



Who is a refugee?

The Universal Declaration of Human Rights enshrines the right of all persons to seek and enjoy asylum. Refugees are individuals who have fled their country due to a well-founded fear of persecution based on race, religion, nationality, political opinion, or membership of a particular social group. This can include persecution by the State, as well as persecution from non-State actors (eg: family members, neighbours, armed groups, vigilantes, criminal gangs), where the State is unable or unwilling to provide protection against such harm.

How is sexual orientation, gender identity or intersex status a basis for refugee protection?

A “particular social group” refers to a group of persons who share a common characteristic other than their risk of being persecuted or who are perceived by society as a group. The characteristic will be innate, unchangeable or otherwise fundamental to one’s identity, conscience or the exercise of one’s human rights. The United Nations High Commissioner for Refugees (UNHCR), as well as some countries of asylum, have recognized that lesbian, gay, bisexual and transgender (LGBT) and intersex individuals may qualify as “members of a particular social group”. Refugee claims based on sexual orientation, gender identity, gender expression or intersex status may also be linked to other Refugee Convention grounds, notably political opinion and religion. Fear of persecution based on perceived sexual orientation or gender identity may also qualify one as a refugee. Nevertheless, many countries do not recognise LGBT and intersex persons as a particular social group, or refugee claims based on persecution related to sexual orientation, gender identity and intersex status.

What responsibilities do States have towards LGBT and intersex refugees?

The 145 countries that are parties to the 1951 Convention relating to the Status of Refugees and the 146 parties to the 1967 Protocol may determine who qualifies as a refugee under their own legal systems, as can UNHCR under its mandate. According to the principle of *non-refoulement*, States may not return refugees to countries where their life and freedom would be threatened on account of their

race, religion, nationality, political opinion or membership of a particular social group. Governments must also ensure the fundamental rights of the refugees they host. The Convention against Torture stipulates that State parties cannot expel, return or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Refugee Convention also requires States to fulfil a number of other obligations to refugees in many areas, including employment, housing, and education.

What type of persecution do LGBT and intersex refugees flee?

Persons whose sexual orientation, gender identity or gender expression differs from prevailing norms may face discrimination, rejection and violence within their community or family. In many countries LGBT persons face active harassment, discrimination and arbitrary arrest and detention by Government authorities on the basis of their sexual orientation or gender identity, including in the 77 States where consensual same-sex relations are currently criminalized. In some countries transgender persons also face criminal sanctions, and in others intersex children are subjected to surgeries and sterilization without their consent.

Who faces persecution on grounds of sexual orientation, gender identity or intersex status?

Not all persons who face such persecution identify as lesbian, gay, bisexual, transgender or intersex. Some women and men who do not fit stereotyped appearances and roles may be perceived as LGBT or intersex even when they are not. For others, the designation is not culturally relevant. Fear of violence, arrest, marginalization, and systemic discrimination may also keep individuals in hiding and inhibit them from accepting themselves or disclosing their sexual orientation and gender identity to officials.

UNHCR estimates that 37 States have granted asylum to individuals with a well-founded fear of persecution owing to (perceived) sexual orientation and/or gender identity. Nonetheless, many States have not done so, and practices and procedures often fall short of international standards.

Many persons fleeing persecution on the basis of their sexual orientation, gender identity, gender expression or intersex status do not realize that such persecution constitutes grounds on which they may request refugee protection. Some are paralyzed by past trauma, by shame or by distrust and cannot bring themselves to disclose their identity. Others may not self-identify with, or even recognize, the terms LGBT, intersex or terms used by the authorities of the host country.

In many countries, protection from persecution related to sexual orientation, gender identity, gender expression or intersex status is not integrated into asylum policy, guidance or processes. Some officials and refugee professionals also lack adequate knowledge and awareness about refugees fleeing persecution on these grounds. This leads to the determination of applications sometimes being arbitrary and inconsistent. Prejudice may lead some to believe that abuse of these individuals is not persecution, or to treat LGBT and intersex refugees and asylum seekers with disrespect. The truthfulness of a person's statements are sometimes evaluated on the basis of stereotypical assumptions, and some asylum seekers are even required to "prove" their sexual orientation and gender identity by inappropriate means (such as requiring evidence of intimate acts, or testing response to explicit images) that can themselves amount to a violation of human rights. In some cases, these asylum seekers are even returned to their country of origin with instructions to "go home and be discreet".

What difficulties do LGBT and intersex refugees face in countries of transit or refuge?

LGBT and intersex refugees are often doubly marginalized – as foreigners and due to their sexual orientation, gender identity, gender expression or intersex status. LGBT refugees often cannot secure safe housing or are evicted when their sexual orientation or gender identity is discovered. They are frequently deprived access to employment and health care. Because of their increased vulnerability, these individuals also are often targeted for extortion and exploitation. LGBT and intersex refugees may also face discrimination or violence from fellow refugees in refugee processing centres. Extreme isolation and pervasive marginalization serve to compound their vulnerability.

Action points

States & Intergovernmental Organizations

- » Enact asylum laws and policies that recognize persecution on account of sexual orientation, gender identity, gender expression and intersex status as valid basis for asylum claims, as "members of a particular social group" or on the basis of other relevant Refugee Convention grounds.

Still much to do...

Recent years have seen progress toward better protection of LGBT and intersex refugees. UNHCR released guidelines in October 2012 that make it clear that LGBT and intersex individuals should be recognized as refugees when they have a well-founded fear of persecution. LGBT persons are for example recognized under the asylum laws of the European Union as members of a "particular social group". Two countries now specifically track asylum statistics related to sexual orientation and gender identity. Despite these improvements, the levels of respect with which LGBT and intersex refugees are treated once they enter the global protection system vary widely.

- » Sensitize and train immigration personnel as well as humanitarian aid workers on LGBT and intersex related human rights and asylum issues, including avoiding stereotypes, respectful means of communication and sensitive interviewing techniques.
- » Ensure the safety of LGBT and intersex asylum seekers or those who allege persecution on the basis of their perceived sexual orientation or gender identity.
- » Prohibit any "test" of sexual orientation or gender identity that violates human rights.
- » Follow recommended best practices for working with refugees fleeing persecution on the basis of sexual orientation, gender identity and intersex status, including with regard to confidentiality, impartiality, and universal respect.
- » Track numbers of asylum and refugee claims based on sexual orientation, gender identity and intersex status.
- » Allow LGBT and intersex individuals to live and remain with their loved-ones, including partners and children.

Media:

- » Raise public awareness on the challenges that LGBT and intersex refugees face.
- » Give voice to the voiceless by including LGBT and intersex refugees, advocates and activists in press coverage.