



POLICY BRIEF



# PROTECTING WOMEN HUMAN RIGHTS DEFENDERS IN MIGRATION CONTEXTS

Photo: UN Women Moldova

## Summary

Around the world, women, girls and gender-diverse people play a crucial role in promoting and protecting the rights of people on the move. They do so in numerous ways—such as by rescuing those in distress at land and sea and accompanying migrants on dangerous journeys. Some provide shelter, transport, healthcare, education, legal aid and integration support to people at different stages of migration. Others document human rights violations and advocate for laws, policies and practices that protect the rights of migrants, refugees and stateless persons. However, migrant women human rights defenders face significant risks as they do so, such as stigmatization, criminalization, surveillance, physical attacks and sexual and gender-based violence from both state and non-state actors. Women human rights defenders who are migrants themselves, especially those in an irregular situation, often face higher risks due to their migration status, such as arrest, detention, deportation and *refoulement*.<sup>i</sup> They may also be subject to torture or cruel, inhuman and degrading treatment; some have been killed or forcibly disappeared. It is critical for states to respect, protect and fulfil the rights of migrant women human rights defenders. This policy brief outlines measures that states can take to create an enabling environment for the defence of human rights and to secure the rights of women, girls and gender-diverse people at all stages and in all types of migration so that they can defend their own rights and the rights of others.

## Introduction: migration, gender and human rights

There are some 281 million international migrants, with women and girls comprising approximately half of them.<sup>1</sup> People move across international borders for many reasons:

to pursue opportunities in life, to study, develop careers and to be with their families. Others are driven to move because of poverty, political instability, insecurity and violence.<sup>ii</sup>

<sup>i</sup> The prohibition of *refoulement* under international human rights law applies to any form of removal or transfer of persons, regardless of their status, where there are substantial grounds for believing that the returnee would be at risk of irreparable harm upon return on account of torture, ill-treatment or other serious breaches of human rights obligations. Office of the High Commissioner of Human Rights. 2018. Technical Note: The Principle of Non-*Refoulement* Under International Human Rights Law. 5 July. OHCHR.

<sup>ii</sup> In 2021, there were an estimated 89.3 million people forcibly displaced worldwide, comprising 27.1 million refugees, 53.2 million internally displaced people and 4.6 million asylum seekers, of whom 49 per cent were women and girls. UNHCR. 2022. "Figures at a Glance". <https://www.unhcr.org/uk/figures-at-a-glance.html>. Accessed 12 November 2022.

From the reasons why people move to their experiences at all stages of their journeys, migration is gendered. Laws, policies and practices that regulate migration may differentiate people according to their gender, often reproducing and reinforcing existing inequalities, which tends to have a disproportionate impact on women.<sup>2</sup> Some states prevent women from migrating abroad for work if they are pregnant or have young children. Others impose discriminatory restrictions on women's movements, such as requiring them to have the permission of a male guardian to travel abroad. Some countries of destination also deport migrant women who are pregnant, prohibit them from marrying nationals, and restrict their employment to certain sectors, perpetuating traditional gendered divisions of labour.<sup>3</sup>

Nationality laws can reinforce gender inequalities. According to the most recently available data, 25 countries have nationality laws that deny women the right to pass on citizenship to their children on an equal basis with men and 50 countries have gender-discriminatory provisions in nationality laws. These include not permitting women to confer citizenship on a non-citizen spouse on an equal basis to men and removing the citizenship that women acquired through marriage if that marriage ends. Such laws not only increase migrant women's precarity, including their risk of statelessness, but they also affect women's ability to claim their rights.

#### BOX 1

##### Use of terminology

In this policy brief, migrant women human rights defenders refer to “women, girls and gender-diverse persons of all ages who promote and protect the human rights of people on the move, whether they are migrants themselves or not, regardless of their migration status, and irrespective of whether they self-identify as a woman human rights defender or use human rights language to frame their work”.

UN Women. 2022. [Recommendations on the Protection of Women Human Rights Defenders at Risk in Migration Contexts](#). Geneva and New York: UN Women.

## Gendered risks in migration

The risks that women, girls and gender-diverse people face during migration depend on intersecting factors, including aspects of their identity (such as their gender, sexual orientation, gender identity and expression, sex characteristics, ethnicity, social status, age and disabilities), their migration status, the ways they migrate and the geopolitical contexts of their movement.

Regular migration pathways across borders are inaccessible for many women, girls and gender-diverse people when they do not have travel documents, cannot meet visa requirements or cannot afford such travel. In such cases, the only options available are via irregular routes, which place women at a much higher risk of violence and exploitation, including trafficking in persons. State practices such as the militarization, privatization and externalization of border controls; pushbacks and collective expulsion at land and sea borders;<sup>4</sup> and the use of digital technologies for surveillance in border enforcement can increase migrant women's use of irregular and often dangerous routes.<sup>5</sup> Numerous studies show that women and girls are often under the control of men during such clandestine journeys and face higher risks of being subjected to rape or forced to provide transactional or survival sex to secure their passage.<sup>6</sup> It is estimated that around 60 to 80 per cent of migrant women and girls travelling through Mexico to the United States are raped at some point during their journey, while along the central Mediterranean route, the figure is about 90 per cent.<sup>7</sup>

Being in an irregular situation increases migrant women's risks of abuse and exploitation by unscrupulous smugglers, employers and service providers. It leads to their exclusion from essential services, including for victims and survivors of gender-based violence, forced labour and trafficking. Migrant women in an irregular situation may be reluctant to seek help and protection from state authorities for fear of arrest and deportation. The widespread practice of immigration detention has led to the separation of families and the detention of those in situations of vulnerability, including children, pregnant or nursing women, those with disabilities, those seeking asylum, and survivors of violence. The serious and long-lasting adverse mental health impacts of immigration detention have been well-documented worldwide.<sup>8</sup> In a study of women in immigration detention in Australia, 88.9 per cent suffered from at least one mental health disorder, ranging from anxiety to depression, suicidal ideation and post-traumatic stress disorder, linked to the conditions, duration and uncertainty of their detention.<sup>9</sup>

Gender-diverse migrants are particularly susceptible to physical and mental abuse in immigration detention facilities, including targeted violence and sexual assault related to their nonconformity with binary gender norms.<sup>10</sup> In the United States, a study suggests that people with diverse SOGIESC<sup>iii</sup> are 97 times more likely to be sexually victimized than those who do not identify as LGBTIQ+.<sup>11</sup> Transgender women are particularly at risk because they are usually detained in cisgender<sup>iv</sup> male spaces.<sup>12</sup> Transgender detainees are also at risk of losing access to hormone therapy and treatment related to gender-affirming care while in immigration detention.<sup>13</sup> Gender-diverse migrants are also more likely to be kept in physical isolation and prolonged solitary confinement,<sup>14</sup> which constitutes torture or cruel, inhuman, or degrading treatment or punishment.<sup>15</sup>

Women and gender-diverse migrant workers are at higher risk of labour rights violations when there are inadequate regulatory frameworks to protect their rights. Those at higher risk include those engaged in domestic work, sex work and those working in the informal economy. Also at high risk are women, girls and gender-diverse migrants deprived of their liberty, subject to forced labour and trafficking, and those who are forcibly displaced: in such precarious situations, they tend to be more at risk of violence and rights violations and have limited avenues for advocating for their own rights.

## Defending the rights of people on the move

Migrant women human rights defenders play a significant role in promoting and protecting the rights of a wide range of people on the move. They do so in various ways: accompanying migrants through dangerous journeys and engaging in rescues at sea; providing food, water, clothes and medicines to migrants in need; and delivering services such as legal aid, psychosocial support, medical assistance and integration support. Some migrant women human rights defenders are involved in investigating, documenting and denouncing human rights violations.

Migrant women human rights defenders engage in such activities as volunteers as well as in their professional capacities. They include search and rescue service providers, humanitarian workers, social workers, doctors, teachers, journalists, trade union representatives and labour inspectors. They come from diverse backgrounds and cultural contexts, including Indigenous women; women from racial, ethnic and religious minorities; Afro-descendants; and women of nomadic communities. Some migrant women human rights defenders are themselves migrants.

### BOX 2

#### Case studies: the criminalization of solidarity

Since 2016, Germany, Greece, Italy, Malta, the Netherlands and Spain have initiated over 60 proceedings against private entities involved in search and rescue operations, typically non-governmental organization (NGO) vessels seeking to reduce fatalities and bring migrants to safety.<sup>19</sup> Carola Rackete, the captain of the Dutch *Sea-Watch 3* rescue ship, was arrested on 29 June 2019 by Italian authorities and investigated for allegedly aiding the irregular entry of migrants after her crew disembarked 40 people they had rescued in the Mediterranean, off the coast of Libya. Only in December 2021 did the court of Agrigento in Sicily shelve the investigation against her, finding that she had “acted in compliance with the duty to rescue”.

Sara Mardini, a refugee woman from Syria, was arrested by the Greek police in Lesbos in February 2018, along with 23 other humanitarian aid workers working for the Emergency Response Centre International, after they were involved in search and rescue operations at sea. They face numerous charges of smuggling, fraud, espionage, unlawful use of radio frequencies, membership of a criminal organization and money laundering, which could result in up to 25 years of imprisonment.<sup>20</sup> NGOs in Croatia, such as the Center for Peace Studies and Are You Syrious?, have also been harassed and prosecuted for facilitating irregular migration.<sup>21</sup>

iii The term diverse ‘sexual orientation, gender identity, gender expression, and sex characteristics’ (SOGIESC) is used at UN Women in preference to ‘LGBTIQ+’. In noting that neither acronym is universally applicable nor reflects the full diversity of sexual and gender formations, practices and identities that exist, and in recognition that SOGIESC applies to all people, UN Women uses ‘diverse SOGIESC’ to capture those living beyond heteronormative, cisnormative, gender binary and endosexist assumptions and/or LGBTIQ+ and other Anglocentric categories. In practice, various culturally, linguistically and context specific terms are used where appropriate.

iv The term is used to refer to people whose experience of gender is, or is perceived to be, in conformity with the sex assigned at birth. It is often used in contrast to transgender.



Yet migrant women human rights defenders are subject to risks, threats and attacks for carrying out these activities. Perpetrators include state actors, such as the police, immigration officers, border control agents, security forces, intelligence officers, prosecutors and government officials, as well as non-state actors, such as criminal gangs involved in trafficking, armed militias who patrol borders aiming to kidnap and detain undocumented migrants, and anti-migrant groups.<sup>16</sup>



Photo: UN Women Moldova

A clear and worrying trend is the criminalization of solidarity.<sup>v</sup> States legitimize the criminalization of solidarity by constructing a narrative that migrants are a threat to peace and security,<sup>17</sup> based on which lifeguards, journalists, priests and service providers, among others, are charged with offences related to facilitating irregular migration and people smuggling, simply for assisting migrants.<sup>18</sup>

Corporations have been launching strategic lawsuits against public participation (SLAPP suits<sup>vi</sup>) to silence migrant women human rights defenders. For example, in 2019 in Thailand, a poultry company Thammasakaet filed criminal defamation and libel charges against Suchanee Cloitre, a woman journalist, who highlighted labour rights violations against its migrant workers. Cloitre was initially convicted and sentenced to two years imprisonment on these charges,

but eventually had this decision overturned on appeal in 2020.<sup>22</sup> Several European Union members have used SLAPP suits to silence civil society actors helping migrants and journalists reporting on migration.<sup>23</sup>

Migrant women human rights defenders have been stigmatized for their work, subject to public shaming and smear campaigns, gendered slurs, “sexuality baiting”<sup>vii</sup>, and sexual and gender-based violence. In the United States, humanitarian workers have been labelled “smugglers and traffickers”, attorneys referred to as “dirty immigration lawyers” and journalists tarred as “the enemy of the people”.<sup>24</sup> In Greece, Dutch journalist Ingeborg Beugel, who publicly questioned the Greek Prime Minister about the pushbacks against migrants in 2021, was subject to an aggressive smear campaign, death threats and physical assaults that forced her to leave the country after 40 years of residence.<sup>25</sup>

Some migrant women human rights defenders have suffered from reprisals that include the loss of status, denial of entry into countries and deportation. Gabriella Castañeda of the Border Network for Human Rights which operates at the Mexico–US border has been subject to state harassment and judicial proceedings related to her status.<sup>26</sup> In September 2021, Russia revoked the refugee status of Valentina Chupik, after detaining her, raiding her home and banning her from entering Russia for 30 years, likely in connection with her activism on the labour rights of migrants.<sup>27</sup>

Migrant women human rights defenders who are migrant workers themselves face high risks when they complain about employment conditions, as this puts them at risk of having their work visas cancelled and consequently being deported. This is particularly acute when the woman’s residency is tied to their contractual relationship with their employer, such as migrant domestic workers in the kafala system.<sup>28</sup> States have also acted against women migrant workers who organize for their rights. In 2016, Lebanon state authorities arrested, detained and deported Sujana Raja and Rose Maya Limbu back to Nepal for their involvement in organizing domestic workers; they described being subjected to physical and mental torture while they were detained.<sup>29</sup>

v The Research Social Platform on Migration defines this as “the increased policing of people who help migrants, including through search and rescue operations, reception activities and the provision of food, housing and services”. Research Social Platform on Migration. 2020. [The Criminalisation of Solidarity in Europe](#). RESOMA: 2.

vi SLAPP suits are lawsuits filed deliberately to intimidate and discourage criticism and opposition.

vii The Women Human Rights Defender International Coalition define “sexuality baiting” as “the manipulative use of prejudices about sexuality to attack defenders’ political agendas in addition to the attacks on the defenders themselves”. Women Human Rights Defender International Coalition. 2015. [Gendering Documentation: A Manual For and About Women Human Rights Defenders](#), WHRD-IC: 26.

## Protecting migrant women human rights defenders

In order to protect the rights of migrant women human rights defenders, it is crucial that threats and attacks against them are documented and denounced, and perpetrators brought to justice. Instead of adopting a victimhood approach when analysing human rights violations, which further entrenches violence and the marginalization of women's voices, state and non-state actors should highlight the agency of women human rights defenders in all actions and initiatives, strengthening their capacity to speak and act for themselves.

Because of their lived experience, migrant women human rights defenders have unique insight into the human rights violations and abuses that occur in migration contexts. In some cases, they are the only ones who have access to and are trusted by migrants in distress. However, it is more difficult and dangerous for them to promote and protect rights when their own migration status and rights are unrecognized and unprotected. As such, securing their rights as people on the move is a critical step in enabling them to promote and protect their own rights and the rights of other migrants.

If women and gender-diverse migrants knew about and had access to safe, orderly and regular pathways for migration, they would be better able to support others in accessing these routes. If those who are refugees had their status and rights recognized in domestic laws, they would be better protected from refoulement and more able to participate in global and local policymaking for fellow refugees. If women and gender-diverse migrants had the right to freedom of association and collective bargaining, they could organize with other migrant workers in advocating for labour rights and decent work. If there were strict “firewall” protections<sup>viii</sup> between immigration law enforcement and service providers, they could accompany migrants in need of legal aid, healthcare and protection to service providers without fear of arrest and deportation. If they had the means to report incidents of violence, harassment, abuse and exploitation confidentially without being criminalized, they could denounce perpetrators without fear of reprisals. If the work they were engaged in—for example, domestic work and sex work—was recognized and protected in national labour laws, they would have legal and administrative frameworks through which they could seek justice.<sup>30</sup>

## Recommendations on the protection of women human rights defenders at risk in migration contexts

In recognition of the critical role of migrant women human rights defenders in securing the rights of people on the move, UN Women, in partnership with the UN Special Rapporteur on the situation of human rights defenders and the UN Special Rapporteur on the human rights of migrants, convened a diverse group of experts to develop a set of recommendations on the protection of women human rights defenders at risk in migration contexts. The recommendations call on all stakeholders to recognize and address the risks facing migrant women human rights defenders and put in place measures to promote and protect human rights so that migrants in all their diversity can live, work and move safely and with dignity.

As the 2030 Agenda for Sustainable Development affirms, migrants contribute positively to inclusive growth and sustainable development. States have committed to cooperating internationally to ensure safe, orderly and regular migration and to respect and protect the rights of all migrants. Migrant women human rights defenders play a unique and essential role in identifying and preventing human rights violations committed against people on the move but have come under attack by state and non-state actors in myriad ways for their actions. The recommendations identify concrete measures that states can take to respect, protect and fulfil the rights of migrant women human rights defenders in all their diversity, thus enabling them to participate meaningfully in the safe and dignified movement of people within and across borders.

viii A “firewall” protection draws on the idea of Joseph Carens who proposes the establishment of a legal principle that “no information gathered by those responsible for protecting and realizing basic human rights can be used for immigration enforcement purposes”. Joseph H. Carens. 2008. [“The Rights of Irregular Migrants”](#), *Ethics & International Affairs*, 22(2): 167.

## THE RECOMMENDATIONS CALL ON STATES TO:

### Create an enabling environment for the defence of human rights in migration contexts by:

- ✓ Protecting the rights of migrant women human rights defenders in accordance with the Declaration on Human Rights Defenders, ensuring that they are not threatened or attacked for their work but instead are able to defend rights with safety and dignity.
- ✓ Countering the stigmatization and criminalization of migrant women human rights defenders, including by publicly recognizing the significance and importance of their work; condemning hate speech, smear campaigns and defamatory statements directed against them; and refraining from taking legal action against them for their human rights work.
- ✓ Ensuring that migrant women human rights defenders have access to justice and to effective remedy, including access to safe and confidential ways of reporting human rights violations with strict firewall protections in place. All violations against migrant women human rights defenders must be investigated promptly and fairly, with perpetrators brought to justice.
- ✓ Developing effective protection measures for migrant women human rights defenders, such as national protection mechanisms and initiatives that are flexible, timely and sensitive to their specific circumstances and needs.
- ✓ Fostering strong, dynamic and diverse movements of migrant women human rights defenders, promoting their agency, leadership and meaningful participation in the development of laws, policies and practices related to the human rights of people on the move.

### Enable migrant women, girls and gender-diverse people to defend their own rights and the rights of others by:

- ✓ Enhancing their access to safe, orderly and regular migration pathways that recognize their status and rights and that eliminate all forms of discrimination against them.
- ✓ Ending all forms of violence and harassment against them, identifying specific situations and contexts where they are at increased vulnerability and taking measures to ensure their effective protection and access to services as survivors.
- ✓ Ending forced labour and trafficking, ensuring that related laws, policies and practices are gender-sensitive, survivor-centred and rights-based, promoting their capacity to combat exploitation without victimization and punishment.
- ✓ Protecting their rights when they are deprived of their liberty, in particular, refraining from the detention of children and implementing alternatives while working towards ending the practice of immigration detention.
- ✓ Ensuring that they are able to engage in decent work by ensuring that their labour rights are protected irrespective of their migration status and that they are able to report cases of exploitation, abuse or rights violations without fear of reprisals.
- ✓ Ensuring that they have access to services in a non-discriminatory and gender-responsive manner with strict firewall protections in place, including those related to healthcare, education and legal aid.
- ✓ Ensuring that nationality laws enable gender equality, removing discriminatory provisions that increase their vulnerability and subjugation.

The full recommendations are available to view and download [here](#).

## Endnotes

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