



FREE & EQUAL
UNITED NATIONS FOR LGBTI EQUALITY

REFUGEE & ASYLUM

Who is a refugee?

The Universal Declaration of Human Rights enshrines the right of all persons to seek and enjoy asylum. The 1951 Refugees Convention defines the term 'refugee' and sets out the rights of the displaced, as well as the legal obligations of States to protect them. 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 (e.g. family members, neighbours, armed groups, vigilantes, criminal gangs), where the State is unable or unwilling to provide protection against such harm.

How are the grounds of sexual orientation, gender identity, gender expression and sex characteristics 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, transgender and intersex (LGBTI) individuals may qualify as "members of a particular social group". Refugee claims based on grounds of sexual orientation, gender identity, gender expression and sex characteristics may also be linked to other Refugee Convention grounds, notably political opinion and religion. Nevertheless, many countries do not recognise LGBTI persons as a particular social group, or refugee claims based on grounds of sexual orientation, gender identity, gender expression or sex characteristics.

What responsibilities do States have towards LGBTI refugees?

The 145 countries that are parties to the 1951 Convention 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 in countries where it undertakes status determination. 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 they would be in danger of being subjected to torture. The Refugee Convention also requires States to fulfil other obligations to refugees in many areas, including employment, housing, and education.

What type of persecution do LGBTI refugees flee?

In many countries, LGBTI people - and others whose sexual orientation, gender identity, gender expression and/or sex characteristics differ from prevailing norms - face discrimination, harassment, rejection and violence, including within their community or family. In over 70 States, consensual same-sex relations are criminalized by laws that are discriminatory in law or practice. Trans people are denied recognition of their gender identity in most countries in the world. Of the few countries that do provide recognition, most force trans people to undergo medical treatment, sterilization and meet other abusive conditions in order to obtain legal recognition. The practice of subjecting intersex children to harmful practices such as medically unnecessary surgery without their consent remains widespread, and in addition to life-long suffering caused by such practices, intersex adults and children also face widespread stigma and discrimination on the basis of their sex characteristics.



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER



What obstacles do LGBTI refugees face?

UNHCR estimates that 42 States have granted asylum to individuals with a well-founded fear of persecution owing to real or perceived sexual orientation, gender identity, gender expression and sex characteristics. Nonetheless, many States have not done so, and practices and procedures often fall short of international standards.

Who faces persecution on grounds of sexual orientation, gender identity, gender expression and sex characteristics?

Many people fleeing persecution on the basis of their of sexual orientation, gender identity, gender expression and sex characteristics do not realize that such persecution constitutes grounds on which they may request refugee protection.

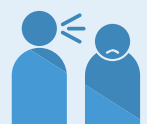
Some are paralyzed by past trauma, by shame or by distrust and cannot bring themselves to disclose their identity. Not all individuals who face such persecution identify as lesbian, gay, bisexual, transgender or intersex or even recognise such terms, though these might be the terms used by authorities of the host country. Some women and men who do not fit traditional gender stereotypes may be perceived as LGBTI even when they are not.

Immigration and other officials and refugee professionals often 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 does not amount to persecution, or to treat LGBTI refugees and asylum seekers with disrespect.

The credibility 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 or gender identity by means that may themselves amount to a violation of human rights (such as requiring evidence of intimate acts, or testing responses to explicit images). In some cases, these asylum seekers are even returned to their country of origin with instructions to "go home and be discreet", in violation of fundamental human rights standards.

What difficulties do LGBTI refugees face in countries of transit or refuge?

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





Action points

States & Intergovernmental Organizations:

- 1** Enact asylum laws and policies that recognize persecution on the grounds of sexual orientation, gender identity, gender expression and sex characteristics as valid basis for asylum claims, as “members of a particular social group” or on the basis of other relevant Refugee Convention grounds.
- 2** Sensitize and train immigration personnel as well as UN staff and other humanitarian aid workers on the human rights of LGBTI people and related asylum issues, including avoiding stereotypes, and ensuring respectful communication and appropriate interviews.
- 3** Ensure the safety of LGBTI asylum seekers and those who allege persecution on the basis of their sexual orientation, gender identity, gender expression and sex characteristics.
- 4** Prohibit any “test” of sexual orientation, gender identity, gender expression and sex characteristics that violates human rights.
- 5** Follow recommended best practices for working with refugees fleeing persecution on the basis of sexual orientation, gender identity, gender expression and sex characteristics, including with regard to confidentiality, impartiality, and universal respect. Track numbers of asylum and refugee claims based on sexual orientation, gender identity, gender expression and sex characteristics.
- 6** Allow LGBTI individuals to live and remain with their loved-ones, including partners and children.

Media:

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

