

INTERSEX REFUGEES & ASYLUM SEEKERS TOOLKIT

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Introductory Words

Only a decade ago, in 2013, when the Malta Declaration was created, the existence of intersex persons was barely known to anybody in Europe and around the globe. A lot has changed since then. The tireless work of intersex activists and intersex organisations and their allies in Europe and around the globe has led to developments that none of us would have believed to be possible. The visibility of intersex persons and the human rights violations they face is growing, still slowly, but steadily. On a European level we have seen important developments, with a growing number of Council of Europe Members States taking legal action, the European Commission including intersex persons in the 2020-2025 LGBTIQ Equality Strategy, the European Parliament including intersex persons and the grounds of sex characteristics in resolutions and reports on relevant directives and the Council of Europe starting the work on a Committee of Ministers Recommendation on the Equality of Rights for Intersex People.

But let us be clear: Despite the progress that we have seen – intersex persons and their existence are still very invisible in everyday life and among professionals in all European countries and across the world. Many intersex persons experience intersexphobia, and their siblings transphobia and homophobia, on a regular basis, together with the violence and human right violations that come with it. Even if visibility has increased, however, many professionals find it difficult to access information on the specific situation and needs of intersex persons relevant to their field of work. This lack perpetuates invisibility and leads to statements, that, just a few years ago, were very common among professionals of all areas of work: “We don’t have intersex people here”. This situation was aggravated in contexts where intersex persons are specifically vulnerable – and this lack of knowledge would then result in a lack understanding about being intersex in society. As a professional would tell me

a few years back: “We have no intersex asylum seekers and refugees – none of the applicants has ever told us that they are intersex”. But why would an intersex asylum seeker or refugee do this – considering that their sheer existence is surrounded by taboo and shame, that they are violated because of the fact that their body does not conform to the norm, that there might be no non-derogatory word for being intersex that they know, that they might only have a diagnosis, and, first and foremost, that their most common experience when opening up, may be that of complete disbelief, being ridiculed, and experiencing violence and threat to their life. This toolkit aims to increase the amount and quality of the information and support being made available to intersex refugees and asylum seekers and to give professionals a tool at hand that sheds light on the specific challenges intersex asylum seekers and refugees face.

My thanks go to all the intersex refugees and asylum seekers who agreed to share their experience with OII Europe, to the experts and professionals who supported the creation of the toolkit and last, but certainly not least, the work and care, that the authors, Luan Pertl and Jana Hugo, have taken when writing the toolkit.

Berlin, 6.12.2023

Dan Christian Ghattas, PhD
Executive Director OII Europe

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Foreword

Intersex people's human rights are still being violated and intersex people's bodily autonomy is still not equally protected in Europe and globally. The intersex community is still struggling a lot to ensure that their human rights are upheld, but what if we look at the intersectionality of being an intersex person and an asylum seeker and/or refugee? Since 2015, I, Luan Pertl, have supported LGBTIQ+ asylum seekers and refugees and since a couple of years, I have focused on supporting intersex asylum seekers and refugees, as many other intersex organisations globally do. Having combined the insider knowledge I have of supporting intersex asylum seekers and refugees throughout their asylum process with the knowledge that Jana Hugo, Policy Officer at OII Europe holds on a policy level, we have identified an existing information gap about intersex people. This gap includes their reasons for fleeing, their specific protection needs during the arrival and

asylum application process, as well as during the integration process. As we highlight in section 1 of this toolkit, we see a critical need for better, more comprehensive asylum legislation – including stricter monitoring of the implementation of already existing protocols and guidelines. This action must be coupled with a better inclusion of the needs and challenges of intersex asylum seekers and refugees on all policy and advocacy levels. Hence the need for this toolkit, which aims to clearly outline these challenges and needs in the sections below, as well as providing detailed recommendations on ways to address them.

Moreover, we wish to highlight that the writing and publication of this toolkit comes at a time when the current anti-LGBTI backlash is growing and where migration fluxes continue to increase globally. The current instability of social and political situations in many countries

also inform local politics, which in turn directly inform the strictness of assessments conducted on refugees and asylum seekers. This general climate of backlash impacts everyone, but especially those who are already on the margins of society. We continue to witness the instrumentalisation of LGBTI people in political discourses, in combination with anti-gender and anti-immigration sentiments, which have resulted in a worsening of the conditions for asylum seekers, forcibly displaced persons and persons fleeing conflict zones around the world.

However, as we highlight in our section below on good practice examples, many positive developments are also ongoing, and our hope is that with this toolkit we will be able to make a positive impact on the amount and quality of the information and support being made available to intersex refugees and asylum seekers. In Europe and across the globe, we are also witnessing a strengthening

of the intersex movement and of an increased cross-collaboration with allies and other organisations working on LGBTI issues, as well as those supporting refugees and asylum seekers.

We would like to thank the following persons, who made the writing of this toolkit possible: first of all, all our interview partners, who put their trust in us and were willing to share their knowledge and stories with us. Secondly, we would like to thank Dr. Petra Sussner, who proofread the toolkit to ensure that the legal framework of the toolkit was comprehensive. We would also like to thank Eirene Chen for sharing her expertise on the topic of LGBTIQ+ asylum with us, and for doing a final proofread of the toolkit. Finally, we wish to thank Ins A Kromminga for doing the layout of this toolkit, and Dr. Dan Christian Ghattas for his support throughout this process.

Luan Pertl and Jana Hugo

Introduction

The Basics:

Who are Intersex People?

Intersex individuals are born with primary and secondary sex characteristics – including but not limited to sexual anatomy, reproductive organs, hormonal structure and/or levels and/or chromosomal patterns – that do not fit the typical definition of male or female, or that do not fit medical or social norms for female or male bodies.

Variations of sex characteristics may manifest themselves in primary characteristics, such as the inner and outer genitalia and the chromosomal and hormonal structure and/or secondary characteristics, such as muscle mass, hair distribution and stature. The fact that someone has an intersex body can become apparent at different times in their life: through prenatal testing, at birth, during childhood, in puberty or even in adulthood. Depending on the person's specific life circumstances, as well as the degree of taboo in their environment or country of origin, intersex people might learn that they have an intersex body at a very early age or only much later in life.

According to the United Nations at least 1.7% of the population, or, globally speaking, as of 2019, 131 million people have been born with intersex traits.¹

What is SOGIESC?

Throughout this toolkit, you may encounter the term *SOGIESC*. It is an abbreviation which stands for sexual orientation, gender identity, gender expression and sex characteristics.

Sexual orientation:

Sexual orientation is about who you're attracted to and who you feel drawn to romantically, emotionally, and sexually. Sexual orientations include e.g. gay, lesbian, straight, bisexual, asexual, pansexual.

Gender identity:

A person's innate sense of their gender. It is about how individuals perceive themselves and what they call themselves. One's gender identity can be the same or different from the sex assigned to them at birth.

Gender expression / gender presentation:

is the way in which a person expresses a gender identity, typically through their appearance, dress, and behaviour. A person's gender expression may or may not conform to socially defined behaviours and characteristics typically associated with being either masculine or feminine.

¹ United Nations Office of the High Commissioner for Human Rights (2015): Fact Sheet. Intersex. Available from: <https://www.unhcr.org/wp-content/uploads/2017/05/UNHCR-Intersex.pdf>

Who are refugees, who are asylum seekers?

Refugee:

According to the *United Nations Convention relating to the Status of Refugees*, as amended by its 1967 Protocol (the Refugee Convention)² a **refugee** is a person who is outside their own country and is unable or unwilling to return due to **a well-founded fear of being persecuted** because of their race, religion, nationality, or because of their membership of a particular social group or political opinion. It is also worth noting that being granted international protection as a refugee (i.e. being formally acknowledged as a refugee after a positive asylum decision has been taken) also applies to persons facing persecution by **non-state actors** in their country of origin.

Most often, refugees find themselves in a situation where they cannot return home or are afraid to do so. Internationally, war as well as ethnic, tribal and religious violence are leading causes of refugees fleeing their countries³.

Asylum Seeker:

Asylum seekers are **individuals who are seeking international protection**⁴. In countries where individualised procedures exist, an asylum-seeker is someone **whose asylum claim has not yet been finally decided on** by the country in which the asylum claim has been submitted. Not every asylum-seeker will ultimately be recognized as a refugee (i.e. be granted a positive asylum decision), but every formally recognised refugee was initially an asylum-seeker.

Another term you might come across under the umbrella of terms sometimes used to describe those seeking asylum is “**asylum applicant**”, which is a term referring to persons whose asylum proceedings are still pending and whose case has not yet been decided on.



Internally displaced persons:

Internally displaced persons (sometimes referred to as *IDPs*) are persons or groups of persons **who have been forced or obliged to flee or to leave their homes or places of habitual residence**, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and **who have not crossed an internationally recognised border**.

Intersex internally displaced persons can be subjected to a **heightened vulnerability** because they remain legally under the protection (or lack thereof) of the jurisdiction of their country of origin, and therefore may not have recourse to resources available to intersex people who seek international protection. Intersex internally displaced persons also remain at high risk of physical attacks, sexual assault and abduction, and frequently are deprived of adequate shelter, food and health services.

According to UNHCR (2023)⁵, while the UN Guiding Principles on Internal Displacement are not legally binding, their authority has been recognised globally, particularly as they draw from international humanitarian and human rights law. The Africa Union in particular has codified the UN Guiding Principles on Internal Displacement with the 2009 Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the so-called “Kampala Convention,” preceded by the 2006 Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons). The term “internally displaced person” is merely descriptive.

² See Article 1 of the UNHCR Convention relating to the status of refugees (1951). Available from: <https://www.unhcr.org/449267670.pdf>

³ According to Article 18 of the Charter of Fundamental Rights (EU), “the right to asylum shall be guaranteed with due respect for the Geneva Convention”. All of the EU Member States signed and ratified the Geneva Convention, see: <https://fra.europa.eu/en/eu-charter/article/18-right-asylum>

⁴ See the UNHCR glossary. Available from: <https://www.unhcr.org/449267670.pdf>. See also Art 2 (a) Directive 2011/95/EU: According to the directive international protection includes refugee status as well as subsidiary protection.

⁵ For the UNHCR definition of an internally displaced person, see: <https://emergency.unhcr.org/protection/legal-framework/idp-definition> See also the second edition of the UNHCR Guiding Principles for

Internally Displaced Persons, available from: <https://www.internal-displacement.org/sites/default/files/publications/documents/199808-training-OCHA-guiding-principles-Eng2.pdf> See also: <https://www.unhcr.org/media/african-union-convention-protection-and-assistance-internally-displaced-persons-africa>.

The Context – Legal Framework:



The Context – Legal Framework: At International Level

In this toolkit, we will be using the term “harmful practices” to speak, in general, about the violations that intersex people are subjected to that include, but are not limited to, intersex genital mutilation (IGM). IGM is a harmful practice, and has been identified as a form of torture⁶. The right to be free from torture or inhuman or degrading treatment or punishment is firmly established under **international and EU legislation**.

At international level:

The Refugee Convention (Article 33), **Universal Declaration of Human Rights**⁷, the **International Covenant on Civil and Political Rights**⁸ and the **United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** (UNCAT)⁹ prohibit torture and other forms of inhuman and degrading treatment or punishment. The **European Convention on Human Rights**¹⁰ and the **Charter of Fundamental Rights of the European Union**¹¹ similarly prohibit such harmful practices.

While the UNCAT definition of torture (cited in the textbox below) requires that the act of torture be inflicted by, or at the least instigated by, a public agent, the EU Qualification Directive recast (see more below in the section *At EU level*) states that the agents of persecution or serious harm may also be **non-state actors** in the context of qualification for international protection.

Multiple universal standards for protection exist, such as the **1951 United Nations Refugee Convention** (also

known as the **Geneva Convention**) and its 1967 additional Protocol, which sets out the definitions and conditions for granting refugee protection for those seeking international protection, as well as the legal obligations of State parties to protect such persons. The Geneva Convention originally lists five grounds on which a person fleeing persecution can be granted international protection.

A second important soft-law instrument is the **Yogyakarta Principles**, which set out principles and State obligations on the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics. Of particular importance to intersex persons are the **Yogyakarta Principles +10**¹³ which explicitly include the ground of sex characteristics. The Yogyakarta

Principles +10 (YP+10) were adopted in 2017, including Additional Principles and State Obligations, to complement the Yogyakarta Principles and notably to cover sex characteristics and gender expression, specifically Principle 23, which outlines that States shall “*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, including where sexual orientation, gender identity, gender expression or sex characteristics are criminalised and such laws, directly or indirectly, create or contribute to an oppressive environment of intolerance and a climate of discrimination and violence*”.

In 2009, the United Nations Refugee Agency (UNHCR) released their Guidance Notes on Refugee Claims Relating to

Torture is defined by the UNCAT 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 them – or a third person – information or a confession, punishing them for an act they or a third person has committed or is suspected of having committed, or intimidating or coercing them 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.”¹²

⁶ IGM has been identified by international human rights bodies, including the United Nations treaty bodies, as harmful practice, amounting to torture: Since 2009 UN committees, including the UN CEDAW, have issued 35 recommendations to 16 EU Member States, and called on them to end these and other violations of intersex persons’ fundamental rights. For further information, see: OII Europe, Intersex Resources, available at <https://www.oiiurope.org/international-intersex-human-rights-movement-resource-list/>

⁷ See Article 5 of UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III).

⁸ See Article 7 of UN General Assembly *International Covenant on Civil and Political Rights* the International Covenant on Civil and Political Rights, United Nations General Assembly resolution, 2200A (XXI), 16 December 1966. United Nations, Treaty Series, vol. 999, p. 171.

⁹ UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading*

Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85.

¹⁰ See Article 3 of Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols No. 11 and 14*, 4 November 1950, ETS 5. Available from: <https://www.refworld.org/docid/3ae6b3b0d.html>

¹¹ See Article 4 of European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C

326/02. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:%3A12012P%2FTXT>

¹² From the UNCAT UN General Assembly, *Convention Against Torture*, 1984, Article 1.

¹³ See Principle 23 of the Yogyakarta Principles +10, points D, E, F, G, H & I. Available from: <https://yogyakartaprinciples.org/relating-to-the-right-to-seek-asylum-principle-23/>

Sexual Orientation and Gender Identity¹⁴ – a non-authoritative, soft law tool used to issue guidance to Member States carrying out decisions on SOGI-based claims. Furthermore, in 2012, UNHCR published their **Guidelines for International Protection No.9**¹⁵, which is the only authoritative document that the Agency has released to help formally guide UN Member States on how to treat requests for international protection from LGBTIQ people. The guidelines were produced to ultimately guide Member States to understand under what conditions protection can be extended to LGBTIQ+ people fleeing their country of origin. The document focuses mostly on people claiming asylum based on their sexual orientation or gender identity, and sex characteristics are not explicitly mentioned. However, in the footnotes of the guidelines, the term ‘intersex’ is explicitly incorporated under the term ‘gender identity’.

Within the international asylum and migration legal framework, different kinds of international protection exist, namely **refugee protection** and **subsidiary protection**. These different kinds of protection have different prerequisites and rights associated with them and the final decision taken by authorities on the type of protection you are to be granted, is determined based on the reasons why the applicant cannot return to their country of origin. **Full protection** (classic **asylum**) is granted when the **refugee status** is met, and is primarily granted to victims

of political persecution who, for example, enter a Member State on a direct flight or who have not crossed through any safe “third countries”. In the latter case, victims of persecution who enter one Member State via another are not eligible for **full protection**. They remain asylum seekers and must pursue their substantive procedures in other countries. Especially for LGBTIQ+ individuals, such third countries are often not safe, and increased sensitivity is required. However, in cases where the applicant is granted full asylum, they receive a residence permit, which can be renewed after a set period of time.

People fleeing imminent torture, inhuman or degrading treatment in the absence of refugee status, for example in the case of civil war or armed conflict, are usually granted **subsidiary protection**. The status of protection is extended by asylum authorities if the grounds for asylum persist. Subsidiary protection is a term used to describe the kind of protection that applies when neither full protection, nor an entitlement to asylum is given by asylum authorities, but serious harm is threatened in the applicant’s country of origin. **Serious harm** within asylum legislation (Article 15(c) of the EU Qualification Directive) is defined as, “*a death penalty or execution or torture or inhuman or degrading treatment or punishment of an applicant in the country of origin, serious and individual threat to a civilian’s life or person by reasons of indiscriminate violence in situations of international/internal armed conflict*”.

At EU-level:

Within the **European Union**, a number of legislative norms are in place in regards to the criteria for granting international protection, procedural standards, reception conditions and so forth. They constitute what is known as the **Common European Asylum System (CEAS)**. When it comes to the specific legislative frameworks that exist to define the minimum standards for the protection of refugees and asylum seekers entering EU territory, four main instruments exist. Namely, the Qualification Directive (recast), the Asylum Procedures Directive (APD) (recast), The Reception Conditions Directive and the Dublin regulation.

The **Qualification Directive (recast)**¹⁶ clarifies the grounds upon which EU Member States can grant international protection. Importantly, the directive mentions the grounds of sexual orientation and gender identity as grounds for protection, as well as providing access to rights and integration measures for applicants who have been granted refugee protection and therefore can benefit from international protection (see further discussion on the grounds below).

¹⁴ UNHCR Guidance Note on Refugee Claims relating to Sexual Orientation and Gender Identity (2009). Available from: <https://asil.org/insights/volume/13/issue/10/unhcrs-guidance-note-refugee-claims-relating-sexual-orientation-and>

¹⁵ See 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 relating to the Status of Refugees (2012). Available from: <https://www.unhcr.org/media/unhcr-guidelines-international-protection-no-9-claims-refugee-status-based-sexual-orientation>

¹⁶ See Directive 2011/95/EU of the European Parliament and of the Council of 13 December

The Context – Legal Framework:

At EU-Level

A concept that is important to understand in relation to EU asylum law and the situation of intersex refugees and asylum seekers is the concept of “**non-refoulement**”. Under the European Charter of Human Rights and other international human rights law instruments applicable to contracting Member States, this principle entails an obligation of Member States not to transfer (*refouler*) people where there are substantial grounds for believing that they would face a real risk of serious human rights violations – including of Article 33 (right to freedom of expression) – in the event of their removal, in any manner whatsoever, from the EU State’s jurisdiction. Contracting Member States will thereby be seen as violating Article 3 (prohibition of torture) if they were to remove an individual ‘**where substantial grounds have been shown** for believing that the person concerned faces a real risk of being subjected to torture or inhuman or degrading treatment or punishment in the receiving country’ under the classic **Soering test**¹⁷.

^{2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast). Available from: <https://eur-lex.europa.eu/legal-content/EN/TX/?uri=celex%3A32011L0095>}

¹⁷ Under both refugee law and human rights law, protection from *refoulement* applies to any type of expulsion or return, including in cases of deportation or extradition. See ECtHR case, *Soering v UK*, specifically footnote 43. Available from: <https://hudoc.echr.coe.int/eng#%7B%22itemid%3A%22%3A%22001-57619%22%7D>

Both of these concepts are important to understand in the context of working with intersex refugees and asylum seekers, precisely because intersex refugees will in most cases first have to credibly prove or demonstrate their belonging to “a particular social group” within the meaning of the refugee definition and or that they risk serious harm if they were to be returned to their country of origin. Therefore, in practice, they are often only granted subsidiary protection, although intersex persons fundamentally fall under the refugee status.

Across Europe, intersex people remain invisible in society at large and a lack of awareness about their specific needs remains widespread. As a result, data about their experiences remains scarce. Already in 2013, IHRA published research highlighting the fact that no data or country reports exist on the number of intersex asylum cases or about the situation of intersex people in different countries. Unfortunately, 10 years later, this is still the case and organisations and activists working to protect the rights of intersex persons are faced with this challenge¹⁸. Intersex asylum seekers who are exposed to the above-mentioned challenges may, as a result, find it very difficult to prove to officers working on asylum cases that they face serious harm in their country of origin.

The **Asylum Procedures Directive (recast)**¹⁹, establishes the common policies and procedures upon which

Member States can grant and withdraw international protection. It aims to set out the conditions for fair, quick and quality asylum decisions. Among others, it foresees a provision for “*applicants in need of special procedural guarantees*” and applicants with special needs, to ensure that they receive the necessary support during the asylum procedure, due to “inter alia, to their age, gender, sexual orientation, gender identity, disability, serious illness, mental disorders or as a consequence of torture, rape or other serious forms of psychological, physical or sexual violence.” The open list does not include the grounds of “sex characteristics”; however, in practice intersex persons and the ground of sex characteristics are being included in various training modules and other soft law instruments that aim to provide comprehensive guidance on the circumstances under which a person can claim asylum²⁰. At the same time, the ground of gender, from a legal perspective, has been broadly interpreted by asylum authorities during the asylum procedure to be inclusive of sex characteristics/ intersex persons. Reports of intersex asylum seekers, however show, that the lack of a specific ground covering their specific needs and experience, in practice, leads to additional challenges for the asylum seeker to receive the necessary procedural support they require and for professionals to understand and meet the specific needs that an intersex asylum seeker may have.

The **Reception Conditions Directive**²¹ sets out the common standards for reception conditions (such as shelter, access to healthcare, food, etc.) and ensures that these standards are met at a dignified standard of living in accordance with the Charter of Fundamental Rights. In accordance with the recast versions of the Asylum Procedures Directive and the Reception Conditions Directive, victims of torture are entitled to **receive specific support** following the registration of their application. However, it is important here to highlight the existing legal gaps. In its current phrasing (June 2023), the Asylum Procedures Directive is not aligned with the Reception Conditions Directive – this is very worrying because it means that intersex applicants may qualify for special guarantees in the asylum procedure, but do not straightforwardly “present” vulnerability factors that in turn qualify them as having special reception needs. The inconsistency between these two pieces of legislation results in uncertainty in domestic legislation, inconsistent application of asylum law across different EU Member States and ultimately in putting intersex

18 See the article from Intersex Human Rights Australia (IHRA), *Senthoran Rajon refugee claims*, 3 September 2013.

Available from: <https://ihra.org.au/23483/senthoran-raj-refugee-claims/>

19 See Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing in-

ternational protection (recast). Available from: <https://eur-lex.europa.eu/legal-content/en/TX/?uri=celex%3A32013L0032>

20 See the Council of Europe's online training module, via the HELP platform, entitled *LGBTI persons in the asylum procedure*. Available here: <https://help.elearning.ext.coe.int/enrol/index.php?id=6573>; see also The European Parliament *resolution of*

The Context – Legal Framework:

At EU-Level

refugees and asylum seekers at risk of having their asylum application be rejected, or being deported when they are not correctly and efficiently identified as qualifying for specific support.

As another example, this could result in intersex persons – who have not been correctly identified as being in need of receiving specific support – being provided with accommodation which follows a binary logic in accordance to the sex recorded in their official documents. For intersex persons, for example, whose sex characteristics may not fit the expectations of normative sex characteristics, this puts them at a significant risk of experiencing violence, harassment and/or discrimination from other applicants. In addition, this binary logic does not take into consideration the fact that their gender identity may differ from the sex or gender recorded in their documents.

6 July 2022 on intersectional discrimination in the European Union: the socio-economic situation of women of African, Middle-Eastern, Latin-American and Asian descent (2021/2243(INI)), recital Z, available from: https://www.europarl.europa.eu/doceo/document/TA-9-2022-0289_EN.html

21 See Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013

laying down standards for the reception of applicants for international protection (recast). Available from: <https://eur-lex.europa.eu/legal-content/EN/TX/?uri=celex%3A32013L0033>

The Context – Legal Framework: At EU-Level

Currently (June 2023), the existing EU asylum law only explicitly recognises sexual orientation and gender identity as grounds for persecution when seeking asylum. While we know that practices and policies may differ at Member State level, and that in some Member States the grounds of gender expression and sex characteristics are also recognised, the explicit mention of sex characteristics as a ground for seeking protection has not yet been identified at EU level.

Under the Qualification Directive, intersex refugees and asylum seekers can currently seek protection under Article 10, which includes the provision “*membership of a particular social group*” as a ground for seeking international protection. This lack of explicit mentioning of the ground of sex characteristics still leaves a legal gap and risks resulting in the exclusion from protection

of intersex refugees and asylum seekers. However, the UNHCR has confirmed that the category “*membership of a particular social group*” shall be interpreted as including intersex²². Even though the UNHCR Guidelines for International Protection N°9 do mention intersex displaced people, it is at the discretion of Member States to invoke this provision when EU asylum law does not. This has significant implications for intersex people in both admissibility and asylum credibility procedures.

On EU-level, the insertion of sex characteristics alongside sexual orientation and gender identity in the text of the regulation would avoid the risk of uneven interpretation and application across Member States, and will bring it into accordance with the aim of the Directive, which is ultimately to enhance uniform standards across the Union.

The **Dublin III Regulation** lays down the specific criteria and procedures to be applied when determining which Member State is responsible for examining an application for international protection. There are differences in national legislation and organisational set-ups of Member States, which is why diverse national practices exist when applying

the regulation. To ensure harmonisation between Member States, the Network of Dublin Units was established to generate and develop operational standards, indicators and guidance to help Member States navigate the Dublin procedure. Under the EU’s **New Migration Pact on Asylum**, and its Regulation on Asylum and Migration Management (AMMR), the EU’s asylum and migration management regulations will be updated and streamlined, and certain aspects previously set out in the Dublin regulation are subject to change.

With the European Commission’s New Migration Pact on Asylum, which at the time of writing (June 2023) is currently being discussed, the EU now plans the next major reform of the Common European Asylum system. It includes legislative and non-legislative instruments, which aim to set guidelines regarding the management of migration in the EU, and whose aim it is to provide Member States with clear guidelines on asylum and relocation procedures, border management, and the treatment of refugees and asylum seekers. The Pact includes proposed amendments to the current Asylum Procedures regulation, as well as the asylum and migration management regulation (mentioned above).

Among others, the pact sets out two new regulations – namely the **screening regulation** which is intended to strengthen the protection of the EU’s borders by setting stricter standards; as well as the **Eurodac regulation** which is intended to strengthen solidarity mechanisms between Member States processing high amounts of arrivals at their borders. Both these regulations endanger intersex refugees and asylum seekers, among other LGBTQ+ migrants, because of its lack of precision, and the limitation in the language it employs.

For example, the new pre-entry screening regulation sets out that such screening procedures will be conducted and concluded within a maximum time frame of five days, wherein the applicant will be screened and their eligibility to seek protection will be assessed. In principle this provision is meant to speed up the screening process so that asylum seekers can enter the system more rapidly and with more efficiency. However, the regulation does not explicitly mention intersex persons, or the fact that LGBTQ+ persons are persons with specific vulnerabilities that need to receive specialised support during the pre-entry screening process. Instead, the regulation places a focus on “*persons visibly having suffered psychological or physical trauma*”, which in the case of intersex applicants, is often not measurable in this way.

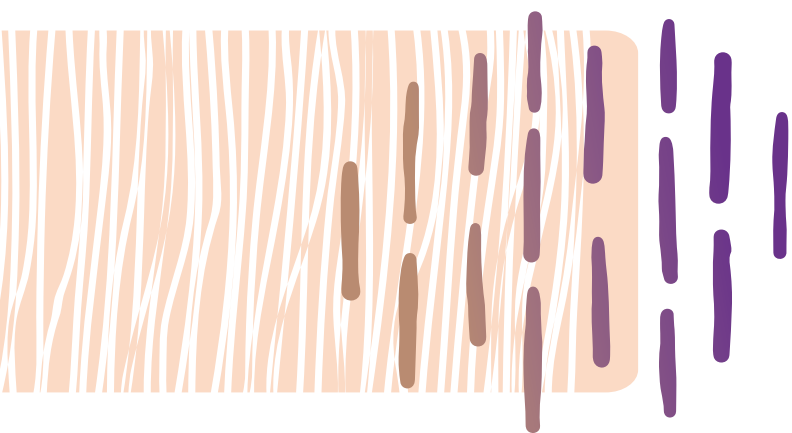
The procedures involving the assessment of vulnerabilities is a critical phase of all intersex refugees and asylum seekers’ journey to claiming asylum, because it constitutes the key moment when the criteria for the application of the normal asylum procedure, as well as the need for immediate psychological care and health-care, is established.

²² See 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 relating to the Status of Refugees (2012), para. 46. Available from: https://www.unhcr.org/sites/default/files/legacy-pdf/509_136ca9.pdf or <https://www.unhcr.org/media/unhcr-guidelines-international-protection-no-9-claims-refugee-status-based-sexual-orientation>

Visible trauma is sometimes used as the vulnerability determination criterion during the vulnerability assessment procedure by security and asylum authorities – this is problematised by the involvement of untrained security actors. For intersex applicants, who may not always present trauma that is visible, this puts them at risk of not having their specific protection needs identified during the vulnerability assessment.

If the vulnerability of an intersex applicant is not adequately identified during this pre-screening procedure, the person risks falling through the cracks, especially in instances where **late disclosure** of one's being intersex (or of one's SOGIESC) is common – seeing as many intersex persons will have had to hide this reality for most of their lives to avoid stigmatisation, discrimination, physical and psychological violence.

Furthermore, some intersex people do not know the term *intersex*, or do not necessarily know that they have a variation of sex characteristics. Some of them may identify with medical terms or 'diagnoses', or may describe themselves according to their body. Asylum authorities and staff working with asylum seekers and refugees need to be aware of this reality for intersex people. [please see the Annex for a complete list of terms]. It is also important to understand the different terms someone might use to self-identity, since they may, as mentioned above, use diagnoses to self-describe their experience, and this directly impacts their entry into the country's medical system. It is vital that intersex refugees and asylum seekers are able to access the specific healthcare they need, and to do so they may need to use medicalised language.



Section 1: Laying the Foundation

What are the specific needs of intersex refugees and asylum seekers?

Persecution

The following information about the forms of persecution intersex people face in their countries of origin, is based on the preparatory interviews for this toolkit, which were conducted with intersex asylum seekers and refugees, as well as with intersex-led organisations or experts who work with intersex asylum seekers and refugees.

In their everyday lives, intersex people are exposed to diverse forms of discrimination and threats in their country of origin, which have far-reaching consequences. These threats and forms of discrimination can manifest themselves even before birth, when parents are advised by doctors to abort their child, if it is discovered that their child will be born with a variation of sex characteristics (these practices are also still happening in Europe). In some cases, intersex infants are killed after birth. Based on reports OII Europe has received, we

know that parents are coerced as a result of shame or fear of social rejection, into hiding the fact that their child is intersex/ has a variation of sex characteristics from other family members, society and from intersex children themselves.

Reports from an intersex activist who works with intersex refugees and asylum seekers attests to a situation where the intersex person, as a child, was violently beaten every time other family members came for a visit. As a result the child would remain silent, in their room, for as long as the visitors were there. In this specific case, the intersex child was sometimes not even allowed to go to school, so that no one would find out about their existence or about them being intersex. We also know of accounts where, if parents of an intersex child live in a city, it is likely that they bring their child to a doctor who performs non-vital

surgical, medical or hormonal treatments or interventions on the child's sex characteristics without the child's own consent, in an attempt to "normalize" them. This harmful practice is known as **intersex genital mutilation (IGM)**. Some children have had to go through these harmful procedures again and again throughout their childhood and adolescence, so that society will accept them. IGM is a violation of human rights, and it deprives intersex children of their human right to bodily integrity and self-determination. It also sets them apart from non-intersex children who have not been subjected to such interventions. These interventions carry multiple health risks for the intersex child and future adult²³.

IGM breaches multiple fundamental rights protected by regional and international Conventions and Charters including, among others, freedom from torture, human dignity, the right to bodily integrity, non-discrimination, the best in-

terest of the child and the right to health. It has been identified on a UN, Council of Europe, EU and in some cases national level as an inhumane and degrading treatment and harmful practice amounting to torture²⁴. It has also been identified as an equivalence to the harmful practice of female genital mutilation (FGM)²⁵. Thus, just like many other forms of physical and also psychological violence, IGM falls under the prohibition of torture and non-refoulement principle.

Growing up having been exposed to these human rights violations, intersex children are heavily traumatised and often aren't able to connect with other children in school or get a good education in the same way that other children can. Because of the effect of conservative beliefs, binary gender norms and harmful gender stereotypes, which remain deeply rooted in society, intersex children are often exposed to bullying, physical and mental attacks and abuse²⁶ for being intersex.

²³ See: A. Dreger et al (2016), *Still ignoring human rights in intersex care*, Journal of Pediatric Urology, 4th of June 2016, p. 1. Available from: [https://www.jpurology.com/article/S1477-5131\(16\)30099-7/fulltext](https://www.jpurology.com/article/S1477-5131(16)30099-7/fulltext) p. 285. The long-term study showed impaired verbal working memory, correlating with the children's self-perception of difficulties in scholastic ability and an increased social anxiety.

²⁴ See for example, among others: OII Europe, *Intersex Resources*, available from: <https://www.oii-europe.org/international-intersex-human-rights-movement-resource-list/>

²⁵ See, among others: United Nations General Assembly (2013): Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez (A/HRC/22/53) Available from: https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session22/A_HRC.22.53_English.pdf, United Nations General Assembly (2021): Report of the Special Rapporteur on the right of

everyone to the enjoyment of the highest attainable standard of physical and mental health, Tlaleng Mofokeng (A/HRC/50/28), para. 20. Available from: <https://bit.ly/A-HRC-50-28>

²⁶ Data from the 2019 FRA LGBTIQ survey reveals that of the intersex respondents, 49.40% indicated that they had been physically or sexually attacked in the last 5 years before the survey. Furthermore, of intersex respondents aged 15-17, 50% reported experiencing bullying at school, and 39% of

them reported experiencing hate-motivated harassment at school or university. For more information see the full FRA report *A long way to go for LGBTI equality*, available here: <https://fra.europa.eu/en/publication/2020/eu-lgbti-survey-results>.

See also OII Europe & ILGA Europe's joint analysis of the data, available from: <https://www.oii-europe.org/intersections-the-lgbti-ii-survey-intersex-analysis/>

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Section 1: Laying the Foundation Persecution

As adults these forms of discrimination – including physical and psychological violence – continue to be a daily reality for intersex people. In our interviews, interviewees reported to us that they weren't able to find any kind of safe space in their home country. They recounted stories of authorities searching for them, or colleagues and neighbours – sometimes even friends – tipping police off as to their whereabouts. In one such case, an intersex person had their clothes ripped off so the authorities could “identify their genitals”. Accounts also exist of persons being beaten up, or even raped multiple times in similar situations.

Interviewee #2: *“I got arrested earlier this year. I was trying to defend an intersex person, I was travelling to another State and one of the intersex persons that was coming from another city in my country – their identity has female on the documents, but their structure is totally masculine, they don't have boobs – so the official said [to them], ‘okay, you are female but don't look like it, this cannot work.’ So I tried to explain to him that some people have variations [of sex characteristics]. And I*

also explained what our national intersex organisation was. And he said, ‘no you can't tell me my work or that this person is a woman’. And he called another officer to strip the intersex person naked to ‘show that he is a woman.’”

In most countries there are no intersex-friendly general or specialised healthcare services for intersex people: this means that intersex people are worried to go to healthcare professionals, because they fear healthcare professionals may refuse to help them to access the healthcare they need, or to answer any health-related questions. Some intersex persons, because of experiencing discrimination and persecution from their community, from religious leaders or from the police, may also be afraid to access healthcare services for fear of being reported – either to a community leader or the police – by the personnel. There is also a lack of safe, confidential, non-stigmatising mental health services, or such services are unavailable to intersex displaced people in many origin and transit countries.

In many countries, no specific legislation exists to protect intersex persons from such forms of discrimination. In some countries, towns and communities, community and/or religious leaders may hold a lot of power. Despite what is formally written in national legislation, severe human rights violations and discrimination can still occur and are common, as the following quote exemplifies:

Interviewee #1: *“[...]but in practice, the law actually lies with the community – religious leaders and community leaders. And they decide who is to be punished and who is to be rewarded. The laws in the books and in the courtrooms have nothing to do actually with how safe you are on the ground”*

As already noted in the introduction, a vast gap exists when it comes to **country reports** available on intersex issues. This is due to the systemic and historic invisibilisation of intersex persons and the human rights violations they face. The lack of access to up-to-date, easily available and accurate information about intersex issues in different countries

around the world can negatively impact a person's asylum decision, especially the case when it is assumed that the conditions in their country of origin are ‘safe’.

For this reason, it remains vital that intersex-led organisations who have the knowledge and expertise about the on-the-ground situation for intersex people in a given country or region, are consulted during the information gathering process of assessing an intersex person's asylum claim.

*For more concrete recommendations on how to ensure that intersex people are supported, please see Section 2 below on **training**.*

Fleeing

The general danger that intersex people face whilst fleeing their country of origin is first and foremost physical danger, such as being chased by pursuers, being injured in hate-motivated incidents, or being physically or sexually attacked. Other physical risks include negative impacts on their health whilst fleeing, depending on the length of the journey, the exposure to the elements and other related risks. They also risk severe emotional trauma and impacts on their mental health, such as life-long fear, anxiety, and depression. Other risks include financial or material loss, such as being separated from possessions, losing access to important documents, or not having access to other necessary resources – including networks of support.

For internally displaced intersex persons, who have first had to flee their homes, and then move – sometimes multiple times and/or in short succession – all of these above-mentioned impacts are exacerbated. This constant moving can have severe impacts on the person's mental health and physical health. Accessing health care in such situations becomes incredibly difficult, and losing access to healthcare after having invested time and effort can be a devastating

blow. Not only does this endanger the persons' physical health, but in the future can also deter them from attempting to find safe and non-discriminatory health care once they have settled again²⁷.

Furthermore, intersex people also face discrimination, harassment, and violence while fleeing, including gender-based violence, due to their variation of sex characteristics. In addition, intersex persons may also have a gender expression and/or gender identity that does not match the gender marker in their official documentation. This threat has been reported to continue being a problem when intersex people have to deal with authorities once they enter the asylum process; experiences include: facing judgement stigmatisation and discrimination from authorities or fellow asylum seekers; asylum seekers being accused of having supposedly “stolen” their identity documents, when according to them, the person does not match the physical appearance or does not have a gender expression that matches the authorities' or fellow asylum seekers' idea of what 'male' and 'female' bodies look like. This includes when the person has a name considered typically male or female, but

does not, according to others, align with what is perceived as a typically 'male or 'female' appearance.

During their fleeing their country of origin, intersex people may also risk losing access to their required medication, which for some can be life threatening. As an example: an intersex person without any hormone producing organs may need to take medication daily, without which they risk having their health deteriorate; or a person with CAH²⁸ may need to take cortisol medication a few times a day; without which, the person risks losing their life.

Quote from a counsellor: “*Ensuring access to such medication therefore has an enormous impact on the person's mobility, and in some cases, the person may even be forced to return to their country of origin if they risk not gaining access to this medication in the country of arrival. This can force a person to weigh up the very*

real risk, for example, of their intersex child dying because of lack of access to needed medication during the journey, versus staying in their country of origin and continuing to face the equally real risk of daily threats, violence and discrimination.”

Reports show that intersex people also face the danger of human trafficking, specifically as some perpetrators believe that they can earn more money from trafficking so-called “hermaphrodites” than from trafficking other persons fleeing their countries of origin. This further underlines just how dangerous and damaging the conservative views held by society, who remain largely uneducated about the existence of intersex persons and of natural variations of sex characteristics, are for intersex people. Still today, intersex people are either fetishized, pathologized, sexually objectified and abused or exposed to human-rights violations like intersex genital mutilation.

²⁷ See also UN Guiding Principles on Internal Displacement for internal displacement situations (2001). These guiding principles have become particularly relevant to ensure that internally displaced persons receive the support they require, following the outbreak of the Russo-Ukrainian war. Available from: <https://bit.ly/QCHA199808>

²⁸ CAH refers to congenital adrenal hyperplasia (CAH) which is an intersex variation that affects the adrenal glands, a pair of walnut-sized organs above the kidneys. The adrenal glands produce important hormones, including cortisol, which regulates the body's response to illness or stress.

Arrival Procedure

As many of the real life stories from the interviews we conducted reflect, intersex persons fleeing persecution in their country of origin may continue to face many obstacles once they have arrived in the destination country, or whilst being in transit through another country. One of the first and most basic procedures during which intersex persons may face significant challenges is **the arrival procedure**.

During this process, border guards and/or other asylum authorities **identify applicants** who are eligible for international protection by entering, according to the legal framework, their basic information and biometrics into the Eurodac system, and by performing security checks. For intersex asylum applicants whose nationality has a less than 25% asylum recognition rate, they are at a heightened risk of being denied admission to the territory, due to their nationality. Furthermore, this process entails requiring the person to present some form of identification (passport, birth certificates or national ID cards) and by stating their reason for seeking entry into the EU²⁹. For security reasons, this step carries a significant weight, yet for many intersex persons this process can be extremely challenging, and in some cases, even (re)traumatising.

For example, an intersex person may have **sex characteristics** that are interpreted as not matching the sex/gender recorded in their official documents. In some cases, their **gender expression**, i.e the way that they present, may also be deemed by others as not fitting the societal expectation of the gender and/or sex recorded in their identity documents. This can also be true for intersex minors, whose bodies are further developing as a result of their variation of sex characteristics, and whose facial appearance, stature, muscle mass and/or other secondary sex characteristics may no longer match the photo in their passport. This may also be true for intersex persons who may have started hormone replacement therapy (HRT). These “differences” may raise the suspicion of authorities, and may result in the intersex person being further questioned and/or examined, thereby exposing the person to the risk of experiencing discrimination and/or violence. It also places the person in a particularly stressful and vulnerable situation. During the interviews, one of the interviewee’s shared the following

²⁹ 32 Member States are bound by the Dublin II Regulation: the 27 EU Member States, along with Norway, Iceland, Denmark, Switzerland and Liechtenstein. See more, on pages 14-15 here: https://bit.ly/Dublin_III

anecdote with us about the challenges they faced upon arrival in a new country:

Interviewee #3: “[...]after several months of HRT my passport was not suitable anymore as a form of ID according to the authorities, just after landing I was immediately interrogated, examined, abused and finally detained by immigration officers, they suspected I had negative intentions in [the country], they based that evaluation on my appearance and stereotypes associated with people from my country”

Furthermore, during this initial identification procedure, intersex applicants may also be misgendered and/or be addressed with the wrong pronouns by authorities, who may in many cases not have received training that emphasises the importance of asking the person **how they identify**. Whilst we recognise that being addressed by correct pronouns may seem of secondary importance, especially for persons who may never have experienced being misgendered, we wish to highlight that being addressed correctly is one of the most basic elements of being treated respectfully and feeling safe. Hence its value cannot be underestimated, especially with highly vulnerable groups with specific needs, including intersex persons. *For more information, please see our recommendations in the **training** section below.*

Section 1: Laying the Foundation Arrival Procedure

This procedure is also crucial, because often – in circumstances where **shelters** are gender/sex segregated – the identification and registration of an intersex person as either male or female, will result in them being placed in a shelter that may not reflect their self-identified gender. This can lead to serious problems for the safety and security of the intersex person, as was the case for one of the intersex persons interviewed. For a more detailed explanation on the challenges faced by intersex people in shelters, *please see the separate section on “**Housing**” below.*

Asylum authorities still lack the necessary **awareness and training** on the specific situation and needs of intersex people. The above mentioned examples show how something as “simple” as the correct registration of a person’s gender marker, can ultimately have a huge impact on determining the person’s safety (or lack thereof) during the arrival procedure, as well as throughout the rest of the asylum procedure. This same lack of awareness also has a great effect on the experience of intersex applicants during the initial interview process. For many people, this experience is very daunting and they may experience heightened feelings of anxiety, misery and stress.

Section 1: Laying the Foundation

Arrival Procedure

The continued **lack of information** about the situation of intersex people can result in authorities posing inappropriate and uninformed questions to the applicant during the first initial interview process. The purpose of this interview, under the New Migration Pact for Asylum regulation, is to determine whether the person is eligible for international protection or not. However, if the authorities lack information about the situation of intersex persons in general, including a lack of information about the **specific situation of intersex people** in the applicant's country of origin, it can result in discriminatory treatment, or even in their application being rejected. This lack of training also

results in creating an atmosphere of "interrogation", where the intersex person may feel uncomfortable to reveal certain facts or information about their situation, or about past experiences that may have informed their decision to leave their country of origin. Some intersex persons may find it very challenging to open up about the experiences they have gone through, especially during this first initial interview, when the person may be in a **particularly vulnerable position**. For example, questions related to the person's body or genitalia, or questions related to the person's sexuality or sexual practices, are extremely intrusive and should not be permitted under any circumstances.

Lastly, upon arrival, some intersex persons may have urgent healthcare needs. However, regardless of whether these needs are urgent or not, many intersex people struggle to access the healthcare services they require; for example access to needed medication (such as for salt-wasting³⁰ and/or access to hormones, or hormone replacement therapy. Lack of access to such services can have serious and life-threatening consequences, and in some instances, the intersex person may already have gone several days without accessing such healthcare, (for example, in the case that the person is fleeing armed conflict, or a warzone; or if the person has travelled by sea) as laid out above in the section about "**Fleeing**".

30 'Salt-wasting refers to when some intersex people/people with variations of sex characteristics who have CAH (Congenital Adrenal Hyperplasia) don't produce the right levels of hormones that control salt in the body. These intersex individuals can become very ill, and even die, without medication to correct their body's salt levels. Many people with "salt wasting" CAH also say that they crave salt, and feel better when they eat very salty food.



Terminology

One of the other major stumbling blocks when it comes to the correct identification and registration of an applicant and their reason for seeking international protection – which is **the term 'intersex'**.

This challenge relates to not only the use of **correct terminology** and interpretation/translation of the term 'intersex', but also has to do with the way that intersex persons self-identify using terms or words to describe being intersex that may differ from what asylum

authorities have learnt or are aware of. The fact that intersex people may use different terms to speak about being intersex, or to self-describe their experience, can create significant barriers for them in the asylum process. These persons may, for example, identify with the medical diagnoses they were given by a doctor in their country of origin, or they may identify with other terms, (which are considered outdated by the international human rights movement) such as 'hermaphrodite'. In such situations, asylum authorities need to be able to suc-

cessfully recognise the person as being 'intersex', whilst at the same time fostering an open environment where persons are not made to feel that the way they identify or self-describe is 'wrong'. Under no circumstance should the intersex person be told that they 'cannot call themselves' as such, or be forced to use another word to speak about themselves and their experience.

Furthermore, some intersex persons may not use any specific term, but may describe their physical reality/expe-

rience, or past physical experiences. In such cases, asylum authorities also need to be able to correctly identify the person as intersex, or as seeking international protection on the grounds of their sex characteristics.

These situations may very often be exacerbated by difficulties that arise when translators and interpreters are not educated on intersex issues, mis-translate what applicants say or who may be intersexphobic.

Intersex minors

Intersex minors have specific healthcare needs and vulnerabilities. Medical situations are already dangerous for intersex persons, but they are especially so for minors. During the interviews in preparation for this toolkit, OII Europe became aware of more than one case of infants and older children, including the case of an adolescent intersex minor who had fled to Turkey and who were being pressured by family members and medical doctors to undergo intersex genital mutilation.

Intersex minors are at risk of medical abuse due to the lack of understanding and respect for their variation of sex characteristics, their gender identity and autonomy. Intersex individuals often undergo unnecessary and invasive medical procedures such as genital surgeries and hormonal treatments without their consent. These treatments can cause irreversible physical and psychological damage, and can be performed without the minor's consent, often leaving them feeling powerless and traumatised. In addition, intersex youth³¹ are too often subjected to stigma and discrimination, which can lead to feelings of isolation and depression. It is therefore essential to

recognize and respect the autonomy and identity of intersex minors and to provide them with access to appropriate medical care and support and this includes international protection from intersex genital mutilation, which is a harmful practice that amounts to torture. Under the Article 3 of the European Convention on Human Rights, torture is prohibited³². Similarly, Article 3.1 of the UNCAT states that no Member States 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.” Therefore, intersex minors who have been subjected to the above-mentioned non-vital, non-consensual interventions are eligible to seek international protection.

A lack of provision of accurate, up-to-date information for intersex persons about international protection (through membership of a particular social group) still prevails. This can result in intersex persons not revealing certain elements about their past which may be important for the assessment of their application, or in the worst case, may result in their application being rejected.

Recognising Terms

Furthermore, some intersex people do not know the term *intersex*, or do not necessarily know that they have a variation of sex characteristics. Some of them may identify with medical terms or diagnoses, or may describe themselves according to their body. Asylum authorities and staff working with asylum seekers and refugees need to be aware of this reality for intersex people. **Please see the Annex for a complete list of terms.** It is also important

to understand that an intersex person might identify themselves with different terms, depending on the situation. E.g. an intersex person might identify by or use the diagnoses given to them when they talk about a health issue. However, the use of medicalised language to describe being intersex / having a variation of sex characteristics should not be a prerequisite for intersex people to receive general or specialised health care.

Furthermore, these differences in the way intersex people name themselves should not be interpreted by asylum authorities as the intersex person being unsure of their experience or situation.

31 In 2019, the EUAA developed a *Practical Guide on the Best Interest of the Child in Asylum Procedures*, however, this guide does not mention LGBTQ+ minors or their specific needs. Available from: https://euaa.europa.eu/sites/default/files/Practical_Guide_on_the_Best_Interests_of_the_Child_EN.pdf

32 See ECHR Article 3 https://www.echr.coe.int/Documents/Guide_Art_3_ENG.pdf. See also ECtHR M. v France case judgement, where the Court set the basis for the qualification of IGM as torture. See more here: <https://hudoc.echr.coe.int/eng/?i=001-217430>

Housing: Shelter & Reception Conditions

As we have outlined in the previous two sub-sections of this toolkit, intersex people may experience psychological trauma, depression, post-traumatic stress disorder, and other mental health issues due to their experiences in their country of origin. Once having departed, these issues can be further exacerbated by the **overcrowded and stressful environment of refugee shelters**.

Often intersex people are being put into refugee shelters or are forced into an unsuitable housing situation, where the accommodation is chosen for the person following binary gender rules and where authorities decide where the intersex person should be placed, based solely on their gender marker or on their appearance. In many cases, **this puts intersex asylum seekers in very high-risk situations**, where they are particularly vulnerable to experiencing mental and physical violence, abuse or even rape and other forms of sexualised violence at the hands of other refugees. Intersex persons, along with other people of diverse SOGIESC, are often housed with co-ethnic refugees by reception shelter administrators, as there is an assumption that this would be culturally supportive and beneficial for them. In reality, this often reintroduces intersex people to further persecution, trauma and

violence. Such forms of violence can also be perpetuated or inflicted by the staff working in these shelters or in refugee housing centres. The following experience of an interviewee exemplifies this:

Interviewee #3: *“The second biggest challenge, and probably the worst one, was to find a safe space for me to shelter myself, sleep and where I could have respect for my privacy and dignity. Most of the spaces in refugee settings are very chaotic, when gender /sex segregation is enforced, depending on our appearance and documentation, these situations can make us visible and at risk of abuse, discrimination and mistreatment by other refugees. Crisis settings have not been adequate and aware of the particular needs that minorities such as intersex refugees require in such settings.”*

The **lack of privacy** in these shelters, which are often overcrowded, is a problem for all asylum seekers. However, for intersex asylum seekers, this is especially problematic, as lack of access to private spaces or bathrooms makes intersex persons **particularly exposed and vulnerable**. Another issue, which is inextricably linked to the safety of intersex refugees – whether they are inside or outside of the shelter – is the **high crime rates** often reported. Refugee shelters are

often located in insecure and dangerous areas, leaving refugees vulnerable to experiencing violence and exploitation, and even exposing them to human trafficking. The above-mentioned quote also touches on points that put intersex minors at risk in housing situations.

Furthermore, state reception centres where refugees and asylum seekers are housed are often located in **rural or semi-rural remote areas**, with very limited transportation access to urban hubs which provide intersex people with vital community resources and support. The degree to which intersex persons are able to access the internet, as well as the extent to which their data is protected and secure, varies greatly within refugee reception centres. Where **internet access** is available, online resources often serve as lifelines for intersex individuals who are living in reception centres, and who may be seeking information or support online.

It is also important to underline the fact that in most cases, **limited or sometimes even no access to healthcare** remains a large issue in these shelters or housing solutions. These structures often already lack basic medical care and services, so in the case that intersex people need special medication or need to access hor-

Section 1: Laying the Foundation

Housing: Shelter & Reception Conditions

mones, more often than not they are not able to receive it. This can lead to **serious health issues** for intersex people or even result in death. The following quote from an interviewee explains the difficulties they faced because of not being able to access the healthcare they needed:

Interviewee #3: *“[...] They are interconnected. As you can see my negative experience in this city was that both associated with lack of access to LGR and access to healthcare. People think that LGR is just about recognition before the State, but it’s also about recognition before doctors and before emergency staff and accommodation. And if you are a refugee, no government wants to pay for your health expenses, when funding is accessible, you are unable to access adequate treatment is not available and on some occasions, some types of treatment are only available to persons based on your legal gender.”*

Finally, a remaining challenge is the **lack of access to education** that all refugees face. Refugee shelters often lack educational opportunities for children or adults, leaving them without the skills to rebuild their lives once they leave these shelters. For intersex children, who may feel even more isolated and who may struggle with being socially accepted, this challenge is further exacerbated.

Integration

Once a positive asylum decision has been granted, whether the applicant has been granted full or subsidiary protection, the “procedural” aspect of the asylum process comes to a close and a new process is initiated: **that of settling**.

As we have outlined in the previous chapters, the asylum procedure is full of many challenges and obstacles for intersex asylum seekers and refugees. However, this chapter seeks to problematise the belief that these barriers disappear once the person has received their positive decision and the integration process starts.

Firstly, once a positive asylum decision has been granted, the **bureaucratic procedures that follow can present many obstacles for intersex persons**. For example, there is a lot of paperwork that needs to be completed, and in certain cases, documents need to be provided to the relevant Member State authority. The person may have **difficulties accessing original documents** from their country of origin (passports, birth certificates) that are usually required to complete “simple” administrative procedures, or they may not have access to such documents in the first place. Intersex persons especially may face discrimination because of their sex characteristics or because of a

perceived ‘mismatch’ of their gender expression and/or gender identity compared to the registered sex or gender marker in their official documents. It can also be incredibly difficult for the intersex person to be **re-exposed on a continued basis** to spaces and procedures where they need to **come out as intersex, or ‘explain’ themselves** in order to access basic rights and services. In addition for intersex persons fleeing from **conflict zones**, accessing documents may be particularly difficult. An anecdote from our interviews shows some of these difficulties:

Interviewee #4: *“Right now, I am in the process of getting an asylum passport (document for travelling to other countries), but first I need to get my birth certificate. Only the OFPRA³³ can issue a birth certificate. It can take a very long time to do so. Some people get it in six months, some people wait several years. Right now all I have is a paper from France with my positive asylum decision. Which is valid in France but not in other countries, so even though I am meant to be able to move freely, I cannot. And it’s hard to know who to contact about this, I don’t really know. And people don’t really ever talk about this part, and how long it takes. So, there is very little information about what the process looks like and who you can consult, like a*

lawyer for example, about it all. So, it gets very frustrating and difficult even after you get your positive decision.”

This quote highlights some of the continued difficulties the intersex person may face, even after their asylum decision has been granted. This problem is also particularly challenging to **intersex activists** who may have fled their country of origin due to **double persecution** – for being both intersex and a human rights defender. They may be unable to travel due to long waiting times for their new official documents, which severely limits their activism, and which in many cases may also be their source of livelihood. These delays and obstacles also prevent intersex people from being able to start integrating into their new home, and can **increase feelings of isolation, social exclusion and marginalisation**. This has a direct impact on the intersex persons psychological wellbeing and physical health.

Other issues, which also arose during the interview process, are the **challenges in integrating linguistically**. Many times, the person may not speak or understand the language spoken in the country they claim asylum in, and the wait to start language courses organised and funded by the integration authorities of the Member State may be very long. In the

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case of one of the toolkit interviewees, they have had to wait over ten months. This presents significant challenges in finding work, or limits the options of the person in finding work that may be in line with their level of skill or qualification. It prevents the person from finding community and integrating socially, which as mentioned above, may exacerbate the isolation and social exclusion that intersex persons face.

Often, very few **support structures** exist that are able to provide intersex persons with the kinds of specific support they may require. Where LGBT NGOs or refugee and asylum seeker support centres exist (even when they may have knowledge on LGBT issues), often lack a clear understanding of the situation and specific needs of intersex people.

One of the greatest challenges when it comes to the integration process lies in accessing **safe, intersex-sensitive, trauma informed and non-discriminatory healthcare services**. During this process intersex persons may particularly rely on the support and advice of intersex-led or LGBTI organisations to guide them in accessing proper healthcare. There is a false belief that intersex persons are automatically safe from experiencing harmful medical prac-

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Integration

tices or interventions once they have left their country of origin, and often intersex persons themselves may not be aware that these practices are persistent in the EU country they have settled in. However, within the EU and Council of Europe region, recommendations that call for the protection of intersex people, including intersex refugees and asylum seekers, have been issued to Member States at multiple reprises³⁴ over many years. In some EU Member States, legislation exists that explicitly protects intersex people from discrimination. For example, Malta, Greece, Germany, Portugal, Spain all have legislation banning non-vital, non-consensual surgeries on intersex minors³⁵.

As mentioned above in the section on Arrival Procedures, many EU Member States still practice intersex genital mutilation, and intersex minors are especially vulnerable to being exposed to these harmful practices. Medical practitioners may also exploit their lack of understanding of the language or medical system to “recommend” undergoing intersex genital mutilation. However,

the reality is that more often than not, **intersex persons remain at risk and will continue to experience pathologization and be exposed to medicalised discourses** from medical professionals, who see their bodies as ‘deviant’ from the norm and in need of ‘fixing’.

An experience of one the interviewees reveals how crucial **receiving support** during this time is for intersex persons, especially where language barriers persist, or where the person may be accessing safe healthcare for the first time in their life, which may be a very emotional process:

Interviewee #1: *“This person from an intersex NGO helped me on the health front to try and find a doctor, there was language challenges, which the person was always helping [me] through, we found English speaking doctors, going to the doctor for the first time in my adult life to really say things that are true, it was also daunting because that was not something that I was used to, I was just going into the pharmacy before to get painkillers over the counter, or to the dentist...nothing that*

required examinations or blood tests. Just to be sure, because I had had an incident at a doctor’s place where I thought they wanted to drug me when they recognised my face... So I had a few issues when I saw the first doctor here, but he was a good doctor and he was able to calm me down so that I was able to talk about things, and if you then diagnoses also came from all kinds of things that had never been seen, so I needed medication, expensive medicines, there were also many emotions around many of the discoveries.”

The question of **accessing healthcare** is also deeply intertwined with the question of gender markers and perceived gender identity. Intersex persons who may not “present” or have a gender expression that matches the binary of male or female, may face serious barriers in accessing the healthcare they require. For example, an intersex woman may be exposed to discrimination, unnecessary and invasive questioning when trying to access gynaecological care, if they are perceived by medical staff and others as “non-female”.

Legal gender recognition is often addressed as only pertaining to the situation of trans people, however for some intersex persons, being able to access legal recognition procedures is essential, as it impacts on their access to many different essential services (healthcare, education, employment) and often these intersecting issues are not well addressed. In countries where such legal

gender recognition procedures exist and are accessible to intersex people, ensuring access to them is crucial.

Family Reunification

Lastly, even when intersex persons have been granted a positive asylum decision, they remain separated from their family members and/or partners. It can be extremely challenging, since the person and their family member(s) have to wait for a very long time, until the person has been granted asylum. Many intersex people identify as heterosexual or ‘straight’, and may have a wife/husband and children. This is often overlooked, and as a result, the needs of intersex people who are seeking international protection to be reunited with their spouses and children, are ignored. The fact that some intersex people identify as straight does not mean that they are not still being threatened, facing discrimination or other violations, in their country of origin for being intersex. Some intersex people however, identify as LGBQ+, and this also impacts their ability to be reunited with their partner.

³⁴ See for example: The Parliamentary Assembly Resolution 2191 (2017) *Promoting the human rights of and eliminating discrimination against intersex people*, Available from: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=24232&lang=en>;

The European Commission’s *LGBTIQ Equality Strategy 2020-2025*, Available from: https://ec.europa.eu/info/sites/default/files/lgbtiq_strategy_2020-2025_en.pdf;

The European Parliament *resolution of 14 February 2019 on the rights of intersex people* (2018/2878(RSP)), Available from: https://www.europarl.europa.eu/doceo/document/TA-8-2019-0128_EN.pdf;

The European Parliament *resolution of 6 July 2022 on intersectional discrimination in the European Union: the socio-economic situation of women of African, Middle-Eastern, Latin-American and Asian descent* (2021/2243(INI)), recital Z, Available from: https://www.europarl.europa.eu/doceo/document/TA-9-2022-0289_EN.html;

The Commissioner for Human Rights, *Human rights and intersex people. Issue paper* (Council of Europe, April 2015), Available from: <https://rm.coe.int/16806da5d4>;

The See ECRI Factsheet on LGBTI issues (1 March 2021), para. 9, Available from: <https://rm.coe.int/ecri-factsheet-lgbti-issues/1680a1960a>

³⁵ For more information, visit OII Europe’s dedicated webpage: <https://www.oii-europe.org/iam-legal/>

Section 2:

Strengthening the Foundation – Recommendations

All asylum authorities, staff working within the asylum procedure – as well as social actors, social welfare officers and organisations working with refugees – should be sensitised to and aware of the specific sensitive approaches to adopt when interacting with and supporting intersex refugees.

Because of their role as the first contact point between intersex refugees and asylum seekers, asylum authorities, for

example, need to be especially aware of the needs and the challenges faced by intersex people, so that they can ensure that interactions with intersex people do not cause further harm and make them feel safe and supported. Once their asylum application has been granted, social welfare officers, who accompany intersex persons, need to be aware of the specific remaining challenges intersex refugees may still face as they settle into their new home.

During the arrival process

According to the latest EUAA survey on Sexual Orientation and Gender Identity³⁶, the majority of the EU countries who responded, reported having specific national guidance on **interviewing applicants** with SOGIESC claims, and half of them reported having specific

guidance for **assessing the credibility** of SOGIESC. Whilst these are positive signs, comprehensive information regarding intersex refugees and asylum seekers, in the interview and assessment of credibility procedures specifically, is still lacking. For this reason, we wish to provide the following recommendations:

We recommend that asylum authorities working with intersex asylum seekers:

³⁶ EUAA survey on Sexual Orientation and Gender Identity - Key Findings Report, June 2022, p.7. Available from: https://euaa.europa.eu/sites/default/files/publications/2022-06/Survey_sexual_orientation_gender_identity_EN.pdf p.7



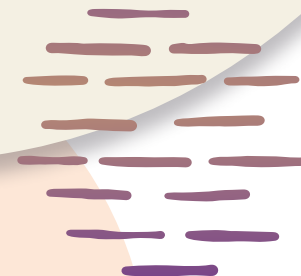
Respect the principles of self-determination and self-identification

Self-determination:

The process by which a person controls their own life or the ability or power to make decisions for yourself. This includes a right to formal recognition of our group identities.

Self-identification:

The assigning of a particular characteristic to oneself, or the act of constructing one's identity in particular terms, usually as a member of a particular group or category. i.e. *I am an intersex person/ I am a person with a variation of sex characteristics*. Persons can self-identify as belonging to more than one group or category at a time.



Respect the principles of bodily autonomy

Bodily Autonomy:

Having autonomy to take decisions about one's own body and to determine one's own fate without undue policing of one's body.

Ensure that the **immediate care needs of intersex asylum seekers are met; including but not limited to:**

- » urgent access to medication or hormones,
- » access to psychological support throughout the duration of the arrival procedure
- » access to non-pathologizing and safe general healthcare services

Ensure access to **safe housing:**

- » Intersex applicants should be asked if they want to stay in LGBTIQ housing/shelters.
- » **Intersex applicants should under no circumstances be forced to take shelter in housing or accommodation that does not align with their self-identified gender, unless for safety reasons, the person expresses a wish to be placed in accommodation which does not align with their self-identified gender.**
- » Placing intersex applicants in solitary confinement, or in isolated accommodation units, is unacceptable, unless the person wishes to be placed in solitary confinement for safety reasons.



Ensure access to **clear, up-to-date, accurate information about the asylum procedure and about the possibility to claim asylum on SOGIESC grounds.**

- » This information should be available in an **easily understandable and easy-to-read format.**
- » This information should be made immediately available to intersex refugees and asylum seekers upon their arrival.
- » This information should be available in a **range of languages, accessible to persons with disabilities**, and where necessary, intersex persons should be able to access support in understanding the information.

As mentioned in the section 1 above, reception officials should also be aware of the following:

- Many intersex persons identify with the sex assigned to them at birth, some intersex persons may identify as non-binary, and others may identify as a different sex or gender than the sex assigned to them at birth and indicated on their official ID documents.
- Intersex applicants may use a **wide range of terms** to self-describe being intersex or having a variation of sex characteristics, or because of the situation in their country of origin, may not know the term ‘intersex’ at all. This is because the term ‘intersex’ is used widely in the Western world and in Europe, but not all

intersex people or people with a variation of sex characteristics, know this word. Instead they might use a (often derogatory) term that indicates having a variation of sex characteristics in their native language. Some intersex people may also say that they have a “body that is not male and not female”, a “queer body” or a “trans body”, for lack of more precise terminology.

- Expectations that intersex applicants will necessarily use the word ‘intersex’, “LGBTI terminology”, or specific “SOGIESC cues” should be avoided; we recommend that, instead, reception officials focus on assisting intersex applicants to express a **SOGIESC-related claim** in their own words and with their preferred terminology during the initial screening procedure.

Furthermore, it is crucial that asylum authorities:

- Use of the **correct terminology** that is not medicalising, pathologizing or discriminatory in any way when referring to the intersex person³⁷. We recommend using the terms “intersex”, “person with a variation of sex characteristics”, “person with non-normative sex characteristics” or to ask the person how they describe their body.
- Guarantee that those providing **interpretation and translation** are equally aware of the **different terms and words that exist** in the target language and the language of translation, to ensure the accurate relay of information between the

Section 2: Strengthening the Foundation – Recommendations

applicant and the asylum authority about how the applicant is self-describing and self-identifying. This also includes training interpreters to treat intersex asylum applicants in a **respectful manner**, since the interpreter or translator may have been specifically recruited from the same ethno-linguistic community as the asylum claimant themselves, and as a result may display negative implicit bias, which could impact the way the intersex asylum applicant’s claim is understood. In order to facilitate appropriate use of terminology we recommend that interpreters seek training by intersex-led NGOs where available.

- Respect the principle of **confidentiality** – especially during initial screening interviews.
- Exercise caution **to not out or disclose information** about a person being intersex to others.

Intersex applicants may be very fearful to disclose the fact that they are intersex because of their past experiences of having been subjected to harassment and violence, or they may be worried that other persons may find out that they are

³⁷ Such as for example terms used in the WHO ICD 11, which, at the time of publication of this toolkit (November 2023), still frames being intersex, i.e. having a variation of sex characteristics, as a pathology for which a medical diagnosis is given. For a full list of such terms, please see Annex 1.

intersex for the same reason. It is crucial that there is awareness among reception officials of what “coming out” means for intersex people, and that they have an understanding of the fact that this process may be difficult and/or traumatic for some – in particular as hiding the fact that one is intersex is the most common measure to survive. This difficulty is exacerbated when intersex persons need to “come out” as intersex repeatedly, for example when interacting with reception staff, or medical personnel, in particular if said staff or health care personnel are not educated on intersex or have a medicalising and pathologizing perspective on intersex.

Considering that the intersex person may be arriving on the shores of a given EU Member State after a long, and in some cases, extremely mentally and psychologically taxing or traumatising journey, the extent to which they feel they are capable of sharing intimate details about themselves may additionally be reduced.

Recommendation on the specific healthcare needs of intersex people:

Upon arrival and whilst waiting for a decision to be taken about their asylum application, intersex persons may have specific healthcare needs. Some of these healthcare needs may be urgent already upon arrival, and can include:

► Needing to **access medication** that they have already gone several days without (for example, in the case that the per-

Ensuring that intersex persons feel safe to disclose information about themselves and about their variation of sex characteristics is crucial to ensure that they are able to access **safe housing**. Reports from intersex refugees and asylum seekers interviewed in the preparation of this toolkit outlined the violations of their bodily integrity that they were exposed to when they were placed in shelters because of the registered gender marker in their passport, and not their self-identified gender.

We recommend that asylum authorities be sensitised to the fact that:

► intersex applicants are **particularly vulnerable** to being exposed to physical, sexual and psychological violence (such as hate crimes and hate speech) in accommodation settings.

► **Specific procedural provisions and safeguards** need to be put in place to ensure that intersex applicants are not further exposed to any forms of discrimination.

son is fleeing armed conflict, or a warzone; or if the person has travelled by sea)

► Regardless of whether the needs are urgent or not, intersex people may need access to medication (such as for salt-wasting³⁸ and/or access to hormones, or hormone replacement therapy). Lack of access to such healthcare goods and services can have **serious and life-threatening consequences**.

► Access to adequate and expert-sensitive psychological support. Training guidelines should also ensure that, to the extent possible and depending on the person’s own wishes, intersex persons should be connected with **peer support organisations**, who are able to offer advice and support.

Training for asylum authorities needs to include information on the specific healthcare needs of intersex people that is non-pathologizing:

► In many EU countries, being intersex is still pathologized and intersex people/people with variations of sex characteristics are still exposed to harmful medical practices like IGM and other forms of violence or discrimination.



³⁸ See explanation above of ‘salt-wasting’ in the footnote 30 on page 31

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Implementation of the above-mentioned recommendations will help to create an **atmosphere of safety and trust** for intersex applicants, which in turn increases the likelihood that they disclose information regarding their situation and reasons for seeking international protection during the next phase of the asylum procedure. **Case officers and interpreters** should also be made aware of these facts. We recommend that specialised training be delivered for case officers and interpreters, or by having specialised staff conducting the first screening procedure interview upon the applicant’s arrival – or at a minimum – that they be available for consultation by case officers where questions may arise (whether during the initial interview, or later during the assessment of credibility). This mandatory training should **also apply to staff working in shelters or asylum housing facilities**. One way to ensure this is to contact and collaborate closely with intersex-led NGOs in Europe, and to involve them in the process of designing and updating training modules on the specific needs and vulnerabilities of intersex refugees and asylum seekers during the arrival procedure.

During the assessment of asylum application

Persons conducting the asylum interviews need to be a person sensitised to intersex issues or an LGBTIQ-sensitive person with knowledge about the special needs and challenges of intersex people/people with a variation of sex characteristics. Training for staff working in shelter and detention facilities, training for interpreters and translators, as well as interviewers, training for judiciary therefore is key to ensure the safety and well-being of intersex applicants.

In addition, the following recommendations apply:

- ▶ All asylum authorities in contact with intersex persons need to be sensitive and alert to the fact that intersex (like some other LGBTQ refugees and asylum seekers) might not immediately disclose their being intersex/ a person with a variation of sex characteristics. As mentioned in the above sections, this may be because of:
 - » Language differences or language barriers
 - » Trauma about having had to hide being intersex during their life, or for most of their life
 - » Fear of being further exposed to violations, harassment and discrimination for being intersex/ having a variation of sex characteristics
- ▶ It is also important that interviewers do not hold incorrect assumptions about who intersex people are; this includes remembering that intersex persons may self-describe their experience of having a variation of sex characteristics in many different ways (please see page 28, 29, and 31 for examples)
- ▶ Intersex people / people with a variation of sex characteristics:
 - » Can be heterosexual/straight
 - » Can be LGBTQ+
 - » Can be married and have children
 - » May have been exposed to IGM (intersex genital mutilation) during their life
 - » May NOT have been exposed to IGM or other harmful medical practices
 - » May have experienced having been threatened by family member(s) for being intersex/ having a variation of sex characteristics.
 - » May have been exposed to threats from religious groups, actors or community leaders
 - » May have been hidden from the outside world, and their parents and/or family members and may for example not have been able to go to school or leave their home at all.
 - » May have experienced physical and/or psychological abuse from their parents and/or family members

- » May have experienced persecution because of being or being perceived as LGBTQ
- ▶ Intersex minors/ minors with a variation of sex characteristics:
 - » May have experienced pressure from medical doctors to undergo non-vital, non-consensual medical, surgical and/or hormonal treatments because of being intersex / having a variation of sex characteristics
 - » May have experienced pressure from family members to undergo these harmful medical practices
 - » May have been exposed to IGM
 - » May NOT have been exposed to IGM
 - » May have experienced threats and pressure from religious groups, actors or other community leaders
 - » May have experienced bullying and violence from peers at school, or from teachers
- ▶ Parents/families of intersex minors / minors with a variation of sex characteristics:
 - » May be at serious risk of being encouraged by family members or the community to abandon or kill their intersex child/child with a variation of sex characteristics
 - » May have experienced pressure from medical doctors to subject their

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- intersex child to non-vital, non-consensual medical, surgical and/or hormonal treatments, including IGM, because their child is intersex / has a variation of sex characteristics
- » May have experienced pressure from family members to have their intersex child undergo these harmful medical practices
- ▶ It should also be ensured that sufficient time is allocated for the asylum interview, and that sufficient breaks are provided for during the interview.
- ▶ It is important that support is provided to intersex persons before and after the asylum interview. This includes:
 - » Psychological and/or peer-support before the interview
 - » Psychological support or access to therapy after the interview, in order to process having needed to speak about an event that the intersex person may have experienced as highly traumatic and stressful.
 - » That the person of trust who accompanies the intersex applicant during their interview, is a peer support person, or someone with expertise on intersex issues who is able to offer support.

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- ▶ For individuals and organisations working with and accompanying intersex refugees and asylum seekers, it is important to:
 - » Support intersex persons emotionally in the lead-up to the interview, on the day of and after the interview.
 - » Support intersex persons by answering any questions they may have about how the asylum procedure works
- » Connect intersex people with peer support groups
- » Connect intersex people with intersex-friendly psychologists or therapists
- » Connect intersex people with intersex-friendly doctors (including endocrinologists)

During the integration process



Intersex persons, as it has been mentioned, may have struggled with social isolation their whole lives, including prior to them fleeing their country of origin. However, intersex persons still remain at risk of experiencing social isolation once they start the journey of settling into their new life in a country foreign to them, where they do not speak the language. Many intersex people arrive alone, without their families or loved ones, and may struggle to find a community in the way that other refugees may. Intersex people may even face rejection from other refugees having arrived from the same country of origin, due to stigmatisation and discrimination due to being intersex. Additionally, many LGBTQ organisations, still today, lack

in-depth information about the specific reality and needs of intersex people – so even when intersex people turn to them, they may not receive the exact support they need. Therefore, it is of vital importance that continued support is offered to intersex people during this time. This can be guaranteed by helping to set up support structures with expertise on the difficulties intersex persons face, like connecting them to peer groups, or local (or international) intersex-led NGOs. This can prevent intersex persons from becoming further isolated, which can have severe impacts on their physical and mental health.

Training guidelines addressed to social actors, social welfare offices and organi-

sations who work to ensure that all persons who have been granted a positive asylum, or who have been awarded refugee status/subsidiary protection, should therefore include certain specific forms of support. The assumption that barriers and challenges only exist during the arrival and assessment of the application process, is false, and tailored support is essential to ensure that intersex persons are able to fully access their rights.

For example, social actors, social welfare offices and refugee support organisations should ensure that intersex persons are provided with support in filling out paperwork or **completing administrative procedures**, once their asylum has been successfully granted. This includes specific forms of support when it comes to:

- » accessing non-pathologizing and expert-sensitive medical care, including psychological care
- » completing the process of gaining access to social security
- » accessing public healthcare services
- » ensuring that they are not exposed to harmful practices like IGM
- » signing up for language courses
- » opening a bank account
- » accessing safe housing
- » accessing child benefits

- » finding employment
- » integrating into the education system
- » accessing peer support groups

For any person, **navigating a new healthcare system**, in a language that the person does not speak, is particularly challenging. For **intersex persons**, this step is filled with **additional specific challenges**, due to the fact that the medical establishment in most reception countries pathologizes intersex persons. Intersex persons may have been exposed to non-consensual, non-vital treatments or interventions on their sex characteristics, which may result in their distrust of medical doctors and severe psychological barriers in feeling safe in healthcare settings. Data shows that this has a severe impact on intersex persons' avoidance of seeking medical help³⁹, even when the need might be urgent.

Please see good practice examples in the Integration section on supporting intersex persons in finding adequate and safe healthcare on page 34-37.

³⁹ Disaggregated data from the 2019 FRA LGBTIQ survey shows that 43.34% of intersex survey respondents felt discriminated against by healthcare or social services personnel, and that this percentage was much higher for intersex people with disabilities (51.95%), trans intersex people from an ethnic minority (including migrants) (60.03%), trans intersex women (54.80%) and non-binary intersex people (53.54%). As a result, 17.06% of intersex people avoid healthcare services because of the obstacles they face.

Read more here: <https://www.oieurope.org/intersections-the-lgbti-ii-survey-intersex-analysis/>

We recommend that, to the extent possible:

» intersex persons are connected with local intersex-led NGOs/CSOs who have expertise on intersex-friendly doctors, endocrinologists and psychologists in the country, thereby ensuring that the person is able to access safe healthcare services that do not risk traumatising them.

Finding **accommodation and housing** may also pose specific challenges for intersex persons, because of intersexphobia still being wide-spread in society. Intersex persons / persons with a variation of sex characteristics should therefore be supported in:

- » Finding safe accommodation that is stable and does not pose a threat to the person's security and wellbeing
- » Signing up for housing insurance
- » Signing up for housing benefits (where applicable)

Furthermore, for intersex minors, or persons wishing to further their studies, **tailored support** should be made available to help them in the process of accessing **primary, secondary and ter-**

tiary education. Intersex persons may have faced severe obstacles in gaining access to, or remaining in, education and employment in their country of origin (regardless of whether this was related to their level of qualification or not). Data shows that the challenges and discrimination faced by intersex people during their education, often continues into their working life, perpetuating taboo, isolation, secrecy and shame. They can be victims of direct or indirect discrimination and harassment because of their physical appearance or gender expression, and real or perceived gender identity and this has a direct impact on their ability to access or remain in employment. Here, statistics also show that intersex people continue to face obstacles in employment⁴⁰, even once they have started the integration process in their country of origin. These issues may be as a result of the person not understanding the language or 'system', but it may also be as a result of them being intersex, them being a refugee or a combination of all the aforementioned factors.

⁴⁰ Data from the 2019 LGBTIQ survey shows that intersex people face the highest rates of unemployment in the LGBTIQ spectrum. And of those who are employed, 51% experience difficulty making ends meet. And of those, 85% face these difficulties because of long standing health issues. Read more here: <https://www.oijeurope.org/intersections-the-lgbti-ii-survey-intersex-analysis/>

Section 3: Good Practice Examples

Unfortunately, good practice examples in relation to the comprehensive protection of intersex refugees and asylum seekers still remain scarce, especially on a structural level as pertains to the explicit inclusion of intersex refugees and asylum seekers needs, and the mitigating the specific challenges they face.

However, there have been some important actions taken by civil society organisations and other important stakeholders in the field of training, housing, shelter, and policy developments over the last few years. These examples can be considered as big steps towards securing the rights of intersex refugees and asylum seekers.

Housing:

LGBTIQ-specific housing, where intersex refugees can find safety and security (whether it be during the asylum procedure, or once their asylum claim has been accepted and they have started their process of integration) is primordial. Examples of some LGBTIQ civil society organisations who provide such services are:

► **QueerBase** -Vienna, Austria: provide specialist counselling and support for LGBTIQ+ refugees, which includes working together with Diakonie Lares and Tralalobe, to arrange safe housing for LGBTIQ asylum seekers who have submitted their asylum claim in Austria⁴¹.

41 For more information about QueerBase, see here: <https://queerbase.at>

42 See the Council of Europe's online training module, via the HELP platform, entitled *LGBTI persons in the asylum procedure*. Available here: <https://help.elearning.ext.coe.int/enrol/index.php?id=6573>

Training, legal advice and educational material:

The importance of training for professionals working with intersex asylum seekers on a daily basis cannot be highlighted enough.

► Legal experts on LGBTIQ asylum, provide training to asylum authorities in Austria, on LGBTIQ refugees and asylum seekers.

► The inclusion of intersex refugee and asylum seekers in the **Council of Europe's HELP desk online training module**⁴² is a good practice example of online training to a wide range of stakeholders working in the field of asylum. The measure also highlights the importance of including intersex-led civil society in the creation of such modules.

► The **Schwulenberatung** in Berlin⁴³ provides legal advice, information and recommendations to professionals and in-

terpreters working with LGBTIQ refugees and asylum seekers; they also have created a number of handbooks⁴⁴ in collaboration with other civil society actors working directly with specific groups within the LGBTIQ spectrum. They have also produced a range of handbooks on various topics relating to LGBTIQ asylum.

► **LesMigraS** Berlin⁴⁵ provides support to LGBTIQ refugees, legal advice, counselling empowerment workshops and accompaniment for refugees and asylum seekers. Their team is composed of lawyers, social workers and therapists, and they offer support in a wide range of languages.

► The work of the **European Agency for Asylum** (EUAA) on developing training guidelines which is inclusive of intersex refugees and asylum seekers is a positive development. Particularly through the creation of the **EUAA Vulnerability Experts Network**, which includes inputs from civil society organisations like OII Europe.

► In 2021, the UNHCR and the IE SOGI convened a global conference on protection and solutions for LGBTIQ+ in forced displacement. The month-long convening resulted in 39 collectively and collaboratively generated recommendations for Member States, regional authorities such as EUAA, civil society orgs and UN agencies. These

43 See <https://schwulenberatungberlin.de/angebote/queer-refugees/> for more information. They can be contacted via email at: refugees@sbberlin.info

44 For more information, please visit their website here: <https://schwulenberatungberlin.de/angebote/fortbildung/>

45 See <https://lesmigras.de/de/> for more

46 Find the 39 recommendations here: <https://www.refworld.org/pdfid/611e20c77.pdf>

47 For more information, visit: <https://mairie20.paris.fr/pages/un-refuge-a-belleville-pour-des-migrants-lgbtq-15668>

Section 3: Good Practice Examples

39 recommendations⁴⁶ are being taken by a number of Member States. At the end of this 2021 convening, UNHCR leadership verbally committed to revise and update the Guidelines for International Protection N°9.

Funding:

► The City of Paris allocated funding to an organisation, **Basiliade**⁴⁷, that has established safe LGBTIQ housing for refugees in the city. This small step forward highlights the importance of financial support on a local level to organisations working on the ground to ensure the protection of LGBTIQ refugees.

► Rapid-response funding to organisations and NGOs working to support intersex refugees, as well as directly to intersex human-rights defenders, who need to leave their countries as a result of threats to their lives as a result of their work to advance and protect intersex rights, is key. Following the outbreak of the war in Ukraine in 2022, it was a good practice example to witness the extent of the financial support given by a wide range of stakeholders to organisations working on the ground, e.g. in Poland.

Annex 1 List of intersex-related diagnoses

Annex 1

List of intersex-related diagnoses:

Disclaimer: This is a **non-exhaustive, non-comprehensive** list⁴⁸ of medical and diagnostic terms used to describe variations of sex characteristics, provided as a reference to those working with intersex persons who may need terminological clarity. Persons with variations of sex characteristics, may or may not have received a diagnosis, or identify with any of the terms in the following list. Persons with variations of sex characteristics may or may not identify with the term intersex.

Please be warned that violations of intersex persons' human rights happen as a result of these lists, which entail a pathologization of persons with natural variations of sex characteristics. Please understand that such medicalising and pathologizing terms **should not be used** to refer to an intersex person **unless** the person themselves have expressed a wish for such terms to be used.

⁴⁸ This non-comprehensive list is based on a list of diagnoses from a 2016 German study *Zur Aktualität kosmetischer Operationen „uneindeutiger“ Genitalien im Kindesalter* by Ulrike Klöppel, et al. available from: https://www.gender.hu-berlin.de/de/publikationen/gender-bulletin-broschueren/bulletin-texte/texte-42/kloepfel-2016_zur-aktualitaet-kosmetischer-genitaloperationen/view.

It also includes additional terms from a book, *Geschlechtliche, sexuelle und reproduktive Selbstbestimmung*, by M. Katzer & H.J Voss, available from: <https://www.psychosozial-verlag.de/2546>.

- ▶ 17-beta dehydrogenase deficiency
 - ▶ 5-alpha reductase deficiency
 - ▶ 46,XX (including SRY+, SOX9 dup.)
 - ▶ Aarskog syndrome
 - ▶ Alstrom syndrome
 - ▶ Androgen biosynthesis disorders
 - ▶ Androgen insensitivity syndrome (PAIS, CAIS)
 - ▶ Aromatase deficiency
 - ▶ CAH (Congenital Adrenal Hyperplasia)
 - ▶ Chimerism
 - ▶ Cryptorchidism
 - ▶ Disorder of Sexual Development (DSD: 46XX DSD, 46XY DSD,
 - ▶ Epispadias
 - ▶ Mixed gonadal dysgenesis
 - ▶ Gordan Overstreet Syndrome
 - ▶ Gynecomastia
 - ▶ Hermaphroditism, True Hermaphroditism, (male/female) pseudo-hermaphroditism
 - ▶ Hirsutism
 - ▶ Undescended Testicle(s)
 - ▶ Hypogonadism
 - ▶ Hypospadias
 - ▶ Kallmann syndrome
 - ▶ Klinefelter syndrome
 - ▶ Leydig cell hypoplasia
 - ▶ Meacham's Syndrome
 - ▶ Mixed chromosome DSD (45 X/46 XY mosaicism or 46 XX/46XY mosaic)
 - ▶ MRKH and MURCS
 - ▶ Ovotesticular intersex/ DSD
 - ▶ Polycystic Ovarian Syndrome (PCOS)
 - ▶ Persistent Müller structures/ Müllerian duct syndrome
 - ▶ Penile agenesis
 - ▶ Prader-Willi syndrome
 - ▶ SOX9 mutations
 - ▶ StaR mutation/defect
 - ▶ Swyer syndrome
 - ▶ Testicular Feminisation
 - ▶ Turner syndrome
 - ▶ WT1 mutations (including Denys Drash, Frasier)
 - ▶ XX-gonadal dysgenesis
 - ▶ XXX syndrome
 - ▶ XYY syndrome
- May also include the following diagnoses:**
- ▶ Börjeson-Forssman Lehmann syndrome
 - ▶ CHARGE syndrome
 - ▶ Fröhlich syndrome
 - ▶ Laurence Moon Biedl Bardet syndrome
 - ▶ Smith-Lemli-Opitz Syndrome

Annex 2

For a regularly updated list of intersex-led NGOs who have experience and expertise on this topic, please visit OII Europe's website:

<https://www.oiiurope.org/intersex-refugees-asylum-seekers/#contact-to-intersex-led-ngos-with-expertise>

Email contacts:

VIMÖ/OII Austria (Austria)
info@vimoe.at

OII France/CIA (France)
cia.intersexes@gmail.com

Fundacja Interakcja (Poland)
magda@interakcja.org.pl

NNID (The Netherlands)
info@nnid.nl

Intersex Greece (Greece)
intersexgreece@gmail.com

Glossary

Asylum seeker:

Asylum seekers are individuals who are seeking international protection. In countries where individualised procedures exist, an asylum-seeker is someone whose asylum claim has not yet been finally decided on by the country in which the asylum claim has been submitted. Not every asylum-seeker will ultimately be recognized as a refugee (i.e. be granted a positive asylum decision), but every formally recognised refugee was initially an asylum seeker.

Bodily Autonomy:

Having autonomy to make decisions about one's own body and to determine one's own fate without undue policing of one's body.

Gender expression / gender presentation:

is the way in which a person expresses a gender identity, typically through their appearance, dress, and behaviour. A person's gender expression may or may not conform to socially defined behaviours and characteristics typically associated with being either masculine or feminine.

Gender identity:

A person's innate sense of their gender. It is about how individuals perceive themselves and what they call themselves. One's gender identity can be the same or different from the sex assigned to them at birth.

Intersex:

Intersex is a term used to refer to persons born with a variation of sex characteristics, that is with sex characteristics (sexual anatomy, reproductive organs, hormonal structure and/or levels and/or chromosomal patterns) that do not fit the typical definition of male or female bodies. The fact that someone has an intersex body can become apparent at different times in their life: through prenatal testing, at birth, during childhood, in puberty or even in adulthood.

Glossary (cont.)

IGM (intersex genital mutilation):

IGM is any surgical or medical procedure or hormonal treatment or intervention on the sex characteristics of a person born with a variation of sex characteristics with the purpose or effect of altering those sex characteristics to align them with sex characteristics considered typically female or male without the person's or child's prior and informed consent and understanding of the procedure.

LGBTQ:

An acronym used for the words *Lesbian, Gay, Bisexual, Transgender, Queer*

Non-refoulement:

A principle which entails an obligation of Member States not to transfer (*refouler*) people where there are substantial grounds for believing that they would face a real risk of serious human rights violations in the event of their removal, in any manner whatsoever, from the EU State's jurisdiction.

Non-consensual surgeries and treatments/ Harmful practices:

Forced and coercive non-vital interventions on the bodies of intersex infants, children, adolescents and adults which may sometimes be described as 'normalization' surgeries, but also as 'corrections', treatment for 'malformations', genital 'enhancement', 'genital reconstruction', 'sex assignment' or 'gender assignment'. The procedures involved may include labiaplasties, vaginoplasties, clitoral 'recession' and other forms of clitoral cutting or removal, gonadectomies, hypospadias 'repairs', phalloplasties and other forms of penile augmentation surgeries, other forms of urogenital surgeries, and prenatal and postnatal hormone treatment, among others. Associated practices may include dilation, repeated genital examinations, post-surgical sensitivity testing, and medical photography⁴⁹, among others.

⁴⁹ Source: Carpenter M. "Intersex Variations, Human Rights, and the International Classification of Diseases" (2018) 20 Health and Human Rights 205. Available from: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6293350/>

Refugee:

A refugee is a person who is outside their own country and is unable or unwilling to return due to a well-founded fear of being persecuted because of their race, religion, nationality, or because of membership of a particular social group or political opinion

Sex characteristics:

The total of primary and secondary sex characteristics. Primary sex characteristics include, for example, the inner and outer genitalia and the chromosomal and hormonal structure. Secondary characteristics include muscle mass, hair distribution and stature, among others. Variations of sex characteristics are found throughout the spectrum.

Sexual orientation:

Sexual orientation is about who you're attracted to and who you feel drawn to romantically, emotionally, and sexually. Sexual orientations include e.g. gay, lesbian, straight, bisexual, asexual.

Self-determination:

The process by which a person controls their own life or the ability or power to make decisions for yourself. This includes a right to formal recognition of our group identities.

Self-identification:

The assigning of a particular characteristic to oneself, or the act of constructing one's identity in particular terms, usually as a member of a particular group or category. i.e I am an intersex person/ I am a person with a variation of sex characteristics

SOGIESC:

Abbreviation of *sexual orientation, gender identity, gender expression, sex characteristics*

