt. Journal of Diversity and Gender Studies*. DOI: 10.21825/digest.v8i2.17325. (2021).

<sup>82</sup> National workshop in EEA2, 1 June 2022.

<sup>83</sup> KII\_WCA\_6.

<sup>84</sup> End of fieldwork national workshop in the country of focus in West and Central Africa, 27 May 2022.

*“If we cannot live together in the same room then let's do some more, let's call organizations because so many organizations will support LGBTIQ+ (...). When they hear LGBTIQ+, is like they saw the devil. And I say okay, maybe if we are talking about this topic and they could see a movie, they could do something about it. Maybe their mind will be more open. So, I would start to do some things like that.”* – Returnee from the EEA European Economic Area, former asylum-seeker.<sup>85</sup>

**Migrants minimized their visibility in these centres**, as a protection and coping mechanism adopted by themselves or on the advice of the teams in charge of the centres, to reduce the risk of violence and discrimination. In one country in West and Central Africa, an NGO in charge of transit centres has put in place ongoing work to ensure that all residents are aware of the need to accept SOGIESC diversity. Thanks to this work, they can better organize the sharing of rooms according to the level of sensitivity and acceptance of SOGIESC diversity (see section 4.3).

### Access to private housing

Compared to all migrants, **migrants with diverse SOGIESC, even as legal residents, faced additional discrimination from landlords on the basis of their race, gender identity/expression and sexual orientation.** Moreover, migrants with diverse SOGIESC may face blackmail when seeking housing arrangements and access to housing can become increasingly difficult as many migrants have limited financial resources compounded with a lack of access to information.<sup>86</sup> Irregular legal status also affects accommodation options and increases prospects of exploitation. This was highlighted by a country office of IOM in South America as one of the main findings from research they conducted in their country in 2020 on LGBTIQ+ people from another South American country:

*“We interviewed more than 50 people and every one of them said they had suffered discrimination for their identity here in different services, mainly in housing. When they wanted to rent an apartment, a lot of them were kicked out of their houses because the landlord found out they were a couple.”*

– IOM Country office in South America.<sup>87</sup>

Migrants with diverse SOGIESC have restricted housing options and landlords who lease houses to them are able to capitalise on their intersectional vulnerabilities by demanding inflated rent. Respondents described landlords threatening and discriminating against them. According to an IOM Country office in South America, landlords forcefully evict migrants with diverse SOGIESC when their sexual orientation or gender identity is visible, which is even more frequent for transwomen who are sex workers. Migrants often relied on "invisibilization", concealing their diverse SOGIESC to remain in safe housing within the rental market; this diverges from successful integration and is considered a form of harm.<sup>88</sup>

Respondents in the country studied in the MENA region lived on the outskirts of the capital in unsafe areas where rent was cheaper. Access to safe residential areas was generally determined by class and socioeconomic means. Areas of residence also affected mobility which depended on the availability, quality and cost of public transport. This impacted their ability to sustain a job and to travel to official administrative or in-person appointments, for example to support registration with the IOM or UNHCR.<sup>89</sup> Also in the focus country in the MENA region, a landlord leased an entire building to migrants with diverse SOGIESC, making them easily identifiable and a potential target. In cases where cash programming is involved to support the provision of rent for houses or rooms, protection officers and caseworkers will need to inform migrants of their rights and provide advice.

Respondents gave examples of landlords **renting apartments to migrants with diverse SOGIESC in exchange for sexual favours. Migrants experienced abuse from locals and residents**, who took

<sup>85</sup> SSI\_EEA2\_3.

<sup>86</sup> IOM. International standards on the protection of people with diverse sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC) in the context of migration. International Migration Law. Information note (2021).

<sup>87</sup> P\_KIL\_1.

<sup>88</sup> As Stated by UNHCR's Guidelines on International Protection No9, "being compelled to conceal one's sexual orientation and/or gender identity may also result in significant psychological and other harms" (para 33). UNHCR. Guidelines on International Protection No9. 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. HCR/GIP/12/09. (23 October 2012).

<sup>89</sup> KIL\_MENA\_4.

advantage of their difficulties when accessing private housing, under the guise of doing them a favour. In the country studied in the MENA region, one CSO reported that landlords had offered the first month(s) of rent in return for a favour.<sup>90</sup> In one of the countries studied in the EEA, a psychologist pointed out the psychological impact on people who are sexually exploited in exchange for services. These experiences tend to shape migrants' self-image, creating feelings of low self-worth and shame that naturally lead to isolation and can close the way to restoration of family links.<sup>91</sup>

On the other hand, migrants, whose partner was a national of the country of transit/destination, reported easier access to rental properties or private housing arrangements. This highlights that in some contexts, such as the EEA, stigmas linked to ethnic and racial identities play more of a role than certain SOGIESC identities, since discrimination was based on their ethnicity and race.<sup>92</sup>

## MAIN CHALLENGES 1

### Accommodation

- **Legal and social barriers to accessing shelters**, leading to homelessness or life under precarious conditions.
- **Lack of inclusive reception centres for migrants with diverse SOGIESC**, organized in gender binary divisions. This exposes migrants with diverse SOGIESC to abuse, discrimination and harassment by other migrants and/or staff members in reception centres.
- **High exposure to racial, gender and SOGIESC-based discrimination** when accessing private housing.

## Detention

Globally, **the conditions of migrant detention tend to violate human rights standards:** the right to liberty and security, the right to dignity and privacy, freedom from torture and cruel, inhuman or degrading treatment or punishment, as well as the right to equality and non-discrimination affirmed by the International Covenant on Civil and Political Rights (ICCPR).<sup>93</sup> The legal status of the prevention of arbitrary detention is based on various international human rights provisions, among which, besides the ICCPR, the International Convention on the Elimination of all Forms of Racial Discrimination, the Convention on the Rights of Children, or the Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment.<sup>94</sup> Detention of migrants with diverse SOGIESC, whether in prisons or immigration detention centres, is even more concerning. Reports regularly denounce overcrowding, the prevalence of torture and ill-treatment, or deteriorating sanitary conditions.<sup>95</sup> IOM also considers that “detention increases the risk of human rights violations and places a migrant in a situation of vulnerability, particularly if the migrant has diverse SOGIESC” as they “face a heightened risk of abuse during detention”.<sup>96</sup> **Migrants with diverse SOGIESC are especially vulnerable to violence and sexual abuse, subject to solitary confinement and lack of appropriate medical treatment and mental health services.**<sup>97</sup> As such, IOM promotes alternatives to migration detention.

<sup>90</sup> KII\_MENA\_4.

<sup>91</sup> SSI\_SP\_EEA2\_14.

<sup>92</sup> KII\_EEA2\_5; KII\_EEA2\_4; KII\_EEA1\_4.

<sup>93</sup> To go further, see also: section on “protection risks during detention” in IOM. International Standards on the Protection of People with diverse Sexual Orientation, Gender Identity, Gender Expression and Sexual Characteristics (SOGIESC) in the context of Migration. International Migration Law, Information Note. (2021).

<sup>94</sup> See also: United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court. A/HRC/30/37. 2015. A list of international human rights provisions is available on the OHCHR website [here](#). Consulted on 31 August 2022.

<sup>95</sup> International Detention Coalition. LGBTI Persons in Immigration Detention. Position Paper. June 2016; Amnesty International. “No safe place”: Salvadorans, Guatemalans and Hondurans seeking asylum in Mexico based on their sexual orientation and/or gender identity. 2017; European Union Agency for Fundamental Rights. Migration: Key Fundamental Rights Concerns. (2020).

<sup>96</sup> IOM. International standards on the protection of people with diverse sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC) in the context of migration. International Migration Law. Information note. (2021).

<sup>97</sup> Ibid.

In nearly all country contexts, **transgender migrants, especially trans women, face disproportionate violations of their human rights compared to other migrants with diverse SOGIESC.** When placed in detention, a transgender woman was more likely to be placed in a men's prison according to their sex assigned at birth and official gender marker on her identity papers, without adequate protection, as reported by a human rights organization in the MENA region.<sup>98</sup>

In the same region, pre-trial detention could last for months in such conditions due to lack of funding and overall slow judicial processes. Additionally, **migrants with diverse SOGIESC were exposed to highly discriminatory and traumatic detention conditions, as well as mistreatment by authorities.**

*"In some prisons [...], if an individual is caught and he or she is in pretrial detention [...], they are put in a separate wing with people with mental health issues. So, they are treated as if they had a mental health issue, like schizophrenia or something like that."* – Human rights organization in the MENA region.<sup>99</sup>

In the country studied in the MENA region, sex workers were noted as a particularly stigmatised group in detention, as well as during all interactions with the police and judiciary, during arrest, hearings, investigation or trial (see also section 4.3.3.). **Sex workers, especially if they are migrants, are not supported by the legal aid system and lawyers' associations, for whom they are not listed as a priority.** As a result, they were more frequently subject of arbitrary detention, arrest and ill-treatment during investigations. A human rights organization from this country noted inappropriate and discriminatory language used by police when approaching transgender migrants, especially if they were sex workers, during interrogation and investigations.<sup>100</sup> **In the country studied in the South America,** a human rights organization also described the added negative impact detention centres have on migrants with diverse SOGIESC compared to all migrants, citing instances of sex workers being detained in dire conditions, in which they were mistreated by authorities and fellow inmates.<sup>101</sup>

**Access to justice and legal protection is problematic for migrants with diverse SOGIESC.** In the focus country of study in the MENA region, a person can be arrested due to their sexual orientation and subsequently can be subjected to invasive or inappropriate treatment. For example, judicial authorities would ask gay men to have an anal test, although it has been formally banned, to give them a chance to prove they are not gay and have the charges dropped. This is still proposed as an option by some judges, but refusal to undergo this test will be considered as an admission of diverse sexual orientation according to an informant from a human rights organization in the MENA region.<sup>102</sup>

**Migrants in prisons or detention centres receive poor medical assistance, if any at all,** including HIV and STI treatments and prevention. In the case study country in South America, distribution of condoms is prohibited in jail, exposing inmates or detainees to the risk of contracting STDs. As an act of "invisibilization", i.e. concealing of diverse SOGIESC, a human rights organization from this region explained that migrants with diverse SOGIESC tended not to disclose their need for HIV medication or hormone therapy as a coping mechanism to avoid stigmatization, putting their health at risk.<sup>103</sup> Overall, beyond self-invisibilization, LGBTIQ+ migrants are frequently denied anti-retroviral treatments and hormone therapy even where they have disclosed their gender transition process or their HIV status. Some countries may be experiencing a crisis in their public health system, as was the case for example in one of the research countries in South America at the time of this study, impacting the availability of basic medicines in any health centres.

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<sup>98</sup> KII\_MENA\_7.

<sup>99</sup> KII\_MENA\_7.

<sup>100</sup> SSI\_SP\_MENA\_14.

<sup>101</sup> SSI\_SP\_SA\_14.

<sup>102</sup> SSI\_SP\_MENA\_14.

<sup>103</sup> SSI\_SP\_SA\_14.

## MAIN CHALLENGES 2

### Detention

- **Transgender women face greater risks of abuse and violations of their human rights**, being usually held in detention facilities reserved for men and with no adequate protection policies and measures taking into account their needs.
- **Migrant sex workers are subject to disproportionate arbitrary arrests and mistreatment** during pre-detention procedures and in detention.
- **Health care in detention settings** is non-existent or of very poor-quality and does not cover specific needs of migrants with diverse SOGIESC.

### Barriers and limitations to accessing employment

A lack of legal documentation is the main barrier to accessing regular employment. In some countries, temporary residence documentation limits or forbids access to the job market. In such cases, migrants can only rely on material and financial assistance provided either by the national authorities or covered by international organizations, NGOs or local organizations, or in the informal employment sector. Depending on the different contexts, the level of information on the financial and material needs of migrants with diverse SOGIESC varied greatly, while many have complained that allowances were insufficient to cover their needs. **A lack of access to legal documents excludes many migrants from formal employment and exposes them to exploitative practices such as sexual and labour exploitation and abuse by informal sector employers. This exploitation extends to the potential for indentured servitude, or slavery, particularly if the migrant has debts to repay (financial or in-kind).** In the country of study in West and Central Africa, there are no employment opportunities for migrants in general, so they become solely dependent on the aid from NGOs and international organizations. In general, migrants from ECOWAS countries can work more easily as there is a free movement zone in place, leading to less restrictions or bureaucracy to obtain work permits for example.

*“Please [name], keep in mind: as long as the “red card” (cash assistance card) is with you we can't assist. (...) - I told her that the card is empty, what good is it for if it helps 6 months a year, my rent now, I can't with the cold, I've been sleeping in the streets for two months, I'm calling them, they told me they approved my assistance, they informed me that UNHCR told them that this is the last assistance they give, it's been two months and now is the third. It's been two months and they've been saying they approved it, okay where is my money?” – Refugee in the MENA region.<sup>104</sup>*

Key informants pointed to the protection gaps of cash-based interventions that are often determined for a family, with the number of household members used to determine the amount of money they should receive. Individual vulnerabilities are not considered. For example, a trans person will receive the same amount than a non-trans individual, while they will face additional challenges to secure legal documents and employment and access to health care.

In the focus country of study in Asia and the Pacific, respondents highlighted the tight link between regular status at **work and regular migration status**: migrants need valid working arrangements to obtain a work permit, which then leads to the right to access health care and accommodation. In terms of employment, migrants with diverse SOGIESC were protected as long as they were regular migrants. **Those who are in an irregular situation and especially those with a disability and those with nothing to secure their employment or who were unable to access employment at all, were**

<sup>104</sup> SSI\_MG\_MENA\_4.



**excluded from protection and assistance measures.** In order to open a bank account, obtain health insurance and in the long-term access retirement funds, migrants need to have specific employment agreements and their employer needs to be responsible for their registration in order to retrieve a work permit and immigration card.

Many respondents across the focus countries of this study mentioned the lack of access to skills development and language training, as well as unfamiliarity with the country of destination's job market, as important barriers and obstacles to accessing regular employment. These types of services were generally limited to people with long-term residency permits, gained either through their refugee status, or through family or employment ties. Respondents in the focus countries in the EEA pointed to the difficulty to access the national job market despite work experience in their home countries. Many had to make use of their personal networks, language skills, capacities to adapt to new environments and their understanding of the labour market to find jobs.

In one of the focus countries in the EEA, a CSO helping migrant women who have been victims of trafficking and/ or SGBV to find community support and employment, explained that many persons they support are working as independent contractors in massage parlours. They are often unaware of the administrative and tax obligations associated with their status as an independent contractor imposed by their employer and many find themselves with significant debts to repay to the authorities. This may then lead them to agree to engage in sex work, as a short-term solution to pay-off this debt.<sup>105</sup>

**Migrants with diverse SOGIESC face significant labour discrimination because of homophobic, transphobic and sexist behaviours from employers or co-workers, as well as discrimination based on religion and race.** Numerous respondents also reported sexual or moral harassment. They expressed not feeling safe in the workplace and preferring not to disclose their sexual orientation, as is the case for example, in one of the countries of study in the EEA.<sup>106</sup> LGBTIQ+ migrants are often underpaid compared to nationals of the countries of destination and discriminated against by their employers, both on the basis of their nationality and their SOGIESC diversity. Overall migrants with diverse SOGIESC in the country of study in the Asia and the Pacific region said in interviews that they were underpaid compared to nationals, in all industries and work sectors and they felt constantly extorted by the host population and national authorities.<sup>107</sup>

**Transgender people experience restricted access to the labour market due to trans- and xenophobia.** An NGO in the focus country in South America highlighted that “trans people are still the most vulnerable” because “they have no livelihood opportunities, unless they go to work in hairdressing salons, or in restaurants.” The respondent explained that they are usually relegated to these “historical professions... or sex work.”<sup>108</sup> A transgender migrant in the focus country in Asia and the Pacific reported that not many jobs were available for “people like us,” and that “if you live in the city, the only job that you can do is beauty salon.”<sup>109</sup>

In the focus country in the EEA, a trans woman expressed that she limited herself to remote work as a protection mechanism, to avoid harassment because of her gender identity and after experiencing invasive questions, pronoun misuse or use of her “dead name”<sup>110</sup> in her previous job.<sup>111</sup>

Moreover, in the focus country in the MENA region, interviewees denounced the abusive kafala sponsorship system, introduced as a framework that regulates all migrant domestic workers and ties them to their employer, but without affording their rights under national labour laws. Interviewees told of how migrant workers under the kafala system, regardless of their SOGIESC, are often subject to de facto slavery. They faced forced confinement, confiscation of passport and travel documents, verbal and physical assault and unlawful working conditions – including no time off.<sup>112</sup>

<sup>105</sup> SSI\_SP\_EEA2\_18.

<sup>106</sup> SSI\_MG\_EEA1\_1.

<sup>107</sup> SSI\_MG\_AP\_8; SSI\_MG\_AP\_9; KII\_AP\_5; SSI\_SP\_AP\_6.

<sup>108</sup> KII\_SA\_10.

<sup>109</sup> SSI\_MG\_AP\_2.

<sup>110</sup> A colloquial term used to refer to the birth name of a transgender person who has changed their name as part of their gender transition.

<sup>111</sup> SSI\_MG\_EEA2\_10.

<sup>112</sup> KII\_MENA\_7.

In cases in which migrants with diverse SOGIESC work in businesses run by their co-nationals in the country of transit or destination, they were more exposed to intra-ethnic violence and discrimination because of their diverse SOGIESC, when known or visible. This could lead to co-ethnic or intra-community blackmail, meaning favours and exchanges or even exploitative work conditions, which migrants felt obliged to accept to achieve their material safety.

Overall, migrant workers were particularly vulnerable to labour exploitation, with long working hours, unfair wages and dangerous and unhealthy working environments.<sup>113</sup> With respect to all forms of exploitation and trafficking in persons, the Yogyakarta Principles (Principle 11) ask States to adopt measures designed to prevent trafficking, which address the factors that increase vulnerability, including various forms of inequality and discrimination on the grounds of actual or perceived sexual orientation or gender identity, or the expression of these or other identities.

## Sex Work

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Many interviewees, throughout the regions of EEA, MENA, Asia and the Pacific and South America, mentioned **the use of sex work for certain groups of migrants with diverse SOGIESC, usually due to a lack of choice or as a short-term solution to support themselves materially**, pay off debt or finance the next steps in their migration journey. An IOM country office in South America highlighted the high vulnerability and marginalization of trans women, who tend to be linked to sex work. Furthermore, in many South American countries, transgender women engaging in sex work are extorted by mafias and even murdered.

*“They are quite marginalized. And they tend to be linked to sex work. So that’s a thing that also says clearly, the discrimination they face to have a job for example in, I don’t know, a supermarket because of the way they express their gender, makes them continue to be very, very, very marginalized here in [country].”* – IOM Country office in South America<sup>114</sup>

In Asia and the Pacific, in countries which are perceived to have more liberal attitudes towards sex, migrants with diverse SOGIESC overwhelmingly migrated for sex work. Where this is not regulated, migrants then faced multiple layers of vulnerability due to their legal status, sexual orientation and/or gender identity and expression, as well as the prejudices associated with this sector of work. For example, respondents mentioned the situation of persons migrating in the focus country in the Asia and the Pacific region to be sex workers on 30-day tourist visas, without the right to work. **Getting legal employment and a work permit was key to unlocking their protection** through access to health services, to accommodation or to other rights as legal workers.

**Extortion by border officials was another example of discrimination and abuse migrant sex workers faced.** In the country studied in Asia and the Pacific, respondents explained that these officials have the right to put irregular migrants in jail on the sole presumption that they would be working irregularly in the country – which is actually the case since they are not protected by the domestic law while irregularly present in their territory. Respondents reported the absence of monitoring mechanisms to hold border officials accountable while trans women who travel back and forth between cities in the country, are often automatically suspected of being irregular workers and are therefore forced to bribe border officials and police to avoid arrest. Shifting borders, i.e. intra-country checkpoints at city entry and exit points and on interregional highways, pose unique risks for LGBTIQ+ migrants and create movement restrictions within a territory.

For migrant sex workers, the income from this activity is a lifeline to support themselves and their family, often through sending remittances back home. **The UNHCR has, over the last two years, noted an increase in refugees turning to sex-work for survival or as a source of livelihood, in the MENA region.** According to one trans migrant in the country of focus in the MENA region, financial support from the UNHCR was sufficient only to cover her rent and not other basic needs.<sup>115</sup>

<sup>113</sup> IOM. International standards on the protection of people with diverse sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC) in the context of migration. International Migration Law. Information note (2021).

<sup>114</sup> P\_KIL\_7.

<sup>115</sup> SSL\_MG\_MENA\_13.

In Asia and the Pacific, migrants expressed that, overall, wages were two to three times higher in some countries, compared to their country of origin. Furthermore, migrants could make even higher salaries in the sex work industry. This results in a particular driver for migrants with diverse SOGIESC who migrate with intentions to engage in sex work and send remittances back to their families.

**In West and Central Africa, survival sex work emerged as a transit issue.** Migrants from this region reported being stranded for months, particularly in North Africa. Some testified that they had been turned back several times to their previous country of transit, up to ten times in some cases. They are then at the mercy of smugglers and traffickers and extremely at risk of SGBV, for example in the form of sexual exploitation in brothels. Female migrants who display their diverse SOGIESC were especially exposed, as they were the primary victims of SGBV and sexual exploitation from smugglers and traffickers.

*“That’s how I arrived in [this city in North Africa]. In [this city] they call it the “Nganda”. The “Nganda” is a form of prostitution, you have to prostitute yourself. So, it’s a house, or brothel, where we sell wine and food and when girls are newly arrived, we are called “the “decor”. The set, you become the set. So, if a man comes, you like him, the woman who has the house is going to charge a price. You are going to go and sleep with the man and what the man is going to give, she is going to think what she can give you. Because, she says you don’t pay, so your share there is sleeping because that’s where you sleep. It’s a bit like that. I stayed there for over two months.” – Migrant in transit in West and Central Africa at the time of the interview, previously in transit in a North African country.<sup>116</sup>*

Respondents in the focus countries in the EEA also claimed resorting to sex-work as a means of survival. This was generally the case for irregular migrants with no other options to make a living and survive. In the country studied in the South America, trans migrants tended to report having difficulties getting a job, which risks pushing them into survival sex.

### MAIN CHALLENGES 3

#### Material Safety

- **Precarious legal status is the main barrier to access employment and education.** Lack of access to legal documents excludes migrants from formal employment and exposes them to the risk of exploitation and abuse.
- **Transgender people experience restricted access to the labour market due to trans- and xenophobia** and often find themselves relegated to jobs in certain work sectors, such as hairdressing salons or restaurants for example.
- **Groups of migrants with diverse SOGIESC, especially transwomen and gay men, disproportionately resort to sex work,** due to a lack of choice or as a short-term solution to support themselves materially, pay off debt or finance the next steps in their migration journey.

## 3.2 ACCESS TO LEGAL SAFETY

**Legal protection and security were the primary needs of migrants with diverse SOGIESC in this study.** Barriers to legal regularization hinder access to many basic rights. Across geographical contexts, access to accommodation, employment, education and comprehensive physical and mental health care often depended on migrants obtaining a legal immigration status in their country of transit or residence. In addition and as noted in section 2, irregular legal migration status is also linked to limited access to local or national justice mechanisms in transit, destination and countries of origin.

<sup>116</sup> SSI\_MG\_WCA\_10.

**Migrants with diverse SOGIESC face barriers to obtaining a legal status or citizenship in the host country**, whether of administrative, legal or financial nature.

Many migrants lack proper documentation, which can lead to issues such as irregular migration status, prolonged detention, denied access to services, non-recognition of family units and refusal to register one's children at birth.<sup>117</sup> For migrants with diverse SOGIESC, the absence of proper individual documentation can create additional issues and risks even if the person is not migrating irregularly. They often experience discrimination and ill-treatment by border authorities, police officers, social services, or other officials. For example, if their documentation does not match their gender, individuals may be denied the right to access to the country through a border or checkpoint and may lead to unnecessary detention.<sup>118</sup>

Due to reasons and conditions under which they left their country of origin, migrants often do not have an “exit stamp” on their passport, as they have not passed through official border controls, which further hampers their legal condition in country. This may require applying to the administrative authorities in the country of origin or crossing the border again, which is always an additional difficulty for migrants with diverse SOGIESC, as they are exposed to high discrimination by law enforcement and border staff.

Some respondents went through regular visa applications from within their country of origin to enter the destination country. In the countries studied in the EEA, **migrants tend to experience heavy, lengthy and costly administrative formalities, as well as hostile administrative procedures, with long queues and a lack of information** in their spoken languages. Even though private companies in this region have developed services to facilitate these procedures and administrations have digitised administrative procedures, not all migrants have the means or knowledge to access these services.<sup>119</sup>

International students who wish to stay in their country of residence are also poorly legally protected, with limited solutions available to them. Some of them reported having discovered their diverse SOGIESC during their studies abroad. They are then reluctant to return to their country of origin due to fears of State and community level violence and discrimination. In the context of the EEA, it is “increasingly difficult to sort of transfer from a student visa into an asylum visa,” according to a United Kingdom Academic interviewee, underlining that there seems to be a gap in terms of protection.<sup>120</sup> Some national legislation in the region offers limited opportunities to change the ground of residence permits. If there is such a possibility, it is limited to a temporary residence permit for one year at the end of the student visa, to allow migrants to look for a job and then apply for a residence permit as a worker. However, migrant students must be able to prove that they have a job in the field of their studies and have an income higher than the minimum wage in the country.

In South America, respondents from IOM country offices mentioned the specific difficulties faced by migrants with diverse SOGIESC to secure a legal status, such as proving their relationship to their partner which is generally the ground to obtain a legal status. In this context, the risks arising from the lack of legal status were also stressed:

*“So from an intersectional perspective, if they are Venezuelans, they're part of the LGBTIQ+ population and they don't have documents, they are at risk of human trafficking, of exploitation, of survival sex, etc.” – IOM in South America<sup>121</sup>*

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<sup>117</sup> IOM. International standards on the protection of people with diverse sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC) in the context of migration. International Migration Law. Information note (2021).

<sup>118</sup> Ibid.

<sup>119</sup> SSI\_MG\_EEA1\_2.

<sup>120</sup> SSI\_MG\_EEA2\_4.

<sup>121</sup> P\_KII\_7.

**A consistent and cross-cutting finding of this study was the layered difficulties faced by transgender people.** In terms of obtaining legal migration status and citizenship in host countries, transgender individuals often encountered **barriers related to the change of name and gender markers on their documents**, which hindered their progress and harmed their well-being. An IOM country office in South America explained receiving complaints from transgender migrants who are forced by migration officers to remove make up, pull up their hair and even change their clothes in order to match the picture in their passports. National authorities justify this in order to prevent identity theft, contributing at the same time to a rhetoric where transgender people are perceived as criminals instead of people that require protection. Change of their gender expression to match their sex assigned at birth was perceived by transgender people as “detransitioning”.

A respondent from Canada living in the EEA explained the complex legal process to have her new identity recognized on documents, as a transgender migrant woman married to a European woman but not a national of their European country of residence. The respondent migrated to a country of the EEA before her transition and married a European woman from a different country. She obtained a residence permit through her marriage, which was at the time, a heterosexual marriage. Same-sex marriage is legal in her country of destination, but the main barrier preventing the alignment of her marriage documents with her identity is her country of origin and her country of destination, as each of them requires different procedures for changing names and gender markers on identity documents. In her country of destination, the legislation considers contexts of transgender persons, by allowing the changing of one's sex and first name without having to meet certain medical conditions. However, she remains subject to the legislation of her country of origin regarding the modification of her identity documents, which does not have specific procedures for transgender persons. Although she can apply for a change of identity, she has to reside in her country of origin for three months to a year before she can apply. These legal gaps in the protection of transgender migrants, even in contexts considered to be progressive, influence her life in terms of travel and employment prospects.<sup>122</sup>

Some countries that allow gender to be legally changed still require medicalised and expensive processes to change gender markers on documents.<sup>123</sup> These requirements constitute violations of the obligation to respect the right to sexual and reproductive health (article 12 of the ICESCR)<sup>124</sup> and to the right to respect private and family life (article 8 of the ECHR).<sup>125</sup>

In other contexts, such as in the country of study in the MENA region, the prospect of transgender people changing their gender marker and name on legal documents is not even a consideration. National authorities restrict movement of transgender migrants in public spaces as they avoid being confronted with presenting their identity documents.

*“As a trans person living in [country in the MENA region], I'm able to somehow navigate a little bit some spaces, but that navigation stops when I have to present my ID, when I have to work, when I get to a checkpoint where I need to be questioned. [...] I would say that the different experience is just how you are socialised in society. For example, at the checkpoint, a trans woman is in a different situation, in terms of legality and in terms of what legality entails, with her ID and I'm talking about a [...] national trans woman. It's different than the experience of a gay man who can just present this card and the same thing for refugees. A refugee trans woman in [country in the MENA region] has major restrictions in terms of mobility, not only because of her ID, but also the limited mobility that is imposed by the government through curfews and checkpoints.. [...] Resident gay men will not face that discrimination.” – CBO in the MENA region.<sup>126</sup>*

<sup>122</sup> SSI\_MG\_EEA2\_10.

<sup>123</sup> IOM. International Standards on the Protection of People with diverse Sexual Orientation, Gender Identity, Gender Expression and Sexual Characteristics (SOGIESC) in the context of Migration. International Migration Law, Information Note (2021).

<sup>124</sup> CESCR, General Comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), U.N. Doc. No. E/C.12/GC/22 (2 July 2009), para. 58.

<sup>125</sup> ECtHR, Y.Y. v. Turkey, App. No. 14793/08 (24 August 2016); A.P., Garçon et Nicot c. France, Apps. No. 79885/12, 52471/13 and 52596/13 (6 July 2017).

<sup>126</sup> KII\_MENA\_6.

Trans people are subject to discrimination and harassment during arrests, investigations and prosecutions, by authorities in charge of protection, such as the police. Accordingly: “the main reason for this discrimination the discrepancy between what is mentioned in identification papers and the outward appearance of trans individuals before or during their transition.”<sup>127</sup>

Overall, trans individuals experience particular challenges when crossing borders in the process of transitioning and whose appearance might not match the legal sex on their identity documents. For example, Ukrainian trans women whose biological sex is listed as "male" on their passports/birth certificates have been denied the right to exit the country, since only women and children were authorised to cross borders.<sup>128</sup>

## Access to Justice and Legal Protection Mechanisms

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To ensure the legal safety and protection of migrants with diverse SOGIESC, there should be options to file a complaint in instances of discrimination or violence. **In most contexts, migrants with diverse SOGIESC who were victims of crimes – such as SGBV or serious physical assaults – reported not filing a complaint.** This reluctance was based on their **distrust of authorities and fear of further abuse or reprisals.** Respondents also believed they could not do so because of their migrant or refugee status in the country. This proved especially true in countries where diverse SOGIESC identity, association and expression is criminalized or unprotected by the law. In such contexts, migrants with diverse SOGIESC are at risk of persecution for their diverse SOGIESC when they attempt to report a crime or during trial. In the country of study in West and Central Africa, a refugee expressed that he did not believe he could file a complaint, when he was hit by a man on account of his sexual orientation, because of his temporary legal migration status. He reported the incident to an NGO in charge of the transit centre where he lived – the NGO filed a complaint on his behalf, however there was no follow-up.<sup>129</sup>

**Across contexts, respondents reported that police refused to take their claim, humiliated them on the basis of their identities and blamed them for the assault they were reporting.** This was clearly confirmed through interviews conducted for this research. In the country studied in West and Central Africa, a refugee in a UNHCR transit centre expressed his traumatic experience when he went to the police station to report a rape crime committed by a national:

*“I went to the police, I started to explain to him, he started to look at me in front of the public at the police station (...) He starts to laugh at me, he moves away from me. He asks me how I, a man, can sleep with another man. (...) I came here for my protection, to tell you about my problem. They ask me to undress, I told him I am gay. He asks me (insulting questions based on discriminatory language). He starts to back off, he starts to put distance between me, he's over there and I'm over here and he's asking me questions. He puts on the bib and tells me that I am a person who is abandoned, a piece of dirt. Afterwards I went to see a commissioner to explain my problem. In front of the entire police station, in front of children and women at the police station, they made me take off my pants.”*  
– Refugee in West and Central Africa.<sup>130</sup>

In some cases where SOGIESC diversity is not explicitly criminalized, **authorities often criminalized migrants with diverse SOGIESC through other legal norms, for example, through legal provisions on "immoral behaviour" or "depravity".** An LGBTIQ+ non-profit organization in the MENA region confirmed that beneficiaries are afraid to report crimes to police or take the cases to court because there is a “chance that they will be criminalized for having sexual relationships with an individual from the same gender”.<sup>131</sup> A study led in the same region, on the status of trans individuals, suggests that discrimination faced by trans individuals “is mainly due to the absence of laws and policies” protecting

<sup>127</sup> Qorras, Tajassod project. “Accessing Legal Rights, Mental Health and Community Support. A Collaborative Look into Issues Facing the Trans Community in Lebanon”. (2021).

<sup>128</sup> KII\_EEA1\_2

<sup>129</sup> SSI\_MG\_WCA\_12.

<sup>130</sup> SSI\_M\_WCA\_6.

<sup>131</sup> SSI\_SP\_MENA\_5.

human rights and civil liberties and particularly the rights of trans individuals. However, it is difficult to prove that discrimination has occurred on the basis of gender expression or gender identity when it comes to employment or accessing services. The report States that transgender individuals resort to sex work as a result of discrimination in employment, “which exposes them to criminal prosecution and imprisonment.”<sup>132</sup> Social discrimination also occurs where anti-discrimination laws are in place, as behavioural changes in society do not always keep pace with political and legislative developments and complaint mechanisms are not always in place or may be ineffective.

### 3.3 ACCESS TO PROTECTION

For migrants, access to protection means both (1) access to protection services guaranteeing the respect of their individual rights in accordance with human rights instruments – including those on the rights of refugees and displaced persons – and (2) access to international protection, specifically covered by Refugee Law.

**1. Protection** encompasses all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and spirit of the relevant bodies of law (i.e. International law, Human Rights law, International Humanitarian Law, Refugee law).<sup>133</sup> Specifically, protection involves activities that seek to directly secure individual or group rights, as well as activities that aim to create a society in which individual and group rights are recognized and upheld.

**2. International protection** is the “protection that is accorded by the international community to individuals or groups who are outside their own country and are unable to return home because their return would infringe upon the principle of non-refoulement and their country is unable or unwilling to protect them”.<sup>134</sup>

While national States are responsible for the protection of people within their jurisdiction – both in the national territory and abroad – in contexts where the State does not grant such protection, international organizations such as IOM and UNHCR have the mandate to provide this protection services or international protection, according to their specific mandates.<sup>135</sup>

Migrants' rights and protection have been of concern to IOM for decades. In 2015, IOM became an United Nations- agency and has taken significant steps in strengthening its role and work in protection and in the fulfilment of rights, such as taking the role of coordinator of the United Nations Network on Migration to follow-up on the adoption of the Global Compact on Safe and Orderly Migration in 2018. IOM's activities aim to reduce protection risks of individuals in vulnerable situations and in particular those who are exposed to abuse, exploitation, violence, neglect and deliberate deprivation. It does so by addressing protection threats and vulnerabilities while increasing the capacities of individuals, their communities as well as those of their duty bearers. On the humanitarian side, protection has been mainstreamed in IOM's service delivery. IOM is also promoting rights in the context of labour migration or assistance to vulnerable migrants and offers support to governments in carrying out their duties to respect, protect and fulfil these rights, thus contributing to managing in line with international standards and practices.

**IOM's migrant vulnerability model was developed to identify, protect and assist migrants who have experienced or are vulnerable to violence, exploitation and abuse** – before, during or after migrating – and to guide the development and implementation of appropriate programmatic and structural interventions to reduce such vulnerabilities.

<sup>132</sup> Qorras, Tajassod project. “Accessing Legal Rights, Mental Health and Community Support. A Collaborative Look into Issues Facing the Trans Community in Lebanon”. (2021).

<sup>133</sup> IOM. *Glossary on Migration* (2019). Source: Inter-Agency Standing Committee, Protection of Internally Displaced Persons: Inter-Agency Standing Committee Policy Paper (December 1999) p. 4.

<sup>134</sup> IOM. *Glossary on Migration*. (2019). Source: Adapted from United Nations High Commissioner for Refugees, Persons in Need of International Protection (June 2017).

<sup>135</sup> IOM. *Handbook on protection and assistance for migrants vulnerable to violence, exploitation and abuse* (2019).

The IOM determinants of migrant vulnerability (DoMV)<sup>136</sup> model is a methodology for assessing vulnerability to violence, exploitation and abuse within a migration context through use of a structured assessment methodology. The DoMV model adopts an ecological approach, which recognizes that individuals are embedded within broader social arrangements including their families, their communities and the broader society governed by the State. The DoMV model therefore considers vulnerability as a result of a combination of factors at the individual, household/ family, community and structural levels. Application of the IOM assistance to vulnerable migrants (AVM) framework enables longer-term, sustainable solutions to social issues including unsafe and irregular migration, migrant exploitation and abuse and migrant reintegration. It provides guidelines on how to design and implement interventions aimed at addressing the risks identified during the assessment conducted using the DoMV model.

**Within this model, diverse SOGIESC is considered an individual risk factor, alongside sex, age, racial and ethnic diversity, personal history, mental and emotional health and access to resources.** These risks are not understood as standalone elements, but rather in their interaction with other risk and protective factors at the household, community and structural level. The vulnerability of migrants is not determined by how many risk factors they are exposed to, but by whether protective factors are present in sufficient quantity to mitigate such risks.<sup>137</sup>

## International Protection: Refugee Status Determination (RSD)

States have the primary responsibility to conduct RSD, however “UNHCR may conduct the procedure under its mandate when a State is not a party to the 1951 Refugee Convention and/or does not have a fair and national asylum procedure in place”.<sup>138</sup> The level of access and quality of procedures, not to mention the protection of migrants with diverse SOGIESC undergoing the RSD process, varies greatly depending on the country and the authority in charge.

In the countries studied in the EEA, **the RSD procedure is considered intrusive and invasive by organizations working with asylum-seekers and refugees. Respondents consider RSD to be particularly insensitive – even traumatic – for people seeking international protection on the basis of their diverse SOGIESC.** Respondents in the country studied in the EEA underlined the need for and the importance of preparing asylum-seekers for the procedure. This would ensure that asylum-seekers understand the objectives of the procedure and the types of questions they will be asked. This would allow them to properly verbalize their experiences, traumas and needs for protection related to their diverse SOGIESC. In the EEA region, service providers generally mistrust decision makers given that they demonstrate a lack of thorough understanding of SOGIESC related issues and in some cases, are homo-, bi- and/or transphobic.<sup>139</sup>

Many respondents emphasised how suspicion from authorities guides interviews with migrants with diverse SOGIESC to ascertain their needs for international protection. **The burden of proving their diverse SOGIESC rests largely on asylum-seekers and their ability to meet certain “queerness”<sup>140</sup> standards during asylum interviews.** Respondents reported being asked to prove their sexual orientation through visual proof of the existence of an intimate or romantic relationship. Requiring this type of evidence was deemed highly intrusive and inappropriate, by migrants and service providers supporting asylum-seekers and refugees. RSD procedures often fail to consider existing trauma of migrants with diverse SOGIESC due to SGBV and other forms of violence.

**Some respondents reported being afraid to apply for asylum because they did not want to be forced to talk to strangers about very intimate and personal matters.** In some cases, migrants

<sup>136</sup> IOM. *Overview of the IOM determinants of migrants vulnerability model and the assistance to vulnerable migrants framework: household/family level.* (n.d.); IOM. *Overview of the IOM determinants of migrants vulnerability model and the assistance to vulnerable migrants framework: community level.* (n.d.); IOM. *Overview of the IOM determinants of migrants vulnerability model and the assistance to vulnerable migrants framework: individual level.* (n.d.); IOM. *Overview of the IOM determinants of migrants vulnerability model and the assistance to vulnerable migrants framework: structural level.* (n.d.)

<sup>137</sup> IOM. *Handbook on protection and assistance for migrants vulnerable to violence, exploitation and abuse* (2019).

<sup>138</sup> UNHCR. [Refugee Status Determination](#).

<sup>139</sup> SSI\_SP\_EEA2\_4; SSI\_SP\_EEA2\_7; SSI\_SP\_EEA2\_8; SSI\_SP\_EEA2\_12; SSI\_SP\_EEA2\_14.

<sup>140</sup> Ropianyk, Anna; D'Agostino, Serena. *Queer Asylum Seekers in Belgium: Navigating Reception Centers*. Published in: *DiGeSt. Journal of Diversity and Gender Studies*.



with diverse SOGIESC prefer to base their application for international protection on other grounds. Lack of visibility and self-concealment of asylum claims on the ground of diverse SOGIESC cause harm to persons in search of international protection.<sup>141</sup>

**Integration into host communities**, i.e. in countries where migrants have sought or received international protection or refugee status, **is almost impossible in some contexts**. In the country of study in West and Central Africa, migrants reported a strong sense of insecurity due to their diverse SOGIESC. They were victims of insults from people in their neighbourhood and were constantly afraid of being physically attacked or even killed.<sup>142</sup> Similar hardships were reported from respondents in the country of focus in the MENA region. Migrants explained feeling scared to walk outside, having difficulty finding a job or not being able to sleep properly on behalf of their diverse SOGIESC and their migration status in the country.<sup>143</sup>

Integration conditions of migrants can be more nuanced in other contexts. In the country of study in South America, some respondents reported prejudices around certain nationalities of migrants, leading to the limitation by those concerned of their social interactions to prevent any form of discrimination or mistreatment.<sup>144</sup> On the contrary, other migrants in the same context testified to their very good integration in the country – such as being able to study and learn the local language - and their feeling of inclusion in the community, through their job for example.<sup>145</sup> In one of the countries surveyed in the EEA, in the western part of the region, migrants overall reported positive integration experiences and particularly a sense of freedom and security with respect to their diverse SOGIESC – connecting with the local LGBTIQ+ community, until the rejection of their asylum claim.<sup>146</sup>

Depending on the contexts, **resettlement** to third countries could be the only option for migrants with diverse SOGIESC. However, the length of the resettlement procedure<sup>147</sup> – ranging from months to years in all contexts – has a significant impact on the lives and protection of migrants with diverse SOGIESC, who are then kept in precarious conditions in terms of rights and inclusion in the country of transit or destination. They are generally not allowed to work and are kept in accommodation centres in which crowding and proximity of people in such facilities can be difficult to live in, especially long term.

Lengthy procedures to claim asylum can end in rejection and some migrants – particularly in the EEA – gave up appealing decisions, just to avoid another long and arduous RSD procedure. In an interview with a psychologist within the EEA, they reported that HIV-positive patients seeking asylum based on their sexual orientation are shuffled between two authorities: the asylum authority and the authority issuing residence permits on medical grounds. Some patients have been entangled in legal and administrative procedures for more than a decade, with no status recognized by either authority.<sup>148</sup>

Another issue arises when migrants with diverse SOGIESC may have hidden their diverse SOGIESC in their country of origin to avoid violence and discrimination. In such cases, States should not rely on this concealment to justify the return of a migrant to a place where they may face violence or discrimination as a result of their identity,<sup>149</sup> which has been confirmed by courts in various jurisdictions.<sup>150</sup>

<sup>141</sup> UNHCR. Guidelines on International Protection No9. 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. HCR/GIP/12/09. (23 October 2012).

<sup>142</sup> SSI\_MG\_WCA\_5.

<sup>143</sup> SSI\_MG\_MENA\_9.

<sup>144</sup> SSI\_MG\_SA\_5.

<sup>145</sup> SSI\_MG\_SA\_9.

<sup>146</sup> SSI\_MG\_EEA2\_2; SSI\_MG\_EEA2\_3.

<sup>147</sup> Resettlement (refugees): the transfer of refugees from the country in which they have sought protection to another State that has agreed to admit them – as refugees – with permanent residence status. Source: IOM *Glossary on Migration*, Adapted from United Nations High Commissioner for Refugees, UNHCR Resettlement Handbook (2011) p. 3.

<sup>148</sup> SSI\_SP\_EEA2\_14.

<sup>149</sup> IOM. International Standards on the Protection of People with diverse Sexual Orientation, Gender Identity, Gender Expression and Sexual Characteristics (SOGIESC) in the context of Migration. International Migration Law, Information Note (2021).

<sup>150</sup> See for example: CJEU, *Minister voor Immigratie en Asiel v. X, Y and Z*, (7 November 2013), C-199/12 - C-201/12.

## MAIN CHALLENGES 4

### International Protection

- **Level of access and quality of RSD procedures**, as well as the level of protection of migrants with diverse SOGIESC, varies greatly depending on the country and the authority in charge of the procedure.
- Migrants who do not qualify as refugees and whose status based on the RSD procedure is rejected face **challenges to obtain protection in the host country**.
- **The burden of proving one's SOGIESC diversity rests on migrants** and their ability to meet certain SOGIESC diversity standards during asylum interviews.

### Social Support Services

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**Across contexts, one of the main barriers to assistance is the lack of trust migrants with diverse SOGIESC have in public service providers and, occasionally, in the local and international organizations providing services.** Interviews revealed a significant gap between the expectations of migrants with diverse SOGIESC and the capacity of protection actors, particularly local CSOs. One of the reasons for this mistrust is the lack of clarity on eligibility criteria for assistance, both among service providers and migrants. These risks have generated intercommunity tensions – between migrants and non-migrant people – several respondents reported having been treated unfairly or mistreated by international organizations and CSOs.

*"I'm not asking you for anything. I just want [you] to support me to face the world and work. Why are you open if you don't want to help me and support me, if you don't strengthen me who will? Most trans women here use drugs. They're all stuck with what's so-called Crystal Tina [Methamphetamine], all the money they're taking is jaw feminization, eye lifting, where from? In my opinion, this is not fair, this money you're giving to trans women, give to someone living on the streets, who can't afford food. (...) If this organization is giving 50 dollars and they're fighting for it and you're spending thousands per day, crystal meth costs 400 to 500 dollars per gram. (..) My house rent is [equivalent of 50 USD in the local currency] and I can't pay it. Okay who needs it more, me or them? Definitely me." - Refugee in the MENA region.<sup>151</sup>*

**Another barrier is the decentralization of protection services in the capital or more urban areas.** Migrants with diverse SOGIESC in rural areas have less access to services and service providers in more remote areas tend to provide less tailored services to their beneficiaries. To overcome this, referral systems would be needed with service providers in these areas, who would in turn need to receive extensive training on SOGIESC. Provision of services through technology was not considered practical by the respondents, as some migrants often do not have a cell phone, lack internet access and/or live in areas with limited reception.

Related to this point, transportation to urban areas to receive assistance presents a further challenge for migrants with diverse SOGIESC. Several respondents feared leaving their houses and their area. In some countries in the MENA region, checkpoints present a restriction to mobility and this can represent an obstacle for migrants with diverse SOGIESC, both because of their sexual orientation and nationality in homophobic and xenophobic contexts and because of the eventual lack of regular documentation. Trans individuals face an additional layer of vulnerability, given that their documents' names and sex markers might not match their gender identity and expression.

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<sup>151</sup> SSI\_MG\_MENA\_4.

The coping mechanism of "invisibilization"<sup>152</sup> adopted by migrants with diverse SOGIESC to navigate the challenges they are exposed to daily, increased the gaps between them and service providers. Migrants with diverse SOGIESC tend not to disclose their diverse SOGIESC and some service providers reported lacking the adequate identification tools to identify such cases during initial conversations and assessments.

## MAIN CHALLENGES 5

### Social Support Services

- **Lack of clarity on eligibility criteria for assistance** can create a significant gap between the expectations of migrants with diverse SOGIESC and the actual capacity of protection actors and lead to intercommunity tensions.
- Tendency towards **geographic centralization of protection services** in the capital or more urban areas.
- **Lack of transportation to receive assistance** presents a further challenge for migrants with diverse SOGIESC, especially in homo/transphobic contexts that will limit their mobility to avoid discrimination or harassment.

## 3.4 ACCESS TO HEALTH CARE

Migrants with diverse SOGIESC may experience barriers to health care because of homophobia and transphobia, as well as ignorance about intersex individuals, in society and among health-care providers.<sup>153</sup> Access to health is particularly challenging in States where diverse SOGIESC is explicitly criminalized or health policies discriminatory in law or in practice.

### Primary Health Care

#### **Access to Primary Health Care**

**Access to health care in most contexts is linked to the legal status of the migrant in the country.** When they are irregular or only have temporary status, free health services are limited to emergency and basic needs and do not cover the needs of trans persons, for example. In most contexts, migrants on a tourist visa or status (i.e. living in the country for less than three months), may access emergency treatment and test for HIV/AIDS, but they are then usually unable to receive treatment that is considered non-urgent and could become so due to lack of care. Overall, most public health insurance plans do not include trans hormone therapy and antiretroviral treatments are not covered in many contexts.

In the focus country in South America, migrants formally have the right to access all public health services for free. However, the public health services lack the capacity to attend to all patients' needs and waiting times can be extremely long, as stressed by a CSO from this region.<sup>154</sup>

In some countries in the EEA, basic free health care is accessible to undocumented migrants, while in other countries of the region they can only access emergency hospital services. Respondents highlighted the many administrative hurdles to access free health care even when provided by the State.

In the focus country in Asia and the Pacific, health-care systems do not allow for irregular migrants, or migrants who do not have any health insurance, to receive proper care. The burden is therefore

<sup>152</sup> From a legal perspective and for the purposes of this research, the terminology *invisibilization* is employed to feature a sociological human behaviour. Overall and generally, the concept itself of invisibility (or any similar term as marginalization, etc.) should be analysed in different layers depending on the purposes and goals of the research and/or action: social, political, cultural, religious and also "legal invisibility". This layer would then bring to human rights in the analysed context and to the importance of not only ensuring the protection of these rights but refraining from affecting them and actively seeking their fulfilment.

<sup>153</sup> IOM. International Standards on the Protection of People with diverse Sexual Orientation, Gender Identity, Gender Expression and Sexual Characteristics (SOGIESC) in the context of Migration. International Migration Law, Information Note (2021).

<sup>154</sup> SSI\_SP\_SA\_12.

on CSOs to either deliver health care or fund health care for irregular migrants. For example, a health service provider organization has reported helping migrants to pay for hospital expenses.<sup>155</sup>

In the focus country in the MENA region, UNHCR has contracts with public hospitals where care is covered by the organization's insurance.<sup>156</sup> For other migrants, IOM and NGOs provide health assistance, which often only covers emergency and urgent care and depends on fundings. Migrant domestic workers should be provided with private health insurance through their employer, but the quality of this insurance and coverage is quite low and is not always provided. However, when there is a need for emergency care (i.e. when someone calls an ambulance), the person is taken to the nearest hospital, often a private one, where the services are expensive and not accessible to many migrants. In both countries of study in the EEA, private health care has been noted as being very expensive as well.

In the focus country in West and Central Africa, health-care services are well integrated into the services provided for migrants within transit centres, including the intervention and support of international NGOs or local CSOs. However, they do not sufficiently take into account the particular needs of migrants with diverse SOGIESC, who are left out of the public health services if there is no financial and medical support from an NGO or international organization.<sup>157</sup>

**This lack of attention and adaptation of health care to the specific needs of migrants with diverse SOGIESC was observed in all contexts studied for this research**, to a greater or lesser extent in different countries and regions. Respondents reported a general lack of training and awareness of health-care workers dealing with this population, but also cases of discrimination, sexual harassment and refusal of treatment in the most extreme cases. In the country of study in the MENA, individuals reported they have been victims of bullying, discrimination, or/and sexual harassment in hospitals and, in several cases, **individuals were refused treatment by doctors** saying they were unable to perform surgery on gender non-conforming or non-binary people, even in the case of basic surgeries such as treating a congenital heart problem, as mentioned by a CSO from this region.<sup>158</sup>

Furthermore, in the focus country in the MENA region, respondents reported negative coping mechanisms of migrants with diverse SOGIESC, including substance abuse (alcohol, drugs) and chemical sex (“chemsex”), a practice that associates sex with drug use. In some settings within the MENA context, local NGOs and CSOs provide support for migrants with diverse SOGIESC to overcome drug and alcohol addictions, but no tailored public services are available for migrants with diverse SOGIESC.

## HIV Treatment

**Access to HIV treatment for gay and bisexual men and transgender women is of particularly importance, as they are among the main groups who have been disproportionately impacted by the HIV/AIDS epidemic. The quality and availability of care varies greatly across contexts.** In some countries in the EEA, all people – regardless of their status in the country – can access anonymous HIV testing centres. However, the number of such centres is generally limited and only available in large cities. Respondents pointed to the need for anonymous and easy to access rapid HIV testing. Some migrants with diverse SOGIESC also need to easily access Pre-exposure prophylaxis (PrEP), which is a treatment that can reduce chances of contracting HIV from sexual activity or drug injection use, as mentioned by a CSO in an EEA country providing medical and psychosocial support for men and trans women sex workers. This CSO stressed that access to PrEP or HIV treatment is “often the entry point into a care system” for the persons they support and important for those exposed to sexual violence.

In the focus country in South America, the public health service is not equipped to promptly tend to HIV cases and offer timely antiretroviral therapy. Antiretroviral therapy is particularly expensive and local NGOs working with this population are often unable to provide the treatment because of the prohibitive costs. In the country of study in Asia and the Pacific, a major barrier identified in terms of HIV treatment

<sup>155</sup> KII\_AP\_2.

<sup>156</sup> SSI\_SP\_MENA\_5.

<sup>157</sup> SSI\_SP\_WCA\_9.

<sup>158</sup> SSI\_SP\_MENA\_5.

in health care is that although migrants on a 30-day tourist visa are able to test for HIV, they are unable to receive treatment free of charge. They can only receive treatment in countries where they have legal residence. Moreover, if they can access treatment, medical legislation can ban the right to patients to monitor or take their own medication for HIV. Therefore, migrants have to pay for their travel in order to physically be in the same place as their doctor, as well as face risks of border discrimination even between regions of a same country, as highlighted by an academic from this region.

In most contexts, HIV remains an extremely stigmatized virus which, for people with diverse SOGIESC, constitutes an additional marker associated with their sexual orientation and based on hetero-stigmatization, as a hospital psychologist working with patients in an infectious diseases department explained.

*“With HIV, what is complex is that there are many people who tell me that HIV is in fact a sign of their homosexuality, a lock on the stigma attached to homosexuality and that it is therefore as if they had a double lock. So, the first one they tried to break by living their sexuality as they wanted to, sometimes by leaving their country of origin, for that reason and so on, or by using this exile to be able to finally live something of this sexuality, so the lock comes off. There's a kind of feeling, here's a certain, here's something that could be skipped, that could be said and so on. And then HIV closes the door and also the secret” – Hospital medical staff in the EEA.<sup>159</sup>*

**The issue of access to HIV treatment is linked to the broader issue of sexual health and reducing the risks of transmission of STIs.** Some respondents mentioned that condoms and lube are becoming extremely expensive, leading to an increase in the risk of STIs. In South America, some local NGOs offer free sexual health services, such as health counselling and testing, specifically tailored for individuals with diverse SOGIESC. However, these services are limited by available funding. There is a need to facilitate access to this type of service, while also guaranteeing the confidentiality of beneficiaries. For example, a student who migrated from the Asia and the Pacific region to the EEA explained that back when he was in his home country, he could not visit health clinics or even buy condoms because he was scared to be seen by a member of his church.

### Medical Needs of Trans Individuals

**Transgender people face layered challenges in accessing medical care when compared to other migrants with diverse SOGIESC.** Most of the service providers and NGO representatives interviewed explained that there is a general lack of knowledge on the medical needs of transgender individuals and particularly on hormone therapy. Indeed, in the countries of focus in MENA and EEA, the care of transgender people is not covered in the university and academic training of most health practitioners and knowledge and good practices identified as part of this study rely on the willingness of individual professionals.<sup>160</sup>

In the country of study in the MENA region, **personnel in public hospitals are generally not trained on SOGIESC, remaining unaware of how to provide care to trans individuals.** In the focus country in South America, shelters and health centres do not have the capacity to care for trans people, so it is necessary to improve protocols. In a limited number of countries in the EEA, respondents reported the existence of a few gender clinics offering a complete medical transition path for trans people. They implemented a structured and supervised process, composed of interviews with a psychiatrist and an endocrinologist before going through the surgery stage, which does not interest all trans people. An additional challenge for trans individuals is that hormones (e.g. testosterone or oestrogen and progesterone shots, gel, or blockers), are not available in the country and in many cases, people will self-medicate. In addition, trans migrants who left their country of origin during their transition, experience more difficulties in accessing continuous care in the country of destination. For example, Ukrainian migrants who fled in the middle of their transition to the EEA could not receive a continuation of their treatment where they sought refuge.<sup>161</sup>

<sup>159</sup> SSI\_SP\_EEA2\_14.

<sup>160</sup> SSI\_SP\_EEA2\_4; SSI\_SP\_EEA2\_7; SSI\_SP\_EEA2\_14; SSI\_SP\_EEA2\_15; SSI\_SP\_EEA2\_17; SSI\_SP\_EEA2\_19; SSI\_SP\_MENA\_4.

<sup>161</sup> KII\_EEA1\_2.

### Need for Mental Health Care as a Migrant

**The majority of migrants with diverse SOGIESC expressed the need to access psychological support** and how engaging in this type of counselling has proven to be instrumental during certain stages of their lives and when overcoming or learning to live with their traumas and hardships. The effect of discrimination by health-care providers have reportedly led to mental health repercussions and self-violence.<sup>162</sup>

In some countries in the EEA, respondents did not experience many obstacles when seeking psychological support and had enough means to do so. Indeed, several interviewees mentioned that accessing private mental health care is very expensive and restricted to certain classes. In the country of study in the MENA region, respondents reported the rate being around 30 USD per session, which is especially expensive given the average salary in the country, around 60 USD at the time of the interview.<sup>163</sup> As a result, mental health services are offered by some organizations and are, for example, included in the services provided by LGBTIQ+ shelters. However, this remains a temporary support and is not sufficient for people who need long-term assistance. In the countries in the EEA, many CSOs offer psychological support. However, several respondents mentioned not having in-house psychologists anymore after loss of funding.

In the focus country in West and Central Africa, mental health services are provided for migrants in transit centres and accommodation, with the intervention of local associations, international organizations and international NGOs, but knowledge to care for the mental health needs of migrants is very limited among practitioners. At the national level, there is a lack of specialized psychological studies and more visibility needs to be brought on this issue. In this vein, IOM and other United Nations agencies can support governments of the region by organizing national conferences on the importance of mental health and psychosocial support (MHPSS).

In some contexts, mental health provision is not regulated and SOGIESC change efforts (also known as conversion therapy) are used during therapy sessions. A 2020 report by the OHCHR explained that ““Conversion therapy” is used as an umbrella term to describe interventions of a wide-ranging nature, all of which are premised on the belief that a person's sexual orientation and gender identity, including gender expression, can and should be changed or suppressed when they do not fall under what other actors in a given setting and time perceive as the desirable norm, in particular when the person is lesbian, gay, bisexual, trans or gender diverse”. The report further points that “such practices are therefore consistently aimed at effecting a change from non-heterosexual to heterosexual and from trans or gender diverse to cisgender”. “Conversion therapy” is considered as a form of torture by OHCHR and United Nations independent expert on sexual orientation and gender identity.<sup>164</sup> A sexual health centre in the focus country in the MENA region testified that this is still used as part of therapy with migrants with diverse SOGIESC.<sup>165</sup>

### Specific Mental Health Needs of Trans Individuals

Mental health support is mentioned by migrants as an essential and crucial support to go through their journey, as a consequence of broader social, cultural and economic marginalization. In one of the countries of focus in the EEA, access to psychologists and psychiatrists is also a necessary step to go through when pursuing a transition.<sup>166</sup> When it is not facilitated, access to psychologists and psychiatrists can be perceived as gatekeeping.

<sup>162</sup> IOM. International Standards on the Protection of People with diverse Sexual Orientation, Gender Identity, Gender Expression and Sexual Characteristics (SOGIESC) in the context of Migration. International Migration Law, Information Note (2021).

<sup>163</sup> SSI\_SP\_MENA\_4

<sup>164</sup> OHCHR, “Conversion therapy” can amount to torture and should be banned says United Nations expert (2020).

<sup>165</sup> SSI\_SP\_MENA\_4.

<sup>166</sup> SSI\_SP\_EEA2\_7; SSI\_MG\_EEA2\_10.

Regardless of the regional context, **the inclusive and non-discriminatory treatment of transgender people in mental health care is very recent.** A research report authored by transgender men and women and non-binary individuals stresses that “the mental health field contains controversial, if not blatantly transphobic theories when it comes to tackling the needs of trans and gender-variant individuals” and it is only in 2013 that “the diagnosis of 'Gender Identity Disorder' (GID) was removed for implying that transness and gender variance were personality disorders” from the 5th edition of the Diagnostic Statistical Manual (DSM), issued by the American Psychological Association. From this new version, “gender variance is no longer viewed as an illness or a disorder in and of itself”.<sup>167</sup> In the journal of the American Psychiatric Association, Gender Dysphoria is explained as that: “The presence of gender variance is not the pathology, but dysphoria is from the distress caused by the body and mind not aligning and/or societal marginalization of gender-variant people”.<sup>168</sup>

*“I had an identity crisis and I tried to make sense of it by saying that when I have emotions that are uncomfortable for other people, it's because I'm not supposed to have those emotions. I wasn't a feminine person growing up, so it wasn't really obvious to me and I didn't have the right language for this. But then I came here and every time that a doctor said, "this medication you're on is too much, we need to cut back on it". And every time that happens, I would be freed. I could see more of myself and this would involve another crisis and another resolution and this happened a few times and eventually I was like "wow, I'm super trans. I have to deal with this or I'm never going to be happy".”*  
– Legal resident in the EEA.<sup>169</sup>

## MAIN CHALLENGES 6

### Access to Health Care

- Access to health care tends to be limited to emergency and basic needs, irrespective of the precarious status of migrants with diverse SOGIESC. Administrative barriers to obtaining State medical aid, delays in obtaining medical appointments and the costs of care cause significant disruptions in providing patients with the necessary care.
- Mental health and specific needs of transgender individuals are insufficiently addressed in all contexts, as they tend to lack a thorough understanding of SOGIESC issues and might themselves be homo/bi/transphobic.
- Transgender people face additional difficulties compared to the broader group of migrants with diverse SOGIESC. Overall, medical staff lack of knowledge on the medical needs of transgender individuals, such as hormone therapy. In addition, trans migrants who migrated in the midst of their transition experience difficulty accessing continuous care and may resort to auto medication.

<sup>167</sup> Qorras. *Accessing Legal Rights, Mental Health and Community Support. A Collaborative Look into Issues Facing the Trans Community in Lebanon.* (2021).

<sup>168</sup> Gender Dysphoria Diagnosis. TGNC Guide. (n.d).

<sup>169</sup> SSI\_MG\_EEA2\_10.



Salma, 34, beneficiary of the reintegration program: "Only work pays. Those who have failed their reintegration project are either unaware of how lucky they are, or lazy. You have to get involved with 2000% because it is your project and the only way to rebuild." © IOM 2018/Sibylle DESJARDINS



## IV. BUILDING AND STRENGTHENING PROTECTION AND ASSISTANCE FOR MIGRANTS WITH DIVERSE SOGIESC

This chapter provides an overview of the key actors, attitudes towards SOGIESC diversity and responses to the needs identified in Chapter 3, pointing out good practices identified during the data collection that can be scaled and replicated across contexts.

### 4.1 ACTORS INVOLVED AND NEED FOR COLLABORATION

**Multiple initiatives exist to strengthen the protection of migrants with diverse SOGIESC**, involving government authorities, United Nations agencies, international organizations, CSOs, local and international NGOs that work on migration-related issues, to human rights organizations and organizations working with people with diverse SOGIESC. During data collection, CSOs and CBOs have emerged as central actors involved in the provision of services related to the vulnerabilities and risks faced by migrants with diverse SOGIESC in their respective fields of activity, often in partnership with United Nations agencies such as IOM and UNHCR. Across contexts, respondents voiced **the need to integrate the work of these stakeholders through the establishment/strengthening of safe referral mechanisms and the development of shared SOPs.**

In this section, the degree and modalities of engagement of the following actors in the focus region of the studies are analysed in-depth, pointing out the roles and responsibilities of each:

1. **Government authorities**
2. **CSOs, NGOs, international organizations and United Nations agencies**
3. **Human rights actors**
4. **Academics and local knowledge production groups**

#### Government Authorities

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**Overall, government authorities were insufficiently mobilized on LGBTIQ+ migrant protection, with some governments continuing to actively persecute LGBTIQ+ populations.**

In the focus countries in the MENA region and West and Central Africa, where diverse SOGIESC identity, association or expression is often criminalized, proscribed or unprotected by law, non-governmental initiatives related to the protection of migrants with diverse SOGIESC were identified. CSOs and NGOs, often limited in resources and capacity, have been called to fill the gap in the provision of diverse SOGIESC public services, which mirrors the government's position towards diverse SOGIESC rights.

**Respondents in the focus country in the MENA region described the challenges posed by working in a context of State-sponsored discrimination and stigma towards migrants with diverse SOGIESC.** To navigate this repressive environment, they developed strategies such as building diverse SOGIESC networks, engaging in grassroots knowledge production and information sharing processes and finding innovative ways to deliver services to migrants with diverse SOGIESC, in more or less upfront ways.

In the MENA region, national governments have been systematically obstructing the work of diverse SOGIESC CSOs and NGOs, cracking down on LGBTIQ+ people and halting gatherings discussing LGBTIQ+ rights. In this context, diverse SOGIESC CSOs have continued operating under severe constraints and created strong solidarity networks working in support of LGBTIQ+ people to overcome

the limitations imposed by States. In times of severe crisis, respondents explained how the vacuum left by governments turned into a space of action for diverse SOGIESC organizations and granted them leeway to gather and organize their efforts.

**While a collaboration with the government on SOGIESC issues seems highly unlikely in such settings, local CSOs in the MENA region and in West and Central Africa highlighted the need for United Nations agencies such as IOM and UNHCR to use their connections with national governments to leverage the inclusion of people with diverse SOGIESC at the national level.**

In this regard, intergovernmental organizations working in West and Central Africa stressed their need to maintain a relationship with the national governments and respect their authority to be granted permission to be present and operate in the country. Advocacy efforts, therefore, will need to be balanced and well measured, as the permission to remain in the country is bound to governments' approvals. Steps in this direction are being taken by United Nations agencies. For example, one of IOM's country offices in West and Central Africa is organizing training sessions for United Nations staff and partners on diverse SOGIESC to raise awareness on the topic and it actively advocates for the integration of diversity dimension in their interventions and data collection efforts.

In other contexts, **governments are actively prioritizing LGBTIQ+ refugees for resettlement** (e.g. countries in North America, South America or the EEA). Others have included the promotion of LGBTIQ+ rights as part of their foreign aid programming, while opening up funding opportunities for CSOs working with LGBTIQ+ migrants (e.g. in North America).

As part of this study, a marginal engagement of national governments on the topic has been observed in both focus countries in the EEA. In most cases, this was not substantial and was limited to funding. In the eastern part of the EEA, some local government institutions carry out initiatives to support migrants with diverse SOGIESC without explicitly stating their target group due to fear of developing tailored responses or outwardly supporting migrants with diverse SOGIESC in an adverse political climate. In this scenario, the possibility of engaging in discussions and collaborating with government authorities at the local level (such as municipalities) seemed more feasible than having a discussion at the national level on diverse SOGIESC. Local CSOs mentioned a good level of cooperation with local government officials, even though these collaborations are often started by organizations and not by the authorities. Encouraging more initiatives of this kind and strengthening the relationship between protection actors and local authorities can potentially pave the way for a discussion on the national level.

An example of collaboration between municipalities and CSOs in Western Europe is a help centre dedicated to LGBTIQ+ migrants that is expected to open during the summer 2022 in the centre of Paris. It will be managed by several associations with the aim to help “people in the greatest difficulty, particularly trans people and LGBT migrants”.<sup>170</sup> The opening of this place follows the observation that the exiled LGBTIQ+ population faces difficulties of inclusion in France, finding themselves both discriminated against in their national community and marginalised in the so-called “gay” socialization places.<sup>171</sup>

### GOOD PRACTICE 1

A SOGIESC CSO in the country of study in South America established a successful model of cooperation in one of the cities where it operates, that brings together international organizations, the [two local authorities] and civil society. These two local authorities generate and directly provide economic resources to support migrants with diverse SOGIESC.

*“[Organization] is currently operating in [city name] and [city name], in these two cities. In the city of [city name], our model is a spectacular model, because it merges: international cooperation, local government and in this case [CSO name] as a civil society. At this point, both the Mayor's Office of [erased] and the [local authority] of [erased], our two local governments, generate and support direct economic resources for the benefit of the migrant LGBTI population. So, we have the experience of working with additional governments and we are doing so at the moment.” SOGIESC diversity CSO in South America (KII\_SA\_9).*

<sup>170</sup> 20 minutes – AFP. « Paris, un centre d'aide dédié aux migrants LGBT+ attendu dans le Marais » (16 May 2022).

<sup>171</sup> Guiti News. À Paris, un nouveau lieu pour lutter contre la « double discrimination » des personnes LGBT+ exilées (17 May 2022).

In some South American countries, governments are gradually becoming more involved in the protection of migrants with diverse SOGIESC, even if their engagement is scattered and discontinuous. This is indicated by the fact that different national governments are characterised by different allocations of funding and that a deep understanding of the topics of gender and migration and their intersection, is generally lacking.

However, in a South American country, the IOM country office and its implementing partners, local CSOs specialized in diverse SOGIESC, are currently working with the government on an action plan with the objective of coordinating different service providers that work with migrants and individuals with diverse SOGIESC; IOM regularly offers technical assistance to the government to create different policies related to people with diverse SOGIESC. This work falls within the “thematic guidance” pillar of IOM protection division, which aims to provide “technical support to Governments and other stakeholders in developing their own policies and guidelines, in adherence with appropriate international legal frameworks and standards.”<sup>172</sup>

Further, CSOs providing tailored assistance to migrants or people with diverse SOGIESC in the South American country of study regularly participate in consultative councils on migration created by the ombudsman's office in the country, to ensure that the perspective of individuals with diverse SOGIESC are considered in the decision-making process.

In the focus country in Western Europe, LGBTIQ+ action plans are in place and the European Union legislation and policies on the topic are applied. The government of the focus country recently launched an action plan to make the country more LGBTIQ+-inclusive, outlining actions to be taken by the ministers and State secretaries to increase the safety and inclusiveness of people with diverse SOGIESC in the country. In this setting, the different levels of authority and the different official languages constitute a challenge to the protection of migrants and people with diverse SOGIESC. Moreover, CSOs and public institutions in this country reported engaging with the government, for example by mounting campaigns for equal opportunities and against discrimination, formulating recommendations for government authorities and generating tools, publications and statistics.

## GOOD PRACTICE 2

An advocacy anti-racism network in the EEA adopts an intersectional approach to connect the voices of local communities to policymakers and facilitates cooperation among civil society and anti-racism actors in Europe, integrating gender and SOGIESC diversity via the racial equality angle. The aim of the network is to understand and eliminate the structural and institutional barriers faced by migrants in Europe, facilitating their integration and removing existing inequalities.

*“In these three pillars, we work in an intersectional way. Every time there is a policy position, a consultation, we talk to the mentors who represent these communities. We are limited to the sharing of knowledge and the sharing of recommendations of our members. So, if there is an organization who is structured in a way that can collect this evidence and can also be there to respond to certain demands. You're going to see these information flow will come and be highlighted” – Anti-Racism and anti-discrimination NGO in the European Economic Area (KII\_EEA2\_2).*

In the focus country in Asia and the Pacific, respondents pointed to the lack of data collection on the needs of migrants with diverse SOGIESC in the focus country, adding that in order to effectively advocate for national tailored protection services for this group, **data on the needs and vulnerabilities of SOGIESC migrants needs to be collected.**<sup>173</sup> Without this data, NGOs expressed that it is extremely difficult to convince the government to develop protection programmes. This was an area of potential synergy between international organizations and NGOs, pointed out by several NGOs at the national workshop, that should be further developed. For example, several NGOs called for projects funded by international organizations focusing on collecting relevant data on the needs and vulnerabilities of migrants with diverse SOGIESC, to advocate for the development of national programmes.

<sup>172</sup> IOM. International Organization for Migration. Protection Division (n.d.).

<sup>173</sup> Within the scope of IOM's work, data is not a synonymous of “number of persons”: collecting and using data on persons with diverse SOGIESC means collecting and using all information that help to safely respond. Most of this data is qualitative not quantitative.

In conclusion, as the government is the ultimate guarantor of rights, respondents across contexts agreed on the need to work more closely with government authorities to ensure the sustainability of the protection services offered and to advocate for the government to advance these topics on their agendas. Working with local governments and using the connection of United Nations agencies with the national government for this purpose emerged as a key recommendation in focused countries in the West and Central Africa and the MENA region. Further, a whole-of-government approach should be adopted to coordinate efforts among governmental bodies and advance actions for the protection of migrants with diverse SOGIESC.

## CSOs, NGOs and international organizations

**CSOs, NGOs and international organizations are the primary service providers for migrants with diverse SOGIESC across the countries and regions of focus of the study.** Given the lack of an institutional framework to regulate their roles and responsibilities, regular communication is critical to ensure the effective delivery of these services. Establishing systematic coordination between organizations, perhaps by developing dedicated protocols and operating procedures, is key to avoiding duplication of efforts and users benefitting from the same services, ultimately optimising the use of resources among actors.

Across regions, **referral mechanisms were identified** among CSOs, national and international NGOs and international organizations to link migrants with diverse SOGIESC to the appropriate services. These mechanisms ranged from well-established coalitions to more informal systems and case-by-case referrals. However, referral pathways are often restricted to a specific sector. Respondents recommended extending the scope of such networks to include organizations working on different topics, either specific to diverse SOGIESC or not.

**International organizations in different regions, including IOM and UNHCR, carry out their programmes through the support of implementing and operational partners.** Among these partners, there are CSOs specialized in providing services to migrants and refugees with diverse SOGIESC and United Nations agencies ensure that LGBTIQ+ migrants and refugees can receive tailored assistance from these actors.

The benefits of working closely with LGBTIQ+ organizations have been highlighted by several respondents and confirmed by the experience of IOM country offices across regions.

*“We need to be more connected with LGBTIQ+ organizations, because they know what the needs are. There is a gap between LGBTIQ+ migrants and the IOM. Because we assist people massively. So sometimes we don't even ask for certain information and can't know if this person is in need of other things, when we are just giving them a food basket. These organizations work with communities in a much closer way. (...) IOM might benefit from having a connection with them and having them refer cases to.” - IOM Country office in South America.<sup>174</sup>*

In the focus country in South America, the IOM mission signed an agreement with a CSO to strengthen the support offered to migrants with diverse SOGIESC in the country. Through this implementing partner, IOM carried out a situational diagnosis on migrants, created a protocol for attention and referral of cases of migrants with diverse SOGIESC, carried out actions to prevent the violation of rights in specific areas of the country through an educational communication campaign and training workshops for State and humanitarian personnel and provided direct assistance through legal and psychological orientation services to LGBTIQ+ population and referral of cases.

<sup>174</sup> P\_KII\_1.

The IOM country office in the focus country in Asia and the Pacific first became aware of the need to include migrants with diverse SOGIESC in its programming during the COVID-19 pandemic. Through a collaboration established with a local LGBTIQ+ CSO, IOM came to understand the specific needs to this group, especially after the immense impact that the pandemic had on migrant sex workers with diverse SOGIESC, given the loss of income derived by the mobility restrictions imposed on the population. Consequently, the IOM mission started providing tailored services to them, both in terms of immediate assistance and skills training to increase their employability and mitigate the challenges brought by the pandemic.

However, the coordination between IOM and LGBTIQ+ organizations is not systematic and often depends on the country's context and the specific conditions on the ground. IOM respondents highlighted the need to establish structural links with diverse SOGIESC CSOs in each country, developing clear agreements and defining the objectives of the cooperation. This kind of cooperation could strengthen IOM's service provision and inform its advocacy and research efforts, providing essential information on the needs and experiences of migrants with diverse SOGIESC.<sup>175</sup>

In one of the focus countries in the EEA, IOM and UNHCR noted unwillingness from NGOs to collaborate with international organizations, both because NGOs were afraid of being persecuted by the State and because they found grant opportunities provided by international organizations and United Nations agencies inflexible and inaccessible.

In this context, the collaboration between international organizations, including United Nations agencies and CSOs varied between referral mechanisms and fractured/hostile collaboration, given the perception that more established NGOs were being less explicitly supportive of migrants with diverse SOGIESC but receiving most of the available funding, whereas activist collectives were perceived as doing the riskier work and struggling to obtain funds.

### GOOD PRACTICE 3

In the country of focus in South America, the IOM mission signed an agreement with a diverse SOGIESC CSO to strengthen the support offered to migrants in the country. Through this implementing partner, IOM carried out a situational diagnosis on this group of population, created a protocol for attention and referral of cases of migrants with diverse SOGIESC, carried out actions to prevent the violation of rights in specific areas of the country through an educational communication campaign and training workshops for State and humanitarian personnel and provided direct assistance through legal and psychological orientation services to the[...]LGBTIQ+ population and referral of cases.

Similarly, some tensions were witnessed among CSOs in the country of study in the MENA region, as some diverse SOGIESC organizations were considered gatekeepers of the funding available, while more recent and less-traditional organizations were excluded from such funding.

**The continuous changes in the list of services offered by organizations were mainly driven by the availability of funds and presented a challenge to the referral system.** Respondents stressed that, for them to be effective, referral systems need to be constantly updated and enough resources – both human and financial – need to be invested. In some cases, the more formal referral systems were considered too slow, therefore causing delays in the referral process and respondents recommended simplifying them to make them more accessible to the different actors involved.

**Despite the existence of solid referral systems and the willingness of actors to collaborate, funding represents a major barrier to the development of joint projects.** CSOs working in this thematic area often lack structural funding and struggle to continue the work initiated under certain project, without follow-up funding or without severely downsizing the activities. To avoid such problems and maximize the impact of a project, it is therefore recommended that a long-term sustainability

<sup>175</sup> P\_KII\_2.

strategy is jointly developed and agreed on by all stakeholders involved in the design phase of a project. Identifying the range of organizations locally – and mapping where referrals could be done to assist migrants with diverse SOGIESC – is a need for IOM and partners on the ground.

The Equality project, implemented by IOM in collaboration with several cities and NGOs, integrated a sustainability plan since the project conception. Involved partners, but also a number of other NGOs and authorities in the European Union continued working with the tools that have been developed under the project, thus guaranteeing a longer-term sustainability and impact.

*“It is really critical for us and IOM to have appropriate referral pathways and for the staff to actually understand what an appropriate referral pathway is, what that means and how to determine whether it is appropriate. And we have part of our training in the protection modules on referral pathways. The best way for us to be successful and assist [migrants with diverse SOGIESC] is to know who to refer them to, because IOM is very rarely going to be the entity that actually provides them with the assistance. So, you really need to know what you’re looking for and how to gauge whether an NGO or an organization is appropriate and respectful. And often it’s not a whole entity itself, but it’s like one doctor in a clinic, or one aid worker in a local office, or one sympathetic government employee, one legal office or lawyer who’s willing to give pro bono assistance and will treat people with respect. That is one of the most critical things that we need to work on in every country where IOM operates. That involves someone in protection to being on top of that, because it’s also like an everchanging landscape with referral pathways.” – IOM Washington.<sup>176</sup>*

Further, respondents highlighted the need to strengthen training available on referrals, to ensure that international organizations’ staff were fully aware of how referral pathways work and how to identify and assess CSOs or other organizations that could be included in the referral mechanism. It was pointed out that many migrants with diverse SOGIESC were searching for local organizations, such as LGBTIQ+ organizations for persons with diverse SOGIESC, reaching out to them for help instead of looking for organizations that assisted migrants, which could potentially offer a safer path for them to receive support.

Lastly, monitoring and evaluation frameworks should be in place to regularly monitor and assess the effectiveness of the referral mechanisms in place at IOM.

#### GOOD PRACTICE 4

A good practice for establishing and maintaining “safe” referral systems is provided by a CSO in the MENA region, that conducts assessments before adding new organizations and service providers to the referral mechanism, ensuring that they provide inclusive services and that beneficiaries can safely be referred to them. Before becoming part of the referral system, the CSO also provides training on SOGIESC to ensure that the staff within the new organizations joining the network, especially those not working specifically with SOGIESC, are sensitized towards the topic.

*“Definitely, there are some issues when it comes to the lack of services, but in general, knowing the individuals that we are going to be referring to, doing an assessment is something that we always do. We have an interview with individuals, we carry out a specific assessment and we provide the training. So how we think about it is that you really need to invest in the individuals that you are going to be referring [beneficiaries] to. We replicate a lot of the same training that (our) staff have received and we give those to referral points as well.” – LGBTIQ+ NGO in the MENA context (SSI\_SP\_MENA\_5).*

## Human Rights Actors

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**The study found a lack of collaboration between protection and human rights actors and institutions in most regions.** Respondents highlighted that actors from different sectors tend to work in silos, partly because of the limited scope of referral mechanisms and lack of knowledge about each other’s work, which is reflected in the absence of mechanisms to monitor the violations experienced by

<sup>176</sup> P\_KII\_5.

migrants with diverse SOGIESC, or inadequate application of existing ones. Protection actors and NGOs working with migrants with diverse SOGIESC are often direct witnesses of SOGIESC rights violations. Having a continued information flow between them and human rights monitoring bodies is an effective, underperformed protection mechanism.

Globally, several fundamental Human Rights conventions and treaty bodies have associated reporting mechanisms and reports which have been regularly released based on State parties' compliance with their human rights obligations under these conventions, e.g. the Universal Periodic Review (UPR),<sup>177</sup> under the auspices of the United Nations Human Rights Council, or the monitoring mechanisms of the ICCPR, the International Committee of the Red Cross (ICRC) or the Committee on the Elimination of Discrimination against Women (CEDAW). **Communication between protection actors and the human rights parties who periodically interface with these instruments must be strengthened.**

In the focus country in the MENA region, these mechanisms are hindered by the lack of collaboration of State actors, such as the national police and security forces with international organizations. The unit for referrals on cases of trafficking in persons, for example, does not work properly and respondents from OHCHR described the barriers encountered when interacting with security forces in this context. Other existing mechanisms are inactive, such as the National Human Rights Commission mechanism to prevent torture, as their activation has been stalled by the national government of the focus country.

In Western EEA, independent national monitoring bodies play a key role in increasing the visibility of the discriminations and challenges faced by migrants with diverse SOGIESC. In these cases, joint advocacy efforts are needed to pressure national governments on their operationalization. These mechanisms are the foundation of an accountability system and can serve as the entry point to initiate legal proceedings and follow-up on the cases of migrants with diverse SOGIESC and their legal outcomes.

**Across regions, there is a clear need to monitor the situation at the borders.** In Asia and the Pacific, migrants with diverse SOGIESC and sex workers in particular, are harassed and subjected to extortion by border officials, who can also arbitrarily detain migrants upon the suspicion of working illegally in the country. There are no monitoring mechanisms in place to keep border officials accountable and migrants with diverse SOGIESC are often forced to pay border officials and police to avoid being arrested. Overall, the need to link protection services and human rights monitoring mechanisms to ensure that accountability systems are in place emerged strongly from the data collection.

## Academics and Local Knowledge Production Groups

The work of academics and local knowledge production groups is crucial to ensure that up to date accurate information is available for stakeholders to inform their programmatic interventions. One of the main barriers to effective service delivery is the lack of understanding of the specific vulnerabilities and needs of different identities within the SOGIESC spectrum and different migratory statuses, as well as the variety of factors that intersect with these categories. The work of thematic experts and grassroots actors renders the different experiences of migrants with diverse SOGIESC visible and brings them to the attention of policymakers, CSOs and international organizations working on the topic.

An example of collaboration between civil society actors and academics is the collaborative advocacy forum that led to the Canberra Statement;<sup>178</sup> a policy document advocating for the need to ensure access to safety and justice for migrants with diverse SOGIESC.

Similarly, a recent collaboration of the UCLA Williams Institute brought together academics, States and civil society actors to produce recommendations on how to improve the asylum procedure for migrants with diverse SOGIESC.<sup>179</sup> The Institute produces multidisciplinary research on a wide range of topics related to sexual orientation and gender identity law and public policy. Sexual orientation and

<sup>177</sup> The Universal Periodic Review (UPR) is a unique process which involves a review of the human rights records of all United Nations Member States. The UPR is a State-driven process, under the auspices of the Human Rights Council, which provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations.

<sup>178</sup> Canberra Statement on the access to safety and justice for LGBTIQ+ asylum-seekers, refugees and other forcibly displaced persons (2019).

<sup>179</sup> UCLA Williams Institute. *Expert Convening on LGBTIQ+ Refugees and Asylum-Seekers: Summary and Recommendations* (2022).

gender identity claims of asylum (SOGICA) was another example of a research project exploring the social and legal experiences of asylum-seekers across Europe claiming international protection on the basis of their sexual orientation and gender identity. Funded by the European Research Council, the project aimed to determine how European asylum systems can treat asylum claims on diverse SOGIESC more fairly, with a focus on Germany, Italy and the United Kingdom as case studies. Synergies between protection actors and academics, experts and local knowledge production groups can lead to impactful advocacy campaigns and the research produced by these actors is critical to informing the design of protection programmes that respond to the needs of migrants with diverse SOGIESC.

Finally, systematic consultation processes and roundtables should take place with grassroots knowledge production actors to ensure that migrants with diverse SOGIESC are given the opportunity to represent themselves and to avoid reproducing stereotyped and inaccurate representations of the community.

### GOOD PRACTICE 5

The LBGTIQ+ NGO Rainbow Railroad collaborated with Human Rights Watch to document the legal and political persecution by the Taliban against people with diverse SOGIESC in Afghanistan. The result of this collaboration is the “Even If You Go to the Skies, We’ll Find You”: LBGTIQ+ People in Afghanistan After the Taliban Takeover” published by HRW, which led to advocacy meetings with various United Nations agencies and other institutional bodies.

1HRW. Even if you go to the skies we’ll find you: LGBT people in Afghanistan after the Taliban takeover.

26 January 2022.

### GOOD PRACTICE 6

In the MENA region, a grassroots trans-led working group works to provide practical information to trans-individuals in the country where it’s based. The group produces research on topics such as access to health care, social and medical information and other key themes relevant to the trans community.

*“In our research and our analysis of the context, we are very mindful of the different experiences that exist in the country. We try our best to have a holistic approach in including all the experiences and the experiences of trans individuals. We know that is not an easy topic to tackle. We know that in terms of what the representation of a certain community can entail, but in a lot of settings the minorities and the extremely vulnerable marginalised communities get somehow silenced or not taken into account. So, we challenge ourselves in our research, our work and in our production of knowledge, to see how these different experiences can meet in certain points and also differ in certain points. These differences highlight not only the flaws in our society, but also the flaws in our community, the flaws in our work in terms of organizations that work on sexual orientation and gender identity. And it helps us improve our data or our information, or the research that we aim to produce in the future.”*  
Trans-led working group in the MENA region (KII\_MENA\_6)

## 4.2 Knowledge and Attitudes

The study identified the need to **train and sensitize all the actors involved in SOGIESC-related issues**. Increasingly, guidelines on the protection of migrants with diverse SOGIESC, including the IOM guidelines, underscore the importance of strengthening capacity-building activities for protection actors.

A 2015 scoping review of diverse SOGIESC inclusive protection efforts in 106 UNHCR operations concluded with a recommendation to develop training for protection staff in collaboration with local SOGIESC organizations, along with additional material resources, such as posters and pamphlets tailored for refugees with diverse SOGIESC.<sup>180</sup> IOM's internal Safe Space Guidance calls for the organization to "provide training to all personnel" on diverse SOGIESC as well as to "share information about projects or training with the organization as a whole."<sup>181</sup>

<sup>180</sup> Ibid.:59.

<sup>181</sup> IOM. IOM Safe Space Guidance: Creating Safe Spaces (n.d.:2).



In a similar vein, IOM's Guidance on Inclusive Facilities for Migrants with diverse SOGIESC advises that all IOM personnel “be appropriately trained to work with individuals with diverse SOGIESC, especially regarding how to communicate and respond to issues appropriately and respectfully”.<sup>182</sup> The IOM Guidance on Gender-Inclusive Communication was designed to support IOM staff in using diverse SOGIESC-inclusive language when interacting with LGBTIQ+ migrants and in all internal and external communication.<sup>183</sup>

This section analyses the generalized attitudes of the following actors towards diverse SOGIESC:

- **Protection actors, including IOM**
- **Law enforcement agencies**
- **Service providers**

These actors were selected as the respondents systematically identified them as playing a critical role in the protection of migrants with diverse SOGIESC and several migrants reported having had negative experiences in their interactions with them.

## Protection Actors

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### International Protection Actors

As highlighted in the literature (see section 2.3), there is a general lack of awareness among asylum authorities that SOGIESC-related persecution is covered under international protection in the 1951 Refugee Convention.<sup>184</sup> The internalization of Western heteronormative concepts around gender identity, sexual orientation and sexuality and stereotyped expectations surrounding LGBTIQ+ lifestyles and behaviours often determines the cases' outcome.<sup>185</sup> Migrants with diverse SOGIESC seeking asylum are expected to “come out” and present themselves as members of a minority group, clearly identifying as members of a specific LGBTIQ+ category (e.g. gay, lesbian, transgender, etc.), which stems from an understanding of sexuality as something fixed.<sup>186</sup> This overlooks the existence of more fluid SOGIESC experiences and pressures applicants to identify with a category they don't necessarily recognize. LGBTIQ+ asylum applicants are then pressured to perform a “credible” and “legible”<sup>187</sup> role and meet specific “queerness” criteria.

*“Organizations and embassies expect, when it comes to couples and people in a relationship, certain standards of gay and trans, that may not be the person believes in. They have to perform something that they do not believe in. (...) Having that kind of civilised expectation of what queer and trans is and inflicting that on people affects the outcome in terms of their access to safety and security.”* – Sexuality and mental health service provider CSO for LGBTIQ+ persons in the MENA context.<sup>188</sup>

<sup>182</sup> IOM. IOM Guidance on Inclusive Facilities for Migrants with Diverse SOGIESC (2020).

<sup>183</sup> IOM. IOM Guidance on gender-inclusive communication (2021).

<sup>184</sup> Berg, L. and Millbank, J. Constructing the Personal Narratives of Lesbian, Gay and Bisexual Asylum Claimants. *Journal of Refugee Studies*. 22(2):195–223, (2009); O'Leary, B. We Cannot Claim Any Particular Knowledge of the Ways of Homosexuals, Still Less of Iranian Homosexuals ...: The Particular Problems Facing Those Who Seek Asylum on the Basis of Their Sexual Identity. *Feminist Legal Studies* 16(1):87–95, (2008); Andrade, V.L., Danisi, C., Dustin, M., Ferreira N. and Held, N. *Queering Asylum in Europe: A Survey Report*. Preprint. SocArXiv. (2020).

<sup>185</sup> Rehaag, S. Sexual Orientation in Canada's Revised Refugee Determination System: An Empirical Snapshot Special Issue: Commemorating the Work of Professor Nicole LaViolette. *Canadian Journal of Women and the Law*, 29(2):259–89, (2017).

<sup>186</sup> Nasser-Eddin, N., Abu-Assab, N. and Greatrick, A. Reconceptualising and contextualising sexual rights in the MENA region: beyond LGBTIQ categories. *Gender & Development*. 26:173–189. DOI: 10.1080/13552074.2018.1429101. (2018).

<sup>187</sup> Kahn, S. and Alessi, E. Coming Out Under the Gun: Exploring the Psychological Dimensions of Seeking Refugee Status for LGBT Claimants in Canada. *Journal of Refugee Studies*, 31(1):22–41 (2018); Millbank, J. From Discretion to Disbelief: Recent Trends in Refugee Determinations on the Basis of Sexual Orientation in Australia and the United Kingdom. *The International Journal of Human Rights*, 13(2–3):391–414, (2009); Berg, L. and Millbank, J. Constructing the Personal Narratives of Lesbian, Gay and Bisexual Asylum Claimants. *Journal of Refugee Studies*, 22(2):195–223, (2009).

<sup>188</sup> KII\_MENA\_4.

**Further, there is an over-reliance of international protection actors on the laws related to diverse SOGIESC in the countries of origin to determine asylum cases' outcomes and a general insensitivity to sources of harm beyond the law.** The legal advancements in terms of LGBTIQ+ rights and the decriminalization of same sex intimacy do not necessarily translate into safer environments for migrants with diverse SOGIESC and the existence of national frameworks for their protection does not guarantee the end of discrimination against this target group.<sup>189</sup> Moreover, if asylum applications are not sustained by a specific event other than the daily challenges faced by members of the LGBTIQ+ community and the country of origin of the migrant does not explicitly persecute LGBTIQ+ persons, applications are often rejected.

On the other hand, **asylum authorities tend to treat LGBTIQ+ asylum cases differently than those of straight and cisgender asylum-seekers.** They apply different administrative practices and evaluate the reasons for fleeing the country distinctly, over-emphasising the diverse SOGIESC over other factors related to the country socioeconomic and political situation.<sup>190</sup> The negative perception of this excessive emphasis also emerged from our findings, for example with migrants in one of the countries of study in the EEA.<sup>191</sup> This understanding can diminish the protection of migrants with diverse SOGIESC and the asylum process in these cases is likely to focus on issues related to their gender and sexuality, overlooking other aspects (e.g. conflict, political persecution) and failing to see how they intersect to create vulnerability for this group of migrants.

Overall, there is a need to re-think the limiting international protection frameworks that build on normative understandings of SOGIESC and sensitize asylum officials on these topics.

## Other Protection Actors

Other protection actors are all those providing services to migrants, including migrants with diverse SOGIESC and directly or indirectly contributing to their protection. They include but are not limited to national governments, local authorities, international organizations, service providers, NGOs, CSOs and CBOs. The knowledge and attitudes of the primary protection actors identified through the study to influence migrants with diverse SOGIESC's experiences have been analysed separately under the section on service providers.

### GOOD PRACTICE 7

In the European Economic Area, a CSO collaborates with organizations in charge of shelters and reception centres for asylum-seekers and provides training to their staff on SOGIESC diversity.

*“Often, we will propose to the companies or to the different sectors to be informed and to be sensitized, offering them trainings. We will remind them of the legal framework in [country], which means that you must respect the self-determination of people, so management and colleagues must respect the identity and expression of the person's gender and the person's point of comfort and then there may also be support that can be given, with a report to [anti-discrimination national body], which is there to intervene when there are situations of discrimination. It is an independent body which intervenes and this independent body generally proposes mediation and also an interpellation to give additional weight to the [CSO] because sometimes it does not always have an effect. – LGBTIQ+ CSO in the European Economic Area (SSI\_SP\_EEA2\_4)*

<sup>189</sup> Nathwani, N. Laws, Legal Frameworks and the Displacement of LGBTI Persons, IPI Global Observatory, (2019).

<sup>190</sup> Allouche, A. (Dis-)Intersecting Intersectionality in the Time of Queer Syrian Refugee-Ness in Lebanon. Published in: *Kohl. A Journal for Body and Gender Research*, (2017).

<sup>191</sup> SSI\_MG\_EEA2\_2.

**Patterns of discrimination and harassment by police officers and law enforcement agents are well documented in the existing literature and have been confirmed by the migrants with diverse SOGIESC interviewed** in South America, in the MENA region, in West and Central Africa and in the EEA.

*“In eastern [city], some policemen beat me up. They gave me internal bleeding, an internal haemorrhage. I reported it to Human Rights, because just as they did that to me, they could do it to someone else. The policeman told me that I was a man, that I should put up with it, that I should put up with it. No, “you are a man, hold on”. And I had a stroke that day”. – Migrant in South America.<sup>192</sup>*

Respondents interviewed in the focus countries reported **being victims of verbal and physical harassment, false accusation and false detention, neglect of police misconduct complaints and inadequate response from police officers** to complaints of assault, property crime and discrimination.

In countries where people with diverse SOGIESC are not criminalized by law, but are not legally protected or accepted by the population, **police reportedly refused to take their claim, humiliated them for their identities, blamed them for their behaviour (putting the responsibility of the assault on them), or criminalized them for other activities**, such as drug use or sex work, especially for trans individuals.

Another issue commonly reported was **the general mistrust in authorities and the justice system**,<sup>193</sup> preventing migrants with diverse SOGIESC from reporting discriminations and abuses they face. Similarly, migrants with diverse SOGIESC may not report violence or discrimination due to fear of additional abuse by law enforcement agents, reprisal by community members, or adverse consequences for pending legal processes (e.g. refugee status determination, family reunification, work authorization processes and permit of stay issue on the ground of other reasons).<sup>194</sup> This is also true in cases of rape, which can have serious physical and mental health implications for the survivors. Service providers interviewed in the MENA region explained that victims of rape, mainly transgender women, who attempted to report the crime were often accused of being sex workers and detained on this ground. For cases of rape, a forensic report is often needed to press charges against the perpetrator. However, for migrants with diverse SOGIESC it is difficult to obtain these, as well as reports from health-care services. This constitutes a further challenge for those wanting to report a crime.

In this sense, human rights education and training to police officers and judicial staff aimed at the protection of migrants with diverse SOGIESC is key to understand the specific needs of migrants with diverse SOGIESC and to fight diverse SOGIESC-based discrimination. **Lawyers provide an entry point into laws in force in country and international legal frameworks that can enhance training and protection.** In some contexts, like in South America, lawyers have developed a legal toolkit for LGBTQ+ migrants with diverse SOGIESC, which can be a resource for protection actors.

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<sup>192</sup> SSL\_MG\_SA\_5.

<sup>193</sup> IOM. Access to Justice: A Migrant's Right. International Migration Law Information Note, (2019:16).

<sup>194</sup> IOM. Access to Justice: A Migrant's Right. International Migration Law Information Note, (2019); Nathwani, N. Protecting Persons with Diverse Sexual Orientations and Gender Identities: A Global Report on UNHCR's Efforts to Protect Lesbian, Gay, Bisexual, Transgender and Intersex Asylum-Seekers and Refugees Division of International Protection, December. Geneva: UNHCR, (2015).

## GOOD PRACTICE 8

A good practice identified in Asia and the Pacific region is that of two diverse SOGIESC CSOs that support and defend migrants when they are harassed by police forces. For example, one of the CSO acts as a “guarantor”, or a “witness”, to speak on behalf of migrants with diverse SOGIESC when they are being profiled or harassed by the police and advocate to prevent them from being arrested. In some cases, police will plant drugs on migrants in order to have a reason to arrest/bribe them and the organization has been successful in catching police doing so and preventing arrests. Besides doing that, the second CSO also accompanies migrants when they are arrested, visits them daily in detention centres to ensure they are not mistreated and negotiates with police officers to release them.

*“We have a human rights protection programme, to advocate their rights, to help them when they face with stigma or discrimination when they meet with policemen, or government health-care providers. We have a conversation, like a negotiation with a business owner to help their staff that are migrants with SOGIESC. (...) Over 70% of the transgender people that work in [city] are illegal workers. Because some are sex workers and they are migrants who do not have any documentation. It is only a passport, so when they try to work standing by the street, they have to hide from the police. They have to protect themselves from screening and scanning. They are afraid of non-uniformed police more than anything else. We will be able to help them when they have been arrested or have been charged wrongfully.” SOGIESC diversity CSO in Asia and the Pacific (SSI\_SP\_AP\_1).*

### Prisons and Immigration Detention Centres

In prisons and immigration detention centres, migrants with diverse SOGIESC are more vulnerable to harassment, discrimination, psychological abuse, physical and sexual violence by detention staff. In the EEA, MENA and Asia and the Pacific regions, this is due to the lack of effective oversight and complaint mechanisms and to the fact that existing legislations are inadequately implemented.

Organizations working in immigration detention centres in the focus country in the MENA region highlighted the inadequate case identification and vulnerability screening when entering these facilities. They described the extremely poor conditions of prisons and reported that torture and ill-treatment still took place in such settings, even though the Convention against Torture has been ratified in the country in question. When regulation exists at domestic levels, they were not implemented and detainees were denied their rights in practice, such as the presence of a lawyer during interrogation, access to health care, etc.

*“You have Laws related to torture, (...) you also have articles stating the rights of arrestees during the first interrogation and what they can do in case of any violation. They have the right to have a lawyer during interrogation. They can get a forensic doctor in case of any abuse, sexual abuse, violence, torture, so they can be examined by forensic. This is enshrined by the law. The implementation is different. (...) They have this. But how does it go on the ground? Well, it's not implemented. Still to this date, after a year of lobbying, lawyers cannot attend interrogation.” – Human Rights NGO in the MENA region.<sup>195</sup>*

In terms of responses, some CSOs provide services such as free legal aid, psychological support and distributing medications. A recommendation given by one of these CSOs is the need for better case-identification of detainees. This would allow CSOs and NGOs working in prisons and detention centres to provide more tailored services to detainees with diverse SOGIESC.

The same CSO cited the provision of services and/or assistance to a specific group of detainees as harmful (e.g. only providing hygiene kits to detainees of a certain nationality, or to detainees with diverse SOGIESC). This risks their exposure, while invisibility is used as a coping mechanism by detainees with diverse SOGIESC.

<sup>195</sup> SSI\_SP\_MENA\_14.

**In all contexts, public service provision was referred to by the respondents as inadequate to meet the needs of migrants with diverse SOGIESC.** For this reason, several CSOs, international organizations and local and international NGOs either provide services tailored to the needs of migrants with diverse SOGIESC or include them as beneficiaries in the general programmes they offer. Regardless of the services in question, migrants with diverse SOGIESC struggled to find service providers who are knowledgeable about their needs and encountered multiple levels of discrimination when accessing services.

### Health-Care Providers

**When accessing public and occasionally private, health services, migrants with diverse SOGIESC can experience discrimination related to both their diverse SOGIESC and nationality.** The main barriers for migrants with diverse SOGIESC to accessing health care include: intrusive personal questions by health-care workers upon disclosure of diverse SOGIESC; lack of knowledge among primary care physicians about transgender care, including gender-confirmation and hormone therapy; and lack of appropriate sexual orientation/gender identity vocabulary among health-care providers.<sup>196</sup> In particular, there is a lack of knowledge about the medical needs of transgender individuals and on hormone therapy. This is not part of the academic training and knowledge depends on the willingness of individual health practitioners.

To address this gap, the medical centre of an academic institution in the country of study in the MENA region has integrated SOGIESC care in its curricula and opened a student-led free clinic where the students were trained in gender affirming care. In conventions with local LGBTIQ+ NGOs, patients were sent to the clinic bimonthly or monthly to receive free primary care, subsidised medications, diagnostic testing, etc.

*“...they even created a task force, not just for medical students, but also residents. Specifically, SOGIESC care, gender affirming care, training. They do this through the simulation and the standardized actor programme or the standardized simulated patient programme. We recruited actors from the community to directly speak about their experiences in health care. The students and the simulated actors roleplay on gender affirming care, dialogue, communication skills, how to share sensitive information, what screenings are specific, for example, for trans individuals, etc. – Academic in the MENA context.”<sup>197</sup>*

**A main component of the training is to create psychological safety and remove prejudicial thoughts when approaching a patient** and a special focus is placed on non-communicable diseases like diabetes, heart diseases, etc. Several respondents mentioned that health-care providers have a narrow focus on sexual and reproductive health when dealing with patients with diverse SOGIESC.

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<sup>196</sup> Yudit Namer and Oliver Razum. Access to Primary Care and Preventive Health Services of LGBTIQ+ Migrants, Refugees and Asylum Seekers. Pp. 43–55 in Access to Primary Care and Preventive Health Services of Migrants, *Springer Briefs in Public Health*, edited by A. Rosano. Cham: Springer International Publishing, (2018: 50–51).

<sup>197</sup> KII\_MENA\_8.

## GOOD PRACTICE 9

A SOGIESC CSO in the MENA region cited accompanying migrants with diverse SOGIESC to medical appointments and establishing a follow up mechanism to ensure that migrants with diverse SOGIESC were attended by medical staff and treated in a professional and sensitive way.

*“When it comes to medical assistance, it is very important to keep a closer eye on the cases and accompany more cases to the hospitals and to ensure to always try to take feedback on the services that were given, because a lot of the times the individuals who go to the hospitals do not report the discriminations that have happened. (...) A lot of times, individuals have left hospitals without receiving the services that they needed, as they were not comfortable enough being treated by people who had discriminated against them. Following up on the cases and with the doctors, carrying out assessments is really important, to make sure that all services were given and that all the best practices that suggested, were put in place, and that the service was provided with the level of professionalism that is expected from these places.” SOGIESC diversity CSO in the MENA context (SSI\_SP\_MENA\_5.)*

Across the regions studied, **several CSOs provide training to health-care service providers and have developed academic training targeting high school or university medical students on comprehensive care for people with diverse SOGIESC.** Increased coordination between CSOs, NGOs and international organizations at the national level would allow for the identification of a group of qualified and diverse SOGIESC trained professionals that organizations can refer their beneficiaries to.

### Legal Services Providers

**Lawyers, judges and organizations offering legal services play a key role in the protection of migrants with diverse SOGIESC. However, across contexts, lawyers and judges lacked general awareness of legislation impacting people with diverse SOGIESC** and in most cases are unable to argue a diverse SOGIESC case in court.<sup>198</sup> As mentioned in section 3.2., this prevents migrants with diverse SOGIESC from reclaiming their rights and reporting the violations they face.

*“According to the law, for people who do not have legal migration status in [the country], it is very difficult to access justice in case their rights were violated. So, migrants, for example refugees, if they do not have residency, it becomes difficult for them to access justice and to claim their rights. So, they prefer to give up on their right, even if it was violated because of their legal status. And not only legal status, the whole judiciary system does not allow anyone to claim their rights on this specific topic. You do not have judges who are sensitized on SOGIESC diversity, you do not have lawyers sensitized on SOGIESC diversity, you do not have NGOs sensitized on SOGIESC diversity. So, it's a whole network of people who are not sensitized on this topic and are not dealing with this properly. So in turn you have a victim whose rights were violated. So, when they see all of these people who are not so just sensitized on SOGIESC, they prefer to drop their lawsuit and say “Okay, no, I prefer not to claim my right”. - Human Rights NGO in the MENA region.<sup>199</sup>*

## 4.3 PROGRAMMING

### Overview of the Protection and Assistance Programmes Available

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First-hand information on the programmes accessible to migrants with diverse SOGIESC in the six focus countries selected was gathered by the research team. This section provides an overview of the protection and assistance responses identified during the data collection, addressing the protection needs outlined in section 3. The responses analysed focus on migrant protection programmes implemented by IOM, international organizations, INGOs and CSOs in the focus countries of the study.

<sup>198</sup> SSI\_SP\_MENA\_5; SSI\_SP\_MENA\_14.

<sup>199</sup> SSI\_SP\_MENA\_14.

IOM's work to enhance migrants' protection is articulated along six pillars: (1) direct assistance; (2) training and capacity development; (3) data, research and learning; (4) convening and dialogue; (5) advocacy and communications; as well as (6) the provision of thematic guidance.<sup>200</sup> While no first-hand data was collected in relation to the “data, research and learning” and “advocacy and communications” pillars, key examples and good practices of IOM's work within the other pillars are presented below, following the protection needs identified and presented in section 3.

Overall, the aim of this section is to provide an overview of programmes and services available to migrants with diverse SOGIESC under the following categories, highlighting good practices identified through the data collection that have the potential to be scaled and replicated in other contexts:

- **Physical safety: accommodation;**
- **Material safety: employment, welfare and education;**
- **Access to legal safety;**
- **Access to protection services;**
- **Access to physical and mental health care.**

### Physical Safety: Accommodation

**Across countries, reception centres and shelters are accessible to migrants with diverse SOGIESC, but not tailored to their specific needs.** The provision of safe accommodation falls within IOM direct assistance pillar.<sup>201</sup> In the focused country in West and Central Africa, IOM manages transit centres, where migrants receive various services, including accommodation, case-management and provision of non-food items. Transit centres are organized according to the specific vulnerabilities of different migrants' groups, such as adult male migrants and children and families. However, IOM does not manage any shelter that specifically target the needs of migrants with diverse SOGIESC.

Guidelines are in place to ensure that the accommodation offered to migrants in transit centres and other facilities managed by IOM are safe, accessible and “maintains the dignity of those being provided temporary housing”.<sup>202</sup> According to the guidance, housing in these facilities should be flexible and mixed and include: (1) gender-segregated housing; (2) family housing options; and (3) accommodation for individuals at risk.

This last category includes “same-(gender) couples and their children, transgender and gender non-conforming people and individuals with other factors that make sharing accommodation with the general population dangerous or uncomfortable.”<sup>203</sup> These spaces should have locks, to ensure the safety of the migrants they host. Further, sanitation facilities should meet the needs of all users, regardless of their SOGIESC, without bringing them increased visibility or insecurity. For example, single-use toilets and showers should be present in IOM managed facilities, in addition to gender segregated facilities.<sup>204</sup> Clear, unambiguous signage should be used to ensure the safety of the facilities, using the SOGIESC-sensitive visual material developed by IOM.<sup>205</sup>

Besides IOM, government agencies, INGOs and CSOs provide accommodation to migrants. However, each shelter is organized differently and has its own protocol and standard operating procedures. Some shelters only receive families, survivors of sexual and gender-based violence, women and children, etc. In the focus country in South America, some countries also have more informal shelters, led by families or local communities.

<sup>200</sup> IOM. Migrant Protection and Assistance (n.d.)

<sup>201</sup> Under IOM Protection portfolio, direct assistance is any activity including services that directly contribute to the protection of migrants including displaced persons and affected communities in accessing or restoring their rights or addressing their needs, while enhancing the capacities and facilitating their participation and is often, although not always, short term in its nature. These activities can support the prevention or the response to a protection risk or a human rights violation, but also in the remedial dimension. Direct assistance, while often individual and tailored to individual needs and provided through individual case management or community based approaches, can also be at the community level, tailored to address communities' needs and access to rights. It involves among others, information provision, counselling, screening, assessment, case planning, access to goods and services, case closure and monitoring and evaluation activities.

<sup>202</sup> IOM. IOM guidance on inclusive facilities for migrants with diverse SOGIESC, (2020).

<sup>203</sup> Ibid.

<sup>204</sup> Ibid.

<sup>205</sup> IOM. Diversity and Inclusion in IOM Programming: Visual Materials, (n.d.)

An INGO working in the focus country in the South America, among other regions, conducts regular evaluations of the conditions of these shelters, both in terms of infrastructure and protection services offered. The organization provides technical assistance to these shelters to improve their habitability and ensure they meet the security requirements and standards, by working on the shelters' infrastructures and training the staff on topics such as hygiene, COVID-19 prevention, women's health and how to render the shelters more inclusive spaces. For example, they adapt the spaces and showers, analysing and diagnosing the community needs.

Another international NGO working in the focus country of study in South America provides accommodation – including private rooms to ensure privacy – to the population at risk of sexual and gender-based violence, including migrants with diverse SOGIESC and open to all genders. It does so in coordination with hotels spread across the country, but particularly with those located in border areas. Individuals at risk of sexual and gender-based violence can stay in these hotels for up to five days, as part of a short-term emergency response. This ensures that the programme's beneficiaries have access to a private room and toilet, which lowers the risk of discrimination and violence that migrants with diverse SOGIESC might face in other shelters.

### GOOD PRACTICE 10

An LGBTIQ+ shelter in South America hosts migrants with diverse SOGIESC for a period ranging from one to two weeks and provides a number of additional services to the shelter residents. Psychological support is offered to the migrants with diverse SOGIESC, who are also provided with hygiene kits and offers them three meals per day. In addition to that, the staff of the shelter works to refer the migrants to other, usually bigger organizations and develop with them an exit plan to avoid that the migrants would be homeless again.

*"The intention is that they can have a safe place for the established period of time and while that time lasts, we coordinate with other institutions, then the case is referred to them and they evaluate what humanitarian aid they can give or this person can access (...). We, as a shelter, are the link between the person and an institution; we provide food, a safe place to sleep and, depending on the case, an installation kit (...). The intention is that during the time that the person stays here, a safe exit can be arranged". – LGBTIQ+ shelter CSO in South America (SSI\_SP\_SA\_8.)*

In the focus country in the MENA region, there were no shelters tailored to the needs of migrants with diverse SOGIESC. Different agencies and international organizations ran safe houses and shelters, which are organized following a male-female division.

A concern related to the possibility of opening shelters specific to the needs of migrants with diverse SOGIESC is that this could bring attention to them, making them an easy target for xenophobic and homophobic attacks. In this sense, a recommendation given by key respondents working in international organizations and representatives of SOGIESC diverse CSOs is that LGBTIQ+ shelters should not be presented as such and should function as regular shelters, to protect the safety of their residents.

### Material Safety: Employment, Welfare and Education

As discussed in section 3.1, key elements to consider when discussing the material safety of migrants with diverse SOGIESC are access to financial resources and employment.

In the different countries, the level of financial assistance that migrants with diverse SOGIESC can receive varied from one organization to another and the eligibility criteria to receive cash assistance was referred to as unclear by several respondents.



*“The reasoning behind who gets what and who does not is flawed, I know that there was a trans woman who was given security money, but her partner was not although he was very much also at risk. They were both living off of that money. (...) He was also considered a refugee and somebody vulnerable in terms of sexuality and gender situation, they were both living off of her funds, because she was considered at risk because she's a trans woman, but he was not considered at risk, although he is also gender non-conforming. It did not make sense”* Sexuality and mental health service provider CSO for LGBTIQ+ persons in the MENA region.<sup>206</sup>

## GOOD PRACTICE 11

A CSO working with sex workers and prostitutes interviewed in the European Economic Area explained being mainly funded by authorities in charge of fighting homelessness. They provide medical, psychological and social support for their beneficiaries, who are mainly men and transgender persons having sex with men. A large part of their activities is outreach work in places where the prostitution takes place, with risk-reduction projects and monitoring of violence. They also offer reception day-centre services, with health counsellors and STDs and HIV testing, or community and participatory activities with the public. Their services are specifically designed for sex workers living on the streets or in very precarious housing, as this concerns the large majority of their beneficiaries, to build long-term trust and implementing ongoing social support work, with health-care support as the main entry point. – CSO in the European Economic Area (SSI\_SP\_EEA2\_7).

The non-sustainability of cash assistance was a point agreed on across countries and the provision of financial assistance lacking as a component of a broader case management plan, was cited as a bad practice that could cause more harm to the beneficiaries and ultimately increase their vulnerabilities. The provision of cash assistance can generate dependency among migrants, including migrants with diverse SOGIESC, when it is not used to build skills and create financial independence, but only used to cover the basic needs of the beneficiaries for a given period.

Access to employment represented one of the greatest challenges for migrants with diverse SOGIESC, as it related to the legal status of the migrant in the host country and the need for an eventual regularization.

In this regard, few programmes linking migrants with diverse SOGIESC to employment opportunities were identified across countries. However, **several NGOs and international organizations, including IOM, offer training and capacity-building activities to migrants with diverse SOGIESC.** Training and capacity development activities for migrants, governments and external stakeholders with the aim to provide migrants with skills, knowledge and tools to enhance their protection, is one of the six pillars of the IOM's protection work.<sup>207</sup>

<sup>206</sup> KII\_MENA\_4.

<sup>207</sup> IOM. International Organization for Migration. Protection Division, (n.d.).

## GOOD PRACTICE 12

An IOM country office in Asia and the Pacific region provides skills training to migrants with diverse SOGIESC in partnership with a local SOGIESC NGO. The programme was launched after the outbreak of COVID-19 to respond to the loss of income of migrants and support them in identifying alternative career paths. The skills training focused on bakery and facial makeup, activities that could be carried out safely during the pandemic. The courses were officially certified so that potential employers would recognize the skills acquired by migrants.

*“In terms of support, of course, the immediate assistance is on distribution of survival kits for them to be able to have access to food and non-food items during the lockdown. In relation to employment, we knew that they lost their jobs immediately right after the COVID-19 outbreak. So, we offered them skill training opportunities, including re-skilling, in case that they would like to change their occupation. I believe that you have heard from the Sisters Foundation that we have supported training on makeup like facial makeup and bakery. And we will continue with this kind of initiative.” IOM in Asia and the Pacific (KII\_AP\_4)*

Besides training programmes targeted to migrants with diverse SOGIESC, this group of migrants were able to access training opportunities open to individuals on the move, regardless of their sexual orientation and gender identity, or to residents of a country regardless of their nationality. Such initiatives were mainly identified in the EEA. For example, a migrant interviewed in the EEA mentioned being happy to have been selected for one of these programmes, learning a lot, focusing on something positive and being valued as a person with specific skills.

### Access to Legal Safety

As addressed in Section 3.2, the needs of migrants with diverse SOGIESC related to legal matters are multiple and multi-layered and only partially addressed by existing programmes.

Across regions, international organizations and local CSOs and human rights organizations, offered free legal assistance and counselling to vulnerable groups, including migrants with diverse SOGIESC. Some diverse SOGIESC organizations offered legal services specifically tailored to people with diverse SOGIESC, but the often-limited capacity of these CSOs did not allow them to carry out systematic work. The support offered by these organizations frequently consisted of providing free legal advice and facilitating access to lawyers, through covering legal fees or connecting individuals to lawyers working in the organization. Another component of the assistance offered by CSOs and NGOs in terms of legal support was direct support to access local or national justice mechanisms, for example accompanying migrants to the police station to file a complaint, providing follow-up support, or acting as guarantors to support migrants' complaints. These components were essential to facilitate migrants with diverse SOGIESC's access to legal safety.

## GOOD PRACTICE 13

An international organization in South America works on livelihoods through specific processes such as entrepreneurship schools with a gender focus. These courses are not specifically target to migrants with diverse SOGIESC, but they are included alongside other vulnerable groups.

*“We have specific resources for LGBTIQ+ people who have experienced violence and can receive economic resources to reduce risks, to pay rent, so meet and satisfy certain needs. In the economic inclusion programme, we provide grants or seed capital for LGBTI entrepreneurs, linked to a process of entrepreneurship school with a gender focus, where they can participate and receive support and have these quotas. Within the whole strategy we have some quotas for LGBTI people. So, we have it in two ways.” International NGO working in South America (KII\_SA\_10)*

One of the main obstacles to the effective provision of legal services to migrants with diverse SOGIESC was their reluctance to disclose their sexual orientation and gender identity, or when they did disclose it in a confidential way, did not grant permission to use the information in a legal case.

In terms of responses to the need for legal safety for migrants with diverse SOGIESC, Rainbow Railroad offers an integral support programme which includes financial assistance, access to accommodation, medical care and in-country or out-of-country relocation, depending on the availability of safe routes and legal pathways to safety.<sup>208</sup>

#### GOOD PRACTICE 14

In the European Economic Area (western area), a good practice is offered by local organizations that assist asylum applicants to prepare for interviews. They are usually drilled on what kind of questions to expect and the kind of proof (e.g. document) they need to collect to facilitate a positive result in their asylum process. They also have lists of lawyers experienced in supporting and representing migrants with diverse SOGIESC.

As for the modification of the legal name and gender displayed in official documentation for trans individuals, respondents from local CSOs highlighted the need to advocate for measures to be taken at the national level to mitigate the challenges that trans people face in their daily life. For example, they recommended the adoption of temporary documents that match the migrants' gender identity to facilitate access to service and mobility of trans individuals who had not gone through the name and gender change procedure. These documents should indicate the “cultural” name of the person, instead of the name assigned to them at birth and should include a recent picture that matches the person's physical appearance at a given moment.

#### GOOD PRACTICE 15

An independent public institution and monitoring mechanism in the EEA works to fight discrimination and promote equal opportunities. Anyone who has been the target of discrimination or a witness to it can turn to this institution, that will provide information about rights and will help to look for a solution. This institution also mounts campaigns for equal opportunities and against discrimination, formulates recommendations for government authorities and generates tools, publications and statistics. This is the relevant authority for discrimination in access to employment but also accommodation – all grounds of discrimination (sexual orientation, gender identity but also racism or religious beliefs).

### Access to Protection and Assistance Services

Respondents testified to the importance of access to protection services to guarantee the respect of their individual rights. In this regard, respondents lacked protection services sensitive to diverse SOGIESC and/or migrant-specific needs. Given that migrants face different protection needs (see section 3), collaboration among entities is needed to address them across sectors. According to IOM guidelines, referral mechanisms for the protection and assistance of migrants vulnerable to violence, exploitation and abuse can be developed at the local, national and transnational levels.<sup>209</sup> An effective referral mechanism entails several steps: identification, status of case-type determination, case management and the provision of protection and assistance services.

IOM has taken significant steps in strengthening its protection work for migrants with diverse SOGIESC, as the organization recognizes and acknowledges the specific needs stemming from the structural challenges faced by migrants with diverse SOGIESC throughout their migration journey.<sup>210</sup> In terms of capacity development, IOM developed a SOGIESC and migration training package, jointly with UNHCR, on protection of migrants with diverse SOGIESC.<sup>211</sup> The target audience of the training are IOM and

<sup>208</sup> Rainbow Railroad, 2021 Annual Report. Understanding the State of global LGBTQI+ persecution, (2021).

<sup>209</sup> IOM. IOM guidance on referral mechanisms for the protection and assistance of migrants vulnerable to violence, exploitation and abuse and victims of trafficking, (2019).

<sup>210</sup> IOM. International Migration Law Information Note. International Standards on the Protection of People with diverse Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics (SOGIESC), (2021).

<sup>211</sup> IOM/UNHCR. Training package: SOGIESC and working with LGBTQI+ persons in forced displacement, (2021).

UNHCR personnel, as well as the broader humanitarian community and it covers a wide variety of topics, including SOGIESC-sensitive terminology, international law, the protection challenges and vulnerabilities of people with diverse SOGIESC and prevention, mitigation and responses to address these specific challenges, return and reintegration and refugee status determination.

### Access to physical and mental health care

One of the main gaps identified during the data collection was the lack of confidentiality of the provision of some medical services in the public health system. Moreover and as discussed in section 4.2, public health-care providers were generally not sensitized towards diverse SOGIESC and public health-care services were generally not sensitive to diverse SOGIESC. In some instances, the lack of a legal immigration status excluded migrants from accessing health-care services and, even when not formally rejected from services, migrants with diverse SOGIESC reported not feeling safe interacting with health-care providers.

To fill these gaps, several agencies, international organizations and CSOs provide services to meet the health-care needs (including mental health) of migrants with diverse SOGIESC. IOM provides and promotes migrants-inclusive health-care services, but there are no specific guidelines related to the provision of health care to migrants with diverse SOGIESC. IOM's Approach to Migration and Health revolves around four key principles: (1) Monitoring migrant health; (2) Policy and Legal Framework; (3) Migrant sensitive health systems; and (4) Strengthening inter-country coordination and partnership.<sup>212</sup>

Moreover, IOM provides HIV-related services and global, regional and national HIV projects are among the largest of IOM's activities in health promotion and assistance to migrant populations.<sup>213</sup>

Another example is a CSO in the EEA that is committed to male and trans sex workers with a view to promoting health and promoting their access to rights, housing and care. The main objectives of the organization are to improve well-being by targeting their social inclusion and promoting their health in the broad sense and their sexual health in particular. The organization also works to reduce the prevalence and incidence of STIs among men and trans women sex workers and thereby reduce the prevalence and incidence among their clients. In the country of study in the EEA, another organization created a list of friendly doctors, with whom persons with diverse SOGIESC can discuss their SOGIESC openly.

In the country of study in West and Central Africa, physical and mental health care was well developed and provided for migrants in transit centres, thanks to the intervention of local associations. However, health-care provision still needed to be improved to take into account the particular needs of migrants with diverse SOGIESC. In the countries of study in West and Central Africa and the MENA region, UNHCR subcontracted the management of health needs to local associations, including mental health, of vulnerable asylum-seekers in its transit centres. Both IOM and UNHCR have staff dedicated to psychosocial support and counselling.

Numerous CSOs and international organizations provided HIV and STI testing to migrants. However, fewer organizations offered comprehensive health-care provision that is not related to sexual and reproductive health.

In the country of study in the EEA, a community centre intended to contribute to the well-being of people with diverse SOGIESC, their environment and bystanders, was opened in May 2022. This project specifically targets individuals with diverse SOGIESC and brings different services together, such as culture, health care, co-working spaces, creative activities, reception and more.

<sup>212</sup> IOM. *IOM Migration Health Division*, (n.d.).

<sup>213</sup> IOM. *Human mobility and HIV*, (n.d.).

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A CSO providing sexual and medical services to individuals with diverse SOGIESC collaborated with groups from the LGBTQI+ community to understand the specific needs of the different identities (e.g. trans-care). The organization encourages feedback and has a whistleblower mechanism in place for service users or other members of the community to raise any eventual concerns on the modalities of service provision.

*“It is very important that whenever you are developing something, or working on something concerning a specific community, to always go for community led organizations and to always to take into consideration the feedback that is coming directly from the community. That is the only way that you could develop your services and your systems better. And that is one thing that we always do and always use and we have for example a whistleblower mechanism, in case someone had any problem for us to really look into it and sort of understand where it comes from reconsider our ways, reconsider our services and where we can improve them. So, I think this is one of the main lessons that everyone should integrate with their practice.” Sexual health centre in the MENA context (SSI\_SP\_L4)*

### Guidelines to Build diverse SOGIESC-Inclusive Programmes

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During the inception phase of the project, three conceptual binaries were discussed to guide the study: protection versus vulnerability, inclusion versus exclusion and visibility versus invisibility. Most stakeholders tend to perceive all minorities in a given context, including migrants and persons with diverse SOGIESC as non-agentive, vulnerable, excluded and invisible. By bringing those binaries to the forefront, the study aims to unpack and scrutinise these essentialist assumptions, providing guidelines to build SOGIESC diversity-inclusive programmes based on the results of fieldwork and the research findings.

#### Protection versus Vulnerability

The **protection versus vulnerability** binary is linked to the understanding of different protection actors of “vulnerability” and how this is streamlined in public discourses and across media platforms.

The idea of the inherent vulnerability of migrants with diverse SOGIESC and the lack of agency associated with it, has been challenged by several respondents interviewed during the development of this study. They highlighted that the vulnerability of migrants with diverse SOGIESC stemmed from multiple and intersecting forms of discrimination and structural inequalities and was therefore context specific. Universal protection guidelines should be adapted to specific local contexts and the factors that interplay in each case should be assessed. Local organizations and SOGIESC groups explained how the needs and vulnerabilities of migrants and individuals with diverse SOGIESC are often misunderstood and misrepresented by protection actors and called for their inclusion in the discussions around these topics.

**Migrants with diverse SOGIESC need to be given a space to voice their needs and knowledge production processes should be supported and linked to the efforts of protection stakeholders.** LGBTQI+ migrants already deploy self-protection mechanisms in the absence of formal institutional protection systems, including through LGBTQI+ community networks. Protection actors should ensure that any supplementary protection services recognize, preserve and support these existing self-protection mechanisms (as opposed to disrupting or dismantling them).

#### Visibility versus Invisibility

Throughout the development of the study, the theme of invisibility was highlighted by respondents several times, both as a coping mechanism used by migrants with diverse SOGIESC to navigate hostile environments and as a “solution” proposed by protection actors to safeguard them.

In different contexts, migrants with diverse SOGIESC are encouraged to conceal or display their SOGIESC according to the circumstances and particularly during asylum procedures. In this regard, **it is**

**fundamental to consider the risks that visibility entails.** As discussed in section 4.4 below (Return and Reintegration), the option to “get back in the closet” once returning to the country of origin was often considered a viable solution by decisionmakers in host countries, despite the psychological harm of concealment.<sup>214</sup>

## Inclusion versus Exclusion

As for the **inclusion versus exclusion binary**, this can be discussed in light of the different approaches CSOs and international organizations adopt to identify their target group. Several respondents highlighted the pros and cons of a holistic versus a tailored approach to target the needs of migrants with diverse SOGIESC. Diverse SOGIESC CSOs who specifically worked with this group could develop customized solutions for them. However, they often had limited capacity given the scarcity of funding for interventions on diverse SOGIESC. Moreover, respondents argued that targeting this group could have negative effects of generating intercommunity tensions as it would exclude other members of the migrant community.

Similarly, organizations only providing their services to migrants have been accused of neglecting the needs of the local communities and nationals, particularly in cases in which the countries they work in are in a period of crisis. For example, a CSO in the country of study in South America stated that most of the support was directed towards international migrants while neglecting to provide support to internally displaced persons (IDPs) in the country. On the other hand, providing services to the whole community could be extremely challenging and organizations would need specialized staff in charge of the different programmes and target groups.

The need to find a balance between services offered to the local community and to migrants was highlighted by several respondents across regions. This requires both flexibility from the donor side and capacity to adapt of local and international organizations providing such services and protection programmes.

In this regard, IOM's integrated approach to reintegration (IAR) addresses migrants' needs at the individual level, as part of their communities and within the overall structures of States. The community level encompasses initiatives which respond to the needs, vulnerabilities and concerns of communities to which migrants return, including returnee families and the non-migrant population.<sup>215</sup>

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In the focus country in South America, IOM created a centre dedicated to the provision of a safe space for migrants with diverse SOGIESC and for the delivery of activities aimed to facilitate their integration in the host community. The services provided are offered to men, women, elderly persons, children and adolescents to support their integration in the country of destination and cultural integration activities involving both migrants and members of the host community are delivered, such as craft fairs, integration activities and workshops. The IOM centre works closely with two SOGIESC CSOs, from which they receive cases and refer cases to.

*“Besides this, we have relationships with several agencies that attend cases like the ones mentioned and we participate in diverse working spaces of analysis and management, we work with reference and counter reference of cases and we have also elaborated a mapping of all agents working on protection, all this referred to LGBTQ+, human trafficking and childhood. Like this we receive cases of migrants and host population that require any kind of assistance. If we identify any protection risk, we evaluate them directly and we have specific members of the crew that attend gender violence cases and others that attend LGBTQ+ population. (...) Additionally we receive case referrals from other organizations outside IOM. We have been working with [SOGIESC diversity CSO] and [SOGIESC diversity CSO]”.  
IOM centre in South America (SSI\_SA\_9)*

<sup>214</sup> UNHCR. Guidelines on International Protection No9. 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. HCR/GIP/12/09. (23 October 2012).

<sup>215</sup> IOM. *Reintegration Handbook*. Module 1: An integrated approach to reintegration, (2019).

## 4.4 RETURN AND REINTEGRATION

While there is no universally accepted definition of return, it can be understood as “an umbrella term to refer to the various forms, methods and processes by which migrants return or are compelled to return to their country of origin or habitual residence, or to a third country. This includes, inter alia, independent departure, assisted, voluntary or spontaneous return, deportation, expulsion, removal, extradition, pushback, handover, transfer or any other return arrangement.”<sup>216</sup> Therefore, the use of this term is not indicative of the voluntary or involuntary nature of the decision and it encompasses both.

IOM defines return in a general sense, as “the act or process of going back or being taken back to the point of departure. This could be within the territorial boundaries of a country, as in the case of returning internally displaced persons (IDPs) and demobilized combatants; or between a country of destination or transit and a country of origin, as in the case of migrant workers, refugees or asylum-seekers.”<sup>217</sup>

Reintegration is broadly understood as the “re-inclusion or re-incorporation of a person into a group or a process”<sup>218</sup> and defined by IOM as “a process which enables individuals to re-establish the economic, social and psychosocial relationships needed to maintain life, livelihood and dignity and inclusion in civic life”.<sup>219</sup> Sustainable reintegration is achieved “when returnees have reached levels of economic self-sufficiency, social stability within their communities and psychosocial well-being that allow them to cope with (re)migration drivers”.<sup>220</sup> Sustainable reintegration therefore depends on multiple dimensions (economic, social and psychosocial) and multiple levels of interventions (individual, community and structural) that define the assistance received during the reintegration process.

Return and reintegration can be highly challenging for all migrants and migrants with diverse SOGIESC tend to face additional obstacles when returning to their countries of origin, as societal expectations and norms associated with their diverse SOGIESC interfere with returnees' ability to access tangible and intangible resources to start their lives anew.<sup>221</sup>

Understanding these barriers is critical to providing tailored return and reintegration assistance to migrants with diverse SOGIESC, while monitoring is essential in ensuring that no harm is caused to them throughout the process and that their wills are respected at all times.

### Actors Involved in Return and Reintegration assistance for Migrants with Diverse SOGIESC

**In all the focus countries, there was a lack of specialized assistance, protection and monitoring mechanisms for the return and reintegration of migrants with diverse SOGIESC.**

Across contexts, State and non-State actors such as United Nations agencies and NGOs are involved in return and reintegration, providing some degree of assistance to returning migrants. In the EEA, most member States offer AVRR programmes funded by the European Union and/or by national authorities, targeting different countries of origin depending on migration patterns and donors. Most donor countries have connections with implementing partners in countries of origin who participate in the AVRR programmes and provide services on the ground. These partners include United Nations Agencies, INGOs, NGOs and CSOs.<sup>222</sup>

Against these complex scenarios, IOM was identified as the primary actor managing return and reintegration programmes in the focus countries of this research and several NGOs and international organizations reported referring cases of potential returns to IOM country offices. Given the lack of familiarity of the research respondents on the topic, limited information was gathered on the role of other actors in migrants' return and reintegration.<sup>223</sup>

<sup>216</sup> United Nations Network on Migration. Gaps and positive practices for safe and dignified return and sustainable reintegration, (2021).

<sup>217</sup> IOM. *Glossary on Migration*, (2019).

<sup>218</sup> IOM. *Towards an integrated approach to reintegration in the context of return*, (2017).

<sup>219</sup> IOM. *Glossary on Migration*, (2019).

<sup>220</sup> Ibid.

<sup>221</sup> IOM. *IOM Guidance on Referral Mechanisms for the Protection and Assistance of Migrants Vulnerable to Violence, Exploitation and Abuse and Victims of Trafficking*, (2019).

<sup>222</sup> Migration Policy Institute. *Putting migrant reintegration programmes to the test: a road map to a monitoring system*, (2022).

<sup>223</sup> The information and key finding presented in this section as the result of KIs with IOM staff across the focus countries of the study. However, the recommendations drafted on the basis of these findings are applicable to all actors managing return and reintegration programmes.

In the focus countries in the MENA region and South America, local NGOs and other international organizations directly referred cases to the embassies and consulates of the migrants' countries of origin. However, their engagement after the referral was limited and they were not able to provide any information on the quality of the assistance offered or the fate of the migrants they had referred.

In the cases where the IOM office in the host country receives the referral, their first interlocutor is the IOM's country office in the migrant's country of origin. The country offices work closely together to develop a return and reintegration plan for the migrant. As Stated by IOM staff, the support that the returnee receives from IOM missions in the country of origin and host country is not fixed and is related to the funding and services available in the country.

**Partnerships and cooperation between a variety of actors are required to enhance the range and quality of return and reintegration assistance available to migrants, avoid duplication of efforts and foster the sustainability of reintegration processes.**<sup>224</sup> The IOM mission in the country of origin coordinates and refers returnees to relevant government services, local or international organizations on the ground that can support the reintegration process in different ways. The collaboration among these actors is crucial to ensure that the returnee has access to the relevant opportunities available and to ultimately achieve a sustainable reintegration.<sup>225</sup> The partnership with these organizations becomes even more important when returnees have been rejected by their families for reasons related or not to their SOGIESC and have no support network in place in the country of origin.

However, **respondents shared the concern that staff involved in the return and reintegration process, including IOM staff but also implementing partners staff in host and countries of origin, were rarely trained on sensitivity towards people with diverse SOGIESC.** This was particularly true of frontline workers that are directly in contact with returnees with diverse SOGIESC. A key recommendation in this sense, is to make the training on SOGIESC and Migration jointly developed by IOM and UNHCR<sup>226</sup> mandatory in IOM country missions and ensure that all the actors involved in the return and reintegration process, including local CSOs, development actors and government authorities have the tools to treat these cases with sensitivity and respect.

Overall, respondents recognized the critical role played by CSOs at the country-of-origin level and acknowledged the need to involve more actors, especially with CSOs working specifically with people with diverse SOGIESC. For this reason, **there is a need for diverse SOGIESC CSOs to develop referral pathways and transnational networks between the host country and country of origin in the context of return and reintegration.** However, the involvement of other actors in the return and reintegration process comes with heightened risks for the migrant. For this reason, it is key to ensure that all actors involved in the process are trained and sensitized on working with migrants with diverse SOGIESC and consider whether the returnee's SOGIESC should be disclosed to the partners in the country of origin. This is conditional on the free, prior and informed consent of the migrant.

<sup>224</sup> IOM's Policy on the full spectrum of return, readmission and reintegration, (2021).

<sup>225</sup> According to IOM's definition, "reintegration can be considered sustainable when returnees have reached levels of economic self-sufficiency, social stability within their communities and psychosocial well-being that allow them to cope with (re)migration drivers. Having achieved sustainable reintegration, returnees are able to make further migration decisions as a matter of choice, rather than necessity".

<sup>226</sup> IOM/UNHCR. Training package: SOGIESC and working with LGBTIQ+ persons in forced displacement, (2021).



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An international organization in South America operates in different countries and connects migrants to the country of origin mission and treats the case as an internal referral, even if not explicitly labelling them as returns. In this way, more information on the services available can be provided by the local country mission.

*"What we are doing now, in this [regional] project, is a regional strategy on gender-based violence. We are establishing cordons or safe circuits. If a person in [this country], is an LGBTI person and tells us: I am going to [this country], our [...] team connects us with that case and we provide all the information about the services that are available, or even in [that country] they said: we provide food and money to reduce risks and in [this country] we are going to provide accommodation and then an economic inclusion strategy. That information is connected if we do it ourselves. But we don't give you a resource: go to [this country] because you want to return, we don't do that. - Refugee NGO in South America (KII\_SA10)*

### Existing IOM's policy and tools on Return and Reintegration

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Since 1979, IOM has been implementing assisted voluntary return and reintegration (AVRR) programmes worldwide, to promote safe and dignified return and sustainable reintegration. IOM's policy on the full spectrum of return, readmission and reintegration, released in 2021, presents IOM's vision of a "comprehensive, rights-based, sustainable, development-oriented and coherent approach to well-managed return, readmission and sustainable reintegration, taking into account the health and well-being of individuals and communities".<sup>227</sup> IOM's "Reintegration Handbook" provides practical guidance on the design, implementation and monitoring of reintegration assistance.

Even though IOM's Return policy and the Reintegration Handbook do not include specific guidelines on the return and reintegration of migrants with diverse SOGIESC, gender in the broader sense is mainstreamed in these tools and policies, which stress that assistance should be provided to vulnerable migrants without discrimination on the basis of nationality, gender, age, sexual orientation, gender identity, ability, race, ethnicity, religion, language, social status or any other ground. One of the guiding principles of IOM's Return policy are "gender-responsive, child- and vulnerability-sensitive perspectives," which aim to ensure that "all migrants, regardless of their sex, sexual orientation, gender, age, race, ethnicity, indigenous status and disability, must be respected at all stages of the return, readmission and reintegration process".<sup>228</sup> In addition, IOM's individual factors questionnaires include questions on sex, gender identity and are designed in a gender-sensitive way.<sup>229</sup> However, besides these efforts to integrate gender into existing policies and guidelines, **respondents interviewed confirmed the existence of a gap of knowledge on the topic** and IOM staff understood the need to develop tailored guidelines to support the safe, dignified and right-based return and sustainable reintegration of migrants with diverse SOGIESC.

Module 12 of the training developed by IOM jointly with UNHCR<sup>230</sup> discusses the options available to LGBTIQ+ persons of concern: local integration, assisted voluntary return and reintegration, resettlement, exploring the unique needs of migrants with diverse SOGIESC. Even though important considerations are raised about assessing the possibility of safe and dignified return and sustainable reintegration, no clear steps are outlined to practically manage the return and reintegration of LGBTIQ+ individuals. Expanding the training section on Return and Reintegration would benefit IOM's return and reintegration staff and set common grounds and procedures to follow in such cases.

<sup>227</sup> IOM. *IOM's Policy on the full spectrum of return, readmission and reintegration* (n.d.).

<sup>228</sup> Ibid.

<sup>229</sup> IOM does not ask questions about gender identity, as these can do harm in the contexts where IOM works and do not produce usable data. IOM rather creates a safe environment where respondents can share such information with IOM in a confidential manner if they want and need to. IOM can collect, record and manage that information through a safe information management system.

<sup>230</sup> IOM/UNHCR. *Training package: SOGIESC and working with LGBTIQ+ persons in forced displacement*, (2021).

**The returnees interviewed for this research reported facing the same challenges they experienced before their migration and at different stages of their migration experience**, such as family rejection, discrimination within their communities and difficulties accessing assistance, health, employment or housing. For this reason, developing responses rooted in a deep understanding of these vulnerability factors is key to facilitating safe, dignified and right-based return and sustainable reintegration of migrants with diverse SOGIESC.

## Protection of migrants with diverse SOGIESC during the return process

Given the lack of dedicated frameworks for the return and reintegration of migrants with diverse SOGIESC, several considerations need to be accounted for to ensure their protection throughout the return journey. The specific risks that this group of migrants is exposed to in different stages of the process must be assessed and mitigated through:

- **Initial assessment;**
- **Vulnerability assessment and design of the reintegration plan;**
- **Reintegration monitoring.**

### Initial assessment

Potential beneficiaries of return and reintegration programmes from different stakeholders, such as United Nations agencies or NGOs, are both migrants unable or unwilling to remain in the host/transit country and those who decide to return to their country of origin.

Taking a rights-based approach in return and reintegration means placing the concerned individuals and their well-being at the centre of every decision or process related to their return and reintegration and seeking to uphold the protection of their rights. Each individual migrant must have the opportunity to have his/her case adequately assessed by competent entities to have any identified protection needs considered and addressed and to receive timely and transparent information on the migration pathways available to them. This is particularly important for migrants in vulnerable situations who may have been subject to violence, exploitation or abuse or who may require specialized assistance through institutional safeguards due to specific health, psychosocial or protection needs.

Respect for migrants' free, prior and informed consent to the specific return modality or option available is an underlying prerequisite for any operational support related to return and reintegration. Empowering migrants to make informed decisions and exercise their agency by offering its support to enable a safe and dignified return to those who are unwilling or unable to remain is a key principle from IOM's Policy on the full spectrum of return, readmission and reintegration and has been underlined as a key recommendation that emerged from the study.

IOM's return and reintegration due diligence is part of IOM's approach to place individuals, their well-being and the protection of their rights at the centre of every decision or process related to their return and reintegration. It is an internal process, where IOM manages eligibility determination and analyses possible return cases. The due diligence process allows for standardization of processes and decisions and is used by IOM country offices in host countries in coordination with country offices and relevant actors in countries of origin. Country offices in host countries conduct initial screenings to assess whether beneficiaries show any signs of vulnerabilities or are at risk of harm upon return to their countries of origin. Depending on the assessment, country offices must follow standardized process to adequately address the identified vulnerabilities. The formalized due diligence ensures that IOM provides the most appropriate assistance to migrants, while respecting their rights.

To assess the voluntary nature of the migrants' decision, the initial assessment of potential beneficiaries of the return and reintegration programme should take into account the barriers that migrants with diverse SOGIESC face in accessing legal status in the host countries and focus on understanding if the

choice of return has been influenced by external actors.<sup>231</sup> For this to happen, IOM respondents stressed that a relationship of trust with migrants should be established over several counselling sessions in the pre-return phase. However, in some contexts, due to the national return management policies, IOM's return and reintegration staff are pressured to accelerate the return procedure, which does not always grant enough time for migrants to disclose sensitive information about their experiences.<sup>232</sup> Allowing the necessary time to conduct an accurate individual assessment of the case of migrants who wish to return is a key principle from IOM's Policy on the full spectrum of return, readmission and reintegration and has been underlined as a key recommendation that emerged from the study.

Guidelines to be followed during the initial assessment of migrants' cases need to be developed and could be integrated into the IOM-UNHCR training package on SOGIESC. Such guidelines should include SOGIESC-sensitive language and guiding questions to assess the voluntariness of migrants' decision to return, considering the specific challenges faced by individuals with diverse SOGIESC in the host country. The joint training package should act as a reference for all actors involved in the return and reintegration of migrants with diverse SOGIESC, both in the pre- and post-return phases.

### Vulnerability assessment and design of the reintegration plan

To ensure the protection of migrants with diverse SOGIESC during their journey and upon return, it is critical to conduct a thorough vulnerability assessment of the migrant's case in the pre-return phase to identify the risk factors they might be exposed to after departure.

A gap identified in the study is that return authorities and other actors managing returns, including IOM, tend to over-rely on the legal situation related to diverse SOGIESC diversity in countries of origin when evaluating the safety and security of an eventual return. The lack of in-depth information on the realities and hardships faced by migrants with diverse SOGIESC in their countries of origin and other key elements such as the risk of detention upon arrival is a gap that needs to be filled to ensure that no harm is posed to the migrant during the return and reintegration process, as highlighted by the guiding principles of IOM's policy on the full spectrum of return, readmission and reintegration.<sup>233</sup>

#### **A comprehensive list of risk factors for migrants with diverse SOGIESC in countries of origin needs to be developed for return and reintegration actors to conduct thorough risk assessments.**

These factors range from individual to structural ones, including disclosure of diverse SOGIESC to the migrants' families, societal attitudes towards individuals with diverse SOGIESC, risk of detention upon arrival and the existence of LGBTQ+ organizations in the area of return and reintegration, among others.

Alongside that, a fundamental step in the pre-return process is the assessment of the specific needs of the returnee as an individual with a diverse SOGIESC, which is crucial to the development of a tailored reintegration plan. The reintegration plan should include access to support groups and training opportunities and ensure that eventual physical and mental medical needs are covered. A migrant with diverse SOGIESC who benefitted from the IOM's AVRR programme in Belgium, reported being supported with the HIV treatment for the six months upon return in their country of origin.

There should be effective information sharing already at the pre-departure stage about the services available to migrants with diverse SOGIESC upon return to their country of origin. Migrants' distrust of the authorities and subsequent reluctance to disclose their SOGIESC with them or with local authorities, is often an obstacle to providing them with support services, which are crucial to ensure sustainable reintegration.

A recommendation to encourage migrants to share personal information related to their diverse SOGIESC with the relevant return authorities is to create safe spaces displaying welcoming signing and symbols associating with safe spaces for the LGBTQ+ community.

<sup>231</sup> KII\_EEA2\_1; KII\_MENA\_11.

<sup>232</sup> KII\_EEA2\_1.

<sup>233</sup> IOM. *IOM's Policy on the full spectrum of return, readmission and reintegration.* (n.d).

In line with this recommendation, IOM has developed guidelines on how to create welcoming spaces for migrants with diverse SOGIESC.<sup>234</sup> These guidelines can be followed to ensure that this group of migrants feels comfortable discussing sensitive topics related to their SOGIESC diversity with IOM staff in the pre-return phase, enabling them to better plan their return and reintegration.

### Reintegration monitoring<sup>235</sup>

Upon and after return, it is essential to regularly monitor returnees' cases to assess the extent to which the reintegration has been successful and intervene promptly in case protection risks unforeseen in the vulnerability assessment might arise.

IOM respondents interviewed during the study explained that returnees' reintegration is normally monitored up to one year after return, with the support of the IOM mission in the country of origin but referred to this process as a rather mechanical one, needed to “close the case”<sup>236</sup> on the IOM system.

As Stated in Module 12 of the IOM/UNHCR training package, returnees' monitoring should include supporting LGBTIQ+ returnees to ensure they enjoy basic human rights.<sup>237</sup>

This process currently takes place but could be strengthened to ensure more comprehensive monitoring, involving all the actors involved in the reintegration process, including diverse SOGIESC CSOs, development actors, local governments, etc. In the case of returns coordinated by IOM, the IOM mission in the host country should remain closely engaged throughout the process.

For this to happen, practical tools must be developed to facilitate effective information sharing among actors in the host and origin countries and monitor reintegration in collaboration with local partners. A SOGIESC-sensitive M&E framework should include specific indicators to monitor the reintegration outcomes of returnees with diverse SOGIESC (e.g. disclosure of their diverse SOGIESC to family and friends, self-invisibilization and need for relocation, among others).

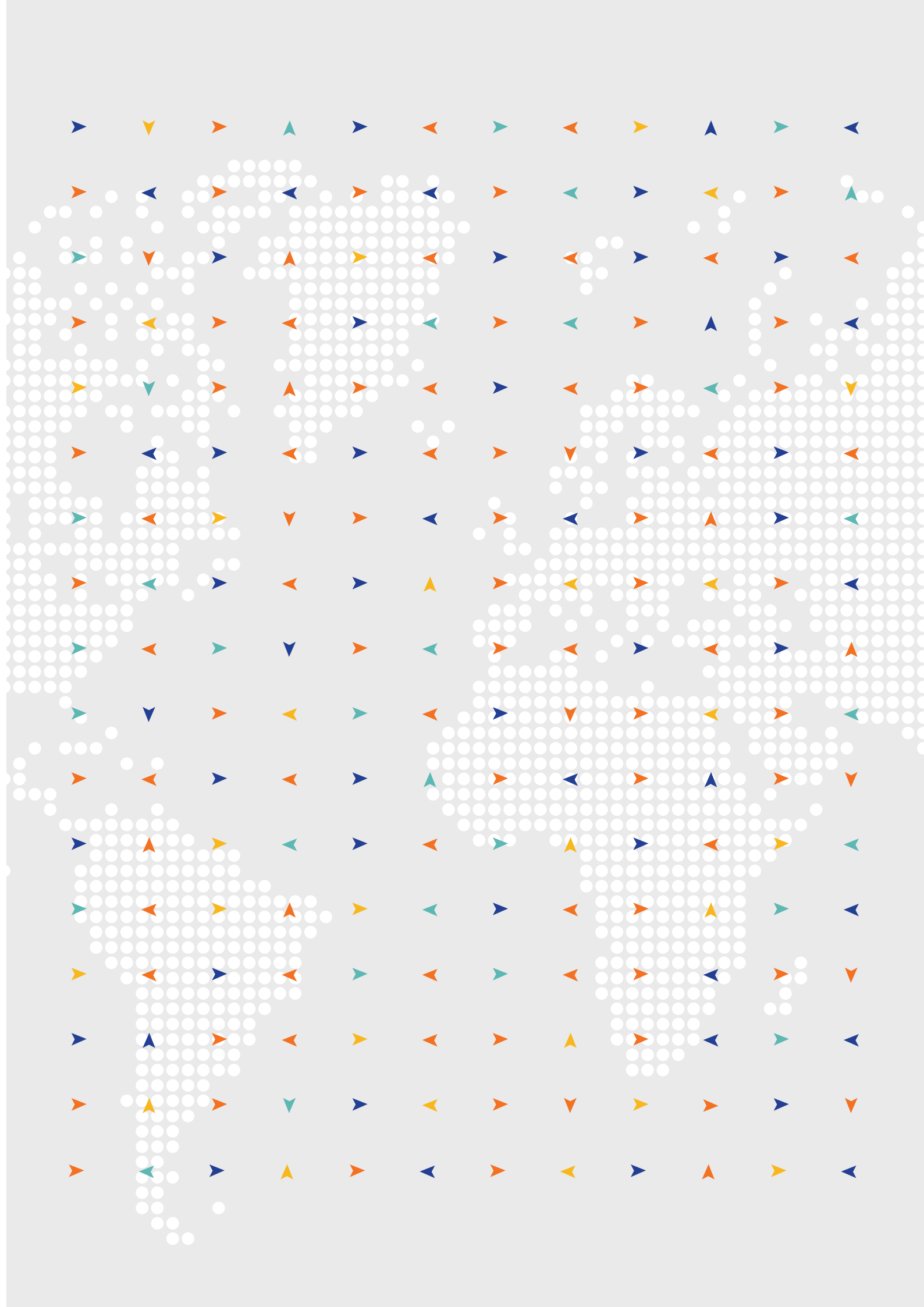
Lastly, a complaint and feedback mechanism for migrants with diverse SOGIESC should be in place to evaluate the assistance received and the degree to which it contributed to their sustainable reintegration, providing eventual suggestions for improvement.

<sup>234</sup> IOM. *Safe Space Guidance. Creating Safe Spaces*, (n.d.).

<sup>235</sup> This paragraph only refers to monitoring and does not include details on evaluation, as very limited data were collected on this topic, not allowing for an accurate analysis.

<sup>236</sup> KII\_11\_MENA.

<sup>237</sup> IOM-UNHCR. *Training package: SOGIESC and working with LGBTIQ+ persons in forced displacement*. (2021),



## V. CONCLUSION AND RECOMMENDATIONS

The study's recommendations follow the primary protection needs identified throughout the phases of this study. They aim at strengthening the protection and assistance measures for migrants with diverse SOGIESC, to ensure the physical and material safety of migrants as well as their legal safety and their access to health care, both physical and mental. When designing and implementing programmes targeting or including migrants with diverse SOGIESC, stakeholders should recall that:

- 1. Migrants with diverse SOGIESC are not a homogenous group.** As a result, stakeholder programmes should add nuance to their programmes and activities including or targeting migrants with diverse SOGIESC and locally contextualize them. For example, protection needs of a lesbian woman from the MENA region may vary greatly from protection needs of a transgender man from South America.
- 2. Transgender migrants have been identified as the most vulnerable group** within the broad category of migrants with diverse SOGIESC. As such, we recommend that stakeholders establish specific protection measures and monitoring mechanisms to respond to their specific needs and vulnerabilities.
- 3. Intersex people are the most invisible group** in research and policymaking – nobody from this group was identified as part of this study. As such, we recommend that stakeholders launch research on this group to identify specific protection risks and needs of migrants with diverse sex characteristics in order to better inform policymaking and programming.
- 4. Migrants with diverse SOGIESC are individuals and rights holders with owned agencies, who are capable of sharing information on their own needs.** When designing and implementing programmes for migrants with diverse SOGIESC, stakeholders should be mindful to offer democratic spaces for participation and consider them not only as beneficiaries, but also as active subjects. Beyond participation, complaint and feedback mechanisms that are contextually appropriate should also be established to enable migrants to provide feedback on programmes and submit complaints if needed, leading in response to appropriate and timely processes and procedures. Migrant participation and complaint and feedback mechanisms should be designed to provide migrants with the opportunity to influence and shape the design, implementation, monitoring and evaluation of activities and decision-making processes.

During this study the Samuel Hall research team has identified good practices across all country contexts that can support protection actors in developing effective and evidence-informed programmes for the protection of migrants with diverse SOGIESC.

Several good practices are linked to the need to train and sensitize the protection actors involved in SOGIESC-related issues, one of the main gaps identified in current protection programming available. Increasingly, guidelines on the protection of migrants with diverse SOGIESC, including IOM guidelines, underscore the importance of strengthening capacity development activities for protection actors.

Among the good practices selected, collaboration between international organizations, NGOs, SOGIESC diversity CSOs and CBOs was noted as important and the need to establish solid referral mechanisms across sectors and fields of activity, as well as developing shared SOPs was raised in different sections of the report.

For instance, CSOs who participated in this research established successful models of cooperation that brought together international organizations, local municipalities and civil society, to provide economic resources to support migrants with diverse SOGIESC. CSOs, in some contexts, also integrated holistic psychosocial health care that responded to the unique vulnerabilities and post-traumatic stress disorders experienced by migrants with diverse SOGIESC.

## 5.1 RECOMMENDATIONS FOR THE PROTECTION OF MIGRANTS WITH DIVERSE SOGIESC

### 1. Ensure that shelters and reception centres are inclusive of diverse SOGIESC

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- To international organizations:
  - Implement regular mandatory training and capacity development for all international and national staff and implementing partners' staff, on sensitivity to diverse SOGIESC and monitor and evaluate effectiveness of its implementation and evolution.
  - Develop links with relevant civil society organizations to improve access to services for migrants with diverse SOGIESC in reception centres and shelters.
  - Develop discreet, scattered, small scale alternatives to "camp-style", gender-segregated group accommodation.
- To authorities:
  - Facilitate ongoing protection efforts from CSOs and international organizations by dispersing funds and resources to meet their needs;
  - Provide accommodation to migrants with diverse SOGIESC regardless of their migratory status;
  - Ensure that accommodation for migrants with diverse SOGIESC are in cities where services are easily accessible by walking and public transport;
  - Implement workshops and trainings, for local and national authorities and officials, on sensitivity to diverse SOGIESC.
- To civil society:
  - Foster synergies between academia and CSOs to provide local knowledge, data and information on the specific needs of LGBTIQ+ migrants to shelters and reception centres, to facilitate the creation of safe physical spaces.

### 2. Raise awareness on diverse SOGIESC sensitivity to access employment and education

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- To international organizations:
  - Provide comprehensive information to migrants with diverse SOGIESC on training opportunities available to them in the country of destination, transit and origin;
  - Systematically assess the skills of migrants with diverse SOGIESC and link them with potential employers;
  - Facilitate social support groups, social activities and vocational training programmes in collaboration with CSOs.
- To authorities:
  - Develop SOPs for companies and businesses to foster inclusion and non-discrimination in the workplace towards migrants with diverse SOGIESC.
- To civil society:
  - Normalize a culture of SOGIESC sensitivity and organize awareness-raising activities among employers to encourage the employment of migrants with diverse SOGIESC and transgender migrants in particular.

### 3. Establish SOGIESC sensitive referral mechanisms

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- To international organizations:
  - Facilitate trust building between authorities and service providers and migrants with diverse SOGIESC.
- To authorities:
  - Improve or design legislation and policies addressing legal identity confirmation for transgender migrants to change their name and gender marker on legal documents.

- To civil society:
  - Develop referral mechanisms for beneficiaries who seek assistance and inform them on the capacity and programmes of various protection actors.

#### 4. Establish international protection procedures and referral mechanisms sensitive to SOGIESC diversity

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- To international organizations:
  - Work with CSOs and international organizations to contextualize SOGIESC diversity-sensitive RSD interview guidelines and questions across distinct linguistic, cultural and geographical contexts.
  - Improve identification of vulnerabilities of migrants with diverse SOGIESC, entailing to more efficient and better-informed referrals between relevant international organizations.
- To authorities:
  - Remove standardized elements of “credibility” during RSD procedures and instead adopt a nuanced approach that corresponds to the realities of diverse and intersectional contexts and is adapted to the uniqueness of each case.
- To civil society:
  - Develop referral mechanisms for beneficiaries who seek legal advice to relevant and inclusive organizations and lawyers.

#### 5. Ensure access to health-care services sensitive to diverse SOGIESC for migrants with diverse SOGIESC

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- To international organizations:
  - Train health-care workers, international organizations medical staff and implementing partners on diverse SOGIESC, including on how to address the specific needs of transgender individuals and on available referral pathways;
  - Use "safe space" imaging in areas where health-care providers have been sensitized and trained on health-care for persons with diverse SOGIESC.
- To authorities:
  - Provide government-administered health-care services with supplementary care that is sensitive to people with diverse SOGIESC through community-based organizations (CBOs).
  - Develop clear guidance for the provision of mental health therapies for people/migrants with diverse SOGIESC.
  - Ensure access to anonymous and free HIV testing centres, as well as free HIV and STIs treatment and prevention.
  - Ensure that LGBTIQ+ migrants can access SOGIESC-sensitive health-care services in rural and remote areas.
- To civil society:
  - Promote the use of SOPs for CSOs to accompany migrants with diverse SOGIESC to appointments with public health-care providers and collect their feedback afterwards.
  - Raise awareness on the health-care services available to migrants with diverse SOGIESC in the country of transit/destination/origin and on the fact that they can be accessed safely, without risking detention and/or deportation.
  - Conduct a mapping and circulate a list of health-care providers (for the different medical specializations) trained on diverse SOGIESC, to whom migrants with diverse SOGIESC can safely be referred.



## 6. Align return and reintegration programmes with the needs of migrants with diverse SOGIESC

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- To international organizations:
  - Develop practical resources to guide return and reintegration actors working with migrants with diverse SOGIESC (e.g. a dedicated toolkit can be integrated in the training package “SOGIESC and Migration” developed by IOM and UNHCR).
  - Allow a longer preparation phase in the host country and use “safe space” imaging to encourage migrants to disclose their diverse SOGIESC and develop a tailored return and reintegration plan.
  - Develop safe information on the actual risks in the countries of origin regardless of the existence of laws related to diverse SOGIESC, including risk of detention, harassment, presence of local support groups/systems.
  - Provide timely, unbiased and reliable information, so that migrants can make informed decisions and exercise their agency.
  - Respect for migrants' free, prior and informed consent to the specific return modality or options available.
  - Involve diverse SOGIESC CSOs in the country of origin to support the returnees' reintegration and develop a long-term reintegration plan.
  - Develop joint monitoring mechanisms including missions in the country of origin and host country and all the other actors involved in the return and reintegration process (e.g. diverse SOGIESC CSOs, development actors, relevant authorities).
  - Develop a monitoring and evaluation framework that includes specific indicators to monitor the reintegration outcomes of returnees with diverse SOGIESC.
- To authorities:
  - Have more ownership over return and reintegration programmes and develop guidelines at the national level to ensure the safe and dignified return and sustainable reintegration of migrants with diverse SOGIESC.
  - Increase funding for health and safe accommodation in the countries of origin.
- To civil society:
  - Refer migrants who wish to return to relevant CSOs and international organizations working in the country of origin and facilitate trust building with migrants, so they consent to this referral towards organizations in their country of origin.<sup>238</sup>

### 5.2 CROSS-CUTTING RECOMMENDATIONS FOR INTERNATIONAL ORGANIZATIONS

## 7. Raise awareness at institutional and structural levels to enable the long-term inclusion of migrants with diverse SOGIESC

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- Include visual representations of migrants with diverse SOGIESC in international campaigns to generate visibility of the target group as one that faces greater vulnerabilities, alongside women and children.
- Encourage knowledge production processes led by minority groups within the community who can represent themselves and help protection actors understand their specific needs.
- Raise awareness among LGBTIQ+ communities on the specific experiences, traumas and hardships of migrants with diverse SOGIESC and on how they differ from those of local LGBTIQ+ communities.
- Develop synergies with local governments to support migrants with diverse SOGIESC and use international organizations connection with the national government for this purpose.

<sup>238</sup> This report does not provide specific recommendations on resettlement and integration, as the data collected on this topic were limited and did not allow for developing informed recommendations.

- Foster linkages between protection actors, human rights actors and multilateral institutions to systematically monitor, document and report human rights abuses against LGBTIQ+ migrants.

## 8. Secure long-term funding to scale best practices for migrants with diverse SOGIESC identified in this report

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- Secure long-term funding for initiatives led by NGOs/CSOs specific for migrants with diverse SOGIESC – included in long-term institutional policies.
- Raise awareness among donors on the importance of funding programmes targeting migrants with diverse SOGIESC.
- Develop a long-term sustainability strategy in the design phase of protection programmes and provide a handover plan to implementing local partners, including but not limited to securing long-term funding or identifying local authorities with the capacity and the will to take over the main activities of the project.
- Develop LGBTIQ+ protection coordination bodies in migration settings, such as LGBTIQ+ Task Forces, to coordinate programming between relevant actors, strengthen referral networks and to make coordinated appeals for funding.

## 9. Develop synergies with private sector entities and employers to advocate for the hiring of migrants with diverse SOGIESC

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- Engage the private sector in the development of small loans programmes to support projects and businesses led by migrants with diverse SOGIESC.
- Ensure that alongside gender balance, employers maintain a diverse SOGIESC balance when hiring employees, with a specific emphasis on transgender migrants.

## 10. Reinforce intra and inter United Nations agency coordination and cohesion in support for migrants with diverse SOGIESC

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- Create working groups, specializing on different protection areas, between country offices that meet on a regular basis to share best practices and lessons learned on protection matters related to migrants with diverse SOGIESC.
- Reinforce regional coordination of United Nations country offices to remain cohesive and coordinated on regional migration programmes related to diverse SOGIESC.
- Monitor and evaluate the effectiveness of coordination efforts between United Nations agencies.

## 11. Develop standardized operational procedures to strengthen protection programmes for migrants with diverse SOGIESC

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- Develop internal guidance notes and SOPs using common indicators to mainstream protection programmes specifically for migrants with diverse SOGIESC across contexts and to compare and monitor and evaluate the protection systems of migrants with diverse SOGIESC.
- Adopt Accountability to Affected Population (AAP) guidelines and define the accountability elements that the organization is committed to.
- Have feedback and complaint mechanisms in place to gather feedback on the quality of the services provided by beneficiaries and reduce the possibility of violations by service providers
- Provide a space for migrants with diverse SOGIESC to participate in assessing their own needs, co-designing solutions and monitoring programmes aimed at improving their protection and inclusion in society.

## 5.3 CROSS-CUTTING RECOMMENDATIONS TO IMPROVE MIGRANT PROTECTION

### 12. Work on alternatives to detention for migrants with diverse SOGIESC

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- To international organizations:
  - Advocate for alternatives to detention, such as a community-based sponsorship system where migrants can reside at home or stay at reception centres.
  - Provide local knowledge, data and information on the specific needs of migrants with diverse SOGIESC to shelters and reception centres, to facilitate the creation of safe physical spaces, in coordination with civil society.
- To authorities:
  - Develop alternatives to detention, prioritizing migrants with diverse SOGIESC alongside other vulnerable groups.
  - Put in place and monitor the effectiveness of protection mechanisms for migrants with diverse SOGIESC.
  - Implement and monitor the effectiveness of training to detention guards and police authorities on how to protect LGBTIQ+ migrants.
- To civil society:
  - Provide an independent monitoring system to collect data on how migrants with diverse SOGIESC are protected/treated.

### 13. Ensure legal safety of migrants

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- Advocate for areas of intervention to alleviate barriers of legal immigration status when migrants seek services.
- Facilitate the dissemination of information on seeking legal immigration status and safety for migrants with diverse SOGIESC.
- Facilitate safe, legal pathways for migrant students and asylum-seekers with diverse SOGIESC whose request was rejected, who cannot return to their country of origin due to fears of State and community level discrimination and violence.
- Provide access to legal systems and judicial remedies in areas where migrants with diverse SOGIESC are residing.
- Issue “alternative” temporary documentation for transgender migrants that matches their details and gender identity, to facilitate their mobility, legal employment and access to services.

### 14. Align international treaties on human rights protection with emerging protection needs

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- Favour a broader interpretation of article 1(A) of the 1951 Refugee Convention and develop a case-law supporting the inclusion of migrants with diverse SOGIESC in other international instruments to protect their rights.
- Broaden the interpretation of the scope of the clause of article 1(A) of the 1951 Refugee Convention on belonging to a particular social group to further protect vulnerable groups of migrants.
- Advocate for international organizations and authorities to expand their references beyond Western conceptions of SOGIESC characteristics, so that migrants are not under pressure to reframe their diverse SOGIESC experiences to conform to mainstream expectations among institutional actors.

## 5.4 RECOMMENDED FURTHER AREAS OF RESEARCH

This last section identifies areas for further research and points to research areas that can, if conducted, provide information required to reinforce the protection and rights of migrants with diverse SOGIESC and to reinforce the actions undertaken on their behalf. Future research suggestions equally arise out of research limitations of this study which was undertaken in contexts of origin, transit and destination countries, leaving a gap in knowledge in these specific contexts. The research team proposes that future research examines specifically:

### Protection

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- Identification of the specific protection needs of generally under-represented groups within the SOGIESC spectrum, such as lesbian/bisexual-identifying women and intersex individuals.
- For migrants with diverse SOGIESC whose asylum application had been rejected, assessing return decisions and the application of RSD procedures and other legal pathways in case return to their country of origin is not an option.

### Reception capacities

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- Assessing the reception/accommodation capacity of authorities to better understand the needs of migrants with diverse SOGIESC.
- Researching the conditions of transgender migrants in reception/detention centres.

### Return

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- Monitoring the human rights of migrants with diverse SOGIESC in contexts of return.

### Reintegration

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- Monitoring and evaluating the reintegration outcomes of migrants with diverse SOGIESC
- Assessing the impact of self-invisibilization on sustainable reintegration.

# Annexes

# ANNEX 1.

Overview of the main protection challenges identified during the study and main international standards on protection of migrants with diverse SOGIESC

Main protection challenges identified during this study	International standards on protection of migrants with diverse SOGIESC
<p><b>Material and physical safety: Accommodation</b></p> <ul style="list-style-type: none"> <li>• Legal and social barriers to accessing shelters, leading to homelessness or life under precarious conditions.</li> <li>• Lack of inclusive reception centres for migrants with diverse SOGIESC, organized in gender binary divisions. This exposes migrants with diverse SOGIESC to abuse, discrimination and harassment by other migrants and/or staff members in reception centres.</li> <li>• High exposure to racial, gender and SOGIESC-based discrimination when accessing private housing.</li> </ul>	<p><b>Right to adequate standards of living</b></p> <ul style="list-style-type: none"> <li>• The right to an adequate standard of living (Article 11 ICESCR). This entails the right to adequate food, clothing and housing and to the continuous improvement of living conditions.</li> <li>• Yogyakarta Principle 14 provides that States shall take all necessary legislative, administrative and other measures to ensure equal access, without discrimination on the basis of diverse SOGIESC, to adequate food, safe drinking water, adequate sanitation and clothing.</li> </ul>
<p><b>Material and physical safety: Detention</b></p> <ul style="list-style-type: none"> <li>• Transgender women face greater risks of abuse and violations of their human rights, being usually held in detention facilities reserved for men and with no adequate protection policies and measures taking into account their needs.</li> <li>• Migrant sex workers are subject to disproportionate arbitrary arrests and mistreatment during pre-detention procedures and in detention</li> <li>• Health care in detention settings is non-existent or of very poor quality and does not cover specific needs of migrants with diverse SOGIESC.</li> </ul>	<p><b>Protection risks during detention</b></p> <ul style="list-style-type: none"> <li>• The right to Liberty and Security. All people have the right to not be subjected to arbitrary arrest or detention (Article 9.1 ICCPR). As such, criminalization of irregular migration is not a legitimate objective by the State to justify detention.<sup>239</sup></li> <li>• Yogyakarta Principle 7 States that arrest or detention on the basis of sexual orientation or gender identity, whether pursuant to a court order or otherwise, is arbitrary. The text urges States to “maintain accurate and up to date records of all arrests and detentions” as well as ensure oversight of all places of detention mandated to identify arrests potentially motivated by sexual orientation or gender identity.</li> </ul>

<sup>239</sup> IDC, Position Paper on LGBTIQ+ in Immigration Detention, (June 2016).

<p><b>Material safety and physical safety: Access to employment and risks related to informal work</b></p> <ul style="list-style-type: none"> <li>• Precarious migration status is the main barrier to access employment and education. Lack of access to legal documents excludes migrants from formal employment and exposes them to the risk of exploitation and abuse.</li> <li>• Transgender people experience restricted access to the labour market due to transphobia and xenophobia and often find themselves relegated to jobs in certain work sectors, such as hairdressing salons or restaurants for example.</li> <li>• Groups of migrants with diverse SOGIESC – especially transwomen and gay men – disproportionately resort to sex work, due to a lack of choice or as a short-term solution to support themselves materially, pay off debt or finance the next steps in their migration journey.</li> </ul>	<p><b>Labour rights</b></p> <ul style="list-style-type: none"> <li>• ICESCR provides that States parties should ensure that the right to work (Article 6) the right of everyone to the enjoyment of just and favourable conditions of work (Article 7) will be exercised without discrimination of any kind (Article 2.2). As such, “States parties should ensure that a person's sexual orientation is not a barrier” to realizing these rights and “gender identity is recognized as among the prohibited grounds of discrimination” (General comments No 20: Non-discrimination in economic, social and cultural rights).</li> <li>• Regarding all forms of exploitation and trafficking, Yogyakarta Principle 11 ask States to adopt measures designed to prevent trafficking, which address the factors that increase vulnerability, including various forms of inequality and discrimination on the grounds of actual or perceived sexual orientation or gender identity, or the expression of these or other identities.</li> </ul>
<p><b>Legal safety: Barriers to obtaining legal status and access to protection mechanisms</b></p> <ul style="list-style-type: none"> <li>• Obtaining legal migration status is crucial to accessing basic rights, such as accommodation, employment, education, or physical or mental health care. Migrants with diverse SOGIESC face legal, administrative and financial barriers to achieve legal status.</li> <li>• Transgender migrants face additional barriers in changing their names and gender markers on legal documents.</li> <li>• Precarious legal status is linked to limited access to local and national justice mechanisms in transit and destination countries.</li> </ul>	<p><b>Lack of proper individual documentation</b></p> <ul style="list-style-type: none"> <li>• Yogyakarta Principle 31 establishes that “[e]veryone has the right to legal recognition without reference to, or requiring assignment or disclosure of, sex, gender, sexual orientation, gender identity, gender expression or sex characteristics” and that everyone “has the right to change gendered information in such documents.” States must therefore make available a “quick, transparent and accessible mechanism that legally recognizes and affirms each person's self-defined gender identity” with “a multiplicity of gender marker options” and ensure that “immigration status or other status is not used to prevent a change of name, legal sex or gender.”</li> <li>• The right to respect for family and private life (Article 8 ECHR) is violated when individuals are not able to legally change their name, gender marker and photo on identity documents and corresponding registries on the basis of self-determined gender-identity.<sup>240</sup></li> </ul>

<sup>240</sup> ECtHR, *Y.Y. v. Turkey*, App. No. 14793/08 (24 August 2016); A.P., *Garçon et Nicot c. France*, Apps. No. 79885/12, 52471/13 and 52596/13 (6 July 2017).

## Legal safety: Access to international protection

- Level of access and quality of RSD procedures, as well as the level of protection of migrants with diverse SOGIESC, varies greatly depending on the country and the authority in charge of the procedure.
- Migrants who do not qualify as refugees and whose status based on the RSD procedure is rejected face challenges to obtain protection in the host country.
- The burden of proving one's SOGIESC diversity rests on migrants and their ability to meet certain SOGIESC diversity standards during asylum interviews.

## International protection

- The principle of non-refoulement prohibits States from removing individuals to countries when there are grounds for believing that the person would be at risk of serious human rights violations.<sup>241</sup> The principle is based on the 1951 Refugee Convention (article 33) and is included explicitly in several other instruments such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (article 3), the American Convention on Human Rights (article 22), the International Convention for Protection of All Persons from Enforced Disappearances (article 16), the Charter of Fundamental Rights of the European Union (article 19).<sup>242</sup>
- Yogyakarta Principle 23 establishes that a State may not remove, expel or extradite a person to any State where that person may face a well-founded and serious human rights violation on the basis of sexual orientation or gender identity.
- Yogyakarta Principle 23 advocates for an asylum process that ensures that diverse SOGIESC are accepted grounds for recognition of refugee status and asylum and that no policy or practice discrimination exists against applicants on those bases.
- Courts in various jurisdictions have held that asylum-seekers cannot be refouled because they can change or conceal their identity to avoid persecution.<sup>243</sup>
- Human dignity (Article 1 of the European Union Charter on Fundamental Rights) is violated when States use intrusive and disproportionate methods to verify the basis for a claim related to diverse SOGIESC.<sup>244</sup>

<sup>241</sup> See also: IOM, Information Note on the Principle of Non-Refoulement (April 2014), 2, available here (accessed 30 August 2022); 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, United Nations Doc. HCR/GIP/12/01 (23 October 2012), para 25. See, e.g. Committee against Torture, *J.K. v Canada*, CAT/C/56/D/562/2013 (finding that the applicant's involvement with LGBTQ+ oriented organizations and the applicant's risk of being detained and subsequently subject to physical or psychological abuse was sufficient to find that a State had a duty to not return the applicant); Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, U.N doc. A/74/181, (17 July 2019).

<sup>242</sup> In addition, the non-refoulement obligation derives from a number of provisions in other international instruments: the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights, ECHR), the African Charter on Human and Peoples' Rights (the African Charter), the Convention on the Rights of the Child (CRC), the International Covenant for the Protection of Civil and Political Rights (ICCPR) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW). Often, non-refoulement obligations are expressed in the general comments or case law of these treaties. Non-refoulement is also a component of many extradition treaties.

<sup>243</sup> *X (C-199/12)*, *Y (C-200/12)* and *Z (C-201/12) v. Minister voor Immigratie en Asiel* (Court of Justice of the European Union) (Judgment of 7 November 2013), paras. 70-71.

<sup>244</sup> *Joined cases A, B and C v Staatssecretaris van Veiligheid en Justitie C-148/13 to C-150/13* (Court of Justice of the European Union) (2 December 2014) paras. 64-65.



### Health: Access to health care

- Access to health care tends to be limited to emergency and basic needs, regardless of the precarious status of migrants with diverse SOGIESC. Administrative barriers to obtaining State medical aid, delays in obtaining medical appointments and the costs of care can all cause significant disruptions and delays in providing patients with the necessary care.
- Mental health and specific needs of transgender individuals are insufficiently addressed in all contexts, as they tend to lack a thorough understanding of SOGIESC issues and might themselves be homo/bi/transphobic.
- Transgender people face again additional difficulties compared to the broader group of migrants with diverse SOGIESC. Overall, medical staff lack of knowledge on the medical needs of transgender individuals, such as hormone therapy. In addition, trans migrants who migrated in the midst of their transition experience difficulty accessing continuous care and may resort to auto medication.

### Right to health

- Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health,” including migrants with diverse SOGIESC (Article 12.1 ICESCR).
- All persons, regardless of gender identity or sexual orientation, are entitled to the same legal protection and access to sexual and reproductive health services and a State is in violation of the right to sexual and reproductive health when it fails to take preventative measures (General comments No 22: on the rights to sexual and reproductive health).
- Compulsory requirement of sterility in order to have access to medical gender confirmation treatment, as well as access to legal gender recognition, is a violation of the right to respect for family and private life (Article 8 ECHR).







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