



**Submission for the Call for Inputs: Protection against violence and discrimination based on sexual orientation and gender identity in relation to forced displacement**

Submitted by **Global Action for Trans Equality**

in collaboration with **Unbreakable Love** and **The Fruit Basket**

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Founded in 2009, Global Action for Trans Equality (GATE) is an international advocacy and expert organization focused on gender identity and expression. GATE works towards justice and equality for trans and gender diverse communities. Rooted in our movements, we collaborate with international, regional, and national strategic partners to ensure access to resources, knowledge, and decision-making spaces.

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Unbreakable Love (UBL) is a refugee trans-women-led human rights organization that advocates for the rights, equal treatment and dignity of trans women refugees, particularly trans sex workers in Kenya.

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The Fruit Basket (TFB) is a grassroots organization dedicated to advocating for the rights, legal recognition, safety, dignity, and social inclusion of LGBTQI+ refugees and asylum seekers. Based in Johannesburg, South Africa, TFB provides a lifeline to those facing displacement, discrimination, and legal barriers through safe housing, advocacy, and community support.

## 1. Introduction

Global Action for Trans Equality submits this report to the call for inputs on Protection against violence and discrimination based on sexual orientation and gender identity in relation to forced displacement by the Independent Expert on sexual orientation and gender identity to inform his thematic report. This report is primarily based on data and findings of two reports developed by Unbreakable Love (Kenya) and The Fruit Basket (South Africa). GATE worked with its partners, thereby providing an evidence-based account of their respective reports:

- *Vulnerability Amplified: Assessing the Needs of LGBTI+ Refugees in South Africa* (Cammainga, de Gruchy, & Marnell, 2022/2023)
- *Human Rights Violations Against Transgender Asylum Seekers and Non-Gender Conforming Individuals in Kenya* (Unbreakable Love-UBL, 2024)

Additionally, this submission also draws on available academic and other civil society literature to argue for enhanced legal, social, and humanitarian protections. This report highlights the compounded risks trans and gender diverse persons encounter throughout the displacement cycle and provides recommendations to address these challenges.

## 2. Overview of Trans and Gender Diverse Forced Displacement

Trans and gender diverse individuals are forced to flee their countries for multiple reasons: pervasive transphobia, attacks by growing anti-gender and anti-rights movements, state-sponsored persecution, and criminalization of non-cisnormative gender expressions. Despite global legal reforms that decriminalize same-sex relations and trans identities in many countries, violence and discrimination persist.

Trans persons often experience:

- **Structural Vulnerabilities:** Legal systems frequently ignore gender diversity. Even when laws exist, they are implemented inconsistently. The lack of legal gender recognition facilitates discrimination and violence experienced by trans and gender diverse individuals. (Cammainga B, 2024).
- **Intersectional Discrimination:** Many trans refugees also belong to racial, ethnic, or socioeconomically marginalized groups, further compounding their exclusion (Cammainga et al., 2023; Meyer, 2003).
- **Economic Exclusion:** Denied access to formal employment and social services, many trans asylum seekers are forced into survival strategies such as sex work (Cammainga, 2019).
- **Insensitive Policies:** In many cases when LGBT-specific asylum policies exist, they are entered on lesbian, gay and bisexual individuals. Also, asylum adjudicators often rely on outdated criteria when evaluating trans asylum claims, requiring trans applicants to “prove” their gender identity in ways that conform to stereotypical narratives (such as “outward transitioning” (Bach J. 2013) and placing trans refugees in wrong wings due to misgendering (Cammainga B, 2024).

In South Africa—despite its progressive constitution—trans refugees often remain undocumented and are excluded from social protections (Cammainga et al., 2023). In Kenya, the situation is even more acute. The *Human Rights Violations* report documents how transgender asylum seekers in the Kakuma refugee camp endure systematic violence and police inaction, while the legal framework (including aspects of the 2021 Refugees Act) further jeopardizes their safety (Unbreakable Love-UBL, 2024).

### **3. Drivers of Forced Displacement for Trans and Gender Diverse Persons**

#### **A. Legal and Structural Hostility**

Across the globe, many countries criminalize consensual same-sex relations and trans identities or impose laws (for example, criminalizing sex work, curbing freedom of expression, association and assembly, regulating ‘gender-appropriate’ attire and anti-drag laws, criminalizing homelessness, criminalizing HIV spread, and harsh penalties related to drugs) that indirectly and disproportionately target trans and gender diverse persons (Hereth, 2024; Sukthankar, 2011; Yarbrough, 2023; Csete, & Cohen, 2010). In many instances, these legal frameworks are used to justify State violence and police harassment against trans individuals.

For example, in Kenya, the criminalization of same-sex conduct contributes to the hostile environment from which trans asylum seekers flee (Unbreakable Love-UBL, 2024).

In other regions, even when decriminalization occurs, persistent social stigma and discriminatory practices, especially driven by anti-gender and anti-rights actors in efforts to weaponize trans communities and issues for political gains, continue to force trans individuals (especially human rights defenders) to flee from their countries. (GATE, 2023).

#### **B. Intersectional Vulnerabilities**

Trans refugees often bear the weight of multiple, intersecting oppressions. Research shows that those who are also members of racial or economically marginalized groups experience further deprivations (Hereth, 2024).

For example:

- In South Africa, trans asylum seekers face compounded discrimination due to both their gender identity and socioeconomic status (Cammainga et al., 2023).
- In Kenya, the *Human Rights Violations* report details how trans and gender non-conforming refugees suffer not only for their gender identity but also because of their refugee status, leaving them particularly exposed to abuse and neglect (Unbreakable Love-UBL, 2024).

#### **C. Political Backlash and Socioeconomic Fragility**

Recent anti-gender and anti-right political trends have intensified the persecution of trans persons. Anti-trans rhetoric and legislative proposals have contributed to an environment of fear.

A study conducted by GATE showed that 56% of respondents felt that the human rights situation for trans and gender diverse individuals in their countries is worsening due to anti-gender attacks (2023). This is compounded by the reality that a significant number of trans and gender diverse human rights defenders have to relocate due to anti-gender and anti-right attacks. Globally, 10% of the respondents indicated the need to relocate staff, board and volunteers due to such attacks (ibid).

In Kenya, the 2021 Refugees Act includes a provision that permits the expulsion of refugees on grounds of “public morality,” a clause that activists fear may be used against trans asylum seekers (Unbreakable Love-UBL, 2024).

## **4. Challenges in Transit and Upon Arrival in Host Countries**

### **A. Discriminatory Registration and Legal Documentation**

Upon arrival in host countries, trans and gender diverse asylum seekers encounter bureaucratic systems that frequently fail to recognize their identities:

- In Kenya, the registration system used by the Department of Refugees Services (DRS) records only “male” or “female,” forcing many trans individuals to misrepresent their identity. The *Human Rights Violations* report documents numerous cases where trans refugees were registered under the wrong gender, leading to further marginalization and endangering their lives (Unbreakable Love-UBL, 2024).
- In South Africa, similar challenges exist as many trans asylum seekers remain undocumented due to administrative delays, even though legal recognition is possible in theory (Cammenga et al., 2023).

### **B. Delays in Refugee Status Determination (RSD)**

Delays in RSD procedures exacerbate the vulnerability of trans refugees:

- The *Vulnerability Amplified* report highlights that many LGBTI+ asylum seekers in South Africa have been waiting for years for a decision on their refugee status, which directly impedes access to healthcare, legal aid, and durable solutions (Cammenga et al., 2023).
- In Kenya, the *Human Rights Violations* report provides detailed evidence that trans asylum seekers experience deliberate delays in RSD processing, often justified by the authorities as a means to “filter” LGBTI cases. These delays leave individuals undocumented and at high risk of violence, exploitation, and expulsion (Unbreakable Love-UBL, 2024).

### **C. Widespread Violence and Impunity**

Trans refugees are subjected to extreme violence during transit and in host countries:

- In Kakuma refugee camp, Kenya, trans and gender diverse asylum seekers face frequent physical and sexual assaults, including rape. The report documents multiple cases of hate

crimes—including arson, machete attacks, and brutal beatings—against trans individuals, with police records issued but no subsequent action taken (Unbreakable Love-UBL, 2024).

- In addition, violent attacks, threats, and harassment occur not only from other refugees but also from State actors, including police and security personnel, reflecting a culture of impunity (Unbreakable Love-UBL, 2024).

## **D. Economic Marginalization and Limited Access to Services**

Economic exclusion is another significant challenge:

- Many trans refugees are forced into informal or precarious livelihoods such as sex work because they lack access to formal employment. The *Vulnerability Amplified* report shows that economic hardship often compounds the risk of exploitation and abuse (Cammenga et al., 2023).
- In Kenya, the encampment policy further restricts the mobility of trans asylum seekers, limiting their ability to seek employment or access community support services (Unbreakable Love-UBL, 2024).

## **5. Recommendations**

Based on our integrated analysis, and drawing on both the South African and Kenyan reports, GATE strongly recommends the following measures:

### **A. Strengthen Gender-Responsive Legal Frameworks**

- **Amend National Laws:** Governments should explicitly include gender identity and expression as grounds for asylum. In Kenya, for example, the existing provision in the 2021 Refugees Act (Section 19(2)) that allows for expulsion on “public morality” must be revised or suspended to prevent discriminatory application against trans and gender diverse refugees (Unbreakable Love-UBL, 2024).
- **Legal Gender Recognition:** Host countries must ensure that asylum seekers have the ability to obtain documents that accurately reflect their gender identity. This requires updating registration systems to include non-binary options (Cammenga et al., 2023).
- **Addressing anti-rights:** Governments must actively counter and prevent the spread of anti-gender and anti-right disinformation and hate speech, also ensuring that State actors themselves do not promote these harmful narratives by weaponizing trans people for political gain. Governments should implement legal measures to hold perpetrators of anti-gender attacks accountable and raise awareness regarding trans issues in society, thereby safeguarding the rights and dignity of trans and gender diverse individuals.

### **B. Enhance Training and Capacity Building for Asylum Officials**

- **Mandatory Gender-Sensitive RSD Training:** Asylum officers and interpreters should receive regular training on trans issues and the specific vulnerabilities of gender diverse

individuals. UNHCR guidelines (Guidelines No. 9) must be fully implemented to create a safe environment for self-disclosure (UNHCR, 2012).

- **Sensitivity Workshops:** Engage community fieldworkers and police officials in workshops to address homo and transphobia. Evidence from the Kenyan context shows that unsympathetic attitudes during registration and reporting further endanger trans refugees (Unbreakable Love-UBL, 2024).

### C. Expand Access to Safe Housing and Economic Opportunities

- **Relocation and Integration:** The reports recommend that trans asylum seekers, especially those in dangerous camp environments like Kakuma, be relocated to urban areas (e.g., Nairobi) where they have better access to social services and employment opportunities (Unbreakable Love-UBL, 2024).
- **Economic Empowerment Programs:** Governments and humanitarian organizations should develop programs that facilitate skills training and financial assistance for trans refugees, reducing their reliance on survival strategies such as sex work (Cammenga et al., 2023).

### D. Improve Accountability and Response to Hate Crimes

- **Establish Independent Investigations:** An independent oversight mechanism should be established to investigate hate crimes against trans and gender diverse refugees. This mechanism must ensure that numbers translate into actual prosecutions and that perpetrators are held accountable (Unbreakable Love-UBL, 2024).
- **Enhance Community Reporting:** Digital platforms and anonymous reporting tools should be expanded to allow trans refugees to report incidents without fear of retaliation.

### E. Foster Multi-Stakeholder and Cross-Border Collaboration

- **Trans-National Platforms:** UN agencies, national governments, civil society organizations, and academic institutions need to create collaborative platforms for sharing best practices, coordinating legal assistance, and monitoring human rights violations.
- **Inclusion of Trans Voices:** All policies and interventions must be designed in direct consultation with trans and gender diverse communities to ensure they address real needs and respect lived experiences (Marnell, 2022; Unbreakable Love-UBL, 2024).

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