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International Commission of Jurists

Expert Roundtable on asylum claims based on sexual orientation or gender identity or expression

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X, Y and Z: The “A, B, C” of Claims based on Sexual Orientation and/or Gender Identity?

**Alice Edwards, Senior Legal Coordinator and Chief, Protection Policy and Legal Advice Section,
UNHCR**

Introduction

This roundtable presents an important opportunity to deepen our understanding of claims to refugee status from those with a minority sexual orientation or gender identity, and the related challenges of decision-makers in applying the 1951 Convention relating to the Status of Refugees (1951 Convention) definition to such claims. I would like to thank the International Commission of Jurists (ICJ) for the invitation to speak and to hear the views of others.

Structure of presentation

My presentation will be in two parts. In the first part I will give an overview of three particular challenges facing asylum decision-makers and adjudicators arising in claims raising sexual orientation and/or gender identity. In doing so, I will make a few remarks on the case of *X, Y and Z*, a decision of the Court of Justice of the European Union (CJEU), in which UNHCR intervened as a third party,¹ and upon which the

¹ *X, Y, Z v Minister voor Immigratie en Asiel*, C-199/12 - C-201/12, European Union: Court of Justice of the European Union, 7 November 2013, available at: <http://www.refworld.org/docid/527b94b14.html>; UN High Commissioner for Refugees (UNHCR), *UNHCR intervention before the Court of Justice of the European Union in the cases of Minister voor Immigratie en Asiel v. X, Y and Z*, 28 September 2012, C-199/12, C-200/12, C-201/12, available at: <http://www.refworld.org/docid/5065c0bd2.html>

ICJ has also just issued an analysis.² I will also discuss briefly the pending case of *A, B and C* also before the CJEU.³ Finally, and time permitting, I wanted to mention a few of the things UNHCR is doing to mainstream the protection of refugees with a minority sexual orientation and/or gender identity within its work.

Part 1 - Challenges for decision-makers

Looking now at issues arising frequently in the determination of sexual orientation and/or gender identity claims, I would like to outline three in particular.⁴

Putting aside the well accepted view that a person's sexual orientation falls within the 1951 Convention ground of "membership of a particular social group", as well as the long-standing debate around alternative versus cumulative approaches to that ground,⁵ I will deal with the two other issues before the Court: on criminalization and on discretion/concealment.

In relation to the first challenge of how to deal with "**criminalization**" of **same sex relations** and the weight to be given to this fact in claims to refugee status, the starting point is that laws that criminalize same-sex relations or conduct are discriminatory and violate human rights norms. However, the existence of such laws do not – per se – constitute the basis for refugee status. UNHCR's view is that for such laws to give rise to refugee status they need to be applied in practice and that the consequences of such laws meet the threshold of persecution. By way of example, UNHCR's Guidelines on International Protection No. 9 focusing on claims to refugee status based on sexual orientation and/or gender identity provide:

² International Commission of Jurists, *X, Y and Z: a glass half full for "rainbow refugees"?*, 3 June 2014, available at: <http://www.refworld.org/docid/538dca6f0.html>; See also S. Chelvan case comment, November 2013, available at: <http://europeanlawblog.eu/?p=2042>

³ UN High Commissioner for Refugees (UNHCR), *UNHCR intervention before the Court of Justice of the European Union in the cases of Minister voor Immigratie en Asiel v A, B and C*, 21 August 2013, C-148/13, C-149/13, C-150/13, not yet available on Refworld.

⁴ These trends are drawn, inter alia, from UNHCR "Ensuring Protection of LGBTI persons of concern", Keynote address by Volker Turk, Director of International Protection, UNHCR, 20 September 2012, available at: <http://www.refworld.org/docid/505c14152.html>

⁵ Paras 10 and 11, UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 2: "Membership of a Particular Social Group" Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, HCR/GIP/02/02, available at: <http://www.refworld.org/docid/3d36f23f4.html>

Where persons are at risk of persecution or punishment such as by the death penalty, prison terms, or severe corporal punishment, including flogging, their persecutory character is particularly evident.⁶

This position is very much in line with the CJEU decision in *X, Y and Z* – paraphrasing:

Article 9(1) of EU Directive 2004/83⁷ (the Qualification Directive), read together with Article 9(2)(c): Criminalization of homosexual acts per se does not constitute an act of persecution. However, a term of imprisonment which sanctions homosexual acts and which is applied in practice must be regarded as being a punishment which is disproportionate or discriminatory and therefore amount to persecution.⁸

Although we are aware that this is not a shared view with some activists in this area, who argue that criminalization per se is persecution, our approach has been very much guided by the standards applicable in other claims to refugee status – such as women’s claims to gender persecution – in which laws need to be enforced, they cannot be dormant.⁹ There needs to be a real risk.

That said, UNHCR’s Guidelines No. 9 go further than looking only at the implementation of laws [or their lack of implementation], but also at the impact of such laws on the situation of the applicant. They provide at paragraph 27:

Even if irregularly, rarely or ever enforced, criminal laws prohibiting same-sex relations could lead to an intolerable predicament [...] rising to the level of persecution. Depending on the country context, the criminalization of same-sex relations can create or contribute to an oppressive atmosphere of intolerance and generate a threat of prosecution for having such relations. The existence of such laws can be used for blackmail and extortion purposes by the

⁶ UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 23 October 2012, HCR/GIP/12/01, available at: <http://www.refworld.org/docid/50348afc2.html>, para 26.

⁷ European Union: Council of the European Union, *Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted*, 30 September 2004, OJ L. 304/12-304/23; 30.9.2004, 2004/83/EC, available at: <http://www.refworld.org/docid/4157e75e4.html>

⁸ CJEU decision in *X, Y and Z*, supra note 1, paras 55 and 56.

⁹ UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, HCR/GIP/02/01, available at: <http://www.refworld.org/docid/3d36f1c64.html>

authorities or non-State actors. They can promote political rhetoric that can expose [...] individuals to risks of persecutory harm. They can also hinder [...] persons from seeking and obtaining State protection.¹⁰

Assessing the “well-founded fear of being persecuted” in such cases needs to be fact-based, focusing on both the individual and the contextual circumstances of the case.¹¹

This is one of the areas where it appears that UNHCR’s position and the Court’s ruling in the case of *X, Y and Z* part company and the CJEU appears to adopt a narrow approach. The ICJ report, for example, criticizes the CJEU’s judgment for failing (i) to reformulate Question 3 before the Court and thus limiting the enquiry to criminalization and not the wider context and (ii) to deal with the question of cumulative measures.¹² The ICJ also criticizes the judgment for its treatment of derogable versus non-derogable rights. On the latter, the ICJ view makes eminent sense and I would merely refer you to our intervention at paragraph 4.1.3, and the ICJ’s own report. The distinction between derogable and non-derogable rights is not an approach generally promoted by UNHCR insofar as it suggests a hierarchy of harms; and is an unfortunate approach used by the CJEU. I will not deal with this issue further here.

On the omissions of the Court, my own view is that it would be wrong to read too much into these omissions. First, the CJEU is a conservative court – and like most courts – it generally only deals with the questions put to it, and not to broader considerations (*obiter*). It would be preferable to acknowledge that the broader consequences of such laws were not before the court, rather than to suggest that the CJEU dismissed them as unpersuasive. Situations where one has a fear of being persecuted in countries where there are no such laws or they have been repealed were also not before the Court. It would be wrong in my view to draw negative inferences from such omissions.

Second, the CJEU was not asked to determine the factual cases at hand, but rather the legal standards to apply in such cases. The cases will now need to be decided in their entirety at the domestic level. As far as it responded to the questions before it, the CJEU answered them in line with UNHCR’s own reasoning. For the broader consequences of criminal laws on asylum claims, the Court’s judgment in the case of *Y and Z*¹³ remains established law. In that judgment, the Court took account of the whole spectrum of the

¹⁰ UNHCR Guidelines No. 9, *supra* note 6, para. 27.

¹¹ *Ibid* para. 28.

¹² ICJ report, *supra* note 2, paras 41 and 45.

¹³ Joined cases of C-71/11 and C-99/11, *Bundesrepublik Deutschland v Y and Z, Judgment of the Court (Grand Chamber) of 5 September 2012* available at <http://www.refworld.org/pdfid/505ace862.pdf>.

experience of freedom of religion and the measures that interfere with it and the way in which they would affect applicants on return. As mentioned, this is also the position in UNHCR's Guidelines No. 9. We will simply have to wait for another case to be brought in order to clarify this point in respect of refugee claims relating to sexual orientation and/or gender identity, and we should monitor cases to make sure that we start to observe any variations in approach between such cases at the national level.

The second challenge for decision-makers I wanted to discuss is the issue of “**discretion**”; that is, does the 1951 Convention protect persons who could avoid persecution by concealing (or “being discreet”) about their sexuality or gender identity? This question has arisen in a number of jurisdictions,¹⁴ and was one of the key questions before the CJEU in *X, Y and Z*.

UNHCR's Guidelines No. 9 are clear on this issue. Paragraphs 31 and 32 of our guidelines provide:

That an applicant may be able to avoid persecution by concealing or by being “discreet” about his or her sexual orientation or gender identity, or has done so previously, is not a valid reason to deny refugee status. [...] [A] person cannot be denied refugee status based on a requirement that they change or conceal their identity, opinions or characteristics in order to avoid persecution.¹⁵

With this general principle in mind, the question thus to be considered is what predicament the applicant would face if he or she were returned to the country of origin. This requires a fact-specific examination of what may happen if the applicant returns to the country of nationality or habitual residence and whether this amounts to persecution. The question is not, could the applicant, by being discreet, live in that country without attracting adverse consequences. It is important to note that even if applicants may so far have managed to avoid harm through concealment, their circumstances may change over time and secrecy may not be an option for the entirety of their lifetime. The risk of discovery may also not necessarily be confined to their own conduct.¹⁶

The idea that individuals with a minority sexual orientation and/or gender identity should be required to hide, change or renounce their sexual orientation and/or gender identity is at odds with the 1951

¹⁴ See, for example, *HJ (Iran) and HT (Cameroon) v. Secretary of State for the Home Department*, [2010] UKSC 31, United Kingdom: Supreme Court, 7 July 2010, available at: <http://www.unhcr.org/refworld/docid/4c3456752.html>; UN High Commissioner for Refugees, *HJ (Iran) and HT (Cameroon) v. Secretary of State for the Home Department - Case for the first intervener (the United Nations High Commissioner for Refugees)*, 19 April 2010, available at: <http://www.unhcr.org/refworld/docid/4bd1abbc2.html>; *Appellant S395/2002 v. Minister for Immigration and Multicultural Affairs; Appellant S396/2002 v. Minister for Immigration and Multicultural Affairs*, [2003] HCA 71, Australia: High Court, 9 December 2003, available at: <http://www.refworld.org/docid/3fd9eca84.html>, paras. 78-83.

¹⁵ UNHCR Guidelines No. 9, *supra* note 6, para. 31.

¹⁶ *Ibid*, para. 32.

Convention, the object and purpose of which is to protect persons who have a well-founded fear of being persecuted for who they are, or for their beliefs or views. It is also not consistent with how the other grounds in the 1951 Convention have been interpreted and applied, and such different treatment would likely amount to discrimination.

We believe that the CJEU is correct on this point and clear: “When assessing an application for refugee status, the competent authorities cannot reasonably expect, in order to avoid the risk of persecution, the applicant for asylum to conceal his homosexuality in his country of origin or to exercise reserve in the expression of his sexual orientation.”¹⁷

The judgment also states that to expect that members of a social group conceal their sexual orientation or shared characteristics is incompatible with recognition of that characteristic as being fundamental to a person’s identity and as such, they cannot be expected to renounce it.¹⁸

Unlike the United Kingdom’s Supreme Court judgment in *HJ (Iran) and HT (Cameroon)*, the CJEU did not ask – nor suggest to adjudicators – that they ask the “if and why” questions. *HT, HJ* suggested that one should ask: If he is likely to exercise restraint, why would he do so? The CJEU states instead that “the fact that he could avoid the risk of exercising restraint ... is not to be taken into account.”¹⁹ In our Guidelines, we did not advocate for the “if and why” questions, but instead to look at the overall predicament and risk of persecution regardless of concealment, discretion or restraint. The applicant is thus not required to exercise greater restraint than a heterosexual in expressing his sexual orientation, even if that would allow him to avoid the risk of persecution.²⁰ Hopefully the CJEU’s judgment puts to rest the reliance on the *HJ (Iran) and HT(Cameroon)* reasoning.

UNHCR also notes that the CJEU in *X, Y and Z* dismissed the distinction between “core areas” of sexual expression and other areas. Making a link with cases based on religious persecution, the Court also noted that the concept of sexual orientation applies to both acts in private life as well as in public,²¹ subject to the caveat against criminal activities.²² UNHCR’s written submissions in *X, Y and Z* are reflected in the overall position taken by the CJEU on this point, in noting that sexual orientation is about a person’s identity. This identity may be expressed or revealed in many subtle or obvious ways. through, for example, appearance, speech, behaviour, dress and mannerisms; or not revealed at all in these ways.

¹⁷ CJEU decision in *X, Y and Z*, supra note 1, para. 76

¹⁸ Ibid para. 70.

¹⁹ Ibid para. 75.

²⁰ UNHCR Guidelines No. 9, supra note 6, para. 32.

²¹ CJEU decision in *X, Y and Z*, supra note 1, para. 69.

²² Ibid, para. 66.

Behaviour and activities may relate to an identity in complex ways, making it difficult to differentiate between core and marginal areas – and leading to arbitrary decision-making.²³

The third area worth exploring is that of the “**sexualization**” of asylum claims based on sexual orientation and/or gender identity: that is, there is an over-emphasis by some decision-makers on sexual conduct, rather than on sexual orientation as identity. Not only can this focus lead to intrusive and humiliating questioning about one’s sexual life, it also overlooks the fact that individuals with a minority sexual orientation and/or gender identity are often persecuted because of the threat they represent to prevailing social and cultural norms; and that “sexual orientation and gender identity are ultimately about a person’s identity, whether or not that identity is manifested through sexual acts.”²⁴ The issues of intrusive questioning and medical or pseudo-medical testing are at the centre of the CJEU preliminary reference from the Dutch Council of State in the case of *A, B and C* concerning the limits on the method of assessing the credibility of the declared sexual orientation of an asylum applicant imposed by Article 4 of the Qualification Directive.²⁵ UNHCR has intervened in this case. The case is currently pending.

UNHCR’s overall position in this case is that the methods of assessing credibility in Article 4 of the Qualification Directive need to be compatible with Charter of Fundamental Rights of the European Union (EU Charter) provisions, most notably Articles 3 (integrity of the person), 4 (degrading treatment) and 7 (private life).²⁶ UNHCR’s intervention stresses the need for sensitivity in the assessment of credibility in these cases, and to avoid superficial understandings of the experiences of lesbians, gays or bisexual persons, as well as erroneous, culturally inappropriate or stereotypical assumptions.²⁷ UNHCR’s Guidelines No. 9 refer to a range of methods to achieve this and, in our intervention before the CJEU, we distinguish between (i) those methods of enquiry that are incompatible with the Charter in all circumstances [here we refer to intrusive questioning about the details of sexual practices; medical or pseudo-medical testing practices such as phallometry; and inappropriate documentary or other evidence or demonstrations – the use of video evidence of applicants engaging in same sex relations are explicitly at issue] and (ii) methods that may be incompatible with the Charter, depending on the circumstances.²⁸

²³ UNHCR’s written submissions in *X, Y and Z*, supra note 1, para. 5.3.

²⁴ UNHCR Guidelines No. 9, supra note 6, para. 63 (vii).

²⁵ For preliminary reference questions posed by the Dutch Court in the case of *A, B and C*– see http://www.raadvanstate.nl/pers/persberichten/tekst-persbericht.html?id=557&summary_only=&category_id=8

²⁶ European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02, available at: <http://www.refworld.org/docid/3ae6b3b70.html>

²⁷ UNHCR Guidelines No. 9, supra note 6, para. 60 (ii).

²⁸ *A, B and C*, supra note 3.

Part 2 - Policy and Operational Developments

UNHCR has devoted an increasing amount of institutional resources to addressing issues affecting asylum seekers and refugees based on their sexual orientation and/or gender identity. As early as 2002, UNHCR Guidelines on International Protection No. 1 refer to claims based on sexual orientation.²⁹ In order to inform our 2012 guidelines, and to explore how to improve approaches to claims based on sexual orientation and/or gender identity, UNHCR organized several expert consultations and roundtables, including, the 2010 Roundtable on Asylum-Seekers and Refugees Seeking Protection on Account of their Sexual Orientation and Gender Identity, which focused on identifying and addressing protection concerns experienced by LGBTI individuals throughout the various stages of displacement.³⁰ In 2011, UNHCR, together with the International Association of Refugee Law Judges and the European Legal Network on Asylum, convened an expert meeting to discuss common issues facing the judiciary and legal representatives in examining asylum claims related to sexual orientation and/or gender identity.³¹

In 2011, UNHCR released a *Need to Know Guidance Note on Working with Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Forced Displacement* with a broad range of stakeholders.³² The Guidance Note is meant for UNHCR and partner staff to improve their understanding of the rights and the distinct vulnerabilities of refugees with a minority sexual orientation and/or gender identity and promote concrete actions to ensure that they are protected throughout all stages of their displacement. It provides practical tips on how to make the office environments more accessible, make programmes safe for, and inclusive of, individuals with a minority sexual orientation and/or gender identity, and promote participation. In addition, UNHCR's Age, Gender and Diversity Policy³³ explicitly refers to refugees and asylum-seeking individuals with a minority sexual orientation and/or gender identity.

However, policy and guidance will be of limited effect, if prejudice and ignorance prevail among those responsible for implementing that guidance. To remedy lack of understanding among our own as well as

²⁹ UNHCR Guidelines No. 1, supra note 8, paras 16 and 17.

³⁰ UN High Commissioner for Refugees (UNHCR), *The Protection of Lesbian, Gay, Bisexual, Transgender and Intersex Asylum-Seekers and Refugees*, 22 September 2010, available at: <http://www.refworld.org/docid/4cff9a8f2.html>

³¹ See UNHCR, IARLJ, ELENA, 'Informal Meeting of Experts on Refugee Claims Relating to Sexual Orientation and Gender Identity,' Bled, Slovenia, 10 September 2011.

³² UN High Commissioner for Refugees (UNHCR), *Working with Lesbian, Gay, Bisexual, Transgender & Intersex Persons in Forced Displacement*, 2011, available at: <http://www.refworld.org/docid/4e6073972.html>.

³³ UN High Commissioner for Refugees (UNHCR), *Understanding Community-Based Protection*, 20 June 2013, available at: <http://www.refworld.org/docid/5209f0b64.html>; UN High Commissioner for Refugees (UNHCR), *Community-based protection*, 4 June 2013, EC/64/SC/CRP.14, available at: <http://www.refworld.org/docid/5209f0344.html>.

partner staff,³⁴ we developed a training package to increase the capacity of staff to deliver protection to persons of concern with a minority sexual orientation and gender identity and have been delivering trainings since last year and have more planned for this year. This training package covers terminology, responses to day-to-day protection issues, refugee status determination (RSD), resettlement and sensitive interviewing techniques.

The RSD and resettlement processing phases are often the stages when individuals with a minority sexual orientation will self-identify, but also where the most vital decision-making concerning their future will occur. That is why we have strengthened our focus on informing these processes.

The RSD Learning Programme, which is mandatory for all UNHCR staff conducting RSD or with national capacity-building responsibilities, deals with issues pertaining to the adjudication of claims on the basis of sexual orientation and/or gender identity. We have developed further guidance for RSD adjudicators, in order to ensure awareness and appropriate lines of questioning when handling claims based on sexual orientation and/or gender identity.

UNHCR also expedites the resettlement of refugees with a minority sexual orientation and/or gender identity according to their vulnerability, which has in some cases involved emergency resettlement. Although the latest edition of UNHCR's Heightened Risk Identification Tool addresses the detection of protection risks facing individuals with a minority sexual orientation, further efforts are needed, including to improve referral mechanisms. In 2013 we developed an assessment tool for individuals with a minority sexual orientation and/or gender identity, which has a checklist and a step-by-step guide intended to assist staff to better reach out to and assess refugees with a minority sexual and/or gender identity in need of resettlement.

The paucity of available statistics remains an important challenge. The number of asylum-seekers and refugees with a minority sexual and/or gender identity is not known as, due to fear and discrimination,

³⁴ A global survey undertaken by ORAM on NGO attitudes towards LGBTI asylum-seekers and refugees found that although the large majority of respondents believed that individuals persecuted on the basis of sexual orientation or gender identity deserved refugee protection, there was a silence, a 'shroud of invisibility' surrounding individuals with a minority sexual and/or gender identity and their protection needs, with many NGOs unaware of the minority sexual and/or gender identity refugees in their midst as well as of the need for targeted policies to help them. ORAM, 'Opening Doors: A Global Survey of NGO Attitudes Towards LGBTI Refugees & Asylum Seekers', June 2012. Available at <http://www.oraminternational.org/images/stories/Publications/oram-opening-doors.pdf>. See also more recently Organization for Refuge, Asylum & Migration (ORAM), *Blind Alleys: The Unseen Struggles of Lesbian, Gay, Bisexual, Transgender and Intersex Urban Refugees in Mexico, Uganda and South Africa* - February 2013, available at: <http://www.oraminternational.org/en/publications>.

many individuals with a minority sexual orientation and/or gender identity do not reveal their true circumstances and do not claim asylum on sexual orientation or gender identity grounds. They usually keep a low profile in order not to attract discrimination and violence from other refugees, the local community or State authorities. Also, a further challenge is that significant number of asylum-seekers may be unaware that their experience of persecution is a legitimate ground for seeking international protection. It is also the case that one's sexual orientation and/or gender identity may not be the main or relevant component of a claim to refugee status.

We are trying to improve our country-of-origin data in order to close information gaps, for example, on the treatment of individuals with a minority sexual orientation and/or gender identity, implementation of laws criminalizing same-sex relations, and harm by private actors in order to assist in the guidance that we can provide to States and legal practitioners. This is particularly important, as lack of comprehensive country-of-origin information can lead to the rejection of asylum claims due to questions surrounding credibility. In order to address this, our eligibility guidelines and country of origin research now systematically include a section on the treatment of individuals with a minority sexual orientation and/or gender identity and later this year we will be issuing eligibility guidelines for assessing the international protection needs of asylum seekers who apply for refugee status based on sexual orientation and/or gender identity covering 10 countries.³⁵

Other efforts that UNHCR is engaged in include the referral of refugees with a minority sexual orientation and/or gender identity to emergency shelter, working with sexual orientation and/or gender identity rights community groups to ensure a greater appreciation of their needs as well as understanding of how UNHCR can assist them, and improving the environment in UNHCR offices to make them more sexual orientation and/or gender identity rights-friendly. UNHCR's 2012 Detention Guidelines and the recently published Detention Monitoring Manual both contain sections specifically dealing with issues of detention for persons with a minority sexual orientation and/or gender identity.³⁶

³⁵ Egypt, Haiti, Honduras, Iran, Iraq, Pakistan, Russia, Uganda, Ukraine, and Zimbabwe.

³⁶ UN High Commissioner for Refugees (UNHCR), *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at: <http://www.refworld.org/docid/503489533b8.html>, para 65; UN High Commissioner for Refugees (UNHCR), *Association for the Prevention of Torture (APT) and the International Detention Coalition (IDC), Monitoring Immigration Detention: Practical Manual*, 2014, available at: <http://www.refworld.org/docid/53706e354.html>, section 4.8.9.

Conclusion

The fact that we are able to discuss the correct legal approach to refugee claims based on sexual orientation and/or gender identity through real case law is testament to the fact progress is being made. Nonetheless there remain a number of obstacles to the full and inclusive interpretation of the refugee definition so that sexual orientation and/or gender identity is properly reflected, and to the harmonization of interpretation across jurisdictions to ensure predictability and fairness in decision-making. *X, Y and Z* is only one part of the overall picture, and as we've seen, doesn't deal with the range of issues relevant to refugee claims based on sexual orientation and/or gender identity. It is thus not the "A, B and C" of such claims, although together with a future judgment in the case of *A, B and C*, it is a step in the right direction.