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STUDY ON

THE SITUATION OF LGBTI PEOPLE WITH INTERNATIONAL PROTECTION NEEDS IN NORTHERN CENTRAL AMERICA

RECOMMENDATIONS DOCUMENT

STUDY ON HUMANITARIAN ACTION



STUDY ON THE SITUATION OF LGBTI PEOPLE WITH INTERNATIONAL PROTECTION NEEDS IN NORTHERN CENTRAL AMERICA RECOMMENDATIONS DOCUMENT

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Notice

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UNHCR / Tito Herrera. Street art reflects the crime that ravages the city of San Pedro Sula, Honduras. In 2016, the city came second in the list of cities with the highest homicide rate in the world.

Presentation of the study: objectives and methodology

CONTEXT

This study is a product of Spain's commitment to strengthening its collaboration with the Office of the United Nations High Commissioner for Refugees (UNHCR) in order to address the issue of forced displacement as part of the development and implementation of the commitments adopted in the New York Declaration for Refugees and Migrants in September 2016. On the basis of this Declaration, UNHCR presented a proposal for a Global Compact on Refugees to be included in its 2018 annual report to

the General Assembly, which includes and is based on the Comprehensive Refugee Response Framework (CRRF) and whose content has been enhanced by the practical experiences of applying the CRRF in 14 countries and through two regional approaches, one of which is the Comprehensive Regional Protection and Solutions Framework (CRPSF) for Central America and Mexico.

The Spanish Agency for International Development Cooperation (AECID) and UNHCR have collaborated for over two decades in the region of Central

America (CA) and Mexico, under a Collaboration Framework Agreement entered into between the Kingdom of Spain and UNHCR in 2002. On this occasion, the collaboration between AECID and UNHCR seeks to support the implementation of the regional contribution of CA and Mexico to the Global Compact on Refugees, and is focused on the response regarding the protection of people affected by violence generated by gangs, drug traffickers and other actors in the region, which is forcing many people to become displaced within their own country, or to seek international protection in another country. This contribution is reflected in the commitments that the States of the region and other stakeholders are working towards within the CRPSF, which has informed the preparation of the Global Compact on Refugees.

UNHCR considers that the development of a regional comprehensive response framework in CA and Mexico represents an excellent opportunity to put into practice the existing political commitments, to identify progress, gaps and priorities, as well as to develop a comprehensive plan for mobilizing resources and cooperation.

OBJECTIVES

One of the areas for improvement identified in the current CRPSF (as regards the regional application of the CRRF in CA and Mexico), increasing the focus on groups in vulnerable situations, is the international protection of people with different sexual orientations and gender identities (referred to hereinafter in this document

as “LGBTI people”). In this area, and through this project, the ultimate objective of the collaboration between AECID and UNHCR is to improve the international protection response received by LGBTI people, through the formulation of recommendations aimed at improving the CRPSF and informing the Global Compact on Refugees, paying particular attention to the opportunities and challenges surrounding the local integration of LGBTI people with international protection needs in the region.

The object of this “Study on the Situation of LGBTI People with International Protection Needs in Northern Central America (NCA) and Mexico” is, therefore, to substantiate these recommendations,

- provide greater knowledge of the situation of LGBTI people from NCA who flee to Guatemala and Mexico, and the impact of the violence surrounding the forced displacement of these people;
- analyse the local integration responses to LGBTI people with international protection needs in two of the countries that have joined the CRPSF, namely, Mexico and Guatemala;
- specify regional and cross-border aspects which may be of interest and of use for the CRPSF;
- present recommendations on policy and operations that could enable the orientation and improvement of the protection response in the local integration of LGBTI people in forced displacement in the region.

METHODOLOGY

The study is based on an extensive review of the literature and on the analysis of the data collected during two periods of qualitative empirical fieldwork, as well as in two end-of-project workshops in which the preliminary results of the analysis were discussed and compared.

The review of the literature primarily covered publications by international bodies and national and international organizations on the situation of refugees in NCA and Mexico and, in particular, that of LGBTI refugees or asylum-seekers.

The empirical work was carried out during February 2018 in Guatemala and March 2018 in Mexico. The qualitative work comprises interviews and discussion groups with people from the group being studied (21 people in 20 interviews); interviews with NGOs, government institutions and UNHCR offices involved with the population being studied (61); observations and visits at hostels, deportation centres and sex work areas (14). As can be seen in the tables in Appendix 1, the study group interviewed included certain individuals who were also in comparison groups (Tables 1.a and 1.b). The comparison groups are formed by people sharing one, but not all, of the characteristics of the study group (whether because they are heterosexual, cisgender people with international protection needs, or because they are LGBTI people who are nationals without international protection needs). The purpose of the comparison groups is to highlight the interaction of the different aspects that disadvantage LGBTI people with international

protection needs, identifying points of similarity and difference between the conditions caused by displacement and which therefore affect asylum-seekers and refugees that are not LGBTI, those deriving from discrimination against LGBTI nationals and foreigners alike, and those affecting foreigners or people of a specific national or ethnic origin. The comparison groups also allow us to assess how international protection solutions for LGBTI people can be incorporated into asylum policies and into national policies for combating discrimination against LGBTI people. Of the 21 people interviewed, 18 were LGBTI and three were heterosexual and cisgender; of these same 21 people, 17 were categorized as persons-of-concern to UNHCR, and four were nationals of the country without international protection needs. The list with the summary of each interview, and the profile description of the people interviewed are included in Appendix 2.

The empirical work was not restricted to the capitals of the countries studied, and efforts were made to gather data that reflected the diverse protection needs of different geographical populations, paying attention to the urban/rural variable and to the specific circumstances of trans-border regions. In Guatemala the interviews were held in Guatemala City, Quetzaltenango, Tecún Umán and Petén; in Mexico they were carried out in Tapachula, Mexico City, Saltillo and Guadalajara.

Following an initial stage focused on the systematization and analysis of the data, two end-of-project workshops were held to discuss and compare the results, on 7 and 9 May 2018, in Mexico City and Antigua Guatemala, respectively.

The organizations and agencies that took part in the empirical work were invited to the workshops, which were participatory in nature. A written script was delivered to facilitate the interaction and the subsequent communication with the research team. The purpose of the workshops was to share and compare the preliminary results of the analysis in a less individualized encounter than the interviews, and to hold a preliminary discussion on how to incorporate possible recommendations into the CRPSF.

ANALYTICAL FRAMEWORK

This study considers the right to asylum as a human right. This means that the human-rights based approach has been adopted¹ to analyse the displacement of asylum-seekers and refugees, as well as the response of the public authorities or national and international civil society as regards the displacement, hosting and integration of these people.

It also means that asylum is understood as a right established by a set of international standards, both universal and regional in nature, which give rise to obligations for the States that ratify them. While acknowledging that the displacement of large numbers of refugees frequently constitutes a humanitarian emergency, this report is primarily focused on the development of a sustainable response and lasting solutions,

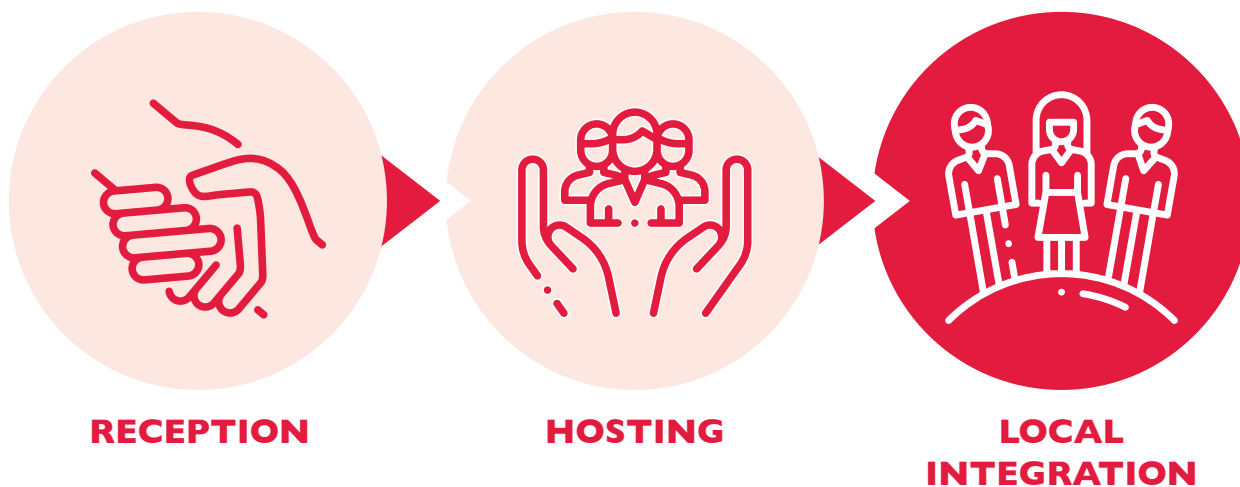
in which international bodies and civil society stakeholders can collaborate with the State, while the latter continues to hold ultimate responsibility for adopting and implementing policies that enable the right to seek and enjoy refugee status to be effectively exercised, pursuant to Article 14 of the Universal Declaration of Human Rights (1948).

In this regard, we have primarily examined the response of the public authorities (State/Federal or sub-State administration) during the different stages into which the right of asylum can be broken down: reception, hosting and integration.

These three stages are delimited by two procedural moments: the submission of the application for asylum separates the reception stage from the hosting stage, and the decision regarding the application ends the hosting stage and opens up a number of alternatives. Traditionally, voluntary return, resettlement and local integration have been considered the lasting solutions to which the refugee population may have access, in addition to other temporary or exceptional mechanisms. If the decision is negative and the appeal is rejected, the options are deportation or remaining in the territory in an irregular situation.

The ultimate goal of the study is to analyse the **conditions for the local integration of LGBTI refugees** (stage 3: local integration).

1. The human-rights based approach is a conceptual framework in which the plans, policies and processes for cooperation and development are anchored in a system of rights and the corresponding obligations established by international law. The human rights-based approach is linked not only to the content of rights and obligations but also the procedure, through participatory processes, transparency and accountability. Office of the United Nations High Commissioner for Human Rights. <https://www.ohchr.org/Documents/Publications/FAQsp.pdf>.



However, as reflected by the interconnecting arrows in the image above, we consider that the prior stages of reception and hosting, and—going back even further—the routes and means of transport by which people flee their places of origin, have long-term impacts on people’s possibilities and capabilities for integrating successfully in the society of the receiving country. Consequently, we will address the integration of the LGBTI population with international protection needs as a dynamic and cumulative process, in which protection mechanisms must be activated from the outset to guarantee, in so far as possible, a satisfactory result.

In this sense, as regards the “reception” stage, the study is focused on access to the territory, identification of an international protection need (including the identification of special and differentiated needs), and information on and access to the system of international protection and humanitarian assistance. As regards the second stage—“hosting”—the study highlights certain fundamental aspects for facilitating

subsequent integration, such as the creation of safe spaces, accompanying asylum-seekers throughout the process, facilitating the issue of documents to asylum-seekers, and supporting them in accessing employment and services.

Due to the generally provisional and precarious status of asylum-seekers, deliberate interventions aimed at local integration are not usually specified during the hosting period. Consequently, the third stage, that of “integration”, usually requires the determination of refugee status or the granting of complementary protection following a positive decision on the application for refugee status or for subsidiary international protection.

Integration is one of the most controversial and highly debated terms in the social sciences and in public policy. In this study, “integration” refers to public and private interventions (and the results thereof) aimed at guaranteeing LGBTI refugees full access and enjoyment of their rights, as well as to the mechanisms of inclusion and participation intended

to prevent the marginalization or social, economic and political exclusion of these people in the host society. Although there are multiple areas and experiences of integration, in this study we have prioritized the most common vectors of integration (employment, housing, health, education) as identified in the diagnostics we have carried out in recent years through consultations with refugees and asylum-seekers.

To improve our knowledge of the difficulties surrounding the integration of the refugee population, especially the integration of LGBTI people, monitoring during the third stage is needed to enable the comparison of indicators on integration levels in the medium and long term.



UNHCR / Sebastian Rich. LGBTI people flee from violence and persecution in Central America. A young man of 27 years has found refuge in southern Mexico, after fleeing his home in Honduras.

Recommendations

Taking into account the ultimate purpose of this study, namely contributing to the implementation of the Global Compact, the recommendations will be structured in accordance with said purpose, following the structure set forth in the CRPSF.

The CRPSF national chapters have structured their priority strategies and actions around four pillars: Pillar 1 Reception and admission; Pillar 2 Immediate and ongoing needs; Pillar 3 Assistance to countries and communities receiving refugees; and Pillar 4 Durable solutions. Moreover, as can be seen in the

graph in Appendix 3, the CRPSF identifies a series of cross-cutting strategies and actions, which include the strengthening of protection systems for groups at risk, as is the case of LGBTI people.

Not all of the pillars are equally relevant to the goals set forth in this study; however, the study ultimately includes recommendations for all of the pillars, insofar as they could be conducive to the integration of LGBTI refugees.

Following the CRRF's indications on multi-stakeholder cooperation (item

2)², the goals highlighted in the CRPSF also include bilateral cooperation—especially south-south cooperation—and international cooperation, the participation of regional and international organizations in multilateral proposals to support national plans, and the participation of relevant civil society stakeholders operating in the framework of regional networks. For all these reasons, these recommendations, albeit addressed primarily to States as the basic implementers and guarantors of the right to asylum—highlight the areas of cooperation with civil society organizations working both to assist migrants and refugees and to combat discrimination and violence suffered by LGBTI people. Moreover, following the CRPSF’s indications, the recommendations in this study will be structured around the national, regional and cross-border spheres.

PILLAR I. RECEPTION AND ADMISSION

1.1 Establish a public, proactive and effective reception and admission policy. To build an effective international protection system it is essential to **train all the staff working for the State who are in contact with migrants, refugees, persons in transit, or returnees.** This training must pay particular attention to law enforcement staff, so that they may detect cases of need for international protection (including the detection of said need among LGBTI people), inform the persons

concerned of their rights, and refer them to the competent authorities for assessment of their cases. This, together with the establishment of monitoring mechanisms for the competent authorities, would contribute to monitoring any **practices that discourage** LGBTI people from seeking international protection or that push them to accepting “voluntary” return to their countries.

- **international organizations and civil society organizations** have experience and best practices in general training on the right to asylum and in more specialized training on recognizing and responding appropriately and respectfully to LGBTI people.

1.2 Disseminate information on the right to asylum and on the procedure to access the international protection system. This must include specific information on persecution on the grounds of sexual orientation and gender identity, both in written media (information published on posters, on social media or in advertising campaigns) and in information given orally to potential asylum-seekers.

- The dissemination of information would be more effective if it had a **transnational scope**, covering the international routes used by asylum-seekers, and if the States collaborated by strengthening the work already being done by **civil society organizations and by international organizations.**

2. The CRRF considers the contribution of a great many stakeholders in protecting asylum-seekers and refugees to be relevant, including national and local authorities, international organizations, financial institutions, regional co-operation organizations and mechanisms, civil society organizations, religious organizations, universities, companies, the media, and refugees themselves.

- **International organizations** have the specific commitment in this area to promote forums for civil society organizations from different States, as well as to disseminate best practices at the regional level among civil society organizations from different States.

I.3 Offering alternatives to detaining asylum-seekers is a priority strategy in the CRPSF. In the case of the LGBTI population, this commitment should be taken further and **the principle of exceptionality should be applied to the use of detention**, given the aggravated risk of acts of aggression and violence, including sexual violence, suffered by LGBTI people both by other detained migrants and by staff. Even in exceptional cases of detention, minimum security conditions and effective access to procedures for reporting acts of aggression and violence to the competent authorities should be guaranteed.

I.4 Make procedures for seeking asylum **more flexible**, enabling asylum-seekers to join the workforce, be relocated in the event of danger (and not only after very serious incidents have occurred), and access medical treatment.

I.5 Promote and **guarantee security and safe transit** for asylum-seekers and for those moving through a territory to seek asylum in another country.

This recommendation has:

- a **national dimension** with regard to the staff and equipment of law enforcement services to address the violence of criminal groups. In the case of the LGBTI population it is

equally important to have another strategy aimed at combating acts of extortion, aggression and violence by staff and authorities. This strategy requires training on human rights, the rights of LGBTI people, and raising awareness of xenophobia, homophobia and transphobia. Also necessary are actions allowing for **reporting mechanisms and access to justice**, not only through criminal prosecution but also through inspection and monitoring mechanisms by competent authorities in the field of non-discrimination, promoting the transformation of xenophobic, homophobic and transphobic attitudes in law enforcement and reducing impunity for said attitudes and behaviours.

» In this sphere, **civil society organizations** can receive claims and complaints and collaborate with the authorities (through what are known as “shadow reports”, for example) to promote monitoring and control mechanisms (actions to monitor authorities carried out by public institutions responsible for defending human rights, in addition to any legal recourse to which the victims may be entitled).

- a **transnational/cross-border dimension** entailing **cooperation** with relevant civil society stakeholders, consisting in **establishing cooperation mechanisms or protocols** among protection networks in the countries along the migratory route and the authorities responsible for international protection in the

countries of origin, transit and destination, in order to guarantee **accompanied transit for persons in situations of extreme vulnerability** to exploitation, trafficking and violence, such as LGBTI people. These would be bi-cross-border cooperation protocols between States (border authorities), with possible accompaniment by **UNHCR and civil society organizations** so that those persons needing international protection, in vulnerable situations, and covered by a protocol, may cross the border at the legally authorized crossing points and be directly referred to the authorities responsible for processing asylum applications, thus avoiding the risks involved in clandestine crossings, and detention.

1.6 Collect disaggregated data on asylum applications on the grounds of violence and discrimination against LGBTI people. Data on persecution on the grounds of sexual orientation or gender identity should be collected both when the application is submitted and when the decision is issued.

1.7 Generate disaggregated statistics / include in statistics disaggregated data on reasons for persecution involving gender, sexual orientation and gender identity, both in the applications and in the decisions regarding those applications. This type of data would provide information about how many applications of this type are submitted, their percentage with regard to all applications, and their variation over time. It would also make it possible to assess whether the rates of admission, rejection or withdrawal are in line with applications in general.

PILLAR 2. IMMEDIATE AND ONGOING NEEDS

2.1 Establish a public policy for reception and hosting. States must create international protection systems that go beyond processing applications and providing documentation. Reception, hosting and integration of refugees are part of the right to asylum. States may seek the collaboration of international organizations and civil society organizations to guarantee these material dimensions of the right to asylum, but they cannot neglect their duty or delegate their responsibilities. States will consider, with criteria of proportionality and on the basis of the available resources, how to use the budget earmarked for regulating migratory flows and allocate part of it to meeting the needs of migrants, asylum-seekers, refugees and returnees, both directly and by providing technical and financial support for organizations working in this sphere.

2.2 Establish specific care models at centres for social assistance and specialized care of child and adolescent asylum-seekers and refugees, to guarantee the fulfilment of the protection needs of LGBTI children and adolescents, in particular transgender adolescents, and prevent their discrimination on the grounds of sexual orientation or gender identity. Provide **specific training** on LGBTI children and adolescents to all persons working in contact with children and adolescents who are in transit, asylum-seekers, refugees or returnees.

2.3 Establish safe and discrimination-free spaces. In the case of the LGBTI population, a priority action for public policy and coordinated action with relevant actors in

the field of protection is the creation of safe and discrimination-free spaces. This recommendation does not only involve actions to **adapt spaces**, but, above all, to **train and raise awareness among all the staff** and volunteers working at centres, on human rights, LGBTI people's rights, and combating homophobia and transphobia, as well as to establish **zero-tolerance policies** with regard to homophobic or transphobic attitudes and behaviours of other migrants hosted at the centres. Within the coordination of protection networks, another possible measure would be to **establish monitoring and feedback protocols and mechanisms regarding discrimination**, including discrimination micro-practices and violence, including symbolic violence, against LGBTI people in these spaces, as well as spaces to share best practices.

- To the extent that the hosting of asylum-seekers is in the hands of **civil society organizations**, creating safe and respectful places, and designing proactive antidiscrimination policies in shelter facilities, zero-tolerance protocols, and monitoring and corrective mechanisms regarding discrimination corresponds to those that accept this responsibility, to the networks of which they are part, and to the organizations supporting them.

2.4 Guarantee access to healthcare, including sexual and reproductive healthcare for LGBTI people who are in transit, asylum-seekers or refugees beyond treatment of HIV or other serious sexually transmitted infections. This requires **specific training on the health and sexual health of LGBTI people** in healthcare centres, to eradicate

prejudice and stereotypes and promote an inclusive vision of healthcare. It also requires **guaranteeing access by LGBTI asylum-seekers and refugees** to specific centres and treatments that may exist in the country.

- **Civil society organizations** fighting against the discrimination and social marginalization of LGBTI people have experience and best practices in training healthcare staff. Authorities can foster inter-sector panels or forums to facilitate knowledge sharing.

PILLAR 3. ASSISTANCE TO COUNTRIES AND COMMUNITIES RECEIVING REFUGEES

3.1 Strengthen the institutional response and coordination among the different administrative systems' areas and levels of authority involved in integrating refugees, and, to the extent possible, asylum-seekers, to prevent **bureaucratic loopholes and contradictions** that may lead to protection gaps or make it impossible to exercise rights. Even though this recommendation affects the entire refugee population, it must be taken into account that the impact of a bureaucratic standstill preventing an LGBTI person from accessing employment or medical treatment may mean that this person may lapse into marginalization, which is more difficult to exit.

- **Civil society organizations and international organizations** providing assistance to or accompanying asylum-seekers and refugees have first-hand knowledge of the different standstill situations that may lead to prejudice. By fostering inter-sector panels or forums, public authorities can facilitate

the monitoring and evaluation of international protection regulations and their impact on the final beneficiaries.

3.2 Design and implement specific policies and measures supporting non-discriminatory and inclusive access to education/training, healthcare and housing for LGBTI refugees. Promote universal access through the anti-discriminatory interpretation of healthcare, housing and education as human rights, and, as the case may be, under the protection of the country's constitutional texts and case-law. Combating the discrimination suffered by LGBTI people in accessing resources for local integration (such as training, housing, healthcare and employment) requires **general policies on equality and inclusion**, as well as **mechanisms with concrete and specific measures to promote opportunities, support and accompaniment**, to make it possible to overcome both the effects of past discrimination and the existing prejudice and discrimination in the host society.

- The design and implementation of anti-discrimination policies will have greater potential for impact if they are based on **participatory and consultation procedures** with civil society organizations involved in defending the rights of LGBTI people, refugees, asylum-seekers and returnees, or human rights in general.

3.3 Ensure that LGBTI refugees have access to and enjoyment of rights and policies against discrimination and violence, including sexual and gender based violence (SGBV), as well as rights providing access to legal changes and medical treatment for transgender people. Utilize international interpretations of access to the right to health, from a human rights perspective.

3.4 Support coordination with and among the relevant civil society stakeholders in the fight against discrimination of LGBTI people, so that they may include the specific situations of refugees on their agendas, and so that States can strengthen these organizations through the allocation of financial resources, among other means.

3.5 Promote non-discriminatory and non-stereotypical access to the labour market, through recognized vocational training courses, and with measures for promotion and access to opportunities, especially measures aimed at offering opportunities to abandon survival sex work.

- In this recommendation there are spaces for **public-private collaboration** among authorities (who promote public policies by offering and recognizing qualifications, or by implementing tax or administrative measures to support hiring people from underprivileged groups, etc.), employers' organizations, and associations specializing in sexual diversity.

3.6 Establish and support public-private collaboration programmes, with business associations that foster LGBTI-inclusive companies or with LGBTI employers' associations, so that they may include refugees in their lists or activities, by creating and supporting forums, or through grants for hiring programmes and initiatives, for example.

- **Civil society organizations** assisting asylum-seekers, refugees and returnees may also establish collaboration programmes with this type of business association, as well as with associations specializing in sexual diversity that could accompany and form part of local integration processes.

PILLAR 4. DURABLE SOLUTIONS

4.1 Strengthen inter-ministerial and inter-institutional coordination to include LGBTI asylum-seekers and refugees in sector-based policies: children and youth, children and youth at risk of social exclusion, persons with disabilities, persons living with AIDS or HIV, indigenous peoples, etc.

4.2 Include and create promotion and equal opportunity programmes for LGBTI refugees, asylum-seekers and returnees among public and private programmes for social or employment inclusion, programmes to promote entrepreneurship, etc.

4.3 Promote best practice codes in the media to combat stereotypes and stigma associated with LGBTI migrants and refugees, in particular with transwomen sex workers.

4.4 Strengthen relocation programmes in the host country in areas offering greater opportunities for decent, quality jobs, and lower rates of violence and discrimination against LGBTI people. These relocation programmes may be designed to be **activated prior** to the finalization of the asylum application procedure, when it is considered that, for subjective or environmental reasons, staying in the place where the procedure is being conducted constitutes a risk for the applicant's safety or future integration.

CROSS-CUTTING RECOMMENDATIONS

1. Ensure that data collection is respectful of the gender identity and sexual orientation of asylum-seekers and refugees, both in the processing of asylum applications and in access to services and the receipt and processing of complaints and claims. The indiscriminate presence of checkboxes on sexual orientation or sexual identity in the documentation of procedures is discouraged. However, transgender people should always be allowed to use their social name in communications with the authorities or with relevant stakeholders. Documents issued to transgender refugees should be issued with the name and gender marker with which they identify, provided that the country's laws so allow, without any discrimination on the grounds of national origin (foreign).

2. Carry out periodic studies on the integration of LGBTI refugees, in collaboration with the universities and research centres that provide a gap analysis and best practices and that may contribute to improving integration policies.



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