



Protecting LGBTQI+ Asylum Seekers Through Partnership with Civil Society

Submission to the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.

About Rainbow Railroad

Rainbow Railroad is an international NGO with headquarters in Toronto and an office in New York that supports at-risk LGBTQI+ persons to escape state-sponsored violence and persecution. Rainbow Railroad is recognized as a global leader in LGBTQI+ refugee protection with over 15 years of experience successfully triaging and referring vulnerable refugee cases to resettlement countries in Europe and North America. In the spirit of and in homage to the Underground Railroad, Rainbow Railroad's mission is to help LGBTQI+ people as they seek safe haven from state-directed violence, murder, or persecution. Rainbow Railroad receives roughly 7,000 requests annually from people in nearly 90 countries. Since our founding in 2006, Rainbow Railroad has helped more than 1,100 people relocate from 38 countries.

Introduction

This report is divided into two sections highlighting the risks LGBTQI+ people face due to conflict-related sex and gender-based violence (SGBV), and reviewing existing and possible policy mechanisms states and international institutions can explore to better protect them. The first section examines how conflict exacerbates pre-existing anti-LGBTQI+ persecution and violence, which forcibly displaces and endangers LGBTQI+ individuals in-country and in transit. This section will respond to question 1 with a case study on Rainbow Railroad's ongoing response to the crisis in Afghanistan. The second section explores what states and international institutions can do to enhance protections for LGBTQI+ persons at risk of experiencing conflict-related SGBV, and responds to questions 2 and 9.

Risks

1. Does the response relate to a particular armed conflict? If so, please indicate the type under international legal standards (Non-International Armed Conflict, International Armed Conflict), the parties involved, the duration in time, the overall characteristics of such conflict with special focus on the root causes and drivers (ethnic, religious, political, gender, territorial domination, control over illegal economies, among others). Please reserve one or two paragraphs to describe generally the sex- or gender-based dimensions of the conflict (for example, forced recruitment of girls and boys, specific rules imposed to civilian population regarding dressing and other norms of conduct informed by gender roles/stereotypes, situation of sexual violence).

In 2021, 1,012 individuals requested our help for experiences and threats of SGBV from family, community, and armed forces.¹ LGBTQI+ persons are at heightened risk of experiencing SGBV,² and our program data shows that conflict exacerbates the risk of anti-LGBTQI+ persecution against people in-country and in transit. The risk of SGBV against LGBTQI+ people spikes in conflict.³ While targeting of LGBTQI+ people often reaches a flash point during conflict, it is not the root cause, and state-led persecution is rooted in ongoing prejudice that continues to endanger LGBTQI+ people before conflict begins and after it has ended.

Last year over a third of our requests came from Afghanistan, and in the lead up to the Fall of Kabul in August 2021, we noticed a clear increase in requests for help. In June 2021, requests tripled, and up to that point, represented the highest number ever received from the country. As the Taliban seized control of key state institutions, a humanitarian crisis unfolded.⁴ Countries with a history of involvement in Afghanistan including the US, Canada, the UK, and the European Union (EU), evacuated hundreds of thousands of Afghans who had worked with their governments, militaries, and organizations.⁵ Since August 2021, over 1,600 LGBTQI+ Afghans have requested assistance from Rainbow Railroad, and we have collaborated directly with Ireland, the UK, the US, and Canada to facilitate the safe and legal passage of refugees with the most urgent protection needs.

At the end of 2021, we partnered with Human Rights Watch and OutRight Action International to interview 60 LGBTQI+ Afghans. Respondents explained the country was dangerous before the Taliban seized power, and recounted a range of abuses including “sexual violence, child and forced marriage, physical violence from their families and others, expulsion from schools, blackmail, and being outed.” And when the Taliban did regain control, things got significantly worse.⁶ The Taliban has attacked, sexually assaulted, and threatened LGBTQI+ people and encouraged community and family members to distance themselves from LGBTQI+ people in their lives to ensure their own safety.⁷ Some individuals even said former romantic partners had joined the Taliban and threatened to hunt them down.⁸ Respondents reported widespread state-directed sexual violence, and family-facilitated murders.⁹

LGBTQI+ refugees who flee their country’s borders and escape the conflict zone still face unique threats because of their identity. LGBTQI+ people are uniquely vulnerable in displacement and may find their identity becomes a continued or emergent source of risk in transit. An expansive conception of what constitutes conflict-related SGBV therefore, can show where LGBTQI+ people are still in danger, and where additional protection measures are needed.

LGBTQI+ Afghans fled the country en masse and are currently hiding in unsafe neighbouring countries including: Iran, Pakistan, Saudi Arabia, Turkey, and the United Arab Emirates. All these states either actively enforce laws prohibiting LGBTQI+ identity, association, and expression, or there are frequent reports of state-sponsored, vigilante, and community violence against LGBTQI+ persons in each of them.¹⁰ In the case of Afghanistan, countries with a history of prior involvement have already begun acknowledging the role they have to play and activating special humanitarian corridors for vulnerable LGBTQI+ people. While it’s clear that conflict disproportionately affects LGBTQI+ asylum seekers, the next section explores existing and possible international protection mechanisms for them. Ultimately, these solutions point to the need to create proactive pathways to safety for persons fleeing violence.

Protections

2. Has the relevant State ratified, signed, or adhered to regional or international human rights/ humanitarian law / international criminal law treaties, declarations, programs or policies or any other international instruments aiming to address the causes and consequences of armed conflict? If so, please indicate which ones, the date of ratification/ adherence, and the correspondent domestic act/instrument.

A narrow interpretation of ‘relevant State’ might lead to analysis about, in the case of Afghanistan for instance, what that country specifically can do to ratify laws to reduce conflict-related violence against LGBTQI+ people. However, given that 68 countries still criminalize same sex intimacy, ratifying additional legislation may not protect people who still face the death penalty for their sexual orientation or gender identity. Conversely, a broad interpretation of ‘relevant State,’ can point to how states with a history of involvement in a state or region engaged in conflict, could provide international protection mechanisms for vulnerable LGBTQI+ people fleeing conflict-related persecution and violence.

When conflict occurs, safer states often enact ad hoc relocation, refugee and resettlement policies.¹¹ These policies are necessary, however, they are reactive and inconsistent by nature, and often fail to recognize the unique needs of highly vulnerable populations. There are 85 million displaced people around the world.¹² As this number increases, states must create comprehensive, proactive asylum seeker protection pathways, and partner with civil society organizations (CSOs) to identify and facilitate urgent evacuation of highly vulnerable populations. Urgent humanitarian schemes are needed for LGBTQI+ asylum seekers in particular because of how conflict exacerbates existing risks of persecution and SGBV, and because they experience barriers to fully availing themselves of the current international refugee apparatus. CSOs focused on SOGIESC (sexual orientation, gender identity and expression, and sex characteristics) recognize these existing vulnerabilities, provide ongoing monitoring in conflict-prone environments, and create pathways when crises do occur.

At the end of 2020, only two of the ten countries hosting the highest number of displaced persons internationally, were high income states.¹³ High income states have a number of mechanisms at their disposal to create urgent humanitarian corridors through both temporary visas and permanent resettlement options. In countries such as Syria, states with a history of military and political involvement, including the UK, US, France, and Canada, could offer those protective corridors. Indeed, the first humanitarian corridor was created in response to the Syrian civil war in 2011, when Italy partnered with CSOs to reach vulnerable Syrian refugees entitled to international protection.¹⁴ France also introduced humanitarian visas to allow Syrian refugees to travel to France and claim asylum there.¹⁵ 16 EU member states have, or have had in the past, variations of humanitarian visa schemes, but no country has a comprehensive policy.¹⁶ Relatedly, in lieu of humanitarian visas, immigration officials in the US and Canada have discretionary authority to grant entry to certain non-citizens for humanitarian reasons.¹⁷

Currently, there is only one LGBTQI+-specific humanitarian corridor. In 2020, Canada introduced the Rainbow Refugee Assistance Partnership, to support Canadians in privately sponsoring LGBTQI+ refugees fleeing violence and persecution. The stream was developed in close partnership with SOGIESC CSOs and supports 50 individuals per year.

Despite this, states have developed a range of mechanisms for another highly visible group that is particularly susceptible to violence when conflict arises, human rights defenders (HRDs). HRD-specific mechanisms emerged in response to the heightened vulnerability they face, and provide models that could be expanded for at-risk LGBTQI+ persons. Examples include: ProtectDefenders.eu from the EU, the Protective Fellowship Scheme for Human Rights Defenders from the UK, the Protection Plan for Human Rights Defenders at Risk from the Asian Forum for Human Rights and Development, and the Scottish Human Rights Defender Fellowship.¹⁸ Beyond temporary relocation, in 2021, Canada introduced a novel dedicated refugee resettlement stream for 250 HRDs per year, including a focus on at-risk LGBTQI+ HRDs.¹⁹

Importantly, most of these international protective mechanisms leverage partnerships with civil society. SOGIESC CSOs operate through global partnership networks that are responsive to instances of persecution and violence at all times, and are particularly attuned to these flare ups during conflict, when LGBTQI+ persons are especially vulnerable.²⁰

In protracted, frozen, and post-conflict settings, long-term destabilized governance creates conditions ripe for outbursts of state-driven persecution. For example, in post-conflict Chechnya in 2017, LGBTQI+ individuals were suddenly and systematically persecuted, attacked, sexually assaulted, tortured, and murdered.²¹ Close international political collaboration with established SOGIESC CSO networks, including Rainbow Railroad, ensured that a number of these individuals were able to relocate and resettle abroad. Now, as Russia wages war against Ukraine, similar fears amongst Ukrainian and Russian LGBTQI+ activists are mounting at what they signal is an oncoming Russian crackdown against LGBTQI+ people in Russia, Chechnya, and Ukraine.

Notably, state-sponsored persecution of LGBTQI+ individuals is not limited to times of armed conflict and sometimes is the issue in and of itself. In 2021, Rainbow Railroad monitored three crackdown situations against LGBTQI+ people in Ghana, Kenya, and Uganda. These events were not tied to a wider armed conflict, but rather a crackdown specifically against LGBTQI+ people in-country. In these cases, urgent protection mechanisms developed in response to armed conflict would prove useless to LGBTQI+ asylum seekers from Ghana, Kenya, and Uganda, despite fleeing the same kind of persecution as individuals from Afghanistan, Syria, and Chechnya. In short, persecuted LGBTQI+ asylum seekers need pathways to safety both in and out of conflict times.

Increases in LGBTQI+-persecution correlate with but are not caused by conflict. This reality highlights the need for international asylum seeker protection mechanisms that support at-risk populations based on their ongoing protection needs, rather than ad hoc conflict-specific responses. The best way for relevant states to immediately enhance protection mechanisms for highly vulnerable LGBTQI+ persons fleeing violence and persecution, is to partner with SOGIESC CSOs and open rapid humanitarian corridors to asylum. At the same time, existing programs provide variable applicability to asylum seekers in-country and refugees in neighbouring countries. Designated humanitarian visas and special relocation and resettlement streams are a strong start, and more countries could establish such pathways while they create comprehensive IDP policies.

The next section will show that LGBTQI+ asylum seekers encounter unique barriers to accessing traditional international protection mechanisms and institutions, gaining status as refugees, and that a comprehensive global response to the Internally Displaced Persons (IDPs) crisis, is still desperately needed.

9. Include any relevant information of international advocacy initiatives before regional and international organizations' mechanisms and organs, such as the UN Security Council. Describe any obstacles and challenges organizations face in these processes of engagement with international institutions. Furthermore, describe the role such institutions have played (or not) in acknowledging the SOGI-related conflict dynamics and forms of violence.

There are a number of barriers limiting LGBTQI+ people from accessing the full range of support offered through the existing refugee protection regime. Many LGBTQI+ asylum seekers are unable to rely on other refugees, their own refugee community, or even biological family for support, and these networks often actively endanger LGBTQI+ people in-place and in-flight. Moreover, these barriers can prevent LGBTQI+ asylum seekers from gaining refugee status determination at all, and demonstrate the need for a coordinated global response on IDPs.

In refugee camps, LGBTQI+ individuals can become targets of persecution and violence from fellow refugees, the wider community, and local state forces, and attempts to avoid this persecution, further limit their access to refugee support services. A well-documented example of this occurred in Kakuma refugee camp in Kenya. In October 2021, Rainbow Railroad and ORAM (the Organization for Refuge, Asylum and Migration) published a report on *The Challenges Facing LGBTQI+ Refugees In Kenya*. Over 90% of respondents reported experiencing verbal insults, 83% reported being denied services in shops or markets, and 88% reported being denied police assistance due to their sexual identity.²² The report found that the high levels of persecution prevented LGBTQI+ individuals from accessing many of the livelihood programs and services in the camp, as they tried to avoid hostility from fellow refugees and the host communities.²³

Similarly, for individuals fleeing conflict en masse, persecution against LGBTQI+ asylum seekers within the same refugee community and even family is a known issue.²⁴ A recent report from the International Committee of the Red Cross and the Norwegian Red Cross shows that LGBTQI+ persons are likely at heightened risk of experiencing SGBV in conflict-related migration and detention contexts, particularly in countries that criminalize same-sex intimacy, and that the prevalence and impact has been severely underestimated to-date.²⁵ There's also a systemic lack of accessible and appropriate services for LGBTQI+ survivors of SGBV.²⁶

For others, even crossing a border to escape the conflict zone can prove an insurmountable barrier. Many cannot gather the means to travel as they cannot rely on their families for support and are barred from accessing traditional employment opportunities. In our own work we have found that due to pervasive transphobia, trans women are especially marginalized in this regard and disproportionately at risk of exploitation.²⁷ The ability to arrange travel can be an issue at both the social and state level, and cis-gender queer women and trans people have reported difficulty accessing travel documents, or leaving their home at all, without the support of male relatives. These examples highlight just a few of the many ways that LGBTQI+ asylum seekers are specifically prevented from becoming refugees and are likely to be overrepresented as IDPs.

Individuals with multiple marginalized identities face compounded barriers that prevent them from fleeing, and right now it's an emerging problem in Ukraine. Many trans women are hiding underground in Ukraine because their travel documents list them as male, and they fear being turned away at the border due to martial law. These fears are well-founded and even trans women who have had their documents updated, are still being subjected to cruel searches by Ukrainian border authorities and ultimately turned away.²⁸ At the same time, access to gender-affirming hormone treatments dwindles as these women are forced to wait in place.²⁹ As one trans woman hiding just outside of Kyiv remarked, "I'm totally scared. And I don't know how much longer I can stay where I am now. I have nowhere to go."³⁰ These factors demonstrate why an IDP policy would provide crucial support to the most vulnerable LGBTQI+ individuals.

Addressing the needs of IDPs has proved challenging. Despite their mandate to protect all forcibly displaced persons, UNHCR has struggled with IDPs because they "often move to areas where it is difficult for us to deliver humanitarian assistance and as a result, these people are among the most vulnerable in the world."³¹ In 2019, the World Refugee Council called for a complete overhaul of the global refugee system, and castigated the public policy response to the global refugee crisis as "entirely inadequate and wildly disproportionate to the catastrophic levels of suffering and misery."³² Urgent global action is needed to protect IDPs whose plight has "fallen off the international community's agenda."³³ Over half of all displaced people are IDPs.³⁴ The International Organization for Migration has recognized the violence, persecution and barriers to accessing humanitarian services that LGBTQI+ IDPs specifically face, and has urged the international community to do more.³⁵

Part of the lack of existing tools is because international recognition of the needs of LGBTQI+ asylum seekers overall is relatively new. In 2018, the comprehensive *Global Compact on Refugees* did not adequately account for nor address the needs of LGBTQI+ asylum seekers.³⁶ In June 2021, UNHCR and the Mandate of the UN Independent Expert on Protection Against Violence and Discrimination Based on SOGIE co-convened the *2021 Global Roundtable on Protection and Solutions for LGBTQI+ Persons in Forced Displacement*.³⁷ The last time the UNHCR convened such a discussion was in 2010, reflecting a clear gap in coordinated international humanitarian engagement on this subject.³⁸

For LGBTQI+ individuals in-country and abroad, SOGIESC CSOs have been operating functional evacuation and resettlement pathways for years, both in and out of conflict settings. International institutions and states leveraging these existing pathways through partnership with civil society would only enhance protection efforts for LGBTQI+ asylum seekers everywhere.

Recommendations

Recognize that:

1. Conflict exacerbates pre-existing risks of SGBV that LGBTQI+ individuals face in-place and in forced displacement.
2. The vulnerability LGBTQI+ individuals experience both predates and postdates active conflict as it's rooted in ongoing persecution and discrimination.
3. The 'relevant state' to a conflict may include states not directly involved in the conflict, but who still have opportunities to offer protection to vulnerable LGBTQI+ persons at heightened risk of conflict-related SGBV;
4. Multiple barriers prevent LGBTQI+ individuals in forced displacement from accessing traditional refugee protection mechanisms such as UNHCR and alternative pathways are needed for them;
5. SOGIESC CSOs have unique insights into where and when conflict-related SGBV is likely to occur and have the experience protecting LGBTQI+ persons globally; and
6. LGBTQI+ asylum seekers need proactive protection mechanisms which include urgent humanitarian corridors, and comprehensive refugee and IDP policies.

References

- 1 Our clients have the opportunity to report the following issues: Police Brutality, Stoning/Lashing (punishment), Beat up/Shot at/Chopped, Acid attack, Violence related to sex work, Sexual violence/crime, FGM, Family-based violence, and Intimate partner violence.
- 2 <https://www.hrc.org/resources/sexual-assault-and-the-lgbt-community>
- 3 https://www.rodekors.no/globalassets/_rapporter/thatneverhappenshere_uu.pdf?mc_phishing_protection_id=28048-c7t8vm70s0vafoouhkkkg
- 4 <https://www.cfr.org/background/taliban-afghanistan>
- 5 <https://www.hrw.org/world-report/2022/country-chapters/afghanistan>
- 6 <https://www.hrw.org/report/2022/01/26/even-if-you-go-skies-well-find-you/lgbt-people-afghanistan-after-taliban-takeover>
- 7 Ibid.
- 8 Ibid.
- 9 <https://www.france24.com/en/asia-pacific/20211102-the-taliban-has-a-kill-list-for-the-afghan-lgbt-community-ngo-says>; <https://edition.cnn.com/2021/09/17/middleeast/afghanistan-lgbtq-evacuation-intl-hnk-dst/index.html>
- 10 <https://www.hrw.org/news/2018/05/08/another-transgender-woman-killed-pakistan>; <https://www.hrw.org/world-report/2021/country-chapters/pakistan#e81181>; <https://www.amnesty.org/en/latest/press-release/2021/05/iran-murder-of-gay-man-highlights-dangers-of-state-sanctioned-abuses-against-lgbti-people/>; <https://www.ebar.com/news/news/297452>; <https://www.hrw.org/news/2010/12/15/iran-discrimination-and-violence-against-sexual-minorities>; <https://www.humandignitytrust.org/country-profile/pakistan/> ;

<https://www.humandignitytrust.org/country-profile/saudi-arabia/>

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- 11 <https://reliefweb.int/report/ukraine/ukraine-crisis-double-standards-has-europe-s-response-refugees-changed>
- 12 <https://www.unhcr.org/figures-at-a-glance.html>
- 13 <https://www.unhcr.org/60b638e37.pdf>
- 14 https://www.humanitariancorridor.org/wp-content/uploads/2019/12/REPORT_ENG_WEB.pdf
- 15 <https://academic.oup.com/jrs/article-abstract/34/2/1327/6357362>
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- 17 <https://www.uscis.gov/humanitarian/humanitarian-or-significant-public-benefit-parole-for-individuals-outside-the-united-states>; <https://laws-lois.justice.gc.ca/eng/acts/i-2.5/section-25.html>
- 18 <https://www.ishr.ch/news/eu-guidelines-human-rights-Defenders-0>

<https://www.york.ac.uk/cahr/defenders/protective-fellowship>

<https://www.forum-asia.org/?p=7302>

<https://www.dundee.ac.uk/politics/research/projects/details/scottish-human-rights-defender-fellowship.php>

- ¹⁹ <https://www.canada.ca/en/immigration-refugees-citizenship/news/2021/07/minister-mendicino-launches-a-dedicated-refugee-stream-for-human-rights-defenders.html>
- ²⁰ <https://www.corteidh.or.cr/tablas/r39345.pdf>
- ²¹ <https://www.hrw.org/report/2017/05/26/they-have-long-arms-and-they-can-find-me/anti-gay-purge-local-authorities-russias>
- ²² <https://www.rainbowrailroad.org/news/rainbow-railroad-and-oram-release-report-on-lgbtqi-refugees-in-kakuma-refugee-camp-kenya>
- ²³ Ibid.
- ²⁴ For example in Syria, state and non-state armed groups perpetrated SGBV against LGBTQI+ people, and in a number of cases, neighbours, friends, and family members were the ones who turned them over. This persecution followed many LGBTQI+ Syrians into displacement, and some individuals who made it to Lebanon, were harassed, arrested, and tortured by Lebanese security forces. <https://www.corteidh.or.cr/tablas/r39345.pdf>
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- ²⁶ Ibid.
- ²⁷ https://assets.website-files.com/5996edc0ab717100012bd6a9/5ed90f74afac27b1e4fb9e1c_Link%201.pdf
- ²⁸ <https://www.theguardian.com/global-development/2022/mar/22/i-will-not-be-held-prisoner-the-trans-women-turned-back-at-ukraines-borders>
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- ³⁰ <https://news.trust.org/item/20220304182133-8fjhu>
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- ³³ Ibid.
- ³⁴ <https://www.unhcr.org/internally-displaced-people.html>
- ³⁵ <https://malta.iom.int/un-migration-agency-statement-international-day-against-homophobia-and-transphobia-idahot>
- ³⁶ <https://onlinelibrary.wiley.com/doi/full/10.1111/imig.12640>
- ³⁷ <https://www.unhcr.org/publications/brochures/611e48144/2021-global-roundtable-protection-solutions-lgbtqi-people-forced-displacement.html>
- ³⁸ Ibid.



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