REFUGE & ASYLUM

Who is a refugee?
Generally, refugees are people outside their countries of origin who need international protection because of fear of persecution, or a serious threat to their life, physical integrity or freedom. This could be because of persecution, armed conflict, violence or serious public disorder. The threat could come from the State, such as the police or the military, or non-State actors, such as family or community members, criminal gangs or groups in conflict.

The 1951 Refugee Convention relating to the Status of Refugees and its 1967 Protocol define refugees as people 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. Other international and regional refugee treaties complement the 1951 Refugee Convention and refer to a number of circumstances forcing refugees to flee their countries of origin, such as external aggression, occupation, foreign domination, generalized violence, internal conflicts, massive violations of human rights or other events seriously disturbing public order.

What is asylum?
Asylum is the protection granted by a State to someone who is fleeing persecution or serious harm or for other reasons. The Universal Declaration of Human Rights (UDHR) enshrines the right of all people to seek and enjoy asylum from persecution.

Can people obtain asylum if they are persecuted for being LGBTIQ+?
Yes, because persecution based on “membership of a particular social group” is included as a ground for refugee status. A particular social group is understood as a group of people who either share a common characteristic or who are perceived as a group by society. The characteristic will often be core to who the person is, unchangeable, or otherwise fundamental to identity, conscience, or the exercise of fundamental human rights. The United Nations High Commissioner for Refugees (UNHCR), as well as some countries, have recognized that lesbian, gay, bi, trans, intersex and queer (LGBTIQ+) people may qualify as members of a particular social group and can be protected against persecution on that basis.

Asylum claims based on sexual orientation, gender identity, gender expression and/or sex characteristics may also be linked to other grounds for refugee status, such as political opinion or religion. Several countries have granted asylum to people with a well-founded fear of persecution owing to being (or perceived as being) LGBTIQ+. Nonetheless, policies, practices and procedures often fall short of international law, with many countries refusing to grant asylum on these grounds.

People who are not LGBTIQ+ may also seek asylum on these grounds if they are perceived and persecuted as such simply because they do not conform to gender stereotypes. Furthermore, identities and terms such as lesbian, gay, bisexual, transgender, intersex and queer are culturally and linguistically specific and are not always used by refugees and asylum seekers from around the world to describe their sexual orientation, gender identity and/or expression or sex characteristics. Respectful terminology and the diversity of identities vary between cultures, countries, regions, languages, generations and even individuals. Therefore, the extent to which people self-identify with LGBTIQ+ terms should not be assumed or required in the asylum process.
THE CHALLENGES

What types of persecution do LGBTIQ+ refugees flee?

All around the world, LGBTIQ+ people face discrimination, harassment, exclusion, sexual violence and other forms of violence. More than a third of UN member states criminalize consensual same-sex relations between men and over a fifth between women – and these laws are often also used to target transgender persons. Numerous reports have documented how lesbian and bisexual women are targeted for forced marriage, physical and sexual violence, including marital rape and rape intended to try and change their sexual orientation. They may also be exposed more frequently to violence and killings as punishment for so-called “crimes of honour” or “harming family reputation”. In addition to criminalization, trans people are also denied legal recognition of their gender in most countries of the world. Of the few countries that do provide legal gender recognition, many impose abusive conditions, such as requirements to divorce or undergo medical treatment or sterilization, in violation of their human rights. The harmful practice of subjecting intersex children to irreversible and medically unnecessary surgeries without their informed consent remains widespread and can lead to life-long physical and psychological suffering. Intersex adults and children also face stigma and discrimination.

What challenges do LGBTIQ+ people face while seeking asylum?

Pervasive prejudice and discriminatory attitudes toward LGBTIQ+ people are often reflected in asylum procedures. A lack of adequate knowledge and awareness about LGBTIQ+ refugees can lead to asylum applications being assessed inconsistently. Personal biases may lead some officials to believe that the abuse of LGBTIQ+ people does not amount to persecution, or they may treat LGBTIQ+ refugees with disrespect. The credibility of asylum seekers is sometimes evaluated on the basis of stereotypes, for example about LGBTIQ+ people’s haircuts, clothes, make-up, mannerisms or relationship history. Some asylum seekers are even required to “prove” they are LGBTIQ+ by intrusive, humiliating or inappropriate means that violate their human rights.

Negative stereotypes about bisexual people have been known to harm the chances of bisexual refugees being granted asylum, with some being returned to their countries of origin under the pretext that they can choose to live a heterosexual life. Indeed, many LGBTIQ+ asylum seekers have been returned to their countries of origin with advice to avoid persecution by concealing their identity, in violation of their rights to freedom of expression and association.

Some people may not be aware that they can request asylum on the basis of a well-founded fear of persecution due to being LGBTIQ+. This includes children, individuals being held in detention facilities and individuals applying for protection as part of a family group.
What difficulties do LGBTIQ+ refugees face in countries of transit or refuge?

LGBTIQ+ refugees have the same needs and face similar challenges as other displaced people. Refugees often experience discrimination and marginalization on multiple grounds – for example, due to their refugee status and belonging to ethnic, racial, religious, linguistic or other minority groups. LGBTIQ+ refugees often encounter additional or distinct protection risks due to their sexual orientation, gender identity, gender expression or sex characteristics. They may find it difficult to secure safe housing and may be evicted when their landlords discover they are LGBTIQ+. They also face discrimination in employment and health care and may be blackmailed, exploited and face discrimination or violence from fellow refugees or service providers, including in refugee camps or registration centres. Extreme isolation and widespread marginalization heighten the risks they experience.

Some LGBTIQ+ refugees flee their home countries on account of violence or persecution on grounds unrelated to being LGBTIQ+. Nonetheless, these refugees are similarly vulnerable to violence and marginalization in transit countries if their family members, host community members or other refugees discover that they are LGBTIQ+.

What responsibilities do countries have towards LGBTIQ+ refugees?

State parties to the 1951 Refugee Convention or the 1967 Protocol cannot return refugees to countries where their life and freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion. The UN Convention against Torture states that countries cannot expel, return (“refoul”) 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. Under international human rights law, the principle of non-refoulement guarantees that no one should be returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm. Governments must ensure the fundamental rights of the asylum seekers and refugees they host. The 1951 Refugee Convention also requires countries to fulfil other obligations to refugees in many areas, including employment, social protection, housing and education.
TAKE ACTION!

1. Educate yourself about the experiences of people fleeing from persecution, including LGBTIQ+ people.

2. Speak out against any stigma or prejudice against LGBTIQ+ refugees and openly support their inclusion – and that of other refugees and LGBTIQ+ persons – in your community.

3. Be a voice for equality – share UN Free & Equal content with your friends and on social networks.

4. Engage with and support civil society organizations working with LGBTIQ+ and other refugees.

GOVERNMENTS SHOULD:

1. Enact asylum laws and policies that recognize persecution on the grounds of sexual orientation, gender identity, gender expression and/or sex characteristics as a valid basis for asylum claims, as members of a particular social group or on the basis of other relevant 1951 Refugee Convention grounds.

2. Sensitize and train asylum personnel, judges, lawyers as well as humanitarian aid workers on the human rights of LGBTIQ+ people and related asylum issues, including on avoiding stereotypes and ensuring respectful communication and appropriate, trauma-informed interview methods.

3. Ensure the safety of LGBTIQ+ asylum seekers and those who allege persecution on the basis of their actual or perceived sexual orientation, gender identity, gender expression and/or sex characteristics.

4. Prohibit any “test” of sexual orientation, gender identity, gender expression and/or 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/or sex characteristics, including with regard to confidentiality, impartiality and universal respect. Visit UNHCR’s website to learn more.

6. Systematically, ethically and safely record data on the numbers of asylum claims based on sexual orientation, gender identity, gender expression and/or sex characteristics.

7. Allow LGBTIQ+ individuals to live and remain with their loved ones, including partners and children.

8. Legally recognize the gender identity of all persons, including refugees and asylum seekers in official documents through a simple administrative process based on self-identification without abusive requirements such as forced medical diagnosis, sterilization, treatment or divorce. Safeguards for minors should not be disproportionate nor discriminatory, and be aligned with the Convention on the Rights of the Child.

9. Ensure that transgender and gender diverse persons are able to safely use the facilities that correspond with their self-defined gender identity (regardless of whether this aligns with the sex listed in their identity documents) and establish gender-neutral facilities.
MEDIA SHOULD:

1. Raise public awareness on the challenges that LGBTIQ+ refugees face.
2. Elevate the voices of LGBTIQ+ refugees, advocates and activists in press coverage, as well as those of UN and other expert organizations working with LGBTIQ+ refugees.
3. Respect the safety and security of LGBTIQ+ refugees and their pathways to safety in covering these stories, including by ensuring respect for informed consent, confidentiality, anonymity and sensitivity to their plights and experiences. Be mindful of the safety and security of organizations working with LGBTIQ+ refugees.
4. Examine refugee stories from an intersectional perspective, highlighting the challenges faced by people facing multiple risks and grounds of discrimination.
5. Be sensitive and respectful to the gender identities of refugees and use pronouns they identify with.

10. Work toward ending immigration detention for all asylum seekers, including LGBTIQ+ asylum seekers, and adopt measures to ensure that transgender and gender-diverse asylum seekers are not detained in facilities that do not conform to their gender identity.

11. Ensure interim safe accommodation, livelihood and healthcare options for LGBTIQ+ asylum seekers pending the determination of their asylum claims.

12. Train asylum decision-makers on the application of international refugee law and international human rights law to asylum claims on the basis of a well-founded fear of persecution based on actual or perceived sexual orientation, gender identity, gender expression, and/or sex characteristics, including trauma-informed credibility assessment.

13. Consult LGBTIQ+ refugees and engage with LGBTIQ+ organisations, particularly those led by displaced people, in the design of services and referral pathways that are informed by the priorities and needs of LGBTIQ+ people.

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