

FLEEING HOMOPHOBIA

QUESTIONNAIRE

European Research Project

FLEEING HOMOPHOBIA, SEEKING SAFETY IN EUROPE

Best Practices on the (Legal) Position of LGBT Asylum Seekers in the EU Member States

Introduction

Each year, thousands of lesbian, gay, bisexual, transgender and intersex (LGBTI) people apply for asylum in the European Union. Although the EU Qualification Directive recognises that they might qualify for international protection (Article 10(1)(d)), it does not address the particular difficulties they are confronted with. As a result of this considerable differences exist in the ways in which applications of LGBTI asylum seekers are dealt with in the various EU Member States. Yet, data with respect to these issues are very scarce. Through this research project we hope to fill this data gap.

Your answers to this questionnaire (= the country reports) will supply the empirical data for the comprehensive, normative analysis we will draft. We will also make an inventory of statistical data, although our initial research shows that these are hardly available.

The data provided by the country reports will enable us to identify best practices regarding qualification for international protection and asylum procedures. We will draft a policy document, translating the best practices into policy recommendations for the EU and its Member States. We hope this will contribute to the development of a common European approach to address the specific needs of LGBTI asylum seekers and to a European practice of adequate protection for LGBTI asylum seekers.

Guidance to the questionnaire

In this questionnaire we ask you to describe legislation and policy, practice and case law concerning LGBTI asylum seekers. We use the EU Directives Articles only as a means to structure the questions.

It is clear that there are not only considerable differences in the handling of LGBTI asylum applications in each EU country, but in their numbers as well. The availability of these cases will

also vary per country. If your country has a small number of cases available, we would like you to give a full description of these cases. An extra effort should be made to find more cases. If large numbers of LGBTI cases are available, your main effort will consist of studying them. Because it may not be possible to describe all cases, we would then like you to provide a more general picture. We ask you to report on the argumentation in legal practice: decisions and/or case law. Some of you may have access to decisions, but if this is impossible or too complicated, you can confine to case law.

We strongly advise you to cooperate with other stakeholders (refugee and/or LGBTI NGOs, lawyers, UNHCR, government officials etc.) in collecting cases and answers to the questionnaire. If you cannot answer a question yourself, if there is a gap in your knowledge, please involve other experts. For example: lawyers should ask NGOs and NGOs should ask lawyers.

We consider practices ‘good’ when they are in line with human rights standards and ‘bad’ when they are not. While we aim at identifying good/ best practices, we are also very interested in bad/ worst practices. So please don’t hesitate to mention all good and bad practices that came to your attention.

We would like you to point out and make explicit whether you refer to written law, decisions or practice. Please send decisions and/or case law as attachment, or a summary in English (French or German) when the question requires this. We would prefer English summaries and translations, but if this is a major obstacle for you, French or German will do as well.

If possible, please give comprehensive answers, although the maximum length of your answers should not exceed 50 pages (not including questions and attachments). In the grey boxes you can type longer answers, the yes/no boxes can be ticked with the space bar or by using your mouse. You can move through the questions with the tab key or arrow keys.

Thank you very much!

Best regards,

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General

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What is the basis of your expertise on LGBTI asylum issues?

My experience in this matter: I am working as a lawyer in CEAR (In english: Spanish Refugee and Asylum Council), a human rights NGO, for the last eleven years, assessing asylum cases, including LGBTI

What sources did you use in responding to this questionnaire (e.g. your own cases, case law, lawyers, NGOs, government representatives)?

Our own cases, as CEAR, including case law

Frequency of LGBTI asylum claims

1) Statistics on LGBTI asylum seekers

a) Does your government provide statistics on LGBTI asylum seekers (their numbers, countries of origin, proportion of L, G, B, T and I cases, positive or negative decisions, recognition rates etc.)?

No

Yes. Please provide us with a copy/translation.

b) Do NGOs in your country provide statistics on LGBTI asylum seekers?

No

Yes. Please provide us with a copy/translation.

c) Do other sources in your country provide statistics on LGBTI asylum seekers?

No

Yes. Please provide us with a copy/translation.

2) If no national statistics are available, could you tell us how many asylum claims based on persecution for reasons of actual or perceived (imputed) sexual orientation and/or gender identity you know of in your country? Please explain the basis of your answer (published case

law, lawyer network, LGBTI community, other NGOs, newspaper reviews, intuition) and indicate the time frame.

We are talking about statistics from the local offices of CEAR al around the country in this matter, that have been collected to make in 2010 the report "The spanish asylum system stand up to the violation of human rights of women and lesbians, gays, bisexuals and transgender", made by CEAR, Local Office of Vasque Country. This will be the biggest support in the making of this report.

Concretely, this report is based about case law in Spain during 2005-2009 (110 sentences for 121 kinds of persecution detected in them, 60 because of non-admission, 46 because of rejection of asylum statute and 4 because of granting subsidiary protection). As we don't have official statistics, it is impossible to know what percentage of the administrative decisions have been appealed in the courts (National Court and Supreme Court, in this case). In this way the option was to work in the case law from this two courts in the last 5 years. But it is important to mention that this effort is referred to LGBTI cases and also to women persecuted by gender violence.

Persecution	Women (%)	Men (%)	Total (%)
Forced marriage	20	0	20 (16,53)
Female genital mutilation	12	2*	14 (11,57)
Familiar violence	15	0	15 (12,40)
Sexual violence and abuses	14	0	14 (11,57)
Sexual Trafficking	3	0	3 (2,48)
Rape as a war weapon	4	0	4 (3,31)
Afective-sexual orientation	8	41	49 (40,50)
Gender Identity	1	1	2 (1,65)
Total	77	44	121 (100,00)

*Men persecuted because of their opposition to this 'traditional' practice

This is not the reality because it is possible to find people who had not appealed the administrative decision, but it is the most reliable information that we have found. We add to these statistics the cases that, as organization, we advised in 2010 and still has to be resolved (47 people). There is no other studies in our country about this question. With the addition:

Persecution	Women (%)	Men (%)	Total (%)
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Forced marriage	20	0	20 (11,91)
Female genital mutilation	12	2*	14 (8,33)
Familiar violence	15	0	15 (8,93)
Sexual violence and abuses	14	0	14 (8,33)
Sexual Trafficking	3	0	3 (1,79)
Rape as a war weapon	4	0	4 (2,38)
Afective-sexual orientation	16	69	85 (50,60)
Gender Identity	12	1	13 (7,73)
Total	96	72	168 (100,00)

*Men persecuted because of their oposition to this 'traditional' practice

3) L, G, B, T, I separately

a) What is the approximate number of lesbian cases within these asylum claims?

16

What are the main issues in these cases?

In general, discrimination (work, education, public health... legal rights) from the society and local authorities, and in several cases, victims of abuse. In this moment, we advice two women from Chile. They both were police women and they were expelled from Police by this: because they are lesbians. The case has to be resolved by Asylum Office (They applied for protection in 2007)

b) What is the approximate number of gay cases within these asylum claims?

67

What are the main issues in these cases?

The same as in the case of lesbians, Specifically we are talking about people from South America, Central America and Caribbean (Venezuela, Colombia, Nicaragua, Cuba, México, Paraguay, Ecuador, Perú...)

c) Did you find bisexual asylum cases within these asylum claims?

No

Yes. Indicate the number of male and female cases. What are the main issues in these cases?

Only two persons, two men, from Afghanistan and Morocco. The persecution was by these question, specifically, the society attributed to them that they were gay: the problem was to be men and to have sex with men, not with women.

d) Did you find transgender asylum cases?

No

Yes. Indicate the number of male-to-female and female-to-male cases.

What are the main issues in these cases?

13 cases. The vast majority are male-to-female cases (1; 12 female to male). Normally this is a more complex situation than others: in many cases, the level of discriminations is increased because these persons, finally, have no other source for living than to prostitute themselves under the "mafias", and in many occasions they are finally victims of the sexual traffic. The fear from suffering any violence (or their families in their countries of origin) from the procurers, make the situation mor difficult, firstly, for them to have access to the procedure of protection, and then, to work with them in order to give them legal advice.

e) Did you find intersex asylum cases?

No

Yes. What are the main issues in these cases?

4) What are the most common countries of origin of LGBTI asylum seekers in your country? If possible, quantify.

- 1 Cameroon (8 applicants)
- 2 Algeria (5)
- 3 Nigeria (4)
- 4 Afghanistan (3)
- 5 Chile (2)
- 6 Colombia (2)
- 7 Eritrea (2)
- 8 Honduras (2)
- 9 Iran (2)
- 10 Morocco (2)

Also Nicaragua (2), Panamá (2), Russia (2), and with one applicant: Costa Rica, Ethiopia, Gambia, Guinea Conacry, Kazachstan, Mexico, Paraguay, Republic Centroatrican and Syria (This list has been made with the data from CEAR in 2010 (cases still in process). We don't have the data from thee sentences between 2005-2009)

By countries:

Afghanistan: 1 bisexual man; 2 gays
Algeria: 2 gay; 3 lesbians
Brasil: 1 transsexual woman (male to female)
Cameroon: 6 gays; 2 lesbians
Chile: 2 lesbians
Colombia: 2 transsexual women
Costa Rica: 1 transsexual woman
Eritrea: 2 gays
Ethiopia: 1 transsexual woman
Gambia: 1 gay
Guinea Conacry: 1 gay
Honduras: 2 gays
Iran: 2 gays
Kazachstan: 1 gay
Morocco: 1 gay; 1 bisexual man
Mexico: 1 transsexual woman
Nicaragua: 2 transsexual women
Nigeria: 2 gays; 1 lesbian; 1 transsexual woman
Panama: 2 transsexual women
Paraguay: 1 gay
Centroafrican Republic: 1 gay
Russia: 2 gays

5) Are you aware of L,G,B,T or I people who do not apply for asylum because of fear of the consequences?

No

Yes. Please explain.

I think this is a little bit complex. I mean that the first problem is the access to the procedure (which is increased with the unknowledgement of the people: normally, even now, the people connect "asylum" with "political asylum", with political cases only, and as their case is not political...). In the case of Spain, we have a real problem if we are talking about the access to seek protection as we have denounced from CEAR in all our annual reports. Also the people don't know anything about the confidentiality of the process: they think Spanish authorities will put in contact

with the authorities from countries of origin (which is prohibited), and the possible consequences for their relatives. In this way, they are worried about the proof (normally absent) to demonstrate the persecution; in these cases usually it is more difficult to get documents than in other situations, because of the particular kind of persecution we are talking about

6) When asylum/ protection is granted to LGBTI asylum seekers, is this generally:

refugee status based on membership of a particular social group? (If so, what is the description of the particular social group, e.g. lesbian women in Pakistan)

refugee status for fear of persecution for reasons of sexual orientation or gender identity based on another Convention ground (political opinion, religion, nationality, race) If so, please explain.

The cases we know that were granted an asylum status is because these persons worked in a NGO defending the legal rights of the LGBTI people. Also they had suffered persecution because of their sexual-emotional orientation or gender identity, but, finally their collaboration in these organizations was the aspect with more influence in their applications: normally, they have been included in a particular social group (as a member of a particular organization) on political opinion grounds. This answer is also for the next question. We are talking about few cases that were granted asylum: the normal answer is rejection.

subsidiary protection? On which basis?

When the persecution is hard, and the person doesn't belong to any organization: he or she are "merely" a LGBTI person who has suffered "hard" persecution in his or her country. What do we mean with "hard"? Really we don't know. It is obvious, because of the practice of Asylum Office and the spanish courts, that a, for example, a transgender woman, male-to-female, who has suffered discrimination in all grounds since early in her life from her family, in the school, by the society in general, sexual abuses by the police agents, who has been prostituted by the "mafias", that has been a victim from sexual traffick, who has been also abused by the "clients", who has been threatened to persecute her relatives or with "vudu" (in the case of african women)... This is not a "hard persecution". Simply, there is no persecution, only discrimination (even you don't have any access to any possibility or education, health or work), and in these cases, the vast majority, the normal sentence will be the rejection. We only know one case (of a lesbian from Russia) that deserved subsidiary protection, because she was hospitalized in a lunatic asylum because of her "mental disorder". In the case that you put, lesbian woman in Iran, also it will depend of the circumstances, but the normal thing, if finally she grant protection, would be to grant subsidiary protection.

There is no asylum statute for LGBTI people because of their gender identity or sexual orientation but because of their belonging to some LGBTI human rights organization.

Only activists grant asylum; if not, the only possibility is to get subsidiary protection (but in few, few cases). This answer is only for the administrative process. At the judiciary level we have some sentences.

7) Do you have any information on LGBTI asylum seekers receiving another form of protection on the basis of national law, such as:

a) humanitarian grounds?

No

Yes. Please quantify and explain.

We want to specify the case of persons with HIV or AIDS and who will not have treatment possibility in their country of origin, in basis or European Court on Human Rights case law, but we don't have news about to grant asylum in these specific applications in Spain

b) other grounds (discretionary leave)?

No

Yes. Please quantify and explain.

8) Do you have information about LGBTI applicants in your country who are, according to your national law, under the age of consent?

No

Yes. Please quantify and explain.

Expertise, Support

9) Do you know general or specialised NGOs supporting LGBTI asylum seekers in your country?

No

Yes. Provide their name and explain what kind of activities specifically aimed at LGBTI asylum seekers they undertake.

We mark both, but, in purity, the reality is none. The reason is because there are organizations specialized in asylum (as CEAR, probably the most important organization in this matter in Spain), and there are some other organizations specialized in LGBTI matters, but with no knowledge if we

are talking about international protection. With the passage of time, we have had to form ourselves in all the LGBTI matters (if we wanted to support these applications)

a) What are the main problems they face while providing support?

The main problem is about the unknowledge in asylum matter by the LGBTI organizations. Many organizations don't know anything about this possibility. During last years, we have led a campaign of public awareness in this way, and also we have kept plentiful contacts with the administration and with NGOs, specifically LGBTI organizations (we have given to them training courses in order to detect, only to detect, possible asylum cases, and then send to us to prepare the asylum application (LGBTI organizations as COGAM, Fundacion Colegas or Transexualia)). And little by little, the process is on motion, but still many road to cover.

b) Do they employ staff or do they work with volunteers only?

Both

c) Are they supported by bigger LGBTI and/or refugee umbrella organisations?

No Yes. Which organisation(s)?

In the case of refugee organizations, CEAR (legal advice, and social, psychologic and economic sources), Red Cross, ACCEM (social, psychologic and economic sources). Human Rights organizations: International Amnesty and Medicos del Mundo; LGBTI organizations: COGAM, Fundacion Colegas, Federacion Estatal de LGBT, Transexualia...

d) Do they work with lawyers or with UNHCR on LGBTI issues?

No Yes. In what form?

In these specific case (asylum) the only organization which works with continuity with lawyers is CEAR. Normally, the rest of organizations send the cases to us

e) Do they have contact with the government?

No Yes. In what form?

In two ways: case by case; and in reunions, to discuss the general situation. Normally these contacts are with representatives of the Asylum Office

10) Special training for NGOs

a) Do people working for general refugee NGOs receive special training on LGBTI issues?

No Yes

b) Do people working for LGBTI NGOs receive special training on refugee law?

No Yes

- c) Do people working for LGBTI Asylum NGOs receive special training on refugee law?
 No Yes

11) Lawyers' expertise on LGBTI

- a) Are there lawyers with expertise in LGBTI asylum cases?
 No Yes
- b) Are there networks of lawyers with expertise in LGBTI asylum cases?
 No Yes. Please provide the web address of the network

12) Sometimes potential asylum seekers are not aware of the fact that sexual orientation or gender identity is a ground for asylum. Are they informed about this?

- No
- Yes. Who gives the information and how is such information given? (If it is given through a booklet or leaflet, please attach.)

We mark both, because as we said before, we try to work in that way, but as you can see in the statistics, there are still so few cases. The reality is that many LGBTI organizations have not internalized this possibility, even they knew this in theory. But we are on the road

Normally the LGBTI people do not know anything about the possibility to seek asylum. But the first contact with NGO, in these cases, frequently is with LGBTI or health organizations. We try to inform to these NGOs about this possibility. This can be a way to get the information reach the people.

Policy, legislation, case law

13) Specific law and/or policy

- a) Does your country have specific law and/or policy concerning LGBTI asylum seekers? (primary or secondary legislation, guidelines, internal instructions and/or circulars, etc.)?
 No
- Yes. Please give English (French/German) translations **and** attach the text in the original language. Are these binding? No Yes

Primary legislation: Law 12/2009, of october 30th, about asylum and subsidiary protection. This law contains the adaptation of the european asylum directives (in this specific point, the article 7.1: "According to the prevailing circumstances in the country of origin, it is included in the concept of particular social group a group based in a common character about sexual orientation or gender

identity, and, or, age. These characters, alone, cannot grant the implementation of this article. Never can be understood as "sexual orientation" the execution of behaviors that were considered as a crime by the spanish law"). We are still waiting for the regulation, because the law only contains general rules

b) Does your country have gender guidelines for the handling of asylum claims?

No Yes

Are these guidelines used in LGBTI claims? No Yes. Please explain.

14) Does your country have explicit law and/or policy on LGBTIs coming from specific countries of origin , for instance to grant asylum to LGBTIs from a specific country? (We do not ask for Country Reports.)

No

Yes. Please describe them.

15) Do you have leading or binding court decisions on LGBTI asylum?

No

Yes. Please provide a brief summary of the case. Provide full citation and attach judgment.

In my particular case, two cases. The first of them was a gay from Cuba; he was discriminated by the society and sexually abused by police agents; but the asylum Office said the "he was only gently homosexual" . The appeal in National Court was denied (SAN 12/04/2009, rec. nº 886/2008: The Court only "move" literally the allegations of Asylum Office to the sentence, without any evaluation else) and the case is still pending in Supreme Court.

The other case was a transsexual woman (male to female) from Nicaragua. She was discriminated by society in all camps: education, health, work... and for all societal statements, even her family. Soon she began to "work" in prostitution, and also was sexually abused by the clients and by the police agents. then, no possiblity of getting effective protection from the authorities.

Discriminations in all kind of forms. But the Asylum Office said that this was no persecution, only discrimination. The same as National Court (SAN 05/13/2010, rec. nº 296/2009), which emphasized that there was no evidence of the persecution and that "in Nicaragua there is no persecution or discrimination based in sexual orientation, in general terms, including transsexualism into the more general concept of homosexuality". Where is the border between persecution and discrimination?

"Transexualism" into "Homosexuality"? A good example about unknowledgment ? and use of stereotypes. Unfortunately, this woman doesn't want to appeal to the Supreme Court: she was tired of the fight, always fighting for nothing, these were her words...

16) Did you find any references to the Yogyakarta Principles¹ and/or to UNHCR's Guidance Note on Refugee Claims Related to Sexual Orientation and Gender Identity² in decisions or case law?

No

Yes. Please specify where you found these references.

Qualification Directive³, Council Directive 2004/83/EC

Article 4 Qualification Directive: Credibility (of sexual orientation/ gender identity)

17) How is sexual orientation/ gender identity generally established?

This is a very good question, because really I don't know: because of intuition? Normally Asylum Office only interview for a second time about 10% of the cases (the first interview is when they apply for protection). In many occasions, LGBTI cases are not deserving this "second interview", only when they belong to LGBTI organizations. But the normal thing this is no point of discussion (the establishment of sexual orientation/gender identity), because the reason to reject uses to be that there is no real based fear: there is no "personal persecution" (the Asylum Office say) and these people generally (the Asylum Office continue) can get effective protection in another part of the country...

18) Could you describe cases in which credibility of the stated sexual orientation/ gender identity was the reason for denying asylum?

No. Please go to question 19.

Yes. Please answer questions 18A and 18B.

18A) If the stated sexual orientation or gender identity was not believed, what was the reason given for this?

¹ Yogyakarta Principles: <http://www.yogyakartaprinciples.org/>

² UNHCR Guidance Note: <http://www.unhcr.org/refworld/docid/48abd5660.html>

³ Qualification Directive: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>

Stereotypes and prejudices. I remember the case of a lesbian, several years ago. She was finally denied because the Asylum Office didn't believe her sexual orientation: she had a baby! That was enough to reject her application. In this case we lost contact with this woman.

Decisions and/or case law. Good/bad practices.

18B) Which patterns - if any - do you perceive in rejecting LGBTI cases based on credibility?

As we said before: stereotypes and prejudices. And also, absence of evidences of the persecution .

19) Is supporting evidence required and/or accepted to prove sexual orientation/ gender identity, apart from the declaration of the person concerned?

No.

Yes. What does the supporting evidence include (e.g. witness statements from other people than the applicant, membership of LGBTI organisations, declarations of LGBTI organisations, other)?

All of these. The problem is not the acceptance of these kind of evidence but the evaluation of the evidence. It is important to note that in the vast majority of these cases, the "problem" will not be in the hesitation about if some person is one or the other. Normally, the motives to reject will be that his or her situation was not so serious (It is very important to highlight that in Spain there is no a COI Office, there is no official COI. In many, many cases there is no reference in the decisions of Asylum Office about COI), not enough for granting protection, or the absence of evidence (of the persecution, of his or her identity, of his or her nationality)

Decisions and/or case law. Good/bad practices

Several situations in the administrative phase of the procedure, apart from the other cases mentioned before:

a. The phrase in the decision: "According to the COI...", but in no place is the specific COI used. This is normal, not only in the cases of LGTBI, but in the vas majority

b. The evaluation of the COI. The case of Brazil is significant: in 2009, more than 150 LGTBI people were murdered in that country. The Asylum Office, with no information added, that this not because homophobia, but for the situation of insecurity in that country

c. In the cases of gays and lesbians above all, it is common the answer: She or he has the possibility of being not so visible. This is not a public problem, only concerns about his or her private life

d. To confuse "transsexual woman" (male to female) with "homosexual man".

About case law: as a previous thing, it is important to note that Audiencia Nacional is an appeal Court and after it, there is nothing (against the ECHR, article 2, Protocol n° 7). The Tribunal Supremo is not an appeal court but a cassation court: it is only possible to get there because of legal and limited motives. Two judgments from this last Court about the same matter make jurisprudence. Then the government as well as the asylum seeker can appeal in all judiciary orders.

No admission in the procedure:

- a. Persecution for non-state agents: SAN 09/19/2007, rec. n° 97/2007 (algerian gay persecuted by his sexual orientation).
- b. Doubts about the identity of the person: SAN 03/11/2009, rec. n° 693/2008 (Sudanese gay persecuted by his sexual orientation: There are doubts about his identity as Sudanese, because he doesn't speak Arabic -official language of the country-).
- c. [Supposed] Contradictions with COI: SAN 07/04/2007, rec. n° 118/2007 (Croatian gay persecuted by his sexual orientation: the persecution is incredible because Croatian government has decriminalized recently homosexuality).

Non recognition as a refugee

- a. About absence of evidence: Sentences from Audiencia Nacional (National Court), SAN, from 12/19/2008, rec. n° 1399/2007 (about a gay from Mauritania: and also contradictions in his story), SAN 10/10/2007, rec. n° 579/2006 (about a gay in Cameroon: and also because, according to the Court, he has the possibility to seek asylum in other countries of transit), SAN 12/10/2008, rec. n°. 1592/2007: despite the COI, there is no proof of any persecution). It is certainly surprising a decision which rejects the application of a Cuban gay (because of absence of evidences) of a Cuban gay who was operated of his breasts (because they seemed feminine) against his will, a person that also was sanctioned because of his behaviour as a gay man (he defined himself as a gay, not transsexual) because there is no evidence of these questions, although his story had no contradictions with COI from Cuba (SAN, 01/30/2007, rec. n°. 278/2005). The Tribunal Supremo (Supreme Court), the cassation court, STS 12/13/2007, rec. n° 4529/2004 resolve in a positive way a case of a gay from Cuba because he had a certificate of expulsion from the Cuban army because of his sexual orientation
- b. Contradictions in the story: SAN, 10/04/2007, rec. n°. 639/2006

c. Persecution from non-state agents: SAN 05/23/2007, rec. n° 412/2004 (gay from Georgia). In this case, he was granted subsidiary protection in the administrative process. Although he appealed, Audiencia Nacional denied asylum by this motive, among others.

d. There is no persecution, only discrimination: SAN 11/28/2008, rec. n° 5265/2005 (gay from Cuba: he didn't argue any detention or sanction because of his sexual orientation, only the general discrimination to LGBTI people in Cuba), SAN, 03/30/2005, rec. n° 819/2003 (Cuban gay), and SAN 07/21/2008, rec. n° 679/2006: a transgender woman from Costa Rica; the Court thought that her problems were because she worked in prostitution, not because of her gender identity, and the case noted in the point before: a Georgian gay (SAN 05/23/2007, rec. n° 412/2004): the Court noted that social repulse cannot identify as a persecution that deserves asylum protection.

e. In the case of countries where homosexuality... is considered as a crime: two rejections: two gays from Algeria (SAN 11/07/2008, rec. n° 1563/2007; y SAN 12/10/2008, rec. n° 1592/2007). Despite of homosexuality is a crime (recognized in Penal code of that country: art. 58, 333 y 338), "a gay in Algeria cannot have problems, the reality is not such serious as to consider that someone can be persecuted because of his sexual orientation" (SAN 11/07/2008, rec. n° 1563/2007)

Finally we must conclude:

1.- Spain is the penultimate country in EU in granted asylum decisions percentage with a 5% (In 2009, Greece was the last with 1,6%, whilst the percentage in EU is rounded 25%

2.- The Audiencia Nacional has resolved positively 8,82% of the appeals about admission phase and the 2,56% against the rejection of asylum status. Also has resolved positively (and partially) the 5,13% of the decisions, in the case of rejection of status.

3.- The Tribunal Supremo had estimated positively the 61,54% of the appeals against the sentences about no-admission phase of Audiencia Nacional. Also they had estimated the 25% of the appeals against the rejection of status, granting asylum.

(These last two points are referred only to LGBTI cases contained in the report from CEAR mentioned before and include the cases of gender violence against women. The statistics of the first point is about the percentage in general)

20) Is medical/ psychological/ psychiatric/ sexological evidence requested or accepted in proving the sexual orientation?

No

Yes

a) Who is considered a 'medical expert' in this respect?

b) What does the examination include?

c) Does it include any inhuman/degrading element? Please explain.

d) What weight is given to the 'expert's' opinion?

Decisions and/or case law. Good/bad practices

21) Is medical/ psychological/ psychiatric/ sexological evidence requested or accepted in proving the gender identity?

No

Yes

a) Who is considered a 'medical expert' in this respect?

b) What does the examination include?

c) Does it include any inhuman/degrading element? Please explain.

d) What weight is given to the 'expert's' opinion?

Decisions and/or case law. Good/bad practices

22) Are explicit questions asked about sexual activities?

No

Yes. Please describe them and include the source of the information.

There is no question about it, for several reasons: as there is no specialized government employees in LGBTI matters, there is no specialized questions about their sexual activities or conduct, because normally it is not the discussion point, but it use to be than belonging to these specific social groups it is not cause, by itself, for granting asylum

23) Are questions asked about stereotypical LGBTI conduct?

No

Yes. Please describe them.

24) Are questions asked with respect to familiarity with gay scenes or membership of LGBTI groups in the country of origin or in the country where asylum is claimed?

No

Yes. Please describe decisions and/or case law in which such questions were relevant.

25) Did you find cases in which the sexual orientation/ gender identity was not believed because the applicant was married or had children?

No Yes. Decisions and/or case law. Good/bad practices

The case of a lesbian; the case of a Cuban gay (SAN 12/04/2007, rec. n° 886/2008), both explained before.

Article 4-3 Qualification Directive; Article 8-2 Procedures Directive: Country of origin information

26) Do decision makers/ courts /tribunals have effective access to Country of Origin Information (COI) concerning the position of LGBTI asylum seekers?

No Yes

We explained it before

27) Does your country have national COI researchers?

No. Please go to question 29

Yes. Are they trained in investigating LGBTI issues? No Yes

Please give details.

28) Does the COI from these national researchers report that state protection is available for LGBTIs?

- No
 Yes. Could you describe this information?

29) Can the legal representative of the applicant consult and instruct an independent COI expert?

- No
 Yes
a) Can the expert draft a report? No Yes
b) How is the expert paid for?

It depends. The person has the right to apply for the called free justice benefit. If it is granted, the administration will be the responsible to paid for. The other way is to count on with volunteers, to look for information and to make reports about specific countries or specific questions. In CEAR we have a "Country Area", which is formed by volunteers and tries to find information.

c) What weight is given to the expert's report?

Normally, the possibility of an official expert, paid for by the administration will be used at the courts. In these, the law establishes that the court will evaluate the expert's reports according to the rules of healthy critic (Civil Procedure Rules, article 348). If we are talking about the support reports from organizations as CEAR, in this particular ground, less than we supposed to be.

30) How is the available COI concerning the position of LGBTI asylum seekers dealt with by decision making authorities, and by judges?

I don't know really

31) Do your decision makers or courts consider the reasons why reports of persecution may be unavailable in some countries?

- No
 Yes. Please give examples.

Normally they will consider that if there is nothing in the internet, there is no real problem then. What it is out from the net, does not exist...

32) Sometimes a lack of information on lesbian/ bisexual/ trans/ intersex people or a lack of criminal sanctions against same-sex conduct by women or against trans/intersex individuals is regarded as a lack of evidence of persecution. Did you find examples of this?

No Yes. Please describe the examples.

The case of Cuba, Nicaragua (since sexual relations between people of the same sex are not consider a crime), Guatemala, Peru, Colombia, many African and Asian countries, the case of Brazil mentioned before

33) Sometimes general COI which is not relevant for the situation of the LGBTI concerned is used as a basis for a decision (e.g. information on gay men used wrongly to assess the risk for lesbians or trans people; information on heterosexual women's status used for lesbians). Did you find examples of this?

No Yes. Please describe the examples.

The case of a transsexual woman from Nicaragua mentioned before: the Asylum Office evaluated the application not as a case of a gender identity but as sexual orientation, as a gay. The Audiencia Nacional rejected the appeal: they didn't consider that this was important (there was no interview by the Asylum Office neither), and finally resolved to reject the case because, apart from that there was no evidence, there was no real persecution: this was only considered to be a discrimination case.

Article 5 Qualification Directive; Article 32 Procedures Directive: Coming-out late

34) Does it occur that LGBTIs who have “come out” after leaving the country of origin, are recognised as refugees or as being in need of subsidiary protection?

No

Yes. Please explain with decisions and/or case law. Good/bad practices

Really we don't know

35) Does it occur that LGBTIs who – for instance out of fear or shame – did not speak about their sexual orientation or gender identity immediately, but do so later (in a later phase of their first procedure, or in a repeat procedure), are recognised?

No

Yes. Please explain with decisions and/or case law. Good/bad practices

Really we don't know

Article 6 Qualification Directive: Persecution by the state

36) Are LGBTI applicants granted asylum if in their country of origin homosexual acts and/or identity is criminalised (by explicit 'sodomy laws' or by other criminal law provisions)?

No. Please go to question 37.

Yes. Proceed with question 36A.

36A) Is it required that those criminal law provisions are actually enforced, or is the existence of those criminal law provisions sufficient? Please provide further information. Decisions and/or case law. Good/bad practices

The case of people from Nicaragua is significant: until the middle of 2008 sexual relations between people of the same sex were criminalised by the penal code. For the applications submitted before, the Asylum Office decided to wait for the reform of the penal code. When this happened, the Asylum Office resolved to reject all cases from this country. The legal criminalization is not enough for granting asylum; but if not, it is enough to reject (remember also the sentence from Audiencia Nacional mentioned before about a gay in Algeria: homosexuality is criminalised in that country in three different articles in the penal code. But this was not enough...). Anything else is not necessary.

Article 6 Qualification Directive: Persecution by non-state actors

37) Do you have examples of LGBTIs who have suffered or feared persecution or serious harm inflicted upon them by non-state actors?

No. Please go to question 38,.

Yes. Proceed with questions 37A and 37B.

37A) Did they get protection?

Yes

No. Do you know what were the reasons to consider that they did not have a well founded fear of future persecution or serious harm?

We have marked "yes" because we signed before the case from a man of Georgia who was granted subsidiary protection, but normally not, with the statistics we have: the argument used to be that they can find protection from the authorities. We have another case where the persecution from non-state agents was considered a basis for the rejection, there was in another case in the admission

process (the case of an Algerian gay persecuted because of his sexual orientation (SAN 09/19/2007, rec. n° 97/2007) .

37B) Did you find that persecution by non-state actors was relatively more common in lesbian or transgender/ intersex claims?

No Yes. Decisions and/or case law. Good/bad practices

Article 7-2 Qualification Directive: State protection + effective legal system

38) Are LGBTI asylum seekers who fled persecution from non-state actors required to have sought protection from the police or other authorities prior to fleeing their country of origin in order to prove that the authorities are unable or unwilling to provide this protection?

No. Please go to question 39

Yes. Proceed with questions 38A, B and C.

38A) Is seeking protection from the police or other authorities also expected when the LGBTI asylum seeker came from a country that threatens homosexuality, homosexual acts (and/or transgender identity) with criminal laws?

No Yes. Please give details. Decisions and/or case law. Good/bad practices.

No, it is not expected. But if not, it is used as argument to reject .

I think the answer is "no". It is not necessary to demonstrate that the person has denounced the persecution to the authorities. It can be useful, of course, very useful indeed, but not necessary or requirable. It will depend on the case.

38B) Is seeking protection from the police also expected when the LGBTI asylum seeker came from a country where the police has a reputation of being homophobic, transphobic, etc.?

No Yes. Please give details. Decisions and/or case law.

38C) Is the requirement to seek protection dependent on country of origin information showing that protection would generally be available for LGBTIs?

No Yes. Decisions and/or case law. Good/bad practices

This is what it would be reasonable but...

The decisions normally are based on stereotypes but not in COI (it is very frequently to read "based in the COI", but without quote or information about it).

39) Do your decision makers and courts acknowledge that the existence of criminal sanctions against LGBTIs, even if not enforced, contribute to a homophobic atmosphere in which persecution by state and/ or non-state actors can flourish?

No

Yes. Could you give examples?

The reality is forceful. The examples of Nicaragua and Algeria mentioned before are clear enough.

Article 8 Qualification Directive: Internal relocation

40) Has an internal relocation alternative been held available for LGBTI asylum seekers?

No. Please go to question 41.

Yes. Please answer questions 40A and 40B.

40A) Could you give examples of reasoning to consider places or situations in the country of origin a good relocation alternative?

40B) If so, was discretion reasoning involved in this matter, i.e. could the LGBTI be open about her/his sexual orientation or gender identity in the relocation alternative or was he/she expected to hide there?

No Yes. Decisions and/or case law. Good/bad practices

Article 9 Qualification Directive: Acts of persecution

41) Could you describe what kind of persecution or serious harm LGBTI asylum seekers who fled to your country experienced in their country of origin (physical violence, (“corrective”) rape or other sexual violence, detention, other criminal penalties, execution, honour killings, medical abuse (as a “cure”), harassment, threats, blackmail, intimidation, forced marriages, other psychological violence, no access to education, health care, housing, welfare, employment, judiciary, and so on...)?

All of these, and also trafficking for the purposes or sexual or labour exploitation, prostitution...

41A) Which of these experiences have been recognised as persecution or serious harm, and which were found to be insufficient to constitute persecution or discrimination that did amount to persecution?

Normally, the recognition of refugee status used to be with the level of evidence, and it is not taking into account the impossibility to get that evidence. But, in order to the concrete question, to say that usually these persecutions are recognized as "discrimination", only, and then, no protection is granted.

41B) Please describe differences in the nature of persecution experienced by men and women respectively, due to their gender (in all of the categories of LGBTI).

The first thing to note is that many more men than women apply for asylum. Normally they are invisible, even in the LGBTI people, and they will suffer, in addition, all the human rights violations as women, by gender motives.

In our experience, in general, there are more men than women; in the cases of sexual orientation, many more men than women again (as you can see in the statistics); in the cases of gender identity, more women (male to female) than men, and also is connecting normally with prostitution and trafficking. We have in process in Asylum Office the case of two lesbians from Chile that were expelled from the police force because of their sexual orientation; they applied for asylum in 2007 and they continue waiting...

42) Is attention being paid to non-conformity to heterosexual gender roles and social roles in the decisions and/or case law?

No Yes. Please give examples.

Article 9 Qualification Directive: Discrimination /persecution

43) Are LGBTI asylum seekers refused because the harm/ persecution they experienced is labelled as discrimination instead of persecution?

No

Yes. Please give examples. Decisions and/or case law. Good and bad practices.

All the examples mentioned before: SAN 11/28/2008, rec. n° 5265/2005 (gay from Cuba: he didn't argue any detention or sanction because of his sexual orientation, only the general discrimination to LGBTI people in Cuba), SAN, 03/30/2005, rec. n° 819/2003 (Cuban gay), and SAN 07/21/2008, rec. n° 679/2006: a transgender woman from Costa Rica; the Court thought that her problems were

because she worked in prostitution, not because of her gender identity (¿?)) and the case noted in the point before: a georgian gay (SAN 05/23/2007, rec. n° 412/2004): the Court noted that social repulse cannot identify as persecution that deserves asylum protection; and also the transsexual woman from Nicaragua (SAN 05/13/2010, rec. n° 296/2009) Despite of homosexuality is a crime (recognized in Penal code of that country: art. 58, 333 y 338), "a gay in Algeria cannot have problems, the reality is not so serious as to consider that someone can be persecuted because of his sexual orientation" (SAN 11/07/2008, rec. n° 1563/2007)

Article 9-1-a,b, f /10-1-d Qualification Directive: Discretion (upon return)

44) Decision makers sometimes argue that LGBTI people will not be persecuted as long as they act discreetly or hide their sexual orientation or gender identity to avoid persecution ('go home and be discrete'). Do the asylum authorities in your country use this reasoning?

No

Yes. Could you provide further information and describe decisions and/or case law in which this happens? Good and bad practices.

The asylum decision makers use this argument, but not in the written resolution. They use the discretion requirement when they speak to us (as lawyers) orally and informally about the case, but they don't "write" this reason neither in the administrative resolution, nor in case law. But indeed, this is the reason (LGBTI people will not be persecuted as long as they act discreetly or hide their sexual orientation or gender identity to avoid persecution) that is behind the refusal.

Article 10-1-d Qualification Directive; Article 37-38 Procedure Directive: Implementation

45) Does your law or practice recognise explicitly that people who flee because of their sexual orientation can belong to a particular social group?

No

Yes. Are there any differences between L, G and B applicants, and if so, what differences?

It is necessary to specify the particular group, because, depending on COI, it is not to be the same the situation of discrimination/persecution of lesbians, gays, transsexual, bisexual and intersexual people. In Spain the LGBTI people are, theoretically, included in a social group (article 7.1.e) of Asylum Law). But it is important, when they make their allegation, to specify concretely this particular social group. For example: "transsexual woman from Nicaragua who has been persecuted by the police, in a context of discrimination to LGBTI people in her country."

46) Does your law or practice recognise explicitly that people who flee because of their gender identity can belong to a particular social group?

No. Does your country have any other policy that provides protection to transgender asylum seekers?

Yes. If there is explicit policy or legislation, please give a translation into English (French or German).

Article 7.1: "According to the prevailing circumstances in the country of origin, it is included in the concept of particular social group a group based in a common characteristic of sexual orientation or gender identity, and, or, age. These characteristics, alone, cannot grant the implementation of this article. Never can be understood as "sexual orientation" the execution of behaviour that is considered as a crime by the Spanish law". This is a contribution from CEAR to the law, because in the very first moment there is no mention about gender identity. It is not perfect but it is an advance. For the moment, there is no change in practice despite the law.

47) Does your country apply Article 10(1)(d) of the Qualification Directive in such a way that members of the group must not only share an immutable/innate/ fundamental characteristic, **and** also the condition that the group has a distinct identity, because it is perceived as being different by the surrounding society, or is one of these requirements sufficient?

No Yes

Article 7.1.e)

48) How is the Qualification Directive's concept of 'gender related aspects' taken into consideration in your legislation?

With the same drafting as in the cases of sexual orientation or gender identity, in the same article (7.1.e)) but in another paragraph: "At the same time, according to the prevailing circumstances in the country of origin, are included [in the concept of a particular social group] people who flee their countries because of persecution based on gender or age. These characteristics, by themselves, cannot guarantee the implementation of this article"

Article 11-1-e, 14 Qualification Directive: Cessation/Withdrawal of asylum status

49) Do you have examples of LGBTI asylum seekers whose asylum status was withdrawn, because the credibility of their lesbian, gay, bisexual orientation or gender identity was doubted later on?

No

Yes. What was the reason?

50) Do you have examples of LGBTI asylum seekers whose asylum status was withdrawn, because their lesbian, gay, bisexual orientation or gender identity had changed?

No

Yes. What was the reason?

51) Are there cases in which asylum status was withdrawn because the position of LGBTIs in the country of origin had improved?

No

Yes. Please give examples.

The case of Nicaragua: their situation did not improve but changed the law. The discrimination/persecution is still the same (because in the last ten years there were no sentences against LGBTI people: it was a question of homophobic society). The Asylum Office waited until the penal code changed to deny all applications from this country (even three years). It is obvious that this is not a case or cessation but the logic inside is the same.

If the answer to questions 49 and/or 51 was yes:

51A) Did the authorities examine whether the person involved could still be at risk in the country of origin for being a perceived LGBTI?

No Yes. Please give details.

Yes, theoretically, but...

Article 20-3 Qualification Directive: Vulnerable persons

52) Are LGBTI asylum seekers considered part of a 'vulnerable group' or a 'group having special needs' in your national legislation/policy/practice?

No

Yes. Please give details

Article 13 Procedures Directive: The interview

53) Can asylum seekers ask for an interviewer and/or interpreter of the gender (sexual orientation/ gender identity) of their own choice?

No

Yes. Is such a preference usually recognised? No Yes

It is not clear. The article 18.5 of Asylum Act says that the administration will take measures to utilize a differentiated treatment when it was necessary (because of sex, people with discapacity, minors, elderly people, pregnant women, people who had suffered tortured or trafficking -article 46-). But it doesn't say anything about the LGBTI people (but we understand that this list is not a numerus clausus list because it is referred to special circumstances) and neither about the possibility of applying for the applicant.

54) Can asylum seekers express a preference for an interviewer and/or interpreter who is not a member of their own ethnic community?

No

Yes. Is such a preference usually recognised? No Yes

This is a possibility that it is not included in law (remember that we are waiting for the asylum regulations) but in practice. But this practice normally takes place in Asylum Office only, not in police stations (The Asylum Office is in Madrid and it is the organism that decide about all asylum cases. This is also where the asylum applications take place for people who live in Madrid. But if the people live in other cities, the first interview should be made in the police station of that city - and then, the police employee should send the application to Asylum Office-, and, in these places, because there is no specific regulation, normally there is no possibility to change the translator (the police employees are less-prepared and specialized in asylum matters indeed than Asylum Office employees)

55) Do you have trainings on LGBTI issues available for officers who take interviews and decisions?

No. Please go to question 56.

Yes. Please answer questions 55A, B, C, D, E and F.

⁴ Procedures Directive: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF>

55A) Is this part of a general training or is it a specific training?

55B) Is the training:

- Obligatory No Yes. For whom?

- Optional No Yes. How many people follow this training (coverage)?

55C) Who has access to this training?

55D) Are judges included in these trainings?

No Yes

55E) What is the level and frequency of these trainings?

55F) Who does the training?

56) Do you have trainings available for interpreters on the appropriate terminology for use with LGBTI asylum seekers?

No Yes

Article 23-3,4 Procedures Directive: Accelerated procedure

57) Does your country have accelerated asylum procedures?

No

Yes. Is an exception made for claims of LGBTI asylum seekers?

No Yes. Please explain.

58) Are applications from LGBTI asylum seekers prioritised by the national authorities?

No Yes. Please explain.

Articles 29-31 Procedures Directive: Safe countries

59) Do the asylum authorities use lists of 'safe countries of origin'?

- No. Please go to question 60.
- Yes. Please answer questions 59A and B.

59A) Does the list include countries that have criminal provisions against same-sex conduct (or obvious homophobic practice)?

- No
- Yes. Please give the names of these countries.

There is not a public list. We know about its existence because of our experience: since many years, it is talking about that list

59B) Does the list provide exceptions for LGBTIs from specific countries?

- No Yes. Please explain.

There is not a public list, and we don't know about any exceptions from specific countries

Article 27, 36 Procedures Directive: Dublin Regulation

60) Did you find examples of LGBTI asylum cases in which the European country responsible for examining the asylum application (Dublin Regulation) was not considered a safe country (because of LGBTI aspects of the case)?

- No
- Yes. Please give details.

Family Reunification Directive⁵, Council Directive 2003/86/EC

Article 10 Family Reunification Directive: Family members

61) Does your country recognise same-sex marriage or same-sex partnership for nationals?

- No. Please go to question 62.
- Yes. Please answer question 61A.

61A) Does your country provide family reunification rights based on same sex relationships for partners of refugees?

⁵ Family Reunification Directive:
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0086:EN:HTML>

No Yes. Please explain under which circumstances.

for spouse, partner, children under 18 (and over this age in specific circumstances of dependency; children in general or from both), parents (from both). Also other relatives or persons in several conditions of dependency

Reception Directive⁶

Article 17 Reception Directive: Reception

62) Do LGBTI asylum-seekers face problems (harassment, ill-treatment etc.) while in reception/ accommodation centres or in immigration detention, based on their sexual orientation/ gender identity?

No. Please go to question 63.

Yes. Please answer questions 62A, B and C.

62A) By whom are these problems caused?

From the other asylum seekers normally. Above all in the case of transsexual women: they are deeply discriminated, first of all from the people of their own country.

Normally the problems faced by transgender people in the refugee centres are from the other refugees of the centre (in a few words, they don't like them, transgender people are seen as a bad influence for the children, their condition is against nature...). And this is a problem not solved yet by the administration: there is no specialized (not specific) social resources for transgender people

62B) Are the authorities aware of these problems?

No Yes. How do they react?

Nothing

62C) Does a complaints mechanism exist?

No

Yes. Is it effective? No Yes

63) Does the possibility of housing in private accommodation exist during the asylum procedure?

No

Yes. Please explain

⁶ Reception Directive: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0009:EN:HTML>

With their own economic possibilities of with the official help for hiring (but this source is not common: the only possibility in many cases uses to be to enter in an accomodation centre). If the person rejects this, it will be understood that he or she rejects all kind of help.

64) Is it possible in reception/ accommodation centres or immigration detention to be placed in an accommodation separate from people from the same country and/or religious background?

No

Yes. Are asylum seekers informed about this possibility? No Yes

Articles 17 and 15 Reception Directive: Transgenders/ intersex

65) Do transgender and intersex people have the possibility to choose whether they want to be housed in a women's or men's (section of) reception/ accommodation and detention centre?

No Yes

66) Do transgender/ intersex applicants have access to specific health care and support,

a) during the asylum procedure

No Yes

b) after they are granted asylum?

No Yes

67) If your country provides the possibility to legally change a person's name and sex, does this also apply to trans/ intersex asylum seekers and trans/ intersex refugees?

No Yes

Any other issues

68) Are you aware of any other specific problems for LGBTI asylum seekers?

Ad Q 67: Yes, this possibility exists in Spain, but only for Spanish people. The Civil Code establishes that all the matters in order to civil status (name include) are regulated by the law of the country of the person. In consequence, the change of the name will depend on the legal status of the asylum seeker. Only when these people get the Spanish nationality, they will be able to change their name (if they want). Until this moment, this possibility will depend on their own law.

69) Are you aware of any other good practices concerning LGBTI asylum seekers?

70) Please add any other comments on the situation of LGBTI asylum seekers in your country.

Thank you!

SHORT LGBTI GLOSSARY

Age of consent

The minimum age at which a person is considered to be legally competent of consenting to sexual acts.

Bisexual

An individual who is physically, romantically and/or emotionally attracted to both men and women. Bisexuals need not have had equal sexual experience with both men and women. In fact, they need not have had any sexual experience at all to identify as bisexual.

Coming out

A lifelong process of self-acceptance. People forge a lesbian, gay, bisexual or transgender identity first to themselves and then may reveal it to others. Publicly identifying one's sexual orientation may or may not be part of coming out.

Gay

Used to describe people whose enduring physical, romantic and/or emotional attractions are to people of the same sex (e.g., *gay man*, *gay people*). Often used to describe a man who is sexually attracted to other men, but may be used to describe lesbians as well.

Gender

Refers to the socially constructed roles, behaviours, activities, and attributes that a given society considers appropriate for men and women.

Gender Identity

Refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth. It includes the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.

Intersex

Refers to a condition of having sexual anatomy that is not considered standard for a male or female. Intersex can be used as an umbrella term covering differences of sexual development, which can consist of diagnosable congenital conditions in which development of chromosomal, gonadal or anatomic sex is atypical. The term *intersex* is not interchangeable or a synonym for *transgender*.

Lesbian

A woman whose enduring physical, romantic and/or emotional attraction is to other women.

Sexual Orientation

Refers to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate relations with, individuals of a different gender or the same gender or more than one gender.

Sodomy Laws

Laws that define certain sexual acts as crimes. The precise sexual acts meant by the term sodomy are rarely spelled out in the law, but are typically understood by courts to include any sexual act deemed unnatural. Consensual homosexual acts between adults are illegal in about 70 to 80 countries in the world; in 40 of these, only male-male sex is outlawed.

Transgender

An umbrella term for people whose gender identity and/or gender expression differs from the sex they were assigned at birth. Transgender people may identify as female-to-male (FTM) or male-to-female (MTF). Transgender people may or may not decide to alter their bodies hormonally and/or surgically.