



HUMAN RIGHTS TO
WATER AND SANITATION

GENDER IDENTITY

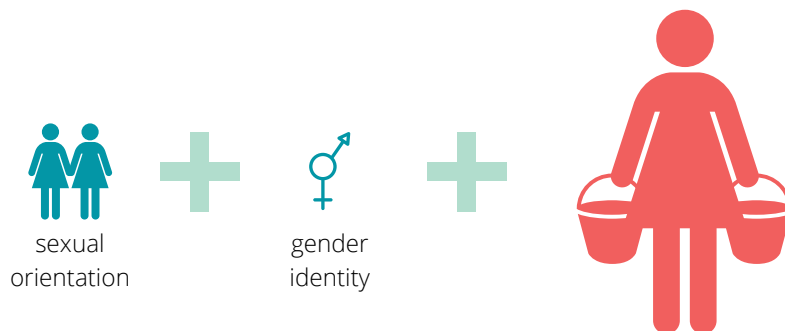
AND THE HUMAN RIGHTS TO WATER AND SANITATION

**A COMPILATION BY THE SPECIAL RAPPORTEUR ON THE HUMAN
RIGHTS TO WATER AND SANITATION, LÉO HELLER**

Applying a gender-sensitive lens to water and sanitation provision highlights the intersectional issues faced by LGBTI persons, and, in particular, transgender and gender non-conforming persons. Intersectional issues such as sexual orientation and gender identity increase existing socioeconomic inequality.

In 2016, the Special Rapporteur presented a report on gender equality and the human rights to water and sanitation to the Human Rights Council (A/HRC/33/49), in which he addressed gender inequality through the lens of the human rights to water and sanitation. Among several gaps, the report addresses several elements of the human rights to water and sanitation for LGBTI persons, particularly transgender and gender non-conforming persons.

Other UN human rights experts have addressed the human rights to water and sanitation from a gender perspective. Notably, the Independent Expert on Sexual Orientation and Gender Identity, Mr. Victor Madrigal-Borloz, in his 2019 report ([A/74/181](#)), emphasized that "the need of LGBT persons to access sanitation services in a safe manner has led to deeply divisive and stigmatising public debates on objectively innocuous issues such as access to gender-neutral bathrooms in public spaces, education and work settings".



LGBTI persons can face specific concerns in accessing water and sanitation, including increased risk of violence and legal discrimination. Lack of representation in disaggregated data and invisibility in emergency situations are also part of the concerns.

The additional barriers to accessing water and sanitation faced by LGBTI persons are too often overlooked, and must be addressed in order to fully realise the human rights to water and sanitation.

Water and sanitation facilities must be safe, available, accessible, affordable, socially and culturally acceptable, provide privacy and ensure dignity for all individuals, including those who are transgender and gender non-conforming.

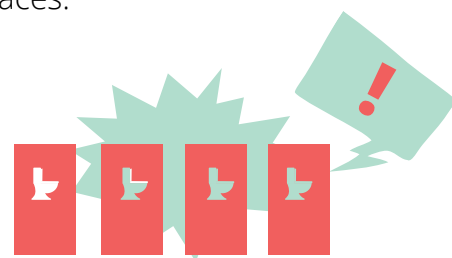
SOCIO-ECONOMIC DISCRIMINATION

LGBTI persons often suffer from socio-economic discrimination. They may find it harder to access work or public services including access to drinking water and sanitation. An intersectional approach highlights how this discrimination and inequality may be compounded when other socio-economic factors are present: homeless LGBTI persons may suffer additional discrimination and risks when accessing water and sanitation.

GENDER-BASED VIOLENCE

People who do not conform to a fixed idea of gender may experience violence and abuse when using gender-segregated sanitation water, sanitation and hygiene facilities. This puts individuals at risk in public spaces, but also in workplaces, schools, hospitals and other shared spaces.

Continued threats and violence may lead transgender or gender non-conforming persons to avoid using facilities in these areas, sometimes leaving school or work entirely.



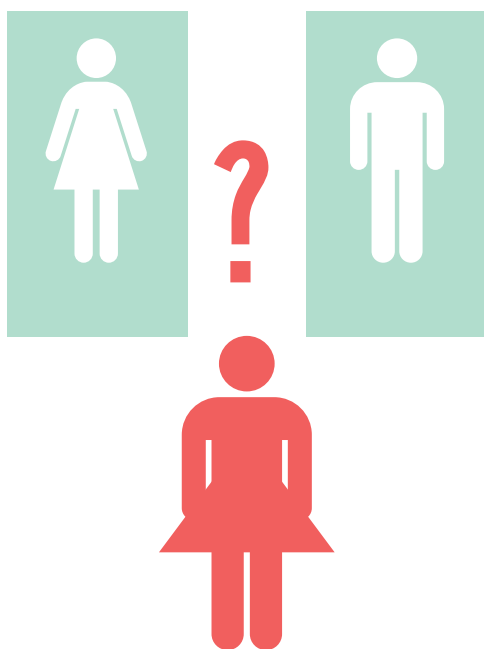
RESTRICTIVE GENDER-RECOGNITION LAWS

In his report on gender equality and the human rights to water and sanitation, the Special Rapporteur identifies how law and policy can contribute to, rather than redress, inequalities between genders and in accessing water and sanitation. This is particularly true in the case of LGBTI persons.

Some States allow individuals to use toilets in a manner consistent with that person's chosen gender identity while other States oblige persons to use only those toilets that correspond with the biological sex listed on their birth certificate.

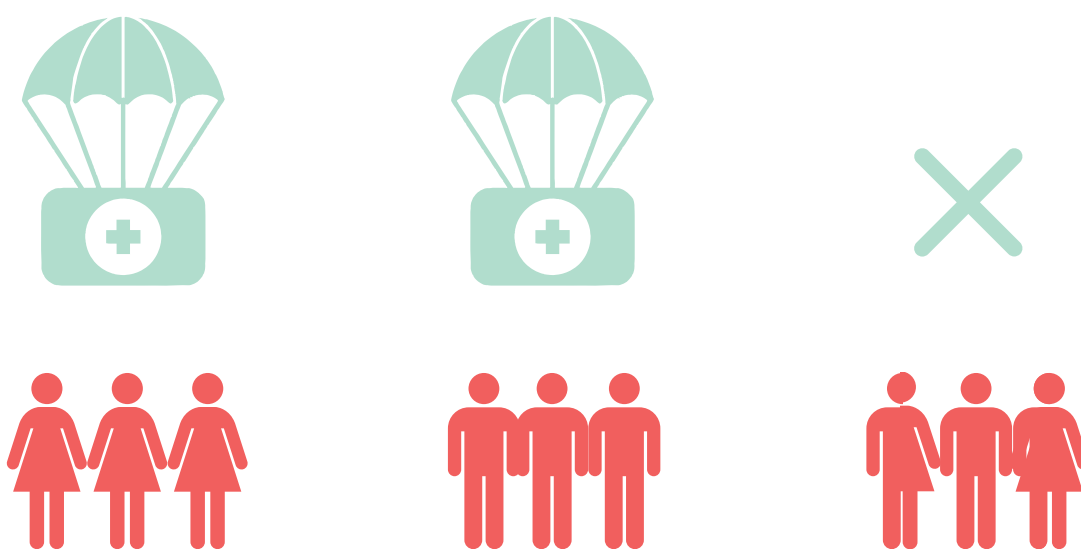
Gender non-conforming people often feel that they need to sign away their freedom of expression since segregation by gender in the use of sanitation facilities — including in public toilets, detention centres, relief camps and school — poses a risk of exclusion, humiliation and violence.

Restrictive gender recognition laws not only severely undermine transgender peoples' ability to enjoy their rights to basic water and sanitation services, it also prevents them from living safely, free from violence and discrimination.



THE HUMAN RIGHTS TO WATER AND SANITATION OF LGBT POPULATIONS IN HUMANITARIAN CONTEXTS

In humanitarian situations, including in times of conflict or natural disaster, when water and sanitation sources are at a minimum, LGBTI persons are often overlooked, or may be at greater risk of discrimination or violence. In line with international human rights law, States should use an “intersectionality lens” in all policy initiatives and in all instances, including emergency situations, to ensure that special attention is given to those persons most disadvantaged in the enjoyment of their rights.



Violations and discrimination extend to all facets of life: lesbian, gay, bisexual, trans and gender non-conforming persons are often treated as if they were by definition sick or disordered, a process referred to by the Independent Expert on sexual orientation and gender identity as “pathologization”. Discrimination affects these persons in their access to sanitation, menstrual hygiene and toilets, in particular in humanitarian situations and areas affected by disaster ([A/HRC/35/21](#)).

**14 TO 27
NOVEMBER 2018**

INSIGHTS FROM THE COUNTRY VISIT TO MALAYSIA

Lesbian, gays, bisexual, transgender and intersex (LGBTI) persons in Malaysia may face structural and systemic discrimination. Particularly under the civil and state administered Syariah laws, there are many laws that criminalize persons based on sexual orientation, gender identity and gender expression.

According to a 2017 online survey on access to toilets by transgender people in Malaysia by Justice for Sisters, 40 out of 97 transgender respondents have encountered discrimination of some form when using public toilet and 26 out of 97 experienced restriction of access to toilets at the workplace. Fifteen of the transgender respondents reported as having had experienced being forced to use toilets based on sex assigned at birth.

Working in such environments not only adds stress, anxiety, isolation, amongst others, but also increases health risks, such as urinary tract infections, due to restricted use of toilets. In the above-mentioned survey, 42 per cent of the respondents feel emotional stress about using the toilet, whereas 39 per cent of them battle with self-esteem issues because of discriminatory experiences encountered when going to the toilet. In many cases, workplaces do not have policies that are inclusive of diversity. Furthermore, another concern is related to the sexual harassment and violence that transgender people face in educational institutions. Several transgender people recalled their experience being teased by other boys in the toilet during their school years.

INSIGHTS FROM THE COUNTRY VISIT TO INDIA

**27 OCTOBER TO 10
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India's case law on the human rights to water and sanitation are internationally recognized as progressive. While the Indian Constitution does not explicitly stipulate the human rights to drinking water and sanitation, article 21 of the Constitution guarantees the right to life, which has on several occasions been interpreted by the courts to include the right to drinking water. As early as the 1990's, the Indian judiciary has formally recognized the right to water as derived from the right to life....In another case, in 2014, the Supreme Court affirmed transgender persons' right to their self-identified gender and directed the Government to provide them separate public toilets.

Despite this, community toilets are often available in small numbers in relation to the number of families that require those facilities. Moreover, according to reports, they are usually not disability-adapted, maladaptive and unaccepting of transgender persons, and lacking adequate facilities for handwashing and for menstrual hygiene management.