

## ***Getting it Right!***

### **30 recommendations for improving the lives of people claiming asylum on the basis of sexual orientation or gender identity (SOGI) in Italy**

It is now nearly forty years since the first SOGI asylum claims were recognised, and a great deal of progress has been made at a global and European level. There is increased awareness of SOGI persecution as well as examples of good policy and practice that should be publicised and replicated. However, alongside these, the SOGICA project found many areas where improvement is urgently needed, and we address these here. These recommendations largely reflect the views of almost 500 people, those who participated in the SOGICA project's interviews, focus groups and online surveys.

These recommendations are written in the midst of the COVID-19 pandemic, which, among other things, has shown that at times of crisis inequalities between individuals and groups in society widen. This underlines the need for domestic legislation and policy to be based on international refugee and human rights standards, and not dependent on the good will of the government of the day. This will help ensure that in future global crises we really will be 'all in it together'.

We are aware that some improvements to the Italian asylum system depends on the reform of the Common European Asylum System (CEAS) at EU level. However, here we focus on recommendations that can be implemented at **national level**, also in light of the substantial discretion left to EU Member States by relevant EU provisions on asylum procedures and reception.

#### **Recommendations: asylum law and policy**

##### **1. Repeal the so-called '*decreti sicurezza*' [security decrees]**

The latest legislative reforms, which emphasise again an unproven connection between immigration and asylum and national security, have seriously jeopardised the protection that asylum claimants and refugees should enjoy in Italy. We urge **the Italian government** to repeal the so-called '*decreti sicurezza*' entered into force in 2018 and 2019 and to reconsider as well the amendments to the asylum system introduced by the so-called '*decreto Minniti-Orlando*' [Minniti-Orlando decree] in 2017, including the removal of a degree of appeal, in line with the following recommendations.

##### **2. Safe passage to Europe/Italy**

An essential aspect of a fair asylum system is to ensure that individuals at risk can reach Europe to claim protection. Even when passage to Europe for SOGI minorities fleeing persecution is possible, it is almost always extremely risky and costly. Similarly to other asylum claimants and migrants, they are often exposed to physical, psychologic and sexual abuses in countries of transit. Building on the 2018 motion by the European Parliament, **the Italian government** should expand and consolidate humanitarian admission programmes and visas to help people in flight reach Europe safely.

##### **3. Correct implementation of the Dublin Regulation (III)**

Italy is the country of destination of several transfers of asylum claimants following the application of EU Regulation no. 204/2013, namely Dublin III. Our research has shown that these transfers are often carried

out in ways that are detrimental to human dignity and without any individual assessment of the individual case. As a result, when SOGI claimants are involved, their specific needs are not addressed at arrival in Italy. We urge **the Italian government** to reconsider its overall approach to Dublin transfers and to ensure, as a preliminary condition for every transfer, an individualised assessment of the specific needs of the claimant in order to grant access to all services and assistance that they may need.

#### **4. A statistical evidence base**

Any transparent and accountable asylum system needs to maintain and publish rigorous and up-to-date statistics on different types of asylum claims and their outcomes. Yet, within Europe, there are still no clear and comprehensive statistics for SOGI claims. Italy is not an exception to this. **The Ministry of Internal Affairs and judicial authorities** should record the number of SOGI claims submitted, and the grounds used to accept or refuse them (for instance, by indicating the Convention ground or lack of, persecution or lack of, credibility or lack of). This information should be made public and regularly updated in order to support the work of all people, organisations and authorities working within the asylum system and with claimants, including NGO service providers, lawyers and researchers.

#### **5. Implementing the right to information on the procedure and on the Convention grounds**

Claimants are often unaware at the time of their arrival that SOGI can be a basis for claiming asylum. This contributes to 'late' and poorly prepared claims. We recommend that all relevant **Italian authorities**, as well as **non-State actors** involved in the management of asylum claimants arrival, provide information about asylum and the right to make a SOGI-based claim, including in easy-read formats and different languages, at a minimum at ports of entry, at registration in Questura and at asylum interview, reception and accommodation centres. At the start of the screening or initial interview, the **interviewer** should confirm that the claimant is aware of the different reasons for claiming asylum, including SOGI persecution, and that confidentiality would be ensured at all stages of the process. However, none of these measures should mean that failure to declare SOGI as the basis for claiming asylum is subsequently held against claimants.

#### **6. Doing justice to 'late' claims**

Even if the measures recommended at point 5 are ensured, SOGI asylum claimants may still make their asylum claim sometime after arriving to the host country for a number of reasons, including their likely fear of disclosure to officials or to other people they come in contact with. This may also happen at the latest stages of the asylum procedure or even years after the arrival in the host country. Yet, 'late disclosure' continues to be a factor that is held against claimants and used to discredit their claims. **Italian asylum and judicial authorities** should not discriminate against 'late' claims or use this circumstance to undermine the credibility assessment, as confirmed by European jurisprudence and the Supreme Court.

#### **7. Limiting the duration of asylum procedures**

The length of time that many claimants must wait for an initial decision and then for their appeal – sometimes totalling years – is a cause of much distress, as during this period people are often unable to study, work, secure family reunion or move forward in any way with their lives even when legislation ensures the enjoyment of these rights. While recent efforts carried out at administrative level are paying off, the length of judicial procedures remains a serious concern. **Italian asylum and judicial authorities** need to invest further in building their capacity to shorten the time and publish targets for both initial decisions to be made and for appeals to take place, although not at the expense of a thorough consideration of claimants' cases.

#### **8. Statutory guidance on SOGI asylum**

Data show that, often, Italian decision-makers refer to UNHCR SOGI Guidelines No. 9 when dealing with SOGI claims. **The National Asylum Commission, in cooperation with relevant national and international authorities and organisations**, should promote further the use of these UNHCR Guidelines in order to ensure that all members of the Territorial Commissions as well as all judges of Tribunals' specialised sections on migration involved in the interview and assessment of SOGI claims apply such guidance

consistently. Alternatively, and only in the attempt to set higher protection standards, **Italian authorities** may consider to produce and make public guidance for decision-makers on SOGI claims to be regularly reviewed. **Italian authorities** should also ensure that SOGI asylum claimants and refugees should be recognised as the main source of expertise in this field of policy and law, and should be involved in preparing and delivering guidance and training materials.

## 9. Mandatory training

Even where good policies on training exist, with the involvement of specialised international organisations, there is some degree of inconsistency in decision-making, and officials failing to apply existing law and policy correctly. **The Italian government** should expand the current provision of effective training to the newly employed administrative officials for all parties, including all decision-makers sitting in Territorial Commissions, judges, interpreters, and service-providers, to improve their confidence in the quality of their work as well as to benefit SOGI asylum claimants. Training should be mandatory on induction and repeated at regular intervals, and should cover all relevant aspects for a fair evaluation of SOGI claims (for instance, terminology, interview techniques, the use of COI, anti-stereotyping approach).

## 10. Promoting a culture of empathy

The specificities of guidance and training materials depend on the institutional context. However, there are some elements that should be included in all materials, such as: the importance of empathy, awareness of equality and human rights, appropriate terminology, confidentiality assurances, how to create a safe space, training on the effects of trauma on individuals and unconscious bias. We recommend that all **asylum and judicial bodies** as well as all **third parties** involved in the asylum system in Italy should develop – if still lacking – or apply rigorously a code of conduct that includes equality and diversity as key principles.

## 11. Improving legal advice and representation

SOGI asylum claims are often particularly complex and require legal representatives who have experience and expertise in this area. Yet, despite the legislation in force and the current organisation of reception centres, many claimants have difficulty accessing good legal advice. According to our data, part of the problem is the lack of preparation of lawyers on SOGI claims, the alleged misuse of funding for legal aid and the lack of control on the provision of relevant services in reception centres by private actors. **The Italian government** needs to invest in this area not only as an ethical requirement, but in the interest of efficiency, whereas the **National Bar Council** should support and complement asylum and judicial authorities' training initiatives, also for promoting a culture of empathy.

## 12. Offering adequate interpretation services

Interpreters have an important role in interviews and at judicial hearings, and it is critical that SOGI claimants are able to feel confident about interpreting services in both these settings. An interpreter who is homophobic or transphobic, or perceived by the claimant to be such, can seriously damage communication. SOGI claimants may be wary of interpreters from their own ethnic communities as they may fear, for example, they will put them at risk by disclosure. **Italian asylum and judicial authorities** should allow claimants to request a replacement where they have concerns about the interpreter provided, who should be adequately selected and trained to ensure a confidential, neutral and specialised approach in the interpretation of SOGI cases. They should also facilitate the exercise of the right to request a male or female interpreter when the interpreter is already provided. When interpreters are not provided, as it often happens in Tribunals, it is essential to verify the qualifications of the interpreter accompanying SOGI claimants and to grant them an adequate compensation for the service offered.

## 13. Procedural needs

Drawing also from good practices already in place within some Territorial Commissions, there are a number of practical improvements that **asylum and judicial authorities** should make both in relation to interview and appeal hearings of SOGI claimants and ensure these are consistently implemented across the country. Officials should always introduce themselves, check the claimants' name and confirm how they would like to be addressed. Confidentiality protocols should be in place, including for interpreters, and the claimant

should be informed of these, also in relation to the expected video recording of the interview. Interviewers and judges should avoid questions that seek a linear evolution or moment of discovery such as ‘when did you realise you were gay (or lesbian/bisexual/transgender/etc.)’ in favour of open-ended questions that allow the claimant to tell their story in their own time and terms. We recommend that claimants be allowed to take a supporter or friend, as well as their legal representative, to their interview to provide moral support. To improve accountability and claimants’ trust in proceedings, there should be accessible complaints procedures. In relation to appeals, a particular concern for SOGI asylum is the removal of the asylum claimants’ entitlement to be heard in person as often SOGI claims are rejected on credibility grounds. We recommend **the Italian government** to reinstate the presumption that claimants are heard in person by the judge deciding their case.

#### **14. No such thing as ‘safe countries’**

Italy, as some European countries have already done for years, has recently designated some third countries as ‘safe’, meaning that claims from these countries will be assumed to be unfounded or less likely to be successful. This is not only in conflict with the need to carry out an individual assessment of each asylum claim, but is particularly problematic for SOGI claims, as SOGI rights and protection may be denied in countries with otherwise acceptable standards. **The Italian government** should no longer designate some countries as ‘safe’, thus returning to the policy followed until the adoption of the latest legislative reforms.

#### **15. Accelerated procedures**

‘Safe country’ lists are often accompanied by ‘fast-track’ procedures, including at borders, which are detrimental to SOGI claimants, whose cases are recognised as being complex and time-consuming to prepare. Rather than making use of accelerated decision-making procedures for claimants of certain nationalities, **Italian asylum authorities** should favour the same thorough consideration to all claims in line with the criteria established in the European jurisprudence and by the Supreme Court.

#### **16. Improving the quality of Country of Origin Information (COI)**

Accurate and extensive COI is critical to good asylum decision-making, yet data on SOGI asylum is scarce and often outdated, leading to flawed decisions. **Italian asylum and judicial authorities** should make better use of existing resources, such as the European Asylum Support Office (EASO) COI portal in decision-making and, when not available, develop their COI resources. General and SOGI asylum NGOs that may produce adequate material in this respect should be invited to contribute their expertise and knowledge (and appropriately paid for their input).

#### **17. Making use of all the Refugee Convention grounds**

In order to recognise the many factors and identities that are the basis for SOGI persecution, **Italian asylum and judicial decision-makers** should make better use of all the Refugee Convention grounds when assessing SOGI asylum claims, rather than invariably relying on the ‘particular social group’ (PSG) category..

#### **18. Persecution over Refugee Convention grounds**

Following domestic decisions that accurately reflect international refugee law and European jurisprudence, the question for **Italian asylum and judicial decision-makers** to ask is not whether claimants are ‘truly’ LGBTIQ+ (lesbian, gay, bisexual, trans, intersex, queer and others), but only whether they are likely to be persecuted on SOGI grounds if they were to be returned to the country of origin.

#### **19. Standard and burden of proof**

Asylum claimants are often required to meet unfairly high evidentiary standards. In practice, asylum and judicial authorities apply a standard of proof that goes beyond the ‘reasonable degree’ threshold claimants are required to meet under international refugee law, often simultaneously violating the principle of the benefit of the doubt. Asylum and judicial authorities also often fail to adopt a sufficiently active role in evidence-gathering. Following the principles established by the Supreme Court, **Italian asylum and judicial**

**authorities** should respect the correct standard of proof, including the principle of the benefit of the doubt, and share the burden of proof with asylum claimants.

## 20. Use of humane means of evidence

Although it is now accepted that evidence of an explicit sexual nature should not be elicited or accepted, interrogating claimants about their relationships and behaviour regularly goes beyond what should be permissible. Excessive scrutiny of claimants' sexual history and experiences of persecution still takes place in interviews and hearings. This fails to respect their personhood and would not be acceptable in other settings. **Italian asylum and judicial authorities** should apply the same standards of civility and dignity to SOGI (and all) asylum claimants when gathering evidence, as established by the Court of Justice of the EU.

## 21. Stereotyping

Despite some improvements emerged through our research, some administrative and judicial decision-makers still fail to understand the individual claimant because of assumptions and prejudices. These include, among others, expectations that claimants have a partner or are sexually active, take part in LGBTIQ+ activism, provide a 'coming out' narrative, and have difficulty reconciling their SOGI with their religious beliefs. Conforming to such stereotypes undermines the individual premise of refugee decision-making. **Italian asylum and judicial authorities** should not make use of 'stereotyped notions' neither during the interviews, nor in their decisions.

## 22. Credibility

Credibility is a key element in many, if not most, SOGI asylum decisions, by which we mean overall belief in the claimant's testimony. Despite the improvements emerged through our research, some decision-making is still based on an attempt to objectively 'prove' a claimant's SOGI and starts from a position of scepticism that the claim is 'genuine', especially if SOGI claimants arrive from specific countries. Time and again during our fieldwork, claimants asked us, despairingly or wearily: 'So how can I prove my SOGI?' Drawing on the good practices already in place and the principles established in the national and European jurisprudence, we recommend that **Italian asylum and judicial authorities** take the evidence, particularly the personal testimony, submitted by claimants as the starting point for credibility assessment. The default position should be belief in claimants' account of who they are and what has happened to them. SOGI claimants should always be given the chance to explain apparent contradictions, rather than asking evidence that is impossible to provide.

## 23. Granting the right status

SOGI asylum claimants have been often granted subsidiary or humanitarian protection, rather than full refugee status as should be the case under international refugee law. **Italian asylum and judicial authorities** should emphasise, in training as well as in any future SOGI guidance, that SOGI claimants can meet all criteria of the refugee definition as provided by Article 1(2) of the Refugee Convention. While subsidiary or other kinds of protection not appropriate for such claims, the recognition of the refugee status must not be assumed as a 'reward' that depends on the intensity of the abuses and the suffering to which SOGI claimants have been exposed to.

## 24. Facilitating family reunification

If international protection is granted, a first priority for some individuals is to be reunited with their children and partners. **The Italian government and judicial authorities** should ensure that definitions of family include same-sex unions for the purpose of family reunification, and the evaluation of SOGI claimants' requests should take into account both their difficulty in having their relationships recognised in their countries of origin or transit, as well the connected struggle to provide evidence of such unions.

## Recommendations: beyond the asylum adjudication process

### 25. Promoting social integration

We recommend **the Italian government** to develop holistic policies for refugee integration that recognise the specific needs of SOGI claimants. The priority for such policies is to ensure that every claimant and refugee feels safe and welcomed from the time of arrival, and is quickly recognised as a respected member of the host society, starting from reception and accommodation centres. This is essential in light of the increasing hostility to refugees (and migrants more generally) in Europe, juxtaposed with persistent homophobia and transphobia. To this end, the **Italian government** must repeal the unreasonable distinction between asylum claimants and refugees for the purpose of reception within the former SPRAR system (now SIPROIMI), thus re-establishing the previous reception system based on small-scale centres and strengthening it across the entire country.

### 26. Safe and adequate accommodation

Many SOGI asylum claimants are housed in general accommodation or reception centres where their needs are unrecognised or – worse – they experience discrimination. All relevant **central and local authorities** need to pay particular attention to the safety of SOGI claimants in asylum accommodation, where residents are vulnerable to homophobic, transphobic, racist and anti-migrant violence and hate crime. **Italian authorities** should give SOGI claimants the choice to be accommodated with other SOGI claimants in separate facilities if that is their wish, and in any case avoid any ‘camp-style’ accommodation. There are particular concerns for trans claimants, making trans-specific accommodation managed by NGOs upon request a priority. Individuals should have as much choice as possible about the area where they live and the type of housing in which they live, and have access to appropriate information, support groups and social activities. Finally, the provision of safe and adequate accommodation solutions should not terminate as soon as international protection is granted.

### 27. Fostering physical and mental health

SOGI asylum claimants have particular health needs that are often overlooked: like many asylum claimants, they are likely to have mental health problems and often suffer from depression. Hormonal or gender-affirming therapy for trans claimants and refugees, including continuity of medical care, is also an area of need. **Italian health authorities** should increase service provision in both these areas and ensure SOGI asylum claimants and refugees are aware of their healthcare entitlements. More broadly, access to healthcare should be universal, not restricted to emergency provision, and include staff and interpretation services trained on asylum and SOGI matters. Every administrative obstacle hampering such access, including those based on an unreasonable distinction between asylum claimants and refugees should be eliminated urgently.

### 28. Facilitating equal access to the labour market and education system

Our research has shown that most asylum claimants experience serious difficulties to get a job. SOGI claimants are often discriminated against at work on grounds of both SOGI and ethnic background or refugee status. They may also need to rely on community support to find work or to accept every sort of labour exploitation – all factors which may make it hard for them to be open about their identities, and make it necessary for **the Italian government, employers and trade unions** to take measures to tackle these particular experiences of workplace discrimination. The difficulty to enjoy the right to work, in combination with a long asylum process, may not have a particular SOGI dimension but was raised by nearly all of our participants as a cause of stress and hardship. This means that **the Italian government** should include in social integration policies measures to improve access to the labour market, further and higher education, and training. Short-term admission programs for inclusion in specific economic sectors, such as the one entered in force in 2020, cannot be a systematic solution to the problems emerged here.

## 29. Nurturing civil society initiatives and NGOs

Asylum claimants often trust NGOs and depend on them for support, far more than they depend on other service providers. There are excellent refugee as well as SOGI organisations that offer invaluable help. However, NGOs often support either refugees or SOGI minorities, but not both. This means SOGI asylum claimants and refugees are not always able to obtain holistic services that are responsive to all their needs. **Italian authorities** should fund SOGI-specific refugee NGOs to expand their reach, whereas newly established **SOGI supporting groups** should receive adequate training before offering relevant services. There is also potential for **NGOs** working in different fields to explore partnership options and develop joint or shared services, but always drawing on the expertise of the SOGI-specific refugee organisations and SOGI refugees themselves. Community organisations set up by SOGI claimants themselves are a huge source of support and expertise but often face a particular struggle to obtain funding. **Funders** should make their funding more accessible to new community organisations with expertise on SOGI asylum.

## 30. International cooperation for fostering LGBTIQ+ equality

It should always be remembered that granting refugee status to SOGI asylum claimants who have reached Europe, while vital, is a poor alternative to preventing individuals needing to flee their countries of origin and undergo perilous and costly journeys to Europe in the first place. **The Italian government, alone and in cooperation with the EU, Council of Europe and other regional and international organisations**, should encourage greater respect for SOGI minorities' rights and needs around the world, including by building the capacity of LGBTIQ+ activists and NGOs. **The Italian government** should also support the improvement of the CEAS where higher standards of human rights protection can be achieved during the negotiations of the upcoming relevant reform.

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In making these recommendations we are aware that there is a bigger picture; that many of the problems that affect SOGI minorities claiming asylum are shared with other claimants, refugees and migrants more generally – issues such as racism, a culture of disbelief, reductions in legal advice and representation, and arbitrary and inconsistent decision-making. While these issues are beyond the scope of this project, we believe these recommendations are a basis for making some focussed and often small changes that would nonetheless make a real difference to the lives of SOGI and other asylum claimants and refugees within the larger context of the struggles for the rights of all refugees and SOGI minorities.

### ***The SOGICA project***

*SOGICA is a four-year (2016-2020) European Research Council-funded project based in the University of Sussex that researches the legal and social experiences of SOGI asylum claimants in Europe, with a particular focus on Germany, Italy and the UK. The project's methodology consisted of 143 interviews with SOGI asylum claimants and refugees, NGOs, policy-makers, decision-makers, members of the judiciary, legal representatives, and other professionals; 16 focus groups with SOGI asylum claimants and refugees; 24 non-participant contextual observations of court hearings; documentary analysis and freedom of information requests. Full details of the project and all our activities and resources are available on the project website [www.sogica.org](http://www.sogica.org). The full socio-legal analysis of our findings is presented in the book *Queering Asylum in Europe* (Springer 2020).*



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