

Sexual orientation, gender identity, and gender expression

A guide for refugee professionals

September 2013



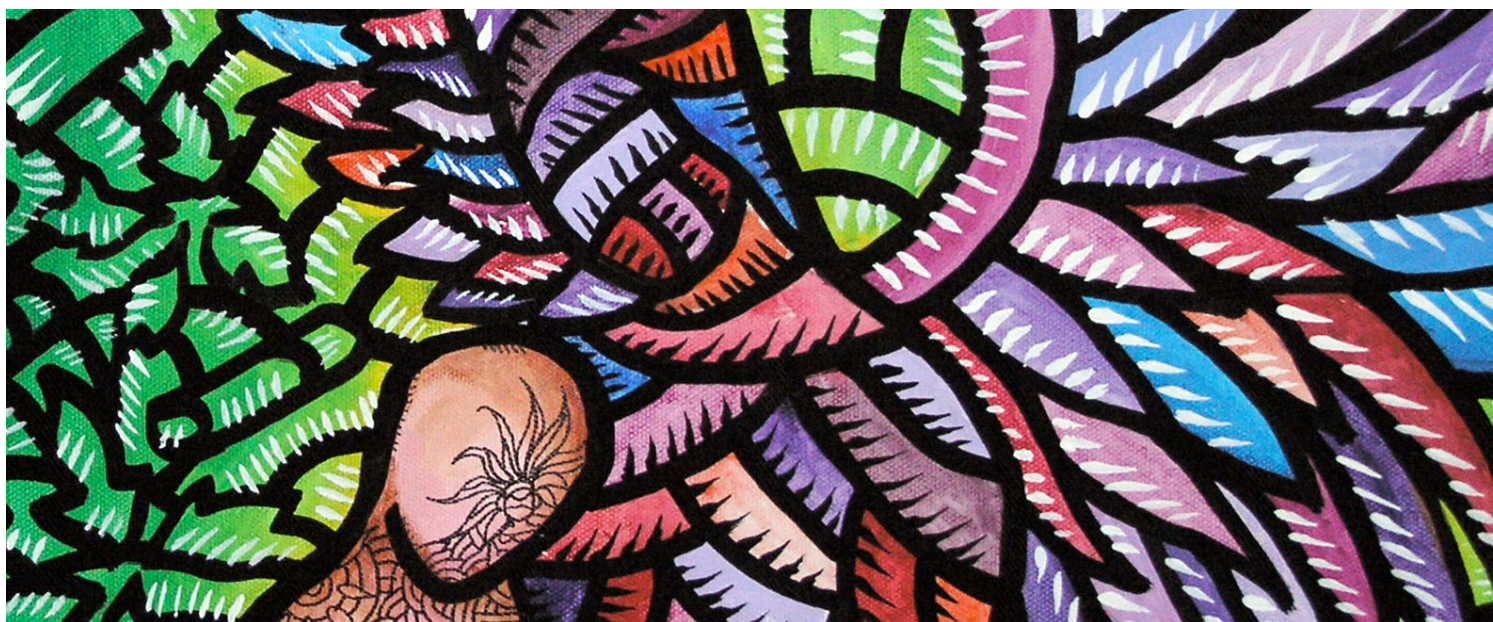
ORAM

Organization for
Refuge, Asylum
& Migration

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More information about the artist is available at www.marconicalindas.com.

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W*e all have the same human rights. Whatever our sexual orientation, gender identity, nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other status, we are all equally entitled to our human rights without discrimination. These rights—interrelated, interdependent, and universal—are shared by each one of us.*

Foreword to the Yogyakarta Principles

A*ll human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.*

Article 1 of the Universal Declaration of Human Rights



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Glossary of Terms

Terms Relating to Sexual Orientation and Gender Identity:

Bisexual refers to individuals who have the capacity for profound emotional, affectional, and/or sexual attraction to and/or intimate and sexual relations with people regardless of their gender or sex.

Cisgender refers to individuals whose gender identity is the same as their assigned sex at birth.

Cultural Construct refers to the idea that cultures influence how we view social categories such as gender, sexuality, status of women, and status of men. Cultural constructs do not exist independently in the "natural" world, but are instead an invention of society.

Gay refers to a self-identifying man who has the capacity for profound emotional, affectional and/or sexual attraction to and/or intimate sexual relations primarily with other men.

Gender refers to the roles, behaviors, activities, and attributes that a given society considers appropriate for men and women.

Gender Binary Model refers to the view that a person's gender identity should be strictly male or female, based on biological sex.

Gender Expression (or "gender presentation") refers to the external appearance, dress, mannerisms and behavior through which individuals present their gender identity.

Gender Identity is each person's deeply felt internal and individual experience of being a man, woman or other gender, which may or may not correspond with the sex assigned at birth.

Homophobia refers to a hatred or fear of homosexuals – that is, lesbians and gay men – sometimes leading to acts of violence and expressions of hostility.

Intersex refers to people who are born with reproductive, sexual anatomy, and/or chromosomal patterns that do not fit typical definitions of male or female.

Lesbian refers to a self-identifying woman who has the capacity for profound emotional, affectional, and/or sexual attraction to and/or intimate and sexual relations primarily with other women.

LGBTI is the acronym for "lesbian, gay, bisexual, transgender, and/or intersex."

Sex refers to the biological and physiological characteristics that define men and women. Biological and physical characteristics include sex chromosomes, gonads, sex hormones, internal reproductive structures, and external genitalia.

Sexual Orientation refers to a person's capacity for profound emotional, affectional, and/or

sexual attraction to and/or intimate and sexual relations with individuals of a different gender, the same gender, or more than one gender.

Sexually and Gender Non-conforming (SGN) is an umbrella term used to refer to individuals whose sexual practices, attractions, and/or gender expression are different from the societal expectations based on their assigned sex at birth. It is intended to be a broader term than “LGBTI.”

Transgender refers to people whose gender identity, expression, or behavior is different from those typically associated with their assigned sex at birth.

- A *transgender woman* (or “transwoman”) is a person who was assigned male at birth but identifies as a woman.
- A *transgender man* (or “transman”) is a person who was assigned female at birth but identifies as a man.

Transphobia refers to negative attitudes and feelings toward transgender people. Transgender people feel that their gender identity (self-identification) does not correspond to their assigned sex (identification by others as male or female based on genetic sex).

Terms Relating to Refugees and Asylum

An **asylum seeker** is someone who has applied for – or is in the process of seeking – asylum from the government of the country of asylum, but who has not yet been granted that status.

Persecution refers to serious harm or threats of harm due to race, religion, nationality, political opinion, or membership of a particular social group. There is no universally accepted definition of “persecution.” Threats to life, freedom and/or other serious human rights abuses always amount to persecution; however, lesser harms or threats may cumulatively constitute persecution. Adjudicators should generally apply a totality-of-the-circumstances test to assess persecution.

A **refugee** is a person “who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.”¹

Refugee Status Determination (RSD) is the process through which state officials in the country of asylum or UNHCR determine whether an asylum seeker is a refugee based on “eligibility criteria under international or regional refugee instruments, national legislation or UNHCR’s mandate.”²

¹ UN General Assembly, *Convention Relating to the Status of Refugees*, U.N. Treaty Series, vol. 189, p. 137, Art 1 A. (1) (July 28, 1951), available at <http://www.refworld.org/docid/3be01b964.html>.

² UNHCR, Self-Study Module on Refugee Status Determination 2 (Sept. 1, 2005), <http://www.unhcr.org/refworld/pdfid/43141f5d4.pdf>.

Introduction

This Guide is designed to help refugee professionals understand and identify “sexually and gender non-conforming” (SGN) refugees in the protection and adjudication contexts. It explains how individuals come to learn about, struggle, and deal with their sexual orientation, gender identity, gender expression, and/or intersex conditions, as well as the terms they use to describe themselves and how they relate to the world around them. This understanding is critically important in providing refugee protection to these highly vulnerable minorities and will help to assess credibility and adjudicate SGN-based claims.

In order to accurately understand human sexuality, one must suspend life-long assumptions regarding sexual and gender characteristics. In particular, universal “binary” perceptions of “male or female” and “heterosexual or homosexual” must be replaced with more nuanced, fluid, and varied concepts in this area.³ As this Guide explains, sexual orientation and gender identity are not fixed identifiers across societies, individuals, or even in the same person over time. Rather, they are fluid and evolving points of reference.

For example, a man in one culture may perceive himself as “heterosexual” in adolescence, “bisexual” in his young adulthood, and “gay” in adulthood. In a different culture, the same man might call himself “heterosexual,” even if he engages in same-sex activity.

These examples illustrate that human sexuality and gender identity can occur on a broad spectrum, with significant variations across cultures, within cultures, and at different times for the same individual. With regard to “intersex” conditions, while a particular physiological characteristic will be seen as a medical condition in one cultural context, it may be perceived by other cultures as a manifestation of negative qualities.

This guide sometimes refers to individuals as “lesbian,” “gay,” “bisexual,” “transgender,” and “intersex” (“LGBTI”). These are common terms in Western countries, used to describe certain sexually and gender non-conforming (SGN) people’s identities. However, these terms and concepts are not universal and are mostly absent from many non-Western languages and cultures. In some countries, they are used only in certain segments of society.

To truly understand what an SGN refugee is telling us, we must understand not only that individual, but also the culture that formed and informed the refugee. In order to best assist refugees or assess their claims, we must understand their stories through their eyes.

This Guide reflects a wide, growing body of psychological, sociological, and legal research on sexually and gender non-conforming (SGN) individuals. Only recently have researchers from the medical, scientific and social/cultural fields begun to truly understand that variance, and this guide is a short introduction to this growing body of knowledge. Refugee professionals should keep in mind that, as culturally open and as diversity-aware as our occupation is, we

³ JUDITH BUTLER, GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY 25 (Routledge, 2006).

are all limited by the cultures and personal experiences that form us. This limitation is particularly pervasive in the areas of sexuality and gender, which are so intensely core to our human consciousness.

This Guide is not intended as a stand-alone instrument. To be effectively employed, it must be used with other tools, adjudication guides, and country of origin information. Further, we do not believe this information can be truly understood or internalized in self-study mode. Protection specialists, adjudicators and other service providers are urged to participate in on-site trainings that inform and engage our emotions, our consciousness, and our intellect. ORAM is making these trainings available to the refugee community. For more information, please visit www.oraminternational.org.

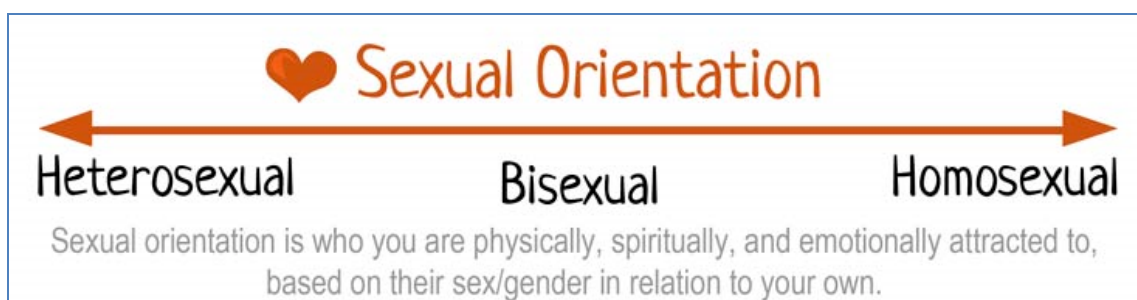
I. Sexual Orientation

A. UNDERSTANDING SEXUAL ORIENTATION

i. What is sexual orientation?

Sexual orientation refers to the ability of a person to be sexually or romantically attracted to another person of the same sex, different sex, or both.⁴ Sexual orientation may be understood as a continuum between exclusive heterosexuality on one end and exclusive homosexuality on the other. For example, two individuals might both consider themselves to be heterosexual, while one has some homosexual tendencies and the other does not. Viewed on a continuum, the two have different sexual orientations, even though they report themselves in the same category.

Viewing sexuality on such a continuum is necessary to account for all of the nuances of an individual's sexual thoughts and practices. Without this concept, those who express their sexuality somewhere between the definitions of homosexual and heterosexual can be misunderstood and mislabeled.⁵ Understanding of sexual orientation varies across societies, cultures, and individuals, and often evolves over a person's lifetime.



Source: It's Pronounced Metrosexual

⁴ AM. PSYCHOLOGICAL ASS'N, ANSWERS TO YOUR QUESTIONS: FOR A BETTER UNDERSTANDING OF SEXUAL ORIENTATION AND HOMOSEXUALITY (2008), <http://www.apa.org/topics/sexuality/sorientation.pdf> [hereinafter APA SEXUAL ORIENTATION BROCHURE].

⁵ James E. Phelan et al., *Response to APA Claim: There Has Been No Conclusive or Convincing Evidence that Sexual Orientation May Be Changed Through Reorientation Therapy*, 1 J. OF HUM. SEXUALITY 36 (2009).

The following terms, discussed in more detail below, are commonly used in the West to describe sexual orientation:

Heterosexual or “straight”: A person who is attracted to members of the opposite sex and has the capacity for profound emotional, affectional and/or intimate relationships with primarily members of the opposite sex.⁶

Homosexual: A clinical term describing a person who is exclusively attracted to members of the same sex and self-identifies as such.⁷ Note that the term “homosexual” is perceived by many sexually and gender non-conforming persons as distancing and objectifying, and should rarely be used when addressing or referring to homosexual applicants.⁸

Gay man: A man who self-identifies as having the capacity for profound emotional, affectional and/or sexual attraction to other men, and/or has intimate and sexual relations primarily with other men. Individuals who self-define as “gay” may use this term or a culturally relative comparable term.⁹ Note that the term “gay” has been adopted by many societies worldwide, and may be used to refer to both gay men and lesbians.¹⁰

Lesbian: A self-identifying woman who has the capacity for profound emotional, affectional, and/or sexual attraction to and/or intimate and sexual relations primarily with other women.¹¹

Bisexual: An individual who has the capacity for profound emotional, affectional, and/or sexual attraction to and/or intimate and sexual relations with people regardless of their gender or sex.¹²

Most individuals from around the world – especially in non-Western cultures – who are sexually or gender non-conforming are unlikely to identify with *any* labels concerning their sexual orientation or gender. Even those who are self-identified are extremely unlikely to share this information with any stranger, especially if they depend on that stranger for legal recognition or survival assistance. These persons may fear persecution for their actual or perceived membership in a sexual identity community or for their non-conforming behaviors.

The international health and development community has coined the terms “MSM” (Men who have Sex with Men) and “WSW” (Women who have Sex with Women).¹³ In contrast to

⁶ APA SEXUAL ORIENTATION BROCHURE, *supra* note 5, at 1.

⁷ See Media Reference Guide – Transgender Glossary of Terms, GAY & LESBIAN ALLIANCE AGAINST DEFAMATION (GLAAD) [hereinafter GLAAD Guide], <http://www.glaad.org/reference/lgb> (last visited Nov. 5, 2012).

⁸ Oren Pizmony-Levy & Patricia A. McManus (2012), *Global Survey of Non-Governmental Organizations Servicing Refugees and Asylum Seekers: Technical Report*, Bloomington: Indiana University, Department of Sociology. See also GLAAD Guide, *supra* note 24.

⁹ APA SEXUAL ORIENTATION BROCHURE, *supra* note 5, at 1.

¹⁰ Natalie Jane Woodman, *Mental Health Issues of Relevance to Lesbian Women and Gay Men*, 1 J. GAY & LESBIAN PSYCHOTHERAPY 53, (1988).

¹¹ GLAAD Guide, *supra* note 24.

¹² *Id.*

“identity labels,” these terms are purely behavioral observations referring to those who engage in same-sex relations with other women or other men. Unlike “lesbian,” “gay,” and “bisexual,” these terms imply no emotional, romantic, or conjugal relationship.

In contrast to this terminology, ORAM recommends that the term “sexually and gender non-conforming” should be used to describe all individuals who have culturally variant sexual identities and behaviors. While the terms “MSM” and “WSW” include all who engage in same-sex relations – including individuals who would not self-define as “homosexual,” “gay,” or “lesbian” – by focusing on the sexual component alone, the terms minimize the experiences of SGN individuals who share romantic, emotional, and intimate relationships with their partners. Indeed, the term “SGN” allows all individuals to be included within one term, without judging or assuming the types of experiences these individuals have.

ii. Is sexual orientation innate, is it a cultural construct, or is it a chosen identity?

Seen from different perspectives, sexual orientation has all of these characteristics.

Sexual orientation is innate in the sense that people are born with the capacity for deep emotional, affectional and sexual attraction to men, women, or both men and women.¹⁴ Today, it is widely accepted that people do not choose their romantic or sexual attractions. They experience those attractions because of a combination of biological, physical, and hormonal factors, with which they are born.¹⁵

Sexual orientation is a cultural construct because the meanings we give to different identities such as “gay” and “lesbian” vary across different cultures, depending on factors including language, location, and time. Sexual orientation is not the only kind of identity label that is understood as a cultural construct. For example, albinos – those who lack pigment in the hair, skin and eyes – exist in every part of the world.¹⁶ In one culture, albinos may be considered to be cursed, while in another culture they are viewed as having a close spiritual connection to God. Although homosexuality and albinism are both universal phenomena, they are “culturally constructed” so that people in different parts of the world understand them in different ways.

Sexual orientation is a chosen identity in the sense that every person can choose whether and how to identify oneself. Even if an individual might belong to a sexual minority, he or she might still choose to identify as “heterosexual” in response to feelings of shame, taboos, or fear of persecution or discrimination. In fact, the vast majority of people who have

¹³ Rebecca M. Young & Ilan H. Meyer, *The Trouble with "MSM" and "WSW": Erasure of the Sexual-Minority Person in Public Health Discourse*, 95 AM. J. PUB. HEALTH 1144, 1145-46 (2005).

¹⁴ SHEILA QUINN ET AL., AN ACTIVIST’S GUIDE TO THE YOGYAKARTA PRINCIPLES 11 (2010), available at http://www.ypinaction.org/files/02/85/Activists_Guide_English_nov_14_2010.pdf [hereinafter YOGYAKARTA GUIDE].

¹⁵ SIMON LEVAY, GAY, STRAIGHT, AND THE REASON WHY: THE SCIENCE OF SEXUAL ORIENTATION 412 (Oxford Univ. Press, 2011).

¹⁶ The Nat’l Org. for Albinism & Hypopigmentation, *What is Albinism?*, http://www.albinism.org/publications/what_is_albinism.html (last visited Sept. 2, 2013).

emotional, affectional, and sexual relations with members of the same sex are likely to call themselves “heterosexual.” Some refugees would never “come out of the closet” and would never have become refugees, had they not been discovered and branded by others as sexually non-conforming.¹⁷

iii. Do individuals need to have sex to find out their sexual orientation?

No. Sexual orientation describes an innate attraction and the capacity to have romantic, emotional, and intimate relationships with others, and is not determined or defined by sexual behavior. There are men who may realize that they are primarily attracted to men and who identify as “gay” without ever having had sex with another man. Similarly, a woman may have an attraction towards another woman, without ever expressing this outwardly or even telling anyone about it. In fact, most individuals who self-identify as lesbian, gay, or bisexual report “sensing” their orientation several years before their first sexual experience.¹⁸

iv. Why don’t all sexually and gender non-conforming people act on their feelings?

Many people who experience same-sex attraction have not engaged in same-sex relations or activities.¹⁹ Shame, stigma, or fear of persecution may prevent individuals from acting on, expressing, or disclosing their sexual orientation. Most societies and cultures approve of sexual behavior at one end of the spectrum but may discourage or even criminalize that behavior at the other end of the spectrum.

In many cases, self-imposed hiding in response to fears of serious harm can give rise to refugee status. Some SGN individuals enter heterosexual relationships and willingly “settle” for less passionate, intimate, or romantic lives. Others choose celibacy for the same reasons. Some choose to suppress their feelings in consideration of other areas of importance in life, such as acceptance by family, finding work, or enjoying the benefits of a “societally recognized” family.²⁰

¹⁷ Percentages are nearly impossible to specify due to prejudice, fear of self-identifying as bisexual and/or gay, and differences between how one defines oneself as opposed to one’s sexual practices. A significant number of studies have been conducted in an attempt to document the percentage of SGN persons within a given population. Findings vary from 1 to 15 percent, acknowledging potential under-reporting based on the afore-referenced issues. Two of the most famous studies of the demographics of human sexual orientation were Dr. Alfred Kinsey’s *Sexual Behavior in the Human Male* (1948) and *Sexual Behavior in the Human Female* (1953). These studies used a seven-point spectrum to define sexual behavior, from 0 for completely heterosexual to 6 for completely homosexual. Kinsey concluded that a small percentage of the population were to one degree or another bisexual (falling on the scale from 1 to 5). He also reported that 37 percent of men in the U.S. had achieved orgasm through contact with another male after adolescence and 13 percent of women had achieved orgasm through contact with another woman. ALFRED CHARLES KINSEY ET AL., *SEXUAL BEHAVIOR IN THE HUMAN MALE* (Indiana Univ. Press, 1st ed., 1948); ALFRED CHARLES KINSEY ET AL., *SEXUAL BEHAVIOR IN THE HUMAN FEMALE* (Indiana Univ. Press, 1st ed., 1953)

¹⁸ Richard R. Troiden, *Becoming Homosexual: A Model of Gay Identity Acquisition*, 42 *PSYCHIATRY: J. STUDY INTERPERSONAL PROCESSES* 288, 289-90 (1979).

¹⁹ Young & Meyer, *supra* note 14, at 1147.

²⁰ See Ritch C. Savin-Williams, *Verbal and Physical Abuse as Stressors in the Lives of Lesbian, Gay Male, and Bisexual Youths: Associations with School Problems, Running Away, Substance Abuse, Prostitution, and Suicide*, 62 *J. CONSULTING & CLINICAL PSYCHOL.* 261, at 261 (1994).

B. EXPANDED DEFINITIONS OF SEXUAL ORIENTATION

The diversity of sexual orientations is universal, but the labels attached to them vary by culture.²¹ The following are common terms used to describe various orientations. They are neither rigid nor comprehensive and should be considered along a continuum.

i. Lesbian

The term “lesbian” refers to a woman who has the capacity for profound emotional, affectional, and sexual attraction to and intimate and sexual relations with other women.²²

Not all lesbians have a history of relationships or instances of sexual encounters with other women. For psychological, cultural, and other reasons, many lesbians will have never experienced these with other women. What is most important here is that a woman has the *capacity* to experience sexual attraction and/or intimate romantic relations with other women, and that she identifies with the term “lesbian” or some comparable culturally relative term.

For lesbians who have had intimate experiences with other women, these experiences vary and are not necessarily exclusively sexual or physical. Romantic intimacy with another woman is often vital and, as for heterosexual women, may complement or be more important than physical or sexual bonding. Lesbians may experience this attraction either within or outside the context of an enduring relationship with another woman.

While lesbians have the capacity to be attracted to and/or have a relationship primarily with other women, because the innate components of sexual orientation exist along a continuum, some lesbians may also hold these feelings towards men.²³

In virtually all societies, women are pressured or coerced to enter into heterosexual relationships. Once again, it is important to note a woman’s social and cultural environment when considering her sexual orientation and how it has been expressed.²⁴

As mentioned above, it is crucial to understand that most female applicants, especially from non-Western cultures, may not necessarily identify with the “lesbian” label. These women are often referred to as “WSW” (Women who have Sex with Women) and are fully encompassed within the category of SGN individuals.

²¹ ORTNER & WHITEHEAD, *supra* note 20.

²² YOGYAKARTA GUIDE, *supra* note 13, at 11. This term refers to an individual who self-identifies as a woman. This does not mean that the individual must be born as a woman or have the biological traits commonly associated with women. The individual’s self-identity as a woman is primary and sufficient.

²³ Lisa M. Diamond & Ritch C. Savin-Williams, *Explaining Diversity in the Development of Same-Sex Sexuality among Young Women*, 56 J. Soc. Issues 297, 297–313 (2000). The study found that two-thirds of the 34 women who identified as lesbian reported periodic attractions to men.

²⁴ Amnesty Int’l, *A Fact Sheet on Lesbians, Gender and Human Rights Violations, Violence and Abuse of Women* 1-2 (2005), <http://www.amnestyusa.org/sites/default/files/pdfs/lesbianfactsheet.pdf>.

ii. Gay

The term “gay” refers to a man who has the capacity for profound emotional, affectional, and sexual attraction to and intimate and sexual relations with other men.²⁵

Not all gay men have a history of relationships or instances of sexual encounters with other men. For psychological, cultural, and other reasons, many gay men will have never experienced these with other men. What is most important here is that a man has the *capacity* to experience sexual attraction to and/or intimate romantic relations with other men, and that he identifies with the term “gay” or some comparable culturally relative term.

For gay men who have had intimate experiences with other men, these experiences vary and are not necessarily exclusively sexual or physical. Romantic intimacy with another man is often vital and, as for heterosexual men, may complement or be more important than the physical or sexual bonding. Gay men may experience this attraction either in or outside the context of an enduring relationship with another man.

While gay men have the capacity to be attracted to and/or have a relationship primarily with other men, because the innate components of sexual orientation exist along a continuum, some gay men may also hold these feelings towards women.

In virtually all societies, men are pressured or coerced to enter into heterosexual relationships. Once again, it is important to note a man’s social and cultural environment when considering his sexual orientation and how it has been expressed.²⁶

As mentioned above, it is crucial to understand that most male applicants, especially from non-Western cultures, will not identify with the “gay” label. These men are often referred to as “MSM” (Men who have Sex with Men) and are fully encompassed within the category of SGN individuals.

iii. Bisexual

The term “bisexual” refers to an individual who has the capacity for profound emotional, affectional and sexual attraction to and intimate and sexual relations with people regardless of their sex.

Many bisexual individuals have never had relationships or sexual encounters with members of the same sex. What is most important is that the individual has the *capacity* to experience sexual attraction to and/or intimate romantic relations with both men and women, and that the person identifies as “bisexual” or some comparable culturally relative term.

²⁵ YOGYAKARTA GUIDE, *supra* note 13, at 11. This term refers to an individual who self-identifies as a man. This does not mean that the individual must be born as a man or have the biological traits commonly associated with men. The individual’s self-identity as a man is most primary and sufficient.

²⁶ SEXUAL ORIENTATION DISCRIMINATION: AN INTERNATIONAL PERSPECTIVE 3 (Lee Badgett & Jeff Frank eds., 2007).

Bisexual individuals' intimate relationships with members of the same sex vary and are not necessarily exclusively sexual or physical. Romantic intimacy with another individual is often vital and, as for heterosexual individuals, may complement or be more important than the physical or sexual bonding. Bisexual individuals may experience this attraction even while in a heterosexual relationship.²⁷

In virtually all societies, women are pressured to enter into conjugal relationships with men, and men with women. Once again, it is important to note an individual's social and cultural environment when considering his or her sexual orientation and how it has been expressed.²⁸

As mentioned above, it is crucial to understand that most applicants, especially from non-Western cultures, will not necessarily identify with the bisexual label. These individuals should be referred to as sexually and gender non-conforming (SGN) individuals.

C. HOW DO INDIVIDUALS KNOW THEIR SEXUAL ORIENTATION?

i. When do people discover their sexual orientation?

Most children grow up assuming they are heterosexual regardless of the sexual orientation of their parents or other relatives. The age at which most individuals discover their orientation varies widely and may vary with differences in personality as well as familial and social environments. The discovery or sense of one's sexual orientation usually begins in middle childhood and early adolescence but can occur at almost any age from early childhood to late adulthood.²⁹ Many SGN individuals report feeling different and isolated in childhood, and some realize from an early age that they are attracted to members of the same sex.³⁰

ii. How do people recognize their non-conforming sexual orientation?

How individuals recognize their non-conforming sexual orientations varies widely, depending on their personality, culture, or other factors. Some individuals feel attracted to a member of the same sex and then begin suspecting that they may be sexually non-conforming. Others may meet someone who is gay, lesbian, or bisexual – or see an example of these identities in the media – and realize that what they feel has a label.

These initial feelings are often met with confusion and a fear that being discovered will lead to isolation, stigmatization, and abuse by their family, friends, and society. In many cultures,

²⁷ Ronald C. Fox et al., *International Perspectives on Bisexuality: An Introduction*, 8 J. BISEXUALITY 3, 3-5 (2008).

²⁸ Amnesty Int'l, *supra* note 48.

²⁹ APA SEXUAL ORIENTATION BROCHURE, *supra* note 21, at 1.

³⁰ Troiden, *supra* note 41, at 289-90.

there is little awareness or acceptance that varying sexual orientations exist.³¹ In other cultures, sexual orientation is perceived as a foreign concept not relevant to local populations. As a result, many sexually non-conforming persons resist addressing their suspicions for years – or even a lifetime.

iii. Are sexually non-conforming people open and comfortable with their sexual orientation?

The vast majority of asylum claims based on sexual orientation come from individuals who have not disclosed their sexual orientation.³² Throughout their childhood and adulthood, these individuals fear being suspected, exposed or found out. It is important to note that most of them never have an interaction with a member of the same sex but have feared persecution – or have actually experienced persecution – due to their sexually non-conforming feelings, which have led their persecutors to perceive them as SGN.

D. COMING OUT

i. What does it mean to “come out”?

In the Western world, the concept of “coming out (of the closet)” is a term that commonly refers to the acknowledgement to oneself and disclosure to others that one identifies as sexually or gender non-conforming. It is an ongoing, sometimes life-long process that SGN individuals are confronted with as they decide whether to disclose this very private aspect of their lives with each person they meet.

Individuals may come out to some people in their lives and not others. To avoid negative consequences, SGN individuals may actively hide and deny their sexual orientation by pursuing heterosexual relationships or acting in ways to reduce suspicions that they are SGN. In some cultures, SGN people who do not acknowledge their sexual orientation may be referred to sympathetically or pejoratively as “in the closet” or “closeted.” In the context of adjudicating asylum claims based on sexual identity, it is crucial to note that most SGN individuals will not “come out” – as understood in the Western context – to themselves or to others.³³

³¹ UN Human Rights Council, Report of the United Nations High Commissioner for Human Rights on Discriminatory Laws and Practices and Acts of Violence against Individuals based on their Sexual Orientation and Gender Identity (2011), *available at* <http://www.unhcr.org/refworld/docid/4ef09202.html> (last visited Sept. 2, 2013).

³² UNHCR GUIDANCE NOTE ON REFUGEE CLAIMS RELATING TO SEXUAL ORIENTATION AND GENDER IDENTITY 5 (Nov. 21, 2008), *available at* http://www.justice.gov/eoir/vll/benchbook/resources/UNHCR_Guidelines_Sexual_Orientation.pdf [hereinafter UNHCR GUIDANCE].

³³ HEARTLAND ALLIANCE, RAINBOW ALLIANCE: AN ASSESSMENT AND RECOMMENDATIONS REPORT ON LGBT REFUGEE RESETTLEMENT IN THE UNITED STATES 28 (2012), http://rainbowwelcome.org/uploads/pdfs/ORR%20Report%20MASTER%20COPY_01.2012.pdf.

ii. What is it like be exposed as SGN in most non-Western cultures?

Most societies around the globe stigmatize sexually and gender non-conforming people. This stigmatization often triggers isolation, fear, anxiety, shame, humiliation, violence, and even murder. Sexually non-conforming individuals may fear persecution and alienation from everyone in their environment, including their families and closest friends. In many countries, being exposed can also lead to prosecution for crimes and severe punishment, including the death penalty.³⁴

In some jurisdictions, asylum claims have been denied based on the idea that SGN applicants could return home and conceal their sexual orientation. Increasingly, adjudicators have held that one should not be required to “act discreetly” in order to remain safe.³⁵

E. RELATIONSHIPS

i. Do sexually non-conforming people want to be in relationships?

SGN individuals have the same range of needs for intimacy, companionship, commitment, and closeness as all other people. Like their heterosexual counterparts, many desire a relationship, but not all do, in part due to the intense pressures that discrimination can place on a relationship. Research suggests that if societies were more accepting of SGN individuals, the number of committed relationships among SGN individuals would be higher.³⁶

ii. Are same-sex relationships different from heterosexual ones?

Same-sex relationships are similar to heterosexual ones in many ways, including how partners treat each other, how satisfied they are with the relationship, and how committed they are to one another. In the context of adjudicating SGN individuals, it is crucial to remember that outside the Western world, these relationships almost never receive support from family, state, and society at large, which significantly lowers their occurrence.³⁷

³⁴ Mark Ungar, *State Violence and Lesbian, Gay, Bisexual and Transgender (LGBT) Rights*, 22 NEW POL. SCI. 61, 61-62 (2000).

³⁵ HJ (Iran) & HT (Cameroon) v. Sec’y of State for the Home Dep’t, [2010] UKSC 31 (appeal taken from Eng.).

³⁶ Letitia Anne Peplau, *Lesbian and Gay Relationships*, PSYCHOLOGICAL PERSPECTIVES ON LESBIAN AND GAY MALE EXPERIENCES 395 (Linda D. Garnets. & Douglas C. Kimmel eds., 1993).

³⁷ UN High Commissioner for Refugees, 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, 23 October 2012, HCR/GIP/12/01, *available at* <http://www.refworld.org/docid/50348afc2.html> (last visited Sept. 2, 2013) [hereinafter UNHCR Guidelines].

F. PREJUDICE, DISCRIMINATION, AND PERSECUTION

i. How do state actors treat SGN individuals?

The official positions of governments towards sexual and gender non-conformity and same-sex sexual activity vary widely. Presently, seventy-six countries consider same-sex relations illegal. The death penalty according to Shari'a Law (Muslim religious law) is applicable nationally in five of them: Saudi Arabia, Yemen, Iran, Sudan, and Mauritania.³⁸ On a sub-national level, the provinces of Northern Nigeria and Central and Southern Somalia also apply death penalty provisions against SGN individuals.³⁹

It is common for SGN people across the globe to experience violent physical, sexual, and verbal abuse, as well as many forms of discrimination and alienation. In addition, governments and local authorities often decline to prosecute offenders and protect victims, even when same-sex activity is not officially illegal.⁴⁰

ii. How do non-state actors treat SGN people?

Treatment of SGN individuals varies widely across cultures, governments, and individuals. While Western states may refrain from openly persecuting sexually non-conforming citizens, negative attitudes may still be present. Many lesbian, gay, and bisexual people continue to live in fear of prejudice, despite the significant progress in recent years to improve equality.⁴¹

Most societies outside the West stigmatize, marginalize, or openly persecute SGN individuals. This is particularly true for those whose same-sex activities are confirmed (rather than merely suspected). Belonging to this group is often seen as “unnatural” in religion, harmful to society, or morally wrong.

iii. Is sexual non-conformity a mental health problem?

The scientific establishment has repeatedly found and expressed the view that there is no inherent connection between mental health and sexual non-conformity. The American Psychological Association, which removed homosexuality from its list of mental disorders in 1975, states that:

Research has found no inherent association between any of these sexual orientations and psychopathology. Both heterosexual behavior and homosexual

³⁸ *UN issues first report on human rights of gay and lesbian people*, UN NEWS CENTRE (Dec. 15, 2011), <http://www.un.org/apps/news/story.asp?NewsID=40743#.UioeEWTF3OU>.

³⁹ ARC INT'L ET AL., SUBMISSION IN THE UPR REVIEW OF SOMALIA 1 (2010), http://lib.ohchr.org/HRBodies/UPR/Documents/Session11/SO/JS5_JointSubmission5-eng.pdf; see also ILGA, STATE-SPONSORED HOMOPHOBIA: A WORLD SURVEY OF LAWS CRIMINALIZING SAME-SEX SEXUAL ACTS BETWEEN CONSENTING ADULTS 13 (May 2012) [hereinafter ILGA WORLD SURVEY].

⁴⁰ Michael O'Flaherty & John Fisher, *Sexual Orientation, Gender Identity and International Human Rights Law: Contextualising the Yogyakarta Principles*, 8 HUM. RTS. L. REV. 207, 208-12 (2008).

⁴¹ Jamie Doward, *Homophobia still rife in UK survey claims*, THE GUARDIAN (Aug. 24, 2013), <http://www.theguardian.com/world/2013/aug/25/homophobia-uk-survey>.

behavior are normal aspects of human sexuality. Both have been documented in many different cultures and historical eras. Despite the persistence of stereotypes that portray lesbian, gay, and bisexual people as disturbed, several decades of research and clinical experience have led all mainstream medical and mental health organizations in [the U.S.] to conclude that these orientations represent normal forms of human experience.⁴²

Other scientific associations that have reached similar conclusions include the World Health Organization,⁴³ the Chinese Society of Psychiatry,⁴⁴ and the Royal College of Psychiatrists in the UK.⁴⁵

iv. What is the position of organized religion toward SGN individuals?

The positions of faiths and denominations towards sexual and gender non-conformity exist on a spectrum from support to rejection. The positions are highly nuanced and often differ along denominational and geographical lines. Many faiths actively and officially oppose sexual and gender non-conformity to varying degrees. Some denominations and members promote physical punishment and/or execution; still others simply reject the existence of this population.

Some denominations and faiths, however, advocate for and even welcome SGN individuals within their communities and clergy. For example, several prominent religious leaders have spoken out in favor of a more accepting attitude towards sexual and gender non-conformity. Archbishop Desmond Tutu of South Africa,⁴⁶ the Dalai Lama of Tibet,⁴⁷ and Bishop Christopher Senyonjo of Uganda⁴⁸ are just a few of the religious leaders who have spoken out for human rights for all people regardless of their sexual orientation.

v. What are the psychological consequences of the prejudice, discrimination, and persecution SGN individuals face?

SGN individuals often recall feeling alienated, lonely, bullied, and fearful at a young age.⁴⁹ As adults, they may face discrimination and isolation by both society at large and their

⁴² APA SEXUAL ORIENTATION BROCHURE, *supra* note 21, at 3.

⁴³ WORLD HEALTH ORGANIZATION, THE ICD-10 CLASSIFICATION OF MENTAL AND BEHAVIORAL DISORDERS 11 (May 1990), www.who.int/classifications/icd/en/bluebook.pdf.

⁴⁴ Associated Press, *Homosexuality Not an Illness*, *Chinese Say*, N.Y. TIMES (Mar. 8, 2001), <http://www.nytimes.com/2001/03/08/health/08PSYC.html>

⁴⁵ *Psychiatry and LGB People*, THE ROYAL COLLEGE OF PSYCHIATRISTS, <http://www.rcpsych.ac.uk/rollofhonour/specialinterestgroups/gaylesbian/submissiontothecofe/psychiatryandlgbpeople.aspx> (last visited Oct. 24, 2012).

⁴⁶ Desmond Tutu, *All Are God's Children: On Including Gays and Lesbians in the Church and Society*, THE HUFFINGTON POST (June 11, 2011), http://www.huffingtonpost.com/desmond-tutu/religion-homosexuality_b_874804.html.

⁴⁷ *HH Dalai Lama Meeting with Gay & Lesbian Representatives (ILCT)*, CANADA TIBET COMMITTEE (June 18, 1997), http://www.tibet.ca/tibet/public/en/newsroom/wtn/archive/old?y=1997&m=6&p=18_2

⁴⁸ Diana B. Bass, *African Religion & God's Transcendent Love for LGBT People*, THE HUFFINGTON POST (June 11, 2010), http://www.huffingtonpost.com/diana-butler-bass/africas-real-goal-human-r_b_608998.html.

⁴⁹ APA SEXUAL ORIENTATION BROCHURE, *supra* note 21, at 4.

immediate social circles. The vast majority of SGN individuals do not self-identify to anyone in their lives, including their closest friends, leading to further fear and isolation.⁵⁰

Living with the stigma of being perceived as SGN may lead to serious psychological distress, including mood and anxiety disorders.⁵¹ The rejection, isolation, and threat of physical harm can be unbearable. Research has demonstrated that psychological distress can lead to substance abuse and/or suicide.⁵²

The psychological effects of stigma and harm often continue long after an individual has relocated to a safer and more inclusive environment. The lingering damage – which may manifest in Post-Traumatic Stress Disorder – may detrimentally affect an individual’s ability to recount, testify to, or even remember traumatic experiences.⁵³ In the context of a refugee status determination (RSD) interview, and as a result of these psychological effects, many SGN individuals will find it deeply uncomfortable and disturbing to speak of their identities and feelings, which they most probably would have repressed for years, if not their entire lives.

vi. Why is sexual orientation relevant in the context of asylum adjudication?

Sexual orientation can be relevant to a refugee claim where the refugee fears persecutory harm due to his or her sexual orientation.⁵⁴ The definition of “refugee” applies to *all* persons regardless of sex, age, sexual orientation, or gender identity. Some countries, including Sweden, have chosen to include specific references to sexual orientation in their own legislative definition of “refugee.”⁵⁵

In the context of RSD, it is crucial to remember that under international human rights standards, sexual orientation is a fundamental characteristic that individuals have a right to express and cannot be forced to suppress or change.⁵⁶ Claims relating to sexual orientation and gender identity are recognized under the 1951 Refugee Convention ground of “membership of a particular social group,” but may also be linked to other grounds, notably political opinion and religion, depending on the circumstances. This has been affirmed by courts and tribunals in various jurisdictions, including Australia, Canada, France, Germany,

⁵⁰ Joanne DiPlacido, *Minority Stress Among Lesbians, Gay Men and Bisexuals: A Consequence of Heterosexism, Homophobia and Stigmatization*, STIGMA AND SEXUAL ORIENTATION: UNDERSTANDING PREJUDICE AGAINST LESBIANS, GAY MEN AND BISEXUALS 138, ? (Gregory M. Herek ed., 1998).

⁵¹ APA SEXUAL ORIENTATION BROCHURE, *supra* note 21, at 2.

⁵² Karine J. Igartua et al., *Internalized Homophobia: A Factor in Depression, Anxiety, and Suicide in the Gay and Lesbian Population*, 22 CAN. J. COMM. MENTAL HEALTH 15-30, 15 (Fall 2003).

⁵³ See AM. PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS: DSM-IV (4th ed. 1994); see also Carol M. Suzuki, *Unpacking Pandora’s Box: Innovative Techniques for Effectively Counseling Asylum Applicants Suffering From Post-Traumatic Stress Disorder*, 4 HASTINGS RACE & POVERTY L.J. 235 (2007).

⁵⁴ UNHCR Guidelines, *supra* note 62.

⁵⁵ Aliens Act (SFS 2005:716) (Swed.), Chapter 4, Section 1, *available at* <http://www.government.se/content/1/c6/06/61/22/bfb61014.pdf>.

⁵⁶ ILGA WORLD SURVEY, *supra* note 64, at 4; see Conference of International Legal Scholars, Yogyakarta, Indon., Nov. 6-9, 2006; see also INT’L GAY AND LESBIAN HUMAN RIGHTS COMMISSION (IGLHRC), RESOLUTION ON SEXUAL ORIENTATION AND HUMAN RIGHTS: UNITED NATIONS HUMAN RIGHTS COMMISSION: CAMPAIGN DOSSIER Annex III (2004), <http://www.iglhrc.org/binary-data/ATTACHMENT/file/000/000/213-1.pdf> [hereinafter IGLHRC DOSSIER].

New Zealand, Sweden, the United Kingdom, and the United States.⁵⁷ It is also worth noting that the Yogyakarta Principles reflect binding international legal standards with regard to sexual orientation, which are derived from key human rights instruments.⁵⁸

G. STEREOTYPES AND MISCONCEPTIONS

i. Are all SGN individuals a part of the “gay culture”?

No. “Gay culture” includes social places, media, and events where SGN individuals are encouraged to attend or participate. An individual’s involvement in gay culture, if any, heavily depends on the national, religious, societal, and geographical origins of an applicant. Many SGN individuals do not have access to welcoming spaces and communities. Most of them would be unfamiliar with “gay culture” references commonly known in the West, including magazines, organizations, or websites that are targeted towards SGN individuals. Overall, a lack of familiarity with these and other aspects of “gay culture” or “lesbian culture” is not indicative of one’s sexual orientation.⁵⁹

Additionally, because SGN identity is stigmatized in many cultures, many sexually non-conforming individuals avoid activities targeted toward these groups. In fact, they may avoid seeking help from organizations that support SGN people, as part of an effort to keep their sexual orientation hidden.

ii. Do sexually non-conforming people look or act a certain way?

SGN individuals do not necessarily have a certain appearance, voice, or mannerism, as is often believed. These are stereotypes that may or may not be relevant in any given case. One cannot necessarily tell an individual’s sexual orientation solely from clothing, physical appearance, tone of voice, speaking style, walking style, or other visible and/or audible characteristics. Sexually non-conforming men do not always look, talk, or act in a more feminine way than heterosexual men. Similarly, SGN women cannot necessarily be identified by stereotypical characteristics.

In the context of refugee claims, it is very important to highlight that much of the persecution based on sexual orientation is triggered by an applicant’s effeminate or masculine appearance or behavior leading persecutors to believe that the applicant is SGN. In many or most cases, the applicant is not self-identified as SGN and is never “caught” in same-sex relations. There are even cases where the applicant is heterosexual but is perceived to be SGN by his or her persecutors because of his or her appearance and/or behavior.

⁵⁷ UNHCR Guidance, *supra* note 56.

⁵⁸ Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (Mar. 2007) (discussing right to apply for asylum under Principle 23), *available at* http://www.yogyakartaprinciples.org/principles_en.pdf [hereinafter Yogyakarta Principles].

⁵⁹ Donald C. Barrett, *Whose Gay Community? Social Class, Sexual Self-Expression, and Gay Community Involvement*, 46 Soc. Q. 437, 451-53 (2005).

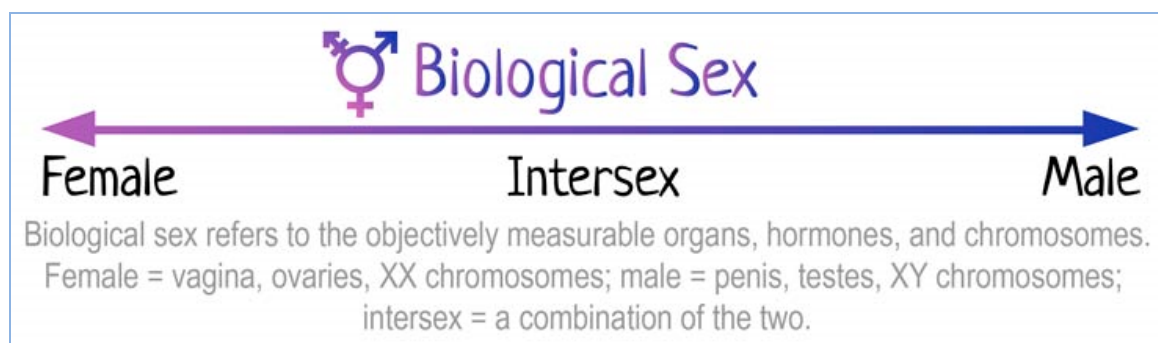
II. GENDER IDENTITY

A. UNDERSTANDING SEX AND GENDER

i. What is the difference between sex and gender identity?

Biological or anatomical sex refers to the physical structure of one's reproductive organs, used to assign sex at birth. Biological sex is determined by chromosomes, hormones, and internal and external genitalia.

Though it may seem that individuals are clearly either male or female, biological sex must be seen as a spectrum or range of possibilities rather than a binary set of two options. Some individuals, such as those with "intersex" conditions, do not have easily discernible biological and anatomical sex features. Intersex will be covered later in this Guide.



Source: It's Pronounced Metrosexual

Gender identity refers to an individual's deeply felt, internal sense of being male, female, or a non-binary gender. Like sexual orientation, gender identity should be understood along a spectrum or continuum, with fluid and evolving boundaries.

While many individuals identify with or express a gender that correlates with the sex they were assigned at birth, others do not. Someone labeled male at birth may identify with or express either gender or even a different idea of gender altogether. For example, an individual born with male genitalia may have a stereotypically female appearance, behaviors, or social roles.⁶⁰ This person may have a deeply felt and continuing sense of being a "woman" despite having male genital and hormonal characteristics.

In the context of RSD, many sexually non-conforming persons report that the bulk of their persecution revolves around their gender expression, with their persecutors assuming a homosexual orientation. For example, a man may be targeted for the "feminine" way he walks or talks, assumed to be homosexual, and severely beaten, despite never being

⁶⁰ Am. Psychological Ass'n, Answers to Your Questions About Transgender People, Gender Identity and Gender Expression (2011), available at <http://www.apa.org/topics/sexuality/transgender.pdf> [hereinafter APA Transgender Brochure].

“caught” in intimate relations with another male.⁶¹ In this case, his refugee claim should rightly be based both on his gender expression and his sexual orientation.⁶²

B. UNDERSTANDING GENDER IDENTITY

i. What is the difference between gender identity and gender expression?

Gender identity refers to an individual’s deeply felt, internal sense of being a man, woman, or other gender. *Gender expression* (or gender presentation) refers to the ways in which individuals manifest masculinity or femininity, including the external appearance, dress, mannerisms, and behavior through which individuals present their gender identity.

Gender expression can include activities such as hunting or child care that might be associated with being male or female, as well as voice, mannerisms, and aspects of appearance such as grooming, clothing, bodily characteristics, use of makeup, and use of jewelry. Gender identity, on the other hand, is an internally felt, emotional experience.



Source: It's Pronounced Metrosexual

⁶¹ HUMAN RIGHTS WATCH, STILL MAKING THEIR OWN RULES: ONGOING IMPUNITY FOR POLICE BEATINGS, RAPE, AND TORTURE IN PAPUA NEW GUINEA 11 (Oct. 30, 2006), available at <http://www.hrw.org/en/reports/2006/10/29/still-making-their-own-rules-0> (indicating that men and boys with male sexual partners are targets of police abuse when they appear effeminate, even though many do not identify as gay). See also Nicole LaViolette, *Gender-Related Refugee Claims: Expanding the Scope of the Canadian Guidelines*, 19 INT'L JOURNAL OF REFUGEE LAW 169, 195-203 (2007); *Men Behaving Like Women Face Flogging*, HUMAN RIGHTS WATCH (Apr. 7, 2005), http://www.hrw.org/legacy/english/docs/2005/04/07/saudia10434_txt.htm; James D. Wilets, *Conceptualizing Private Violence Against Sexual Minorities as Gendered Violence: An International and Comparative Law Perspective*, 60 ALB. L. REV. 989, 1006 (1997) (“Gendered violence is frequently the consequence of perceived threats to a male dominated societal system by groups that do not conform to the norms appropriate for the continuation of such a system.”).

⁶² This was the case in *Ray v. Antioch Unified School District* (107 F. Supp. 2d 1165 (N.D. Cal. 2000)), in which a boy was constantly verbally abused by his classmates because they considered him to be a homosexual. The court determined that this abuse was not distinguishable from sexual harassment under Title IX. The decision was supported by the Supreme Court's opinion in *Oncale v. Sundowner Offshore Services* (523 U.S. 75 (1998)). The Court found no material difference between the instance in which a female student is subject to unwelcome sexual comments and advances due to her harasser's perception that she is a sexual object, and the instance in which a male student is insulted and abused due to his harasser's perception that he is homosexual and therefore a subject of prey. In both instances, the conduct is a heinous response to the harasser's perception of the victim's sexuality and is not distinguishable to the Court.



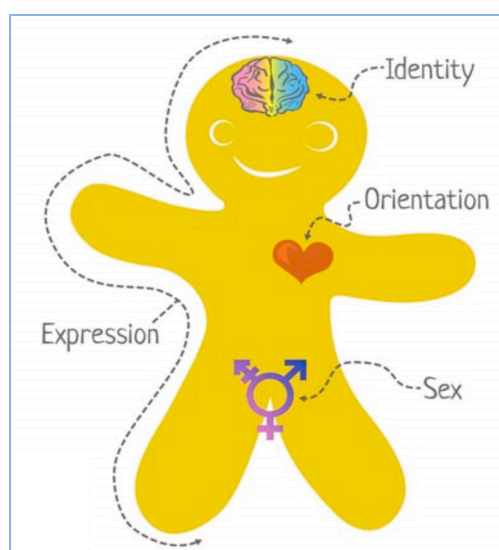
Source: It's Pronounced Metrosexual

Transgender individuals may be assumed to be one gender at birth, due to their sex assignment, but identify with or express a different gender later in life. For example, a transgender newborn with female physical characteristics may be raised as a girl but later on feel a strong internal identity with the masculine gender and a desire to express this male identity.

ii. **Can you summarize the definitions of sexual orientation, biological/anatomical sex, gender identity, and gender expression?**

Even though these ideas are related to one another, they are four very distinct concepts, which must be understood independently.

- *Sexual orientation* refers to a person's capacity for profound emotional, affectional, and/or sexual attraction to and/or intimate and sexual relations with individuals of a different gender, the same gender, or more than one gender. "Heterosexual," "gay," and "lesbian" are examples of sexual orientation.
- *Sex* refers to physical, genetic, and anatomical traits that define the male and female sexes.
- *Gender identity* is the internal sense of being distinctly masculine, feminine, or gender variant.
- *Gender expression* (or gender presentation) refers to the ways in which individuals manifest masculinity or femininity, including the external appearance, dress, mannerisms, and behavior through which individuals present their gender identity.



Source: It's Pronounced Metrosexual

For example, a person who was born with biologically male physical, genetic, and anatomical traits (*biological sex*) may have the psychological sense of being female (*gender identity*). She might be attracted to females and self-identify as a lesbian (*sexual orientation*). The gender identity in this case would be that of a “transgender woman.”

Another example is a transgender man (*gender identity*) born with female biological characteristics (*biological sex*). If he is attracted primarily to men, he will likely self-identify as gay (*sexual orientation*).⁶³ Conversely, if he is attracted primarily to women, his sexual orientation would likely be heterosexual. He might or might not behave in the “traditional” ways expected of a man rather than a woman (*gender expression*).

C. GENDER IDENTITY AND CULTURE

Around the world, a wide variety of culturally-specific identities exist based on a combination of sexual orientation, gender identity, and/or other factors. For example, some Native American tribes recognize and honor “Two-Spirits,” or people whose gender identity combines feminine and masculine elements. Two-Spirits are often spiritual leaders in their community who are respected based on their unique experience of the world and their dual identity.⁶⁴ Certain communities in Albania have a custom of female virgins swearing in front of twelve witnesses that they never want to marry and thereafter living as men and being treated as such.⁶⁵ Some cultures in Indonesia and Siberia have between five and seven wholly separate gender categories. Hijras in India and Pakistan, who have existed as a group for more than 4,000 years, base their identity around a Hindu religious story.⁶⁶ Being hijra involves being born with male anatomy but adopting a female gender identity. In some cases, hijras engage in a ritualized castration process called nirvan.⁶⁷

Cultures instill their own norms concerning gendered behavior and roles. There is a wide variation in individuals’ understanding of what it means to be “masculine” and “feminine.” In one culture, women are expected to act demurely and be nurturing, in another they are expected to be authoritative. In many cultures, women are given primarily domestic roles, while in others they are expected to enter the work force.⁶⁸

⁶³ Judith Lorber, *Beyond the Binaries: Depolarizing the Categories of Sex, Sexuality, and Gender*, 66 SOC. INQUIRY 143, 146-48 (1996).

⁶⁴ ENCYCLOPEDIA OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER HISTORY IN AMERICA (Marc Stein ed., Charles Scribner’s Sons, 2004).

⁶⁵ Stephen O. Murray, *Gender-Mixing Roles, Gender-Crossing Roles, and the Sexuality of Transgendered Roles*, 31 REV. IN ANTHROPOLOGY 291, 298 (2002).

⁶⁶ Amisha R. Patel, *Note: India’s Hijras: The Case for Transgender Rights*, 42 GEO. WASH. INT’L L. REV. 835, 840 (2010).

⁶⁷ *Id.*; Murray, *supra* note 91, at 295-96.

⁶⁸ For example, in Saudi Arabia, women tend to have largely domestic roles and are expected to abstain from activities such as driving a car. U.S. Dep’t of State, *2010 Human Rights Report: Saudi Arabia* (Apr. 8, 2011), available at <http://www.state.gov/j/drl/rls/hrrpt/2010/nea/154472.htm>. In France, women are expected to live independent lives, and it is expected that some will achieve high-ranking government roles. See *France’s Socialist government keeps its pledge to give women big role in new Cabinet*, THE WASH. POST (June 21, 2012),

D. EXPANDED DEFINITIONS OF GENDER IDENTITIES

As mentioned above, there are many different identities and expressions of gender. Like sexual orientation, gender identity should be conceptualized along the lines of a continuum. Terms used to describe gender identity can change over time and may vary significantly by culture or individual; they should therefore not be viewed as rigid or fixed. In addition, many of the terms are overlapping. Some commonly used terms to describe gender identity include (but are not limited to) *transgender*, *transsexual*, *third gender*, *genderqueer*, and *cross-dresser*.

i. Transgender

The term “transgender” describes individuals who are assigned one sex at birth but have a sense of being a different gender or genders. The term “transgender” is fluid and encompasses many different gender identities. Some transgender individuals will identify as both man and woman; neither man nor woman; or moving between genders.⁶⁹ This umbrella term includes – but is not limited to – transsexuals, cross-dressers, androgynous people, genderqueers, and gender non-conforming people.

ii. Transsexual

Transsexual individuals alter their bodies to match their gender identity. Transsexuals may use surgery of the face, chest, genital areas, and other parts of the body, as well as hormonal treatments, to alter their bodies. Transsexual men are individuals who were assigned the female gender at birth and later identify as men. Transsexual women are individuals who were assigned the male gender at birth and later identify as women.⁷⁰

iii. Third Gender

“Third gender” individuals do not identify with the male or female gender. As mentioned above, conceptions of gender that are neither male nor female are found in many cultures and countries.

iv. Genderqueer

The term “genderqueer” can describe various types of gender identity outside binary gender. Genderqueer individuals may identify as both man and woman; neither man nor woman; or moving between genders. Some genderqueers may or may not consider themselves third gendered, and some (but not all) transsexuals also identify as genderqueer.⁷¹

http://www.washingtonpost.com/world/europe/frances-socialist-government-keeps-its-pledge-to-give-women-big-role-in-new-cabinet/2012/06/21/gJQAftgNtV_story.html.

⁶⁹ AMERICAN PSYCHOLOGICAL ASSOCIATION, ANSWERS TO YOUR QUESTIONS ABOUT TRANSGENDER PEOPLE, GENDER IDENTITY AND GENDER EXPRESSION 1 (2011), available at <http://www.apa.org/topics/sexuality/transgender.pdf> [hereinafter APA TRANSGENDER BROCHURE].

⁷⁰ APA TRANSGENDER BROCHURE, *supra* note 95, at 1

⁷¹ APA TRANSGENDER BROCHURE, *supra* note 95, at 2.

v. Cross-dresser

Wearing clothing that is stereotypically associated within one's culture with another gender is known as "cross-dressing." Cross-dressing does not imply that one wishes to change one's birth sex, nor does it imply that there is a mismatch between one's assigned gender and one's internal sense of gender. As such, it is not necessarily indicative of sexual orientation or gender identity. In other words, a cross-dressing man could be gay, heterosexual, or bisexual, and may or may not be transgender.

E. WHY ARE SOME PEOPLE TRANSGENDER?

i. Are there medical or psychological explanations of why some people are transgender?

There is no one theory or set of explanations to describe why some people identify as male and others as female. This is true for both transgender and non-transgender people. Sex and gender are complex constructs created by multiple societal, cultural, and biological factors.

Transgender identity has been described both physiologically and psychologically. From a medical standpoint, it is possible that variations in hormones may lead to a child being born transgender.⁷² Research has also shown that some brain structures are associated with transgender identity.⁷³ It is also possible that early childhood experiences shape gender identity.⁷⁴ In any event, transgender people know that their gender identity is an innate and integral part of their personhood, just as it is for cisgender individuals, that is, those whose gender identity matches their assigned sex.

ii. Is being transgender a mental or physical health problem?

There is no consensus among researchers or transgender people about whether being transgender is a mental health problem. However, the American Psychiatric Association officially removed it from its list of disorders in 2012.⁷⁵ According to the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV), however, people who experience intense, persistent gender incongruence can be given the diagnosis of "gender identity disorder," which is useful for seeking health care where a "disorder" is required for treatment.

⁷² Louis Gooren, *The Endocrinology of Transsexualism: A Review and Commentary*, 15 PSYCHONEUROENDOCRINOLOGY 3, 68 (1990).

⁷³ Jiang-ning Zhou et al., *A Sex Difference in the Human Brain and Its Relation to Transsexuality*, 378 NATURE 68, 68-70 (1995).

⁷⁴ Aaron H. Devor, *Witnessing and Mirroring: A Fourteen Stage Model of Transsexual Identity Formation*, 8 J. GAY & LESBIAN PSYCHOTHERAPY 41, 3 (2004)

⁷⁵ Camille Beredjick, *DSM-V To Rename Gender Identity Disorder 'Gender Dysphoria'*, ADVOCATE.COM (July 23, 2012), <http://www.advocate.com/politics/transgender/2012/07/23/dsm-replaces-gender-identity-disorder-gender-dysphoria>.

Diagnosing gender identity disorder is a highly controversial issue. On one hand, some researchers and transgender people assert that transgenderism implies a mismatch between the internal sense of gender and physical characteristics, and that it is best for this mismatch to be “fixed” through body modification. Once a person’s internal sense of being a man or a woman matches his or her physical characteristics, they argue, the person is no longer transgender: the “disorder” has been treated successfully.⁷⁶

Others argue that being transgender is not a disorder of any kind. The problem, they believe, is with the discrimination transgender people face from those who do not accept them for what they are. In this view, it is the culture or people’s attitudes that need to be “fixed” – not the people who identify as transgender.

Note that the foregoing is an oversimplified description of the debate about whether being transgender implies a disorder of some kind.

F. HOW DO TRANSGENDER INDIVIDUALS KNOW THEIR GENDER IDENTITY?

i. When do transgender individuals begin to understand their gender identity?

Most transgender individuals report knowing from their earliest childhoods that they were assigned the “wrong sex” and thus did not feel comfortable assuming the associated gender. This understanding often arises from a strong internal sense and sometimes manifests in a deep desire to express and identify with a gender different from the one that was assigned at birth.⁷⁷

Nevertheless, many transgender individuals come to understand their gender non-conforming feelings later on in life, and it should not be assumed that all transgender refugees will have always self-defined this way.

ii. What is it like for transgender individuals in childhood?

It is common for transgender individuals to struggle with gender identity for a long time, experiencing shame, confusion, and fear of stigma. Often these individuals feel that they are different from their peers, resulting in feelings of isolation. Many transgender individuals struggle to conform to their assigned gender for a long period before eventually becoming strongly dissatisfied with their lives. Only then do they accept or embrace their transgender identity.⁷⁸ Despite the variety of differences, many transgender individuals report some similar experiences.

⁷⁶ APA TRANSGENDER BROCHURE, *supra* note 95, at 3.

⁷⁷ Kenneth J. Zucker, *Gender Identity Disorder in Children and Adolescents*, 1 ANN. REV. CLINICAL PSYCHOL. 376, 380 (2005).

⁷⁸ FRANK W. LEWINS, *TRANSSEXUALISM IN SOCIETY: A SOCIOLOGY OF MALE-TO-FEMALE TRANSSEXUALS* (MacMillan Education Australia 1995).

G. GENDER IDENTITY AND SEXUAL ORIENTATION

i. Are transgender people always attracted to the same sex?

Gender identity and sexual orientation are distinct. Transgender men can be attracted to men, women, or both. Transgender women can be attracted to women, men, or both. Gender identity refers to an internal sense of being masculine, feminine, third gender, or genderqueer. Sexual orientation, on the other hand, refers to an individual's sexual attraction to and/or intimate romantic relations with others. A transgender individual may be heterosexual, lesbian, gay, bisexual, MSM, or WSW.

Asylum adjudicators should exert caution when addressing a transgender applicant since transgender individuals usually label their sexual orientation based on the gender with which they identify. For example, a transgender man (someone who was assigned a female sex at birth but now identifies as a man) who is attracted to other men will likely identify as gay or MSM.⁷⁹

H. TRANSITIONING FOR TRANSGENDER INDIVIDUALS

i. What is transitioning?

In the Western world, transitioning is the process of changing the presentation of gender to reflect one's innate sense of gender. The process affects both the body and the mind, and it includes physical, social, and psychological changes. Not all transgender individuals in the West will choose to undergo hormone treatment and/or sex reassignment surgery (SRS) in order to alter their physical characteristics. Moreover, in the context of RSD, it is crucial to understand that the very concept of transitioning does not apply to the vast majority of transgender asylum seekers, who come from regions of the world where such practices are culturally, religiously, and socially unthinkable.

ii. How do individuals transition?

There is no single way to transition between genders. However, people who transition often share one or more of the following experiences: grooming or wearing clothing that reflects their preferred gender, using a new name, changing sex designation on official identity documents (if legally permitted), using hormone therapy treatment, and/or undergoing medical procedures that modify their body, including surgeries that alter the face, chest, and/or genitals. The ability to make these changes depends on the culture, social setting, and economic opportunities of individuals. Most cultures restrict transsexual people from expressing their preferred gender and forbid them from changing sex designation on legal documents.⁸⁰

⁷⁹ Jaimie F. Veale et al., *Sexuality of Male-to-Female Transsexuals*, 37 ARCHIVES SEXUAL BEHAV. 586, 587-89 (2008).

⁸⁰ See, e.g., *RRT Case No. 0903346* [2010] RRTA 41 (Austl.), available at <http://www.unhcr.org/refworld/docid/4b8e783f2.html>; *RRT Case No. 0902671* [2009] RRTA 1053 (Austl.), available at <http://www.unhcr.org/refworld/docid/4b57016f2.html>; see also ILGA, Map – Ability to change

Hormonal therapies consist of testosterone for transgender men and estrogen for transgender women. Many people report a greater feeling of peace after beginning hormone therapy. These hormones have profound effects on the body. For example, estrogen softens the skin, redistributes fat deposit to a more “feminine” appearance, reduces body hair, and alters mood. Testosterone lowers the voice, increases body hair, redistributes body fat to a more “masculine” appearance, and stops the menstrual cycle.⁸¹

A variety of SRS procedures exist. A transsexual man may undergo genital surgery to remove the ovaries and uterus and create a penis and testes. A transsexual woman may have surgery to remove the Adam’s apple or change the thorax, and to form a clitoris, labia, and vagina. Transsexual men and women may also remove or augment breasts and use facial reconstruction to suit their preferred genders.

iii. Why do some people decide to transition and some do not?

In most Western countries, people decide to transition because they are looking to find comfort, happiness, and a sense of authenticity in their lives. Transitioning leads to a better overall quality of life for many people and is often the only effective treatment for the distress they feel. It is important to note that transitioning is a personal choice that depends on how comfortable an individual feels in a given culture and social environment.

Some individuals may not transition because of barriers to medical treatment or to avoid stigmatization. As mentioned above, the vast majority of applicants will originate from regions and cultures where there is no such possibility of altering one’s gender. It is also important to note that many have no desire to alter their bodies but do express their gender in other ways, including dress and behavior.⁸²

I. PREJUDICE, DISCRIMINATION, AND PERSECUTION

i. How do governments and communities treat transgender individuals?

Negative attitudes towards transgender and intersex people correspond to the importance that a society places on the binary gender model and the level of gender stereotypes, sexism, and gender inequalities that exist within that society.⁸³ Governments differ in their official attitudes towards transgender individuals. These differences include the extent to which transgender individuals are allowed to express their gender and whether individuals who wish to transition are granted access to medical treatments and procedures. The vast majority of governments around the world block access to these procedures and do not

gender on official documents, available at <http://ilga.org>; Transsexual Road Map, available at <http://www.tsroadmap.com/index.html>.

⁸¹ NHS, A GUIDE TO HORMONE THERAPY FOR TRANS PEOPLE, <http://www.gires.org.uk/assets/DOH-Assets/pdf/doh-hormone-therapy.pdf>.

⁸² WALTER MEYER ET AL., THE HARRY BENJAMIN INTERNATIONAL GENDER DYSPHORIA ASSOCIATION’S STANDARDS OF CARE FOR GENDER IDENTITY DISORDERS, SIXTH VERSION 3 (Feb. 2001), <http://www.wpath.org/documents2/socv6.pdf>.

⁸³ EUROPEAN COMMISSION, TRANS AND INTERSEX PEOPLE (2012), available at <http://www.refworld.org/pdfid/4fdedde32.pdf>.

allow medical insurance to pay for them. One very notable instance is the Islamic Republic of Iran, whose authorities strongly encourage transgender individuals as well as gay men to undergo sex reassignment as a “remedy” for homosexuality.⁸⁴

Many transgender individuals, especially those who express their preferred gender, face frequent emotional, physical, and sexual abuse in all areas of life, including school, work environments, local communities, and even among family members.⁸⁵ Many governments and local authorities decline to prosecute offenders or protect victims.⁸⁶

Governments also differ in whether they allow workplace discrimination based on gender identity. The vast majority of refugee status applicants come from countries that allow such discrimination. A large proportion of transgender persons are unable to enter the workforce, are marginalized in their communities, and have little or no legal recourse.

ii. What are the psychological consequences of the prejudice, discrimination, and persecution transgender individuals face?

Gender is a central element to one’s identity. Human rights violations take a large psychological toll on transgender people. Transgender individuals living in social environments that prevent or stigmatize their preferred gender expression are susceptible to psychological distress, including mood and anxiety disorders, feelings of isolation, sadness, and shame.⁸⁷ This distress can be unbearable and may lead to substance abuse and/or suicide.⁸⁸ Psychological effects of being transgender often continue even after individuals have transitioned to their chosen gender and/or relocated to a safer environment. Transgender individuals suffering from Post-Traumatic Stress Disorder may be unable to remember or accurately describe traumatic experiences.⁸⁹

iii. Why is gender identity relevant in the context of asylum adjudication?

According to UNHCR and international refugee law, individuals who fear persecution because of their membership in a sexual minority may be eligible to seek international protection and claim refugee status. In the context of RSD, it is crucial to remember that under international human rights standards, gender identity is a fundamental characteristic that individuals have a right to express and cannot be forced to suppress or change.⁹⁰

⁸⁴ B.J. Carter, *Note: Removing the Offending Member: Iran and the Sex-Change or Die Option as the Alternative to the Death Sentencing of Homosexuals*, 14 J. GENDER RACE & JUST. 797, 798 (2011).

⁸⁵ Emilia L. Lombardi et al., *Gender Violence: Transgender Experiences with Violence and Discrimination*, 42 J. HOMOSEXUALITY 89, 97-100 (2001).

⁸⁶ Flaherty & Fisher, *supra* note 65, at 209.

⁸⁷ Masahiko Hoshiai et al., *Psychiatric Comorbidity Among Patients with Gender Identity Disorder*, PSYCHIATRY & 65 CLINICAL NEUROSCIENCES 514, 514-15 (2010).

⁸⁸ Kristen Clements-Nolle et al., *Attempted Suicide Among Transgender Persons: The Influence of Gender-Based Discrimination and Victimization*, 51 J. HOMOSEXUALITY 53, 54-56 (2006).

⁸⁹ See AM. PSYCHIATRIC ASS’N, *supra* note 95, at 253; Suzuki, *supra* note 52, at 272.

⁹⁰ See Yogyakarta Principles, *supra* note 57; IGLHRC DOSSIER, *supra* note 82, at Annex III.

III. INTERSEX CONDITIONS

A. UNDERSTANDING INTERSEX CONDITIONS

i. What does intersex mean?

The term “intersex” refers to individuals whose biological/anatomical sex cannot be classified easily as male or female. Intersex conditions can include the presence of ambiguous genitals, atypical development of internal reproductive organs, atypical sex chromosomes, or atypical production of sex-related hormones or an inability to respond to these hormones.⁹¹

An estimated one in 2,000 babies is born with an anatomical feature or chromosome pattern that does not fit typical definitions of male or female. These conditions occur naturally, if rarely, and individuals and societies have developed different ways of responding to this reality.⁹² Intersex people have lived in all cultures throughout history.

ii. What are examples of intersex conditions?

The following list describes several – but not all – intersex conditions:

- Vaginal agenesis: when a female infant is born without a vagina
- Penile agenesis: when a male infant is born without a penis
- Turner syndrome: when a female infant is born with one, rather than two, X (female) chromosomes, causing developmental anomalies
- Klinefelter syndrome: when a male infant is born with an extra X (female) chromosome and displays feminine physical characteristics
- Congenital adrenal hyperplasia: when a female infant has masculinized genitalia because her adrenal glands produce high volumes of certain hormones
- 5-alpha-reductase deficiency: when a male infant has feminine genitalia because of low levels of the 5-alpha-reductase enzyme

⁹¹ National Institute of Health, *Intersex*, MEDLINE PLUS, <http://www.nlm.nih.gov/medlineplus/ency/article/001669.htm> (last updated Aug. 2, 2011); AMERICAN PSYCHOLOGICAL ASSOCIATION, ANSWERS TO YOUR QUESTIONS ABOUT INDIVIDUALS WITH INTERSEX CONDITION (2006), available at <http://www.apa.org/topics/sexuality/intersex.pdf> [hereinafter APA INTERSEX BROCHURE]; *Intersex Conditions*, INTERSEX SOCIETY OF NORTH AMERICA, <http://www.isna.org/faq/conditions> (last visited Sept. 6, 2013).

⁹² FAQs, ADVOCATES FOR INFORMED CHOICES, <http://aiclegal.org/who-we-are/faqs/> (last visited Sept. 6, 2013).

- Partial androgen insensitivity: when a male infant has feminine genitalia because his cells do not fully respond to testosterone and related hormones
- Complete androgen insensitivity: when a male infant has feminine genitalia because his cells do not respond to testosterone and related hormones⁹³

B. INTERSEX AT BIRTH

i. Are all variations of sex development (intersex conditions) identifiable at birth?

No, not all variations are identifiable at birth. Only those babies with ambiguous genitals - difficult to classify as male or female - are typically diagnosed as intersex at birth. Other instances of intersex conditions are usually not diagnosed at birth because their characteristics develop or manifest later in life. For example, hormonal shifts in puberty may not follow a typical trajectory. An individual assigned female sex at birth may fail to start menses, or an individual assigned male sex at birth may begin to grow breasts during puberty. Some intersex people discover their intersex status only when they try to have children and are found to be infertile.

ii. What happens when a baby's genitals aren't easily classified as male or female?

In most Western countries, when a baby is born with ambiguous genitals, doctors perform tests to determine the conditions causing variations in the sex development of the child. They conduct these tests, in part, because some intersex conditions are associated with medical conditions that may jeopardize health, and also to provide more information for doctors and the family about the condition. Parents and doctors alike are frequently unsettled by the child's atypical genitals and the possibility of "gender uncertainty." There is often a great sense of urgency about making a quick gender assignment, despite the fact that up to 20% (or more, depending on the specific condition) of these children later reject their gender assignment.⁹⁴ Genital surgery is commonly performed in the first two years of life, often by six months of age.⁹⁵ Removal of internal sex organs is also a common practice.

⁹³ National Institute of Health, *supra* note 90.

⁹⁴ Hughes IA et al., *Consensus statement on management of intersex disorders*, 91 ARCH. DIS. CHILD 554, at 555 (2006). Karkazis K., *Fixing Sex: intersex, medical authority, and lived experience*, REPORT TO THE UN SPECIAL RAPPORTEUR ON TORTURE: MEDICAL TREATMENT OF PEOPLE WITH INTERSEX CONDITIONS AS TORTURE AND CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT 2, 2 (Advocates for Informed Choices ed., 2012); Furtado, P. S. et al., *Gender dysphoria associated with disorders of sex development*, REPORT TO THE UN SPECIAL RAPPORTEUR ON TORTURE: MEDICAL TREATMENT OF PEOPLE WITH INTERSEX CONDITIONS AS TORTURE AND CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT 2, 2 (Advocates for Informed Choices ed., 2012).

⁹⁵ S. Creighton et al., *Timing and nature of reconstructive surgery for disorders of sex development - introduction*, 6 J. Pediatr. Urol. 602 (2012).

iii. Is surgery necessary?

Genital surgery is not necessary for gender assignment, and atypical genitals are not in themselves a health issue.⁹⁶ Nonetheless, doctors around the world frequently perform surgery in children with intersex conditions. While surgery is sometimes necessary for medical reasons, such as to create an opening for urine to exit the body, most procedures commonly performed on children with intersex conditions are cosmetic and done for gender-related social reasons such as “to achieve an unobstructed, sex-typical manner for urination (*i.e.*, standing for males).”⁹⁷ Rationales often provided for such surgery for children include reducing gender confusion for the child and parents, responding to parental concerns that the child be “normal” and accepted, and promoting the child’s social integration and happiness.⁹⁸

There is a movement in the West to convince doctors to avoid surgery until the child is older and able to make a decision about surgery. It is widely recognized that there is insufficient data on surgical and sexual outcomes to support any recommendation about the timing of genital surgery or to predict gender identity outcomes with confidence in many conditions.⁹⁹ However, evidence that surgery provides these benefits is lacking.¹⁰⁰ No studies have linked early genital surgery to successful gender outcomes.¹⁰¹

C. INTERSEX IN LATER LIFE

i. Are intersex people always happy with their surgically assigned sex?

According to research, intersex individuals are more likely to feel uncomfortable in their assigned gender than the general population.¹⁰² As many as 20% of children with intersex conditions may be forced to undergo irreversible genital surgeries in order to achieve a gendered appearance that is ultimately inconsistent with their assigned gender. Gender identity issues have been related to behavioral and emotional problems, with a potential link to increased risk of suicide.¹⁰³ These concerns reinforce the position of intersex rights associations that advocate avoiding genital surgery until the individual is able to make an informed decision about whether surgery is right for him or her.

⁹⁶ K. Karkazis et al., *Genital surgery for disorders of sex development: implementing a shared decision-making approach*, 23 J. Pediatr. Endocrinol Metabol. 789 (Aug. 2010).

⁹⁷ Creighton, *supra* note 94, at 2; Erik Parens ed., *SURGICALLY SHAPING CHILDREN: TECHNOLOGY, ETHICS AND THE PURSUIT OF NORMALITY 2* (1st ed., Johns Hopkins Univ. Press 2008).

⁹⁸ Parens, *supra* note 96, at 2; Karkazis 2010, *supra* note 95, at 2.

⁹⁹ P. Lee et al., *Review of recent outcome data of disorders of sex development (DSD): Emphasis on surgical and sexual outcomes*, REPORT TO THE UN SPECIAL RAPPORTEUR ON TORTURE: MEDICAL TREATMENT OF PEOPLE WITH INTERSEX CONDITIONS AS TORTURE AND CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT 2, 2 (Advocates for Informed Choices ed., 2012); L.M. Liao et al., *Determinant factors of gender identity: a commentary*, REPORT TO THE UN SPECIAL RAPPORTEUR ON TORTURE: MEDICAL TREATMENT OF PEOPLE WITH INTERSEX CONDITIONS AS TORTURE AND CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT 2, 2 (Advocates for Informed Choices ed., 2012).

¹⁰⁰ Hughes, *supra* note 93, at 2; Karkazis 2010, *supra* note 98, at 2; Creighton, *supra* note 94, at 3.

¹⁰¹ Creighton, *supra* note 94, at 2.

¹⁰² Karkazis 2010, *supra* note 98, at 3; Furtado, *supra* note 93, at 3.

¹⁰³ Furtado, *supra* note 96, at 3.

ii. What happens when individuals find out about their intersex status later in life?

Some intersex individuals are unaware of their condition until they begin puberty. For example, some intersex individuals assigned female at birth do not begin to menstruate. Other secondary physical characteristics such as facial hair and breast development may appear or fail to appear in adolescence. Learning about one's own intersex status later in life can be very distressing, resulting in anger, shame, depression, and a lack of trust towards family. In the vast majority of countries where applicants originate, these individuals will feel completely isolated and will not have access to any support system.

D. PREJUDICE, DISCRIMINATION, AND PERSECUTION

i. Why are intersex conditions relevant in the context of asylum adjudication?

Intersex refugees may be fleeing a society that excludes them or that seeks to consider them male or female against their will. For intersex refugees fleeing exclusion, violence, and medical interventions, the outlook is often bleak. Nevertheless, according to UNHCR and international refugee law, individuals who fear persecution because of their membership in a sexual minority may be eligible to seek international protection and claim refugee status. In the context of RSD, it is crucial to remember that under international human rights standards, gender identity is a fundamental characteristic that individuals have a right to express and cannot be forced to suppress or change.¹⁰⁴

¹⁰⁴ See Yogyakarta Principles, *supra* note 57; IGLHRC DOSSIER, *supra* note 47, at Annex III.

ABOUT ORAM

ORAM — Organization for Refuge, Asylum & Migration is the leading agency advocating for lesbian, gay, bisexual, transgender, and intersex (LGBTI) refugees worldwide. Based in San Francisco in the United States, ORAM is the only international NGO that focuses exclusively on refugees and asylum seekers fleeing sexual orientation and gender identity-based violence.

ORAM works to carry out its worldwide mission on multiple fronts, from direct client assistance and global advocacy to logistical support and training. Among ORAM's many groundbreaking undertakings are its comprehensive and innovative trainings and its work in the assisted resettlement of LGBTI refugees. Through these strategic activities, ORAM is expanding the international humanitarian agenda to include LGBTI persons and to secure LGBTI refugees' safety.

Concurrently, ORAM advocates within a broad range of communities to include these refugees within their scope of protection.

Informed by its intensive legal fieldwork, ORAM conducts international and domestic advocacy to protect LGBTI individuals fleeing persecution worldwide through collaboration with a wide array of NGO partners. ORAM continuously provides educators, community leaders, and decision-makers with much-needed information about LGBTI refugees.

ORAM's publications meld legal expertise with research-based insights in the social sciences and thorough knowledge of current events. These are informed by ORAM's comprehensive community-based understanding of LGBTI issues. Together these three pillars yield an unsurpassed capacity to bring about real change.

As a steward and educator on LGBTI refugee issues, ORAM develops and provides targeted, culturally-competent trainings for refugee protection professionals, adjudicators, and other stakeholders worldwide. This report is intended to inform such trainings.

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