



**SELECTED DOCUMENTS
RELATING TO SEXUAL
ORIENTATION AND GENDER
IDENTITY RELEVANT TO
INTERNATIONAL REFUGEE
PROTECTION**

**DIVISION OF INTERNATIONAL PROTECTION SERVICES
(DIPS)**

United Nations High Commissioner for Refugees
CP 2500, CH-1211 Geneva 2, Switzerland

E-mail: refworld@unhcr.org

Website: <http://www.refworld.org/>

October 2009



This list, including weblinks that lead directly to the individual documents, is accessible in Refworld at <http://www.unhcr.org/refworld/docid/4ae99c582.html>. It will be updated whenever necessary.

Table of Contents

I.	United Nations High Commissioner for Refugees (UNHCR)	4
	<i>A. General</i>	4
	<i>B. Refugee Status Determination</i>	4
II.	International Instruments Relevant to Sexual Orientation and Gender Identity	5
	<i>A. Refugee Law</i>	5
	a. International Instruments	5
	b. Regional Instruments	5
	<i>B. Human Rights Law</i>	5
	a. International Instruments	5
	b. Regional Instruments	6
	<i>C. Non-Binding Documents</i>	6
	a. United Nations	6
	b. Council of Europe	7
	c. European Union	7
	d. Organization of American States	7
	e. Other	7
III.	Jurisprudence and Doctrine	7
	<i>A. Compilations</i>	7
	<i>B. National Guidance Documents</i>	8
	<i>C. National Jurisprudence</i>	8
IV.	Academic Literature	9
V.	Other Reports	10
VI.	Links	10

I. United Nations High Commissioner for Refugees (UNHCR)

A. *General*

1. **UNHCR Manual on a Community Based Approach in UNHCR Operations**, March 2008
URL: <http://www.unhcr.org/refworld/docid/47da54722.html>
2. **UNHCR Handbook for the Protection of Women and Girls**, January 2008
URL: <http://www.unhcr.org/refworld/docid/47cfc2962.html>
3. **Handbook for the Protection of Internally Displaced Persons**, Inter-Agency Standing Committee, December 2007
URL: <http://www.unhcr.org/refworld/docid/475fec412.html>
4. **Code of Conduct and Explanatory Note**, June 2004
URL: <http://www.unhcr.org/422dbc89a.html>

B. *Refugee Status Determination*

5. **UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity**, 21 November 2008
URL: <http://www.unhcr.org/refworld/docid/48abd5660.html>
6. **Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A (2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees**, HCR/GIP/02/01, 7 May 2002
URL: <http://www.unhcr.org/refworld/docid/3d36f1c64.html>
7. **Guidelines on International Protection No. 2: “Membership of a Particular Social Group” Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees**, HCR/GIP/02/02, 7 May 2002
URL: <http://www.unhcr.org/refworld/docid/3d36f23f4.html>
8. **Advisory Opinion by UNHCR to the Tokyo Bar Association Regarding Refugee Claims Based on Sexual Orientation**, 3 September 2004, para. 3
URL: <http://www.unhcr.org/refworld/docid/4551c0d04.html>
9. **Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees**, January 1992
URL: <http://www.unhcr.org/refworld/docid/3ae6b3314.html>

II. International Instruments Relevant to Sexual Orientation and Gender Identity

A. *Refugee Law*

a. International Instruments

1. **Statute of the Office of the United Nations High Commissioner for Refugees**, adopted by UN General Assembly Resolution 428 (V) of 14 December 1950
URL: <http://www.unhcr.org/refworld/docid/3ae6b3628.html>
2. **Convention relating to the Status of Refugees**, 28 July 1951, 189 U.N.T.S. 150
URL: <http://www.unhcr.org/refworld/docid/3be01b964.html>
3. **Protocol relating to the Status of Refugees**, 30 January 1967, 606 U.N.T.S. 267
URL: <http://www.unhcr.org/refworld/docid/3ae6b3ae4.html>
4. **Convention relating to the Status of Stateless Persons**, 28 September 1954, 360 U.N.T.S. 117
URL: <http://www.unhcr.org/refworld/docid/3ae6b3840.html>

b. Regional Instruments

5. **Convention Governing the Specific Aspects of Refugee Problems in Africa (“OAU Convention”)**, Organization of African Unity, 10 September 1969, 1001 U.N.T.S. 45
URL: <http://www.unhcr.org/refworld/docid/3ae6b36018.html>
6. **Cartagena Declaration on Refugees**, adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, held at Cartagena, Colombia from 19-22 November 1984
URL: <http://www.unhcr.org/refworld/docid/3ae6b36ec.html>
7. **Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted**, Official Journal of the European Union L 304/12, p. 17, 30 September 2004
URL: <http://www.unhcr.org/refworld/docid/4157e75e4.html>

B. *Human Rights Law*

a. International Instruments

1. **International Covenant on Civil and Political Rights (ICCPR)**, 16 December 1966, 999 U.N.T.S. 171
Article 2
URL: <http://www.unhcr.org/refworld/docid/3ae6b3aa0.html>
2. **International Covenant on Economic, Social and Cultural Rights (ICESCR)**, 16 December 1966, 993 U.N.T.S. 3
Article 2
URL: <http://www.unhcr.org/refworld/docid/3ae6b36c0.html>

3. **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)**, 10 December 1984, 1465 U.N.T.S. 85
Article 3
URL: <http://www.unhcr.org/refworld/docid/3ae6b3a94.html>
4. **Convention on the Elimination of All Forms of Discrimination Against Women**, 18 December 1979, 1249 U.N.T.S. 13
Articles 1, 5
URL: <http://www.unhcr.org/refworld/docid/3ae6b3970.html>
5. **Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation**, ILO, 25 June 1958, 362 U.N.T.S. 31
Article 1
URL: <http://www.unhcr.org/refworld/docid/3ddb680f4.html>

b. Regional Instruments

6. Council of Europe, **European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)**, 4 November 1950, 213 U.N.T.S. 221, as amended by Protocol No. 11
Articles 8, 14
URL: <http://www.unhcr.org/refworld/docid/3ae6b3b04.html>
7. Organization of American States, **American Convention on Human Rights (“Pact of San Jose”)**, 22 November 1969, 1144 U.N.T.S. 123
Articles 11, 24
URL: <http://www.unhcr.org/refworld/docid/3ae6b36510.html>
8. Organization of African Unity, **African Charter on Human and Peoples’ Rights (“Banjul Charter”)**, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982)
Articles 3, 5
URL: <http://www.unhcr.org/refworld/docid/3ae6b3630.html>

C. Non-Binding Documents

a. United Nations

1. **Protection of human rights and fundamental freedoms while countering terrorism, Note by the Secretary-General**, Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, Martin Scheinin, to the UN General Assembly, A/64/211, 3 August 2009
URL: <http://www.unhcr.org/refworld/docid/4aae4eea0.html>
2. **General Comment No. 20 [32], Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2)**, adopted by the UN Committee on Economic, Social and Cultural Rights at its 42nd session on 2 July 2009, E/C.12/GC/20, para. 32
URL: <http://www.unhcr.org/refworld/docid/4a60961f2.html>
3. **Statement on Human Rights, Sexual Orientation and Gender Identity**, adopted at a high level panel discussion which was organized as a side-event of the UN General Assembly, 18 December 2008
URL: <http://www.unhcr.org/refworld/docid/49997ae312.html>

b. Council of Europe

4. **Human Rights and Gender Identity**, Council of Europe: Commissioner of Human Rights, CommDH/Issue Paper (2009)2, 29 July 2009, pp. 15-16
URL: <http://www.unhcr.org/refworld/docid/4a7bff742.html>
5. **“Discrimination against transgender persons must no longer be tolerated”**, Council of Europe: Commissioner for Human Rights, 5 January 2009
URL: <http://www.unhcr.org/refworld/docid/4a700e112.html>
6. **Situation of gays and lesbians and their partners in respect of asylum and immigration in the member states of the Council of Europe**, Recommendation 1470 (2000), Parliamentary Assembly of the Council of Europe, 30 June 2000
URL: <http://www.unhcr.org/refworld/docid/3dde404c6.html>

c. European Union

7. **Resolution on Homophobia in Europe**, European Parliament, P6_TA(2007)0167, 26 April 2006
URL: <http://www.unhcr.org/refworld/docid/4a54bc07d.html>
8. **Resolution on the Case of the Iranian Citizen Sayyed Mehdi Kazemi**, European Parliament, P6_TA(2008)0107, 13 March 2008
URL: <http://www.unhcr.org/refworld/docid/47da75002.html>

d. Organization of American States

9. **Human rights, sexual orientation, and gender identity**, Organization of American States, AG/Res. 2504 (XXXIX-O/09), 4 June 2009
URL: <http://www.unhcr.org/refworld/docid/4ad5ae402.html>
10. **Human rights, sexual orientation, and gender identity**, Organization of American States, AG/Res. 2435 (XXXVIII-O/08), 4 June 2008
URL: <http://www.unhcr.org/refworld/docid/4a54bc090.html>

e. Other

11. **Yogyakarta Principles, Principles on the application of international human rights law in relation to sexual orientation and gender identity**, March 2007
URL: <http://www.unhcr.org/refworld/docid/48244e602.html>

III. Jurisprudence and Doctrine

A. *Compilations*

1. **Sexual Orientation, Gender Identity and International Human Rights Law – A Practitioners Guide**, International Commission of Jurists, Practitioner Guide No. 4, Geneva, 2009
URL: <http://www.unhcr.org/refworld/docid/4a783aed2.html>
2. **Sexual Orientation and Gender Identity in Human Rights Law: Jurisprudential, Legislative and Doctrinal References from the Council of Europe and the**

European Union, International Commission of Jurists, October 2007

URL: <http://www.unhcr.org/refworld/docid/4ad5b8f32.html>

3. **Sexual Orientation and Gender Identity in Human Rights Law: References to Jurisprudence and Doctrine of the Inter-American System**, International Commission of Jurists, July 2007
URL: <http://www.unhcr.org/refworld/docid/4ad5b83a2.html>
4. **Sexual Orientation and Gender Identity in Human Rights Law: References to Jurisprudence and Doctrine of the United Nations Human Rights System**, International Commission of Jurists, third updated edition, October 2006
URL: <http://www.unhcr.org/refworld/docid/4ad5b5ab2.html>

B. *National Guidance Documents*

5. **Vreemdelingen­circulaire 2000 (C)**, Aliens Act Implementation Guidelines, BWBR0012288, The Netherlands, 2009
Paragraphs 2.10.2; 2.11; 14.4.3
URL: <http://lexius.nl/vreemdelingen­circulaire-2000-c/> (*in Dutch only*)
6. **Affirmative Asylum Procedures Manual, III B. 13. Transsexual Asylum Applicants**, United States Bureau of Citizenship and Immigration Services, 2007
URL: <http://www.uscis.gov/USCIS/Refugee,%20Asylum,%20and%20Int'l%20Ops/Asylum/AffirmAsyManFNL.pdf>
7. **Gender Issues in the Asylum Claim**, United Kingdom Home Office, October 2006
URL: <http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/genderissueintheasylum.pdf?view=Binary>
8. **Guidelines for Investigation and Evaluation of Asylum Cases in Which Persecution Based on Given Sexual Orientations is Cited as a Ground**, Swedish Migration Board, 28 January 2002
URL: <http://www.unhcr.org/refworld/docid/3f8c1af44.html>
9. **Guidelines Issued by the Chairperson Pursuant to Section 65(4) of the Immigration Act: Guideline 4 – Women Refugee Claimants Fearing Gender-Related Persecution**, Immigration and Refugee Board of Canada, No. 4, 13 November 1996
URL: <http://www.unhcr.org/refworld/docid/3ae6b31c98.html>

C. *National Jurisprudence*

10. **Okoli v. Canada (Minister of Citizenship and Immigration)**, 2009 FC 332, Canada: Federal Court, 31 March 2009
URL: <http://www.unhcr.org/refworld/docid/4a5b4bfa2.html>
11. **Decision No. MA6-01580 (Private Proceeding)**, Immigration and Refugee Board of Canada, 12 January 2007
URL: <http://www.unhcr.org/refworld/docid/482457202.html>
12. **HS (Homosexuals: Minors, Risk on Return) Iran v. Secretary of State for the Home Department**, [2005] UKAIT 00120, United Kingdom: Asylum and Immigration Tribunal / Immigration Appellate Authority, 4 August 2005
URL: <http://www.unhcr.org/refworld/docid/47fdfafe0.html>

13. **Refugee Appeal No. 74665**, New Zealand Refugee Status Appeals Authority, 7 July 2004
URL: <http://www.unhcr.org/refworld/docid/42234ca54.html>
14. **Appellant S395/2002 v. Minister for Immigration and Multicultural Affairs; Appellant S396/2002 v. Minister for Immigration and Multicultural Affairs**, [2003] HCA 71, High Court of Australia, 9 December 2003
URL: <http://www.unhcr.org/refworld/docid/3fd9eca84.html>
15. **Hernandez-Montiel v. Immigration and Naturalization Service**, 225 F.3d 1084, United States Court of Appeal for the 9th Circuit, 24 August 2000
URL: <http://www.unhcr.org/refworld/docid/3ba9c1119.html>
16. **Refugee Appeal No. 1312/93, Re GJ**, New Zealand Refugee Status Appeals Authority, 30 August 1995
URL: <http://www.unhcr.org/refworld/docid/3ae6b6938.html>
17. **Matter of Toboso-Alfonso**, 20 I& N. Dec 819, United States Board of Immigration Appeals, 12 March 1990
URL: <http://www.unhcr.org/refworld/docid/3ae6b6b84.html>

IV. Academic Literature

1. **‘The UNHCR’s Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity’**, Nicole LaViolette, 30:10 (2009) American Society of International Law (ASIL Insight)
URL: <http://www.asil.org/files/insight090730pdf.pdf>
2. **‘Constructing the Personal Narratives of Lesbian, Gay and Bisexual Asylum Claimants’**, Jenni Millbank, Laurie Berg, 22 (2009) Journal of Refugee Studies, 195-223
3. **‘Sexual Orientation, Gender Identity and International Human Rights Law: Contextualising the Yogyakarta Principles’**, Michael O’Flaherty, John Fisher, 82 (2008) Human Rights Law Review, 207-248
URL: <http://www.yogyakartaprinciples.org/yogyakarta-article-human-rights-law-review.pdf>
4. **‘Jurisprudential Annotations to the Yogyakarta Principles’**, Gwyneth Williams, Michael O’Flaherty, University of Nottingham Human Rights Law Centre, November 2007
URL: <http://www.yogyakartaprinciples.org/yogyakarta-principles-jurisprudential-annotations.pdf>
5. **‘Towards Non-Discrimination on the Basis of Sexual Orientation: The Normative Basis and Procedural Possibilities before the African Commission on Human and Peoples’ Rights and the African Union’**, Rachel Murray, Frans Viljoen, 29 (2007) Human Rights Quarterly, 86-111
6. **‘Unspeakable Love. Gay and Lesbian Life in the Middle East’**, Brian Whitaker, Saqi Books, London, 2006
7. **‘Homosexual or Female? Applying Gender-Based Asylum Jurisprudence to Lesbian Asylum Claims’**, Victoria Neilson, 16:2 (2005) Stanford Law & Policy Review, 417-444

8. **‘Gender, Visibility and Public Space in Refugee Claims on the Basis of Sexual Orientation’**, Jenni Millbank, 18 (2003) Georgetown Immigration Law Journal, 71–110
9. **‘Gender, persecution and the concept of politics in the asylum determination process’**, Heaven Crawley, Forced Migration Review 9, December 2000
URL: <http://www.fmreview.org/FMRpdfs/FMR09/fmr9.6.pdf>
10. **‘No Safe Haven: Sexuality as a Universal Human Right and Lesbian and Gay Activism in International Politics’**, Nicole LaViolette, Sandra Whitworth, 1994 Journal of International Studies, 563-588
11. **‘Give me Liberty or Give me Death: Political Asylum and the Global Persecution of Lesbians and Gay Men’**, Suzanne B. Goldberg, 26 (1993) Cornell International Law Journal, 605-662

V. Other Reports

1. **“They Want Us Exterminated”**: Murder, Torture, Sexual Orientation and Gender in Iraq, Human Rights Watch, 1-56432-524-5, 17 August 2009
URL: <http://www.unhcr.org/refworld/docid/4a8953f52.html>
2. **Unsafe Haven: The Security Challenges facing Lesbian, Gay & Transgender Asylum Seekers & Refugees in Turkey**, Helsinki Citizens’ Assembly, Turkey and Organization for Refuge, Asylum and Migration (ORAM), June 2009
URL: <http://oraminternational.org/sites/default/files/pdf/Unsafe%20Haven%20Final.pdf>
3. **Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States Part I – Legal Analysis, Summary Report**, European Union Agency for Fundamental Rights (FRA), 2008
URL: <http://www.unhcr.org/refworld/docid/49997afe1e.html>
4. **Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States, Part II – Social Situation, Summary Report**, pp. 15ff., European Union Agency for Fundamental Rights (FRA), March 2009
URL: <http://www.unhcr.org/refworld/docid/49997afe11.html>
5. **Legal Survey on the Countries in the World Having Legal Prohibitions on Sexual Activities Between Consenting Adults in Private**, Daniel Ottosson, 2006
URL: http://www.ilga.org/statehomophobia/LGBcriminallaws-Daniel_Ottosson.pdf
6. **ELENA Research Paper on Sexual Orientation as a Ground for Recognition of Refugee Status**, European Council on Refugees and Exiles, June 1997
URL: <http://www.unhcr.org/refworld/docid/3decd1fa4.html>

VI. Links

This Section provides links to some websites that contain further guidance and materials relating to the detention of asylum-seekers, refugees and stateless persons. Country-specific pages are not included.

1. **Asylumlaw.org**
URL: <http://www.asylumlaw.org>

2. **Gay & Lesbian Alliance Against Defamation (GLAAD)**
URL: <http://www.glaad.org>
3. **International Lesbian and Gay Association (ILGA)**
URL: <http://www.ilga.org>
4. **Sodomylaws.org**
URL: <http://www.sodomylaws.org>

For additional links, please refer to Refworld's External Links collection at:
<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=links&skip=0&reftopic=SEXUALORIENT>