

FORCED MIGRATION review

Issue 42
April 2013

Sexual orientation and gender identity and the protection of forced migrants



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Forced Migration Review

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From the editors

Around the world, people face abuse, arbitrary arrest, extortion, violence, severe discrimination and lack of official protection because of their sexual orientation and/or gender identity. This is true even in countries where the legal environment for lesbian, gay, bisexual, transgender and intersex (LGBTI) people is relatively progressive. Many feel compelled to flee their homes, seeking safety in another country.

Although displacement may provide an opportunity for them to express a profoundly felt personal aspect of their identity that has not been possible or allowed in their country of origin, safety and protection are often elusive in these other countries too, where LGBTI forced migrants are frequently met with unacceptable and sometimes incomprehensible treatment.

There is now a growing awareness that full rights should be extended to people whose orientation or identity is not only as a minority in society but has also often been considered taboo, unacknowledged or unaccepted. It seems that it is often impossible to divorce deeply felt social, cultural and religious attitudes from the protection of LGBTI forced migrants. Yet there has been and continues to be rapid change, with radical improvements in many contexts – especially in terms of training of asylum authorities, updating of legislation and improvement in case law.

There remain, however, significant challenges and needs, many of which are identified in the following articles. In this context, bringing LGBTI and refugee protection sectors together – one of the aims of this issue of FMR – should help lead to greater protection.

We have included a short glossary on page 63 to clarify certain terms. The authors of the articles in this FMR use different terms when referring to gender non-conforming forced migrants – such as LGBTI, LGBT and sexual minority – and we have allowed

them to use the terms they themselves prefer. In addition, although the articles do not explicitly cover protection issues relating specifically to bisexual or intersex people, much of what is written here will be equally relevant for them.

We would like to thank Rachel Levitan of HIAS for her invaluable assistance as special advisor on this issue. We are also very grateful to the Arcus Foundation, the Swiss Federal Department of Foreign Affairs, UNHCR and the US Department of State's Bureau of Population, Refugees, and Migration for their funding support for this issue. All our current institutional donors, including those who generously provide unearmarked funding for FMR, are listed on page 63. Thanks also to those individual readers who have donated to support FMR.

The full issue is online at www.fmreview.org/sogi in html, pdf and audio formats. It will be available online and in print in English, French, Spanish and Arabic.

FMR42 Listing (expanded contents listing for this issue) is available in print and online at www.fmreview.org/sogi/FMR42listing.pdf

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Details of our **forthcoming issues** can be found on page 63.

To keep up to date on announcements and all other FMR news, please sign up for our **email alerts** at www.fmreview.org/request/alerts or join us on Facebook or Twitter.

With our best wishes

Marion Couldrey and Maurice Herson
Editors, Forced Migration Review



Our cover shows a 'word cloud' generated from the text of articles in this FMR. The size of each word in the cloud is determined by how frequently it appears in the articles.

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LGBT: equally entitled to human rights and dignity

Anne C Richard

Attitudes toward lesbian, gay, bisexual and transgender (LGBT) people and issues are rapidly improving in the United States. Barriers to equal treatment and opportunity are coming down. Recognition that LGBT rights are universal rights is gaining ground. While much work remains to be done, the trend, finally, is positive.

But greater respect for LGBT rights and inclusion of LGBT people still is not a worldwide movement. In too many countries, it is illegal to be gay, punishable by imprisonment and even death. In some societies, the simple assertion of human rights and fundamental freedoms by members of the LGBT community – rights enshrined in international law – is met with oppression, abuse and ostracism. LGBT people become targets simply because of who they are. Their treatment in these countries and societies is grotesque and unacceptable.

The United States' position on LGBT rights and treatment is unambiguous. It was clearly articulated by then-Secretary of State Hillary Clinton in a December 2011 address in Geneva:

It is a violation of human rights when people are beaten or killed because of their sexual orientation, or because they do not conform to cultural norms about how men and women should look or behave.

It is a violation of human rights when governments declare it illegal to be gay, or allow those who harm gay people to go unpunished.

It is a violation of human rights when lesbian or transgendered women are subjected to so-called corrective rape, or forcibly subjected to hormone treatments, or when people are murdered after public calls for violence toward gays, or when they are forced to flee their nations and seek asylum in other lands to save their lives.

And it is a violation of human rights when life-saving care is withheld from people because they are gay, or equal access to justice is denied to people because they are gay, or public spaces are out of bounds to people because they are gay.

No matter what we look like, where we come from, or who we are, we are all equally entitled to our human rights and dignity.

The State Department's Bureau of Population, Refugees, and Migration (PRM) has a mandate to assist vulnerable, forcibly displaced people worldwide. We help design, build and maintain an international system of aid and protection for people persecuted at home and while in transit. We work hand-in-glove with international and non-governmental organisations, with faith-based communities and with resettlement agencies to shield victims from harm and to help them recover from crisis and rebuild their lives.

LGBT victims of persecution and abuse are a focus of PRM's efforts globally. Our training, policy guidance and strategies all emphasise vigilance and sensitivity to the needs of vulnerable LGBT refugees, migrants and others. We have research specifically focused on shrinking LGBT refugee protection gaps. Our diplomatic outreach encourages greater respect for LGBT rights and speaks plainly and forcefully against those who prey on people perceived as weak or different. Most importantly, our effort is not a bureaucratic exercise. It is a personal commitment of my colleagues in PRM and in partner organisations to identify and protect LGBT refugees and other victims who have been forced to flee their homes or hide their identities.

The United States, like all nations, has more work to do to protect the rights of LGBT people. But our leadership is rooted in the solid progress we have achieved at home and our determination to press for improvements abroad and it will continue. In that spirit, I salute the editors of Forced Migration Review for their leadership in examining these topics from different geographic and thematic vantage points and for their willingness to shine a bright light on these compelling issues.

Anne C Richard is the Assistant Secretary of State for Population, Refugees, and Migration in the United States Department of State. For more information, please contact Caroline Raclin at raclincr@state.gov

Ensuring protection for LGBTI Persons of Concern

Volker Türk

Lesbian, gay, bisexual, transgender and intersex (LGBTI) asylum seekers and refugees face a myriad of threats, risks and vulnerabilities throughout all stages of the displacement cycle. There needs to be greater awareness not only of the specific protection concerns relating to LGBTI individuals but also of related jurisprudence and guidance available for UN staff, partners, state authorities and decision-makers.

At the centre of the 1951 Refugee Convention are human dignity, the richness and diversity of human life, and the full expression of individual freedoms. The very purpose of the Convention is the protection of those who manage to flee predicaments that violate their dignity, identity and freedoms. Despite the fact that there was no explicit recognition in the Convention of persecution for reasons of sexual orientation or gender identity, its drafters used broad enough language to cover such instances, notably through the introduction of the 'membership of a particular social group' ground.

I have no doubt that the framers of both the Universal Declaration of Human Rights and of the 1951 Convention were aware of what had happened in Nazi Germany to LGBTI people. People were arrested on suspicion of homosexuality and many were incarcerated in concentration camps. We will never know how many LGBTI persons fled Nazi Germany to avoid ending up in the camps. As homosexuality was – and remains in many societies – a social stigma and a criminal offence, they would have been forced to hide their reasons for flight even in their new countries of asylum. Unfortunately, this remains the situation for LGBTI asylum seekers and refugees in many parts of the world today.

There has been growing awareness in recent years about the rights of LGBTI individuals within the human rights and humanitarian community and an emergence of a body of research on this topic. The 2007 Yogyakarta Principles, in particular, have made a significant contribution to a better appreciation of how human rights

norms apply and are to be interpreted in the context of sexual orientation and gender identity.¹ It is perhaps premature to assess the role played by the Principles in making concrete improvements in the lives of LGBTI people; however, encouragingly, the Principles have been drawn upon on numerous occasions by the UN (including UNHCR), states, activists, asylum courts and tribunals, and have a constructive role to play as a legal, practical and advocacy tool.

For almost two decades the UN has documented violations against LGBTI people and articulated human rights standards in the context of sexual orientation and gender identity. More recently, the UN has called, at the highest levels, for equal rights, non-discrimination, an end to violence and the abrogation of laws that criminalise same-sex relationships. And in May 2012, the UN High Commissioner for Refugees issued a message to all UNHCR staff, encouraging them to help improve protection for LGBTI persons of concern as well as to eliminate homophobia and transphobia in the workplace.

Issues in jurisprudence

Since the first refugee claims based on sexual orientation and gender identity were recognised in the 1980s, jurisprudence in this area of refugee law has continued to evolve, though at times with diverging views in different jurisdictions. We have identified a number of issues in this regard.

The first is that of demanding 'discretion' – that is, concealing one's sexual orientation in order to avoid persecution. The idea that gay people should have to tolerate being 'discreet' about their sexual orientation was



2008 Manila (Philippines) Pride March and launch of Yogyakarta Principles in the country.

dismissed by the UK Supreme Court in 2010,² a ruling which has received wide attention outside Europe. Discretion has the potential to undermine one of the basic tenets of refugee law – that one should not be compelled to hide, change or renounce one's identity in order to avoid persecution. Nevertheless, such reasoning continues to be used in a number of countries, particularly within Europe.³

The second is 'criminalisation' and the challenges involved in determining whether laws criminalising same-sex relations amount to persecution. The mere existence of such laws is insufficient in some jurisdictions for recognition of refugee status; recent or regular enforcement of the law is required. Some countries also require that applicants show that steps towards enforcement have taken place in his or her individual case. In our view, quite apart from the potential law enforcement perspective, such an interpretation does not take sufficiently into account the level of societal discrimination in countries criminalising same-sex relationships and

the impact of this on the actual or feared predicament of LGBTI individuals.

The third relates to 'sexualisation' – the over-emphasis by some decision-makers on sexual acts rather than on sexual orientation as an identity. Not only can this lead to intrusive and humiliating questioning about a person's sexual life (not appropriate for anyone regardless of their sexuality) but it also overlooks the fact that LGBTI people are often persecuted because of the threat they are thought to represent to prevailing social and cultural mores.

The fourth concern is 'stereotyping'. Sexual orientation and gender identity are not visible in the same way that race and nationality may be. Decision-makers have consequently been preoccupied with obtaining evidence to prove whether an applicant is in fact LGBTI. Lacking guidance and knowledge, they have relied on their own personal assumptions or stereotypes to draw conclusions. This risks undermining the impartiality of decision-making.

The fifth is that of ‘disbelief’ – which often goes hand-in-hand with stereotyping. Not all courts accept the self-identification of the applicant as LGBTI. Some ask for witness statements or documentation such as emails, ignoring the fact that this might be impossible for the applicant to produce, in particular when he or she has been doing everything possible to hide their sexual orientation.

Developing guidance

UNHCR has developed policy and practical guidance for staff, partners, state authorities and decision-makers to promote a consistent and rights-based approach to the protection of LGBTI people.

In 2008 UNHCR issued a Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity⁴ to improve decision-makers’ awareness about the specific experiences of LGBTI asylum seekers and encourage a deeper analysis of the legal questions involved. This Guidance Note is now superseded by a new set of guidelines on international protection, published in October 2012, which for the first time deal comprehensively with refugee claims based on sexual orientation and/or gender identity. These new Guidelines⁵ provide advice on substantive, procedural, evidentiary and

credibility issues relating to such claims. The Guidelines are intended to provide guidance to governments, legal practitioners, decision-makers and the judiciary, as well as to UNHCR staff adjudicating these claims under the 1951 Convention, and to ensure a proper and harmonised interpretation across jurisdictions of the definition of a refugee under the 1951 Convention. They recognise that people fleeing persecution for reasons of their sexual orientation and/or gender identity can qualify as refugees under Article 1A(2) of the 1951 Convention.

In 2011 UNHCR released a Need to Know Guidance Note on Working with Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Forced Displacement⁶ to help UNHCR and partners’ staff improve their understanding of the rights and the distinct vulnerabilities of LGBTI refugees and promote concrete actions to ensure that they are protected throughout all stages of their displacement. It provides practical advice on how to make office environments more welcoming, make programmes safe for, and inclusive of, LGBTI persons, and promote participation. In addition, UNHCR’s Age, Gender and Diversity Policy⁷ explicitly refers to LGBTI refugees and asylum seekers.

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 UNHCR’s as well as partners’ staff,⁸ UNHCR is developing a staff training package with ORAM.⁹ This package covers terminology, responses to day-to-day protection issues, refugee status determination (RSD) and LGBTI-sensitive interviewing techniques. The refugee status determination and resettlement processing phases are often the stages when LGBTI persons of concern will self-identify but are also where the most vital decision-making concerning their future will occur.

The 2011 *UNHCR Resettlement Handbook* provides guidance on the resettlement of LGBTI individuals, which is often the only

New UNHCR SOGI Guidelines

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: available online at www.unhcr.org/509136ca9.html

A new set of guidelines on international protection – superseding the Guidance Note on Refugee Claims relating to Sexual Orientation and Gender Identity (2008) – was issued by UNHCR in October 2012. The Guidelines complement the UNHCR Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status (reissued in 2011).

Other materials on sexual orientation and gender identity can be found on the Special Feature on Sexual Orientation and/or Gender Identity on Refworld at www.unhcr.org/refworld/sogi.html

viable solution in many first-country-of-asylum contexts. UNHCR expedites the resettlement of LGBTI refugees according to their vulnerability, which has in some cases involved emergency resettlement. Although the latest edition of the Heightened Risk Identification Tool addresses the detection of protection risks facing LGBTI individuals, further efforts are needed, including improvement of referral mechanisms. UNHCR is currently working on a resettlement assessment tool for LGBTI refugees which will include a checklist and step-by-step guide for assessing LGBTI refugees in need of resettlement. We are aware, however, that the lengthy average processing time for resettlement by states has an adverse impact on the well-being of LGBTI individuals, who are often in dangerous and difficult situations.

Conclusion

Homophobia is a human-made construct, fed by political, religious, legal and even pseudo-medical justifications. We know that human beings can be quick to judge, fear and even hate the 'other' – people who are different. And departure from the majority 'norm' inherently implies social change and can even be seen as a threat. In this context, LGBTI people risk becoming embodiments of that threat. And we have seen similar resistance and bigotry towards individuals promoting social change in the past. Comparable to the anger and hatred today directed against LGBTI individuals and those advocating for their rights is the denigration and abuse that women suffered in the early 20th century when demanding the right to vote or that African Americans

and others active in the civil rights movement experienced in the US in the mid-20th century.

Fortunately, research shows that prejudices can be overcome. We need to change the way society treats LGBTI people by discussing this as an issue of diversity and equality, and by promoting respect for those outside the mainstream. But as long as LGBTI individuals continue to be shunned, abused and criminalised by societies and communities, they will need to be able to avail themselves of the protection – and dignity – that refugee status can provide.

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1. www.unhcr.org/refworld/pdfid/48244e602.pdf
2. See *HJ and HT v. Secretary of State for the Home Department*, UKSC 31, UK Supreme Court, 7 July 2010 www.unhcr.org/refworld/docid/4c3456752.html
3. The 2011 *Fleeing Homophobia: Asylum Claims Related to Sexual Orientation and Gender Identity in Europe* report found discretion reasoning still being invoked in Austria, Belgium, Bulgaria, Cyprus, Denmark, Finland, France, Germany, Hungary, Ireland, the Netherlands, Malta, Poland, Romania, Spain, Norway and Switzerland www.unhcr.org/refworld/docid/4ebba7852.html
4. www.unhcr.org/refworld/docid/48abd5660.html
5. 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 www.unhcr.org/509136ca9.html See box p7.
6. UNHCR (with input from ORAM), Working with Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Forced Displacement, Need to Know Guidance 2, 2011 www.unhcr.org/refworld/docid/4e6073972.html
7. June 2011 www.unhcr.org/refworld/docid/4def34f6887.html
8. ORAM *Opening Doors: A Global Survey of NGO Attitudes Towards LGBTI Refugees & Asylum Seekers*, June 2012 <http://tinyurl.com/ORAM-Opening-Doors-2012>
9. Organization for Refuge, Asylum & Migration www.oraminternational.org

Criminalisation of same-sex sexual acts around the world

In 2012, 78 countries out of 193 still have legislation criminalising same-sex consensual acts between adults. This is an increase from the previous year (up to 78 from 76).

"Though one 'new entry' – Benin – is due to our improved knowledge as to the laws of the country [...], the other entry – South Sudan – represents a real disappointment: one would have hoped that the birth of a new country would have been also the

occasion to improve the legislation inherited from the old country the new one was once part of." (See ILGA May 2012 report *State-sponsored Homophobia* <http://tinyurl.com/ILGA-State-Homophobia-2012>)

Iran, Mauritania, Saudi Arabia, Sudan, Yemen and parts of Nigeria and Somalia have the death penalty for same-sex acts.

See map on pages 32-33 of this FMR. For more maps, please see www.ilga.org

Mental health challenges of LGBT forced migrants

Ariel Shidlo and Joanne Ahola

Many LGBT forced migrants have significant and sometimes incapacitating psychological scars. Mental health providers can assist in documenting the psychological impact of anti-LGBT persecution and its impact on the ability to secure refugee status.

Lesbian, gay, bisexual and transgender (LGBT) forced migrants around the world report a history of multiple traumatic events across their lifespan. The range of events includes verbal, emotional, physical and sexual abuse and assault, harassment, shunning, spitting, discrimination in housing and employment, destruction of property, blackmail, forced prostitution, forced heterosexual marriage, 'corrective rape'¹ and coerced sexual orientation conversion interventions. Those who from a young age are perceived by others as behaving in gender non-conforming ways are targeted starting in childhood.²

LGBT persons who are victims of sexual orientation and gender identity (SOGI)-based violence seldom find comfort in their families, either because they are not 'out' to their families or because their families join in their persecution. LGBT forced migrants are distinct from other persecuted groups in that their families of origin often contribute to the abuse. Many LGBT forced migrants report emotional, verbal, physical and sexual violence at the hands of their family. A Peruvian woman who was non-gender conforming was, from an early age, emotionally and physically abused by her family; she was not allowed to eat with the rest of the family and, unlike her siblings, was not given a bed to sleep in. A Colombian woman reported feeling sad, angry and isolated when, after an anti-LGBT assault by the police, she could not go to her family for help and emotional support as that would have necessitated coming out to her family.

Psychological consequences

Many suffer from significant mental health consequences as a result of a lifetime of cumulative trauma. Common diagnoses are recurrent depression, dissociative disorders, panic disorder, generalised anxiety disorder,

social anxiety, traumatic brain injury and substance abuse. LGBT forced migrants may also suffer from two types of Post-Traumatic Stress Disorder: PTSD and complex PTSD. PTSD includes the symptom triad of re-experiencing traumatic events, numbing and avoidance of thinking about these events, and hyper-arousal. Those who have a history of cumulative trauma may suffer from the symptoms not only of PTSD but also of complex PTSD which include self-destructive behaviour, amnesia, intense shame, difficulties with intimacy, experiencing bodily pains in response to psychological distress, and despair about finding loving relationships.

Adjudicators expect coherent, consistent and sequential accounts of persecution. But a person's survival of persecution sometimes necessitates amnesia and denial of the impact and severity of traumatic events. Memories of trauma may be stored as fragments – images, sounds, smells and physical sensations – rather than as a verbal narrative, and this poses challenges to recounting a history of persecution. Furthermore, repeated retelling of a history of persecution can be re-traumatising for the forced migrant and cause secondary trauma to advocates and adjudicators. When a mental health provider is available they can utilise techniques that may minimise the level of re-traumatisation.³

Assessing SOGI

In the absence of a safe environment, many LGBT individuals are not able to work through the internal processes necessary to allow them to integrate the multiple aspects of their sexuality. Instead, these processes may slow down or become 'frozen' until they reach the relative safety of a new host country. Because the coming-out process may only begin to unfreeze many years after arrival in the host country, some individuals may have difficulty

convincing adjudicators that they are LGBT. To document the developmental changes that LGBT forced migrants may experience in their sexual orientation and gender identity before and after migration, it is helpful to shift expert testimony away from a focus on any one aspect of SOGI to documenting shifts over time in a broad range of SOGI features: sexual feelings; sexual fantasy; crushes and falling in love; romantic relationships; self-labelling; disclosure of self-labelling to LGBT persons; disclosure of self-labelling to heterosexual persons; forming relationships with other LGBT persons; and sexual behaviour.⁴

It is also helpful to document the fear, shame and attempts to hide their sexual orientation and gender identity experienced by many LGBT persons who are persecuted. For example, a LGBT forced migrant may have never had sex or a romantic relationship with a same-sex partner, may have been in a heterosexual marriage or relationship, may have had children in a heterosexual marriage, and may have limited relationships with LGBT persons in their host country. Nonetheless, they may identify as LGBT and recount a history of having same-sex crushes, of feelings of fear in response to noticing features of their sexual orientation and gender identity, of attempts to hide their sexuality, of being targeted because of non-conforming gender behaviour, and of fears of disappointing their family of origin. Adjudicators need to be educated that these characteristics alone are valid indicators in an asylum claim based on SOGI-related persecution, and that claimants do not need to produce evidence such as sexual behaviour or involvement in the host country's LGBT community to be credible.

Slowing down of the coming-out process may lead to two types of difficulties: firstly, delays in seeking protection from persecution or, secondly, seeking protection from persecution but not disclosing SOGI as the basis for the claim until later in the claim process. The cumulative effect of social and family anti-LGBT abuse creates potent psychological obstacles to seeking help on a SOGI basis. LGBT forced migrants experience considerable shame and fear when disclosing their sexual orientation

and gender identity, especially in recounting the instances of traumatic violence directed at their sexuality. For many LGBT forced migrants, the notion that they would receive help from governmental authorities on the grounds that they have suffered persecution based on SOGI is difficult to grasp until they have been outside their country of origin for an extended period. Complex PTSD makes it difficult for forced migrants to recount a history of traumatic events and it may take many years for the shame and fear to diminish sufficiently to allow a forced migrant to be able to seek help.

Post migration

Documenting developmental events in SOGI that occur after arrival in the host country may be critical data in asylum applications in countries, such as the US, that require 'exceptional changes in personal circumstances' when the application is filed after the allowed period.⁵ Some transgender forced migrants may experience shifts in gender identity that occur after they have reached the relative safety of the host country. Some may start an asylum application while self-identifying as lesbian or gay but later on in the application process they may adopt a transgender identity. Adjudicators need to be educated that these are normative developmental events for transgender forced migrants.

Unlike other forced migrant groups, once LGBT persons are in a host country they do not usually have the natural support of their ethnic community. Their compatriots remind them of the very people that they have fled from and are fearful of. In their contact with members of their ethnic community they will often not disclose their sexual orientation and/or gender identity. Furthermore, when connecting with the local LGBT community, they may experience considerable self-blame and embarrassment about their history of persecution and hide it from their new LGBT social network. In this way they often miss out on two potential sources of social support and sometimes experience great isolation.

Forced migrants experience tremendous changes during their first years in their new country. Their perceptions of themselves as LGBT

persons may be in flux as they test out how people respond. They are often incredulous to discover that there are people who want to help them even though they are LGBT; but they can also be hyper-vigilant and fearful when they meet new people or those who remind them of their tormentors. In our clinical work, we have observed that it is common for new social situations to reactivate traumatic memories. One client from Moldova worked in a supermarket that caters to people from Moldova and Russia. Hearing co-workers and customers speak in Russian triggered memories of being harassed and physically assaulted, and being a social outcast. "When people at work give me looks, it automatically reminds me of people in my country. I start shaking, and I go in the bathroom and cry. I'm not in control of my feelings; my body responds to my emotions."

Conclusion

Mental health providers can help document and explain the psychological impact of anti-LGBT persecution and the developmental changes that can be expected in sexual orientation and gender identity characteristics. Adjudicators need to be able to draw on this expertise in order both to be accurate in their judgments of claims for asylum based on SOGI-based persecution and also to help minimise the re-

traumatisation that may occur when forced migrants are asked to retell their history as part of a SOGI-based asylum claim.

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Article based on research drawn from interviews with persons from 26 countries. Email authors for more information.

1. Rape of a person because of their perceived sexual or gender orientation; the intended consequence of the rape, as seen by the perpetrator, is to 'correct' their orientation – to turn them heterosexual or to make them act more in conformity with gender stereotypes.
2. Anti-LGBT traumatic events can be assessed using Ariel Shidlo's SOGI Traumatic Events Questionnaire (SOGI-TEQ), unpublished measure, 2010. Contact author for details.
3. See Ariel Shidlo, Joanne Ahola, Michael Corradini, & M. Carl Budd, 'Mental health challenges of LGBT refugees and asylum seekers', presented at Double Jeopardy 2012 conference at Greenwich University, London, July 2012.
4. Ahola and Shidlo, 'SOGI Assessment in Forced Migrants (SOGI-AFM)', unpublished measure, 2011.
5. US Citizenship and Immigration Services 'Guidelines for Adjudicating Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) Refugee and Asylum Claims'. 2011. pp 48 and 64 <http://tinyurl.com/USCIS-march2011>

The Rainbow Group in Mae La camp

Moses

Discrimination, verbal abuse and physical and sexual violence follow Burmese LGBTI people who cross into Thailand to seek shelter in camps.

Growing up gay in Burma I did not really understand what being 'gay' meant but I believed that my feelings must be wrong. I think most LGBTI people who left Burma for refugee camps in Thailand were similarly confused about their sexual identity or had suffered mental or physical abuse by their families and/or community. This is the reality of life for LGBTI individuals in Burma. Traditional cultural and religious beliefs prevent most of us from living openly as respected members of our communities.

Most of the LGBTI people in Mae La refugee camp on the Thai-Burma border decided to leave Burma because of the discrimination they experienced there. We fled to Thailand with the hope of finding freedom. In reality, things were not going to be as we expected. We arrived in Thailand with no legal documentation and therefore had to live in one of the refugee camps established along the border. The camps are large and well established but there are no organisations or groups offering support specifically for the LGBTI community.

Living in the camps is a big challenge for LGBTI individuals. The camps are crowded and gossip spreads quickly. Taunts and abuse against LGBTI people are looked on with amusement by bystanders, and attempts to find protection from the established camp leaders results in advice to “change our appearance” or in even further abuse. After finding the refugee camp to be no better than the situation I had left behind, I began thinking about why we were being treated so badly, what was wrong with us and what we could do to live peacefully with the community. Then I came up with some ideas for how I believed we could change perceptions. By participating in community work perhaps we could create understanding between the community and LGBTI people.

At first, we had no idea how we could start. A friend who worked for an NGO operating in the camp gave us advice on organising a group. We met twice a month with the aim of providing a safe place for LGBTI individuals to meet, talk about our experiences and hopefully improve our situation in the camp. We faced many challenges, even in just having the confidence to meet together. Within the camp there is a great deal of fear in identifying oneself as LGBTI and we had ten members at most. We would meet in someone’s house, inviting people whom we felt might identify as LGBTI. We were asked by UNHCR to consider establishing a more formal community-based organisation (CBO) but resisted as we did not believe we could offer our members sufficient protection if we were to become more visible through becoming a CBO.

There are certainly many more people living closeted lives within the camps, too frightened to live open lives or make contact with other LGBTI people. In creating a more positive perception of being LGBTI by contributing to the community we hoped to make it increasingly acceptable for people to identify as LGBTI in the camp and to challenge intolerant attitudes. The group’s motto was very clear: “we love to live peacefully with the community”.

We set up our Rainbow Group with seven members, with all of us taking different responsibilities. The Group worked in the belief

that we had different abilities that could help the wider camp community. We decided that we could raise the profile of LGBTI in the camp by becoming involved in social work and so the Rainbow Group began decorating weddings, assisting at funerals, running dance classes and facilitating funfairs or special events. Due to our reluctance to become a formal CBO we never received funding, although we were able to attend community meetings.

Despite our involvement in community activities, however, I did not feel a great change in attitudes. Tolerance, perhaps, but not acceptance. We had believed that perceptions within the camp could change but there are huge obstacles. The leadership positions in the refugee camps are often held by religious leaders and the majority of the camp community is uneducated and holds conservative beliefs regarding sexuality. We avoided becoming a formally recognised CBO because of fears of what having a higher profile might bring – but that meant we had no protection provided by any authority in the camp.

For most LGBTI refugees in Mae La and the other refugee camps, the choice is between leaving the camp to work illegally in nearby Thai communities or living closeted lives in the camps until they can relocate to a third country. I left Mae La to study near Mae Sot. Most of the former members of the group now also live outside the camps and our Rainbow Group has now ceased to exist. I am still in contact with friends in the camp and understand that the intolerance and the abuse continue.

The Thai interior minister recently announced that, given current reforms in Burma, all refugees could be repatriated within two years. We do not believe, however, that LGBTI individuals will be able to live openly and safely in Burma as LGBTI. But as we are not in the camps we are not in a position to seek resettlement elsewhere.

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“On what grounds?” LGBT asylum claims in Canada

Sharalyn Jordan and Chris Morrissey

A number of positive developments have occurred over the past two decades to create more robust protection and community support within Canada – but recent legislative changes will jeopardise fairness and justice for LGBT refugee claimants.

“It was the vigilante groups. It was the villagers. It was the uncles. It was the entire system. It was the guy I was working for who would scream in front of his clients: “*kandu*” [“fag” – pejorative term for male homosexual]. It was everywhere...”

Currently, no fewer than 78 countries criminalise same-sex sexual acts or gender-variant behaviour. Many of these laws are the legacy of colonial imposition of the British penal code. Yet legal statutes are only one aspect of homophobic or transphobic persecution. The global terrain of protection and persecution for sexual and gender diversity is complex, shifting and often paradoxical. Brazil hosts the largest Pride Parade in the world yet also has the world’s highest reported rate of homophobic and transphobic murders. While South Africa recognises same-sex marriage, human rights organisations there report ten cases a week of ‘corrective rape’¹ targeting lesbians, most of which are never investigated by police. Within the same country, people’s vulnerability or safety varies considerably based on social class, race, religion, ability to ‘pass’ and social networks.²

In 1992-93, Canada became one of the first countries to officially extend refugee protection to people facing persecution based on sexual orientation or gender identity (SOGI) and its approach has been lauded as a model. Yet simultaneously Canada has been using increasingly stringent measures to screen out potential asylum seekers. New legislation entitled Protecting Canada’s Immigration System Act came into force in December 2012; many of the changes undermine fairness and justice for all refugees, and LGBT asylum seekers face particular challenges.

The routes people take to escape SOGI-based persecution are often complex and prolonged. Intersections of gender, social class and nationality enable and constrain who is able to leave, how people migrate, and options for permanent status. Migration restrictions and the relative obscurity of a refugee claim combine to create situations in which LGBT migrants pursue more apparent, but sometimes irregular, social or economic means of migration. Among SOGI survival migrants now living in Canada, many attempted multiple relocations within their own country or region, spending years living in precarious circumstances. Unlike civil conflicts, people experience sexual orientation or gender identity persecution in relative isolation. To survive stigma and violence, people learn to deny, cover or hide their sexuality or gender identity, and to be ever vigilant. These survival tactics, and other impacts of trauma, do not disappear on departure from the country of origin – and they may undermine people’s ability to access safety and permanent status.

For those who manage to initiate a refugee claim in Canada, one of the first questions

Angela is a young woman from an African country with a ten-year prison sentence for having a same-sex relationship. Her father arranged for her to marry a man twenty years her senior. She confided in her sister that she had a secret relationship with a girlfriend and could not marry this man. The sister told her parents. Angela was locked up and beaten regularly by her father for over a month. Rumours spread around her town. Her church publicly expelled her. When she was allowed out of her home, she was assaulted by a gang of young men and neighbours threw rocks at her. She went into hiding until an uncle arranged to get her out of the country. An agent arranged her travel to Canada, where she was eventually granted asylum.



UNHCR/Gy. Sopronyi

Asylum seekers queuing at the state-operated Reception Centre in Sofia, Bulgaria, 2011.

potential refugees face is: “On what grounds?” Thus, people who have survived through secrecy are forced to ‘out’ themselves to an official. Mzlendo, a claimant from East Africa, recounted his experience: “They call you through a window. They tell you ‘Tell me your story. Why are you making a refugee claim?’ And you’re in earshot of people, some of whom are the very countrymen you are trying to get away from. You shout your claim through a bullet-proof glass. It is dehumanising. You are forced to shout before them ‘I want to make a refugee claim because I am a homosexual.’”

Port of entry, screening interviews and refugee hearings all become places of scrutiny where asylum seekers must override stigma, shame and fear in order to access protection. Under these circumstances, incomplete or late disclosure of sexual orientation or gender identity as the cause of persecution is not unusual. In the context of massive changes to Canada’s refugee system, it remains to be seen whether LGBT asylum seekers will be adequately protected. Under the new regime, claimants face extremely tight timelines for preparing themselves and their evidence: 10-15 days for the written basis of a claim, 30-45 days to submit documents and 60 days to the hearing.

To be recognised as a refugee, applicants must convince decision-makers of the genuineness of their sexual orientation or gender identity, their fear of persecution because of this identity, and the lack of protection in their country. Because homophobic and transphobic persecution usually occurs out of the public eye, the possibility of securing

corroborating evidence is limited. SOGI asylum seekers go to great lengths – asking sexual partners to provide letters, recovering old hospital records, and sifting through newspaper stories – to try to make what is hidden visible, or for transgender claimants, the inconsistent, coherent. Because of the challenges of obtaining evidence, a great deal of weight rests ultimately on verbal testimony. Refugee claimants struggle against cultural and language differences, suspicion and the impacts of stigma and trauma to narrate a plausible account.

Applicants are evaluated against expected narratives of refugee flight and Western narratives of LGBT identity and community. Decision-makers rely on their own background knowledge – often based on culturally constrained understandings of sexualities and genders – to assess the credibility of an applicant’s identity claim. Assumptions about sexuality and gender based on Western lesbian, gay, bi and trans ‘coming out’ narratives or ‘gender identity dysphoria’³ diagnosis do not necessarily apply inter-culturally. For example, an expectation that SOGI asylum seekers will seek ties with the local LGBT ‘community’ in Canada is evident in many decisions we have seen. The coming out narrative creates this expectation. Yet sexual orientation or gender identity does not universally provide a sense of collective identity. Even when it does, there are many reasons why LGBT migrants may not seek out the LGBT community in Canada, such as exhausting work schedules, poverty, experience of racist exclusion within LGBT circles, and language gaps. Furthermore,

under the new system applicants simply will not have time to connect with LGBT communities or organisations. Consequently it is probable that even greater weight will rest on verbal testimony. Among some decision-makers, suspicion of fraudulent claims runs high – and there is particular suspicion that people are faking sexual orientation or gender identity claims. As a result, slight inconsistencies or omissions are often interpreted as lack of credibility.

Steps forward, steps back

A combination of training and Federal Court decisions has improved the quality of decisions we see in Canada. Adjudication practices have become more skillful with the training of decision-makers on SOGI claims. The recently published UNHCR guidelines are an excellent step towards enhancing the quality of decision-making on SOGI refugee claims.⁴

In the absence of official sources, informal networks have played a critical role in facilitating access to refugee protection for LGBT forced migrants. Recently, official sources have begun to include information related to sexual orientation and gender identity claims. For example, a resource list provided by government officials at the screening interview now includes local groups for LGBT claimants. Border officers have, on some occasions, pointed out these resources to claimants as a way of signalling openness. The Refugee Board's online guide for refugee claimants now specifically identifies sexual orientation and gender identity as examples of particular social groups.

Canada's guidelines for vulnerable persons were amended in late 2012 to recognise the potential vulnerability of LGBT claimants.⁵ These guidelines allow modifications to procedures for people deemed vulnerable because of age, mental illness or psychological impacts of trauma. The inclusion of LGBT claimants in these guidelines acknowledges that the psychological impacts of homophobic and transphobic trauma can interfere with

people's ability to remember and recount their experiences clearly. Demonstrating claimants' vulnerability and determining the kinds of assistance needed are best done with input from mental health professionals and physicians. However, with recent federal cuts to health service coverage for refugees, many claimants will not have access to assessments, nor to counselling or medication that may help them stabilise enough to testify. In the extremely tight scheduling of hearings it remains to be seen how effectively procedures for vulnerability can be applied.

In Canada's major receiving cities, Montreal, Toronto and Vancouver, recognition and support for LGBT migrants among community organisations have grown over the past decade, addressing exclusion and building better support systems. Very recently, groups have formed in other cities: Halifax, Ottawa, London and Winnipeg. Yet the pace of the new system being introduced will place immense strain on the volunteers, community workers and NGO infrastructure that sustain these support systems.

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1. Rape of a person because of their perceived sexual or gender orientation; the intended consequence of the rape, as seen by the perpetrator, is to 'correct' their orientation – to turn them heterosexual or to make them act more in conformity with gender stereotypes.

2. Jordan, S R (2010) 'Un/Convention(al) Refugees: Contextualizing the accounts of refugees facing homophobic or transphobic persecution', *Refugee* 26, 2, 165-182. <http://pi.library.yorku.ca/ojs/index.php/refuge/article/view/32086>

3. Negative impact on well-being caused when a person feels there is a mismatch between their biological sex and their gender identity.

4. UNHCR (2012) 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 HCR/GIP/12/01 See box on p7.

5. <http://tinyurl.com/IRB-Guideline8>

LGBTI asylum claims: the Central and Eastern European perspective

Anna Śledzińska-Simon and Krzysztof Śmiszek

Recent research indicates that CEE countries still lag far behind the rest of Europe in their asylum practices in relation to LGBTI asylum claims. Low levels of awareness, lack of guidance and cultural hostility are jeopardising asylum seekers' prospects for fair treatment.

Research published in 2011 found that authorities in the Central and Eastern Europe (CEE) region only occasionally have to deal with LGBTI asylum claims. The Fleeing Homophobia project of COC Netherlands and VU University Amsterdam¹ found that since 1997 the average number of claims on this ground per year is two in Bulgaria, three or four in the Czech Republic, five or six in Hungary, two or three in Poland and three in Lithuania. In comparison, there were 1,100 LGBTI asylum claims considered between 2008 and 2010 in Belgium. However, there are no official data since the CEE countries do not keep separate statistics on LGBTI claims, let alone disaggregating the statistics with respect to lesbian, gay, bisexual, transgender or intersex status.

All of the CEE countries are signatories of the 1951 Refugee Convention and its 1967 Protocol, and all – except Belarus – are members of the Council of Europe and States Parties to the European Convention of Human Rights (ECHR). Moreover, Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia (and in the near future Croatia) are members of the European Union. The 1951 Refugee Convention, EU law and ECHR case-law all offer protection to asylum seekers and refugees. Yet procedures for granting refugee status to LGBTI asylum seekers seem to be far from consistent in this region of the world.

Moreover, none of the CEE countries has any official guidelines on how to handle LGBTI asylum claims – and there are no specialised national NGOs providing legal and social support for LGBTI asylum seekers in the CEE region. Asylum officials

demonstrate low awareness of the specific nature of persecution against LGBTI individuals and often demonstrate biases against this social group. The low number of LGBTI asylum claims in the region may therefore be attributed to the general homophobic and transphobic climate, which makes it far from a dream destination for those persecuted on the basis of their sexual orientation or gender identity.

Criminalisation

A noticeable trend in CEE countries is that LGBTI applicants are, on the whole, only granted asylum if same-sex acts and/or self-identification as lesbian, gay, bisexual or transgender are criminalised in their country of origin. Unfortunately, in most CEE countries, granting a positive asylum decision requires evidence of actual enforcement of such laws, thereby running counter to UNHCR's guidance that laws prohibiting same-sex relations, even if irregularly, rarely or never enforced, could lead to an intolerable predicament for an LGBT person amounting to persecution. The Lithuanian and Polish authorities state that merely the existence of such laws would be considered as persecution; however, practice in Poland is that enforcement of the law is essential for recognition of LGBTI claims.

Credibility assessment

Most CEE countries require evidence over and above the applicant's statement about her or his sexual orientation or gender identity. The Fleeing Homophobia project's final report revealed that many CEE asylum authorities demand medical certificates and other medical documents, usually issued by sexologists, psychologists or psychiatrists.

The obscure practice of ‘sexodiagnostic examination’ was conducted in the Czech Republic between 2008 and 2010, and included an interview with a sexologist plus so-called ‘phallometric testing’². This practice was not only unnecessary but also contrary to the prohibition of inhuman and degrading treatment and in contravention of the right to privacy. After international criticism by the Fundamental Rights Agency of the European Union, UNHCR and other human rights organisations and institutions,³ the practice of phallometry was abandoned by the Czech authorities.

However, in Slovakia an expert opinion is still required in order to establish sexual orientation and/or gender identity of anyone claiming asylum on these grounds. In particular, sexual orientation is determined in the course of a sexological interview. Again, this practice contravenes UNHCR’s guidelines which state that officials should rely on the applicant’s statements alone where there is a lack of Country of Origin Information.



In Bulgaria the marital or parental status of LGBTI applicants is sufficient to deny granting refugee protection. Bulgarian asylum authorities also ask intrusive questions concerning the number of sex partners, favourite sexual positions or sexual contacts

with persons of the opposite sex. In Hungary any delay in revealing sexual orientation in the first phase of the asylum procedure is a negative factor in the credibility assessment. Moreover, heterosexual relationships and children born out of them are also considered grounds for questioning the credibility of lesbian and gay asylum seekers.

Discretion requirement

CEE national asylum authorities often use the argument of being able to conceal one’s sexual orientation or gender identity in the country of origin in order to judge claims to be unfounded. The Hungarian Office of Immigration and Nationality noted with regard to one LGBTI asylum case that “even if criminal sanctions against homosexuals or homosexual behaviour are in force [in Algeria], the sexual orientation can be practised in a hidden, discreet way, in order to prevent possible attacks”. Similarly, a Pakistani asylum seeker’s case before the Polish Office for Foreigners was rejected because, according to the authorities, the applicant was able to “escape” to other parts of his country. In the justification of its decision, the Office for Foreigners referred to the British Home Office report on the situation of LGBT in Pakistan, which states that “if he lives as homosexual discreetly there should be no reason for him to experience harm from the rest of the society”. In contrast, UNHCR’s guidelines emphasise that LGBTI people should be equally entitled to enjoy their right to express their identity and associate with others, and that concealment of sexual orientation and/or gender identity should not be required to prevent the risk of persecution.

Inconsistent rulings

Two cases of homosexual Ugandan asylum seekers were recently decided by the Polish authorities. The first applicant claimed to have been beaten, tortured and humiliated in Uganda because of his orientation. In spite of his sexual orientation, he was married and had biological children. The second applicant had been caught having homosexual intercourse in a park and was arrested, during which time, he claimed, he was subjected to

physical and psychological violence; he was released after ten days but expected a criminal sentence of imprisonment for seven years or even the death penalty. Both applicants' claims for protection were refused in the first instance of the asylum proceedings. In both cases the Head of the Office for Foreigners decided that the situation in Uganda did not pose a real risk of persecution on the basis of sexual orientation. In the case of the first applicant the decision was reversed in the second instance by the Refugee Board which concluded that the mere existence and execution of the provisions penalising homosexual acts may be sufficient to grant a refugee status. In the second case the Refugee Board held that the claimant's homosexual orientation was not effectively established notwithstanding the sexologist's medical certificate and the material presented by the applicant. (This decision was later reversed by the administrative court).

Conclusion

CEE countries are bound by international standards concerning refugees and asylum seekers. Nevertheless, the practice of their national asylum authorities concerning LGBTI claims definitely falls below these standards. Given the low number of LGBTI asylum seekers in the CEE region, national

asylum authorities appear to lack expertise in dealing with such claims and might easily err both in assessment of individual circumstances of the applicants and the objective situation in their country of origin. This reality should encourage all stakeholders – government officials and human rights NGOs – to cooperate more closely in order to exchange information and good practices.

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The article draws on the results of the Fleeing Homophobia project. Final report at: <http://tinyurl.com/Fleeing-Homophobia-report>

1. Carried out in cooperation with the Hungarian Helsinki Committee, Avvocatura per i diritti LGBT/Rete Lenford and the European Council on Refugees and Exiles.
2. "Phallometry measures changes in genital blood flow in response to sexually explicit visual and audio stimuli using electrodes attached to the genitalia." www.unhcr.org/4daed0389.pdf
3. UNHCR's Comments on the Practice of Phallometry in the Czech Republic to Determine the Credibility of Asylum Claims based on Persecution due to Sexual Orientation, April 2011 <http://tinyurl.com/ORAM-phallometry-report>

Global human rights frameworks applicable to LGBTI migrants

Shana Tabak and Rachel Levitan

Sexual minorities leave home for a variety of reasons but their departure is often due to the identity-based violence, discrimination and harassment they face at the hands of state actors, family and community. Although no international legal instrument exists to specifically protect the human rights of LGBTI individuals, over recent years international legal bodies have interpreted basic human rights provisions to apply to LGBTI populations.

Various UN treaty bodies have echoed this message, including the Human Rights Committee which has stated that the principles of the International Covenant on Civil and Political Rights (ICCPR) apply equally to all without discrimination to LGBTI

populations, holding that the reference to 'sex' in Article 26 (the ICCPR's principal anti-discrimination provision) incorporates sexual orientation.¹ Similarly, the Committee on Economic, Social and Cultural Rights (the authoritative interpretive body of the International Covenant on Economic, Social and Cultural Rights – ICESCR) proscribes any discrimination on the basis of sexual orientation.² Consequently, States Parties to the ICCPR and the ICESCR must ensure protection of Covenant rights for all LGBTI people, including migrants, within their territories as set out in both treaties.

Beyond these international legal protections of LGBTI individuals, regional human rights bodies

have also affirmed that human rights law must apply to those discriminated against on the basis of sexual orientation or gender identity. Most recently, the European Court of Human Rights held that segregating LGBTI detainees violates their human rights and amounts to torture, inhuman or degrading treatment if it deprives them of meaningful access to detention centre services or is tantamount to penal solitary confinement.³ The Inter-American Commission on Human Rights' jurisprudence has increasingly addressed the human rights of LGBTI people, holding for the first time that the American Convention on Human Rights bars discrimination based on sexual orientation.⁴

In addition to these human rights standards, in 2006 a group of legal experts drafted the Yogyakarta Principles, guidelines that address how basic human rights tenets relate to sexual minorities.⁵ Although these principles are not

binding on states, they articulate the primary international law protections for sexual minorities and offer states guidance on best practices for ensuring human rights of LGBTI populations.

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1. See *Toonen v Australia*, HRC Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992, para. 8.7 (1994).
2. See Committee on Economic, Social and Cultural Rights, General Comment No. 14: The right to the highest attainable standard of health, August 11, 2000, E/C.12/2000/4. www.unhcr.org/refworld/docid/4538838d0.html
3. ECHR, *X v. Turkey* (application no. 24626/09)
4. www.cidh.oas.org/basicos/english/basic3.american%20convention.htm *Atala Riffo and Daughters v. Chile*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. 83-84 (February 24, 2012).
5. Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, 2006 www.unhcr.org/refworld/pdfid/48244e602.pdf

LGBTI refugees: the Brazilian case

Henrique Rabello de Carvalho

Brazil has a long tradition of providing shelter and protection to people persecuted for political, racial and social reasons. Following the directives of UNHCR concerning the definition of a 'social group' as a cohesive and vulnerable group whose members share essential characteristics of identity, Brazil's National Committee for Refugees (CONARE¹) has determined that sexual minorities should be considered as a social group for the purposes of applying the 1951 Refugee Convention and Brazil's Refugee Law.²

In analysing the question of the well-founded fear of persecution as grounds for claiming asylum, CONARE includes consideration of the criminalisation of sexual relations between same-sex adults when assessing the potential risk to life or freedom of the refugee applicant in their country of origin. 78 countries out of 193 still have legislation criminalising same-sex consensual acts between adults. Punishments range from a number of lashes (e.g. Iran) or two months in prison (e.g. Algeria) to life imprisonment (e.g. Bangladesh) or even death (Iran, Mauritania, Saudi Arabia, Sudan, Yemen).³ By contrast, in May 2011 the Supreme Court of Brazil recognised that homosexual couples have the same rights as heterosexual couples, including the right to being treated equally and the right not to be discriminated against.

However, public policies in defence and in favour of LGBT people are neither sufficient nor effective in reducing homophobic violence in Brazil. Violence against gays and lesbians – including murder – continues to rise. Brazil has no hate crime law and no public institution or specific project monitoring the occurrence of homophobic crimes and violence. A bill criminalising homophobia has been pending in the National Congress for more than ten years.

In the meantime, recognition of sexual minorities as a social group in terms of claiming and providing asylum means that Brazil's Refugee Law and the 1951 Refugee Convention continue to be the most powerful tools in the defence of LGBTI refugee rights in Brazil.

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1. Established by the Ministry of Justice.
2. Law n° 9.474/1997
3. International Lesbian, Gay, Bisexual, Trans and Intersex Association <http://tinyurl.com/ILGA-State-Homophobia-2012>

Sexual orientation and gender identity: developments in EU law

Evangelia (Lilian) Tsourdi

The amended version of the EU Qualification Directive, adopted in 2011, marks further progress in ensuring LGBTI applicants' rights by explicitly adding gender identity alongside sexual orientation as a cause of persecution.

The EU is in the process of setting up a Common European Asylum System (CEAS) which is being developed in two phases. During the first phase, the EU Qualification Directive was adopted (Directive 2004/83/EC of 29 April 2004) which established two distinct categories of protected persons: refugees and subsidiary protection beneficiaries. It set out rules for the definition of these categories as well as the rights that accrue to each category.

The Directive, in Article 10, retained the approach of the 1951 Refugee Convention that in order to be recognised as a refugee the individual must be persecuted for one or more of the following grounds: race, religion, nationality, membership of a particular social group or political opinion. Sexual orientation was therefore not explicitly included as a stand-alone ground for persecution. However, the Directive also set out some additional guidance by providing for more detailed definitions of these five grounds.

Article 10 (1)(d) of the Directive states that "depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. [...] Gender related aspects might be considered, without by themselves alone creating a presumption for the applicability of this Article". Although this wording was not particularly strong, the explicit mention of sexual orientation as a common characteristic defining a particular social group was in itself a step forward in the enhancement of LGBTI applicants' rights. Decision-makers at national level in the EU Member States were urged to take into consideration during the

assessment of claims the applicants' sexual orientation as well as gender-related aspects.

Despite this positive development, the provision also included some limitations. The concept of gender identity was not expressly mentioned. In addition, Article 10(1)(d) provided that applicants need both to possess an "immutable characteristic" and to be perceived by society as possessing that characteristic in order to be considered members of a particular social group. This is not consistent with a great part of national case-law, nor with UNHCR's position on the issue which is that "a particular social group is a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society".¹

In practice, on the one hand, if the persecutor perceives an individual as possessing a particular characteristic and decides to persecute them on that basis it matters little whether in fact the individual possesses this characteristic or not; thus social perception should suffice. On the other hand, as UNHCR stresses, there is no requirement that members of the social group associate with one another, or that they are socially visible, for the purposes of the refugee definition; thus possessing the immutable characteristic should suffice.² A study on the incorporation of the Directive into domestic law revealed that some Member States required that both conditions were fulfilled, while others did not.³

2011 Qualification Directive: pros and cons
The second stage of development of the CEAS aims more ambitiously to create a

common asylum procedure and a uniform status valid throughout the EU. Despite the developments on the definitional scope brought by the 2004 Qualification Directive, a study in 2011 on the treatment of asylum claims related to sexual orientation and gender identity found that there were still considerable differences in the way in which EU Member States treat LGBTI applications.⁴

EU Member States adopted an amended version of the Qualification Directive in 2011 and this version marked progress by making explicit reference to gender identity. The second part of the relevant text of Article 10(1)(d) of the Directive now reads as follows: “Gender related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group.”

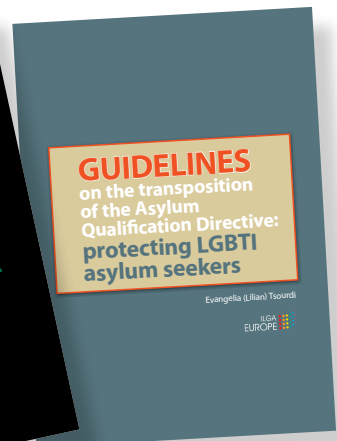
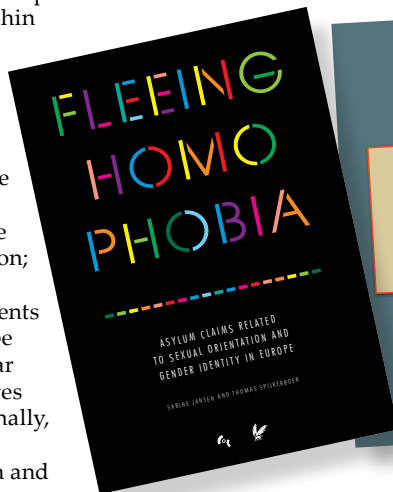
Not only does the Directive now explicitly include gender identity but it also entails an obligation for decision-makers to give consideration to gender-related aspects, including gender identity – reflected by the use of “shall” instead of “might”. Even with this strengthened wording, however, and the inclusion of gender identity, it does not unambiguously include intersex individuals, although the Directive does recognise in Article 9(2) that gender-specific acts and child-specific acts fall within the concept of persecution and both of these references can be relevant in cases of persecution of intersex people.⁵

Disappointingly, the 2011 Directive retained the word ‘and’ between the phrases referring to immutable characteristics and social perception; this could lead national decision-makers to require both these elements to be fulfilled if applicants are to be considered members of a particular social group, a practice which leaves certain applicants unprotected. Finally, both versions of the Directive put consideration of sexual orientation and

gender identity under the membership of particular social group ground. However, as UNHCR stressed in its recent Guidelines on claims based on sexual orientation or gender identity, “other grounds may though also be relevant depending on the political, religious and cultural context of the claim; for example advocacy by LGBTI activists may be seen as going against prevailing political or religious views and/or practices”.⁶

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1. UNHCR, *Guidelines On International Protection: “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*, 2002, para 11. www.unhcr.org/3d58de2da.html
2. UNHCR, *Guidelines On International Protection: 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*, 2012, para 42. www.unhcr.org/509136ca9.html
3. Odysseus Academic Network, *Directive 2004/83: Qualification Directive Synthesis Report, Done for DG JLS of the European Commission*, 2007, pp52-53.
4. See Spijkerboer, T & Jansen, S, *Fleeing Homophobia: Asylum Claims Related to Sexual Orientation and Gender Identity in Europe*, 2011, <http://tinyurl.com/Fleeing-Homophobia-report> See also article by Śledzińska-Simon & Śmiszek pp16-18.
5. ILGA-Europe, *Guidelines on the transposition of the Asylum Qualification Directive: protecting LGBTI asylum seekers*, 2012, p9 <http://tinyurl.com/ILGA-Tsourdi-2012>
6. www.unhcr.org/509136ca9.html See also article by Turk pp5-8.



LGBT refugee protection in the UK: from discretion to belief?

Amanda Gray and Alexandra McDowall

The UK government used to have no specific guidance or training for decision-makers for claims brought on the grounds of sexual orientation. It was only in 2010 following a combination of judicial, civil society and political pressures that specific policy guidance was speedily issued and significant progress was seen.

Until July 2010, individuals who claimed asylum in the UK on account of their sexual orientation or gender identity (SOGI) were considered not to be in need of international protection if it would be “reasonable” for them to be “discreet” on return to their home country. This ‘reasonable discretion’ test had been elaborated in earlier case law and adopted in 2009 by the UK Court of Appeal in the case of *HJ (Iran) and HT (Cameroon)*.¹ Consequently, UK asylum decision-making authorities focused on whether an individual seeking asylum could be discreet about their sexuality if returned. This test required testimony by the applicant as well as country-of-origin evidence as to whether they could reasonably be expected to tolerate a life lived in secret if returned there.

The test ran contrary, however, to UNHCR’s 2008 Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity which states that “a person cannot be expected or required by the state to change or conceal his or her [sexual] identity in order to avoid persecution. Nor is there a duty to be ‘discreet’ or take certain steps to avoid persecution, such as living a life of isolation, or refraining from having intimate relationships.”² The Guidance Note makes it clear that requiring lesbians and gay men to remain ‘in the closet’ in this way is discriminatory and can amount to persecution in itself.

While a significant problem, the reasonable discretion test was not the only one relating to the quality of decision-making in sexual orientation claims. Research published in April 2010 by two UK NGOs³ identified other systematic issues with the quality of decision-

making. The report by one of the NGOs, Stonewall, was deeply critical, finding that UK authorities and the judiciary displayed evidence of “systematic discrimination” against those claiming asylum on the basis of sexual persecution. Their research found that 98% of gay or lesbian claims were refused, based on arguments such as:

- **the potential for the applicant to relocate** to another part of their country of origin to avoid persecution.
- **non-enforcement of laws** criminalising same-sex relationships leading to the finding that an applicant did not have a well-founded fear of persecution. This fails to adequately reflect the reality that a well-founded fear of persecution can exist even if laws criminalising same-sex consensual acts are not enforced, that is, when “the existence of that law has the effect of creating an intolerable predicament for him or her” or when such laws are “enforced in an unofficial manner”.⁴
- **problematic credibility assessments**, which resulted at times in outright disbelief that the asylum claimant was lesbian or gay. This included rejection of claims due to pre-conceived notions about how lesbians and gay men behave, both when forced to conceal their sexual identity in their country of origin (for example, by being in a heterosexual relationship) and how they express their sexual identity when they are in the UK (for example, not having been to gay clubs or formed gay relationships). Stonewall’s report quoted a caseworker saying: “I would look at how they’ve explored their sexuality

in a cultural context, reading [famously homosexual British author] Oscar Wilde perhaps, films and music.”

Meanwhile, in May 2010 the UK’s government committed publicly to ensure that no gay or lesbian asylum seeker would be returned to persecution: “We will stop the deportation of asylum seekers who have had to leave particular countries because their sexual orientation or gender identification puts them at proven risk of imprisonment, torture or execution”.⁵ It was nonetheless, the Supreme Court’s decision in July 2010 in the case of *HJ (Iran) and HT (Cameroon)* which gave the much needed policy change real urgency and direction, ensuring a radical overhaul in how such decisions were approached by refugee status decision-makers at the first instance (i.e. at the first legal decision). This case concerned the extent to which two gay refugees from Iran and Cameroon might conceal, or be expected to conceal, the behaviour or characteristic giving rise to his or her fear of persecution, in this case their sexual orientation. The Supreme Court considered whether they would be considered a refugee when they were hiding their own sexual orientation – in other words, living a lie – in order to avoid persecution. They found that such a person **would** be a refugee, and so overturned the Court of Appeal’s 2009 decision which had answered the same question with “only if the concealment cannot reasonably be tolerated”. Several points were made:

- The rationale of the Refugee Convention is that people should be allowed to live their lives free from the **fear** of serious harm coming to them as a result of one of the protected grounds (of which sexual orientation is one). If an individual would have to conceal his/her sexual identity because of a well-founded fear of persecution, that person does not cease to have that well-founded fear, even if such concealment is successful.
- No-one would consider it acceptable for a straight man or woman to have to conceal his or her sexual identity indefinitely.

- The ‘reasonable tolerability’ test was difficult to apply in practice.

The judgment was unanimous, finding that gay and lesbian asylum seekers should be granted refugee status if going home would result in them being forced to conceal their sexuality. The UK authorities reacted quickly to the judgment. Specific guidance and training for decision-makers on how to approach asylum claims based on sexual orientation and sexual identity were rolled out by the UK Border Agency by the end of 2010.

Policy and training

By the end of 2010 all decision-makers at the UK Border Agency, along with their managers and senior managers, had been trained and a specific Asylum Policy Instruction was in place and public. Findings from the NGO research referred to above and the Supreme Court judgment provided a framework of the key areas where the UK authorities should focus. Some of the key policy changes and guidance that were introduced are outlined below.

A strong and welcome focus on **interviewing skills** highlighted the need to ask open and sensitive questions around sexual identity as opposed to the former practice of asking questions on conduct. The training explores interviewing technique and describes why asking about sexual conduct is inappropriate.

Research by NGOs had revealed how a failure by applicants to disclose their sexual orientation early in the asylum process was used to discredit their story without any consideration of mitigating circumstances. The new policy and training both deal with the issue of **late disclosure**. Recognition by the UK authorities that the asylum process can silence narratives of sexual orientation due to environmental factors and lack of privacy as well as harsh and insensitive questioning is particularly welcome.

On the issue of **self-identification**, the Policy Instruction comes close to adopting the UNHCR Guidance, when it states that “generally speaking self-identification as a

lesbian, gay or bisexual will be the normal starting point as an indication of a person's sexual orientation". Guidance is provided for decision-makers in terms of **credibility assessment** in this caseload. This includes the need to apply the 'benefit of the doubt' more often due to the fact that in lesbian, gay, bisexual and transgender (LGBT) cases it is more likely that external, documentary evidence and country of origin evidence may

not be available. Decision-makers are trained that it is far better and more determinative to investigate at interview the applicant's personal journey ('narrative of difference') – that is, how they know they are gay, lesbian or bisexual.

Monitoring the quality of decisions is a vital safeguard in this complex arena. Since 2004 UNHCR has been working with the UKBA to develop a Quality Audit System and to achieve an improvement in the quality of first instance decision-making. Following the introduction of this new policy and training, in 2011 the UK Border Agency's Quality Audit Team conducted a thematic audit of decision-making in SOGI claims, in order to identify strengths and weaknesses of implementation.

The authorities also moved quickly to collect better **data**. Such data will include statistics on the number of sexual orientation cases overturned at appeal and can help identify the particular areas that require further attention, through training or guidance on particular factors that have an impact on decisions.

Statistics can also help dispel myths about the numbers of individuals claiming asylum on a certain ground, addressing the misconceived notion expressed in the press that floodgates will open if grounds for claiming asylum are liberalised for gay claimants.



Protest outside the UK Supreme Court, led by Movement for Justice, prior to the Court's judgment in July 2010 against the 'discretion test'.

Continuing challenges

A major area of continuing concern in LGBT decision-making is the quality of credibility assessment. The emphasis on 'self-identification' as evidence of sexual orientation has led to accusations that these claims are easy to make and hard to disprove, and research indicates that decision-makers in Australia and the UK "have been slow to fully absorb and apply the insight that gay people are secretive about their sexuality and relationships as a result of oppressive social forces rather than by choice".⁶ Even if there is self-identification by the applicant as an LGBT person, he or she may still not be believed.

Such inherent difficulties are in part due to the fact that credibility assessment is conducted by human beings who bring an element of subjectivity into the decision-making process. While the training developed in the UK allowed considerable time in the training session to look at individual attitudes to gay and lesbian applicants, it is important that authorities have a heightened awareness of the other subtle pressures that face decision-makers. For example, post-traumatic stress disorder can transfer to the decision-maker over time as a result of hearing such difficult and traumatic personal testimonies; this, combined with defensive

coping mechanisms, can negatively affect the starting point of belief, disbelief or neutrality.

The progress made in the UK on refugee protection for LGBT people is vital, progressive and life-saving. It is for this reason that there must be utmost concern to ensure that one problem is not replaced with another – by moving from discretion to disbelief.

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1. UK Court of Appeal in HJ (Iran) and HT (Cameroon) and SSHD, (2009) EWCA Civ. 172, 10/03/09 para 96
2. UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity, 21 November 2008 para 26. Guidance Note superseded in 2012 by new Guidelines: see article by Volker Turk pp5-8.
3. UK Lesbian and Gay Immigration Group, *Failing the Grade: Home Office initial decisions on lesbian and gay claims for asylum*, April 2010 <http://tinyurl.com/UKLGIG-Failing-the-Grade-2010>
Stonewall, *Immigration and Asylum*, www.stonewall.org.uk/what_we_do/research_and_policy/2874.asp
4. UNHCR Guidance Note 2008
5. <http://tinyurl.com/Coalition-programme-2010> (p18)
6. Millbank J 'From discretion to disbelief: recent trends in refugee determinations on the basis of sexual orientation in Australia and the United Kingdom', *International Journal of Human Rights*, 2009, Vol. 13, 391–414 See footnote 1, at p. 392 http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1330175

Seeking asylum in the UK: lesbian perspectives

Claire Bennett and Felicity Thomas

Many aspects of the UK asylum process can be confusing, disempowering and traumatic for lesbian asylum seekers. Recent research examines the impacts of this process on their experiences, their identity and their well-being.

Individuals making asylum claims based on persecution which relates to their sexual orientation need to argue their case under the 'particular social group' category of the 1951 Refugee Convention. This category has long been the most contested of the Refugee Convention grounds and such claims can result in an intricate and lengthy asylum application process. For asylum claims based on a person's sexuality, their cases can be

further complicated by the requirement to produce evidence of their sexuality.

This article is based on recent doctoral research which examined the ways that lesbian women navigate the UK asylum process and the impacts of this process on their experiences, their identity and their well-being.¹ All of the women interviewed had experienced physical and sexual violence

Currently in the UK, there are no statistics available which indicate the number of applicants who seek or who have claimed asylum on the grounds of their sexual identity. However, NGOs estimate that in 2008, 1,200-1,800 lesbian, gay and bisexual people applied for asylum,² mainly from the Caribbean, Africa and the Middle East. Although gay applicants are relatively few in number, little is known about this group and there is limited academic research charting their experiences.

in their home countries and described being targeted and experiencing 'corrective rape'³, torture, imprisonment and family abuse because of their same-sex relationships. All the women had sought international protection on the grounds of their sexual orientation and seven of these women had gained refugee status; four were still going through the UK asylum process at the time of the study. The women came from Jamaica, The Gambia, Uganda, Nigeria, Pakistan and Saudi Arabia, all of which openly discriminate and legislate against homosexuality.

Key findings

The asylum process, legal arguments and court appearances were all considered to be confusing and disempowering. Women frequently referred to the stress and discomfort they felt when talking on demand about traumatic experiences. The pressure of needing to be believed and their frustration at not always understanding the decisions and judgments that were being made about them by the UK Border Agency (UKBA) and immigration judges were also upsetting. A major concern for the women interviewed was how individual decision-makers understood and interpreted 'sexuality' and made assumptions about the appearance, characteristics and behaviour of 'a lesbian' – perceptions which were found to have a significant influence on the outcome of women's asylum applications.

● Talking about sexuality

The research found that talking about private, intimate details in a public and legal domain was particularly troubling. As the women

had not previously discussed their sexuality with strangers, declaring their lesbian identity to UKBA at the initial screening interview was frequently described as being very stressful. Exacerbating these difficulties was the lack of privacy available to them during the screening interview and their anxiety that their conversation could be overheard.

Given that the participants had experienced sexuality-related violence in their home countries (including, for some, by police officers or while in police custody), disclosing their sexuality to people in a position of authority was stressful. Talking about being a lesbian during legal interviews and court appearances was described as exhausting and emotionally draining. One woman spoke of crying, shaking and feeling as if she was physically and emotionally breaking down after one interview. In addition, accounts emerged regarding the UKBA's and immigration judges' perceived lack of sympathy, sensitivity or appreciation of the difficulties women associated with talking about such intimate details.

● Appropriateness of questions

Re-telling intimate accounts and being questioned in open courts about their sexual desires and their relationships also emerged as difficult, and for some this experience affected their mental health and well-being. Moreover, the appropriateness of the questions asked was queried. For example, women had been asked about sex positions, as well as being asked to justify why they chose to be gay when they knew it was illegal in their home country. Several women described being asked what shows they watched, whether they read Oscar Wilde [famously homosexual British writer], how many Gay Pride marches they attended and which gay clubs they frequented. One woman described how the immigration judge commented that she did not look like a lesbian while another was told in court that she could not be a lesbian because she had two children. Clearly, decisions regarding someone's claim to be a lesbian were frequently based on the extent to which they conformed to Western stereotypes. Failure to



ALL OUT

EQUALITY. EVERYWHERE.

28 January 2011

Home Secretary Theresa May:
DO NOT DEPORT BRENDA NAMIGADDE

Dear Home Secretary Theresa May,

Please halt the impending deportation of Brenda Namigadde (Case Ref #1165857), a Ugandan lesbian scheduled for removal this Friday January 28th. Brenda fled Uganda eight years ago because of persecution for her sexuality, but if forced to return Brenda fears that she'll be "tortured, or killed ... they've put people like me to death there." The fact that a virulently anti-gay, high ranking member of the Ugandan government has taken note of her case means that Brenda faces clear and present danger if she is returned to Uganda.

Last July you told the press, "We have already promised to stop the removal of asylum seekers who have had to leave particular countries because their sexual orientation or gender identification puts them at proven risk of imprisonment, torture or execution." Please use all of the powers at your disposal to act now to halt Brenda's deportation.

SENT FROM
22,452
ALL OUT MEMBERS
IN 80 COUNTRIES

meet these preconceived ideas often resulted in asylum claims being refused and women's individual credibility being questioned.

● **The need to be 'out'**

Under pressure to conform to Western stereotypes, some women felt under pressure to change their look and dress in a way described as "more butch". While they felt that this might help their legal claim for asylum, several women also explained that this was not always a straightforward or desirable option. Two participants with children felt that they did not want their sexuality publicly known for fears over their children's safety. A perception that other asylum seekers saw homosexuality as "immoral", "wrong" and "unacceptable" led them to believe that being publicly 'out' could be isolating. Experiences were recounted in which women had been ignored or been asked to leave refugee support groups because of their sexuality, an issue which was particularly traumatic when such groups had been their main source of comfort and support. Fears that other migrants might spread rumours or threaten them also increased their sense of insecurity. As a consequence, some women requested to be housed separately from people from the same country of origin, a situation which in turn made them feel even more isolated.

● **Sexual freedom**

Despite the many challenges facing lesbian asylum seekers in the UK, a number of positive experiences were also identified. All of the women reported feeling that they could now be themselves and that they felt respected for the first time in their lives. Some women had started their own support groups to help provide emotional and practical support to other lesbian asylum seekers.

As a result of this research we recommend:

- further research on the experiences and persecution experienced by lesbian asylum seekers in their home countries to help women submit objective evidence for their claim; it is important that such research recognise differences across cultures and

backgrounds as well as seeking to identify similarities in experience.

- further clarity (at both national and international levels) over the interpretation and application of refugee law in relation to asylum claims based on a person's sexual identity
- provision of a discreet and confidential space for women to talk about the basis for their claim at the initial screening interviews
- training for legal interviewers in the need for greater awareness of and sensitivity towards the cultural difficulties, negative emotions and problematic nature of talking about and identifying oneself as a lesbian
- collaborative work between legal personnel and international agencies to form a better understanding of the complexity of 'sexuality' and to avoid stereotyping
- further research on, and a greater awareness of, the tensions that can exist among asylum seekers themselves on issues relating to homosexuality
- delivery by NGOs and service providers of targeted services and assistance to lesbian asylum seekers to alleviate their isolation, and to provide appropriate information and support.

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1. Repeat individual interviews were conducted with eleven women over a period of six months.
2. Alasdair Stuart 'Over Not Out: Refreshed 2012: An update on progress against the original recommendations of the Over Not Out Report (2009)', London: Metropolitan Migration Foundation <http://tinyurl.com/Stuart-Over-Not-Out-2102>
3. Rape of a person because of their perceived sexual or gender orientation; the intended consequence of the rape, as seen by the perpetrator, is to 'correct' their orientation – to turn them heterosexual or to make them act more in conformity with gender stereotypes.

Barriers to justice in the UK

Charlotte Mathysse

In recent years, there have been significant legal advances in the treatment of the cases of lesbian and gay asylum seekers in the UK. However, various barriers still remain.

Interviews with case workers, solicitors specialising in LGBT asylum cases and a gay immigration charity in the UK indicate that UKBA officials resort to obsolete stereotypes in order to 'inform' their decision making. Asylum seekers have been denied protection because they have appeared too typically straight and often applicants are expected to act, dress and speak in certain ways which conform to rigid Western notions of sexuality. Lesbians have been rejected for not seeming butch enough, and gay men have been asked if they frequented parks for sex. These deeply held assumptions about how lesbian and gay identity ought to be manifested undermine any effective and protective asylum system.

Many asylum seekers have also found that the presence of interpreters can sometimes be detrimental to their application. Claimants in the asylum process are allowed to choose the gender of their interpreter, and that interpreter should be aware of cultural or religious sensitivities. However, interpreters in the UK receive no training on LGBT issues and there are no imminent plans to address this. Many LGBT asylum seekers fear being interpreted by someone from their home community. In many refugee communities in the UK, homophobia is as common as it is back in the home country, and

often interpreters are a representation of this. There have been instances where interpreters have used abusive language against applicants, or mistranslated their statements. Accurate interpreting is essential because often a decision is based upon the precision and coherence of the witness statement. If there are inconsistencies or mistranslations, then a whole claim may be jeopardised.

Government cuts to legal aid have also disproportionately affected lesbian and gay asylum seekers. Legal aid law firms now have less time to construct a coherent case to present to the Home Office, meaning that some asylum seekers face their UKBA interviews without sufficient preparation. Lesbian and gay asylum applications often take longer because the applicant must have 'come out' to the solicitor, and be prepared to talk openly about their sexuality in front of a UKBA official.

Clear guidance exists on how to approach sexuality claims but is being ignored. Decision makers are instead resorting to ignorance and heterosexist biases in judging cases. This has resulted in the identity of the decision-maker, rather than that of the applicant, becoming the decisive factor in a claim.

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Resources for those representing asylum claims on grounds of sexual orientation

The Fahamu Refugee Programme's information portal for those providing legal aid to refugees is expanding its resources for those defending cases based on sexual orientation – lesbian, gay, bisexual, transgender and intersex (LGBTI).

To facilitate instant access to the information that lawyers need when preparing an asylum case for adjudication, the Fahamu Refugee Programme is aiming to provide Country of Origin Information for all 192 UN member states. To date, 30 are available; the rest should be available by the end of 2013.

<http://tinyurl.com/Fahamu-SOGI-country-list>

For each country this resource will provide specific legislation and case law (where it can be found), plus a section on public attitudes and/or the state's capacity to protect LGBTI persons. Each country page will conclude with a list of relevant NGOs (where they exist) and country-of-origin specialists who have agreed to provide statements on the plausibility of individual cases.

For more information, or to offer relevant information, please contact Eddie Bruce-Jones *eddiebrucejones@gmail.com*

www.refugeelegalaidinformation.org

Asylum for persecuted homosexuals in the Republic of Korea

Andrew Wolman

Two recent successful claims for asylum suggest that the Republic of Korea may be prepared to serve in the future as an important country of asylum for those suffering persecution due to their sexual orientation.

While Korean society has certainly become more accepting of differing sexual orientations over the last fifteen years, many elements of Korean society remain quite conservative, and open affirmations of homosexuality are rare. Nevertheless, gays and lesbians have equal rights and are protected by anti-discrimination law,¹ and two relatively high-profile asylum cases in recent years have resulted in gay men being granted asylum in Korea.

The first case involved an asylum seeker from Pakistan, a married attorney from Lahore with four children. He had been arrested and detained briefly in Pakistan, and had also been subjected to blackmail and intimidation by family members and people around him. His application for refugee status in Korea was rejected by the Ministry of Justice in June 2009 and the claimant then filed an appeal, which was heard by the Seoul Administrative Court.

The court found the claimant's personal statement to be coherent and persuasive, and granted him asylum, concluding that if he were returned to Pakistan he would have a "high possibility of being persecuted by Muslims and the Pakistani government because he was gay". The court explicitly explained that persecution could come from either the government itself or from private actors. In addition to the claimant's testimony, the court's conclusion was based largely on Country of Origin Information from foreign jurisdictions – specifically, a UK Border Agency report on Pakistan that said Pakistani police officers frequently blackmail homosexuals, as well as a Canadian Refugee and Immigration Committee report detailing instances of persecution of gays

in Khyber and Lahore. The court also noted clauses in both Pakistani law and Islamic law criminalising homosexual behaviour.

In 2011, another claim of sexual orientation-based persecution was presented to the same court by a Nigerian asylum seeker. Here the claimant stated (and the court accepted as credible) that the Nigerian government had rejected him from a government job because he was gay, and had denied him compensation when his house was demolished in an urban planning project because of his sexual orientation. When he protested at the lack of compensation, a group of people tried to attack him at his house. The Seoul Administrative Court ruled in favour of the appellant, basing its opinion largely on an analysis of Country of Origin Information compiled from foreign sources, including a Canadian Immigration and Refugee Board report, an Australian Refugee Appeal Tribunal research report, a US State Department human rights report, an Amnesty International report and others. The court also took into account the fact that Nigerian law criminalises homosexual relationships.

Taken together, these two cases show a distinct openness to allowing asylum based on sexual orientation. The court fully accepted the credibility of the claimant in each instance. In the case of the Pakistani asylum seeker, it even went out of its way to stress that the fact that the claimant was married and had children did not mean he was not gay, and that this was not unusual behaviour in the Pakistani context. The court also had no trouble locating Country of Origin Information from reputable sources that gave credence to the claimants' fears of persecution.

The judges also declined to address other potential arguments that are sometimes used to deny asylum in other parts of the world. For example, neither ruling addressed the possibility that the claimant might be able to avoid persecution by living in a different part of his home country or by hiding his sexual orientation, although in the Nigerian claimant's case the court did state that "if a person cannot express his sexuality due to the fear of being persecuted, it can be regarded as a sort of persecution", thus implying that it would be inappropriate to return someone to a country where they could remain secure only by disguising their sexuality.

The importance of these two single cases to Korean refugee law should not be overstated. However, these decisions are significant in that they show that, despite being relatively new to refugee jurisprudence, the Korean judiciary is willing to grant asylum based on sexual orientation persecution to applicants coming from countries that are considered to be hostile to gays.

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1. With the exception of men in the military.

Challenges to producing LGB-specific Country of Origin Information

Christian Pangilinan

Evaluations of whether lesbian, gay and bisexual (LGB) asylum claimants have a well-founded fear of persecution frequently require Country of Origin Information (COI) on the state of LGB people in the country of origin. However, information on LGB populations in countries where being LGB is criminalised is often difficult to obtain and frequently anecdotal. First-hand accounts from LGB people themselves are rare.

In order to help address this lack of information in Tanzania, I interviewed 40 self-identified LGB people in Dar es Salaam. Some organisations and individuals – primarily those who advocate for shielding LGB advocacy within advocacy for HIV/AIDS prevention and treatment – advised me that people would refuse to answer direct questions regarding their sexual orientation. However, I did not find that direct questions alienated respondents (even those who did not self-identify as LGB).

Those whom I interviewed had experienced discrimination by family members, removal from school, derogatory and hate language, harassment by police, humiliating treatment by medical providers, fear of accessing public transportation

and, in one case, corrective rape. Obtaining this information presented some unexpected as well as expected challenges, which others seeking COI information might do well to bear in mind.

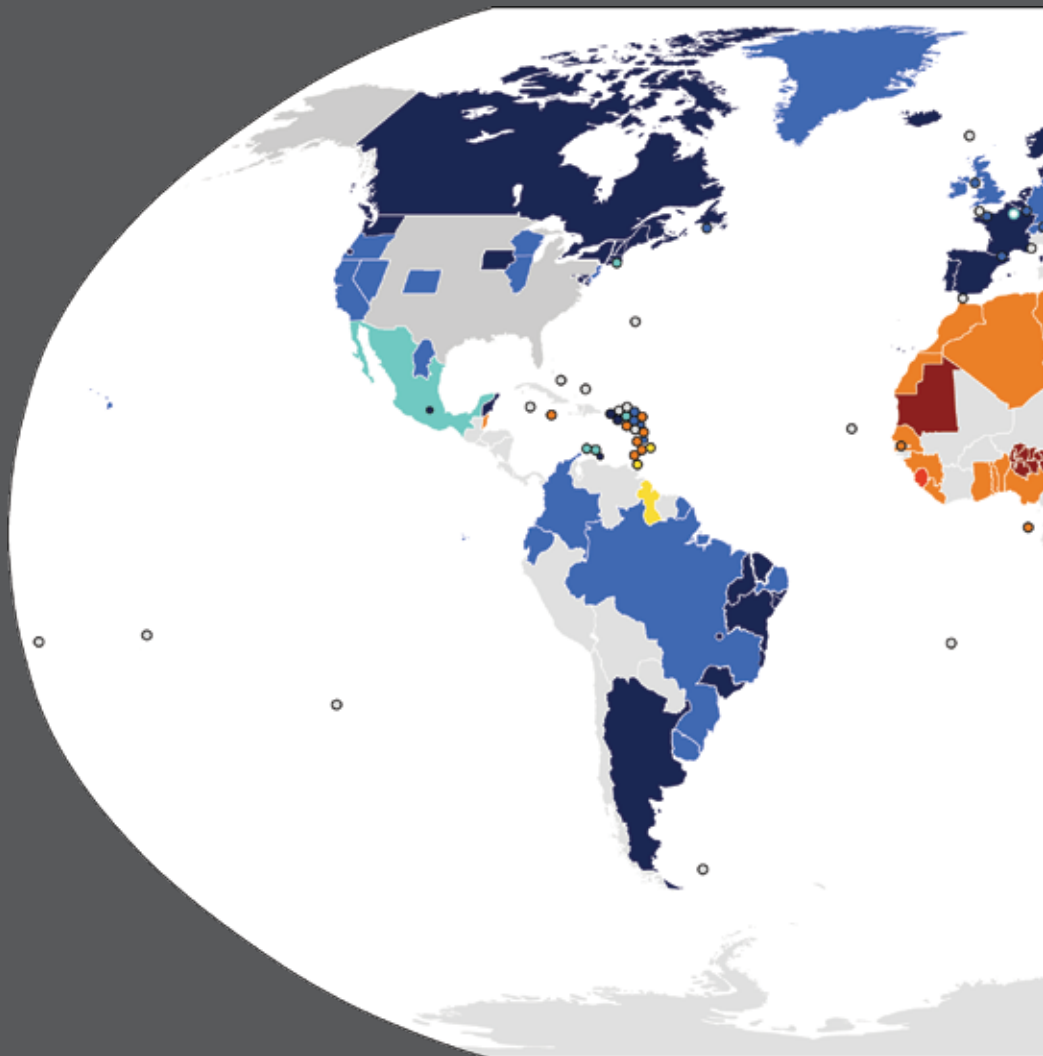
Access to LGB organisations can be restricted, especially since many such organisations tend to operate underground in order to evade government scrutiny or to ensure activists' personal safety. Careful referrals may be needed in order to collaborate with such organisations.

Information gathered will inevitably depend on which stakeholders are contacted. In addition, it should not be assumed that all LGB activists are on the 'same side'. LGB organisations may be in active competition or even in conflict. While differences of strategy may be expected, LGB organisations in Dar es Salaam also compete for legitimacy as representatives of LGB people, driven in part by competition over access to funds. Any inquiry into LGB people should take care to obtain insight into the organisation's credibility with LGB people themselves.

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World homosexuality laws



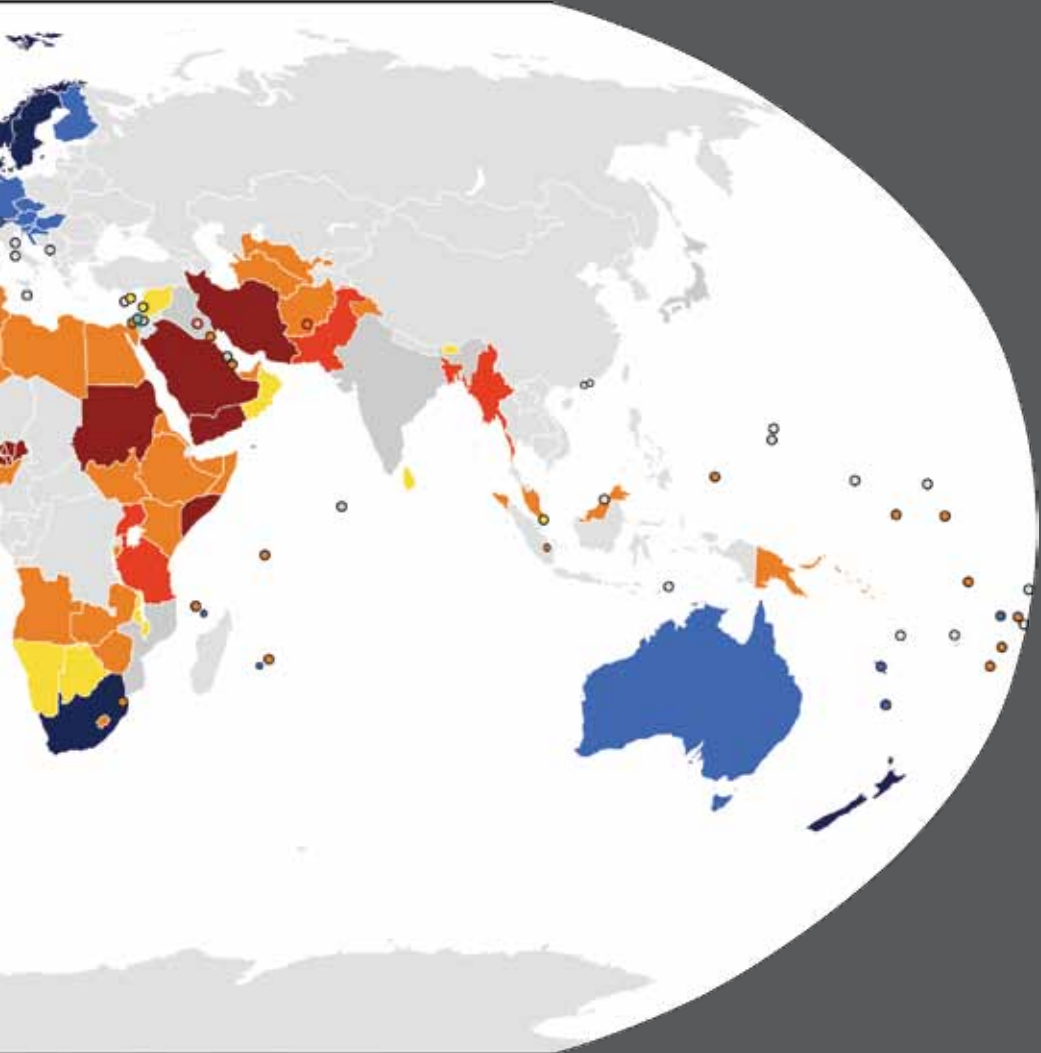
Homosexuality legal

- Same-sex marriage¹
- Other type of partnership (or unregistered cohabitation)¹
- Foreign same-sex marriages recognized¹
- No recognition of same-sex couples

Rings indicate areas where local judges have granted marriage or imp

¹May include recent laws or court decisions which have created legal

Original version Silje
http://commons.wikimedia.org/wiki/File:World_homosexuality_laws.svg
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Homosexuality illegal

- Minimal penalty, or de jure penalty that is de facto not enforced
- Heavy penalty
- Up to life in prison
- Up to death (ring = local judges)

posed the death penalty in a country where that is not otherwise the law.

recognition of same-sex relationships, but which have not entered into effect yet.

Assessing transgender asylum claims

Jhana Bach

It can be challenging for all asylum seekers to demonstrate that they are at risk of persecution but perhaps even more so for transgender applicants.

There are two main categories of gender identity: ‘normative’, where one’s biological sex and felt gender are in alignment, and ‘transgender’, where one’s felt gender differs from one’s biological sex. Though transgender issues are often lumped together with lesbian, gay and bisexual (LGB) ones, there are wide and often unrelated differences between sexuality, which refers to desire, and gender, which refers to identity. Like homophobia, transphobia is prevalent in many parts of the globe, even in countries where it is legal to be transgender.

Transgender identity often excludes people from the protections of citizenship in their country of origin, and puts them at risk of forced sterilisation or castration, ‘corrective rape’, domestic violence, forced sex work, institutionalised violence and even execution. In Europe, many countries require people to be sterilised before they can legally change gender.

One of the biggest challenges lies in authorities’ lack of awareness that gender is different from biological sex. ‘Transitioning’ is the outward process of publicly assuming one’s felt gender through clothing, behaviour, hormone use or surgery. In Indonesia, the national government recognises a transgender person only after s/he has undergone gender alignment surgery but people in the earlier stages of transition, or those with no desire for surgery, are unprotected. Many transgender people live in constant fear of discovery. In one case, an Indonesian couple in which the husband was in the process of transitioning were exposed as lesbians by neighbours and threatened with beheading by local religious police.

Even after reaching a receiving country, transgender asylum seekers continue to be

at risk. Research has identified transgender people as “particularly vulnerable to physical, sexual and emotional abuse within asylum detention centres and community-based single sex shared accommodation” and therefore “at a high risk of self-harm or suicide” during the asylum process.¹

The UK Border Agency’s training manual ‘Gender Identity Issues in the Asylum Claim’² (hereafter called the GII guidance) is primarily used to educate UKBA case officers in trans-related issues and in evaluating testimonies. The document describes types of persecution that trans people may face in their country of origin, the feasibility of internal relocation (moving the applicant to another part of her/his country rather than granting asylum in the UK) and relevant Conventions such as the 1951 Refugee Convention, the European Convention on Human Rights (ECHR) and the Equalities Act 2010. LGB and particularly transgender issues are complex yet caseworkers receive only one day of training on LGBT issues before being expected to make what in many cases may be a life or death judgment. The guidance is vague, open to misinterpretation, and often based on normative assumptions.

Proving gender identity

Applicants are expected to be able to identify as trans upon their first interview, in spite of the fact that asylum seekers may not be familiar with UK transgender terminology, and therefore may not know how to describe themselves to the UK Border Agency. It is also deemed “reasonable to expect the individual to give a detailed account of any incidents of persecution”, in spite of the fact that it can be immensely difficult for people to recount traumatic experiences. The GII guidance also advises that “it is reasonable to ask whether redress was sought and/to explore any reason

for not seeking protection”, ostensibly in order to help caseworkers build up a history of the applicant’s experiences. However, research has shown that in practice this requirement can become a barrier to successful applications, as border agents may decide someone who did not seek protection did not feel significantly threatened. While this may seem reasonable in the context of the UK, it is much less so in areas where police, other officials and even family members engage in the rape, torture or killing of trans people.

For trans claims, interviewers are instructed to “explore what the applicant is claiming to be their current gender identity and establish the range of behaviour and activities of life that inform or affect the individual’s gender identity, or how they are perceived”. The phrase “current gender identity” ignores the evidence base that many if not most trans people have felt their gender/sex variance since childhood. The reference to a “range of behaviour” is troubling in its evocation of essentialised norms (women do this, men do that), and its implication that in order to be legitimately trans, one has to behave in a certain way. Further, by focusing on how they are perceived by others, the guidance belies the lived experiences of many trans people, who state they have always felt themselves to be transgender, regardless of how they are outwardly perceived. At issue is the notion that in order to be transgender one must already be in transition, which is not the case. This goes against the experience of many trans people, as well as a substantial amount of trans theory that establishes gender identity as internal and disconnected from body morphology. In other words, ‘transitioning’ from one gender to another is less about ‘changing’ gender than ‘aligning’ the exterior with the interior.

The GII guidance also directs decision-makers to look for evidence of transitioning such as “some or all of the following personal, legal and medical adjustments: telling family, friends and colleagues; changing one’s name and/or sex on legal documents; dressing, behaving and/or

living as a different sex; hormone therapy; and possibly surgery.” By referring to practices which are common in the UK, the guidance neglects the fact that outward transitioning is often not socially, medically and/or legally possible in the applicant’s country of origin, and as such cannot be relied on as an indicator of felt gender.

Proving ‘well-founded’ fear

In assessing claims, the primary role of the decision-maker is to “assess objectively whether there are reasonable grounds for believing that the applicant ... would face persecution” if repatriated. The UKBA guidelines centre on whether the country of origin “takes reasonable steps to prevent the persecution or suffering” of trans people. The guidance acknowledges that while it may appear that a state which does not criminalise homosexuality or trans identity offers ‘reasonable’ protection, this is often not the case; however, there are no specific statutes about what constitute “reasonable grounds” or “reasonable steps”. Caseworkers are directed to “assess objectively whether there are reasonable grounds for believing that there would be a real risk of serious harm”, without a clear indication of what level of proof is required.

The GII guidance directs decision-makers to the Country of Origin Information (COI³) to determine grounds for asylum. However, COI is only updated periodically and there is little or no information on lesbians and trans people in most COI reports. One of the greatest risks to transgender asylum seekers is that the lack of trans-specific discrimination information is frequently taken as an absence of threat. One senior caseworker said, “I can’t see that there would be any circumstances where persecution of gay people would not be reported ... So you have to ask, if there’s no evidence that can be found anywhere, whether it actually exists at all.”⁴ For some countries the COI data is misleading. For example, some states, such as Iran, allow transsexual surgery as a forced method of preventing homosexuality rather than supporting trans identities, while

the claims of LGBT asylum seekers from countries considered generally safe, such as Jamaica, are often summarily denied.

COI is also used to establish whether a trans asylum seeker would be safe if they relocated internally. Relocation is based on the idea that a specific, local group is responsible for the persecution but in the case of transgender persons the agents of persecution typically are police and society at large, thus internal relocation is not likely to effect a significant improvement in conditions for trans people. In addition, there is no objective measure of what constitutes 'safety'.

While the GII guidance document goes some way towards attempting to capture the complex and varying nature of gender identity issues, these efforts are negated by a conflicting notion that trans status is something that can be tested and proven. This misapprehension is the cause of most of the hardships which the UKBA subjects

trans applicants to – from expectations of immediate, coherent evidence of persecution to reliance on incomplete COI and the burden of proving an internal feature of identity. And in turn this has allowed the UK government (and many others) to detain and 'fast track' LGBT asylum seekers in order to return people who have legitimate fears for their well-being to the site of their persecution.

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Kosovo: what does the future hold for LGBT people?

Agathe Fauchier

Rising numbers of people from Kosovo are seeking asylum in other European countries on grounds of persecution for their sexual orientation. States considering such claims need to look beyond Kosovo's apparently progressive constitution to the rather different reality on the ground.

Despite Kosovo being one of only ten European states to have constitutionally banned discrimination on the ground of sexual orientation, its society remains deeply traditional and even hostile towards sexual minorities. This contrast between progressive legal protection and conservative social attitudes is hardly surprising. Kosovo's constitution is, from a human rights point of view, largely based on the constitutions of western European countries such as France and Germany.

Many international actors, including the United States, were heavily involved in advising Kosovo on the substance of its constitutional framework and advocated

for its compliance with international and European human rights standards – hence the inclusion of the term 'sexual orientation' in the anti-discrimination article of the Constitution (Article 24). This gave rise to much criticism during the drafting process, with some delegates walking out in protest.¹ Another key provision – the definition of marriage – was also liberally drafted so as not to not make any specific reference to gender. These provisions do not stem from local opinion or practice but rather have been parachuted in on the basis of international advice.

Walking around the busy streets of Kosovo's capital, Pristina, it is hard to imagine that there is an LGBT community here. There are

no visible signs of them and certainly no gay bars or clubs. Social conventions dictate that most young people in Kosovo live with their families until they marry; those who 'come out' as LGBT risk being kicked out of the family home, ostracised by their families and marginalised by their community. Some are married off as their family attempts to control their sexuality or 'cure' them. Indeed, many in Kosovo believe that LGBT individuals are deviant or suffer from a mental illness. Despite this, the LGBT community in Kosovo is very much alive and recently a small number of LGBT individuals have dared to break the silence and speak out.

In Kosovo, discrimination against LGBT people is social rather than official – perpetrated by non-state actors such as the asylum seeker's family or close community. As in theory there are legal guarantees in place in Kosovo to prevent discrimination, officials considering asylum claims by people from Kosovo on the basis of sexual orientation or gender identity expect them to have access to legal remedies to enforce their rights; Kosovo is therefore usually classified as a country where LGBT people are not in danger of persecution.² In reality, says a source, there is a significant gap between legal protection on paper and implementation on the ground. Reports of discrimination against LGBT people are apparently seldom taken seriously by the police and to date no discrimination case on the ground of sexual orientation has been brought before the courts.

Added to this is the fact that the risk faced by an asylum seeker has to be assessed on the basis of so-called 'secure information'. However, in Kosovo this kind of information is not readily available, as there is a lack of up-to-date, detailed, published data pertaining to the vulnerability of the LGBT community. Interestingly, when the lack of 'secure information' is problematic, states handling asylum claims originating from Kosovo have relied on information provided by local interest groups and NGOs with specific insights into LGBT rights. This

information is of course informal, and should certainly be considered with care, but it has the advantage of being first-hand and relying on the statements of people in direct and extensive contacts with the LGBT community on the ground. "Kosovo is a small place and LGBT people are a tight community", an activist says. These groups provide an appraisal of the situation of a specific LGBT individual, who is in all likelihood known within the local LGBT community.

Grounds for asylum

It is increasingly common for asylum seekers from Kosovo to claim sexual orientation as a ground of persecution; indeed, this is not unique to Kosovo but rather part of a regional trend.³ Helped by the internet, which serves as an important platform for Kosovo's repressed and underground LGBT community, LGBT people are becoming increasingly aware of their human rights. They no longer feel the need to conceal the real reasons – their sexual orientation and gender identity – when seeking refuge from violence in countries of asylum.

However, an LGBT rights activist based in Kosovo estimates that less than a third of asylum seekers invoking sexual orientation or gender identity in their claims are genuine. According to this activist, many are desperate to leave to find a better life in richer countries and not necessarily because they have a well-founded fear of persecution owing to their sexual orientation or gender identity in Kosovo.

Kosovo is reported to have the lowest employment rate in the Western Balkans and many young people – LGBT and non-LGBT alike – struggle to see any viable future for themselves and their families there. While people from Kosovo claimed asylum during and in the aftermath of the 1990s' conflict on the basis of ethnic and political persecution, sources indicate that these grounds are no longer accepted by many states as the political and security situation between the ethnic communities in Kosovo has now mostly stabilised.



Stamping out homophobia.

Belonging to a sexual minority is believed by many in Kosovo to enhance an asylum claim's chances of success and therefore, according to a source, many LGBT people exaggerate the level of threat they face and others falsely claim to belong to a sexual minority. A member of the LGBT community interviewed by the author goes as far as to say that "claiming to be persecuted as an LGBT person has become the only potentially successful way to get out of Kosovo". Another LGBT rights activist says that states looking into the merit of asylum claims originating from Kosovo are rightly exercising an appropriate degree of caution. Unfortunately, this undermines the credibility of actual LGBT people rightfully seeking protection against grave human rights abuses.

Transgender: a case apart

Contrary to gays and lesbians, transgender people are not acknowledged by the Constitution and although there are no laws actively criminalising transgender

behaviour, this cannot be taken to mean that transgender people's rights are protected. While gays and lesbians are slowly working towards gaining more visibility and social acknowledgement, this is far from being the case for the sub-group of trans-genders. People in Kosovo do not grasp the more complicated aspects of gender identity and, even within the LGBT community itself, there is a lack of education and awareness about transgender issues. Furthermore, few transgender people in Kosovo identify as such; they are isolated, often unable to articulate their gender identity and do not form a tight community. In these circumstances, those in positions of handling asylum claims need to ask the right questions and to consider the particular vulnerability of this sub-group. At the moment there is no indication that this happens.

Nearly five years after the adoption of Kosovo's Constitution, protection for LGBTI individuals in Kosovo remains uncertain,

and the gap between the legal provisions for protection and the facts on the ground is not generally recognised when asylum cases are evaluated by potential receiving countries. Kosovo may be knocking at the door of the European Union but it still has a long way to go in implementing human rights protection for LGBT people to a European standard.

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and experiences of an anonymous LGBT rights activist from Kosovo interviewed by the author.

1. 'On Constitution Writing: The Case of Kosovo', Interview with Professor Louis Aucoin, 2008 <http://tinyurl.com/Tufts-Aucoin2008> Protection against discrimination on the ground of sexual orientation was also incorporated into Kosovo's anti-discrimination law.
2. *Unknown people: The vulnerability of sexual and gender identity minorities and the Swedish Migration Board's Country of Origin Information System*, January 2010, EU European Refugee Fund <http://tinyurl.com/Unknown-People-2010>
3. UNHCR 2010 *The Protection of Lesbian, Gay, Bisexual, Transgender and Intersex Asylum-Seekers and Refugees* www.unhcr.org/refworld/pdfid/4cff9a8f2.pdf para 1.

City planning for sexual diversity: new policies in Bogotá

Marcela Ceballos and Juan Carlos Prieto

Bogotá is the primary destination of those internally displaced by violence in Colombia. The places of origin of the population displaced by violence are also the areas with the highest levels of violations of the rights of LGBT people, mainly transgender women¹. Guerrillas and paramilitary groups direct violence against sectors considered to be opposed to the social order they wish to maintain since they see them as symptoms of 'social decay'. The sectors they victimise include drug users, homeless people, individuals linked to prostitution, those living with HIV/AIDS, members and leaders of unions and community organisations – and homosexuals and transgender individuals.

30% of displaced LGBT people now living in Bogotá cite the reasons for their flight as associated with their sexual orientation and/or gender identity. In the areas of Bogotá where displaced trans women tend to settle, there is widespread violence, sale and use of drugs, and trafficking of people for sexual exploitation – networks which are frequently linked with trans women and to which boys, girls and adolescents are most exposed.² However, social mobilisation in these areas has been strengthening progressively for more than a decade, culminating in 2009 in the signature of Agreement 371 of the Council of Bogotá on LGBT public policy. This policy fully guarantees the equal rights of LGBT people and has two key aims: firstly, to guarantee services and assistance regardless of sexual orientation or gender identity and, secondly, to promote a culture free of violence on the basis of sexual orientation and gender

identity. Relating to the first, for example, the district housing subsidy for the low-income population now recognises same-sex couples as a family unit with the right to benefit from this assistance.

Implementation of this policy requires strengthening those organisations and leaders who have a role to play in supporting LGBTI rights. The authorities need improved information systems to monitor displacement due to sexual orientation and gender identity. The majority of trans individuals who arrive in Bogotá have low educational levels and tend to enter society in informal and transsexualised activities (hair and beauty, prostitution, tailoring, etc) with precarious working conditions; the network of institutions – such as community centres – which are responsible for catering to the specific needs of vulnerable groups and displaced people needs to be extended, and the social inclusion of these groups should be promoted through strategies for cultural change.

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1. transgender person with a female gender identity
2. 42% of transgender women find it difficult to rent a home and 27% are victims of violence at the hands of their partners. 100% of the transgender women surveyed had suffered some form of aggression or had been harmed by abusive or offensive sexual approaches. (Taken from Bogotá's Baseline Public Policy for the Full Guarantee of Rights of LGBT, 2010.)

Towards inclusive resettlement for LGBTI refugees

Jennifer Rumbach

Lesbian, gay, bisexual, transgender and intersex (LGBTI) refugees face myriad challenges within the resettlement context. Practical initiatives – such as creating a welcoming space, ensuring confidentiality, training staff, providing critical resources and fostering inclusive workplaces – can promote a more humane resettlement experience.

Resettling to a new country is a formidable task for any refugee. Like other marginalised populations, LGBTI refugees face added challenges. Many have been abused or discriminated against due to their sexual orientation or gender identity, and if they do not wish to discuss their sexual orientation or gender identity with the protection community, they navigate alone a resettlement system that may not be sensitive to their needs. Once they arrive in their new communities, LGBTI refugees seek dignified inclusion there while inevitably battling continued discrimination.

Since 1975, the US Refugee Admissions Program has welcomed more than three million refugees into the United States. To facilitate this, the US Department of State's Bureau of Population, Refugees and Migration funds and manages nine Resettlement Support Centers¹ (RSCs) around the world. The International Organization for Migration (IOM) administers four of these RSCs, and we are now implementing an LGBTI project at all four sites.²

This LGBTI project is critical for a wide range of LGBTI refugees, including those persecuted for their sexual orientation or gender identity, those whose sexual orientation or gender identity is not the primary reason for their flight but will affect their future experience in the US, those who are 'coming out' to officials/support providers for the first time and require counselling, and those who do not wish to share their sexual orientation or gender identity in their country of first asylum but may do so in the country to which they are resettled.

The Safe Space Initiative

Welcoming LGBTI refugees is key to providing effective assistance. Without this, many refugees will not feel comfortable sharing their sexual orientation and/or gender identity with IOM staff. They may fear discrimination, breaches of confidentiality or being barred from resettlement. Sometimes an office has a reputation for being unwelcoming due to the experience of one or more refugees. They may also make assumptions based on the nationalities of the staff. In Iraq, for instance, the majority of RSC caseworkers are of Middle Eastern or North African origin, and LGBTI refugees have reported feeling reluctant to share information with them because they fear they may be homophobic. Establishing refugee resettlement offices as 'safe spaces' is thus especially important.

In the LGBTI context, a safe space – whether a forum, community, network, family (biological or chosen) or physically defined place – is where individuals can freely express, question and explore their sexual orientation and/or gender identity without fear of judgment or reprisal.

Most critical to gaining the trust of LGBTI refugees is guaranteeing confidentiality. LGBTI persons must feel certain that those assisting them will not share sensitive information with family members or the community. This is especially important for those who have not shared their sexual orientation or gender identity with members of their family, including opposite-sex spouses.

We actively promote a welcoming and confidential space by widespread use of a safe space sign, incorporating safe space and confidentiality language into interview

scripts, and disseminating an LGBTI status and resettlement handout³ to refugees referred to the US resettlement programme. Refugees are told that they may request a staff member of another gender, if desired. This initiative has been implemented at RSC offices in Iraq, Jordan and Nepal, and is now being started up at other IOM RSC sites covering the regions of Eurasia, Latin America, North Africa and Middle East, and South Asia.

The safe space sign and handout have been particularly effective in Iraq. The sign reassures refugees that we believe in equal rights for all persons and that if they are being persecuted because of their gender or sexual orientation, they can tell us – in confidence. The handout explains that being

LGBTI does not bar refugees from resettlement or delay their cases. It is distributed to all refugees to ensure LGBTI individuals can access the information in a way that does not call attention to their sexual orientation or gender identity. While the safe space sign references the broad terms 'gender' and 'sexual orientation', the handout specifically uses local terminology for lesbian, gay, bisexual, transgender and intersex.

An additional tool used at the Iraq RSC office is an LGBTI hotline, introduced during widespread anti-LGBTI violence in 2012. Because some refugees did not feel comfortable sharing information at the Baghdad office, or were unsure whether they qualified for the resettlement



programme, we set up a 24-hour hotline number answered by an LGBTI or 'ally' staff member.⁴ The staff answering the hotline reassure callers that they are supportive of LGBTI individuals and that the information will be handled sensitively.

Providing critical resources

We have an obligation to offer resources of as many types and through as many avenues as possible, for several reasons. First, we recognise that many LGBTI refugees will never feel comfortable or safe coming out to IOM or partners. It is critical we do not pressurise them to do so. Second, we know that a percentage of the refugees we serve every day, in every operating environment, are LGBTI, regardless of whether or not they have identified themselves as such. Finally, we know that not all communities in the US are as welcoming to LGBTI persons – especially transgender individuals – as others. Providing resources to all refugees helps ensure that LGBTI individuals who do not share their status will still receive information critical to making better informed decisions about their resettlement case and final destination. And by providing this information to everyone, we can also notify the resettlement community at large that LGBTI equality is highly respected in the US.

Information resources can be shared in a variety of ways, including through cultural orientation classes, handouts, private counselling sessions, public bulletin boards or pre-departure briefings. For persons awaiting resettlement, resources may be in the form of referrals to LGBTI-friendly health-care or psycho-social programmes. For persons receiving assistance during transit, it may be information about non-gendered toilet facilities or travelling with certain medications. For persons bound for the US, we can inform them about resources like the Rainbow Welcome website administered by Heartland Alliance.⁵

Creating an inclusive work environment

An organisation that promotes inclusion and sensitivity towards LGBTI refugees

must ensure its offices provide a welcoming and supportive – and therefore effective – working environment for all staff. To this end, the LGBTI staff training includes a module featuring inclusion exercises for staff and a special session for supervisors on creating a harassment-free workplace.

An inclusive work environment also promotes better care, because LGBTI and ally staff members are well placed to recognise issues of concern to LGBTI persons. For example, an LGBTI staff member in Nepal recognised that questions about opposite-sex partners in interviews could act as a deterrent to LGBTI refugees sharing their sexual orientation or gender identity, or information about same-sex partners. In Iraq, an ally staff member offered her office number to a refugee whom she suspected did not feel comfortable sharing information in person. After receiving counselling, he asked if other LGBTI refugees in the resettlement programme could call her. She then suggested her number become the permanent LGBTI hotline. In both instances, the staff said their LGBTI-inclusive office environment encouraged them to take this initiative.

Training staff

The RSC LGBTI training created in early 2011 was initially a sensitivity session for staff in Baghdad. Its primary aim was to help staff recognise that they are already serving LGBTI refugees (even though not identified as such), and to understand the particular challenges faced by LGBTI individuals in Iraq. In early 2012, violence against LGBTI persons in Iraq significantly increased, and it became clear that sensitivity trainings were not enough. RSC staff needed in-depth training for working with LGBTI individuals, and more needed to be done to make LGBTI refugees feel welcome at our office. The Baghdad LGBTI sensitivity session was thus developed into a full LGBTI training package.⁶ It was offered to all Resettlement Support Center staff in Iraq and selected IOM staff in Jordan in 2012, and to selected staff and partners in India, Thailand, Egypt and Nepal in 2013. It will be provided for staff working with refugees

and migrants in North Africa and the Middle East, Latin America, Eurasia and South Asia throughout 2013. Training is provided for both IOM and partners in the field.

The training provides a diverse toolkit for staff. Sensitivity training educates trainees about LGBTI persecution, myths and realities, and asks them to consider workplace inclusion. Skills training provides information about what questions to ask and which to avoid during counselling and interviews; correct LGBTI terminology; how to write successful LGBTI protection or persecution assessments; particular concerns for lesbians, bisexual women and transgender persons; challenges faced by refugees from particular geographical or cultural areas; LGBTI needs during interpretation, travel and transit; and assumptions that can create a barrier to assistance.

We believe it is important that all staff are equipped to offer the highest quality of care to LGBTI refugees. Refugees come into contact with numerous staff during resettlement, including caseworkers, counsellors, interpreters, information centre staff, transit centre staff and medical health staff. They often spend significantly more time speaking with support staff than with caseworkers. For that reason, the training offers 14 modules that can be combined for a wide variety of personnel.

For many staff, sexual orientation and gender identity are new or uncomfortable topics. Recognising this, the training promotes practical skills for refugee assistance professionals, rather than requiring staff to change their minds about LGBTI issues within a one-to-three day training period. By approaching the topic in this manner, we found in the Middle East that trainees are then more receptive to broaching ideas about LGBTI equality, and less defensive of cultural or religious beliefs that may not align with those ideas.

Training is the beginning of a process. While we move towards understanding

and acceptance, the emphasis is first and foremost on our ability to serve LGBTI refugees with the same high level of professionalism we offer to others. Staff who complete successful LGBTI interviews or offer successful counselling and support services are acknowledged in front of their teams for their dedication and expertise.

Beyond resettlement

The full spectrum of LGBTI individuals exists in all of the communities we serve. In many cases, LGBTI refugees and migrants are marginalised or isolated in the humanitarian aid context due to a lack of understanding about LGBTI populations, their diversity and their particular vulnerabilities. Staff training, safe space initiatives and resource-sharing efforts are applicable not only to Resettlement Support Centers but also to organisations working in emergency environments, in refugee camps, with urban refugee and migrant communities, and in medical health services. Future projects should address these needs to ensure that LGBTI migrants and refugees are provided with a dignified experience at every stage – not just during resettlement. The experience gained and good practice developed within the resettlement context point to ways in which this this can be achieved.

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1. The US Refugee Admissions Program Resettlement Support Centers are: Africa, Austria, Cuba, East Asia, Eurasia, Latin America, North Africa and Middle East, South Asia, and Turkey and Middle East.
2. IOM currently administers Eurasia (based in Moscow, Russia), Latin America (based in Quito, Ecuador), North Africa and Middle East (based in Amman, Jordan), and South Asia (based in Damak, Nepal).
3. Available on request from the author.
4. Someone who "advocates for and supports members of a community other than their own". UC Berkeley Gender Equity Resource Center http://geneq.berkeley.edu/lgbt_resources_definiton_of_terms
5. www.rainbowwelcome.org
6. Advice and materials available from the author.

LGBT refugee resettlement in the US: emerging best practices

Scott Portman and Daniel Weyl

US refugee resettlement agencies are directing more attention and effort toward assisting LGBT refugees and asylum seekers, and best practices are beginning to emerge.

For more than two decades, the US has recognised persecution due to sexual orientation as grounds for refugee status. Despite this, the number of self-identified lesbian, gay, bisexual and transgender (LGBT) refugees entering the US remains much smaller than predicted given that the prevalence of same-sex orientation is estimated to be about 3.8% in the population as a whole.¹

In 2011, 81,372 refugees and asylum seekers entered the US, of whom as many as 3,000 may eventually identify as LGBT.² Very few LGBT refugees disclose their sexual orientation or gender identity to refugee resettlement agencies, other than the limited number granted refugee status specifically on this basis. Neither UNHCR nor the US government records the number of refugee or asylum cases granted due to persecution for LGBT identity, nor are those so identified tracked through the refugee allocations and resettlement process. The number of LGBT refugees who disclose their status and who are resettled annually on that basis is probably less than 300, and the number of persons granted asylum based on sexual orientation or gender identity is probably less than 500.³

Refugees and asylum seekers who obtain refugee status as a direct result of persecution based on sexual orientation or gender identity often resettle alone and do not arrive with families or friends, and may remain segregated from those who share the same country of origin. Many of them fled violence from relatives and community members and consequently have limited, if any, relational ties upon arrival. For some, this isolation is self-imposed but it is still a result of the deep-seated fears they continue to harbour. LGBT refugees' security

concerns are not entirely subjective; many have reported threats of aggression or verbal abuse from other refugees because of their sexual orientation and/or gender identity.

Those who are computer literate or who have some English language skills are on average less isolated and more aware of the differences in attitudes and beliefs regarding sexual orientation and gender identity in countries of resettlement than those who lack those skills. They are also typically more likely to disclose and seek services. LGBT refugees without these skills not only experience greater isolation but may also have more difficulty coming to terms with their own sexuality or gender identity, and may define themselves differently from the familiar 'LGBT' categories.

Preferred sites

Controversy remains as to whether LGBT refugees are best resettled to 'preferred sites' or whether all refugee resettlement programmes should develop competencies to resettle this population. LGBT refugees undeniably benefit from resettlement to locations with a positive legal environment, an established LGBT community, and a critical mass of other LGBT refugees. LGBT refugees often migrate from their original resettlement site seeking communities of choice, which is a compelling argument for allocating LGBT refugees to preferred communities initially. Where concentrated populations of LGBT refugees exist, resettlement practitioners also have greater justification for developing the social networks and establishing formal working relationships with LGBT organisations, LGBT-friendly employers, housing providers and other community resources that exponentially improve LGBT refugee integration.

Certain refugee resettlement sites are more experienced at integrating comprehensive services, and are better prepared to make appropriate referrals or to accommodate special medical or mental health needs internally. One model for LGBT refugee resettlement parallels that used for refugees living with HIV in the 1990s, in which specific agencies were equipped to manage the health needs of people living with HIV/AIDS while maintaining rigorous standards of confidentiality.⁴ Resettlement agencies serving LGBT refugees may also be able to incorporate lessons learned from torture treatment programmes, which typically emphasise specialised trauma-informed mental health services, offer services over a longer period of time, and employ a team approach that enables survivors to obtain services without having to retell their story or disclose their identity to multiple providers.⁵

Transgender refugees are best resettled in preferred sites where agencies have prior expertise and pre-existing linkages with LGBT-specific service providers. Transgender refugees face profound difficulties in obtaining specialised medical care, supportive and safe housing, and appropriate employment. Another emerging best practice is to link LGBT refugees with sponsors, either in the LGBT community or among straight allies, who can assist in meeting initial needs and provide the sense of social support that LGBT refugees who are isolated from their own communities require.⁶

Mainstreaming LGBT resettlement

Given the small number of self-identified LGBT refugees and the great number who do not disclose, it is important for all refugee service providers to create a safe and supportive environment and to foster tolerance within the wider community. Mainstreaming involves integrating LGBT-appropriate services within existing practices, based on the knowledge that any refugee may be LGBT and that uniform standards for access, respectful communication and protection need to be provided regardless of whether any refugees disclose information about sexual orientation or gender identity. This mainstreaming of LGBT-appropriate services includes simple steps, such as making

sure that multilingual brochures and posters are displayed on site, displaying a rainbow flag or symbol⁷ to demonstrate openness to conversations about sexual orientation or gender identity, and ensuring that staff members are conscious of the adverse effects of jokes, derisive or inappropriately gendered language, and stereotyping. Mainstreaming includes ensuring that appropriate anti-discrimination and grievance policies exist, and ensuring that these policies are understood by and accessible to programme participants.⁸

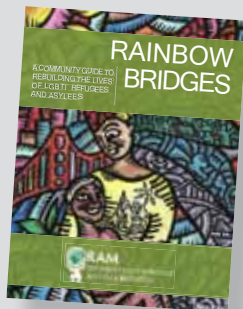
Mainstreaming also extends to communication with refugees within the agency and immigrant communities externally. Practitioners should integrate information on sexual orientation and gender identity within broader conversations on diversity and cultural differences in the US, in order to avoid separating out and stigmatising LGBT refugees. There are two forums in which resettlement agencies have clear opportunities to educate refugees on diverse expressions of sexuality and gender. Cultural orientation – conducted within the first 30 days of arrival – offers a chance to dispel prevalent myths surrounding the LGBT community and promote acceptance. Careful introduction of gender roles, including sexual orientation, into discussions of parenting can mitigate the risk of violence against LGBT or gender non-conforming young people. ESL classes present another opportunity; although ESL instructors may prioritise language acquisition for employment purposes, English classes can also serve as extended cultural adjustment sessions. Staff must be cautious and introduce these topics delicately so as not to shame refugees for their beliefs or appear to be undermining their religious and cultural mores.

Recruiting ‘ally ambassadors’ within the refugee community is a powerful technique to effect positive change. Within each refugee community, one can usually find individuals sympathetic to the plight of LGBT refugees, even among nationalities or cultures which are generally highly averse to conversations about sexual orientation or gender identity. Prime candidates are young adults who, based on their English proficiency and



Rainbow Response

<http://tinyurl.com/HAI-Rainbow-Response>



Rainbow Bridges

<http://tinyurl.com/ORAM-Rainbow-Bridges-2012>



Rainbow Welcome Initiative assessment report

<http://tinyurl.com/HAI-Rainbow-Assessment>



Opening Doors

<http://tinyurl.com/ORAM-Opening-Doors-2012>

access to resources, have assumed leadership roles within their respective communities. These individuals are often more progressive and prone to support LGBT peers and advocate on their behalf if they are targeted or excluded.

Communities of support

By providing additional assistance and by offering emotional and social support, LGBT groups can serve as the community network LGBT refugees urgently need. However, making a referral to the local LGBT group is not sufficient in itself to prevent the continued isolation of LGBT refugees. Refugees have reported their reluctance to join and participate in domestic LGBT groups because of cultural differences and because refugees, as immigrants and as persons of colour, often feel invisible, excluded or unwelcome in Western LGBT spaces. The onus falls on resettlement practitioners to train LGBT groups on the backgrounds and needs of refugees and to devise ways for the LGBT community to offer a welcoming and safe space for refugees to access services and support. Establishing a mentorship programme or hosting social gatherings are just two methods that have proved successful.

While LGBT refugees may greatly benefit from domestic LGBT community support, this cannot rival what LGBT refugees can offer each other. Just as survivors of torture often find it easier to connect to other survivors regardless of nationality or ethnicity, so too do LGBT refugees naturally bond with those whose experiences, hardships and dreams they share. Community is critical to the resettlement process; LGBT refugees are no different from all refugees in that they cannot transition successfully and achieve self-sufficiency without networks of support.

One best practice is for refugee resettlement agencies to develop participant-led social groups comprised of local LGBT refugees and asylum seekers. These groups can organise social outings and help LGBT refugees make friends and explore their new neighbourhoods. These activity groups parallel similar activity groups piloted in torture treatment centres, and address similar needs.⁹

While LGBT refugees' particular needs and recent history of persecution may distance them from their ethnic or national communities, ultimately

efforts must be made to build bridges between LGBT refugees and other immigrants from their countries of origin. With increased support, improved access to services and new opportunities to become part of a community, LGBT refugees will be able to carve out new lives and pursue new possibilities.

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1. Gates, Gary J (2011) *How many people are lesbian, gay, bisexual, and transgender?* The Williams Institute, University of California at Los Angeles <http://tinyurl.com/Williams-Inst-Gates-April2011>

2. www.dhs.gov/xlibrary/assets/statistics/publications/ois_rfa_fr_2011.pdf
3. The refugee estimates are based on information from Resettlement Service Centers (RSCs) in East Africa, the Middle East and Asia, where the majority of refugees are processed. The asylum seeker estimates are based on the National Immigrant Justice Center (NIJC) informal survey of other programmes specialising in LGBT asylum seeker legal representation as well as members of the American Immigration Law Association who handle these cases in private practice.
4. For information on best practices on HIV+ refugee resettlement see www.refugeehealthia.org/webinars/hivavids/hiv-webinar-062011/ and www.refugees.org/resources/for-service-providers/hiv-aids.html
5. For a description of an integrated model for torture treatment, see www.heartlandalliance.org/kovler/news/caringfortorturesurvivors.pdf
6. The Organization for Refuge, Asylum and Migration (ORAM) has piloted a programme in San Francisco in which LGBT refugees and asylum seekers are matched with community volunteers who provide housing, social support and assistance in finding employment. See www.oraminternational.org/
7. Now widely recognised as the symbol of the international LGBT movement.
8. See Heartland Alliance International's resettlement manual *Rainbow Response: A Practical Guide to Resettling LGBT Refugees and Asylees* at: <http://tinyurl.com/HAI-Rainbow-Response>
9. HAI's Marjorie Kovler Center has run a torture survivor support and cooking group for several years, in which torture survivors gather monthly to cook foods from their countries of origin, share dinner and participate in social activities.

LGBTI migrants in immigration detention

Shana Tabak and Rachel Levitan

As states increasingly use detention as a means of controlling migration flows, sexual minority migrants find themselves in detention facilities where they may face multiple violations of their human rights.

Increasingly, states detain irregular migrants as a means, they believe, to control migration flows and deter further irregular migration. Despite this trend, detention has not deterred migrants from crossing borders. Furthermore, conditions in immigrant detention facilities have been widely criticised as violating international law.

Sexual minorities in detention often face social isolation, physical and sexual violence directed at them because of their gender identity, and harassment by both facility staff and other detainees. In most prison settings, sexual minorities face a heightened risk of targeted physical and sexual violence. Transgender women¹ are particularly vulnerable to this abuse because they are usually housed with men; in the US, for instance, they are thirteen times more likely to be sexually assaulted than other detainees.

LGBTI detainees are often placed in 'administrative segregation' in response to complaints of sexual or physical violence or as a preventive measure. Although segregation may seem to be the only available means of protecting sexual minority migrants from violence, in many detention centres it is indistinguishable from solitary confinement, involving confinement for 23 out of 24 hours a day in a tiny cell with extremely limited access to the outdoors, exercise or other people. This practice can lead to severe mental health after-effects and may exacerbate Post-traumatic Stress Disorder (PTSD) or other conditions developed in response to violence in the country of origin or during migration. (In some cases, LGBTI detainees may self-isolate so as to avoid stigmatisation by refugees from their countries of origin.) Such solitary confinement is held by international human

rights bodies as amounting to torture, inhuman or degrading treatment when it deprives detainees of meaningful access to detention centre services or, although it is widely termed ‘non-punitive isolation’, is tantamount to conditions of penal solitary confinement.

The medical needs of sexual minorities in detention, whether or not they require a regular regimen of HIV medication or hormone therapy, are rarely met. In many migrant detention facilities, only urgent medical care is provided; interpreters are rarely provided during medical procedures; there are insufficient private spaces for medical consultations; and medical expenses are borne by the detainees. LGBTI migrants in detention face significant risk of HIV infection and exposure to other sexually transmitted infections (STIs). Some arrive in detention infected, often due to a history of sex work or exposure to sexual violence. Others are infected in detention, where rates of HIV, AIDS and other STIs tend to be higher than the rate in the general population. Infection as a result of sexual violence in detention is of particular concern to transgender women, who are often housed with men. Detention also increases

exposure to other infectious diseases, which heightens risk of HIV-related morbidity.

The lack of medical care available is also evidenced by the limited access of transgender detainees to hormone and other treatment associated with gender transition. In the US, however, according to recent guidelines, transgender immigrant detainees may receive hormone treatment but only if they were undergoing such treatment prior to being detained. Transgender migrant detainees also report invasive and voyeuristic medical examinations by officials who are unfamiliar with their medical needs or have had little exposure to individuals with gender non-conforming identities.

Sexual minority migrants, who experience high levels of physical and sexual violence in countries of origin, often suffer serious mental health after-effects. Detention conditions – including the loss of physical liberty (particularly when segregated), staff abuse, marginalisation by other detainees, lack of access to appropriate medical care, substandard hygiene, combined with the often indefinite



nature of immigration detention – exacerbate mental illness. Voyeuristic or offensive questioning of LGBTI migrants by migration authorities also detrimentally affects their mental health. Since access to mental health counselling in migrant detention is extremely rare, sexual minorities not only suffer ongoing after-effects of harm experienced in countries of asylum but also are often re-traumatised by experiences in detention.

Rights of migrants in detention

While LGBTI detainees – particularly those who are transgender – are often so visible in immigration detention systems that they are put at grave physical risk, they remain invisible where their protection concerns matter most: in the policies and guidelines that are designed to protect all detainees from harm and process migrants equitably and with dignity under international law.

The core elements of protection in human rights law that relate to detainees include the prohibition on torture, the prohibition on arbitrary detention, limits on detention time, non-discrimination clauses, and the right to liberty. Both the UN Human Rights Committee and the UN General Assembly have confirmed that these tenets of human rights law must be applied without discrimination to all peoples, including migrants. Other refugee-specific legal standards promulgated by UNHCR prohibit penalising migrants for illegal entry or presence, and assert that detention of asylum seekers should only be contemplated as a last resort.

In October 2012, UNHCR issued new guidelines governing the detention of refugees. Intended as guidance to governments, legal practitioners, decision-makers and others, they provide valuable leadership on the special concerns of LGBTI asylum seekers in detention. Guideline 9.7 states that:

Measures may need to be taken to ensure that any placement in detention of lesbian, gay, bisexual, transgender or intersex asylum-seekers avoids exposing them to risk of violence, ill-treatment or physical, mental or sexual abuse; that they have

access to appropriate medical care and counselling, where applicable; and that detention personnel and all other officials in the public and private sector who are engaged in detention facilities are trained and qualified, regarding international human rights standards and principles of equality and non-discrimination, including in relation to sexual orientation or gender identity. Where their security cannot be assured in detention, release or referral to alternatives to detention would need to be considered. In this regard, solitary confinement is not an appropriate way to manage or ensure the protection of such individuals.²

Although extremely welcome, UNHCR's new Detention Guidelines alone are insufficient to address the severe problems that characterise the detention of sexual minority migrants. Ultimately, states must provide alternatives to detention for all self-identifying sexual minorities – establishing non-custodial measures and alternative sentencing procedures.³ In addition, migrant detention facility staff and management must be trained on and sensitised to the protection needs of LGBTI migrants. Access to appropriate health-care, welfare and contact with the outside world – including legal counsel, medical attention and external LGBTI support systems – must be ensured. LGBTI detainee safety and the ending of discrimination and abuse, both by other detainees and by prison officials, must be the highest priority.

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An expanded report of this research is to be published as an article in Volume 37 of the *Harvard Journal of Law and Gender*.

1. Assigned male at birth but with female gender identity.
2. Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012 www.unhcr.org/refworld/docid/503489533b8.html
3. FMR 44 (forthcoming September 2013) will include a major feature on detention, including alternatives to detention www.fmreview.org/detention

A model immigration detention facility for LGBTI?

Christina Fialho

The US has taken some positive steps to improve the treatment of gay and transgender asylum seekers in immigration detention but could make improvements in four key areas.

In 2011, the first official multi-plaintiff complaint was lodged with the US Department of Homeland Security's Office of Civil Rights and Civil Liberties (CRCL) on behalf of 17 lesbian, gay, bisexual, transgender and/or intersex (LGBTI) asylum seekers and other migrants who were subject to abusive conditions in US civil immigration detention. Among the complaints were a pervasive denial of medical care for chronic conditions, sexual assault and physical abuse by both guards and other people in detention, and an over-reliance on solitary confinement.

In response, CRCL and US Immigration and Customs Enforcement (ICE) created the first dedicated protective custody unit for gay and transgender individuals in immigration detention at the Santa Ana City Jail in California.¹ The unit has the capacity to hold 64 gay and transgender individuals; although the beds are rarely filled to capacity, ICE pays the city for all 64 beds each day in order to ensure that the city can keep these individuals segregated from the rest of the jail population.

In November 2012, visitor volunteers from Community Initiatives for Visiting Immigrants in Confinement (CIVIC) and I interviewed individuals being held in the protective custody unit. While the men and women at Santa Ana described a number of problems, overall the asylum seekers whom we interviewed felt that the dedicated unit was a significant improvement and that the quality of life was better than at other ICE-contracted facilities.

The protective custody unit itself has two-person cells, an indoor dayroom with natural lighting, and a small outdoor recreation space. The gay and transgender asylum seekers have use of the dayroom from approximately 7am to 12pm, 2pm to 5.30pm, and 7pm to 11pm.

The rest of the time, they are locked in their cells. The jail offers a number of programmes, such as English as a Second Language and computer classes. All the programmes, except the computer classes, are offered to the gay and transgender population in the protective custody unit to prevent mingling with the general jail population.

In many ways, ICE is living up to its goal of making the Santa Ana City Jail's protective custody unit a model for the nation. For example, visitation is offered seven days a week, even for individuals who are placed in 'administrative segregation' (commonly known as solitary confinement) for disciplinary purposes. This is one of the few detention facilities in the US that does not eliminate visitation privileges for migrants placed in solitary confinement. However, there is room for improvement in four key areas:

LGBTI training: ICE's contract with the Santa Ana City Jail requires an eight-hour 'specialised LGBT training' for staff in the facility to cover the following: 'familiarisation' with LGBT issues (gender identities and sexual orientations but not currently including intersex), interpersonal relations and communications skills (tone of voice, use of gender-specific words, avoiding homophobic and derogatory comments), vulnerability to sexual abuse/assault and intervention approaches, sensitivity in search methods, and use of preferred pronouns. However, it is not clear that this training has taken place or that guards are complying with the training policies. For instance, transgender asylum seekers who self-identify as females reported being told by guards to "use their male voice" and "act male" on an almost daily basis, and many guards use male pronouns to refer to transgender women. ICE should ensure that each officer working in the protective custody

unit receives all eight hours of specialised training and that the training incorporates familiarisation with intersex issues.

Health care: ICE should improve its medical and mental health care, particularly to ensure seamless transfer of communications and medical records when a person is transferred from another detention facility to the Santa Ana City Jail or when initially taken into ICE custody. According to the Santa Ana City Jail, they will not accept a person from ICE unless that person has five days of medicine available. However, asylum seekers interviewed said that when they were transferred from another facility, their medical records followed 35 to 45 days later, thereby delaying medication by anywhere between one and four months. Additionally, one transgender asylum seeker who had been subjected to police brutality in her home country had not been able to meet with a mental health-care provider since she was detained in the US six months previously.

Visitation: Gay and transgender asylum seekers and other migrants rarely receive visitors because either they do not know anyone in the US or their family and friends live hundreds of miles away. Although visitation is available seven days a week, visits at the Santa Ana City Jail take place behind

plastic screens, speaking through telephone handsets. All family and community visits should be permitted in a classroom-style setting where visitors and those in detention can make physical contact with one another. While I commend ICE and the Santa Ana City Jail for welcoming a CIVIC-affiliated community visitation programme, a classroom-style

visitation setting would help decrease the emotional hardship for isolated gay and transgender asylum seekers and other migrants in detention.

Transfers: As the Santa Ana City Jail remains the only immigration detention facility in the country with a dedicated protective custody unit, gay and transgender migrants are often transferred from other states to this facility. These transfers have far-reaching negative consequences on the individuals' right to fair immigration proceedings as well as on their family ties and general well-being. For example, transfers across state lines can render attorney-client relationships unworkable and separate migrants from the evidence they need to present to a judge in order to win asylum and prove good moral character. Moreover, transfers make family visits so prohibitively costly that they rarely – if ever – occur. Independent non-governmental advisers should investigate the successes and failures of the protective custody unit and consider whether this model can be exported to other immigration detention facilities to ensure that gay and transgender migrants remain close to their families and support systems.

Thousands of lesbian, gay, bisexual, transgender and intersex people around the world see the US as a place where they can live freely and openly, without fear of persecution. Yet, many LGBTI asylum seekers face months or even years of prolonged suffering and isolation in immigration detention before they are granted asylum. The Santa Ana City Jail's protective custody unit could be a model for the nation if it implemented the above recommendations. However, the US could be a model for the world if it completely ended the detention of asylum seekers, particularly those who are LGBTI.

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1. Located 100 miles north of the US-Mexican border.



Identity and integration in Israel and Kenya

Yiftach Millo

Expression of non-conforming sexual orientation and gender identity depends on social, legal, cultural and political opportunities which provide space for exploration and the emergence of new identities. People's protection will also depend on these.

Sexual minority refugees and asylum seekers interviewed in Israel and Kenya had fled countries such as Armenia, the Democratic Republic of Congo (DRC), Ethiopia, Morocco, Somalia, Sri Lanka and Sudan where the LGBTI discourse is almost non-existent:

"There is no such thing in Morocco as sexual identity, forget it. Sexual identity is a Western 'invention'. It's either you're a man or a woman. If you're in the margin, then you're a male whore." (Gay Moroccan asylum seeker)

On arrival in their new country, most were exposed for the first time to LGBTI rights discourse through encounters with the local population, local sexual minorities, LGBTI advocates, refugee assistance agents, medical and psychosocial service providers, and media coverage. After an initial period of establishing contacts with other refugees, asylum seekers and migrants from their countries of origin, the majority tend to start to disengage from these communities and attempt instead to integrate with the local population, gradually adopting LGBTI self-representations. This process is lengthy and characterised by greater vulnerability due to lack of confidence in approaching refugee assistance and LGBTI networks or advocates.

Israel

Israel is considered tolerant of non-conforming sexual orientations and gender identities, and in this environment sexual minority asylum seekers are more able to reconfigure and be open about their sexual orientation and/or gender identity. Such opportunities, however, are dependent on a person's language skills and encounters with trusted social agents (mainly gay-friendly employers). Access to protection is still limited and many sexual minority asylum seekers in

Israel only approach refugee assistance agents or LGBTI advocates months if not years after arrival in Israel, thereby often missing the one-year deadline for submission of asylum claims to the Population, Immigration and Border Authority (PIBA). In addition, fixed and narrow LGBTI categorisations used by PIBA mean that both asylum seekers and officials are quite literally lost for words to discuss SOGI asylum claims. As of November 2012 PIBA had not yet recommended a single instance of granting refugee status on the basis of SOGI-related persecution. Isolation, loss of social networks and the stress of the asylum process, compounded by the effects of traumatic events in their home countries, lead to high rates (71%) of post-traumatic stress disorder (PTSD) among participants interviewed.¹

Kenya

Ugandan male LGBTI activists interviewed in Nairobi had gained refugee status after fleeing arrest and imprisonment by Ugandan authorities. As activists they possessed clearly articulated gay identities and were members of LGBTI rights networks which provided them with information about obtaining asylum in Kenya. In contrast, non-activist Ugandan sexual minority participants interviewed in Nairobi and Kisumu (who had fled Uganda primarily after being exposed by family, friends or neighbours) were not connected to LGBTI networks and had no knowledge of the asylum system and the relevance of the reason for their flight to an asylum claim. All three were in their early twenties, surviving financially by engaging in sex work.

Interviewees from DRC, Ethiopia and Somalia in Nairobi had primarily fled their countries due to violence or their political engagement. The majority first sought the assistance of



fellow countrymen in accessing the asylum process and securing employment and accommodation; after some time they reduced these contacts and started searching for spaces where they could be open about their sexual orientation and/or gender identity. However, due to the general homophobic climate in Nairobi and the threat of extortion and violence upon exposure, many of the sexual minority refugees found refuge with Kenyan, foreign and other refugee men, securing accommodation and food in exchange for sex. Some of these relations were characterised by dependency due to extortion; at least two cases amounted to sexual enslavement.

Fear of exposure by neighbours and landlords in Nairobi forces sexual minority refugees to move frequently from one lodging to another. Isolation and constant stress due to lack of protection and the impossibility of local integration may explain the high rates of PTSD among participants in Kenya. At 69% this rate is similar to rates in Israel.

Conclusions

In Nairobi, in recognition of generalised homophobia and threats towards LGBTI individuals, both HIAS Refugee Trust of Kenya and the Refugee Consortium of Kenya are operating specific programmes addressing the legal, psychosocial and shelter needs of

sexual minority refugees. In Israel, where there is a general perception of tolerance towards sexual minorities, there are only minimal proactive measures being taken by assistance providers to enhance protection of this particular vulnerable group. Both settings demand further development of specific outreach and identification strategies and proactive protection measures.

LGBTI and refugee assistance agencies should:

- train local LGBTI advocates on the legitimacy of SOGI-based persecution in claiming international protection and incorporate them into a wider referral network
- post information about SOGI-based persecution and international protection on relevant websites
- extend outreach, identification and referral systems specifically to urban centres beyond Nairobi and Tel Aviv
- facilitate social support groups for sexual minority refugees including integration into social activities and vocational training run by LGBTI civil society
- improve access to psychosocial assistance by extending training on SOGI to professionals in Kenya
- provide safe shelters for sexual minority refugees in Kenya to reduce the need to form dependent relations with abusive hosts.

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1. The sample size is too small to represent the targeted population but may be indicative of a possible trend that needs to be further researched.

Protection in the city: some good practice in Nairobi

Duncan Breen and Yiftach Millo

Despite a challenging protection environment, an assistance programme for LGBTI refugees in Nairobi offers examples of good practice that could be replicated in other urban settings.

More than 50,000 registered refugees live in Nairobi.¹ Assistance agencies face multiple difficulties in trying to reach the most vulnerable individuals within such a large population, and refugees with particular needs can struggle to access the assistance they need. Lesbian, gay, bisexual, transgender and intersex (LGBTI) refugees constitute one such group. While there are many organisations in Nairobi doing valuable work with refugees, more effort is needed to integrate LGBTI refugees into assistance and protection programmes.

Same-sex relations between men are prohibited by Section 162 and 165 of Kenya's Penal Code and, although there are few actual convictions, NGO reports indicate harassment and blackmail of LGBTI people by police.² LGBTI refugees also face particular risks within refugee communities as well as from the local population. Human Rights First's report *The Road to Safety*³ documents high levels of violence within refugee communities towards LGBTI refugees, including beatings, abductions and one attempt to set a gay Somali boy alight. HIAS's report *Invisible in the City* also notes attacks by Kenyan citizens on LGBTI refugees involved in survival sex work.⁴

LGBTI refugees often struggle to access assistance from NGOs, UNHCR offices or health-care providers due to a fear of being identified as LGBTI by other refugees and consequently subjected to harassment and/or violence. Others fear being subjected to discrimination and prejudice from service providers. For example, one refugee told Human Rights First how he had been too afraid to approach UNHCR or an NGO for assistance because he worried that either other refugees there would identify him as LGBTI or a member of staff would expose him. He had already lost his job and his place of residence and had been thrown out of his church when

the pastor learned that he was gay. He told us that he had three other friends who were in an equally vulnerable situation but were too scared to seek help and that the only reason he had come that day was because the NGO where we met him had agreed to see him on a Friday when there were usually no visitors.

Outreach and identification

Despite these challenges, there are some good practices in Nairobi that could be replicated elsewhere. One example relates to outreach and identification of LGBTI refugees with particular vulnerabilities. In 2009 an NGO in Nairobi established an assistance programme for LGBTI refugees; its staff generated referrals of LGBTI refugees in need of assistance by approaching local LGBTI organisations, trusted health-care providers and progressive religious institutions, as well as other organisations working with refugees, to let them know about the assistance it provides. More recently, the NGO has established satellite offices in areas where large numbers of refugees live, thereby making services more accessible by reducing time and transport costs.

Trained refugee counsellors based in these satellite offices conduct outreach in the local refugee communities; this has resulted in a significant increase in the number of LGBTI refugees seeking assistance with 120 LGBTI people approaching the organisation for help in the first six months of the new satellite offices being open. Also important is the NGO's 'open door' policy; refugees do not require appointments but can approach the office at any time, which means that LGBTI refugees do not have to wait with other refugees for extended periods in order to access services – something that LGBTI refugees had identified as a major obstacle due to fear of their sexual orientation or gender identity being discovered by other refugees.

Prior to the new outreach approach, few lesbian women came forward for assistance but since the satellite offices became operational, more than 40 lesbian refugees have approached the NGO. With some women facing additional barriers in accessing transport money or requiring permission from their husband or another male family member to leave their homes, the proximity of the satellite offices has made protection more accessible. The success of this outreach has shown the importance of conducting pro-active outreach, locating services in areas accessible to refugees and being flexible about appointments.

A number of LGBTI refugees in Kenya are engaged in survival sex. Outreach, identification and referral work therefore also needs to take place in areas where sex workers congregate. Kenyan LGBTI organisations currently conduct health awareness sensitisation among LGBTI sex workers which could be expanded to include sensitisation on protection issues for LGBTI refugees and asylum seekers involved in sex work.

Safe shelter

Another example of good practice from Kenya is the provision of safe shelter for a limited number of at-risk LGBTI refugees. While steps should be taken to make existing safe houses (such as those for victims of gender-based violence) safe for all, an NGO has established a specific scattered-site housing programme for LGBTI refugees who face heightened risks while they wait to be resettled. Instead of accommodating individuals in a single safe house, this programme enables individual refugees to identify a safe place to stay and covers the cost of rental for a temporary period. Many such refugees choose to stay in locations away from where most other refugees live as this affords them a greater degree of anonymity. This approach also helps to avert concerns that a single safe house for LGBTI refugees could become a target for harassment or violence.

Psychosocial support

Many LGBTI refugees find themselves without a social support system because they fear

harassment or violence if they reveal their sexual orientation or gender identity. This isolation contributes to some LGBTI refugees forming dependent and often abusive relations with a single person as a source of support in exchange for providing menial work or sexual favours, and may contribute to the high rates of post-traumatic stress disorder symptoms found in this population.

In Nairobi, an NGO holds regular group counselling sessions run by the refugees with the guidance of a senior counsellor. The existence of the group mitigates feelings of isolation and serves as a support group where problems and solutions are discussed and shared. Individual counselling is also provided by the NGO, focusing on self-acceptance and help in distinguishing societal hostility from one's own perceptions of sexual orientation and gender identity. This enables LGBTI refugees to make informed decisions about the degree to which they may resist social pressures to conform, builds their resilience and sense of self-worth, and increases their sense of control over their lives. Social events arranged by the local LGBTI community also offer opportunities for developing a local social network.

Training

For the past three years, the same NGO has been conducting training for UNHCR staff and its international partners in Nairobi on the diverse ways in which LGBTI refugees may represent their sexual orientation and gender identity as well as addressing internalised and institutionalised homophobia and transphobia amongst UNHCR and NGO staff. The training has contributed to an increased awareness of the specific needs of LGBTI refugees and has also helped challenge and combat individual and institutional prejudice among staff. Continuous support for such training is needed as processes addressing prejudice require long-term commitments.

As part of its *Invisible in the City* research, HIAS plans to issue a guide detailing best practices for working with LGBTI refugees to serve as a basis for further regional training.

Further good practice

Because it is frequently difficult to self-identify openly due to risks of violence or harassment, LGBTI refugees have sometimes found it useful to have **specific staff members** – focal points – to work with at UNHCR or NGOs. This means that LGBTI refugees can simply ask at the reception to speak to the specific staff member rather than having to explain the nature of their circumstances and this helps build trust.

Protection of **confidentiality** is a major concern. In Kenya, LGBTI refugees cited the presence of interpreters from their country of origin at a UNHCR or NGO office as a reason for not seeking assistance through that organisation, regardless of whether or not the interpreter would be in the room during their visit. Ways to try to address this include posting information in reception areas regarding confidentiality of all information in interviews and in refugee files, as well as incorporating information on the protection of confidentiality in outreach materials. Similarly, some NGOs have provided signs around their offices such as rainbow flags or posters stating that refugees will not be discriminated against on any grounds, including on the basis of sexual orientation and gender identity. UNHCR and NGOs should try to provide confidential spaces where refugees can provide information discreetly without being overheard. All staff, including interpreters and additional staff such as security guards and drivers, need to be trained on non-discrimination and the importance of confidentiality.

In Kenya, **registration and refugee status determination can be fast-tracked** on the request of a partner organisation. However, not all at-risk LGBTI refugees may be referred by partners. As a result, UNHCR must have procedures in place to fast-track vulnerable LGBTI applicants who approach the office directly for registration and refugee status determination.

Because LGBTI refugees face high risks of violence in particular countries or areas, UNHCR and NGOs need to take steps to provide **protection** including through

documenting incidents of violence and raising concerns about any gaps in police response with the government, identifying medical and legal practitioners who can assist victims, and providing access to safe shelter. Outreach to police on their duties to protect all people, including LGBTI refugees, as well as outreach to refugee communities to address violence among refugees, including against LGBTI refugees, are two further strategies that can help improve protection.

Resettlement countries should continue to strengthen measures to expedite **resettlement** in cases where individuals face high risks. Resettlement countries should also support the provision of protection measures such as safe shelter or transfer to an Emergency Transit Facility for those facing high risks while they wait to be resettled.

In 2012, UNHCR in Nairobi worked with urban partners to assess assistance of groups with specific needs, including LGBTI refugees, as informed by UNHCR's Age, Gender and Diversity policy of 2011.⁵ As a result, it developed action points to improve aspects such as identification and outreach, referrals and case management, and access to information and services. This is a useful approach and, if effectively implemented in urban areas as well as camps and regularly updated, will help to better mainstream the protection of vulnerable groups into UNHCR and NGO protection and assistance programmes.

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1. The Kenyan government announced in December 2012 that refugees living in urban areas would be relocated to the camps at Dadaab or Kakuma and that agencies with services in urban areas should stop assisting refugees and asylum seekers with immediate effect. For updates and assessment of impact see www.urpn.org

2. Kenya Human Rights Commission *The Outlawed Amongst Us* <http://tinyurl.com/KHRC-Outlawed>

3. 2012 <http://tinyurl.com/HRF-Road-to-safety>

4. 2012 <http://tinyurl.com/HIAS-invisible-in-city>

5. www.unhcr.org/4e7757449.html

Gender identity and disaster response in Nepal

Kyle Knight and Courtney Welton-Mitchell

Agencies need to be mindful of the special needs of LGBTI victims of disasters in order to enhance protection and minimise unintended harmful consequences of relief efforts.

Although there is a need for more research in this area, there is evidence to suggest that LGBTI persons may be discriminated against during disasters in various ways: being perceived as lower priority for rescue efforts; families with same-sex partners being excluded from distribution of food and other basic supplies; and difficulty visiting injured partners and claiming the bodies of deceased loved ones. A recent study of relocation efforts following floods in southern Nepal in 2008 found that the needs of some LGBTI communities were indeed overlooked and, for some, relief efforts resulted in unintended harmful effects.

Central to the emergence of Nepal's LGBTI rights movement in the early 2000s was the widespread state violence perpetrated against *metis*, male-bodied feminine-presenting people who have been alternatively characterised as gay men or transgender women. In the flood-prone Sunsari district, *metis* are usually referred to as *natuwas*, meaning 'dancers'. *Natuwas* typically migrate to Bihar during the wedding season to dance at the ceremonies and engage in sex work. Elements of cultural and religious pluralism – and even reverence – combined with substantial legal progress in recent years mean that many *natuwas* (and other LGBTI-identified



Kyle Knight

A Nepali transgender woman holds up her citizenship certificate, which identifies her as male. She has struggled to access services as a result of the discrepancy between the document and her current appearance.

people) live openly in their families and local communities, some with partners.

The 2008 flood in Sunsari and Saptari districts affected an estimated 70,000 people and displaced 7,000 families. In the aftermath of the flood, many *natuwas* were relocated to areas far away from the border, thus making the migration to Bihar prohibitively dangerous (longer distance, more exposure) and expensive. In addition, no longer living in communities in which they were known meant that some experienced increased discrimination and heightened safety concerns. Lack of informal support networks and fear of organising or attending LGBTI-friendly groups in unfamiliar places left many feeling very isolated.

Some *natuwas* reported discrimination in the relief process. “When the district leaders came to hand out food supplies, my family got half of what other families got,” explained Manosh.¹ “They told my parents that ... the family didn’t deserve the full portion because they had a child like me.”²

Another *natuwa* was distressed when she was relocated to a plot of land far away from her previous home. “We are safe when we are in the communities who know us and have seen us as we are,” she said. “But when we have to start in a new place, it doesn’t matter if the government gives us money or a house – we are not safe and we have to hide again.”

For people whose gender might be questioned in administrative processes, daily transactions can be difficult and stressful. In situations where insecurity is heightened – such as in humanitarian emergencies – discrepancies between gender presentation and documentation can make people like *natuwas* targets of increased scrutiny and humiliation, abuse or neglect. One of the central challenges for displaced LGBTI people is the multiple document checks one encounters along the way. Passing through check points, registering in relief camps, seeking medical attention, and enrolling in school are some of the

points at which documentation can become an issue, especially for transgender people or people who do not identify or present as the gender marked on their documents.

In addition, many administrative and material relief systems are disaggregated by two genders – male and female – and there is a dearth of attention paid to transgender or gender-variance issues.

Disaster-prone Nepal, with its new protected legal status for a ‘third gender’ category³ presents a compelling case of how legal recognition can enhance protection for LGBTI people in emergencies. In addition, agencies working in such situations should consider the following measures:

- requiring staff involved in relief efforts to participate in appropriate sensitivity training
- ensuring displaced LGBTI disaster victims have access to social support and safe places to lodge complaints and raise safety concerns
- providing documents that allow gender-variant people to be acknowledged as such
- taking into account informal economic activities, including sex work, when designing relocation programmes in order to protect the livelihoods of people like *natuwas*.

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1. Not her real name
2. <http://tinyurl.com/ODIHPN-Sept2012-Knight-Sollom>
3. Nepal’s Supreme Court ruled in 2007 that the government should issue ‘third gender’ citizenship certificates for people who do not wish to be identified as male or female; implementation of this policy started in January 2013. The third gender category is labelled ‘other’ on official documents.

LGBT aid workers: deployment dilemmas

LGBT aid workers and their managers confront a number of dilemmas in deciding whether LGBT staff will be safe – and accepted – working in certain countries.

The deployment manager's perspective

It was 5pm on a Friday night and I was dropping off my new colleague, Markus¹, at the guesthouse after a briefing for his forthcoming deployment to the field. He would be on a plane early the next morning. As Markus stepped out of the car he turned and said, "By the way, you do know that I'm openly gay, don't you?"

Well, actually, I didn't. Or rather I simply hadn't thought about his sexuality. But the field posting Markus was about to take up was in a country where homosexuality is criminalised and our organisation had a rather precarious relationship with a hostile and aggressive government that frequently harassed our national and international staff on the flimsiest of pretexts. The national media also publicised the government line that we were all spies, or immoral and sexually promiscuous.

As an adviser at headquarters, I felt very ill-equipped to deal with the situation. The time frame made it impossible to seek advice before Markus departed and none of the internal training I'd had had dealt with this issue.

I sat down to chat with Markus, and used carefully worded open questions to ask him what he thought the risks might be and how they could be managed. He didn't want to end up in a foreign jail, nor did he want to compromise the safety of national staff or our organisation. He decided that 'being discreet' was the only course of action – essentially, hiding his sexuality from everyone except those he was sure he could trust. He would have to tell his line manager, though, and I couldn't be sure whether that would be problematic.

We are all required to follow the law of the country in which we are operating but what if that law is at odds with our rights-based

approaches? My organisation supports work to challenge discrimination and prejudice on the basis of sexual orientation in some countries, and then essentially asks staff to hide their sexuality – and possibly lie to their colleagues – in others. When the going gets tough, does pragmatism win over principles?

What I would have liked from my organisation is advice on what he should expect: the risks to him, a partner, his colleagues and the organisation, the support he would need from his manager in-country, and what we should do if the in-country manager was not supportive, and what we would do if he was subjected to any kind of discrimination, abuse, was arrested or detained. The maximum sentence for 'sodomy' in the country when Markus was going is up to 100 lashes and five years in jail.

A year or so later, as I arranged a secondment for a staff member who is gay to another part of the world, a friend of his took me aside. She told me: "I know the team he's been sent to. They won't accept him – and I don't think he could cope with it." The secondment was cancelled due to a security incident but again I wondered... We would not accept discrimination and harassment on the grounds of race within our staff teams, yet in terms of sexuality we expect gay staff to change their behaviour, lie, hide their partner and relationships. In our programmes we challenge homophobic attitudes; but we seem far less willing to challenge it within our staff teams, or to help managers to support staff in dealing with homophobia within the workplace and in the countries where they work. However, although there are many questions we struggle to answer right now, at least in the organisation where I work the majority of people are committed to challenging discrimination both internally and in the outside world too.

Markus completed his deployment without problem. He's since worked for other aid agencies in countries where homosexuality is criminalised. All his postings so far have been unaccompanied but now I hear he's looking for a post where his partner can join him and they are considering adopting a child. But it's not just in the developing world that Markus will face challenges about his sexuality. As I write these final sentences, hundreds of thousands of people are protesting on the streets of Paris about their government's plans to give gay couples the right to marry and adopt children.²

The gay humanitarian's perspective

I have always chosen to keep a low profile regarding my sexual orientation when working overseas, through a combination of self-preservation and recognition that being open could significantly compromise my ability to do my job. There may be those who would criticise me for it but unfortunately being openly gay and being able to do the work I have gone to these countries to undertake is not currently compatible. Of the six countries in which I have worked as an expatriate for NGOs, homosexuality is illegal in five of them; in the sixth, as with the other five, there is certainly a serious social and cultural taboo. In truth I have usually been more concerned with the more immediate potential risks of compromised working relationships, rejection, harassment, blackmail or worse, than the legal implications.

That said, I have lived with my partner in several countries and to date we have not experienced any problems, since two expatriates sharing accommodation is not in itself at all unusual. I also think that it is probably easier to fly under the radar as two women in a relationship, as opposed to two men, if only because suspicions about and hostility towards homosexuality in many places are frequently heightened towards men. Perhaps unfairly I generally work on the assumption that local colleagues probably don't have an entirely favourable attitude to homosexuality. I may have done some people a disservice by making these assumptions but until I have good grounds to believe

that they will be tolerant and accepting, and considering the potential risks, this is how I feel I need to proceed. I can count on one hand the number of local colleagues that I have been directly open with over the years.

If you were to ask me what my employer would or could do if it were the case that I experienced harassment inside or outside of work overseas due to my sexuality, the fact is I don't know. I remember the subject being directly addressed in orientation sessions; where it concerns the laws of a country, you have to accept that there is probably little an employer could do. Harassment inside the workplace is a different issue and – when dealing with very entrenched negative attitudes to homosexuality – can be very difficult to address. However, I do think it is important that when staff members are going overseas to places where being gay is not socially or legally accepted, there should be space for this to be discussed with managers and advisors if they want to. There is also room for improvement in the guidance and orientation available, including the expectations and responsibilities of both staff and employers, including on issues such as accompanied status.

It can be alienating working in a place where you could potentially be imprisoned for simply being who you are, and with the awareness that people you count as good colleagues and friends would struggle to accept you if they knew the truth – or might reject you completely. The compromises that have to be made are not always comfortable. My own experiences and those of others I have met demonstrate that with discretion and care these things can be managed, although I admit that I had to accept a long time ago that if I want a full and open life, including children, ultimately there will be countries where I will not be able to live.

The authors of this article have asked not to be named.

1. To protect privacy, names have been changed.

2. www.bbc.co.uk/news/world-europe-21004322 'Mass Paris rally against gay marriage in France', 13 January 2013

Grantmaking for SOGI programmes

Andrew S Park

With issues relating to sexual orientation and gender identity a relatively new field for funders, the opportunity exists for funders to exert strategic influence on the development of improved policy and practice.

The availability and limitations of funding can heavily influence response to forced migration. Because issues of sexual orientation and gender identity (SOGI) are relatively new to many state and NGO actors in this field, and because current economic pressures are forcing some tough choices at all levels, current funding patterns are playing a decisive role in the development of this issue.

The term ‘funder’ needs definition for the purposes of this discussion. Indeed, the practice of many in this and other fields is to group all sources of funding under the category of ‘donor’, thereby sidestepping the various restrictions and opportunities associated with each type of funding:

Public: controlled by government officials and arising out of the budgets of governmental and intergovernmental agencies. This includes bilateral development and international cooperation funds as well as UN funding. Public funding is often driven by foreign policy priorities and commitments of states.

Private: includes funding from foundations, both public and private (which leads to some confusion). Roughly speaking, a private foundation receives funds from one or a small number of sources for the purposes of supporting charitable activities. Funds disbursed by the private foundation come from its assets. Public foundations receive ongoing support from the public, or at least a larger number of sources. Often they must engage in constant fundraising in order to maintain their giving programmes. A public foundation is essentially the same as an NGO; the difference is that public foundations accomplish their mission – and can influence policy – by raising money and making grants while NGOs accomplish their

mission by raising money and conducting advocacy, providing services, etc. The absence of cumbersome government administration allows some private funders to be more flexible and innovative in their grantmaking.

Sources and streams of funding

The latest and most comprehensive report tracking all international SOGI grantmaking identified a total of US\$35.5 million provided in 2010 by 64 institutions to organisations and projects in 94 countries working internationally or in the global South and East. This included public and private funding. Most dollars came from private funders. Although Sweden, the Netherlands and Norway all ranked amongst the top seven donor countries, the total of all public funding constituted was only 36% of the \$35.5m; the median grant size was \$15,000 and 91% were one-time awards.

Very little of this funding goes to forced migration issues. Half of all funds addressed human rights in a broad sense. Only \$601,550 were designated as addressing the issue of ‘Immigrant/Migrant Rights’ (including refugees and asylum seekers), representing 5.5% of the grant funds.

Equally informative is the question of which entities are making grants. The report identified the top grantmakers according to the total amount of dollars for SOGI issues. A comparison of that list with lists of major funders in the field of forced migration reveals little intersection.¹ Only a handful of foundations with the largest assets fund actively in both fields. If one looks at LGBT funders with the highest number of LGBT grants, as opposed to the largest amount of dollars, the overlap between the two funding communities is almost non-existent.

These data raise several issues. First, SOGI issues are still emerging in the field of forced migration. As is the case with issues where the obligation on states is still not settled, private funding, though small, will precede and exceed public funding. When governments establish LGBT people as a target of programming, the funding programmes will shift to incorporate SOGI issues. Second, even among private funders those most active in the field of forced migration are not engaging in these issues. Third, the current amount of funding, as well as the size of grants by funders in the SOGI field, is insufficient to support certain projects.

Recommendations for funders

These funding patterns present opportunities for funders, particularly private funders. First, private funding has been and can continue to be the primary source of support for activities to document and publicise trends of violence and discrimination as well as the establishment of networks within which LGBT people can identify themselves. In the same way that private funding has supported the development of demographic research techniques in the field of health and census-taking for LGBT people, private funding could also support the development, testing and validation of interview and investigatory guidelines regarding the complex area of sexual orientation and gender identity.

Second, private funders, through NGOs, could support professional development and training for staff at UNHCR and local agencies throughout the world. Until SOGI issues are considered part of the core practice of agencies dealing with forced migration, such programmes will often require outside assistance. As policy develops in this area, training and knowledge acquisition will be crucial.

Third, private funders can support the development of practices surrounding asylum claims, detention and status determination by providing representation to displaced persons. The funding role here is not to provide generalised services but rather to provide services with the goal of raising issues of practice in agencies working in this area, where their expertise does not include SOGI issues.

Last, funders whose primary grantmaking activities are in forced migration issues currently have the ability to strategically advance SOGI issues with a small number of grantmaking decisions. Until funding patterns change, the opportunities to establish models and precedent will remain strong. These funders hold a high degree of expertise and can guide initial innovations in the field.

We should note two potential caveats for the use of private funding for the support of LGBT individuals facing displacement. First, private funding, given that grants are usually small one-time disbursements, may increase risk. Such a grant may support an LGBT person to leave immediate danger, only to have the person fall short of a durable solution or be placed in a situation where their long-term vulnerability is increased. Secondly, private funders cannot be held accountable for whether their decisions – where and how to spend their funds – conform to international norms concerning displaced persons.

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1. This article relied on the following sources: Funders for Lesbian and Gay Issues *A Global Gaze: Lesbian, Gay, Bisexual, Transgender And Intersex Grantmaking In The Global South And East 2010* www.lgbtfunders.org/files/A_Global_Gaze_2010.pdf as well as an internet search of the Foundation Center Philanthropy/Insight interactive map www.philanthropyinsight.org

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Glossary to help readers with certain terms used in this issue

Sexual orientation refers to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.

Gender identity refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms. These definitions are adapted from the Yogyakarta Principles. See Preamble, p8 www.unhcr.org/refworld/pdfid/48244e602.pdf

In addition:

A **transgender woman** (or transwoman) is a person who was assigned male at birth but identifies herself as a woman.

A **transgender man** (or transman) is a person who was assigned female at birth but identifies himself as a man.

Forthcoming issues of FMR

Fragile states and forced migration (FMR 43)

Due out May 2013.

Details at www.fmreview.org/fragilestates

Detention and deportation (FMR 44)

Due out September 2013.

Details at www.fmreview.org/detention

Crisis migration (FMR 45)

Due out December 2013.

Call for articles online at www.fmreview.org/crisis

Submission deadline for articles is 2nd September.

FMR's 25th Anniversary

November 2012 marked the 25th anniversary of FMR and its predecessor, RPN.

In recognition of this, we are putting together a collection of articles that look back over 25 years of debate, learning and advocacy for the rights of displaced and stateless people. Read the articles published to date at

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