If I Go Back, I Will be Killed

Legal Standards for SOGIE Asylum Claims in Iceland





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List of Acronyms and Abbreviations

CAT Treatmen	Convention Against Torture and Other Cruel, Inhuman or Degrading t or Punishment
COI	Country-of-Origin Information
DoI abbreviat	Directorate of Immigration (Iceland). Also referred to using the Icelandic ion "UTL" in some direct quotes.
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
IFA	Internal Flight Alternative
LGBTQ+ Lesbian, Gay, Bisexual, Transgender, Queer (plus other identities not specifically named)	
NGO	Non-Governmental Organization
PI	Principal Investigator
PTSD	Post-Traumatic Stress Disorder
RIKK	RIKK — Institute for Gender, Equality and Difference at the University of Iceland
SOGIE	Sexual Orientation, Gender Identity and Expression
UNHCR	United Nations High Commissioner for Refugees

Executive Summary

Lesbian, gay, bisexual, transgender, queer, and other individuals with diverse sexual orientations, gender identities and expressions (SOGIE) face heightened risks of violence, persecution, and discrimination globally. For many, the only means of survival is to seek international protection abroad. While Iceland has a strong human rights record and is a signatory to key international conventions, SOGIE applicants for asylum continue to encounter certain legal and procedural challenges that may compromise their right to safety, dignity, and non-discrimination.

This report is part of the research project Queer Refugees in Queer Utopias: Inclusions and Exclusions, funded by the Icelandic Research Fund under RANNÍS. Drawing on international human rights law, UNHCR guidance, and Iceland-specific qualitative data collected between 2022 and 2024, the report offers a set of nine guidelines to ensure the rights of SOGIE applicants for international protection are upheld throughout the asylum process in Iceland. Each guideline combines legal analysis with testimony from SOGIE refugees and professionals working within the Icelandic asylum system.

Background and Context

Under international law, individuals fleeing persecution due to their SOGIE are entitled to protection as members of a "particular social group." Iceland has ratified the 1951 Refugee Convention and its 1967 Protocol, the European Convention on Human Rights (ECHR) and the Convention Against Torture (CAT). Although Iceland is legally bound to uphold these protections, there remain implementation gaps, particularly in credibility assessments, access to sensitive interviews, and awareness of the unique vulnerabilities faced by SOGIE asylum seekers.

SOGIE refugees in Iceland often come from countries where their identities are criminalized, and many have faced torture, death threats, and state-sponsored persecution. Some report being retraumatized during interviews or experiencing disbelief from officials. Others express fear of being returned to countries where persecution is near-certain. The asylum process can thus become a source of renewed vulnerability.

Key Findings

- Non-refoulement must be applied consistently. SOGIE applicants must not be returned to countries where they face risk of persecution, inhuman treatment, or death. Icelandic authorities must consider both state and non-state actors as sources of risk.
- Torture and ill-treatment remain ongoing threats. Many SOGIE applicants have endured torture and imprisonment in their home countries. In accordance with

Article 3 of the ECHR and the CAT, Iceland must assess and prevent returns that could expose individuals to such treatment.

- Credibility assessments are not applied in a sufficiently uniform or objective manner. Current methods may not account for the fear and trauma experienced by applicants, leading to unreasonable expectations about disclosure or selfpresentation.
- Country-of-Origin Information (COI) is often insufficient. Up-to-date, SOGIEsensitive COI is essential for assessing risk, yet Icelandic authorities sometimes rely on general or outdated sources.
- Intersectionality is inadequately addressed. Discrimination based on SOGIE often intersects with race, religion, migration status, and other factors, compounding risks during the asylum process.
- Lack of safe accommodation and trained personnel persists. SOGIE applicants
 may experience harassment in reception centers or have difficulty accessing
 basic support in environments where their identity is not protected.

High-Level Recommendations

- 1. Apply the principle of non-refoulement with heightened scrutiny in all SOGIE-based claims, referencing international legal standards and ECtHR jurisprudence.
- 2. Ensure credibility assessments are holistic, trauma-informed, and sensitive to the risks of forced disclosure for SOGIE individuals.
- 3. Improve the quality and specificity of Country-of-Origin Information (COI) used in decision-making for SOGIE applicants.
- 4. Train all staff handling asylum claims on SOGIE-related vulnerabilities and rights, including interviewers, interpreters, and caseworkers.
- 5. Develop clear and accessible protocols for safe, confidential, and respectful interviews with SOGIE applicants.
- 6. Assess internal flight alternatives (IFA) with attention to the full spectrum of societal, familial, and institutional risks faced by SOGIE individuals.
- 7. Recognize intersectionality as a key consideration in asylum evaluations and service provision.

- 8. Ensure access to safe accommodation and psychosocial support for SOGIE applicants throughout the asylum process.
- 9. Monitor, review, and revise legal and procedural guidelines on SOGIE asylum claims in consultation with relevant civil society actors.

This report aims to support Icelandic immigration authorities, legal practitioners, and service providers in strengthening their practices to align with international obligations and best protect those who seek refuge on the basis of their SOGIE. Through informed, rights-based implementation, Iceland can uphold its human rights commitments and provide meaningful protection to some of the world's most vulnerable individuals.



Introduction

Iceland has come to be seen as both a gender equality stronghold and a queer-friendly destination. Yet, for individuals seeking international protection on the basis of their sexual orientation, gender identity and expression (SOGIE), the experience of applying for asylum in Iceland reveals certain contradictions. While the country has ratified core human rights conventions and maintains a reputation for progressive values, the legal and procedural treatment of SOGIE asylum claims often falls short of international obligations. This report addresses that gap.

Developed as part of the research project Queer Refugees in Queer Utopias: Inclusions and Exclusions, funded by the Icelandic Research Fund, this report brings together legal analysis, empirical data, and lived experience to assess how Iceland can better fulfill its obligations toward SOGIE applicants. Drawing from interviews with SOGIE refugees and key professionals working within Iceland's asylum system, the report seeks not only to highlight systemic shortcomings but also to propose concrete, actionable improvements.

The need for such a report arises from growing concern over the disproportionate evidentiary burden placed on SOGIE asylum seekers, the narrow interpretations of credibility by immigration authorities, and the lack of culturally appropriate interview practices. In many cases, SOGIE applicants are asked to prove their identities in ways that reinforce racialized, Western-centric, and stereotyped understandings of queerness, often at the cost of retraumatization . Moreover, the deportation of individuals to countries with known histories of homo- and transphobic violence raises serious questions about Iceland's adherence to the principle of non-refoulement.

This report aims to support practitioners, policy makers, and civil society actors by presenting nine thematic guidelines, each grounded in international law and enriched by the testimony of individuals who have navigated the Icelandic asylum process. These guidelines are intended to promote more rights-based, trauma-informed, and culturally sensitive procedures that recognize the unique vulnerabilities of SOGIE individuals. At the same time, the report serves as a resource for SOGIE applicants themselves, outlining both their rights and the responsibilities of the Icelandic state.

While the findings in this report focus on Iceland, they echo broader European and transnational patterns in the treatment of queer refugees. In this way, the report also contributes to international conversations on sexual migration, the politics of belonging, and the ethical responsibilities of states that value inclusivity yet practice exclusionary practices at the border.

¹ Retraumatization in the context of SOGIE refugees refers to the re-experiencing or triggering of previous trauma, such as persecution, violence, or discrimination, through new or ongoing experiences that mirror or echo the original harm. For SOGIE refugees, retraumatization can occur at various stages of displacement, asylum, and resettlement, often through systemic, institutional, or interpersonal interactions that reproduce exclusion, fear, or violence.

Through its legal recommendations and human-centered approach, this report calls for a rethinking of how safety, dignity, and justice are operationalized within Iceland's asylum system so that queer individuals seeking refuge are not simply received, but meaningfully protected.

Structure of the Report

The report is structured around nine thematic guidelines that aim to enhance the treatment of individuals seeking international protection in Iceland on the basis of their sexual orientation, gender identity, and expression (SOGIE).

Each guideline begins by setting out the relevant legal obligations that Iceland must uphold, referencing key instruments such as the European Convention on Human Rights, the Convention Against Torture, the 1951 Refugee Convention and its 1967 Protocol, and the International Covenant on Civil and Political Rights. This establishes the normative standards against which current practices are assessed.

Building on this foundation, the guidelines then propose targeted measures for improving the handling of SOGIE asylum claims within Iceland's immigration system. These recommendations are designed to be both practical and context-specific, offering pathways to ensure procedures are fair, sensitive, and compliant with international standards.

To illuminate how these legal principles and procedural norms intersect with everyday realities, each section concludes with accounts from individuals who have navigated Iceland's asylum system as SOGIE applicants. Their testimonies, alongside observations from professionals and advocates working in the field, bring to light the tangible impacts of existing policies and underscore the urgency of reform.

Beyond guiding institutional stakeholders, the report also serves as a tool for SOGIE applicants, their legal representatives, and supporting organizations. By clarifying rights and state responsibilities, it seeks to strengthen applicants' ability to advocate for just and respectful treatment throughout the asylum process.

International Legal Frameworks Applicable in Iceland

On the following pages, references will be made to international legal frameworks and guidelines. Regarding SOGIE applicants for international protection specifically, Iceland has signed, ratified, is bound by, or is otherwise reasonably expected to adhere to the provisions of the following conventions and laws.

European Convention on Human Rights (ECHR) (1950) — Iceland is a member of the Council of Europe and has ratified the ECHR (ísl. <u>Lög um mannréttindasáttmála Evrópu, nr. 62/1994</u>). Iceland is therefore bound by the decisions of the European Court of Human Rights (ECtHR), including rulings that protect individuals, SOGIE or otherwise, against threats to their lives or freedom, from torture and inhuman or degrading treatment, and from persecution and discrimination.

Convention Against Torture (CAT) (1984) — Iceland has ratified the CAT (isl. Samningur gegn pyndingum og annarri grimmilegri, ómannlegri eða vanvirðandi meðferð eða refsingu, nr. 19/1996) and is bound by its provisions. Among other things, the CAT bars Iceland from returning individuals, LGBTQ+ or otherwise, to a country where they would be subjected to physical or mental torture.

1951 Refugee Convention and 1967 Protocol — Iceland is a party to both the 1951 Refugee Convention and the 1967 Protocol (isl. Alþjóðasamningur um stöðu flóttamanna frá 28. júlí 1951, sbr. bókun við samninginn frá 31. janúar 1967). The Convention and Protocol have not been directly incorporated into domestic law, but they are referred in the Law on Foreigners, no. 80/2016. Iceland therefore has an international obligation to uphold its provisions, including providing protection to refugees, including those persecuted due to their sexual orientation or gender identity, under the "particular social group" category.

International Covenant on Civil and Political Rights (ICCPR) (1966) — Iceland has ratified the ICCPR (ísl. Alþjóðasamningur um borgaraleg og stjórnmálaleg réttindi, nr. 10/1979), meaning that Iceland has committed to upholding its protections, including those against discrimination. Individuals are not able to rely on the ICCPR in national courts as the domestic law has not taken effect, however, Iceland and its authorities have an international obligation to maintain its provisions. The Human Rights Committee's interpretations of the ICCPR have indicated that the rights of LGBTQ+ individuals fall under the Covenant's guarantees.

United Nations High Commissioner for Refugees (UNHCR) Guidelines on International Protection No. 9 (2012) — UNHCR guidelines are not legally binding, but they are influential in shaping the asylum processes of countries that are parties to the 1951 Refugee Convention, like Iceland. Icelandic authorities are expected to consider these guidelines when evaluating asylum claims related to sexual orientation or gender identity.

Data Collection and Interview Methodology

Testimonies presented in this report were gathered through a qualitative approach, using in-person, semi-structured interviews with individuals seeking or granted international protection on the basis of their sexual orientation, gender identity, or expression (SOGIE), as well as with professionals involved in their reception and support. Data collection took place between 2022 and 2024 in the capital region of Iceland, specifically in the municipalities of Reykjavík, Garðabær, Seltjarnarnes, and Mosfellsbær, and also in the municipality of Reykjanesbær.

The research was guided by a purposive sampling strategy complemented by snowball sampling, both commonly applied in studies involving socially marginalized or legally vulnerable populations. A total of 17 SOGIE asylum seekers and refugees aged 18 and over participated in interviews. Participants originated from the Middle East, Africa, South America, and Eastern Europe. Self-identification data indicated that eleven participants identified as gay or bisexual men, and six identified as lesbian, bisexual, pansexual, transgender women, or non-binary persons.

In addition to interviews with SOGIE applicants, 30 professionals were interviewed. These included 12 municipal social workers (based in Reykjavík, Mosfellsbær, and Seltjarnarnes), 10 representatives from non-governmental and advocacy organizations, four professionals involved in service or policy development, and four professionals working within the asylum assessment and decision-making process.

Participant recruitment was facilitated through cooperation with Samtökin '78 – the National Queer Association of Iceland – and the Icelandic Red Cross, as well as through municipal social services. Prior to recruitment, an informational meeting was held with Samtökin '78 in early 2022. The organization distributed information letters to potential participants. Municipal authorities and NGOs were likewise provided with information letters and were asked to circulate these to relevant staff. Interested participants subsequently initiated contact with the research team to arrange interview times and locations.

Efforts were made to ensure that interviews were conducted in environments conducive to psychological safety and privacy, considering the legal and emotional vulnerability of many SOGIE applicants. Interviews with SOGIE participants were held either at the University of Iceland, in participants' homes, or in public spaces such as libraries or cafés, based on participant preference. Interviews with professionals were conducted either in university offices or at their workplaces.

Before commencing interviews, all participants were provided with detailed information regarding the research project, including the purpose of the study, data use, and their rights as participants. Written informed consent was obtained prior to participation. Participants were explicitly informed that they could decline to answer

any questions, withdraw from the study at any time, and that their participation or withdrawal would not affect the services or support they received from any institution. As an added safeguard, SOGIE participants were offered access to free post-interview counselling through Samtökin '78 should they experience distress or require support.

Professional interpreters were used in four interviews involving five participants where language barriers were identified. While none of the participants were able to conduct the interview in Icelandic, in two cases the interpreters opted to translate into Icelandic rather than English, as this was their customary practice. All other interviews were conducted in English.

Interview duration ranged from 30 to 120 minutes. A semi-structured interview guide was used in all interviews to ensure consistency across key thematic areas while allowing flexibility for individual narratives. Interview topics focused on legal experiences, social integration, interaction with institutions, and personal reflections relevant to the research aims. All interviews were audio recorded with consent, and transcribed verbatim. Identifying information was removed during transcription and pseudonyms were used to protect anonymity. All data were stored in encrypted folders on OneDrive, accessible only to the research team.

The data analysis process followed standard qualitative procedures. Initial coding was conducted through open coding, followed by focused coding. Thematic analysis and elements of grounded theory were applied to generate core themes. Data was managed and analyzed using ATLAS.ti and Dedoose software programs.

Care was taken to ensure ethical integrity and reflexivity throughout the study, particularly considering the potential power asymmetries between researchers and participants. While all members of the research team shared LGBTQI+ identities with participants, differing positionalities in terms of race, class, nationality, and legal status were acknowledged. Reflexive practices included systematic note-taking and reflective memo-writing during all stages of data collection and analysis. Procedures for participant recruitment, consent, and emotional safety were designed to mitigate power imbalances, foster trust, and ensure voluntary participation.

The study did not include intersex participants. However, the sample encompassed individuals across a range of gender identities, sexual orientations, nationalities, and legal statuses, including individuals often underrepresented in comparable Nordic studies.



1. Non-Refoulement and Protection of Life and Freedom

The principle of non-refoulement, enshrined in Article 33 of the 1951 Refugee Convention and supported by the ECtHR's interpretation of Article 2 of the ECHR, prohibits the return of individuals to countries where their life or freedom would be at risk. This principle is central to the protection of refugees and must be carefully upheld by Icelandic immigration authorities. For LGBTQ+ applicants for international protection, non-refoulement can mean the difference between safety and unimaginable harm.

Immigration staff must assess whether an applicant faces threats in their home country due to their SOGIE, or other factors. If such risks exist, Iceland is obligated not to return the individual. By handling these cases with care, compassion, and adherence to international standards, officials play a critical role in protecting some of the world's most vulnerable individuals.

Many LGBTQ+ refugees come from countries where their identities are criminalized or condemned. For example, one refugee stated, "If I go to Iran, I will be executed," while another shared, "In my country, being outed as gay can mean death... even looking gay is dangerous." These accounts underscore the severe risks LGBTQ+ individuals face and highlight the importance of non-refoulement.

Legal Frameworks Supporting Non-Refoulement

Article 2(1) ECHR:

Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

In M.S.S. v. Belgium and Greece, the ECtHR noted that in cases of expulsion of applicants for international protection, its "main concern is whether effective guarantees exist that protect the applicant against arbitrary refoulement, be it direct or indirect, to the country from which he or she has fled" (para 286).

Definition of Refugee under Article 1(A)(2) of the 1951 Convention and Article 1(2) of the 1967 Protocol:

Owing to wellfounded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

Article 33 of the 1951 Refugee Convention on prohibition of expulsion or return ("refoulement")

- No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
- 2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

The UNHCR Guidelines on International Protection No. 9 clarify that "a particular social group" includes LGBTQ+ individuals, encompassing lesbians, gay men, bisexuals, transgender persons, and likely intersex individuals, though fewer claims have been made on this basis. Sexual orientation, gender identity, and expression are therefore recognized as grounds for refugee status.

In the case of the Reykjavík District Court (Case No. 5409/2021), the methodology used by the Immigration Appeals Board for credibility assessments was under scrutiny. The court noted that while the Board referred to guidelines issued by the UNHCR regarding international protection based on sexual orientation and gender identity, it failed to explain how these guidelines were applied in the credibility assessment or detail their content in the decision.

Recommendations

To ensure non-refoulement and protection from threats to life and freedom for SOGIE applicants for international protection, it is recommended that:

- 1. Special care is taken when an applicant expresses fear for their life or freedom, based on their SOGIE or otherwise.
- 2. Where such a fear is substantiated, under Article 33(2) of the 1951 Refugee Convention, the application may only be denied if there is clear and reasonable evidence that the applicant presents a danger to the security of Iceland or has been convicted of a 'particularly serious crime' making them a danger to the community.
- 3. The principle of non-refoulement is applied strictly, ensuring applicants are not returned to countries where their sexual orientation or gender identity places them at risk of persecution, inhuman treatment, or death.

- 4. Comprehensive assessments are conducted on the legal and societal conditions for LGBTQ+ individuals in the applicant's country of origin, including the existence of laws criminalizing LGBTQ+ identities and societal attitudes that perpetuate violence or discrimination.
- 5. Statements made by applicants regarding fears of persecution are evaluated with sensitivity, acknowledging that LGBTQ+ individuals may have legitimate fears of disclosing their identity fully during initial interviews.
- 6. Decisions are made in line with the jurisprudence of the ECtHR, particularly in ensuring effective safeguards against arbitrary or indirect refoulement, as highlighted in cases such as M.S.S. v. Belgium and Greece.
- 7. Relevant international legal instruments, including the ECHR, ICCPR, CAT, and UNHCR guidelines, are consistently referenced to ensure alignment with Iceland's international obligations.
- 8. Decisions to deny asylum are thoroughly reviewed to ensure compliance with the strict standards required by the principle of non-refoulement.
- 9. Only refer to the UNHCR Guidelines for credibility assessments if a specific reference to how they were applied can be provided.

Feedback from Past Experiences

While Iceland has a strong commitment to human rights, there are moments when the application of non-refoulement requires careful attention and reflection. One refugee recounted their experience with immigration authorities:

"In my country, homosexuality is punishable by death. The immigration department told me that this is not their problem, and I should return [home] and bring documents that I am single. I told them that if I go [home], I will be executed, but the immigration department did nothing. He ignored me and told me 'We don't care what will happen to you and we don't care if you are executed or not."

While this case highlights a deeply challenging interaction, it also underscores an opportunity: immigration staff have a pivotal role in ensuring that cases like this are handled with the care and thoroughness that Iceland's human rights obligations demand. Each decision made within the asylum system has profound implications, often determining whether someone will live or die. For many LGBTQ+ individuals, the danger extends beyond legal persecution. One refugee explains:

"The LGBT community [in my country] is always exposed to the danger of threats and killing from different individuals in the society, different groups, like some kind of armed groups, religious groups, police officers, and also some of them are just under the threats from their family."

Such accounts show that persecution is often deeply embedded in familial, societal, and legal structures, making it impossible for individuals to find safety within their home countries. Honor-based violence poses an additional risk. One refugee explained:

"When my father knew about everything [...] I received lots of threats, lots of messages, every single day, about killing. And he would come, and he would do his best just to do this kind of we call they call honor killing, because I am now shaming the family."

These forms of violence are often rooted in cultural norms that prioritize family reputation over individual lives, leaving LGBTQ+ individuals with no choice but to flee.

These narratives highlight the weight of the decisions made within the asylum system. The principle of non-refoulement is not just a legal obligation—it is a moral responsibility that reflects Iceland's commitment to human rights and equality. By approaching each case with sensitivity, cultural awareness, and a firm commitment to international standards, staff can ensure that no one is returned to a situation where their safety, dignity, or life is in jeopardy.

At the same time, the complexity of credibility assessments in LGBTQ+ asylum cases are not lost on those who carry them out. A legal professional working within the Directorate of Immigration (DoI) explained the challenge of assessing the trustworthiness of asylum seekers' claims:

Yes, I fully admit that this is very delicate. We're not evaluating behavior or demeanor—that's just a certain methodology we use, generally, in credibility assessments. It's a holistic evaluation.

This quote highlights how determining whether an individual is telling the truth about their sexual orientation or gender identity demands both expertise and a high degree of sensitivity.



2. Non-Refoulement and Protection from Torture and Persecution

The principle of non-refoulement, central to the 1951 Refugee Convention, CAT, and ECHR, prohibits expelling or returning individuals to countries where they face imminent risks of torture or inhuman and degrading treatment. Under Article 3 of the ECHR and Article 3 of the CAT, Iceland has a duty to carefully assess whether an applicant would face such risks in their country of origin, particularly when their SOGIE is a contributing factor. If such risks exist, Iceland must refrain from returning the applicant. This principle is also reflected in national law, inter alia, Article 42 on the Act on Foreigners No. 80/2016.

Legal Frameworks on Torture and Inhuman Treatment

Article 3 of the CAT:

- No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
- For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

"Torture" is defined in Article 1(1) CAT as:

...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Article 3 ECHR on Prohibition of Torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

The ECtHR has elaborated on the terms "inhuman" and "degrading" in case law, including in <u>Gäfgen v. Germany</u> (para 89):

- "Inhuman treatment" involves premeditated actions causing severe physical or mental suffering.
- "Degrading treatment" arouses fear, anguish, or feelings of inferiority, humiliating the victim or breaking their moral resistance.

In <u>Soering v UK</u>, the ECtHR established that extradition could invoke the responsibility of the sending State under Article 3, setting a precedent that States must avoid deporting individuals at real risk of torture or inhuman treatment.

In <u>B and C v. Switzerland</u>, the ECtHR ruled that deporting an individual to a non-European country where they risk ill-treatment based on their sexual orientation violates Article 3. The Court criticized domestic authorities for inadequately addressing risks from non-State actors and for assuming the applicant could avoid harm by concealing their identity.

Article 7 ICCPR:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Recommendations

To ensure non-refoulement and adequate protection from threats of torture, inhumane or degrading treatment, or persecution for SOGIE applicants for international protection, it is recommended that:

- 1. The principle of non-refoulement is applied strictly, ensuring applicants are not returned to countries where they face persecution due to their sexual orientation or gender identity.
- 2. Article 3 ECHR is considered to ensure applicants are not subjected to torture, inhuman, or degrading treatment upon return.
- 3. The CAT principles are applied to determine whether the applicant has been or could be subjected to torture due to their SOGIE.
- 4. Article 7 of the ICCPR, which prohibits torture and cruel, inhuman, or degrading treatment, is referenced in evaluating asylum claims.

- 5. Consistent patterns of human rights abuses, including torture, inhuman, or degrading treatment, are taken into account.
- 6. The legal and societal conditions in the applicant's home country are assessed, including laws criminalizing LGBTQ+ identities and systemic discrimination.
- 7. Risks are evaluated comprehensively, considering both State and non-State actors as potential sources of harm.
- 8. The applicant's personal circumstances, including psychological and social vulnerabilities, are evaluated, ensuring their SOGIE is a central factor in the assessment.
- 9. Patterns of persecution specific to an applicant's SOGIE, such as domestic violence or abuse ignored by authorities, are recognized as grounds for protection when the home country fails to provide adequate safeguards.
- 10. Immigration staff are trained to avoid bias, stereotypes, or assumptions when assessing SOGIE-related claims, ensuring sensitivity and impartiality throughout the process.

Feedback from Past Experiences

For many LGBTQ+ individuals fleeing persecution, their identities are inextricably linked to the danger they face in their home countries. Some refugees in Iceland consistently emphasized the threats posed by religious groups, families, police, and broader social networks and communities. One applicant for international protection encapsulated this collective experience, stating:

"You are surrounded by all kinds of threats: your family, the society, religious groups, and the police. There is no safe space."

This testimony underscores how LGBTQ+ individuals are targeted as a distinct social group, rendered vulnerable by deeply entrenched cultural, religious, and political hostilities.

Another refugee articulated the compounded risks associated with their sexual orientation and familial obligations.

"If my wife tells the court in [my home country] that I'm gay, she can divorce me and I'll lose my son and everything else and be completely exiled"

This narrative illustrates the systemic discrimination faced by LGBTQ+ individuals, extending beyond societal stigma to legal repercussions that isolate them further. Such

experiences demonstrate how LGBTQ+ identities are persecuted not only individually but collectively, as societal norms render the entire group marginalized and at risk.

A professional in the role of social support in municipal social services working with SOGIE refugees in Iceland also highlighted the deep-rooted fear and hatred of LGBTQ+ individuals in some countries.

[To be queer] is just seen as the work of the devil in these countries. If you're in any way, you know, deviating from this norm [...] it's just considered evil, really.

Many such stories from SOGIE refugee home countries positions LGBTQ+ persons as inherently deviant, stripping them of agency and embedding persecution through both law and custom.

While the asylum process is inherently bureaucratic, those conducting interviews with asylum seekers also recognize the importance of humanizing the process. One experienced legal professional working with cases that undergo substantive review (efnismeðferð) reflected on efforts to improve interview procedures:

We've now started to reflect more on how much it matters how we meet people—how we receive them, how we introduce the interpreter, how we introduce the advocate—and we go over all that. More than just jumping into the questions, we take time to create a safe atmosphere. Because we also know how much it matters that people feel relaxed, because that makes it easier for them to talk. There's also emphasis on how we close the interview and go over the next steps with the applicant. We don't gain anything directly from that, but we know it might help them feel more at ease.

This statement reveals an effort within the DoI to refine the interview process, ensuring that asylum seekers (many of whom have endured significant trauma) are given the space to articulate their experiences in a way that does not feel like an interrogation. The lawyer acknowledges that while the procedural necessity of asking questions remains, the way in which the process is conducted significantly impacts the applicant's ability to communicate. Rather than reducing the credibility assessment to a rigid checklist of questions, there is an effort to foster a more humane environment where applicants feel less pressured and, in turn, better able to express their experiences.



3. Ensuring Non-Discrimination and Equal Treatment

Iceland is obligated to ensure non-discrimination and equal treatment before the law for all individuals, including applicants for international protection. SOGIE-based asylum claims must be assessed fairly, without prejudice, and with cultural sensitivity. Immigration authorities must ensure that these applicants are not subjected to stereotypes, assumptions, or bias regarding how an LGBTQ+ person should appear or behave. Upholding these standards is essential to maintaining the dignity and rights of vulnerable individuals.

Legal Frameworks on Non-Discrimination

Article 14 of ECHR on prohibition of discrimination:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

ECtHR Case of Maymulakhin and Markiv v. Ukraine (2014):

The ECtHR held that differential treatment based solely on sexual orientation constitutes discrimination under Article 14. The Court emphasized: "differences based on sexual orientation require "particularly convincing and weighty reasons" by way of justification" (para 62). This case underscores the importance of applying equal standards to SOGIE-based asylum claims and ensuring that no discriminatory practices influence decision-making.

Article 16 ICCPR:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

UNHCR Guidelines No. 9:

...The presence or absence of certain stereotypical behaviours or appearances should not be relied upon to conclude that an applicant possesses or does not possess a given sexual orientation or gender identity. There are no universal characteristics or qualities that typify LGBTI individuals any more than heterosexual individuals. Their life experiences can vary greatly even if they are from the same country. (para 60(ii))

Article 11 of the Administrative Procedures Act, no. 37/1993:

In the resolution of cases, public authorities shall ensure consistency and equality in legal terms.

It is prohibited to discriminate between parties in the resolution of cases on the basis of considerations related to their gender, race, skin color, nationality, religion, political opinions, social status, descent, or other comparable reasons.

Article 65 of the Constitution of Iceland, no. 33/1944

Everyone shall be equal before the law and enjoy human rights irrespective of sex, religion, opinion, national origin, race, colour, property, birth or other status.

Men and women shall enjoy equal rights in all respects.

Reykjavík District Court case E-5409/2021

The Reykjavík District Court held that it is not uncommon for individuals to withhold information about their sexual orientation due to the sensitive and personal nature of the issue. Applicants for international protection may have legitimate reasons for not disclosing their orientation at the outset, including distrust of authorities, fear of exposure (e.g., if an interpreter is from the same community), and cultural or religious stigmas. The court criticized the Immigration Appeals Board for failing to address these factors in its decision.

The Court further stated that an applicant's account should not automatically be deemed unreliable merely because such information was disclosed later in the process, particularly for someone with the applicant's religious and societal background. It emphasized that credibility should not be dismissed solely because some aspects of an applicant's narrative may appear implausible.

Immigration Appeal Committee case 560/2024

"The applicant stated that she was bisexual and thus belonged to a minority group in her home country. The Directorate of Immigration did not address this claim by the applicant and did not provide a general discussion about the situation of bisexual individuals in its decision. Furthermore, the Directorate's decision was based on the fact that the applicant has parents and siblings in her home country, without addressing her account that her father had severed ties with her due to her sexual orientation."

"The appealed decisions are annulled. The Directorate of Immigration is instructed to reprocess the applications for international protection submitted by the appellant and her children."

Immigration Appeal Committee case 453/2021

"The main claim of the appellant is based, among other things, on her belonging to a specific social group in her home country as a bisexual woman. She has experienced discrimination and prejudice due to her sexual orientation and fears living openly as a bisexual woman in Venezuela. The appellant had a romantic relationship with someone of the same sex, but their fathers intervened to prevent the continuation of the relationship.

The Immigration Appeals Board sees no reason to doubt the appellant's account, and it will therefore be accepted as fact that the appellant is bisexual."

Immigration Appeal Committee case 22/2020

"The applicant has also stated that she fears harassment and discrimination in her home country due to her sexual orientation. Based on her account, it can be inferred that she has not lived openly as a bisexual or homosexual individual in her home country, and her nearly three-year relationship with a woman there was kept secret until her husband discovered it. When questioned by her representative during an interview with the Directorate of Immigration, the applicant stated that she believes individuals in her community in her home country are now aware that she is homosexual. The Immigration Appeals Board finds no reason to doubt the applicant's sexual orientation, and the case will be resolved based on the assumption that the applicant is homosexual."

Immigration Appeal Committee case 504/2018

"In the detailed reasoning of the Directorate of Immigration regarding the appealed decision dated October 31, 2018, it is stated that the applicant appeared for the notification of the decision on October 30, 2018, and informed a representative of the Directorate that he would not withdraw his application. During the notification process, the applicant stated that he could not return to his home country as his life would be in immediate danger there due to his sexual orientation. In the reasoning provided by the Directorate of Immigration, this statement was deemed not credible, as the applicant had not mentioned his sexual orientation or any connection between it and his reasons for fleeing his home country during an interview with the Directorate on October 29, 2018. Furthermore, the reasoning emphasized that the resolution of the case was based on the assumption that the applicant could seek protection and assistance from the authorities in his home country."

"The main purpose of administrative appeals is to ensure legal security for citizens by enabling them to have their cases reviewed at two administrative levels. Given the applicant's statement during the notification of the appealed decision and the

evidence submitted to the Appeals Board, which indicates that the applicant had, on several occasions, experienced violence in his home country due to his sexual orientation, the Appeals Board finds it appropriate for this claim to be assessed at two administrative levels. Therefore, the appealed decision is annulled, and the Directorate of Immigration is instructed to reassess the applicant's case."

Immigration Appeal Committee case 427/2020

"The Immigration Appeals Board has also considered the UNHCR guidelines regarding international protection based on sexual orientation and gender identity ("Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity," October 2020).

The applicant based his application on the claim that he feared persecution in his home country due to his sexual orientation, stating that he is homosexual, which is criminalized in his home country. He argued that he is not safe in his home country and has no realistic possibility of internal relocation."

"The Directorate of Immigration found the applicant's account of his flight to be vague and deemed his claim of being homosexual to be not credible. This judgment was based in part on the fact that the claim regarding his sexual orientation was raised more than a year after he initially applied for international protection in Iceland. As a result, the Directorate did not accept that the applicant was homosexual in its decision."

"The applicant did not provide satisfactory explanations for why he did not disclose his sexual orientation until July 2, 2020—nearly a year after his arrival in Iceland—despite having attended two interviews with the Directorate of Immigration and submitting three statements to authorities. The Appeals Board acknowledges that raising new claims at later stages of the application process does not automatically render those claims unreliable. However, it argues that the longer the delay, the greater the responsibility on the applicant to provide credible and rational explanations for the delay, especially when the applicant had opportunities and reasons to disclose such claims earlier. Similarly, the Board asserts that heightened evidentiary requirements apply to new claims made at later stages."

"The Appeals Board has considered the sensitive nature of homosexuality, which may make applicants for international protection hesitant to disclose their orientation in interviews with authorities. However, in his interview with the Appeals Board, the applicant spoke openly about his alleged sexual orientation, with no indication that he found the discussion uncomfortable. The Appeals Board, therefore, sees no reason to conclude that the applicant's hesitation or discomfort in discussing his sexual orientation caused him to delay disclosing it

in earlier interviews with the Directorate of Immigration, or in conversations with his representative or healthcare professionals."

"The Appeals Board concludes that the applicant's claim of being homosexual is unsubstantiated and was made to enhance his chances of obtaining international protection in Iceland. In the Board's view, the applicant should have disclosed his sexual orientation earlier after submitting his application for international protection in Iceland. Furthermore, it does not appear that the applicant was denied opportunities to disclose his sexual orientation at earlier stages of his case. For instance, he was asked about the reasons for fleeing his home country in his first interview with the Directorate of Immigration on September 5, 2019. Additionally, when asked on September 29, 2019, if he had experienced events that affected his physical or mental health, the applicant answered in the negative."

Immigration Appeal Committee case 220/2021

"In light of the applicant's statements during an interview with the Appeals Board, the Board determined that there was doubt regarding the applicant's credibility concerning his sexual orientation. On the same day, the Appeals Board requested additional information to support the applicant's account, including the submission of photographs and screenshots of communications between the applicant and the aforementioned individuals. In an email sent to the applicant on May 4, 2020, it was explicitly stated that photographs of a sexual nature were not being requested. In the applicant's response, received on May 5, 2020, he stated that he only had photographs of a sexual nature."

"In assessing whether the applicant's account of his homosexuality should be accepted, the Appeals Board considered, among other factors, the explanations provided by the applicant during his interview regarding the events that led him to realize his sexual orientation. The Board found these explanations to be unconvincing. It also noted the late introduction of this claim—over a year after the applicant arrived in the country and after his application had been denied by the Directorate of Immigration."

"Furthermore, the Board found that the applicant had not substantiated his claim of having been in relationships with two men, as he stated during the interview. Based on the information presented in the case, the Board inferred that the applicant had likely communicated with the aforementioned individual with the intent of obtaining photographs of a sexual nature involving himself and the other person, which would then be used to support his claim of being homosexual.

Taking all of the above into account, the Appeals Board concluded that the applicant's claim of being homosexual was not credible. Consequently, his account of this matter will not be considered as a basis for the case."

Immigration Appeal Committee case 476/2021

"The Directorate of Immigration concluded that the delay in disclosing his alleged sexual orientation to Icelandic authorities did not support the credibility of the applicant's account. Additionally, the Directorate noted that the applicant's spouse, who was also an applicant for international protection in Iceland, had never mentioned being bisexual or homosexual during the processing of his application by Icelandic authorities. This raised suspicions about the credibility of the applicant's or his spouse's bisexuality or homosexuality and suggested that their marriage might have been a marriage of convenience.

The Directorate further found that the timing of their marriage on April 3, 2020, and the circumstances under which it was established did not support the credibility of the applicant's claims about his bisexuality. The Directorate pointed out that, at the time of the marriage, the applicant was aware that he was facing deportation to the Netherlands.

The Directorate of Immigration ultimately determined that the applicant had not substantiated or made it plausible that he was bisexual or homosexual. It concluded that the applicant had entered into a marriage of convenience with the intention of strengthening his application for international protection in Iceland"

"On September 2, 2021, the applicant participated in an interview with the Immigration Appeals Board. When asked how he would describe his sexual orientation, the applicant struggled to respond but eventually stated that he was bisexual. He explained that he first became aware of his feelings toward men when he joined the military.

When asked if he knew of any laws regarding the rights of LGBT individuals in Egypt, the applicant responded that LGBT individuals were rejected by society. He further stated that he did not follow LGBT issues in Egypt because such matters were not discussed publicly and were only spoken about in private. When asked if he knew of any organizations advocating for LGBT rights, the applicant replied that such organizations did not exist in Egypt because it is a predominantly Muslim society."

"The Appeals Board concluded, based on the aforementioned considerations and the case evidence, that the applicant had not substantiated his claim of being bisexual or demonstrated that he would face persecution in his home country as a result. The Board found his account regarding his bisexuality to be not credible, and it will not be used as a basis for resolving the case."

Recommendations

To ensure non-discrimination and equal treatment for SOGIE applicants for international protection, it is recommended that:

- 1. Each case is assessed individually, avoiding stereotypes or generalizations about LGBTQ+ experiences or appearances.
- 2. Authorities ensure that SOGIE applicants are not denied asylum in cases where a non-SOGIE applicant would be granted protection on substantively similar grounds.
- 3. Indirect discrimination is carefully considered. For example, recognizing that SOGIE individuals may lack certain documentation, such as marriage certificates, if coming from countries where same-sex marriage is criminalized. Penalizing such applicants for missing documents could constitute indirect discrimination.
- 4. The ECtHR's prohibition on discrimination, including on the basis of sexual orientation or gender identity, is consistently applied in decision-making.
- 5. Cultural or religious biases are avoided to ensure impartiality and fairness in assessing SOGIE claims.
- 6. Immigration staff are trained to recognize and address unconscious biases and ensure decisions are based solely on legal and factual grounds.
- Feedback from past decisions involving SOGIE claims is systematically reviewed to identify and address patterns of potential bias or inequality in the asylum process.
- 8. Care should be taken not to draw too many conclusions when applicants for international protection do not disclose their sexual orientation at the beginning of the process. There may be natural explanations for why applicants for international protection do not disclose their sexual orientation at the start of the process or before a decision is made regarding their application, as the Reykjavík District Court has confirmed in case E-5409/2021.
- 9. Stricter evidentiary requirements should not be imposed on gay and bisexual men compared to gay and bisexual women, see f.x. decisions nr. 560/2024, 453/2021 and 22/2020 from the Immigrations Appeals committee in contrast to decisions nr. 504/2018, 427/2020, 220/2020 and 476/2021.

Feedback from Past Experiences

In examining the lived experiences of SOGIE applicants for international protection navigating Iceland's immigration system, patterns of implicit bias and systemic mistrust emerge, undermining the fair treatment of this vulnerable population. One refugee, reflecting on their interactions with immigration officials, expressed their frustration with being doubted at a fundamental level:

"The immigration said that I'm not gay. 'You are not gay; we cannot trust you'. They wrote to me, and said that I don't have anything, and that I must be deported."

This sentiment encapsulates the skepticism many SOGIE applicants face when their identities and claims are scrutinized without clear and apparent empathy. Such bias, whether real or assumed, erodes the dignity of applicants, forcing them to defend not only their need for safety but their very existence as LGBTQ+ individuals.

The challenge is compounded by cultural nuances that shape how sexual orientation and gender identity are understood and expressed. A professional from Samtökin 78 shared an illustrative example from their work with SOGIE refugees:

The African guys [...] they just honestly don't grasp the concepts of hommi or gay, and they might just say, "I'm into men." And then that gets interpreted by the Directorate of Immigration as: "Yeah, you're into men, but you're not gay."

This highlights a potential disconnect between the frameworks used by officials and the culturally specific ways refugees articulate their identities. What might be dismissed as vagueness or lack of credibility is often rooted in cultural contexts. In the Icelandic context, sexuality and gender is closely tied to people's identity (e.g. "I'm gay"), but in other parts of the world these are thought of and expressed as behaviors (e.g. "I like men.").

Adding to these barriers is a pervasive mistrust often embedded within the system. Another professional from Samtökin 78 noted:

There's often a lot of suspicion in the case assessment process at the Directorate of Immigration when it comes to queer people. Are people applying out of self-interest? Trying to influence the outcome of their case? Are they lying about being queer? That kind of suspicion.

Immigration authorities have a responsibility to address and rectify patterns of systemic discrimination. Testimonies highlight the importance of adopting culturally sensitive and unbiased practices that uphold the dignity and safety of SOGIE applicants for international protection, as failure to do so risks reproducing the very harm the process is intended to mitigate. The challenges involved in assessing SOGIE

asylum claims go beyond procedural limitations and cultural misunderstandings, requiring a deeper awareness of the significance and impact of these decisions—a point underscored by a legal professional with extensive experience in substantive case reviews (efnismeðferð) during a closing remark in an interview:

Yes, I think most people here internally are very aware of how delicate this is, and of course how burdensome it is if we, if we reach the wrong conclusion. Everyone is aware of that. I hope that's the experience of those who go through this process here. One doesn't know if that's the case, but naturally, if you get a no, then understandably, you don't experience it that way.

This reflects a tension between procedural intent and lived experience but also shows a degree of institutional self-awareness. It is pointed out that even when systems aim to be fair, the people going through them may still feel they have been treated unfairly. This perspective is especially relevant for SOGIE asylum seekers, many of whom already feel a sense of mistrust or fear that their identities will not be believed.

According to the interviewee, who works as a lawyer, when LGBTQ+ asylum seekers feel that their personal stories are closely questioned or doubted, a rejection can seem like confirmation that they were never truly seen or understood. While these decisions may follow proper procedures, the experience can still be deeply painful and feel unjust.

This feedback highlights an important challenge: the way fairness is defined and practiced by institutions does not always match how it is experienced by applicants. It points to a valuable opportunity for reflection—especially on how trust, communication, and transparency can be improved. Strengthening these areas can help ensure that the process not only follows legal standards, but also feels respectful and dignified to those who go through it.



4. Sufficient Evidence Consideration

SOGIE applicants for international protection often face unique challenges in providing evidence to substantiate their claims. Immigration authorities must recognize these challenges and avoid placing undue evidentiary burdens on applicants. Credibility should be assessed primarily based on personal testimony and overall consistency rather than demanding documentary or photographic evidence, particularly in cases where SOGIE is criminalized or stigmatized in the applicant's home country.

LGBTQ+ individuals may suffer from trauma, PTSD, or other mental health issues due to persecution. Psychological reports or medical evidence can provide valuable context but should not be considered mandatory proof of SOGIE. Decision-makers must approach such cases with sensitivity, understanding that mental health impacts may influence the applicant's ability to provide detailed or linear narratives.

Legal Framework and Relevant Guidelines

UNHCR Guidelines on International Protection, No. 9:

- The applicant's testimony is often the primary or sole source of evidence, particularly when persecution originates from family members or the community. Where country of origin information is lacking, the decision must rely on the applicant's statements, and an interview should generally suffice. Applicants must never be required to present documentary or photographic evidence of intimate acts, nor should they be expected to exhibit physical affection during interviews. (para 64)
- Medical "testing" of sexual orientation is a violation of basic human rights and must not be used. However, evidence of transition-related surgeries, hormonal treatments, or biological characteristics (for intersex individuals) may corroborate claims but should not be a requirement. (para 65)
- Country of origin information on the treatment of LGBTQ+ individuals is often limited due to stigma and repression. A lack of documentation does not mean persecution does not exist, and decision-makers must avoid assumptions based on the absence of detailed reports. (para 66)

ECtHR case of F.G. v. Sweden (2016):

By contrast, in relation to asylum claims based on an individual risk, it must be for the person seeking asylum to rely on and to substantiate such a risk. Accordingly, if an applicant chooses not to rely on or disclose a specific individual ground for asylum by deliberately refraining from mentioning it, be it religious or political beliefs, sexual orientation or other grounds, the State concerned cannot be expected to discover this ground by itself. However, considering the absolute nature of the rights guaranteed under Articles 2 and 3 of the Convention, and having regard to the position of vulnerability that asylum-seekers often find themselves in, if a Contracting State is made aware of facts relating to a specific individual that could expose him to a risk of ill-treatment in breach of the said provisions upon returning to the country in question, the obligations incumbent on the States Parties under Articles 2 and 3 of the Convention entail that the authorities carry out an assessment of that risk of their own motion. This applies in particular to situations where the national authorities have been made aware of the fact that the asylum-seeker may plausibly be a member of a group systematically exposed to practice of ill-treatment and there are serious reasons to believe in the existence of the practice in question and in his or her membership of the group concerned (para 127)

Reykjavík District Court case <u>E-5409/2021</u>

In the case the Reykjavík District Court criticized the Immigration Appeals Board for inadequately substantiating its decision that the applicant's account of their bisexuality was not credible. The Board's reliance on the applicant's lack of detailed knowledge about LGBTQ+ issues was deemed flawed, as cultural and societal factors in the applicant's home country likely suppressed their exposure to such matters. The court emphasized that applicants from countries where non-heterosexual identities are criminalized or stigmatized should not be penalized for lacking involvement with or knowledge of LGBTQ+ communities.

Consistent with principles established in Icelandic and European human rights law, the court reaffirmed that the burden of proof should not be unduly high in such cases. Credibility should be assessed with the benefit of the doubt given to the applicant when their circumstances support the plausibility of their account.

Court of Appeal case <u>149/2020</u>

The Court of Appeal held that in assessing whether an applicant for international protection has provided sufficient evidence, it must also be borne in mind that evidentiary requirements must not be so stringent as to deny the individual effective protection against serious human rights violations. In this regard, it must be recognized that securing evidence from the country the applicant has fled may pose significant challenges. A lack of written documentation cannot therefore be decisive in the evaluation of evidence. Due to the unique circumstances of individuals fleeing persecution, it may also be necessary to resolve doubts in their favor when assessing the credibility of their account and the supporting evidence they have provided.

Article 15 of the Law on Foreigners, no. 80/2016

Art. 15 Cross-border information provision

Authorities handling cases concerning foreign nationals may provide foreign authorities with information on foreign nationals in cases concerning visas, residence permits or international protection, to the extent necessary in connection with agreements concluded by Iceland on criteria and arrangements for determining what state is to handle requests for international protection submitted in Iceland or any of the contracting states.

Authorities may not gather or provide information on individual cases concerning a foreign national's application for international protection in Iceland in such a way that parties responsible for persecution or inhumane or degrading treatment in the case of the foreign national concerned could obtain information on his/her case which could jeopardise the security of the person concerned or his/her family.

The Minister may make further provisions in a regulation regarding what information may be provided and the conditions to be met in order to provide the information.

Article 25, paragraph 1, of the Law on Foreigners, no. 80/2016

Art 25 Analysis of the special needs and status of applicants for international protection.

An applicant for international protection shall undergo a medical examination as soon as possible after an application has been submitted. A medical examination is conducted under the authority of the government body responsible for providing services to applicants for international protection, as specified in Articles 27 and 33. As early as possible in the processing of an application for international protection the Directorate of Immigration shall ensure that an individualised assessment is made, with the assistance of appropriate experts, of whether an applicant is deemed to be in a particularly vulnerable position, cf. art. 3(6). If an applicant is deemed to be in such a position, an assessment shall be made as to whether as a result he/she has any special needs which must be taken into consideration in the proceedings, e.g. a need for specific healthcare services. Such an assessment is not limited to the time of application and the individual's right to special assistance shall not be limited even if special needs arising from his/her vulnerable position only come to light after the submission of the application.

Recommendations

To properly apply sufficient evidence considerations for SOGIE applicants for international protection, it is recommended that:

- 1. Intrusive or explicit questions regarding sexual conduct are avoided, as they are both unnecessary and humiliating for the applicant. As a general rule, information on sexual conduct is not grounds for international protection alone.
- 2. 2Claims are evaluated holistically, considering the applicant's personal circumstances, including psychological and social vulnerabilities.
- 3. 3Psychological and physical evidence of trauma resulting from persecution or discrimination is given appropriate weight in decision-making.
- 4. Corroborating evidence of SOGIE identity is not required, recognizing that societal stigma or safety concerns often make such evidence impossible to obtain.
- 5. The burden of proof is not placed excessively on the applicant, given the inherent challenges in proving sexual orientation or gender identity. Credibility should be assessed with the benefit of the doubt given to the applicant when their circumstances support the plausibility of their account, as the Reykjavík District Court has confirmed in case E-5409/2021 and the Appeal Court in case 149/2020.
- 6. Self-identification as SOGIE is generally considered sufficient to establish credibility unless there are substantial reasons to doubt the claim.
- Country-of-Origin information, even if limited, is critically examined, avoiding assumptions that persecution does not exist based solely on a lack of documentation.
- 8. Psychological and medical evidence related to past trauma is used to contextualize the applicant's experiences, while avoiding reliance on such evidence as the sole determinant of credibility.
- 9. All officials involved in assessing SOGIE claims are trained to handle cases with sensitivity and avoid biases or stereotypes.
- 10. Irrelevant considerations, such as applicants' knowledge of LGBTQ+ activities in their home country, should not be used against applicants, as the Reykjavík District Court has confirmed in case E-5409/2021.
- 11. Care should be taken not to draw too many conclusions when applicants for international protection do not disclose their sexual orientation at the beginning of the process. There may be natural explanations for why applicants for international protection do not disclose their sexual orientation at the start of the process or

before a decision is made regarding their application, as the Reykjavík District Court has confirmed in case E-5409/2021.

12. Evidentiary requirements must not be so stringent as to deny the individual effective protection against serious human rights violations as the Court of Appeals has confirmed in case 149/2020.

Feedback from Past Experiences

Some accounts suggest immigration officials follow this guideline by focusing on personal narratives and ensuring applicants feel heard. For example, one refugee shared:

"They give you all the time that's needed, to be honest... mostly from our experience, they give us the time to talk about it and express it"

This reflects an empathetic approach, allowing the individual's story to take precedence over rigid evidentiary requirements. Similarly, other lines of questioning described by the same individual, including "Why Iceland?" and "What will happen if we send you back to [home country]?", focuses on their lived experience and the risks they face, rather than demanding extraneous proof.

However, other refugees reported significant deviations, where excessive evidentiary demands were made. One striking example involves a refugee being asked to return to their home country to obtain proof of their single status, despite the extreme risks:

Homosexuality is a crime in my country. And in my country, homosexuality is punishable by death... but the immigration department told me... 'You should return to [your home country] and bring us documents that you are single'

This demand violates the principle of sufficient evidence consideration. Expecting an individual to procure documentation from a state where their SOGIE identity is criminalized, jeopardizes their safety and undermines the asylum process.

To ensure compliance with the principle of sufficient evidence consideration, officials should prioritize training that emphasizes the value of personal testimony, cultural sensitivity, and the challenges faced by SOGIE applicants for international protection in providing traditional evidence. Clear guidelines and consistent oversight should be implemented to prevent excessive evidentiary demands or intrusive questioning. Officials must focus on fostering trust and understanding during interviews, creating a system that upholds international standards and respects the dignity and safety of SOGIE applicants.

Finally, the question of how asylum seekers prove their sexual orientation or gender identity remains a deeply contested issue in many immigration systems, including Iceland's. While some accounts indicate an emphasis on personal narratives, others highlight problematic evidentiary demands that place undue burdens on applicants. A legal professional handling case reviews (efnismeðferð) at the DoI reflected on how Icelandic immigration authorities approach the issue of evidence in SOGIE asylum claims:

It's not the Directorate of Immigration's intention to gather information about someone's sex life, sexual desires, or anything like that. We don't accept videos or photos meant to prove sexual activity. It's more about the person's experience, and in most cases, we're not really questioning their sexual orientation—though of course, that does happen.

This offers valuable insight into how evidentiary standards are applied in credibility assessments for LGBTQ+ asylum claims. According to their account, Icelandic authorities do not request explicit or invasive forms of proof, such as photographs or videos, to verify an applicant's sexual orientation. Instead, credibility is assessed based on the individual's personal narrative and lived experience. This perspective reflects a commendable alignment with international best practices, which emphasize self-identification and narrative consistency while discouraging degrading evidentiary requirements.

However, the interviewee also remarked that "in most cases, we do not actually dispute a person's sexual orientation, although, of course, it does happen." This acknowledgment suggests that while overtly intrusive demands may be rare, some level of discretionary skepticism remains part of the process. As a result, applicants may still face uncertainty about how their identities will be received and evaluated.

Ultimately, while Icelandic authorities formally reject inappropriate evidentiary demands, this does not necessarily prevent SOGIE asylum seekers from encountering what they experience as skepticism and inconsistencies in credibility assessments. Ensuring that narratives are assessed with cultural sensitivity and without implicit biases remains critical to upholding fair asylum procedures.



5. Sensitive and Confidential Interviewing

Interviews with SOGIE applicants for international protection must be conducted with respect, sensitivity, and understanding of the applicant's unique vulnerabilities. Officials should be specifically trained on SOGIE-related issues to ensure interviews are respectful and culturally appropriate. The interview setting must be comfortable and safe, without any coercion to reveal unnecessary personal details. Intrusive questioning about sexual experiences, romantic relationships, or private matters must be avoided, as it risks causing distress or retraumatization.

Legal Framework and References

UNHCR Guidelines on International Protection No. 9

The UNHCR emphasizes the importance of conducting interviews with sensitivity and ensuring a supportive environment for SOGIE applicants. Key principles include:

- Applicants may be reluctant to fully disclose the extent of the persecution they
 have suffered or feared, particularly if they are still coming to terms with their
 identity or fear openly expressing it. Adverse judgments should not be made if
 the applicant did not declare their sexual orientation or gender identity early in
 the process. (para 59)
- Establishing trust through an open and reassuring interview environment is crucial. Interviewers must assure applicants that all aspects of their claim will remain confidential, with interpreters bound by the same confidentiality obligations. (para 60(i))
- Interviewers and interpreters must avoid any verbal or non-verbal judgments about the applicant's sexual orientation, gender identity, or relationship patterns.
 Even inadvertent distancing or demeaning body language can undermine the process. (para 60(iii))
- Specialized training for interviewers, interpreters, legal representatives, and advocates on the unique aspects of LGBTQ+ refugee claims is essential to ensure sensitivity and fairness. (para 60(iv))
- Requests regarding the gender of interviewers or interpreters should be accommodated wherever possible to help the applicant feel more comfortable. If interpreters share the applicant's cultural, religious, or national background, this may increase the applicant's sense of shame and hinder disclosure of critical details. (para 60(vi))

Article 17 of the Law on Foreigners, no. 80/2016

Art 17. Processing of Personal Data.

The Directorate of Immigration, the Immigration and Asylum Appeals Board, [the authority responsible for the implementation of Articles 27 and 33], 1) Registers Iceland, [child protection authorities], 2) and the police may process foreign nationals' personal data provided the provisions authorising such in the Act on the Protection of Privacy and the [the Processing] 3) of Personal Data are satisfied, and insofar as authorisation for such processing is provided in this Act. To the extent not otherwise provided for in this Act, the provisions of the Act on the Protection of Privacy and the [Processing] 1) of Personal Data apply to processing of information

Authorities specified in para. 1 may link together personal data on foreign nationals from separate datasets in order to ensure their stay in Iceland is lawful. To this end, these agencies may obtain information from tax authorities, the Directorate of Labor, and local authority social services. [[Authorities] 1) specified in Paragraph 1 are authorized to cross-match and share personal data to ensure the interests of a child during procedures conducted by the Directorate of Immigration, the Immigration Appeals Board, and the police in implementing decisions pursuant to this Act.] 2) Outcomes of data linkage which are of significance for individual cases shall be preserved with the case documentation, while other outcomes shall be destroyed. In other respects this data linkage is subject to provisions of the Act on the Protection of Privacy and the [Processing] 1) of Personal Data.

[If necessary to implement a decision on expulsion or removal of a foreigner pursuant to Article 104, the police are authorized to obtain certificates from healthcare authorities regarding the foreigner's physical and mental health to determine their fitness to travel.] 4)

Should the Directorate of Immigration, Immigration and Asylum Appeals Board [the authority responsible for the implementation of Articles 27 and 33], 1) or Registers Iceland obtain information which may entail a possible violation of law, the agency concerned must inform the police or relevant authority of the case and deliver to it any documentation requested.

Statistics Iceland may use the files of the Directorate of Immigration and its data for statistical reporting. The Directorate of Immigration shall provide Statistics Iceland with copies of files and information from them in accordance with the latter's request and without charge. Statistics Iceland must treat documents from the Directorate of Immigration as statistical data that is subject to confidentiality. The Minister issues a regulation, after obtaining the opinion of the Data Protection Authority, regarding which records concerning foreign nationals are to be kept by the Directorate of Immigration, the Immigration and Asylum Appeals Board, Registers Iceland and the police.

Article 42 of the Administrative Procedures Act, no. 37/1993

Article 42. Duty of Confidentiality

Anyone working on behalf of the state or municipalities is bound by a duty of confidentiality regarding information that is marked as confidential by law or other regulations, or where confidentiality is otherwise necessary to protect significant public or private interests. This includes, for example:

- 1. The security of the state or defense matters.
- 2. Relations with other states or multinational organizations.
- 3. The state's economically significant interests.
- 4. Government actions to prevent crime, criminal investigations, and enforcement of penalties. The same applies to information about the protection of suspects, witnesses, and others involved in criminal cases.
- 5. The business operations of institutions and companies owned by the state or municipalities, to the extent that they compete with others.
- Planned measures or tests by the state or municipalities, if disclosure would render them ineffective or prevent their intended results. Once such measures have been completed, confidentiality ceases unless other confidentiality provisions apply.
- 7. Environmental matters, if the disclosure of the information could seriously affect the protection of that part of the environment to which the information pertains, such as the habitat of rare species of organisms, minerals, fossils, and geological formations.
- 8. Private or financial matters of individuals where it is fair and reasonable to keep them confidential. This does not include information such as date of birth, place of birth, national ID number, marital status, job title, workplace, place of stay, or legal residence, unless such information is closely linked to confidential data, in which case data protection laws apply. It is also prohibited to disclose the legal residence of a person if the National Registry has issued a decision on a hidden residence in accordance with laws on domicile and residence.
- 9. Active financial or commercial interests of companies and other private legal entities, such as operational or competitive position, as well as **trade secrets**, where confidentiality is fair and reasonable.

In state and municipal administration, information may only be subjected to confidentiality if it is necessary to protect specific public or private interests as described in the first paragraph and if it aligns with democratic traditions.

The duty of confidentiality means that an employee is prohibited from disclosing or using, either personally or on behalf of others, information about case facts that are meant to be kept secret and that the employee has acquired in their position or due to their work, whether by chance or not. The employee must also take appropriate measures to ensure that confidential information is not accessed by unauthorized parties during handling and storage. The duty of confidentiality remains in effect even after leaving the position.

When an authority engages a specialist for advice or assistance as needed, the contract shall specify that the specialist is bound by the confidentiality provisions of Chapter X of this Act, and the provisions of that chapter shall then apply.

Violation of this duty of confidentiality is punishable under **Article 136 of the General Penal Code**. If the violation was not intentional, it may be punishable under **Article 141** of the same code, provided the conditions are met. Violations committed by persons other than public employees, cf. paragraph 4, are punishable by fines or up to one year of imprisonment if done intentionally or with gross negligence. Attempt or complicity in a violation is punishable according to the General Penal Code. If the violation occurs in the operations of a legal entity, the entity may be fined under **Chapter II A of the General Penal Code**.

Recommendations

To conduct sensitive and confidential interviews for SOGIE applicants for international protection, it is recommended that:

- 1. Interviews are conducted by trained officers who are familiar with SOGIE issues and equipped to handle these cases with cultural sensitivity and respect.
- 2. It is recommended to make applicants aware of their rights as SOGIE applicants for international protection prior to the beginning of an interview, perhaps as part of standardized guidelines provided to all applicants at the top of the session.
- 3. Authorities and interviewers thoroughly review the case file before the interview, noting any previous disclosures or subtle indications of SOGIE, as well as identifying information gaps.
- 4. The confidentiality of the interview process is clearly explained, including how information will be used and the assurance that it will not be shared with the applicant's country of origin.

- All information shared by the applicant during the interview is treated with the utmost confidentiality to protect their identity and prevent potential harm or outing.
- 6. Inconsistencies in an applicant's narrative, particularly related to family history or background, are viewed with an understanding of the possible impacts of shame, trauma, or violence on their ability to provide a cohesive account.
- 7. Applicants are informed that SOGIE-related claims are valid grounds for international protection under Icelandic law and international agreements.
- 8. Late disclosure of SOGIE status is not used as the sole basis for a negative determination; instead, it prompts a nuanced and sensitive credibility assessment.
- 9. Officials consistently use the applicant's preferred name, pronouns, and gender identity to foster trust and ensure respect throughout the process.
- 10. Interpreters are selected carefully, ensuring they are trained in SOGIE issues, maintain strict neutrality, and adhere to confidentiality standards.
- 11. Questions regarding sexual experiences, romantic relationships, or private matters are avoided unless absolutely necessary for the credibility assessment and framed in a respectful and non-intrusive manner.

Feedback from Past Experiences

Some applicants for international protection report positive experiences, reflecting adherence to the principles of respectful interviewing. One refugee recounted:

"Yes, my own experience with the Directorate of Immigration was like, really, really good... all the staff were very polite. They were smiley. They were so helpful... And when I was feeling stressed during my interview, they were like, allowing me to take like, small breaks if I want. And... they respected the stress and the difficult period that we've been through."

This account illustrates a process conducted with sensitivity to the applicant's stress and vulnerability. Allowing breaks during the interview and responding promptly to concerns reflects a commitment to creating a supportive environment.

Another individual emphasized that the interview process provided adequate space to narrate their story:

"Of course, they first ask you, you're from where, what's your name, your age... and then they just tell you, okay, tell us your story, why you're here, why

you're applying for protection. And then, of course, you start saying the whole event that happened in sequence. They give you all the time that's needed."

Such practices align with the guideline's directive to focus on the individual's testimony without rushing or coercing them.

However, some negative examples also emerged in other accounts. Some individuals describe distressing and intrusive questioning that undermines the safety and respect intended for SOGIE applicants for international protection. For instance:

"At some point, they try to ask you very specific things, like, when did you discover this? ... And then there are questions about, can you tell me names of the people or names of the specific person who did something to you?"

Such questions risk retraumatizing individuals, particularly when phrased in a way that may feel accusatory or invasive. Similarly, asking for details about other individuals potentially places an undue burden on the applicant to expose personal relationships or revisit painful experiences.

Furthermore, if phrased differently, the questions could provide a more specific and helpful response for the Immigration Authorities. As an Icelandic lawyer specializing in asylum and international protection, notes:

""When did you first know you're gay?" is a silly question. A better question would be "when did you first have romantic or sexual feelings for a person of the same gender" or even "when did you first have a relationship with a person of the same gender?""

The issue is succinctly put by Samtökin '78:

We have had people afraid to "come out" as they have a lack of trust for authorities, and they don't seem to feel safe with UTL. Then that is used to their disadvantage in their asylum cases.

This underscores a fundamental flaw in the assessment of credibility. Many asylum systems rely on applicants providing personal testimonies as evidence, yet if individuals do not feel safe enough to share their full stories, they risk having their claims rejected for lack of evidence. In cases involving SOGIE applicants, this is particularly problematic because coming out is often an ongoing and deeply personal process influenced by trauma, cultural stigma, and previous experiences of discrimination.

Finally, the nature of asylum interviews for SOGIE applicants inherently requires a balance between ensuring that applicants can share their experiences and fulfilling

the procedural requirements of the asylum system. A legal professional from the DoI reflecting on their experience conducting interviews with LGBTQ+ asylum seekers, acknowledged the delicate nature of this process:

This is delicate—you're asking people about very personal matters. At the same time, they need to understand that they've entered the protection system, and they have to inform us about their case, and that's why we're asking these questions.

This reflection highlights a key challenge: while the need to ask detailed questions is understood as part of the asylum process, it is not always clear whether applicants experience these questions as being asked with cultural sensitivity and emotional awareness. Some past testimonies from asylum seekers describe interviews that felt invasive or emotionally difficult, which can unintentionally create an atmosphere of mistrust rather than safety.

The interviewee's perspective points to an important area for continued attention. While it is necessary for applicants to present a clear and detailed account of their case, the way in which questions are asked, the language used, the tone of the interview, and the interviewer's awareness of the applicant's vulnerability plays a crucial role in shaping the experience. These elements help determine whether the process upholds the core principles of dignity, fairness, and respect.

This suggests a valuable opportunity for ongoing training and review of interview techniques to ensure that questioning, while thorough, remains as trauma-informed and culturally aware as possible.



6. Country-of-Origin Information(COI) and Criminalization

A comprehensive understanding of the situation in the applicant's country of origin is crucial when assessing SOGIE-based asylum claims. Accurate and up-to-date Country-of-Origin Information (COI) should be used to evaluate the legal framework, societal attitudes, and the treatment of LGBTQ+ individuals in the applicant's home country. This includes recognition that persecution may exist even in the absence of explicit criminalization of same-sex relationships or gender non-conformity.

The mere existence of laws criminalizing homosexuality or gender non-conformity can amount to persecution. Such laws, even if rarely or never enforced, contribute to an environment of fear, discrimination, and violence against LGBTQ+ persons. Applicants do not need to have been directly prosecuted under these laws to qualify for asylum. The criminalization of SOGIE identities often creates or exacerbates an oppressive atmosphere of intolerance, exposing individuals to threats from both State and non-State actors.

Legal Framework and References

ECtHR Case: B and C v Switzerland

- Persecution by Non-State Actors: Ill-treatment can come not only from family
 members but also from broader societal discrimination and homophobia,
 where years of anti-LGBTQ+ rhetoric fostered widespread hostility. This
 illustrates the dangers LGBTQ+ individuals face from non-State actors, even
 after governmental changes. (para 61)
- State Protection and Criminalization: States must actively evaluate whether the applicant's country of origin can and will provide effective protection against harm from non-State actors. The Court emphasized that this assessment must be conducted on the State's own initiative and cannot rely on assumptions about the applicant avoiding detection. In this case, the ECtHR found that Swiss authorities had failed to analyze the availability of protection adequately. The continued criminalization of same-sex relationships in the country of origin was a clear indication that effective State protection for LGBTQ+ individuals was not available, as criminalization often signals a State's unwillingness to protect such individuals. (para 62)

UNHCR Guidelines on International Protection No. 9

The UNHCR offers important guidance on how to assess Country-of-Origin Information (COI) and the impact of criminalization in SOGIE asylum claims. Key principles include:

- Criminalization as Persecution: Laws that criminalize same-sex relationships, even if they are rarely enforced, create an environment of fear and persecution. These laws can be used for blackmail, extortion, and discrimination by both authorities and members of society, leaving LGBTQ+ individuals at significant risk. (para 27)
- Discrimination Adding Up to Persecution: When acts of discrimination such as being denied jobs, housing, or access to services add up, they can have a serious impact on a person's life and amount to persecution. Decisions should take into account reliable and up-to-date information about the country of origin. (para 17)
- Fear of Future Persecution: Applicants don't need to prove they've already been harmed to qualify for protection. What matters is whether they would face real risks if sent back, such as harm due to criminalization, societal rejection, or being "outed." (paras 18, 28, 32)
- Secrecy and Risk of Being Discovered: Many LGBTQ+ people hide their identity to avoid harm, but this doesn't guarantee safety. Discovery can happen accidentally or through rumors and suspicions, and even those trying to live quietly may face threats because they don't meet cultural expectations, like marrying or having children. (paras 30, 32)
- State Protection is Often Unavailable: If police or authorities in the applicant's home country don't take action to protect LGBTQ+ individuals or if same-sex relationships are criminalized, it's unlikely they can rely on the government for safety. (para 36)
- Real Change Takes Time: Changes in the law, like repealing anti-LGBTQ+ laws, don't necessarily mean people are safe right away. Discrimination and violence often continue in society, even if new laws are introduced. What matters is whether these changes make a real difference in people's lives. (para 37)
- Gaps in Information: Sometimes, there isn't much information about how LGBTQ+ people are treated in certain countries. This doesn't mean they are safe. It could mean that abuse and discrimination go unreported because of stigma or fear. This is especially true for groups like transgender or intersex individuals, who face unique challenges. (para 66)

Recommendations

When considering COI for SOGIE applicants for international protection, it is recommended that:

- 1. The legal and societal conditions for LGBTQ+ individuals in the applicant's country of origin, including the presence or absence of laws criminalizing SOGIE identities, are thoroughly reviewed.
- Reliable and reputable sources, such as the <u>EUAA COI Portal</u>, <u>Human Rights Watch</u> and <u>ILGA World Maps</u>, are consulted to gather COI. Note that a lack of information may reflect prominent anti-SOGIE attitudes and underreporting of human rights violations.
- Criminalization is assessed in the broader context of its impact on SOGIE individuals. For example, laws criminalizing same-sex relationships, even if unenforced, may deter individuals from seeking protection or subject them to blackmail or extortion.
 - a. Expert opinions are sought in cases where COI is unclear or insufficient, particularly regarding regional variations in the treatment of SOGIE individuals within the applicant's country of origin.
- 2. Laws and practices that may not explicitly criminalize SOGIE identities but result in de facto persecution, such as systematic harassment or denial of services, are carefully considered.
- 3. Flexibility is applied to document requirements when criminalization or societal persecution prevents applicants from obtaining certain records, such as identity documents or police reports.

Feedback from Past Experiences

The availability of accurate tools and resources to quickly access comprehensive Country-of-Origin information (COI) is essential when assessing SOGIE-based asylum claims. This helps ensure that decision-makers consider not only relevant laws, but also the broader cultural and social context, including public attitudes and the lived experiences of individuals in the applicant's country of origin. Criminalization can take different forms in different legal systems and a willingness to dig deeper into country-of-origin information is often required. As an Icelandic lawyer specializing in asylum and international protection cases notes:

Many cases fail based on a strict interpretation of the concept of persecution, and the requirement that it has to be strictly illegal for two consenting adults of the same sex to have intimacy, and that this law is practiced.

Concerns remain about the consistent use of COI and the level of cultural competence applied in decision-making, particularly in cases involving LGBTQ+ applicants from Spanish-speaking countries. These concerns were raised by Samtökin '78 (S78), Iceland's national LGBTQ+ organization, which has observed cases where, in their view, applicants met the criteria for international protection but were not granted it by the DoI:

From our perspective, on how SOGIEs cases seem assessed, there is a significant gap in understanding of LGBTQ issues within and amongst [DoI] staff, especially clients from Spanish-speaking countries. We are quite perplexed when cases that seem so obvious to us here in S78 to qualify for protection get denied by [DoI].

One possible reason for discrepancies in credibility assessments may be a limited understanding of how LGBTQ+ identities are expressed across different cultural contexts. The data suggests that some applicants' experiences may be evaluated using assumptions that reflect Western or Euro-American models of identity and disclosure, which do not always correspond to how SOGIE is lived or understood in other parts of the world.

This issue is particularly relevant for applicants from Latin America, where expressions of sexual orientation and gender identity may not follow the same patterns of "coming out" or public self-identification often seen in Western contexts. In many cases, identity is understood and recognized through relationships, behaviors, or social roles rather than verbal declarations. As a result, applicants may not explicitly state their LGBTQ+ identity in the ways expected but may still be at significant risk of harm or discrimination.

When these cultural differences are not fully accounted for, there is a risk that applicants' experiences will be misinterpreted. For instance, the absence of public disclosure or a clearly defined identity label may be mistakenly seen as evidence that the individual does not face persecution. However, LGBTQ+ individuals can be targeted based on perceived non-conformity to gender norms or associations, regardless of whether they openly identify as such.



7. Assessment of Internal Flight Alternative (IFA)

Before suggesting internal relocation as an alternative to granting asylum, decision-makers must carefully assess whether LGBTQ+ individuals could realistically live safely elsewhere in their country of origin without facing persecution or discrimination. The assessment must consider societal stigma, cultural norms, and systemic discrimination, which may render internal relocation unfeasible. If relocation would expose the applicant to further harm or severe limitations on their basic rights, asylum should be granted.

Legal Framework and References

Article 3 ECHR on Prohibition of Torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

ECtHR Case: JK and Others v Sweden

The ECtHR has provided guidance on the application of an IFA under Article 3 ECHR. Key principles include:

- Relevance of Internal Flight Alternative: Article 3 does not prevent States from considering the possibility of internal relocation when assessing whether a return to the applicant's country of origin would expose them to a real risk of inhuman or degrading treatment. However, the assessment must be conducted with specific safeguards (para 81)
- State Responsibility for Relocation Feasibility: States relying on IFA must ensure that the applicant can safely travel to, gain admittance to, and settle in the proposed area of relocation. If such guarantees are not in place, there is a risk that the applicant could end up in a part of the country where they may face ill-treatment, thereby breaching Article 3 of the Convention (para 82)

UNHCR Guidelines on International Protection No. 9

The UNHCR Guidelines provide clear principles for assessing whether an internal flight or relocation alternative (IFA) is a valid option for SOGIE applicants for international protection. Key points include:

Definition of IFA: IFA refers to whether a person can relocate to a specific
area in their country of origin where they would no longer face persecution
and could reasonably live a safe and normal life. This requires meaningful
and genuine protection, which must be provided by the State, not by non-governmental organizations or other non-State actors. (para 51)

- Two-Part Assessment: The decision-maker must evaluate two key factors when considering an IFA: (1) Relevance Analysis: Whether the proposed relocation site eliminates the risk of persecution, taking into account national laws and societal attitudes. (2) Reasonableness Analysis: Whether the applicant can realistically live there without undue hardship, considering their personal circumstances and the situation in that area. (para 52)
- Impact of National Laws: If same-sex relationships are criminalized, or if
 laws restricting access to gender-affirming medical care or documentation
 exist, these are often enforced nationwide. This means relocation within the
 country would not eliminate the risks, making IFA irrelevant. (para 53)
- Countrywide Intolerance: In many cases, intolerance and discrimination against LGBTQ+ individuals are widespread, meaning relocation within the country would not be a safe or reasonable option. Relocation is also not an acceptable alternative if it would require the applicant to hide their sexual orientation or gender identity to stay safe. (para 54)
- Localized Progress: Some countries may have urban areas with better social
 or political conditions for LGBTQ+ individuals. However, it is the responsibility of the decision-maker to prove that relocation is a valid and safe option,
 supported by specific information about the proposed location. (para 55)
- Reasonableness Analysis: Relocation must not cause undue hardship. Decision-makers must assess whether the applicant would face barriers such as lack of safety, inability to meet basic needs, or denial of rights. For example, women may face additional challenges, including economic dependency on male family members. (para 56)

Recommendations

To properly assess internal flight alternatives for SOGIE applicants for international protection, it is recommended that:

- 1. Internal relocation is not proposed where laws criminalizing same-sex relationships or gender non-conformity exist, as such laws are typically enforced nationwide.
- 2. Societal barriers, such as fixed gender roles or reliance on male relatives for day-to-day life, are evaluated to determine whether they would prevent safe and viable relocation.
- 3. Regional variations in attitudes towards SOGIE individuals are carefully assessed, including the level of safety and societal acceptance in urban versus rural areas.

- 4. Practical challenges to relocation, such as access to housing, employment, healthcare, or social networks, are considered, especially where societal stigma may impede integration.
- 5. The risk of harm from societal discrimination, violence, or persecution by non-State actors, such as gangs or extremist groups, is taken into account when evaluating relocation options.
- 6. The safety, dignity, and fundamental rights of the applicant are prioritized, ensuring that proposed relocation options do not subject them to degrading treatment, undue hardship, or economic deprivation.

Feedback from Past Experiences

A central consideration in asylum cases involving SOGIE applicants is whether they can safely relocate within their country of origin rather than seeking international protection. International legal frameworks, including the ECtHR and UNHCR guidelines, stress that an IFA must not only eliminate persecution but also allow the applicant to live a dignified and secure life without undue hardship. For many LGBTQ+ individuals, however, societal discrimination, economic barriers, and legal restrictions make internal relocation an unfeasible and often dangerous option.

Many refugees emphasize that even within their home countries, there are no genuinely safe spaces where they can live openly and without fear. One individual recounted how he initially attempted to find safety by moving to a different neighborhood in his home country but ultimately realized that relocation within the country was not a viable solution:

The Christians are generally more open and less conservative than the Muslims, and I lived in a Christian neighborhood for some time. But then I realized how life really was in [country of origin]. I was about 20 years old when I started to see that I wouldn't be able to adapt myself to the way people live in [country of origin].

This account highlights the misconception that certain enclaves within a country might offer a long-term refuge for LGBTQ+ individuals. While some areas may be more tolerant, this does not necessarily equate to safety or the ability to live freely. This individual ultimately sought asylum after recognizing that his sexual identity would always place him at risk, regardless of the specific community he lived in.

A similar experience was shared by another refugee from an East African country, who initially attempted to relocate to a neighboring country that he perceived as more accepting, before seeking international protection:

The [neighboring country's] society is not so brutal as [my home country]. It's a little bit friendlier to queer people. But at the same time, it's not safe. If you have money, then it's easier for you to live in a different kind of area where people might understand, where people are educated. But if you live in the rural area or in the neighborhood where poor people are, they don't know anything.

This statement illustrates the economic disparity in access to safety. In some countries, wealthier individuals may be able to find temporary protection in more liberal urban areas, but for most LGBTQ+ asylum seekers this is not an option. More importantly, even in these relatively "safer" locations, legal frameworks criminalizing same-sex relationships still render LGBTQ+ individuals vulnerable. The existence of marginally more tolerant spaces does not eliminate the risk of persecution, especially when the law remains an instrument of oppression.

For some asylum seekers, the idea of an internal flight alternative is entirely unrealistic. One refugee from a Muslim majority country, who had applied for asylum in Iceland, rejected the idea outright when questioned by immigration authorities:

The Directorate of Immigration asked if there are any other safe places, other than [the capital] in [country of origin], that I can live in. [I answered] No, it's all the same. It's all the government, it's the tribe, it's the family, it's the religion.

This response highlights a key reality for many LGBTQ+ individuals seeking asylum: the risks they face are not limited to certain regions within their home countries. Instead, threats often come from a combination of state policies, family pressures, and widespread societal attitudes. Assuming that an applicant can simply move to another area within their country to avoid harm may underestimate how deeply discrimination is embedded in both formal institutions and everyday social life.

Still, legal systems often require a clear distinction between general discrimination and persecution. For someone to qualify for asylum, the harm they face must meet a certain level of seriousness. A legal expert from the DoI explained this distinction:

All of this is based on methodology and interpretive frameworks grounded in international obligations. Prejudice, in itself, isn't considered persecution, because it has to reach a certain level of severity—a violation of fundamental human rights.

This explanation shows the challenge faced by LGBTQ+ asylum seekers. While they may live under constant pressure, fear, or exclusion, their experiences may not always meet the legal definition of persecution. The decision-making process must therefore balance legal standards with an understanding of how discrimination can be experienced: not just as isolated incidents, but as a continuous threat that affects daily life, mental health, and personal dignity.

These concerns are particularly relevant when considering IFA. In the case of LGBTQ+ applicants, this is rarely a realistic or safe option. Even if some areas appear less hostile, that does not necessarily mean a person could live there openly, safely, or with access to support. The underlying issue remains: when discrimination is widespread in legal systems, families, and society at large, simply moving to another region is often not a genuine or lasting solution.

For decision-makers, this means carefully examining the full social and political context of each case. Relocation should only be considered a viable alternative if the person can truly live safely, freely, and without unreasonable hardship. This is clearly outlined in guidance from the UNHCR and the ECtHR. For many LGBTQ+ asylum seekers, such conditions are simply not present in their home countries.



8. Gender-Sensitive and Intersectional Approach

Sensitivity to the intersections of gender, sexual orientation, and other identities, such as age, race, disability, or socio-economic status is crucial when evaluating SOGIE asylum applications. Claims involving transgender or non-binary individuals require particular attention to the specific risks and forms of persecution they may face. Additionally, the applicant's sexuality and gender identity must be considered alongside other vulnerabilities that may exacerbate their experiences of discrimination or violence.

Intersectionality refers to understanding how different aspects of a person's identity, such as gender, race, sexual orientation, or nationality combine to create unique experiences of advantage or discrimination. For example, a transgender woman from a conservative country who is also part of a racial minority may face compounded risks of violence, societal exclusion, and persecution that must be addressed holistically in her asylum claim.

Legal Frameworks and References

ECtHR Case: Gharib v The Netherlands

The ECtHR emphasizes the importance of applying the concept of intersectionality in assessing discrimination claims. Key insights include:

- Intersectionality as a Holistic Approach: Intersectionality allows decision-makers to view a person's situation as a whole rather than analyzing discrimination from a single-factor perspective. This approach considers how different forms of discrimination interact and amplify each other, creating compounded effects. (para 35)
- Beyond Aggregation: Intersectionality is not simply about adding up various
 factors of discrimination but recognizing the unique and combined impact
 of these factors when they intersect. This method highlights the composite
 nature of discrimination and the distinct, simultaneous effects that arise from
 overlapping identities. (para 35)

UNHCR Guidelines on International Protection No. 9

The UNHCR highlights the importance of considering the intersection of gender, sexual orientation, and other identity factors when assessing SOGIE-based asylum claims. Key points include:

 Multiple Layers of Discrimination: Factors such as sex, age, nationality, race, economic status, or health conditions (e.g., HIV status) can combine with sexual orientation or gender identity to create heightened risks of violence and discrimination. These intersecting factors often leave LGBTQ+ individuals marginalized, isolated from their families and communities, and less able to disclose their fears of persecution during the asylum process. (para 3))

- Relevance of Gender and Sexual Orientation: A person's sexual orientation
 or gender identity is often central to their refugee claim, especially when it
 does not conform to societal, cultural, or political norms. Harm resulting
 from not adhering to traditional gender roles is frequently a key component
 in these cases. (para 13)
- Harm from Non-Conformity: Persecution based on sexual orientation or gender identity often stems from refusal to conform to expected gender roles or behaviors. UNHCR's Guidelines on Gender-Related Persecution emphasize that such claims include a gender element, as they involve individuals being targeted for not fitting societal expectations tied to their gender or sexual orientation. (para 13)

Immigration Appeals Committee decision nr. 562/2019

In case no. 562/2019 of the Immigration Appeals Board, one of the applicants, a transgender boy in his childhood, faced challenges in the asylum process that appeared to lack a gender-sensitive and intersectional approach, critical for addressing the unique needs of SOGIE applicants for international protection.

An individualized assessment of whether A was in a vulnerable position seems not to have been carried out adequately. This oversight highlights the need for decision-makers to approach such cases with a nuanced understanding of the applicant's intersecting vulnerabilities, including gender identity.

The only time it is mentioned that 'A' is possibly transgender in the decision is in the following paragraph:

'A' also suffers from depression, has undergone psychological therapy, and considers himself to be a boy rather than a girl.

Recommendations

To ensure a gender-sensitive and intersectional approach for SOGIE applicants for international protection, it is recommended that:

- 1. Intersectionality is explicitly considered in all SOGIE claims, recognizing that factors such as race, ethnicity, religion, ability, and socio-economic status may heighten the applicant's vulnerabilities to persecution.
- 2. Officials receive training on gender-sensitive and intersectional approaches, ensuring they can recognize and address the compounded risks faced by individuals with multiple marginalized identities.
- Claims involving transgender or non-binary applicants are assessed with a nuanced understanding of the specific forms of persecution and barriers to safety they may encounter, both in their country of origin and in potential internal relocation contexts.
- 4. SOGIE-related claims are evaluated in conjunction with the applicant's broader vulnerabilities, such as health conditions, age, or disability, to ensure that all risks are adequately addressed.
- 5. Decision-makers rely on updated and accurate COI regarding the treatment of transgender and non-binary individuals, including data on societal attitudes, access to medical care, and the risk of gender-based violence.
- 6. The applicant's personal testimony is given due weight, particularly when documentation is unavailable due to systemic barriers or fear of seeking State recognition in their home country.
- 7. The case is addressed based on SOGIE criteria. In case no. 562/2019 of the Immigration Appeals Board, the applicant was a transgender boy in his childhood. Despite this, the application was scarcely handled with a gender-sensitive and intersectional approach for SOGIE applicants for international protection.

Feedback from Past Experiences

LGBTQ+ individuals seeking asylum often experience persecution not just based on their SOGIE but also due to intersecting factors such as disability, health status, socioeconomic background, and cultural expectations. A truly intersectional approach ensures that decision-makers consider these overlapping vulnerabilities, rather than isolating one aspect of the asylum seeker's identity in a vacuum. Failure to do so can result in inadequate assessments that overlook the compounded risks faced by marginalized individuals.

One SOGIE refugee, who is also autistic, reflected on how her neurodivergence shaped her experience of marginalization from childhood through adulthood. Her account illustrates the importance of recognizing invisible disabilities, such as

autism, in asylum procedures. Neurodivergent individuals may struggle to articulate traumatic experiences, particularly under stress or in unfamiliar settings, which can inadvertently affect credibility assessments. Her testimony highlights how a supportive environment is crucial not only for communication, but also for fostering dignity and understanding in the asylum process. As she shared:

There's nothing wrong with me; I'm just different. I'm learning to live with this. I just need some understanding. People used to think that I had a learning disability, and my parents always said I was stupid, but I'm not stupid; it's just because of these autistic traits that I sometimes just freeze and can't think, but when I'm in a comfortable environment, I can be very smart. The environment is very important.

Health status is another crucial intersectional factor that can significantly impact an applicant's vulnerability to discrimination and violence. One asylum seeker from South America, who is HIV-positive, explained how HIV is socially perceived in his country of origin:

In my country, they don't see HIV as it is. They see it as something terrible, some kind of judgment for your unnatural behaviors or, you know, this kind of stuff.

In many countries, people living with HIV still face stigma and discrimination, especially when others assume they are LGBTQ+. This can lead to being rejected by their communities and facing serious obstacles, like being denied healthcare or the right to stay in the country. For asylum seekers, having HIV can make them even more vulnerable to mistreatment, especially in places where there is strong anti-LGBTQ+ sentiment. In these cases, HIV is not just a medical issue, it can put someone's safety, dignity, and ability to survive at serious risk. Transgender asylum seekers face particularly acute dangers, as they are often targeted not only by society but also by their own families. One transgender woman from Muslim majority country described the violence and rejection she endured from childhood:

I wasn't a boy from inside my body; mentally and physically, I was a girl, and my family was treating me like a boy. Everything inside me was in contrast to what was happening outside around me with my parents, my siblings, and other people. My parents were violent with me, my siblings kept their distance from me; and nobody wanted to talk to me. My parents were constantly hitting me until I escaped from the house.

This account highlights how her experience of persecution was compounded by multiple, overlapping forms of harm: as a transgender woman, she not only faced widespread discrimination in society but also endured serious violence from her own family. These intersecting vulnerabilities (linked to both gender identity and domestic

abuse) should have been fully recognized in the assessment of her asylum claim. A gender-sensitive and trauma-informed approach would acknowledge that, for many trans applicants, internal relocation is not a safe or viable option, particularly when violence originates within the family and is reinforced by societal and institutional transphobia.

Finally, the fluidity of identity and the role of safety in self-expression must also be recognized. One bisexual refugee reflected on how personal identity does not always fit into rigid categories and how safety influences how individuals express themselves:

I see myself as bi today, bisexual, but I do not base my identity on it, I just see myself as any other person, so I do not know how that comes in. [...] In my own opinion, I think it all comes down to how safe one feels, and that is putting into consideration all the factors, environmental and physiological.

This reflection reminds us that sexual orientation is not always expressed in the same way across different cultures and environments. Some LGBTQ+ asylum seekers may not have openly identified as queer before fleeing their country, often because doing so could have put them in serious danger. Others may not feel comfortable using fixed identity labels, but still face discrimination because of who they are attracted to or how they express themselves. In the context of a gender-sensitive and intersectional asylum process, it is essential to understand that identity can be shaped by safety, culture, and environment. If asylum decision-makers expect all LGBTQ+ applicants to describe or "perform" their identity in a way that matches Western norms, they risk unfairly rejecting valid claims. This is especially important when assessing credibility: individuals who do not fit expected narratives may still face very real threats and persecution. These testimonies highlight the necessity of a gender-sensitive and intersectional approach in the asylum process. Vulnerabilities related to disability, health status, gender identity, and societal stigma cannot be assessed in isolation, as they interact to shape the lived realities of asylum seekers. Decision-makers must move beyond single-factor assessments and recognize how overlapping forms of discrimination create unique risks that require tailored protections.

Ensuring that asylum decision-makers receive training on intersectionality is key to preventing misjudgments that could place LGBTQ+ applicants in further danger. Additionally, adopting trauma-informed and disability-sensitive interviewing methods is essential to ensuring that all asylum seekers, regardless of how they communicate or present their identities, are given a fair and dignified evaluation of their claims.



9. Ensure Safe Accommodation and Protection²

SOGIE refugees must be housed in facilities where they are protected from harassment, discrimination, or violence. It is the duty of immigration authorities to ensure that SOGIE applicants are not placed in environments where their safety is at risk due to their sexual orientation or gender identity. Safe and inclusive accommodation is essential for the physical and psychological well-being of SOGIE applicants for international protection, many of whom have already experienced significant trauma.

Legal Frameworks and References

ECtHR Case: OM v Hungary

The ECtHR held that

"...in the course of placement of applicants for international protection who claim to be a part of a vulnerable group in the country which they had to leave, the authorities should exercise particular care in order to avoid situations which may reproduce the plight that forced these persons to flee in the first place. In the present case, the authorities failed to do so when they ordered the applicant's detention without considering the extent to which vulnerable individuals – for instance, LGBT people like the applicant – were safe or unsafe in custody among other detained persons, many of whom had come from countries with widespread cultural or religious prejudice against such persons" (para 53)

UNHCR Guidelines on International Protection No. 9

The UNHCR Guidelines outline critical considerations for assessing the safety and protection of SOGIE applicants for international protection in their country of origin, particularly in cases involving non-State actors. Key principles include:

- Persecution by Non-State Actors: Persecution can come from non-State
 actors, including family members, neighbors, the broader community, or
 specific groups like paramilitary organizations, criminal gangs, or vigilantes.
 These actors may engage in acts of intimidation, harassment, domestic violence, or other forms of physical, psychological, or sexual violence against
 LGBTQ+ individuals. (para 35)
- State Protection Requirements: For protection to be considered effective, the State must demonstrate a willingness and ability to address violence and discrimination. If police or authorities fail to respond to requests for help or

² Since the data collection for this research started, in 2021, the responsibility for housing matters concerning applicants for international protection has shifted from the Directorate of Immigration to the Icelandic Directorate of Labour (Vinnumálastofnun). As of the finalization of this report, the Directorate of Labour had not yet agreed upon an interview or provided comments despite requests.

refuse to investigate and prosecute perpetrators, State protection is not considered available. (para 36)

 Reforms and Societal Change: Legal changes, such as repealing laws against same-sex relationships, do not immediately ensure safety for LGBTQ+ individuals. Societal attitudes and entrenched prejudice often persist even after legal reforms. Effective protection requires more than just legal changes—it requires meaningful enforcement and societal acceptance. (para 37)

Recommendations

To ensure safe accommodation and protection for SOGIE applicants for international protection, it is recommended that:

- 1. Accommodation is provided in facilities that prioritize the safety and well-being of SOGIE applicants for international protection, with protections against harassment, violence, or discrimination.
- SOGIE applicants who have been victims of violence are assured of their personal safety and are placed in environments where they can recover without fear of further harm.
- 3. All safety concerns raised by SOGIE applicants are promptly investigated and addressed, ensuring immediate and appropriate responses to any threats or incidents.
- 4. Victims of psychological or physical violence are informed of available support services, including legal aid, counseling, and medical care.
- 5. Steps are taken to prevent harassment or discrimination against SOGIE applicants for international protection within reception centers, including awareness training for staff and other residents.
- 6. Access to mental health services is provided to SOGIE applicants for international protection to help them address trauma, stress, and other mental health challenges stemming from their experiences.
- 7. Accommodation placements take into account the specific needs and vulnerabilities of SOGIE individuals, including transgender or non-binary applicants who may require accommodations aligned with their gender identity.
- 8. Mechanisms are implemented to ensure the safety and inclusivity of housing facilities, with regular feedback sought from SOGIE residents to improve conditions and address concerns.

Feedback from Past Experiences

LGBTQ+ individuals seeking asylum are often at risk of violence and discrimination not only in their countries of origin but also in the reception and accommodation facilities where they are placed during the asylum process. Ensuring that asylum seekers are housed in safe and inclusive environments is critical to their well-being, particularly as many have already endured significant trauma. However, testimonies from SOGIE applicants reveal ongoing challenges in securing protection within asylum accommodation in Iceland.

A response from counselors at Samtökin '78 (S78), Iceland's national LGBTQ+ organization, emphasized the lack of sufficient housing resources for these groups:

It should be mentioned that we have had many complaints regarding the housing which fall within VMST but should be noted. For example, issues concerning vulnerable groups within LGBTQ groups, such as mothers with children and trans people. There is a bit of a void in resources to provide them with safe accommodations and to meet their needs. Their situations are particularly vulnerable and should warrant protection and given asylum.

An Icelandic lawyer specializing in asylum and international protection cases, notes the importance of acting on reports of poor treatment and conditions:

A gay couple was being housed with other applicants, where they faced ridicule, harassment, and discrimination. This was pointed out to the Directorate of Labour without any action taken.

One couple from Eastern Europe recounted how they were targeted by a fellow resident at their accommodation, despite making efforts to keep their relationship private:

There was a woman who persecuted us, so we had to ask for a transfer of accommodation. We were hiding our sexuality and did not tell anyone, but she knew our acquaintance here in Reykjavík, so she assumed that we are a couple. [...] She started threatening us on social media and encouraging others in the community to do the same. We just got really scared. But luckily, we had a screenshot of her messages and reported it to the police.

This case highlights the difficulty of maintaining safety in shared accommodations, particularly for LGBTQ+ asylum seekers who may be outed against their will. The fear of retaliation from fellow residents, sometimes from their own home country, can recreate the very conditions of persecution they fled. Although the couple reported the threats to the police, at the time, no immediate housing alternative was available due to Iceland's ongoing accommodation crisis, illustrating the limitations of the current system in responding to threats in a timely manner.

For others, the risk of harassment in shared accommodations has led to requests for relocation. A young man from South America, who had initially been placed in a facility where he experienced discrimination from Arab-speaking residents, explained his situation:

I asked to get transferred to another building. [...] Because there were Arab people there that discriminated against me. So, it's difficult. That's another reason that I tried to hide myself just like temporarily, just to go out of the building. Then I got transferred to another building of immigration.

This testimony reflects a broader issue noted across multiple interviews: LGBTQ+ asylum seekers often face hostility from co-residents, particularly in facilities where individuals from conservative cultural backgrounds are housed together. Although Icelandic authorities were able to transfer this individual to a different accommodation, the need to "hide temporarily" illustrates how unsafe environments force many LGBTQ+ applicants to suppress their identities, contradicting the principles of protection and non-discrimination outlined in international guidelines.

The psychological toll of unsafe accommodations was also emphasized by a man from Iraq, who described his experience of being placed in overcrowded conditions with men who made him feel unsafe:

But after a week, I was really destroyed completely. I was crying because they put me in a crazy camp with three guys. So, we were four guys in the same room. So, I feel like I was crying every day. It was like new for me because I was in a very cozy and stylish life [in country of origin]. And I just came to be a refugee. [...] But now, after a transfer of accommodation, most of the people in my accommodation are from [country in Latin America], so it is possible for me to have a rainbow flag in my room; the flag gives me hope.

This account underscores that ensuring safety for SOGIE applicants extends beyond protection from physical harm. The psychological impact of accommodation arrangements must also be considered. For many LGBTQ+ asylum seekers, particularly those accustomed to private or stable living conditions prior to displacement, communal housing can be a source of distress. In this case, the applicant's ability to display a rainbow flag in his new accommodation served not only as a symbol of safety but also of affirmation and dignity. Such expressions of identity, made possible in a more supportive environment, illustrate the importance of housing placements where applicants feel secure and respected. Immigration authorities should take into account both the emotional well-being and specific vulnerabilities of SOGIE applicants when assigning housing, including the potential for re-traumatization in settings where homophobic or transphobic hostility may occur. Despite the well-documented risks faced by SOGIE asylum seekers, Icelandic immigration authorities currently do

not provide dedicated housing solutions for LGBTQ+ individuals. Accommodation placements are managed on a case-by-case basis, with no formal policy to proactively identify or address the specific housing needs of this vulnerable group. A former lawyer from the DoI summarized the current institutional approach:

We don't have any specific resources [for queer people applying for international protection], no, but every effort is made to provide a private room if that's something they've requested.

This reactive model stands in contrast to emerging practices in several other countries. For example, Germany has implemented dedicated shelters for LGBTQ+ asylum seekers in cities like Berlin, often in partnership with civil society organizations such as Schwulenberatung Berlin. Similarly, Canada supports LGBTQ+ refugees through its private sponsorship programme, with groups like Rainbow Railroad and Rainbow Refugee Society helping to arrange safe, affirming housing from the outset. In the Netherlands, local authorities work with COC Netherlands to monitor safety in asylum accommodations and intervene when LGBTQ+ individuals face threats. These examples demonstrate that dedicated housing solutions either through state support or collaboration with LGBTQ+ organizations are both feasible and increasingly recognized as essential for ensuring the safety, dignity, and psychological well-being of SOGIE applicants for international protection.



Conclusion

This report has outlined the legal foundations, institutional obligations, and practical challenges related to the protection of individuals seeking asylum in Iceland on the basis of their sexual orientation, gender identity, and expression (SOGIE). Through nine thematic guidelines, the report offers concrete recommendations rooted in Iceland's international legal obligations, complemented by lived experiences of SOGIE applicants and the professionals who work with them.

The central insight emerging from this work raises the question on whether legal protection alone is sufficient. Iceland is party to robust human rights instruments, such as the 1951 Refugee Convention, the European Convention on Human Rights, and the Convention Against Torture, but the effective and humane implementation of these commitments is what ultimately determines whether SOGIE applicants are safe, heard, and treated with dignity.

The experiences recounted throughout this report highlight how credibility assessments, access to safe accommodation, interview practices, and country-of-origin analysis can either uphold or undermine the rights of SOGIE individuals. Too often, procedural shortcomings and a lack of SOGIE-specific training contribute to retraumatization, disbelief (or the interpretation thereof), or the risk of refoulement. Conversely, when decision-makers are well-informed, legally grounded, and sensitive to the lived realities of SOGIE applicants, Iceland's asylum system becomes a space of protection rather than exclusion.

As a country with a strong commitment to gender equality, human rights, and refugee protection, Iceland is well-positioned to lead by example. Doing so requires not only adherence to legal frameworks but also an institutional culture of empathy, awareness, and accountability. This report is intended to support that aim: by informing the work of immigration authorities, strengthening the knowledge of advocates and legal professionals, and empowering SOGIE applicants with an understanding of their rights.

Ensuring that no one is returned to danger, denied safety because of who they are, or forced to conceal their identity in exchange for protection is a moral imperative as well as a legal obligation. Iceland's ability to uphold this standard will remain a defining measure of its commitment to equality, justice, and human dignity.

Recommendations Overview

I. Legal Obligations and Decision-Making Standards

- Ensure consistent application of the principle of non-refoulement in SOGIE-based claims involving non-State actors, to guarantee uniform and effective protection.
- Ensure that risk assessments of torture, inhuman or degrading treatment under Article 3 of the ECHR, Article 3 of the CAT, and Article 7 of the ICCPR fully account for the personal circumstances of SOGIE individuals as a particularly vulnerable group.
- Ensure decisions to deny asylum are subject to thorough review, tailored to SOGIE-related claims of persecution.
- Recognize SOGIE status as grounds for refugee status under the "particular social group" category in the Refugee Convention.

II. Credibility Assessments and Evidentiary Standards

- Adopt a holistic and trauma-informed approach to credibility assessments, avoiding reliance on stereotypes, assumptions, or expectations about the degree to which applicants are expected to be open about their sexuality.
- Be mindful of any request made of applicants that may be construed as requiring them to provide evidence of sexual behavior or follow specific cultural narratives of identity to be deemed credible.
- Evaluate statements from applicants with the understanding that fear of disclosure and trauma may shape how and when stories are told.
- Only refer to UNHCR Guidelines in decisions if their application is explicitly explained and substantiated.

III. Procedural Safeguards and Interviewing Practices

- Ensure confidential, respectful, and sensitive interviews, with full information provided to applicants about the role of interpreters and legal representatives.
- Guarantee that applicants are not pressured to disclose their SOGIE status prematurely or in unsafe environments.
- Improve procedures for introducing interview staff, creating space for trust-building and clear communication.
- Avoid interview practices that prioritize efficiency over applicant wellbeing, especially in first encounters.

IV. Use of Country-of-Origin Information (COI)

- Conduct comprehensive and up-to-date assessments of legal and societal conditions for LGBTQ+ individuals in applicants' home countries, based on independently verified, reliable sources.
- Consider both State and non-State sources of persecution, including family-based violence, religious groups, and societal discrimination.
- Use COI that reflects the specific risks facing transgender, bisexual, and gendernonconforming individuals.

V. Internal Flight Alternatives (IFA)

- Avoid relying on IFA in countries where systemic discrimination or criminalization of SOGIE identities exists.
- Evaluate whether the applicant can genuinely relocate safely and with dignity, especially in cases where family, community, or local authorities pose threats.

VI. Non-Discrimination and Intersectionality

- Acknowledge that SOGIE-based persecution often intersects with other factors, such as race, religion, disability, or socio-economic status.
- Integrate an intersectional approach throughout the asylum procedure, recognizing how multiple forms of marginalization compound vulnerability.
- Ensure that discrimination and threats from diaspora or shared ethnic communities in host countries is not underestimated or ignored.

VII. Accommodation and Support Services

- Provide safe and appropriate accommodation for SOGIE applicants, ensuring protection from harassment or violence by others in asylum facilities.
- Offer psychosocial support services tailored to the needs of LGBTQ+ asylum seekers, particularly those experiencing trauma or isolation.

VIII. Institutional Capacity and Training

- Train all asylum officers, caseworkers, interpreters, and appeals board members in SOGIE sensitivity and anti-bias practices.
- Include SOGIE-specific modules in training curricula for immigration staff, emphasizing legal obligations and trauma-informed approaches.
- Support continuous professional development through collaboration with civil society and experts in queer and refugee rights.





