

INVISIBLE IN THE CITY:

Protection Gaps Facing Sexual Minority Refugees and Asylum Seekers in Urban Ecuador, Ghana, Israel, and Kenya

By Yiftach Millo for HIAS

Prepared for the Bureau of Population, Refugees, and Migration of the U.S. Department of State, February 2013



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Contents

Acronyms 3

Executive Summary..... 4

Introduction 7

Methodology 8

Findings

 Invisibility of Sexual Minority Refugees and Asylum Seekers..... 9

 Tensions Between Self-Representation and Categorization by Others 12

 Vulnerability to Abuse and Violence..... 13

Findings by Country

 Ecuador..... 14

 Ghana 16

 Israel 17

 Kenya..... 19

Recommendations 21

Endnotes 25

Appendices 29

I. Observations from Geneva Symposium
 “Invisible in the City: Protection Issues Facing Sexual Minorities Fleeing Persecution”
 Geneva, Switzerland, September 20-21, 2012

II. Keynote Address
 Volker Türk, Director of International Protection, UNHCR

III. Keynote Address
 David Robinson, Principal Deputy Assistant Secretary, BPRM

Acronyms

AGDM – Age, Gender, and Diversity Mainstreaming
ASSAF – Aid Organization for Refugees and Asylum Seekers in Israel
CHRAJ – Commission for Human Rights and Administrative Justice
CSO – Civil Society Organization
ECOWAS – Economic Community of West African States
ERC – Enhanced Registration Campaigns
ERD – Ecuador Refugee Directorate
FTM – Female-to-Male
GALCK – Gay and Lesbian Coalition of Kenya
GIZ – German International Cooperation
GOI – Government of Israel
GOK – Government of Kenya
GRB – Ghana Refugee Board
HIAS – Hebrew Immigrant Aid Society
HRIT – Heightened Risk Identification Tool
HRTK – HIAS Refugee Trust of Kenya
ILGA – International Lesbian, Gay, Bisexual, Trans and Intersex Association
IP – Implementing Partner of UNHCR
IPIBA – Israeli Population, Immigration and Borders Authority
JRS – Jesuit Refugee Service
KCS – Kituo Cha Sheria
KEMRI – Kenya Medical Research Institute
KHRC – Kenya Human Rights Commission
KNCHR – Kenya National Commission on Human Rights
LGBTI – Lesbian, Gay, Bisexual, Transgender, and Intersex
MARP – Most at-Risk Populations (HIV/AIDS)
MK – Member of Knesset (Israeli Parliament)
MTF – Male-to-Female
MOI – Ministry of Interior
MSM – Men Who Have Sex with Men
NAGI – National Association of GLBT in Israel
NGO – Non-Governmental Organization
NSGB – National Status Granting Body (Israel)
PCL-C – PTSD Checklist – Civilian
PHR-I – Physicians for Human Rights – Israel
PTSD – Post-Traumatic Stress Disorder
RCK – Refugee Consortium of Kenya
RET – Refugee Education Trust
RRLC – Refugee Rights Legal Clinic at Tel Aviv University
RSD – Refugee Status Determination
SGBV – Sexual and Gender-Based Violence
SOGI – Sexual Orientation and Gender Identity
SWOP – Sex Workers Operations Project (Kenya)
TGP – Temporary Group Protection
UNHCR – United Nations High Commissioner for Refugees
USRAP – U.S. Refugee Admissions Program
WAPCAS – West Africa Project to Combat AIDS and STI (Sexually Transmitted Infection)
YP – Yogyakarta Principals

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Executive Summary

This report is the result of a one-year qualitative and quantitative research project conducted by HIAS on sexual minority refugees in the urban centers of Ecuador, Ghana, Israel, and Kenya. During the course of the research, interviews were conducted with sexual minority refugees, refugee protection professionals, and sexual minority civil society organizations.¹ The report presents the protection gaps facing sexual minority refugees and asylum seekers and offers recommendations for mitigating these gaps. In all, 66 sexual minority refugees, asylum seekers and migrants, and 92 representatives of governments, international organizations and local civil society organizations were interviewed in nine urban locations.

Sexual minority refugees flee their countries of origin due to discrimination, exclusion, and at times, violence by a myriad of actors, including family, neighbors, coworkers, police, paramilitary forces, and the media. Some leave primarily due to danger from the violent conflicts in their countries. Persecution on the basis of sexual orientation or gender identity (SOGI) is often the motivating factor for flight, but is seldom expressed as such by refugees and asylum seekers themselves.

Enhancing the protection of sexual minority refugees and asylum seekers requires a commitment to a challenging path of change in social, religious, cultural and political attitudes.

Although the United Nations High Commissioner for Refugees (UNHCR) has made significant strides in its headquarters and in some country operations to protect sexual minority refugees, protection in the field remains extremely limited. Their protection is affected by a general misconception of lack of need and urgency resulting from the “invisibility” of their plight.

The “invisibility” of sexual minority refugees and asylum seekers is a consequence of survival mechanisms adopted by this population in order to survive in homophobic and transphobic social, political, and cultural environments. Disclosure of accounts relating to SOGI-based persecution during registration and Refugee Status Determination (RSD) is rare among sexual minorities fleeing violent conflict or political persecution. Sexual minority refugees and asylum seekers are often forcibly displaced to neighboring countries where similar attitudes and practices prevail. They therefore tend not to disclose socially stigmatizing information pertaining to their sexual orientation or gender identity, fearing a repeated experience of rejection and discrimination by asylum authorities. Sexual minority asylum

seekers, including those who flee to countries with more progressive attitudes toward sexual minorities, prefer to rely on other motives considered more legitimate by international protection professionals for securing legal status as refugees.² This research has identified a high rate (44.2 percent) of respondents suffering from Post-Traumatic Stress Disorder (PTSD), which can affect memory and self-esteem and increase vigilance and suspicion, affecting the ability to form trusting relationships with protection professionals.

To cope with the fear of marginalization, discrimination, or targeted violence, many sexual minority refugees hide their sexual orientation or gender identity, hoping to “pass” as part of the sexual and gender majority. This tends to exacerbate their invisibility. Further, sexual minority refugees who live in isolation, adopt gendered mannerisms, and live “closeted” lives increase the general sense that sexual minorities are “just not out there.”

The few refugee-assistance organizations that have implemented individual protection strategies for sexual minority refugees have rarely developed communal protection mechanisms. This limits long-term protection for sexual minority refugee communities. In addition, many protection professionals fear conflicts with authorities, and hesitate to grapple with legal and administrative barriers. There is also a lack of training in sexual minority-sensitive protection methods, and prevalence of homophobia and transphobia among protection agencies in countries where strong homophobic attitudes prevail. As a result, refugees and asylum seekers avoid disclosing their persecution and threats related to their gender identity and sexual orientation to asylum authorities and UNHCR, which increases their vulnerability.

Moreover, sexual minority refugees often encounter asylum systems that employ limited categorizations of sexual orientation and gender. This may effectively exclude or lead to the rejection of individuals whose gender or sexual identity does not clearly conform to the categories of lesbian, gay, bisexual, transgender, or intersex. These categories provide fixed and limited options for self-expression, and 40.8 percent of respondents felt that their identities did not fit these fixed categories. Many participants expressed fluid representations of gender identity, which can lead to rejection of asylum claims based on inconsistencies and credibility issues. This suggests that sexual minority asylum claims tend to be sexualized, rather than evaluated based on the experience of identity-based targeting and lack of protection by authorities in the country of origin.

Internal and external silencing of sexual minority refugee voices means most protection professionals operate with little access to information about the identities or persecution experiences of sexual minority refugees. Asylum authorities and refugee-assistance organizations conduct little outreach to sexual minority refugees, who as a result, have little knowledge that SOGI-based persecution can be a legitimate ground for seeking international protection. This lack of knowledge puts sexual minority refugees at risk, especially upon arrival in countries





of first asylum, where many form exploitative dependency relationships in order to meet their basic needs. Violence, extortion, sexual abuse, and police harassment of sexual minority asylum seekers are common, particularly in Ghana and Kenya and to a lesser degree in the urban centers along the Ecuadorian-Colombian border.

Health issues are of great concern to sexual minority refugees and asylum seekers, especially transgender persons who expressed specific needs related to gender transitioning. Many also require significant psychosocial assistance to help recover from experiences of physical and sexual violence.

Enhancing the protection of sexual minority refugees and asylum seekers requires a commitment to a challenging path of change in social, religious, cultural, and political attitudes. Critically, the protection of sexual minority refugees and asylum seekers cannot be separated from support for local sexual minority rights in countries of asylum. The four countries examined for this report are each in transition, reconfiguring attitudes toward sexual minorities or toward migrants and refugees. These transitions may provide a unique opportunity to negotiate for improved protection of sexual minority refugees and asylum seekers. It also requires the commitment and leadership of the UN, UNHCR, and refugee-assistance organizations to form strategic alliances with LGBTI/MSM/HIV and sex workers' advocates. These alliances will allow agencies to create comprehensive strategies for enhancing outreach to sexual minorities. They will also help to improve protection of sexual minorities by providing practical guidance, as well as implementing relevant trainings and sensitizations to overcome organizational and external barriers to their inclusion.

Introduction

Sexual minority refugees and asylum seekers face an international legal system that was not designed or originally intended to protect those fleeing persecution on the basis of sexual orientation or gender identity. This system employs Western social and legal categorizations of gender and sexuality that may be foreign to or incongruent with their own self-representations. Since 1994, when asylum on the basis of sexual orientation was first granted in the United States, growing attention has focused on the specific needs of sexual minority refugees and asylum seekers. Recent declarations and guidelines from the United Nations and other international organizations have made this evident.⁴ This has developed parallel to the expansion of the legal and social recognition of sexual minority rights in many countries. However, at present, at least 76 countries criminalize homosexuality or same-sex sexual acts, and in many more countries sexual minorities face severe persecution.⁵

In recent years, the United Nations High Commissioner for Refugees (UNHCR) has increased efforts to improve awareness and provide practical guidelines for the protection of sexual minority refugees and asylum seekers. In October 2012, the UNHCR issued *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity*. It complements UNHCR's *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*. It also provides valuable guidance to asylum authorities, judges, and advocates regarding the myriad articulations of claims based on sexual orientation or gender identity.⁶ In September 2011, UNHCR issued a more practice-oriented guide, *Working with Lesbian, Gay, Bisexual, Transgender & Intersex Persons in Forced Displacement*, which provides guidance to field practitioners about the barriers sexual minority refugees face accessing protection. It also suggests methodological approaches for the elimination of these barriers.⁷ UNHCR's *Working with Men and Boy Survivors of Sexual and Gender Based Violence in Forced Displacement* provides similar practical guidance.⁸

Nonetheless, significant issues require additional practical focus. For example, more attention could be given to the legal contradictions between international and national protection standards in countries where same-sex relationships are criminalized. There also is the challenge of assessing narratives that present fluid sexual or gender identities and assessing practices that do not conform to Western understandings of gender and sexuality.

Despite the greater articulation of sexual minority refugees' rights, little research has been done regarding the lived experiences of sexual minority migrants and refugees, especially in non-Western asylum countries. Many sexual minority asylum seekers remain invisible and lack access to assistance due to fear of further persecution in countries of asylum, internalized homophobia, or distrust of local officials and international aid workers.

The purpose of this assessment is to map out the lived experiences of sexual minority refugees in urban centers as well as emerging gaps in the protection of this population, as voiced by those fleeing persecution based on their sexual orientation or gender identity.

This paper is a refined and consolidated version of a more in-depth research study, which can be found at <http://www.hias.org/en/pages/policy-position-papers>.

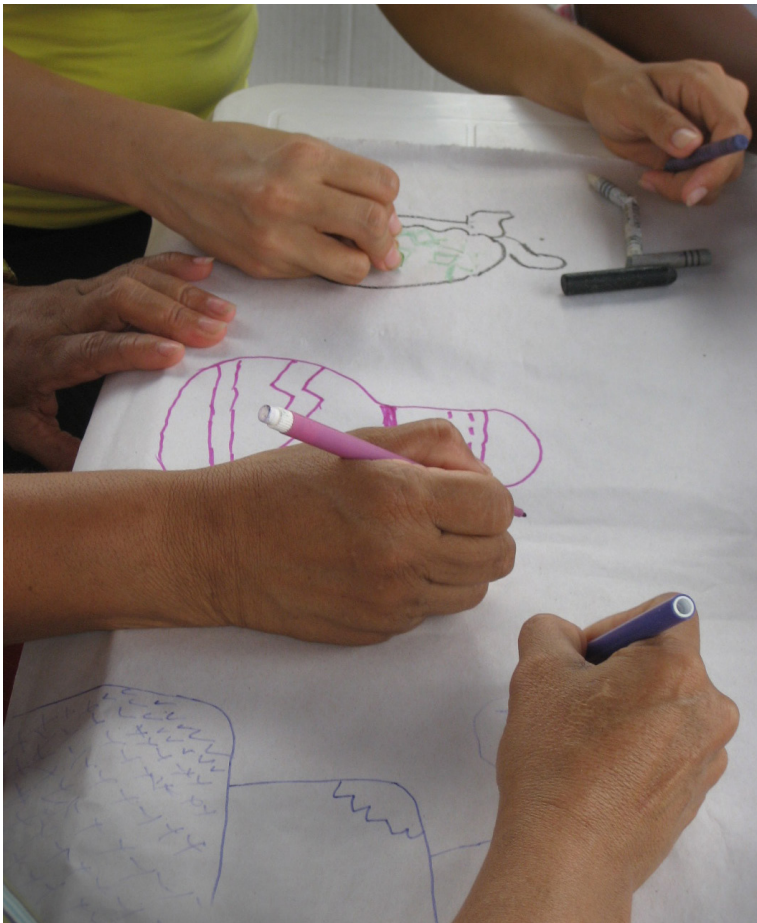
Methodology

This report is the result of four one-month field visits to nine urban locations in Ecuador, Ghana, Israel, and Kenya. These countries were selected to represent two legal and political realities—one where same-sex relations are legal, as in Ecuador and Israel, and one where they are illegal, as in Ghana and Kenya. In total, 53 sexual minority refugee participants were interviewed individually, and 13 were interviewed during a focus group held in San Lorenzo, Ecuador. In addition, 92 representatives of stakeholders involved in refugee protection or sexual minority advocacy were interviewed. The research utilized both qualitative and quantitative methodologies in order to capture the lived experience of refugees and their perceived protection gaps.

Participants included recognized refugees, asylum seekers, and sexual minorities who had never filed an asylum claim, but reported having fled their countries due to persecution on the basis of their sexual orientation or gender identity. In order to safeguard the privacy and ensure the safety of those interviewed, the report utilizes pseudonyms for quoted participants.

Qualitative Methodology

Two sets of qualitative interviews were developed for the purpose of assessing protection gaps experienced by sexual minority refugees and asylum seekers in urban settings. The first was aimed at sexual minority refugees and was a semi-structured interview, utilizing open-ended questions on relevant themes to allow participants to describe thoroughly their lived experiences. The second was aimed at refugee protection professionals and LGBTI activists, and provided guidelines for questions regarding contexts and working experience with sexual minority refugees.



Quantitative Methodology

A quantitative survey was added to the interview instrument; it included widely employed psychosocial measurement tools such as the MPSS Social Support Questionnaire, Self-Esteem Scale⁹, and the PTSD Checklist – Civilian (PCL-C). They were designed to gather additional information about the psychosocial state and health of sexual minority refugees and to acquire data on how protection gaps in countries of asylum affect refugees' coping abilities.¹⁰ The survey also aimed to collect social and demographic data. Univariate analysis of the quantitative data was employed in order to detect possible correlations among the numerous variables.

Findings

Invisibility of Sexual Minority Refugees and Asylum Seekers

In all four countries, refugee protection professionals had limited awareness of the existence and protection needs of sexual minority refugees. Sexual minority refugees were effectively invisible. This invisibility is due to five main factors: social exclusion and discrimination; isolating, “closeting,” or “passing” to survive; the prevalence of traumatic stress; the focus by refugee protection agencies on individual strategies of protection; and the legal and administrative barriers to the recognition of asylum seekers fleeing sexual orientation and gender identity (SOGI)-based persecution.

Social Exclusion and Discrimination

During registration and Refugee Status Determination (RSD) with asylum authorities, sexual minorities fleeing violent conflict or political persecution rarely disclose information related to SOGI-based persecution. Sexual minority refugees are often forcibly displaced to countries where similar attitudes and practices prevail, and therefore tend not to disclose information related to their sexual orientation or gender identity. They may fear a repeated experience of marginalization or discrimination by local asylum authorities, as in the case of sexual minority refugees arriving in Ghana and Kenya. Asylum seekers—including those fleeing to countries with more progressive attitudes toward sexual minorities, such as Ecuador and Israel—prefer to rely on other motives considered more legitimate by international protection agencies for securing status as refugees. These fears act as barriers to protection even when cessation of protection of refugees fleeing violent conflicts is implemented, as in the case of Liberians in Ghana.

In all four countries of asylum surveyed, sexual minority refugees experience double exclusion and discrimination as sexual minorities and as foreigners. In some specific areas, this experience is multiplied by other levels of discrimination based on gender (women, transgender, or intersex persons), skin color, HIV status, engagement in sex work, or internal power hierarchies within sexual minority subgroups.

Structural and socioeconomic barriers may disproportionately affect lesbian refugees, who are significantly less likely to come forward and seek protection on the basis of their sexual orientation. As women, they are more likely to experience persecution at the hands of domestic authorities and have less mobility, fewer resources, and limited access to public forums than do men. This is due to the confinement of women into a subordinate group within social power structures. Recent developments reported by a non-governmental organization (NGO) in Kenya strengthen this argument. In six months after three offices were opened in refugee-populated shanty towns of Nairobi, 120 sexual minority refugees, including 40 lesbian women, came forward to staff to reveal their sexual orientation. These women broke social barriers due to increased proximity of available protection.¹¹ Conditions may be different for lesbian women whose claims for asylum involve persecution based on past political participation, as was the case of two Colombian lesbian women in this study who escaped persecution by paramilitaries. They come from a society where some women are able to take an active part in civil society. They are consequently more likely to have the autonomy, education, and resources to flee persecution and access the asylum system on the basis of political persecution while not exposing their sexual orientation.

Isolating, “Closeting,” or “Passing” to Survive

In different contexts, sexual minority refugees disguise their identities for self-protection. Such survival mechanisms include: living in isolation from other refugees, as in the case of participants interviewed in Israel and Kenya; adopting mainstream gendered behavior, attempting to “pass,” as gender conforming, like those in Ghana; and repressing sexual desires and emotional needs for intimacy.

Most participants interviewed in Ghana and Kenya opted to lead “closeted” lives, revealing their sexual orientation only to trusted friends who share a similar sexual orientation. The experience of discrimination, exclusion, and violence from various actors in their countries of origin repeats itself in the country of asylum. It forces them to continue familiar mechanisms of vigilance and “camouflage” as detailed by Johnny, a refugee from Liberia living in Buduburam, a semi-urban refugee camp on the outskirts of Accra:

*Yeah, you have to be on guard and you don't have to act that feminine type; when you start acting then they think you are [gay], so you have to act straight and move along with both sexes because when they see you always with guys then they say you are one. ... Well, it's not easy, it's weird, it's kind of difficult ... since the community or people don't like it. You have to respect it because when they get to know who you are, your family and your friends—everyone around you—will neglect you.*¹²

Such mechanisms reinforce internalized homophobia and lower self-esteem. They also lead sexual minority refugees and asylum seekers to believe that disclosing their sexual orientation would negatively affect their ability to access services or resettlement.¹³

In Israel, sexual minority refugees and asylum seekers tend to shy away from other refugees and migrant populations from their countries of origin, fearing repeated experiences of discrimination. Some hope to lead a life in which they do not have to hide their true gender or sexual orientation. They therefore seek integration within Israeli society, and form minimal relations with refugee-assistance NGOs, particularly during the initial period after their arrival.

The Prevalence of Traumatic Stress

Out of a research sample of 55 sexual minority refugees in the four countries, there was a 44.2 percent rate of Post-Traumatic Stress Disorder (PTSD).¹⁴ This percentage is within the average range of PTSD rates among refugees, which can vary between 4 percent and 86 percent depending on the circumstances of flight, but is still considered high.¹⁵

In examining at the correlation between PTSD and social support, results demonstrate that participants who met the criteria for PTSD exhibit a significantly lower perception of family support. There is a higher rate of PTSD among those who attended psychological counseling than those did not attend counseling.

PCL-C scores of participants receiving and not receiving counseling

		Sample Size	Mean	Standard Deviation	T-Test	P-Value
Counseling	Yes	9	47.65	14.10	-1.228	0.235
	No	12	41.17	10.14		

** p<0.05 ; *p<0.1

We assume there is no negative causal relationship between counseling or participation in support groups and PTSD. We suspect, however, that the high scores of PCL among those participating in long-term counseling or support groups is related to higher awareness regarding their post-trauma symptoms.

The high prevalence of PTSD among respondents may also be linked to the fact that 29.3 percent of respondents were sexually abused as children, and 17.2 percent were sexually abused as adults. Moreover, 60.3 percent reported having experienced traumatic violent events, including torture, kidnapping, and other forms of violence, with torture being the most common experience among respondents. Additional factors that increase the risk of developing PTSD for sexual minority refugees are heightened discrimination and social

exclusion; a lack of positive factors such as a sense of safety and security; and a lack of a sense of self, community, and connectedness.¹⁶

Focus of the Individual and Inattention Toward the Community

Key factors in lowering social, cultural, and legal prejudice are the visibility of sexual minorities as a community, the appropriation of public space, and the organized demand for the rights of sexual minorities. In countries where sexual minority refugees maintain communal links with each other, as in Ghana or in Ecuador (the latter hosts a visible community of male-to-female [MTF] transgender Colombian refugees and migrants), invisibility is maintained due to the methodology of protection practiced by UNHCR, implementing partners (IPs), and refugee-assistance NGOs. The standard methodology is based on individualized protection for men. Such practice is not mindful at the field level of MSM/gay men in Ghana and transgender women in Ecuador as specific social groups with specific protection needs. Recognition of communal ties and needs has the potential for strategic interventions to strengthen and build upon existing community self-help mechanisms. This may be accomplished, for example, by conducting outreach and identification in spaces where sexual minority refugees tend to gather and feel safe, or by using existing information and social networks to substantiate the legitimacy of SOGI-based persecution claims. Also, supporting informal community-based groups that already exist and providing them with psychosocial and livelihood alternatives, as well as physical protection for those in distress, are all ways to support and recognize groups of sexual minority refugees.

The invisibility of sexual minority refugees poses a serious challenge and may foster false complacency and a sense of a lack of need. This is the case in Ghana, where no sexual minority refugee had approached the Ghana Refugee Board (GRB) or UNHCR while both organizations expected that the mechanisms put in place were sufficient to serve this particular population. In addition, UNHCR and refugee-assistance NGOs in Ghana find it difficult to secure resources for improved protection of sexual minority refugees due to the fact that they do not often self-identify.

While UNHCR has taken considerable steps to raise awareness about the protection needs of sexual minority refugees, the substance of the comprehensive LGBTI guidelines issued by UNHCR's headquarters seldom filter down to protection officers at the field level, to local government agents, or to civil society implementing partners. Sexual minority issues are not prioritized. This is possibly due to the fact that they may provoke discomfort within local governments and partners, which could then create internal conflicts within UNHCR staff or with IPs, and in some cases, political conflicts with local authorities.

Legal and Administrative Barriers

Apart from fear of repeated discrimination, many sexual minority refugees find it challenging to overcome legal and administrative barriers to international protection on grounds of gender identity and sexual orientation-based persecution. In Kenya, although reasons for submission of an asylum application are not required, some refugees expressed skepticism about approaching the Department of Refugee Affairs (DRA), as same-sex acts are illegal in Kenya. Participants in Ghana expressed similar views regarding registering with the GRB. No administrative procedures exist in Ghana for granting refugee status on the basis of SOGI, and with the cessation of protection of Liberians in June 2012, Liberian sexual minority refugees have no meaningful pathways to extend their protection.

In Israel, refugee status on the basis of SOGI-based persecution has not been granted since the establishment of the Israel's Population, Immigration and Border Authority (IPIBA) in July 2009. Israel maintains a limited interpretation of the concept "Particular Social Group" mentioned in the Refugee Convention, and as a result, refugee claims brought on this basis have been systematically denied.¹⁷ In addition, Israel excludes all Palestinians from procedures related to granting legal status under the *Law of Citizenship and Entry 2003*.¹⁸

Ecuador introduced an “Admissibility Process” in January 2011, which involves a 20-minute interview to filter out ineligible asylum claims. This short interview does not allow sexual minority refugees the time necessary to build trust or detail the complexities of their experiences of persecution. Many of the research participants had their refugee status revoked after going through this interview.

Tensions Between Self-Representation and Categorization by Others

The 2008 UNHCR Guidance Note labels sexual minorities as “lesbian, gay, bisexual and transgender (LGBT)”; but by 2011, UNHCR had added an “I” for intersex to its guidelines relating to sexual minority refugees.¹⁹ Many of the identities expressed by participants in this study do not conform to Western cultural and political categories encompassed by the “LGBTI” rubric. As a result, some of their asylum claims may be denied by officials who fail to recognize non-normative or fluid sexual minority identities, or who find these accounts to be flawed or inconsistent. The following table demonstrates the prevalence of participants whose gender identity or sexual orientation contrasts with the assumed relations between anatomy, sex, gender, and object of desire inherent in LGBTI categories.

Participants’ gender and sexual identities, compared with LGBTI definitions

Country	Sex assigned at birth	Gender identity & sexual orientation corresponds with LGBTI definitions	Gender identity and sexual orientation does not correspond with LGBTI definitions
Ecuador	Male	4	5
	Female	1	0
Ghana	Male	8	8
	Female	2	0
Israel	Male	5	1
	Female	2	0
Kenya	Male	9	6
Total		29	20

Of the 49 individuals in the quantitative survey who answered questions relating to their perceived gender identity and sexual orientation, 40.8 percent presented orientations or identities that did not correspond to the categories LGBT or I utilized by the UNHCR. Participants in Israel, where there is a more public gay community and wider acceptance of non-heterosexual identities, seem to have adopted identities that fit within the categories of LGBTI. Participants in Ecuador, Ghana, and Kenya expressed a myriad of identities. Some were not familiar with the concepts of gender identity or sexual orientation and referred to their sexual roles²⁰ when describing their identities.

Identities are influenced by migration to new social and political environments. Muhammad from Sudan explained how the meaning of being gay changed for him after arriving in Israel:

For Sudanese, if you say you’re gay, it necessarily means you’re passive or feminine, and if the man is attracted to men but he is on the active side, he is not considered to be gay. He is straight ... When we came to Israel we heard that “gay” is both active and passive.²¹

While he had not been persecuted for his sexual orientation in Sudan, he might now be in danger of such persecution due to his current bisexual identity and affiliation with the Israeli gay community.

Some refugees and asylum seekers attempt to adopt identities congruent with LGBTI categories during the asylum process to help facilitate their access to protection. Ranmal from Sri Lanka learned he was considered intersex only after being introduced to a transgender support group at the Tel Aviv LGBTI community center.

This categorization was reinforced by his lawyers from both *Kav La'oved* (Workers' Hotline) and the Refugee Rights Legal Clinic (RRLC) at Tel Aviv University.²²

A member of the Israeli Refugee Status Determination (RSD) Unit stated that when interviewing a person claiming asylum on the basis of persecution due to sexual orientation, the eligibility officers look for visible signs of that individual's sexual minority status. An example could be a circle of sexual minority friends or same-sex romantic relationships.²³ Given that many sexual minority refugees and asylum seekers live deeply closeted lives in their home countries and continue to do so in Israel, such evidentiary requirements are unreasonable, if not impossible. In addition, some sexual minorities only come to terms with or begin to express their orientation in the country of asylum. They therefore cannot demonstrate past persecution or ties to other sexual minorities, or do not present expressions of gender or sexual orientation which fit dominant frameworks utilized by asylum authorities.

In Esmeraldas and San Lorenzo, Ecuador, the most visible non-heterosexual identity is “transsexual”, referring to all effeminate identity expression by men. Many protection agencies equated gay with transsexual, making it difficult for them to recognize other sexual minority identities, as language and categories tend to be based on binary constructs. Moreover, many had adopted a deterministic view that all gay men would eventually become transsexual, as this is the accepted identity allotted to sexual minorities in Afro-Ecuadorian and Afro-Colombian societies.²⁴

LGBTI categorization and labeling perpetuate the power gap between asylum authorities and sexual minority refugees. Because there is a need to conform to categories held by officials and service providers in order to obtain recognition, those holding fluid identities are forced to amend and undermine their own self-representations. When asylum seekers feel pressured to present an inauthentic identity, this increases mistrust and confusion for both the protection provider and the asylum seeker, and it increases the likelihood the asylum seeker will be denied refugee status.

Vulnerability to Abuse and Violence

Sexual minority refugees and asylum seekers who experience multiple forms of exclusion and have difficulties securing sustainable livelihoods are vulnerable to financial exploitation, sexual- and gender-based violence (SGBV), and physical violence.

The search by sexual minority refugees for basic protections leads many to form dependent relations with individuals offering shelter, food, employment, or social support in exchange for sexual favors. Aggravating factors include elements of social and cultural hatred, self-denial of desire, and social legitimacy of violent retaliation. Other factors are SGBV and physical violence, including “corrective” rape targeting lesbians.

The risk of financial exploitation and sexual abuse and violence against sexual minority refugees is significantly higher in Kenya than the other countries studied. Several participants in Kenya reported various levels of violence, such as violence from neighbors or relatives of romantic partners who accused gay refugees of corrupting their sons, husbands, or fellow workers. Two of these participants were arrested by police. The formation of dependent relations is most apparent in Kenya, where many participants found shelter with local men, fellow refugees (including one female refugee), and foreign visitors in exchange for sexual favors, with at least two kept as sexual slaves.

In Ghana, although male sexual minority refugees seek out sexual engagement with Ghanaian men, these encounters entail financial remuneration and are therefore brief and do not evolve into dependent relations. Still, such encounters may present a threat due to the general fear of exposure by men engaged in sexual activity with other men. These encounters may result in threats, exposure, or sexual violence because some of the Ghanaian may be married, have families, or attempt to protect their social standing. Three participants were

sexually abused by other men, and one was gang raped by a group of local men. None went to the police or agencies offering assistance to SGBV victims.

Having almost no access to protection due to social exclusion and internalized homophobia, male refugees identified or suspected of being gay are subject to identity-based harassment. Participants in Ghana experienced harassment by fellow refugees for being gay, experienced extortion by Ghanaians who hide their own sexual orientation, and were victims of physical violence as a result of romantic feuds or police raids. Only one participant approached the police, pretending he was a straight man falsely accused of being gay.²⁵

In Ecuador, social networks between MTF transgender refugees were present due to their visibility and ability to identify one another. Such networks, which include shared accommodation, social life, and working environments, limit the formation of dependent relations. Unfortunately, these networks do not protect sexual minority refugees from general violence, which is quite high in urban centers along the Ecuadorian-Colombian border. Gay refugees interviewed in Ecuador seemed to lead a more secluded life, finding it harder to form meaningful social networks and at times opting for domestic work, experiencing subjugation and financial abuse by their employers.

In Tel Aviv, where homophobic attitudes are less prevalent, the issue of violence was not prominent. Positive relationships were formed between sexual minority asylum seekers and their employers. For many of these asylum seekers, managing to find an Israeli-Jewish employer, who was able to accept their gender identity or sexual orientation, provided a sustainable source of social and emotional support and proved essential in accessing legal and medical services. Nevertheless, with increased xenophobia against African asylum seekers in Israel, the threat of physical violence and abuse of labor rights was prevalent.

Engagement in survival sex in all four countries is another major concern affecting vulnerability to SGBV, physical violence, and substance abuse-related violence.

Findings by Country

Ecuador

Ecuador is host to the largest population of recognized refugees in South America, coming primarily from Colombia, Cuba, Africa, and Asia.²⁶ Refugees are entitled to full access to social welfare, health care, education, and public legal defense, which is equal to that granted to Ecuadorian citizens. Although refugees in Ecuador are permitted to work, discriminatory behavior by employers often results in lower wages and abuse of refugees' basic rights.²⁷ While Colombian refugees are integrated into community life,²⁸ social tensions, economic competition, and xenophobia are widespread. Refugees are viewed as actively importing the Colombian internal conflict into Ecuador.

Same-sex sexual activities and civil unions are legal, and Ecuador's constitution establishes the right to change one's national identification card to reflect a self-identified gender.²⁹ Ecuadorian law prohibits discrimination on the basis of gender identity or sexual orientation. Nevertheless, social attitudes are quite removed from the pluralistic legal framework. Gays, lesbians, and particularly transgender people continue to face discrimination by public and private actors.³⁰ Reports show that violence, including the killing of sexual minorities, is not effectively investigated by police and that many gay men and lesbians have been interned against their will at private treatment centers to "cure" their sexual orientation.³¹

For sexual minorities who are refugees and asylum seekers, the experience of exclusion and discrimination is far more pronounced due to the compounding factors of transphobia and xenophobia. Sexual minority refugees and asylum seekers who are of African descent face heightened discrimination because of prevailing racism. Despite experiencing and witnessing violence toward sexual minorities in their home countries, many

asylum applicants were reluctant to cite SOGI-based discrimination and violence during the admissibility interview due to their internalization of violence and acceptance of it as a mundane part of reality that does not require specific mention.

Social discrimination against sexual minority refugees and asylum seekers, especially transgender refugees, is widespread, and they experience tremendous barriers accessing employment, higher education, and vocational training. Lacking other options, some turn to sex work. While there are organizations that serve the sex-work community, sex workers experience great health risks. Many are at high risk of sexually transmitted infections, and drug use is common both to ease psychosocial stressors and to maintain the capacity to work on the streets in the extreme cold of Quito nights.³² Those without access to housing may have no other option than to stay in someone else's home, where hosts may request sexual favors in exchange for a safe place to sleep. Medical care is available to all individuals, regardless of their legal status in the country. However, most migrants do not have medical insurance, and cannot afford medical care. This is especially significant for transgender asylum seekers, who may resort to dangerous methods of self-medicating when they are unable to pay for gender reassignment surgeries or hormone treatments.

Ecuador: Although sexual minority refugees, particularly transgender refugees, are both visible and significant in number, little attention is paid to their protection needs as a community.

Transgender refugees are targets for paramilitary violence along the border, as well as theft, robbery, gang violence, sexual violence, and transphobic violence. Without appropriate documents, police often arrest asylees and seek bribes, which may include sexual favors for the release of sexual minorities. Due to

financial constraints, lack of required documents, travel distance to government offices, and lack of awareness of their rights and knowledge of the legal system, it can often be difficult for sexual minority refugees and asylum seekers to access needed legal protection. Transgender participants remarked that they tend to avoid approaching local organizations providing services to refugees, as they fear being harassed or mistreated in public spaces, and feel safer meeting in more private settings.

Although sexual minority refugees, particularly transgender refugees, are both visible and significant in number, little attention is paid to their protection needs as a community. For instances, there is a lack of assistance for community-building support in terms of strengthening existing community-based self-help mechanisms. Examples could be to provide a safe space to gather, assist existing formal or informal communal representation bodies, and facilitate dialogue with other refugees and hosting communities.

In addition, there is a lack of collaboration between agencies involved in the protection of refugees and those involved in the protection of sexual minorities. Moreover, there seems to be reluctance among certain Ecuadorian gay advocacy organizations to invest resources in providing services to Colombian sexual minorities living outside major urban centers. As of the time of this research, no specific training related to sexual minorities had been conducted in Ecuador by UNHCR or partner organizations, and refugee-assistance NGOs interviewed were largely unaware of the special protection and community support needs of the sexual minority community.³³

There is a lack of supportive policies and strategies that assist in sustainable local integration of sexual minorities. Practical measures enabling access to basic rights, services, and protection from violence and discrimination are not in place. While the legal framework is set to ensure sustainable integration, social reality lags behind and sexual minority refugees have been and continue to be resettled by UNHCR in order to secure their safety.³⁴

Ghana

Liberians are the largest refugee community in Ghana.³⁵ However, protection of Liberian refugees ended in June 2012 as a result of improved conditions in Liberia.³⁶ At the time of research, thousands of Liberians had applied to the Ghana Refugee Board (GRB) to be locally integrated, but had not yet regularized their status.³⁷ In 2011, thousands of Ivorian asylum seekers crossed into Ghana following violence in Cote d'Ivoire.³⁸ An agreement between UNHCR, Ghana and Cote d'Ivoire was signed to facilitate their return; however, very few repatriated.³⁹ Lack of legal status or financial resources forced thousands to return to Cote d'Ivoire in May 2012, creating tension between the two countries.⁴⁰ Ghana also hosts numerous refugees from Togo, Guinea, Sierra Leone, and Mali.⁴¹

Ghana's *Refugee Law* of 1992 guarantees refugees' rights, freedoms, and access to naturalization procedures.⁴² The GRB is responsible for supervising and sanctioning all refugee-related issues and activities in Ghana. However, decisions on asylum claims can take several years, leaving many asylum seekers, who have very limited rights and access to services, in limbo. Appeals are not currently possible, and the GRB is working to reform the appeals process.⁴³

Sexual minorities in Ghana face prevalent discrimination, police harassment, and extortion.⁴⁴ Same-sex sexual acts are illegal in Ghana. The Commission for Human Rights and Administrative Justice (CHRAJ) claims penalization is based on proof of having committed sodomy and is not tied to a sexual orientation per se.⁴⁵ However, charges against homosexual men and arrests are recurrent, and are frequently based on charges unrelated to the law. Anti-discrimination laws protecting sexual minorities are nonexistent in Ghana. Sexual minorities must live in hiding, as public disclosure leads to social ostracism, extortion, and violence.⁴⁶

Strong anti-gay attitudes are prevalent in Ghana, and create an environment where sexual minority refugees are invisible. This invisibility is due to fear of the consequences of exposure, mistrust of "others," and internalized homophobia. Sexual minority refugees often make efforts to conceal their identities to fit within traditional gender roles in order to pass while in public. Consequently, no Liberian sexual minority refugee has ever approached the GRB or UNHCR with a protection concern regarding their sexual orientation or gender identity.⁴⁷ Refugee protection agencies tend to be complacent about protection for sexual minority refugees and asylum seekers. This is due to a false sense of lack of need, and to the assumption that UNHCR staff members have that existing access mechanisms are sufficient for sexual minority refugees in Ghana.⁴⁸ The stigma, internalized homophobia, and a lack of access to reliable information negatively affects sexual minorities' safety and access to resettlement and legal services.⁴⁹

Due to a scarcity of employment opportunities for both locals and refugees, as well as language barriers, discrimination against foreigners, and lack of vocational skills, refugees in Ghana find themselves significantly disadvantaged when it comes to finding employment. Those who are unemployed manage to secure livelihoods by either selling whatever they can in the camp, relying on assistance from friends who work, or engaging in survival sex work. Some sexual minority refugees are survivors of trauma resulting from gender-based violence occurring in both Liberia and Ghana, but do not feel that they can safely seek help. They often lack access to needed psychological care and counseling.⁵⁰

The existence of sexual minorities in Ghana is recognized only in discourses relating to public health and HIV/AIDS prevention efforts, as they are included as one of the "Most at-Risk Populations" (MARPs). This further marginalizes sexual minorities by communicating that their right to protection is intertwined with their position as a public health threat. HIV testing and TB treatment is free at Buduburam's camp clinic. Nonetheless, participants avoid the clinic due to the stigma attached to those who approach the clinic's HIV testing lab because they are assumed to be HIV positive. There is a lack of both sex education and access to free condoms and lubricant in the camps.⁵¹

The public debate on homosexuality has become more prominent in recent years. The international community is placing pressure on African countries to modify laws to protect sexual minorities and work toward securing their human rights. With time, change may lead to adoption of more progressive attitudes and legislation. It was revealed through numerous interviews that currently state officials, including the police, tend to have a hands-off attitude regarding violence toward sexual minorities. Nevertheless, some NGOs directly serve this population under the framework of HIV/AIDS prevention.

UNHCR Ghana expressed difficulties granting refugee status to sexual minority asylum seekers fleeing persecution on the basis of SOGI. This was due to the entrenched stigma relating to sexual minorities and the criminalization of consensual same-sex relations and, de facto, of gender nonconforming identities.⁵² There is a need for dialogue between the UNHCR and the Government of Ghana on developing procedures for providing international protection to sexual minority refugees who have experienced persecution on the basis of sexual orientation or gender identity. Nevertheless, the current social and cultural environment does not provide a sufficient level of protection for those “exposed” as sexual minorities.

Israel

Since 2006, Israel has experienced a significant increase in the number of unauthorized migrants entering the country and asylum seekers applying for protection.⁵³ The current number of asylum seekers is unclear as foreigners entering Israel without authorization are referred to as “infiltrators,” even if their intent is to claim asylum. As of early 2012, the majority of asylum seekers were Eritrean, followed by Sudanese⁵⁴ and South Sudanese. The anti-refugee discourse is rooted in a perception that migrants pose a threat to maintaining a Jewish majority.

In July 2009, the Israeli Population, Immigration and Borders Authority (IPIBA) took over registration and RSD functions from the UNHCR. Israel holds one of the lowest rates of refugee recognitions in the world, despite the fact that many claims assessed by UNHCR were delivered to the IPIBA for deliberation with positive recommendations for international protection.⁵⁵ The RSD unit is bound by a policy that prioritizes claims made by asylum seekers from countries to which deportation is feasible.⁵⁶ Thus, many asylum claimants are excluded from the RSD process, which legitimizes the government’s claims that Israel has no refugees, only “infiltrators” or migrant workers.⁵⁷

The influx of African asylum seekers across the Israeli-Egyptian border and their lack of access to basic rights and economic opportunities have forced many African asylum seekers into poorer neighborhoods, sharing small apartments or sleeping in the streets or parks. From April to June 2012, there was a wave of xenophobic violence that targeted African refugees and asylum seekers. The violence was fueled by their concentration in the poorest neighborhoods of Tel Aviv among



a host population that has been neglected by the local municipality, combined with inflammatory comments by Israeli politicians.⁵⁸ Systematic deportation of South Sudanese asylum seekers began that June.⁵⁹

Deterrence is the underlying strategy behind Israel's policy toward non-Jewish migrants and asylum seekers. Israel is building the world's largest detention facility for asylum seekers and has existing legislation for the detention of "infiltrators" for at least three years without trial or access to the justice system.⁶⁰ For asylum seekers in Israel, the current xenophobic atmosphere and lack of rights has made asylum almost impossible. Israel's ethnocentric view regarding entitlement to rights is most visible when looking at the dissonance between Israel's progressive legislation for its LGBTI citizens and the fact that refugee status has never been granted based on persecution related to gender identity or sexual orientation.⁶¹

Unique to Israel is the case of sexual minority Palestinians, who flee persecution in Palestinian communities in the Territories, yet are excluded from gaining legal status in Israel.⁶² Their only options for protection are appealing to the courts or resettlement to a third country.⁶³ Neither option constitutes a sustainable solution. Most sexual minority Palestinians seeking protection enter Israel illegally and find themselves in a state of acute vulnerability. They cannot register with the IPIBA, and unlike other foreigners in Israel, they can be deported without a judicial hearing. Police often do not verify Palestinians' identity or protection status before deporting them. For sexual minority Palestinian asylum seekers, access to protection means disclosing their sexual orientation and exposing themselves to great risk for a very limited chance of obtaining protection.⁶⁴

In the sexual minority asylum seeker community in Israel, there is little awareness of the ability to claim refugee protection on the basis of persecution due to SOGI. Many sexual minority asylum seekers are isolated and even minimize contact with fellow countrymen, fearing repeated discrimination and abuse. Due to reconfiguration of their SOGI-based self-representation after encountering the more open LGBTI rights discourse in Israel, many approach asylum officers with their particular protection concerns months or even years after their arrival in Israel. This can be problematic as claims must be submitted to the IPIBA within a year of entry.⁶⁵ According to the Hotline for Migrant Workers, employees of the RSD Unit present themselves as "interrogators"⁶⁶ with an attitude of "breaking down" claimants by putting extra pressure on them during the RSD interview. This strategy is not conducive to obtaining an accurate account of their experiences, and it results in anxiety and efforts to say what will please the interrogator.⁶⁷ It may also harm those who have experienced trauma or have been interrogated or tortured in the past. Sexual minorities face particular challenges sharing information central to their refugee claims under such circumstances.

Asylum seekers have limited employment possibilities. Nevertheless, they may find employment in restaurants, cleaning, or construction. For some, employers can provide a social safety net and a safe space where the asylum seeker's identity is known and respected. Others suffer abuse and low wages and find it hard to secure basic needs such as food and shelter. There is no official safe shelter for either Israeli or migrant adult sexual minorities, and only one shelter catering to the needs of underage sexual minorities in Israel. As a result, there is a growing number of young adults and underage Palestinian and African male asylum seekers engaging in sex work on the streets of Tel Aviv.⁶⁸

Asylum seekers in Israel are not entitled to state-sponsored health insurance, are often unable to find employers willing to provide health insurance, and find private health insurance to be prohibitively costly. As such, asylum seekers are dependent on pro-bono health services. Refugees may receive emergency treatment in Israeli hospitals throughout the country even if they cannot afford to pay for it, but there is no access to preventive medical care outside of Tel Aviv.

Psychosocial assistance is limited to psychiatric and psychological volunteer assistance through Physicians for Human Rights – Israel. Four participants suffered violence and abuse while in Israel, and three attempted to

commit suicide, which according to National Association of GLBT in Israel (NAGI) is a common phenomenon among Palestinian gay asylum seekers.⁶⁹

Apart from actors involved in their legal protection and medical care, general levels of awareness regarding the existence of sexual minority refugees and their specific protection needs are low. A clear overview of specialized protection services available for this population is needed, as are improved links between CSOs involved in refugee protection and CSOs active in LGBTI protection. The issue of sexual minority refugees is often raised in discussions or as examples in general training provided internally by IPIBA, UNHCR and HIAS. However, no specific training has been dedicated to this group.

At the time of writing, there appears to be no available durable solutions for sexual minority asylum seekers in Israel. The law of return excludes the possibility of local integration and gaining of Israeli citizenship by non-Jews unless a family link to a Jewish person is proven.⁷⁰ Given that no sexual minorities have ever been recognized as refugees based on persecution due to their SOGI, local integration is essentially unavailable. Attaining legal status through partnership, including same-sex couples, is also impossible as in most cases asylum seekers do not hold a valid passport. Sexual minority asylum seekers live with uncertainty and the constant threat of possible deportation. Some give in to the pressure, stress, and fear, “voluntarily” returning to their home countries, which puts them at risk of facing the perils of living with discrimination and persecution.

Kenya

As of October 31, 2012, there were 630,926 registered refugees residing in Kenya.⁷¹ This figure is on the rise due to the drought in the Horn of Africa, the influx of Somali refugees fleeing hunger and fighting, and Kenya’s recent invasion of Somalia. RSD proceedings are still conducted by the UNHCR. However, it is expected that the Department of Refugee Affairs (DRA) will take over RSD proceedings, signaling a change in UNHCR’s role and Kenya’s assumption of greater responsibility for refugee affairs.⁷² The majority of Somalis make their way to Dadaab Refugee Camp Complex, which is the largest refugee camp in the world. Sudanese, Ethiopian, and other refugee groups are housed in Kakuma Refugee Camp in northwestern Kenya. Many Somalis and other refugees make their way directly to urban centers in Kenya. In recent years, the UNHCR has devoted significant energy and resources toward enhancing protection of urban refugees in Nairobi and working to provide medical, psychosocial, and legal assistance to urban refugees.⁷³ However, the claims process is slow and it can take up to 18 months for asylum seekers to secure an appointment. In December 2012—after research was completed—the Kenyan government announced that it would begin to enforce an encampment policy requiring all urban refugees to move to either Dadaab or Kakuma camps.⁷⁴ The enforcement of the policy was in flux at the time of publication of this report.

Kenyan politicians and religious leaders claim homosexuality is a Western import brought to the continent by colonialism. LGBTI advocates claim homophobia is the legacy of colonial rule and adoption of rigid British perspectives regarding sexuality.⁷⁵ Same-sex acts are illegal in Kenya, with a sentence of up to 21 years in prison for sex between two men.⁷⁶ Protection against discrimination on the basis of sexual orientation is absent from the new constitution, which was adopted in 2010. Negative social attitudes and persecution of sexual minorities are common. High levels of violence and a lack of police protection lead to acts of mob justice against sexual minorities.

Sexual minority asylum seekers and refugees may choose not to disclose their orientation to service providers or protection professionals because they associate doing so with coercion or exposure. They may also fear exploitation, extortion, or violence. Many are distrustful of referrals to CSOs by other sexual minorities.⁷⁷ Time and limited financial resources prevent those in socially vulnerable positions, like married women and under-age youth, from accessing protection services.

Most Kenyan refugee-assistance NGOs lack awareness of the particular protection needs of sexual minority refugees, and therefore there has been minimal outreach. Asylum authorities tend to refer these cases to local organizations, isolating the issue from mainstream asylum agenda and practice. Because of the need for official referrals, many sexual minorities are at risk of being excluded from services. While UNHCR is quick to respond to the protection needs of sexual minorities identified as vulnerable, it seems less committed to actively combating homophobic or transphobic attitudes of protection agents in Kenya.

The experience of sexual minority refugees living in urban Kenya is characterized by a need to navigate between opportunity and threat. Due to the current policy, provision of basic protection needs in urban areas such as shelter, food, education, and medical care is available to only 10 percent of Nairobi's refugee population.⁷⁸ Participants reported a lack of safe or stable shelter, a transient lifestyle due to lack of work or financial resources, and threats and evictions by neighbors and landlords due to their sexual orientation. Many had formed dependent relationships with men in order to secure shelter, which often involved sexual favors and resulted in sexual violence. Danger of living with hosts is compounded by threats from neighbors. Sexual minority refugees and Kenyans are both concerned about their sexual orientation being disclosed by neighbors. Limited resources for provision of safe shelter, the absence of alternative exit strategies, and the limited availability of resettlement means heightened levels of risk for sexual minority refugees and an absence of effective solutions.

In addition, many refugees face a lack of access to sustainable livelihoods. Competition for employment is high, and opportunities are scarce. Many sexual minority refugees engage in sex work in order to survive. For sex workers, negotiating safe sex is almost impossible, as the pay is low and difficult to survive on.⁷⁹ In the past few years, sex workers in Kenya have come together, organized and publicly demonstrated solidarity, demanding protection and rights.⁸⁰

For many refugees and asylum seekers, Nairobi does not offer relief from insecurity and threats of violence. The rate of SGBV toward sexual minority refugees and asylum seekers is high. It results from a lack of protection and the need for many individuals to engage in sex work or enter into dependent relationships to survive. Moreover, there is limited capacity for providing psychosocial counseling. This is due to a lack of training and sensitivity, as well as the religious and cultural biases of professional counselors. Refugees do not trust counselors due to the fact that counseling is widely Christian and tends to emphasize "corrective" therapy.⁸¹

In spite of the homophobic atmosphere in Kenya, it is home to an active and vibrant LGBTI civil society. Several LGBTI organizations operate in Nairobi, Kisumu, Mombasa, and other urban centers, and are registered primarily for providing health education services on issues of HIV/AIDS and reproductive health.

The open debate on homosexuality has led to progress. For example in May 2012, the Kenya National Commission on Human Rights (KNCHR) issued a report recommending the decriminalization of same-sex relationships.⁸² Still, sexual minority Ugandans fleeing SOGI-based persecution and settling in other urban centers of Kenya lack knowledge regarding their right to claim refugee status. Local LGBTI NGOs do not have the connections with UNHCR and refugee protection agencies that would allow them to expand outreach and identification.

According to the DRA, the long-term protection and integration of sexual minority refugees in Kenya is currently impossible due to social attitudes.⁸³ For CSOs and refugee protection professionals in Kenya, there is frequent conflict between the need to protect sexual minority refugees in accordance with international law and to adhere to local legal frameworks, which criminalize same-sex relations. Moreover, many sexual minority asylum seekers are doubtful that SOGI is a ground on which they can be granted asylum and continue to conceal their identities. As long as the UNHCR is responsible for RSD and assessment of asylum claims, sexual minorities claiming asylum on the basis of their membership in a particular social group are eligible to

receive international legal protection. However, with the transfer of responsibility to the DRA, there is a risk this policy may not be upheld.

The social, political, and legal reality in Kenya does not provide a tenable situation for local integration. At the moment, resettlement is the only viable durable solution for sexual minority refugees due to the protection risks they face as well as the lack of prospects for integration. UNHCR does expedite the resettlement cases of sexual minority asylum seekers and high-risk cases. The U.S. Refugee Admissions Program (USRAP) is reviewing sexual minority resettlement cases on an expedited basis where some of the procedural steps are marked as urgent.⁸⁴ Still, resettlement may take 12-18 months, when many have already been waiting as long as two years.⁸⁵

Recommendations

It is imperative that the international community do whatever possible to ensure the protection of sexual minority refugees. Widespread discrimination and exploitation has forced this population to become invisible, and many live in danger without the resources or power to access help. With these changes, we can build opportunities for all to live safely, fully, and freely.

Key Recommendations to All Stakeholders

1. UNHCR and refugee NGOs must **conduct outreach** to sexual minority refugees where they live and work.
2. UNHCR, governments, and resettlement countries must implement mechanisms to **expedite** the registration, claim evaluation, and resettlement of at-risk sexual minority refugees.
3. UNHCR, government agencies, refugee NGOs, service providers, and LGBTI/MSM/SW advocates must **coordinate protection strategies** and **build referral pathways** to ensure the greater protection of sexual minority refugees.
4. UNHCR, government agencies, refugee NGOs, and service providers must regularly **train** all levels of staff on sensitively serving and protecting sexual minority refugees, and take other steps to **create welcoming environments** for sexual minorities.
5. Donors should prioritize funding **safe shelter** options for sexual minority refugees in urban environments.

To Donors

- **Fund appropriate safe shelter options, including scattered shelter, for sexual minority refugees in urban environments**, since this one protection intervention has a substantial impact on physical security and livelihood opportunities.
- **Fund the regular training of UNHCR staff at all field offices on sexual minority refugee protection.** Fund the independent evaluation of training.
- **Fund the training of medical staff on provision of respectful and supportive services to sexual minorities and those refugees involved in sex work.**
- **Fund country-based LGBTI programming that integrates sexual minority refugees.**

To UNHCR

Outreach/Identification

- **Conduct outreach to sexual minority refugee communities where they live and work**, including by providing mobile registration or developing registration outposts in urban outskirts. Work closely with refugee NGOs and LGBTI/MSM/SW advocates to secure access to the most vulnerable refugees.
- **Publish online and printed public information** on access to asylum, specifying that SOGI is a ground for protection, and listing services for sexual minority refugees.
- **Prioritize protection of sexual minority refugees as a high-risk group and strengthen capacity to identify relevant needs and threats.** Expand the *AGDM Participatory Assessment Tool and Heightened Risk Identification Tool* to include more detailed questions regarding the formation of dependent relationships, engagement in survival sex, physical threats by society and police, and specific medical needs and risks, in particular those faced by transgender and intersex persons.

Protection

- **Establish emergency shelter options for at-risk sexual minority refugees in coordination with refugee NGOs.** Seek support from donor governments to support sustainable forms of safe housing.
- **Harmonize protection strategies for sexual minority refugees and create referral pathways** with government agencies; refugee NGOs; LGBTI/MSM/SW advocates; and LGBTI-positive legal, medical, and mental health professionals.
- **Systemize mechanisms for expedited registration and RSD** of at-risk sexual minority refugees in coordination with responsible government agencies.
- **Advocate with governments for alternatives to detention** for sexual minority refugees.
- **Integrate sexual minority refugee protection issues** into ongoing and new protection strategies and thematic working groups.

Training / Welcoming Environment for Sexual Minorities

- **Provide regular sexual minority refugee sensitivity and protection training to all UNHCR field staff, with LGBTI community input where possible.** Training should focus on the diversity of sexual and gender identities, basic rights and protection, and confidentiality issues. Evaluate training impact. Provide specialized training for eligibility officers conducting RSD and interpreters. Encourage similar trainings for government (police, border authorities, medical staff, educators, and other government employees serving refugees); refugee-assistance NGOs, including IPs; and refugee communities.
- **Post culturally appropriate materials welcoming sexual minorities**, especially in waiting areas.
- **With input from sexual minority refugees, create safe spaces** (e.g., establish special days/times for sexual minority refugees to register or hold interviews; establish a hotline for inquiries by sexual minority refugees).
- **Update registration forms** and all other relevant means of collecting biodata to be gender neutral and otherwise sensitive to sexual minorities.
- **Establish and enforce policies to prohibit discrimination on the basis of SOGI.** Establish and enforce complaint mechanisms for UNHCR staff and refugees confronting SOGI-based discrimination.

Solutions

- **Encourage resettlement countries to expedite the processing of at-risk sexual minority refugees.**
- **Update durable solutions assessments for those facing cessation of refugee status to include appropriate questions regarding sexual orientation and gender identity.**

- **Prioritize and coordinate the resettlement of sexual minority refugees without family ties to specific resettlement countries**, taking into account each resettlement program's capacity and processing speed.
- **Implement systems to gather global data on sexual minority refugees to facilitate durable solutions.**

To Refugee NGOs

- **Conduct outreach to sexual minority refugee communities where they live and work. Employ sexual minority refugees to conduct community outreach.** Work closely with LGBTI/MSM/SW advocates to increase outreach, in particular to those engaged in sex work.
- **Distribute UNHCR online and printed public information** on access to asylum, specifying that SOGI is a ground for protection, and listing services for sexual minority refugees.
- **Establish emergency shelter options for at-risk sexual minority refugees.**
- **Harmonize protection strategies for sexual minority refugees and create referral pathways** with UNHCR, government agencies, LGBTI/MSM/SW advocates, and service providers.
- **Conduct outreach to establish a network of LGBTI-positive legal, medical, and mental health professionals.**
- **Provide regular sexual minority refugee sensitivity and protection training to all staff, with LGBTI community input, where possible.** Facilitate the provision of similar training to refugee communities.
- **Post culturally appropriate materials welcoming sexual minorities**, especially in waiting areas. Seek input from local LGBTI/MSM/SW advocates on materials.
- **With input from sexual minority refugees, create safe spaces** (e.g., establish special days/times for sexual minority refugees to register or hold interviews; establish a hotline for inquiries by sexual minority refugees).
- **Update registration forms** and all other relevant means of collecting biodata to be gender neutral and otherwise sensitive to sexual minorities.
- **Establish and enforce policies to prohibit discrimination on the basis of SOGI.** Establish and enforce complaint mechanisms for staff and refugees confronting SOGI-based discrimination.
- **Collaborate with LGBTI/MSM/SW advocates on strategic litigation to increase access by sexual minority refugees to protection and basic services.**
- **Advocate for greater protection of sexual minorities in coordination with local LGBTI/MSM/SW advocates, including by supporting decriminalization of consensual same-sex relationships.**
- **Provide sexual minority refugees access to alternative livelihoods** through vocational training and micro-credit programs, to prevent formation of dependency relationships and survival sex.
- **Develop social support groups for sexual minority refugees and local sexual minorities**, providing safe spaces essential for diminishing isolation and increasing self-esteem, social support, resilience, and sense of security.

To LGBTI/MSM/SW Advocates

- **Integrate refugees into strategic planning and funding proposals.**
- **Integrate refugees into programming** (cultural, educational, and vocational), **services** (medical, psychosocial), **and advocacy campaigns** for sexual minority equality. Undertake specific training and advocacy to serve sexual minority refugees (e.g., transgender refugees' access to state-funded hormone treatment or reassignment surgery).
- **Conduct outreach to sexual minority refugees where they live and work.**
- **Establish internal mechanisms to identify refugees among program recipients.**
- **Harmonize protection strategies for sexual minority refugees and create referral pathways** with UNHCR, refugee NGOs, government agencies, and LGBTI-positive legal, medical, and mental health professionals.
- **Provide training on sexual minority identities and protection concerns** to UNHCR, refugee NGOs, government (police, border authorities, medical staff, educators, and other government employees serving refugees), refugee communities, host communities, and cultural and religious leadership. Share expertise regarding the diversity of sexual and gender identities and local protection gaps.
- **Monitor and document police abuse of sexual minority refugees** in coordination with refugee NGOs and present reliable data to appropriate offices for further action.

Endnotes

- ¹ Since the terms lesbian, gay, bisexual, transgender, and intersex (LGBTI) are not adopted internationally, the author has chosen to employ the term “sexual minorities.”
- ² Unfortunately, such fears continue to act as barriers even when cessation of protection of refugees fleeing violent conflicts are implemented, as in the cessation of protection of Liberia in refugees in Ghana June 30, 2012, where issues of SOGI-based persecution were still not raised by Liberian refugees who had suffered SOGI-based persecution in Liberia, or were victims of SGBV and did not approach state protection.
- ³ Jordan, S.R. (2009). Un/Convention(al) Refugees: Contextualizing the Accounts of Refugees Facing Homophobic or Transphobic Persecution. *Refuge*, 26(2), 165-182.
- ⁴ Sridharan, S. (2008). The Difficulties of US Asylum Claims Based On Sexual Orientation. *Migration Information Source*, October 2008. <http://www.migrationinformation.org/USfocus/display.cfm?ID=700>. [18 August 2012]; UN Office of the High Commissioner for Human Rights. (2011). *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*. http://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.41_English.pdf [3 April 2012].
- ⁵ St. Paul Foundation. (2012). *Erasing 76 Crimes*. <http://76crimes.com/76-countries-where-homosexuality-is-illegal/>. [13 August 2012].
- ⁶ United Nations High Commissioner for Refugees. (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*. <http://www.unhcr.org/refworld/docid/50348afc2.html>. [9 November 2012]. These guidelines replace the *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity (2008) and complements UNHCR's Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*.
- ⁷ United Nations High Commissioner for Refugees (2011). *Working with Lesbian, Gay, Bisexual, Transgender & Intersex Persons in Forced Displacement*. Division of International Protection, UNHCR. <http://www.unhcr.org/refworld/docid/4e6073972.html>. [9 September 2011].
- ⁸ United Nations High Commissioner for Refugees. (2012). *Working with Men and Boy Survivors of Sexual and Gender Based Violence in Forced Displacement*. <http://www.unhcr.org/refworld/pdfid/5006aa262.pdf>. [11 October 2012].
- ⁹ Adapted from Herek, G.M., & Glunt, E.K. (1995). Identity and community among gay and bisexual men in the AIDS era: Preliminary findings from the Sacramento Men's Health Study. In G.M Herek & B. Greene (Eds.). *AIDS, IDENTITY AND COMMUNITY: The HIV epidemic and lesbians and gay men* (pp. 55-84). Thousand Oaks, CA: Sage.
- ¹⁰ Weathers, F.W., Litz, B.T., Herman, D.S., Huska, J.A., & Keane, T.M. (1993). The PTSD Checklist (PCL): Reliability, validity, and diagnostic utility. *The Annual Meeting of International Society for Traumatic Stress Studies*, San Antonio, TX.
- ¹¹ Kawira, Doris. Anonymous NGO employee. Interview. Geneva, Switzerland. 20 September 2012.
- ¹² Liberian sexual minority refugee. Interview. Buduburam, Ghana. 3 May 2012.
- ¹³ Nunoo, Trudy. Director, Pro-Link. Interview. Accra, Ghana. 10 May 2012.
- ¹⁴ A combined criterion was used for PTSD detection, including PCL score (cutoff-44, as recommended for civilians by the PCL user guide of the National Centre for PTSD) and sub-symptoms prevalence. Weathers, F. W., Litz, B. T., Herman, D. S., Huska, J.A., & Keane, T.M. (1993). The PTSD Checklist (PCL): Reliability, validity, and diagnostic utility. *The Annual Meeting of International Society for Traumatic Stress Studies*, San Antonio, TX.
- ¹⁵ United States Department of Veterans' Affairs. *PTSD in Refugees*. Washington, DC: Bolton, E.E. <http://www.ptsd.va.gov/professional/pages/ptsd-refugees.asp>. [18 August 2012].
- ¹⁶ Hobfoll, S.E., Watson, P., Bell, C.C., Bryant, R.A., Brymer, M.J., Friedman M.J., Ursano, R.J. (2007). Five essential elements of immediate and mid-term mass trauma intervention: Empirical evidence. *Psychiatry*, 70(4), 283-369.
- ¹⁷ Harel, Sharon. Assistant Protection Officer, UNHCR. Interview. Tel Aviv. 7 November 2011; Ben-Dor, Anat and Livant, Yuval. RRLC. Interview. Tel Aviv, Israel. 23 October 2011.

- ¹⁸ The *Admissibility Interview* was introduced by Ecuador's General Directorate for Refuge in January 2011 and serves as a preliminary filtering measure for screening eligible and ineligible asylum applicants. *Ghana Criminal Code 1960– Chapter 6, Sexual Offences Article 105. Kenyan Penal code articles 162-165*. See Kagan, M. & Ben-Dor, A. (2008). *Nowhere to Run: Gay Palestinian Asylum-Seekers in Israel*. Public Interest Law Program, the Buchman Faculty of Law, Tel Aviv University (PDF). http://www.law.tau.ac.il/Heb/_Uploads/dbsAttachedFiles/Nowhere.pdf. [11 August 2012]; *Article 3d, Law of Citizenship and Entry into Israel(2003)*.
- ¹⁹ UNHCR. (2008). *Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*; 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*. UNHCR. (2011). *Working with Lesbian, Gay, Transgender & Intersex Persons in Forced Displacement*, 3. <http://www.unhcr.org/refworld/docid/4e6073972.html>: “A lesbian is a woman whose enduring physical, romantic and/or emotional attraction is to other women. Gay is often used to describe a man whose enduring physical, romantic and/or emotional attraction is to other men, although the term can be used to describe both gay men and lesbians. Bisexual describes an individual who is physically, romantically and/or emotionally attracted to both men and women. Transgender describes people whose gender identity and/or gender expression differs from the sex they were assigned at birth. The term intersex covers bodily variations in regard to culturally established standards of maleness and femaleness, including variations at the level of chromosomes, gonads and genitals.”
- ²⁰ Sexual roles refer to preferred insertive or receptive role in anal intercourse, and at times to its gendered categorization as male (insertive) or female (receptive) role.
- ²¹ Sudanese sexual minority refugee. Interview. Eilat, Israel. 5 November 2011.
- ²² Sri Lankan sexual minority refugee. Interview. Tel Aviv, Israel. 21 October 2011. *Kav La'oved* http://www.kavlaoved.org.il/default_eng.html.
- ²³ Member of the RSD unit, Israeli Immigration Authority. Interview. Tel Aviv. 10 November 2011.
- ²⁴ A homosexual couple relocated due to threats from the local community was the only case where sexual minority refugees were relocated due to protection concerns. UNHCR Esmeraldas. Interview. Esmeraldas, Ecuador. 2 March 2012.
- ²⁵ Liberian sexual minority refugee. Interview. Buduburam. 2 May 2012.
- ²⁶ ERG. September 2012.
- ²⁷ *Ibid.*
- ²⁸ Ospina, O.R. and Santacruz, L. (2011). *Refugiados Urbanos en Ecuador: Resumen Ejecutivo*. FLACSO. p. 24-25.
- ²⁹ United States Department of State. (2011). *2010 Human Rights Report: Ecuador*. <http://www.state.gov/j/drl/rls/hrrpt/2010/wha/154504.htm>. [1 August 2012].
- ³⁰ U.S. Department of State, Bureau of Democracy, Human Rights and Labor. (2012). *2011 Human Rights Reports: Ecuador*. <http://www.state.gov/j/drl/rls/hrrpt/2011/wha/186512.htm>
- ³¹ *Ibid.*
- ³² United States Department of State. (2011). *2010 Human Rights Report: Ecuador*. <http://www.state.gov/j/drl/rls/hrrpt/2010/wha/154504.htm>. [1 August 2012].
- ³³ One training was conducted by the HIAS research team for HIAS and UNHCR in Quito, March 2012.
- ³⁴ Merckx, Jozef. UNHCR Deputy Director. Interview. Quito, Ecuador. 5 March 2012.
- ³⁵ UNHCR 2011: *Universal Periodic Review*.
- ³⁶ IRIN. (3 October 2012). *GHANA-LIBERIA: Limbo for ex-Liberian refugees*. <http://www.irinnews.org/report/96440/GHANA-LIBERIA-Limbo-for-ex-Liberian-refugees>. Note that the field study in Ghana took place April 23 – May 18, 2012, prior to the cessation clause taking effect.
- ³⁷ UNHCR. (3 April 2012). *Cessation Q & A*. <http://www.unhcr-ghana.org/node/196>. [12 May 2012].

- ³⁸ UNHCR. (2011). *Universal Periodic Review: Ghana*. Submission by UNHCR for the Office of High Commissioner for Human Rights' Compilation Report.
- ³⁹ GRB. Interview. Accra, Ghana. 30 April 2012.
- ⁴⁰ Western Diplomat. Interview. Accra, Ghana. May 2012; UNHCR. Interview. Accra, Ghana. May 16, 2012.
- ⁴¹ GRB. Interview. Accra, Ghana. 30 April 2012.
- ⁴² *ONDCL 305D*. The law is somewhat antiquated and was formed under Rawling's military regime.
- ⁴³ *Ibid.*
- ⁴⁴ U.S. State Department. (2011) Country Report: Ghana. *U.S. State Department Human Rights Report 2011*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dclid=186202>. [13 October 2012].
- ⁴⁵ CHRAJ. Interview. Accra, Ghana. 17 May 2012.
- ⁴⁶ Cobinnah, Mac-Darling. Director, CEPEHRG. Interview. Accra, Ghana. 18 May 2012; Padi, Tetteh. Programme Coordinator, GRB. Interview. Accra, Ghana. 30 April 2012.
- ⁴⁷ Interview with Tetteh Padi, Programme Coordinator, GRB. Ghana. April 30, 2012.
- ⁴⁸ *Ibid.*
- ⁴⁹ Nunoo, Trudy. Director, ProLink. Interview. Accra, Ghana. 10 May 2012; UNHCR Protection and Community Services Units. Interview. Accra, Ghana. 10 May 2012.
- ⁵⁰ *Ibid.*
- ⁵¹ Two Liberian sexual minority refugees were trained as HIV prevention peer educators by ProLink in 2008.
- ⁵² UNHCR Ghana. Interview. Accra, Ghana. 16 May 2012.
- ⁵³ Natan, Gilad. (2012). *Non-Israelis in Israel: Foreigners, foreign workers refugees, infiltrators and asylum seekers 2010-2011*. <http://www.knesset.gov.il/mmm/data/pdf/m02986.pdf>. [5 September 2012].
- ⁵⁴ IPIBA. (April 2012). *Data on Foreigners in Israel* (in Hebrew). <http://www.piba.gov.il/PublicationAndTender/ForeignWorkersStat/Documents/%D7%90%D7%A4%D7%A8%D7%99%D7%9C%202012.pdf>.
- ⁵⁵ Harel, Sharon. Assistant Protection Officer, UNHCR. Interview. Tel Aviv. 7 November 2012.
- ⁵⁶ Ephraim, Haim. Head of RSD Unit. Presentation at Ben-Gurion University, Israel. May 2011.
- ⁵⁷ Wurgaft, N. (21 June 2009). Closing the holes and the loopholes, *Ha'aretz* (online). <http://www.haaretz.com/print-edition/features/closing-the-holes-and-the-loopholes-1.278503>. [7 August 2012].
- ⁵⁸ Shimoni, M. (30 April 2012). *Suspicion: African Refugees attempted to rape a girl in front of her boyfriend* (Hebrew). Walla News. <http://news.walla.co.il/?w=/10/2529078>. [7 August 2012].
- ⁵⁹ HIAS. (13 June 2012). *Xenophobic Violence against Asylum seekers in Israel*. <http://www.hias.org/en/post/hias-blog/xenophobic-violence-asylum-seekers-israel>. [7 August 2012].
- ⁶⁰ The Independent. (10 March 2012). *Israelis Build the World's Biggest Detention Centre*. <http://www.independent.co.uk/news/world/middle-east/israelis-build-the-worlds-biggest-detention-centre-7547401.html>. [7 August 2012].
- ⁶¹ Amnesty International. *A Little Bit of History: LGBTI Rights in Israel* (Hebrew). <http://www.amnesty.org.il/?CategoryID=420&ArticleID=877>. [11 August 2012].
- ⁶² Kagan, M. & Ben-Dor, A. (2008). *Nowhere to Run: Gay Palestinian Asylum seekers in Israel*. Public Interest Law Program, The Buchman Faculty of Law, Tel Aviv University (PDF). http://www.law.tau.ac.il/Heb/_Uploads/dbsAttachedFiles/Nowhere.pdf. [11 August 2012].
- ⁶³ Ben-Dor, Anat and Livnat, Yuval. RRLC. Interview. Tel Aviv, Israel. 23 October 2011.
- ⁶⁴ Livnat, Yuval. RRLC. Interview. Tel Aviv, Israel. 26 August 2012.
- ⁶⁵ Submissions can also be made at the "Saharonim" detention facility. IPIBA (2011) *Asylum Claim Procedure Manual*. IPIBA. Article 1.[2 January 2012].

- ⁶⁶ Hotline for Migrant Workers.(2012), 28. http://www.hotline.org.il/en_drupal/english/index.htm.
- ⁶⁷ Haim, Ephraim, Head of RSD Unit, and Hass, Danny, Head of the Research & Information Branch. RSD. Interview. Tel Aviv, Israel. 10 November 2011.
- ⁶⁸ Katzav, Reli. Manager, Youth at High Risk, Elem. Interview. Tel Aviv, Israel. 17 October 2011.
- ⁶⁹ Ganon, Shaul. NAGI. Interview. Tel Aviv, Israel. 4 January 2012.
- ⁷⁰ *Law of Return 5710-1950*. For more information, see Israel Ministry of Foreign Affairs' website: http://www.mfa.gov.il/MFA/MFAArchive/1950_1959/Law%20of%20Return%205710-1950. [10 August 2012].
- ⁷¹ UNHCR (31 August 2012). *UNHCR Kenya Statistical Summary*. Email from Human Rights First. 11 October 2012.
- ⁷² Dhadho, Omar. Senior Protection Officer, Department of Refugee Affairs. Interview. Nairobi, Kenya. 13 March 2012.
- ⁷³ Campbell, E., Crisp, J. & Kiragu, E. (2011). *Navigating Nairobi: A review of the implementation of UNHCR's urban refugee policy in Kenya's capital city*. UNHCR Policy Development and Evaluation Service, 15.
- ⁷⁴ BBC. (18 December 2012). Kenya orders Somali refugees to go to Dadaab <http://www.bbc.co.uk/news/world-africa-20768955>.
- ⁷⁵ Ocholla, A.M. (2011). The Kenyan LGBTI Movement—Context, Volunteerism, and Approaches to Campaigning. *The Journal of Human Rights Practice*. 3 (1), 93-104.
- ⁷⁶ The National Council of Law Reporting. (2009). *Laws of Kenya: The Penal Code, 67*. <http://www.kenyalaw.org/Downloads/GreyBook/8.%20The%20Penal%20Code.pdf>. [23 December 2011].
- ⁷⁷ Gitari, Eric. Head, SGBP HRTK. Interview. Nairobi, Kenya. 16 November 2011.
- ⁷⁸ Karanja, James. UNHCR. Interview. Nairobi, Kenya. 16 November 2011.
- ⁷⁹ Ugandan sexual minority refugee. Interview. Kisumu, Kenya. 11 December 2011.
- ⁸⁰ Nzioka, Denis. Identity Kenya Internet Magazine. Interview. Nairobi, Kenya. 14 December 2011.
- ⁸¹ Congolese sexual minority refugee. Interview. Nairobi, Kenya. 30 November 2012.
- ⁸² Africa Review. (4 May 2012). *Legalize prostitution and homosexuality, says Kenya's rights body*. <http://www.africareview.com/News/Let+gays+and+prostitutes+be+says+Kenya+rights+body/-/979180/1399386/-/sb27mq/-/index.html>. [28 May 2012].
- ⁸³ Dhadho, Omar. Senior Protection Officer, Department of Refugee Affairs. Interview. Nairobi, Kenya. 13 March 2012.
- ⁸⁴ USARP. Interview. Nairobi, Kenya. 22 October 2011.
- ⁸⁵ Kawira, Doris. HRTK. Email. 17 October 2012.

APPENDICES

I. Observations from Geneva Symposium “Invisible in the City: Protection Issues Facing Sexual Minorities Fleeing Persecution”

Geneva, Switzerland

September 20-21, 2012

Summary of Observations

This Symposium was convened to bring together leading international voices on refugee protection and sexual minority rights to examine the experiences of sexual minority refugees. It provided an opportunity to participants from the UN High Commissioner for Refugees (UNHCR); the Bureau of Population, Refugees, and Migration of the U.S. Department of State (PRM); and government agencies and NGOs to share experiences, identify protection gaps, and agree on good practices to increase protection for sexual minority refugees. The Symposium also served as an opportunity to highlight findings and vet preliminary recommendations based on HIAS’ research on sexual minority refugees in urban Ecuador, Ghana, Israel, and Kenya.

The following summarizes key protection concerns and good practices raised by Symposium participants. Although not intended to be an exhaustive summary of each session, it highlights many of the ideas raised by participants for further consideration and action. The summary begins with some general observations and then addresses country-specific issues.

OBSERVATIONS: CHALLENGES AND GOOD PRACTICES

General Challenges

Country of Origin Conditions

- Homosexual conduct is still illegal in 77 countries; in five the death penalty is applied.
- Stigmatization of homosexuality and gender non-conformity is deeply entrenched in many countries around the world.
- Many politicians use anti-gay rhetoric to gain support among constituents.
- Sexual minorities suffer harm in all forms, including: rejection from family and community institutions; discrimination in housing, education, medical care; extortion and other threats; identity-based sexual and physical violence; lack of police protection; criminal charges, convictions, and sentencing in countries that criminalize homosexual acts.
- Men, women and transgender people experience different forms of identity-based harm.
- Sexual violence against visibly gender non-conforming people is often particularly severe.
- Many sexual minorities suffer high rates of depression or Post-Traumatic Stress Disorder.
- Many hide their identities as sexual minorities to avoid harm, living “invisibly.”
- There is a lack of commitment by UN agencies to advocate for sexual minority rights in countries that criminalize same-sex relations.

Country of Asylum Conditions

- Sexual minority refugees are “doubly marginalized,” often facing discrimination and identity-based violence in countries of asylum relating to refugee and sexual minority status.

- They face barriers to legal representation, safe housing, employment, education, medical care, or sustainable integration.
- Harm experienced due to refugee status is exacerbated since sexual minorities usually cannot rely on support from family or other refugees.
- Many turn to sex work or exploitative relationships to survive.
- Sexual and physical violence comes from the local population, other refugees and police.
- Young people, sex workers and transgender refugees are particularly vulnerable.
- Police protection from identity-based violence is rarely available.
- There are few available safe protection spaces for sexual minority refugees.
- Asylum procedures are not welcoming for sexual minorities (e.g., at registration, interviews).
- Fast-track asylum procedures filter out large populations of asylum seekers, including sexual minorities, torture survivors and others who may have difficulty quickly articulating a claim.

Identity and Self-Identification

- Sexual minorities identify in varying ways—many do not relate to Western identity labels included within the lesbian, gay, bisexual, transgender, intersex (LGBTI) rubric.
- Migration affects identification: realization of identity often occurs in countries of asylum.
- Many initiate claims years after arriving after coming to terms with their identity.
- Many sexual minorities continue hide or partially hide their identity in countries of asylum.

Asylum Procedures, Migration Management, and Refugee Resettlement

- Many sexual minorities fear self-identifying to asylum and border authorities.
- Most refugees are unaware that they may claim refugee status based on persecution related to sexual orientation or gender identity.
- In countries of asylum where homosexuality is criminalized, asylum authorities do not know if they can grant refugee status on the basis of sexual orientation or gender identity.
- Untrained asylum officers may reject claims for lack of credibility due to reliance on:
 - o stereotypes (e.g., gay men are feminine; women with children cannot be lesbians)
 - o evidence of past same-sex sexual experiences (when some claimants have none)
 - o evidence of social connections to local sexual minority populations (when many have none)
 - o evidence of LGBTI activism in country of asylum (when many have none)
- Refugees who delay lodging claims due to slow self-identification process are often rejected.
- Sexual minorities in immigration detention are particularly vulnerable to sexual violence and some authorities place them in solitary confinement as a protective measure.
- Many gay and lesbian refugees do not realize that they can be resettled as a couple in countries where same-sex partnership is recognized.

Refugee Agencies

- There is insufficient mainstreaming and sensitivity training to promote safe agency environments for sexual minority refugees.
- Refugee agencies in countries that criminalize homosexual conduct are either untrained on how to support sexual minority refugees or are resistant or fearful of doing so.

- There is a lack of communication and strategic alliance formations among civil society groups that work with sexual minorities and those that work with refugees.
- The prevalence of sexual- and gender-based violence (SGBV) against men and boys is often ignored, particularly in instances of rape during war.

General Good Practices

- Conduct outreach to LGBTI refugee communities where they live, by providing:
 - o Medical services
 - o Mental health support—individual and group
 - o Housing support
 - o Legal services
 - o Education and livelihood training
 - o Social activities
- Provide emergency shelter for at-risk sexual minority refugees.
- Publish public information on access to asylum, specifying that sexual orientation and gender identity is a ground for protection.
- Publish materials listing services for sexual minority refugees.
- Develop alliances, referral pathways and harmonized sexual minority refugee protection strategies among:
 - o UNHCR, its implementing partners and funders
 - o UN agencies involved with HIV/AIDS prevention, development, and human rights
 - o NGOs, government agencies serving refugees
 - o Human rights institutions and agencies
 - o Police, border and asylum authorities
 - o Hospitals, medical clinics, schools
 - o Legal, medical, and mental health professionals
 - o Refugee communities
 - o NGOs serving local sexual minority populations, including rights groups and health providers working with sexual minorities, sex workers, and HIV+ populations
- Conduct sensitivity and protection training for those agencies, followed by evaluation.
- Develop policies prohibiting discrimination based on sexual orientation and gender identity.
- Enforce complaint procedures for sexual minority agency staff and refugees.
- Create welcoming, safe agency environments for sexual minority refugees, including by posting diversity materials in languages refugees know.
- Advocate for alternatives to detention for sexual minority refugees.
- Advocate for greater domestic protection for sexual minorities.
- Encourage governments to engage in sensitive humanitarian diplomacy supporting the rights of sexual minority refugees.

- Encourage governments and other funders to support programs that provide short- and long-term protection for sexual minority refugees.

COUNTRY-SPECIFIC OBSERVATIONS

Ghana

- Homosexual acts are criminalized—decriminalization is critical.
- Culturally, Ghana is at a crossroad that may lead to great acceptance of sexual minorities.
- The discussion of sexual minority rights is in its very early stages.
- Even so, harassment of local sexual minorities by police and physical, sexual, and emotional abuse from family, friends, and neighbors is prevalent.
- Concerns raised regarding how to push an agenda for decriminalization without prompting a public backlash claiming sexual minority rights are a Western import.
- The few local sexual minority organizations lack resources—funding is needed.
- Advocates for sexual minority rights have been physically attacked—they need protection.
- Sexual minority refugees are deeply marginalized and invisible, though support each other.
- Ghana’s Refugee Board refers the few self-identified sexual minority refugees to UNHCR, but to get refugee status, all applicants must go through the government procedure.
- UNHCR staff, government agencies would benefit from sensitivity training.
- See detailed findings and recommendations in *Invisible in the City: Protection Gaps Facing Sexual Minority Refugees and Asylum Seekers in Urban Ecuador, Ghana, Israel, and Kenya*.

Kenya

- Homosexual acts are criminalized—decriminalization is critical.
- Homophobia and transphobia are deeply entrenched.
- Sexual violence and extortion of sexual minorities is common.
- Some sexual minority rights and support groups include refugees in their programming, but need training on refugee procedures.
- Alliances and referral pathways between sexual minority and refugee agencies are critical.
- Mobile registration in urban peripheries—undertaken by UNHCR and HIAS—have been extremely effective in identifying sexual minority refugees, in particular lesbians.
- UNHCR and refugee agency staff have limited fluency on sexual minority rights and protection gaps—regular training and follow up is necessary.
- This is also true for police, refugee, and health officials .
- Refugee agencies must create safe spaces for sexual minority refugees, e.g., “vulnerable Fridays” piloted by UNHCR, when sexual minorities and survivors of sexual violence can come to the office.
- Sexual minority refugees do not trust mental health counselors who tend to engage in “corrective” therapies—individual counseling and peer-to-peer support with counselors who have been trained to work with sexual minority refugees is needed.
- Safe shelter for sexual minority refugees is of critical importance to limit risk exposure.

- Greater funding is needed for sexual minority rights organizations.
- Increased partnership between refugee-assistance agencies and local LGBTI civil society is key.
- Increased outreach to sexual minority refugees involved in sex work including through the provision of alternate livelihoods is critical.
- See detailed findings and recommendations in *Invisible in the City: Protection Gaps Facing Sexual Minority Refugees and Asylum Seekers in Urban Ecuador, Ghana, Israel, and Kenya*.

Ecuador

- Culturally entrenched homophobia began to break down as the sexual minority community organized to demand rights and recognition.
- Same-sex relationships are now legally recognized and sexual orientation is a protected category in the country's constitution.
- But secondary legislation is necessary to enforce these rights, e.g., through hate crimes legislation, administrative procedures to officially change one's gender, adoption rights, trans-rights in higher education.
- In practice, there is a gap between constitutionally recognized rights and realities for sexual minorities, who are still marginalized from communities and subject to violence.
- Stereotypes about sexual identities are entrenched: in Afro-Caribbean communities, for example, there is an expectation that gay men will eventually become transwomen.
- Among sexual minority refugees, transgender refugees are very visible, but other sexual minorities tend to be invisible.
- Refugee organizations serve sexual minority refugees, but they could do more to recognize them as a group with specific protection needs.
- Peer support groups would be very helpful for sexual minority refugees.
- See detailed findings and recommendations in *Invisible in the City: Protection Gaps Facing Sexual Minority Refugees and Asylum Seekers in Urban Ecuador, Ghana, Israel, and Kenya*.

Israel

- Sexual minority rights are recognized and cultural life for sexual minorities is rich.
- Sexual minority refugees, like other refugees, face a restrictive asylum system: less than 1 percent of all asylum applications are granted.
- Sexual minority refugees' claims tend to be rejected because of failure to conform with sexual stereotypes, or failure to produce evidence of sexual acts or "LGBTI lifestyle."
- Most live completely outside domestic sexual minority communities.
- Prevalence of PTSD among sexual minority refugees in Israel is very high.
- Among Palestinians, there is a correlation between being gay and being perceived as or actually a collaborator with the Israeli security services.
- Palestinians are considered "enemy nationals" and as a result are not granted protection or access to a tribunal.
- International pressure by UNHCR, PRM, and the Jewish diaspora may help improve the asylum system and, in turn, create greater protection space for sexual minority refugees.
- See detailed findings and recommendations in *Invisible in the City: Protection Gaps Facing Sexual Minority Refugees and Asylum Seekers in Urban Ecuador, Ghana, Israel, and Kenya*.

II. Keynote Address

Volker Türk, Director of International Protection, UNHCR

I am pleased to have the chance to engage with you on the important topic of protecting lesbian, gay, bisexual, transgender, and intersex (“LGBTI”) refugees and asylum seekers. This symposium provides a good opportunity to deepen our knowledge about the issues facing LGBTI individuals in the forced displacement context, as well as the challenges confronting those who are working to address them. I would like to thank the organizers of this conference, HIAS, one of the leading NGOs in this area and an important UNHCR partner, for this valuable initiative.

LGBTI asylum seekers and refugees face a myriad of threats, risks, and vulnerabilities throughout all stages of the displacement cycle. The persecution they flee from is at times repeated in the country of asylum and also within refugee communities, making it difficult for them to access community support networks and humanitarian services. Even those responsible for providing protection and assistance may not always fully appreciate the challenges LGBTI refugees and asylum seekers face.

This being said, there is much greater awareness today within the human rights and humanitarian community about the specific protection concerns of LGBTI refugees and asylum seekers. The last few years have, for example, seen the emergence of a body of research on this topic. However, just as homophobia and discrimination against LGBTI persons are not new phenomena, neither is that of LGBTI people being part of asylum flows.

Context

The 1951 Convention relating to the Status of Refugees speaks directly to the topic of this symposium. I have no doubt that both the framers of the Universal Declaration of Human Rights and of the 1951 Convention were aware of what had happened in Nazi Germany to LGBTI people. In 1936 the Nazis created a Reich Central Office for the Combating of Homosexuality and Abortion, revised the infamous paragraph 175 of the German Penal Code, arrested people *en masse* on suspicion of homosexuality and incarcerated a good number of them in concentration camps, where they had to wear the *Rosa Winkel*. It is a little known fact that even after the concentration camps had been liberated at the end of the Second World War, some of the pink triangle prisoners were often simply re-imprisoned, as homosexuality remained illegal. 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 offense, 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.

After the Second World War it took a while for the world to acknowledge the LGBTI victims of the Holocaust. Despite the fact that there was no explicit recognition in the refugee definition of persecution for reasons of sexual orientation or gender identity, the drafters of the 1951 Refugee Convention used broad enough language to cover such instances, notably through the introduction of the membership of a particular social group ground. At the center of the Convention is 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, their identity, and freedoms.

In my line of work I have often asked myself, “*Why it is that minorities are particularly targeted.*” There are many explanations put forth by both historians and sociologists. As with racism, xenophobia and other forms of discrimination, homophobia does not come from “cosmos.” It is a human-made construct, ill fed by political, religious, legal, and even pseudo-medical justifications. Sadly, it is commonplace for oppression over

a minority group to be “legitimized” by the dominating group through artificial distinctions and concepts meant to justify discrimination. Deeply held biases, prejudices and beliefs can surface when conditioned through the socialization process.

Another reason is that departure from the majority “norm,” from the accepted *status quo*, inherently implies social change. Social change can be unsettling and even seen as a threat to the home, family, religion, culture, or country. In this context, LGBTI people risk becoming symbols of that threat. We have seen politicians and religious groups in some countries use a strong anti-LGBTI stance to gain votes or resist human rights reform, by portraying LGBTI people as immoral and a Western import. This is not new. We have seen similar resistance and bigotry toward other movements to promote social change in the past. Comparable to the anger and hatred today directed against those advocating for the rights of LGBTI individuals is the denigration and abuse that feminists suffered in the early 20th century when demanding the right to vote or that members of the civil rights movement experienced in the United States in the mid-20th century.

From a psychological perspective, we know that human beings can be quick to judge, fear and even hate the unknown, the “other”—people who are different. We are inclined to create an “us” and “them” based on religion, gender, race, or even eye color to boost our self-esteem, to conform to the majority group, or simply to scapegoat the “other.” Moreover, majority members may often not come to the defense of the minority out of fear of being excluded or harmed themselves.

Fortunately, research shows that prejudices are mutable and, when shedding light on them through mindfulness, it is possible to overcome them. We can, for instance, work to change the way society labels and stigmatizes LGBTI people by honoring our common heritage, embracing diversity, and fostering understanding. And we should not forget there are also stories of acceptance and courage in our refugee files: a sister who would give her gay brother money and encouragement to flee the country; a mother who would save her transgender son by persuading the police not to oblige him to present his ID document; a man who would warn a lesbian neighbor about her possible arrest because of her sexual orientation. There are always some people who despite risks will not be silent about injustice against others.

Legal Developments

There has been growing awareness about the rights of LGBTI individuals. I would like to mention in particular the 2007 *Yogyakarta Principles* and the contribution they have made to a better appreciation of how human rights norms apply and are to be interpreted in the context of sexual orientation and gender identity. At the LGBTI Roundtable organized by UNHCR in 2010—in which some of you participated—we recognized that the cross-fertilization between human rights law and refugee law could be strengthened by using the Principles as a legal, practical, and advocacy tool. 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 United Nations—including UNHCR, by states, activists, asylum courts, and tribunals.

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.³ More recently, the UN has become more public on this issue and called, at the highest levels, for equal rights, non-discrimination, an end to violence and the abrogation of laws that criminalize same-sex relationships. In May this year, the UN High Commissioner for Refugees issued a message to all staff, recognizing the particular harm and discrimination faced by LGBTI persons of concern and encouraging all of us to help improve their protection as well as to eliminate homophobia and transphobia in the workplace.

Legal rights of LGBTI individuals have been asserted in international and domestic courts as well. As the excellent *Sexual Orientation, Gender Identity and Justice: A Comparative Law Casebook* by the International Commission of Jurists illustrates, extraordinary progress has been made in favor of the rights to equality for LGBTI people.

Since the first refugee claims based on sexual orientation and gender identity were recognized in the 1980s, jurisprudence in this area of refugee law has also continued to evolve—but at times with diverging views in different jurisdictions. We have identified a number of trends in this regard, which I would now like to set out briefly.

The first trend is that of demanding “discretion,” meaning whether the 1951 Convention protects persons who could have avoided persecution by simply concealing their sexual orientation. The idea that gay people should tolerate being discreet about their sexual orientation was dismissed by the UK Supreme Court in 2010 in *HJ and HT*,⁶ which has also received wide attention outside Europe. Nevertheless, such “discretion” reasoning continues to be used in a number of countries, particularly in Europe.⁷ Discretion has the potential to undermine one of the basic tenets of refugee law—that the 1951 Convention protects persons who have a well-founded fear of being persecuted on account of who they are; and that one should not therefore be compelled to hide, change, or renounce one’s identity in order to avoid persecution.

The second trend is “criminalization” and the challenges involved in determining whether laws criminalizing same-sex relations amount to persecution. The mere existence of laws criminalizing same-sex conduct 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 toward enforcement have taken place in his or her individual case. It is not enough that the applicant wishes to avoid the risk of the law being applied to him or her. In our view, such an interpretation would not do justice to the actual or feared predicament of LGBTI individuals, not just from a potential law enforcement perspective but also at the level of societal discrimination in countries criminalizing same-sex relationships.

The third is “sexualization.” With this I mean the overemphasis by some decision-makers on sexual acts rather than on sexual orientation as an identity. Not only can it lead to intrusive and humiliating questioning about one’s sexual life, it also overlooks the fact that LGBTI people are often persecuted because of the threat they represent to prevailing social and cultural mores. Rarely is the threat of persecution simply about the enforcement of laws against a particular sexual act.

The fourth concern is “stereotyping.” Sexual orientation and gender identity are not visible in the same way that race and nationality are and perhaps other particular social groups may be. This has meant that decision-makers have been preoccupied with obtaining evidence whether an applicant is in fact LGBTI. For lack of guidance and knowledge, they have relied on their own personal assumptions or stereotypes to conclude if somebody is LGBTI or not, which risks undermining the impartiality of decision-making.

The fifth trend I would like to highlight 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 letters, ignoring the fact that this might be impossible for the applicant to produce, in particular where he or she has been doing everything they could to hide their sexual orientation—to be “discreet.” Their stories may not be deemed credible because there is no reliable and sufficiently detailed country of origin information to corroborate their accounts.

These issues will be further addressed in UNHCR’s forthcoming guidelines on which I will elaborate a bit later. We are also contributing to jurisprudence through court interventions under the office’s supervisory responsibility in respect of international refugee instruments. We have, for example, submitted two legal briefs

and are currently working on a third for the Court of Justice of the European Union, which will be considering the discretion issue.

Apart from the need for engagement in the jurisprudential sphere, I agree with the “*Invisible in the City*” report that there is also a need for greater mainstreaming of the protection of LGBTI persons of concern. UNHCR has endeavored to do this through the development of policy documents and guidelines, trainings to increase staff and partner awareness, as well as enhancing operational protection, particularly in the areas of refugee status determination, resettlement, and community services.

Policy and Operational Developments

In order to inform our guidelines, and to explore how to improve approaches to the protection of LGBTI people, UNHCR has organized several expert consultations and roundtables, including, as I mentioned previously, the 2010 *Roundtable on Asylum Seekers and Refugees Seeking Protection on Account of Their Sexual Orientation and Gender Identity*, which focused on identifying and addressing protection concerns experienced by LGBTI individuals throughout the various stages of displacement.¹¹ In 2011, UNHCR, together with the eight International Association of Refugee Law Judges and the European Legal Network on Asylum, convened an expert meeting to discuss common issues facing the judiciary and legal representatives in examining asylum claims related to sexual orientation and gender identity. We have also, together with NGO partners, organized side events and panel discussions at the annual UNHCR-NGO Consultations to discuss sexual orientation, gender identity, and refugee rights; explore related protection challenges; and identify areas requiring further development and analysis.

As lack of awareness of LGBTI issues and the need for training and guidance have been identified as knowledge, capacity, and tools gaps, 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 Identity* to improve decision-makers’ awareness about the specific experiences of LGBTI asylum seekers and encourage a deeper analysis of the legal questions involved. The Guidance Note is currently being updated in light of new developments and will be issued later this year. It will address comprehensively both substantive and procedural issues for the determination of refugee claims based on sexual orientation and gender identity under the 1951 Convention.

Last year, UNHCR released a *Need to Know Guidance Note on Working with Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Forced Displacement* with input from ORAM. The *Guidance Note* is meant for UNHCR and partner staff to 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 tips on how to make the office environments more accessible; make programs safe for, and inclusive of, LGBTI persons; and promote participation. We will continue to disseminate the *Need to Know Guidance* widely to raise awareness of LGBTI protection issues with partners and governments. In addition, UNHCR’s *Age, Gender and Diversity Policy* 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 our own as well as partner staff, we are in the process of developing a training package with ORAM to increase the capacity of staff to deliver protection to LGBTI persons of concern. This package covers terminology, responses to day-to-day protection issues, refugee status determination (RSD), and LGBTI-sensitive interviewing techniques. Train-

ing using this material was piloted earlier this year and we hope to take this further forward in 2013. UNHCR is also developing a separate e-learning and facilitator's guide on social exclusion for UNHCR and partner staff and will include material on groups who are often discriminated against: persons with disabilities, older persons, LGBTI people, as well as minorities and indigenous groups.

The refugee status determination and resettlement processing phases are often the stages when LGBTI persons of concern will self-identify, but also where the most vital decision-making concerning their future will occur. That is why we have strengthened our focus on informing these processes. You will no doubt have noted that our eligibility guidelines and country of origin research now systematically include a section on the treatment of LGBTI individuals.

The RSD Learning Programme, which is mandatory for all UNHCR staff conducting RSD or with national capacity-building responsibilities, deals with 10 issues pertaining to the adjudication of claims on the basis of sexual orientation or gender identity, and covers appropriate interviewing techniques. In partnership with ORAM, we are developing further guidance for RSD adjudicators, in order to ensure awareness and appropriate lines of questioning when interviewing LGBTI individuals.

The 2011 Resettlement Handbook provides guidance on the resettlement of LGBTI individuals, which is often the only 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 to improve referral mechanisms. We are currently working on a resettlement assessment tool for LGBTI refugees, which will have a checklist and a step-by-step guide intended to assist staff to better reach out to and assess LGBTI refugees in need of resettlement. However, the average processing time for resettlement by states remains long. This impacts adversely on the well-being of LGBTI individuals, who are often in dangerous and difficult situations.

Statistical Data and Other Information

The paucity of available statistics remains an important challenge. The number of LGBTI asylum seekers and refugees is not known as, due to fear and discrimination, many LGBTI persons do not reveal their true circumstances and do not claim asylum on sexual orientation or gender identity grounds. They usually keep a low profile in order not to attract discrimination and violence from other refugees, the local community or state authorities. As HIAS' study has found, a significant number of asylum seekers may be unaware that their experience of persecution is a legitimate ground for seeking international protection.

The need for improved country-of-origin information regarding the persecution of sexual minorities and specifically of LGBTI persons is highlighted in HIAS' report and recommendations to UNHCR. We are trying to improve our country-of-origin data in order to close information gaps, for example, on the treatment of LGBTI individuals, implementation of laws criminalizing same-sex relations, and harm by private actors in order to assist in the guidance that we can provide to states and legal practitioners.¹¹

Other efforts that UNHCR is engaged in include the referral of LGBTI refugees to emergency shelter, working with LGBTI community groups to ensure a greater appreciation of their needs as well as understanding of how UNHCR can assist them, and improving the environment in UNHCR offices to make them more LGBTI-friendly. Yet, more needs to be done, and partnership is key.

Partnerships

We need to use all the tools at our disposal in close partnership and send a strong and unambiguous message that any form of discrimination or violence is not permissible. We need to address this from every angle—

within the context of a human rights network, together with the Office of the High Commissioner for Human Rights and other UN entities, by addressing this through our work on hate crimes; by discussing this as an issue of diversity and marginalization; by promoting respect for those outside the mainstream; and by working to empower communities. We will only be successful in this endeavor if we work together on this.

Conclusion

Not so long ago, the needs of LGBTI asylum seekers and refugees were invisible, and events such as this unheard of. We are making progress. This is encouraging but much work lies ahead of us. As long as societies and communities continue to shun, abuse, and criminalize LGBTI individuals, refugee protection will be a necessity and, in fact, the only means to realize their fundamental human dignity. It will be doubly important that both the asylum systems and the institutions underpinning them (including UNHCR and NGOs working in partnership) are sensitive to the specific rights and particular needs of LGBTI asylum seekers and refugees. Our discussions today and tomorrow will assist us all in enhancing much needed understanding and enable us to explore gaps, share good practices, and build consensus around improving responses to the protection of LGBTI people. I much look forward to these discussions and, more importantly, their outcomes.

III. Keynote Address

David Robinson, Principal Deputy Assistant Secretary, BPRM

Good morning, everyone. It's a real pleasure to be here with you and I'd like to thank HIAS and especially the organizers of this symposium for their great work in bringing us all together. More importantly, I'd like to thank HIAS for its leadership in helping expose and address the unjust barriers and the oppression of lesbian, gay, bisexual, and transgender refugees, and for HIAS' energy and vision in driving us all to find solutions to a problem that should have been solved long ago. So, thank you, HIAS, and thank you, Mark, for that kind introduction.

Let me just say that, standing here, I feel a little like a priest or a minister ... I guess I should say a rabbi ... preaching to the choir. I think, I trust, we all are on the same page and share the same conviction. As Secretary Clinton said in a memorable speech here in Geneva last December, human rights are gay rights and gay rights are human rights. We all agree with that. We all agree that everyone, regardless of race, religion, nationality, class, or sexual identity is equal and is entitled to equal protection, especially when they are refugees.

I also think we all agree that we are working hard to live up to our conviction that lesbian and gay and bisexual and transgender people should not have to hide their sexual identity in order to receive the care, to access the services, to get the help they are entitled to, that every other refugee or displaced person is entitled to under our mandate. We all understand vulnerability. We all understand protection. We all understand our universal obligation to be the rock, to be the champion of people who otherwise are tragically more familiar with oppressors, or with tormentors, or with persecutors than they are with those dedicated to helping them.

And we all are convinced that LGBT refugees have the same rights, the same legitimate expectations as other refugees. We are committed to equal protection. And we know, as UNHCR's own logo tells us, that one refugee, gay or straight, bisexual or transgender, is one refugee too many. So ... if we are convinced, and if we are committed, and if we know what we know, then why is it still so hard to protect LGBT refugees, as HIAS' report indicates it is? Why do so many LGBT refugees, in fact, feel that they have to hide their sexual identities to access services and to get help? Why are so many subject to re-victimization in the very places in which they seek asylum?

Well, the answer to that question, it seems to me, cannot be for lack of awareness or lack of concern on the parts of anyone in this room or the agencies we represent. As important as HIAS' report is, and as timely as this symposium is, they are not the first warning bells we've heard that we're having difficulty meeting the needs of LGBT refugees, of meeting our own obligations. We've all been aware and we've all been concerned for a long time. And I'm sure we can all cite a litany of things we've done to advance our shared goal.

From the perspective of the United States, for example, I've already mentioned the secretary's speech last December. That same month, President Obama issued a statement reaffirming our commitment to promoting the human rights of LGBT persons, and he directed all federal agencies to ensure that U.S. diplomacy and foreign assistance advance this objective and, specifically, protect vulnerable LGBT refugees and asylum seekers. In fact, the president directed the Departments of State and Homeland Security to step up their efforts to make sure that LGBT refugees and asylum seekers have equal access to protection and assistance, especially in countries of first asylum. And in some of those countries, in Uganda and Ghana and Kenya, we're working with HIAS and the Refugee Law Project to give help to the most vulnerable LGBT refugees.

And we know we're not alone in these efforts. We know that civil society groups and international organizations and partner governments are all working to protect LGBT rights generally and to assure the protection

of LGBT refugees, specifically. We applaud UNHCR's efforts to address this problem, including guidance issued last year on working with LGBT refugees; its updated resettlement handbook which includes new language on working with sexual minorities; and its inclusion of LGBT refugees in its new gender-based violence strategy.

Looking at it from an institutional perspective, then, we can take some comfort in our level of effort. We can see there has been progress in our understanding of the problem. We recognize progress in our ability to align our organizations to address the problem. And we can affirm there has been progress in our sustained determination to solve the problem.

But, even as we review this landscape, as we evaluate the impact of our work, and as we ask whether the actions we've taken so far, whether the statements we've made or the projects we've launched are actually working, are helping to protect these refugees, I often wonder if I would reach the same conclusions, see progress the same way, if, instead of sitting in my comfortable office in Washington or Geneva, or meeting in this nice room, I were instead languishing in a jail cell, or hiding in a refugee camp, or living friendless in my new resettlement home, simply because of who I was. Not because of a movement I'd joined. Not because of a stance I'd taken. Not because of something I had imposed on you, but simply because of who I am.

Under those circumstances, would I find all of this activity, all of this institutional scurrying about, comforting? Would I feel more protected knowing that bureaucrats and advocates are building programs and crafting language designed, someday, sometime, to help me? Or conversely, would I be thinking, "Well, too late, time's up, I'm here now, and there's nobody here with me, nobody here to help me?" And at that point, would I be wishing that I had been born somebody different, somebody "not me," just because of who I am? I think we all know the answer to that. And I think we all know that that is a tragedy.

So, since we all here agree on so much, since we all agree that we need to better protect LGBT refugees now, not later, let's agree on something else. Let's also agree that doing right by LGBT refugees is not an act of generosity on our part. It's not going the extra mile. It's not making an heroic effort. It's not adding to our already full load of responsibilities. It's none of those things. Doing right by lesbian, gay, bisexual, and transgender refugees is our base minimum obligation. Let's agree on that.

Being gay is not a physical impairment. Being bisexual is not an emotional disorder. Being transgender is not a mental or cognitive dysfunction. Sexual identity, whatever it is, is not inherently a vulnerability. Gay people do not need a wheelchair ramp to go up the stairs, unless, of course, they are in a wheelchair for some other reason. Bisexual people do not need reading materials printed in braille unless they are blind. And transgender people do not need to be spoken to in sign language unless they are deaf. In other words, the vulnerability that plagues LGBT refugees has nothing to do with them. Nothing. It has everything, though, to do with their persecutors and with those of us who are trying, imperfectly, to respond, to help these innocent victims.

How we describe the problem of better protecting LGBT refugees matters. The way we interpret the challenge will shape our response to it. If we see LGBT refugees as people with unique, complicated, head-breakingly complex vulnerabilities, we almost certainly will establish ... have established ... working groups; we'll commission fact-finding missions; and we'll begin the deliberate work of building a new protection regime for this new, special group of people.

And there's nothing wrong with any of those activities. Indeed, there is much right with them. Except that I can practically hear the screams of our staffs saying, "Yes, we get it. We get it. But we also get urban refugees, and we get protracted refugee situations, and we get gender-based violence, and we get unaccompanied minors, and we get every other special project you've got us working on. But what you don't get is that it takes time and it takes more resources and we don't get those."

I'm frankly sympathetic to that point of view. I get it. I know what it's like to work in a bureaucracy. I know what it's like to run one. It's hard. There are too many demands, too few resources, and not enough hours in the day or days in the week to get your regular stuff done. So I do get it.

But what I also get, and what I think we all get, is that's not what's happening here. We're not being asked to build a new protection regime. We're not being tasked with implementing a new idea and doing all the additional work that implies. That is not how we should interpret this challenge. That is not how we should view the problem of better protecting LGBT refugees, as yet another new project to undertake. And it is not the basis on which we should shape our response.

We are merely being asked to keep the door to protection open. To keep it open. LGBT refugees can walk through an open door. Their sexual identity is not an impediment. But they need us to make sure the door stays open.

Now, that doesn't sound like such a big deal. But it's easier said than done. Culture, religion, prejudice, practice, laws ... you name it ... all work against us in some places. Homosexuality is illegal in 76 countries around the world, and it's subject to the death penalty in five countries. And where it's not illegal, it's still often socially unacceptable. The barriers are real. So we have to take a good, hard look at the vulnerabilities LGBT refugees confront.

But here's the uncomfortable truth, the inconvenient truth. Too often, when we look at those vulnerabilities, what we see, what looks back at us, is us. What we see is our own struggle to get it right. We see how well, or not, we run our own protection systems. We see how well, or not, we train our own colleagues. We see how well, how dynamically, we press our own equal rights agenda diplomatically. And we see how well we translate all that activity, all that concern, all that awareness, into protection. Protection now, not later. We see how well, or not, we're meeting our own base minimum obligation.

Now, as I survey this situation, as I look at what together we've done to protect the world's most vulnerable people, including LGBT refugees, I feel unapologetically proud. There is no organization, in my view, with a staff more skilled, more dedicated, or more courageous than UNHCR. Without them, the bulk of the world's refugees really would be abandoned. Without them, our own impulse to do good, to do right by refugees, would be frustrated.

And without us, without HIAS, PRM, and all the other refugee response agencies and organizations, UNHCR's reach and influence also would be frustrated. Together we have a good relationship, and the kind of discussion you've been having these last two days, this honest stock-taking, can only happen constructively among friends, among colleagues who have a deep and abiding respect for each other.

That's the base line. As we face these challenges together, let's remember two things: First, that we have a record of success. We have every reason to believe we're going to get this right, to keep the door open, for refugees who happen to be LGBT and for all the others as well. We keep holding each other accountable and we keep getting better at doing our jobs.

But just as importantly, and the second thing we should remember as we go about our work here in Geneva, or in Washington, or in other world cities, is that there is some person who, just because of who he was born, is right now suffering and feels abandoned and alone. He may be out of our sight, but he should not be beyond our reach.

We do what we do, we strive to get it right, for that one person. Not for some theory of justice. Not for some organizational principle or prerogative, but for that one person. As leaders of our respective agencies and organizations, our job is to make sure that everyone we work with, everyone in our structure, up and down the

line from the gate keeper to the boardroom, makes protecting that one person a personal obligation. It must matter personally to me. And once we make it personal, it becomes much easier to do the right thing, to keep the door open for all refugees, including LGBT refugees.

Let's do this together. Let's make it work. Let's do the right thing. Now.