

Why LGBTI asylum seekers seek and deserve international protection

A significant number of people arriving in the EU Member States to apply for asylum are lesbian, gay, bisexual, trans or intersex (LGBTI). Some of them flee persecution unrelated to their sexual orientation, gender identity or expression and sex characteristics (SOGIESC) (e.g., their political activity), while others are at risk of persecution precisely because of their SOGIESC. In both cases, their SOGIESC can be a ground for protection under the Refugee Convention¹. The EU asylum law² recognises exclusively sexual orientation and gender identity as reasons for persecution, but some Member States recognise also gender expression and sex characteristics as a ground for protection, either in laws or in practice.

LGBTI asylum seekers are often at risk of additional danger because of their SOGIESC during their journey and upon arrival in the country where they seek asylum, which can take the form of harassment, exclusion, sexual violence, or other forms of violence. Often but not always, they qualify as vulnerable persons with specific needs in legal assistance, reception conditions, healthcare, and others throughout the asylum process.

Protection for LGBTI asylum seekers in the New EU Pact on Migration and Asylum

In September 2020, the European Commission presented the New Pact on Migration and Asylum; an attempt to move out of the deadlock at the European Council over the last reform package on EU asylum legislation³. The Pact includes legislative and non-legislative instruments with the aim to foster a political agreement but not concluded negotiations. The Commission is withdrawing only the most controversial legislative proposal from 2016, the Dublin Regulation, and is replacing it with the Regulation on asylum and migration management.

In the following, ILGA-Europe raises concerns about provisions set out in the different pieces of legislation in the Pact regarding the protection of LGBTI people and sets out recommendations to ensure an enhanced protection, reception and procedural standards offered to people persecuted on the ground of their SOGIESC through the EU asylum system.

1. Gender expression and sex characteristics as grounds for international protection

¹ Convention Relating to the Status of Refugees, 28 July 1951, <http://www.refworld.org/docid/3be01b964.html>.

² In EU law, the 2011 Qualification Directive elaborates who is eligible for protection in the EU. For more information on EU asylum law, see http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm.

³ https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1706

To ensure all LGBTI people are covered and protected, ILGA-Europe calls for inclusion of the grounds of sexual orientation and gender identity as already foreseen in the draft text and reflected in case-law of the CJEU; and to add of the grounds of gender expression and sex characteristics as protected grounds.

The Qualification Directive names the grounds of "sexual orientation" and "gender identity" as reasons for persecution. Subsequently, many Member States adopted specific national legislation and policies covering both grounds⁴. Current EU asylum legislation does not explicitly include the grounds of gender expression and sex characteristics, which means that LGBTI people suffering persecution due to their gender expression and intersex people are not expressly included in international protection. However, EASO, some Member States, and the UNHCR already broadened the scope of their work on the rights of LGBTI people to protect the fundamental rights of trans and intersex people fully by including the grounds of gender expression and sex characteristics as well. The most notable national law in the EU is the Gender Identity, Gender Expression and Sex Characteristics Act adopted by the Maltese Parliament on 1 April 2015. In addition, in practice, many Member States recognise sex characteristics and gender expression as grounds for international protection.

The EEAS LGBT Guidelines⁵ address the criminalisation of trans people by legal measures, such as anti-prostitution laws, nuisance laws, and prohibition of so-called 'cross-dressing'. The Council recognises that such laws may target gender variant and transgender persons and be used by law enforcement personnel to prosecute trans persons on the basis of their gender identity or gender expression.

In addition, the Yogyakarta Principles⁶, a set of principles on the application of international human rights law in relation to SOGIESC, calls States to ensure that a well-founded fear of persecution on the basis of sexual orientation, gender identity, gender expression or sex characteristics is accepted as a ground for the recognition of refugee status.

ILGA Europe reiterates the position of UNHCR as expressed in their *Guidelines on International Protection No. 9*, calling on governments, legislators, decision-makers and the judiciary, as well as UNHCR staff to ensure full and explicitly inclusion of trans and intersex people, and add the ground of gender identity, gender expression and sex characteristics to the draft proposals.⁷

⁴ <https://rainbow-europe.org/>

⁵ https://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/137584.pdf

⁶ <https://yogyakartaprinciples.org/relating-to-the-right-to-seek-asylum-principle-23/>

⁷ UNHCR, *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol*

2. List of “safe countries” and fast-track procedures are more dangerous for vulnerable groups, including LGBTI people

ILGA-Europe recommends rejecting any application of accelerated procedures based on lists of safe countries of origin and safe third countries, in particular regarding vulnerable applicants, including LGBTI people.

The safe country of origin concept in asylum policies is based on the assumption that certain countries can be designated as generally safe for their nationals. Therefore, any application for international protection by an applicant from a country of origin, which is considered to be generally safe, is likely to be unfounded and thus rejected.

The determination of a country of origin as safe carries a crucial legal effect on the rights and guarantees available to asylum seekers throughout the asylum process. Member States can use the “safe country of origin” concept to set up accelerated procedures and expediting the examination of asylum claims as manifestly unfounded. Accelerated procedures often have very short time frames for taking first instance decisions and shorter time limits for appealing the first instance decision, and are often coupled with a lack of automatic suspensive effect for such appeals.

Besides, such measures shift the burden of proof from the authorities to the asylum seeker and accelerate the procedure, leaving very little time for LGBTI asylum seekers to come forth with the motive of their flight, as well as specific country of origin information. Due to lived experiences of stigma, discrimination and violence, both in the country of origin and on the migration route, LGBTI asylum seekers in some cases need more time to come forward with their sexual orientation, or disclosing their gender identity/expression, or being intersex. Thus, fast-track mechanisms entail the risk that people in need of protection are not identified; as a careful case by case evaluation is not possible in these procedural frames a particularly great risk in the case of asylum claims by LGBTI people, which tend to be complex and delicate by their nature. Another reason for dealing with applications from certain countries on fast-track procedures foreseen is when the rate of positive asylum decisions from a given country is below 20 percent⁸, which is no indication of how safe this country is for LGBTI people.

The European Parliament has rightly pointed out that some countries listed as safe are not safe for LGBTI people to be out, and LGBTI people can be subjected to abuse in countries held to be ‘safe’ for asylum determination, so their asylum claims may be

relating to the Status of Refugees, HCR/GIP/12/09, 23 October 2012, available at: <http://www.unhcr.org/50ae466f9.pdf>. See in particular paragraphs 9-10 and 57 and footnote 1.

⁸ The new Article 41(3) of the Asylum Procedure Regulation obliges Member States to apply the border procedure in cases of irregular arrival at the external border or following a disembarkation after a search and rescue operation and if the applicant is from a third country for which the share of positive asylum decisions in the total number of asylum decisions is below 20 percent.

entirely legitimate⁹. It also noted that fast-track procedures and lists of 'safe countries' should not unduly affect asylum claims of vulnerable groups in a detrimental way and any EU list of 'safe countries' would need to be consistent with the principle of nonrefoulement and the rights of vulnerable groups¹⁰.

As many Member States lack effective mechanisms for identifying vulnerability, many vulnerable applicants may be subjected to accelerated procedures. Any safe country list of fast-track procedures undermines the principle that every asylum application requires a full and individualised assessment of the particular personal circumstances of the applicant as set by the international refugee law.

ILGA-Europe reiterates that the concept of "safety" in terms of LGBTI rights is malleable, very locally-context specific, and can vary considerably within the different populations under the "LGBTI umbrella."

3. LGBTI applicants: special reception and procedural needs

ILGA-Europe recommends harmonising the list of people with specific needs in the context of reception and asylum procedures by recognising LGBTI asylum seekers as applicants both with special reception needs and special procedural needs.

The way an asylum applicant will be treated throughout the asylum process under the proposed legislations greatly depends on whether they fall within the notion of a 'vulnerable person.' One of the main focus of the CEAS reform by the Commission in 2016 was to improve the protection of vulnerable groups in the EU. Article 2(1)(13) of the proposed Reception Conditions Directive (RCD) replaces the term 'vulnerability' with 'special reception needs', without any change in substance.

Article 21 of the Reception Conditions Directive states that individuals 'such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children' are included in the list of persons with 'special reception needs'. LGBTI applicants are not explicitly mentioned in this provision, but through the 'such as' may fall within its remit.

The Asylum Procedures Directive (APD) foresees a provision for "applicants in need of special procedural guarantees". The Directive does not include an exhaustive list of asylum seekers included in definition of need of special procedure and refers to the needs related to age, gender, sexual orientation, gender identity, disability, serious illness, mental disorders, or as a result of torture, rape or other serious forms of psychological, physical or sexual violence.

⁹ European Parliament, 2016. Report on the situation of women refugees and asylum seekers in the EU (2015/2325(INI)). Brussels. Point 12

¹⁰ Ibid

The fact that the APD and the RCD are not aligned when it comes to naming groups that require special attention is very worrying. This would mean LGBTI applicants may qualify for special attention in the asylum procedure but do not straightforwardly present vulnerability factors that qualify for special attention with regards to their reception conditions.

Even if EU law offers non-exhaustive guidelines for identifying vulnerable groups, there is a danger that the inconsistency between the two pieces of legislation results in uncertainty in domestic legal orders. In fact, when transposing the Directives into national law, EU Member states so far have not taken a consistent approach to the procedural and reception safeguards for vulnerable groups. Most countries' definitions of vulnerable categories of asylum seekers are based on the language of the 2003 Reception Conditions Directive and its recast, and do not contain any of the elements specified in the recast Asylum Procedures Directive. This results in a risk of exclusion of LGBTI applicants from the list of persons with special reception needs and can lead to the violation of procedural and reception guarantees provided in the above-mentioned Directives, exacerbating the risk of LGBTI applicants falling through the cracks of the exemptions made in the draft legislative measures under the Pact for applicants with special reception needs.

Without these safety guarantees, LGBTI persons' safety may not be assured. LGBTI persons face harassment, isolation and discrimination by other asylum seekers in reception centres. Such violence often forces them to avoid reception centres and this self-exclusion deprives them from access to essential services such as shelter, food, healthcare, and other vital services.

The European Parliament position on the 2016 reform of the Reception Conditions Directive also calls for a wider indicative list of categories with specific reception needs, including persons with posttraumatic stress disorder, LGBTI persons, non-believers, apostates and religious minorities among others. The inclusion of sexual orientation, gender identity/expression and sex characteristics as grounds relevant to identifying specific reception needs ensures much needed consistency and legal certainty between the provision of reception and procedural support by national authorities¹¹.

4. Screening procedure poses a greater risk for vulnerable people, including LGBTI asylum seekers

ILGA-Europe recommends to withdraw the Screening Regulation as it poses greater risks for fundamental rights of vulnerable applicants. Furthermore, the added value of the Screening Regulation is unclear.

¹¹ European Parliament, Report on the proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast), A8- 0186/2017, 10 May 2017, Amendment 34 – Article 2(13).

A new procedure for screening migrants arriving in the EU was included in the Screening Regulation and in the amended Asylum Procedures Regulation.

Screening of asylum seekers at the border would apply to all non-EU citizens who cross an external border without authorisation, who apply for asylum while being checked at the border or who are disembarked after a search and rescue operation.

A health and vulnerability check, an identity check, registration in a database, a security check, debriefing form, and decision on the next steps are the six elements of screening, as detailed in the proposal. At the end of the screening, the migrant is channeled either into the expulsion process or into the asylum process (usual or accelerated procedure).

The amended APR does not foresee a general exemption of vulnerable applicants from border procedures. Article 41(9) specifies the cases, where the asylum border procedure shall not be applied: where the necessary support cannot be provided to applicants with special procedural needs and where there are medical reasons for not applying the border procedure.

As ECRE noted, proper and effective vulnerability identification mechanisms are lacking in many Member States and the foreseen 5-day timeframe is not sufficient for identification of vulnerability of applicants¹².

When it comes to LGBTI asylum seekers, in many cases LGBTI asylum seekers do not reveal their SOGIESC directly upon arrival in the country of asylum and at first registration. They might not disclose this important aspect of their claim at early stages due to internalised phobia, shame, trauma, repercussions, lack of information about protected grounds for protection among others. This will negatively impact their chance of being recognised as applicant with special reception and/or procedural needs or applicant, who should be exempt from 20% rule.¹³

Border procedures will negatively impact LGBTI applicants from so-called 'safe countries', 'safe third countries' and third countries for which the recognition rate across the EU is below 20 percent: these applications are a priori deemed not worthy of a standard asylum procedure. This will be exacerbated in cases of SOGIESC asylum as there is the lack of detailed, specific and up to date country of origin information (COI) needed to support a SOGIESC based asylum claim in EU Member states. In addition, average recognition rates may be flawed due to diverging recognition rates of SOGIESC asylum claims among Member States.

In addition, as ECRE highlighted, there is uncertainty about the rights of those who undergo the screening process for key elements including: use of detention; reception

¹² SCREENING OUT RIGHTS? DELAYS, DETENTION, DATA CONCERNS AND <https://www.ecre.org/wp-content/uploads/2020/12/Policy-Note-30.pdf>

¹³ (Article 40(1)(i)) of amended Asylum Procedure Regulation

conditions; legal assistance; the thoroughness of health and vulnerability checks; implications of the decision they receive; and right to remedy among others¹⁴.

5. Addressing violence against LGBTI asylum seekers in reception centres and detention

ILGA Europe calls to ensure that all appropriate measures to prevent assault and gender-based violence, including sexual assault and harassment, is guaranteed in the RCD'.

Considering the increased stress placed on all people in these settings, individuals who are already marginalised within the society bear a greater burden of this stress and therefore, homophobia, transphobia and intersexphobia can arise in the context of asylum accommodation.

LGBTI persons face harassment, isolation and discrimination by staff and other asylum seekers in reception centres. Such violence often forces them to avoid reception centres. This self-exclusion deprives them from access to essential services such as shelter, food, healthcare, and other vital services. And as a consequence, LGBTI persons become even more vulnerable and are exposed to the additional risk of falling victim to exploitation and human trafficking.

Recommendation of the Council of Europe Committee of Ministers calls on states to protect LGBTI asylum seekers, including by taking appropriate measures “to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty¹⁵”. Moreover, in the case of *O.M. v. Hungary*¹⁶, the European Court of Human Rights also emphasised that “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.”

ILGA-Europe calls to ensure that all appropriate measures to prevent assault and gender-based violence, including sexual assault and harassment, is guaranteed in the Reception Conditions Directive.

The 'Victims' Rights Directive includes a comprehensive list of characteristics, which should be taken into account during assessment of special protection needs, and to ensure consistency between EU legislation, the same criteria list for the assessment

¹⁴ See 10

¹⁵ Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity. Adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies.

¹⁶ *O.M. v. Hungary*, Application no. 9912/15, 5 July 2016 at:
<https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%5B%22001-164466%22%5D%7D>

of individual protection needs should also be applied in the legislative measures of the new Pact.

6. Full protection of trans asylum seekers

ILGA-Europe recommends to ensure that self-determination is respected for trans asylum seekers at all stages of the procedure and access to legal gender recognition is guaranteed to trans refugees.

It is important that the gender identity of trans applicants is respected from the start of the asylum process and considered in all steps, including reception.

In many Member States, asylum authorities and security personnel continue to use the officially documented yet inappropriate name and gender marker from the country of origin, exposing trans refugees to be housed not according to their gender identity and exposing them in reception centres but also in society to discrimination and violence¹⁷. Many trans asylum seekers when being placed in mass asylum accommodation face constant threats of physical and sexual assault¹⁸. False placement, e.g. of trans women in male accommodation, accelerates the severe risk of physical, sexual and mental harassment and violence.

Recognising the gender identity of asylum seekers from the beginning and treating their claims but also their reception needs accordingly, even if their identity documents do not match due to no access to legal gender recognition in their country of origin, helps to reduce the exposure to transphobic violence and discrimination that might be directed at them by staff or other applicant in asylum facilities, as well as in society. It is psychologically stabilising to recognise and respect a person's gender identity, even more so when that person has been traumatised in their home country or during their journey to Europe because of their gender identity or gender expression.

Legal status and appropriate documentation are key to ensuring migrants' and refugees' access to public and private services, as well as to the labour market. EU law sets out detailed mandatory requirements relating to providing status and documentation to certain categories of migrants, such as asylum seekers¹⁹, recognised refugees²⁰ or long-term residents²¹.

¹⁷ Frankfurter Zeitung, Die Wut des Herrn Komarov, 12 October 2017

¹⁸ UNHCR, Protecting Persons with Diverse Sexual Orientations and Gender Identities: A Global Report on UNHCR's Efforts to Protect Lesbian, Gay, Bisexual, Transgender and Intersex Asylum-Seekers and Refugees (2015)

¹⁹ Article 6 of the Reception Conditions Directive (2013/33/EU)

²⁰ Articles 13 and 18 of the Qualification Directive (2011/95/EU).

²¹ According to various provisions in the Return Directive (2008/115/EC).

The European Convention does not expressly require State Parties to provide a certain status or issue specific documentation. At the same time, specific circumstances justify a departure from the rule in two situations: interferences with the right for family and private life under Article 8 may give rise to a violation and refusal to issue specific documentation is based on discriminatory grounds under Article 14.

In the recent case of *Rana v. Hungary*²², the European Court of Human Rights extended the right of legal gender recognition for trans refugees²³. The ECtHR has acknowledged the hurdles faced by migrants approaching their country of residence for changes in gender marker in their IDs, despite being persecuted for the same in their country of origin.

Therefore, self-determination of trans asylum seekers and refugees should be respected throughout the asylum procedure and access to legal gender recognition should be guaranteed to trans refugees.

7. Access to essential health care, specifically for trans and intersex asylum seekers

Under international human rights law, the human right to health is recognised in numerous international instruments: Article 25.1 of the Universal Declaration of Human Rights, Article 12.1 of the International Covenant on Economic, Social and Cultural Rights among others.

The right to health is also recognised by the regional human rights instrument, the European Social Charter of 1961, Article 11 (as revised). Under the ECHR, there is no express right to healthcare. However, this is an aspect of 'moral and physical integrity' which falls within the scope of Article 8 guaranteeing the right to respect for private life.

Asylum seekers have specific and essential healthcare needs, which are guaranteed under Article 30 of the current Reception Conditions Directive.

In its general comment No.14, the Committee on Economic, Social and Cultural Rights emphasised equality of access to health care and health services with respect to the right to health. The Committee notes that states have a special obligation to provide those who do not have sufficient means with the necessary health insurance and health-care facilities, and to prevent any discrimination on internationally prohibited grounds in the provision of health care and health services, especially with respect to the core obligations of the right to health.

²² *CASE OF RANA v. HUNGARY* (Application no. 40888/17), ECLI:CE:ECHR:2020:0716JUD004088817, Council of Europe: European Court of Human Rights, 16 July 2020, available at: <https://www.refworld.org/cases,ECHR,5f11a1f90.html> [accessed 6 September 2021]

²³ *Ibid*, para.42

In general comment No. 3, the Committee confirms that States parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the Covenant, including essential primary health care. With respect to the right to health, in the Committee's view, these core obligations include at least ensuring the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalised groups and to provide essential drugs among others²⁴.

To protect and fulfill the right to health of trans and intersex asylum seekers under international law, Member States have to ensure that basic healthcare needs of an asylum seeker are met, including trans and intersex specific healthcare. Trans and intersex specific healthcare needs such as expert psycho-social support, hormone replacement treatment, or post-surgical care constitute basic healthcare needs protected under international human rights law. For many trans and intersex asylum seekers access to hormone replacement treatment and mental health support is paramount to maintaining their physical well-being and emotional stability, which is crucial for the asylum procedures, interviews, etc.

8. Late disclosure of SOGIESC

ILGA-Europe calls for the inclusion of guidance on late disclosure in the new ' Pact's legislative measures, namely in the Asylum Procedures Directive to reflect recommendation of UNHCR²⁵ and Court of Justice²⁶.

One of the main arguments used to reject asylum claims of LGBTI people is late disclosure of their SOGIESC status. In many cases LGBTI asylum seekers do not reveal their sexual orientation or gender identity, gender expression or sex characteristics directly upon arrival in the country of asylum and at first registration. Reasons for not disclosing this important aspect of their claim at early stages include trauma, repercussions, lack of information about protected grounds for protection, general distrust to authorities due to persecution in country of origin among others.

Article 40 of the Asylum Procedures Directive constitutes that if there are further representations during or after the examination of an asylum claim, Member States can examine those representation if the asylum applicant is not at fault for not presenting new information in question within earlier procedure. Article 5 of the Qualification Directive affirms that Member States may consider it the duty of the applicant to submit all information substantiating application for international protection

²⁴ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant), 14 December 1990, E/1991/23, available at: <https://www.refworld.org/docid/4538838e10.html> [accessed 6 September 2021]

²⁵ See 1

²⁶ See 5

as soon as possible. Both directives thus put conditions on excepting later information, instead of giving guidance on why especially for vulnerable groups, late disclosure is a common feature and the reasons for that should be taken into account, rather than using it to dismiss the credibility of claims. Case law of the CJEU clearly argues in this direction. In *A, B and C*²⁷, the CJEU argued that late disclosure of the sexual orientation should not automatically be held against asylum seekers in credibility assessment.

ILGA-Europe stresses the fact that LGBTI asylum seekers originating from countries, in which persecution and/or discrimination of LGBTI people are highly prevalent, are often incapable of speaking about their sexual orientation, gender identity or their being intersex right away, for instance due to distrust or fear.

9. Ensuring inclusive definitions of family

To ensure the right of the LGBTI asylum seekers to family life and non-discrimination in the new Pact, ILGA Europe calls on EU institutions to ensure an inclusive application of the term family, which does not discriminate against same sex couples and their children.

Family reunification for refugees is of utmost importance for successful integration and settlement of refugees. Without family reunification, refugees are denied their right to respect for family life, have vastly diminished integration prospects and endure great additional suffering, as do their family members. If international protection is granted, the EU Family Reunification Directive allows refugees to be joined by family members²⁸. This provision is reiterated in Article 23 of the Qualification Directive. According to the EU legislation family members include spouses, children and unmarried partners in a duly attested stable long-term relationships upon discretion of the Member State.

In the case of LGBTI asylum seekers, these provisions might be interpreted in less advantageous manner by Member States that discriminate against the rights of the LGBTI people to family life protected by the Articles 7 and 9 of the Charter. In addition, LGBTI people have greater difficulty to attest long term relationship because of secretive nature of the relationship given hostility or even criminalisation against same-sex partnerships in the country of origin.

10. Burden of proof

²⁷ See the wording in *A, B and C v Staatssecretaris van Veiligheid en Justitie*, of 2 December 2014, paragraph 73:

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=160244&pageIndex=0&doclang=en&mode=req &dir=&occ=first&part=1&cid=143957>

²⁸ Articles 9 of the Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification

ILGA Europe joins UNHCR in calling for the burden of proof being shared between asylum seeker and Member State through EU legislation on the matter²⁹.

According to the Qualification Directive, providing substantiated evidence for asylum is of absolute importance in the asylum process. Article 4 of the Qualification Directive constitutes that 'Member States may consider it the duty of the applicant to submit as soon as possible all the elements needed to substantiate the application for international protection. In cooperation with the applicant, it is the duty of the Member State to assess the relevant elements of the application.' Hence, burden of evidence gathering lies only on the asylum seeker, and not on the authorities. Evidence related to SOGIESC persecution is often extremely difficult to document for the asylum seekers, especially in discriminatory, oppressive and criminalising environments in the country of origin.

Detailed, specific and up to date country of origin information is therefore crucial to ensure asylum claims of LGBTI refugees are rightfully assessed in EU Member States. Often, there is a dearth of accurate country information about the most repressive countries, where LGBTI people remain invisible and discussion of their existence and the abuses they suffer is suppressed by governments. Inadequate evaluation of information indicating that a country is taking steps to eradicate discriminatory or persecutory practices against LGBTI people is also an issue within asylum assessment context. These factors make it almost impossible for LGBTI asylum seeker to provide substantiated evidences about persecution.

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²⁹ United Nations High Commissioner for Refugees, 2018. UNHCR Comments on the European Commission Proposal for a _Qualification Regulation – COM (2016) 466. Geneva. (pp. 9–10).