

Protecting LGBTI Refugees: The Role of Cities

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Acronyms

CJEU: Court of Justice of the European Union
COE: Council of Europe
LGBTI: Lesbian, Gay, Bisexual, Transgender, and Intersex
NCLR: National Center for Lesbian Rights
NGO: Non-governmental Organization
OHCHR: Office of the United Nations High Commissioner for Human Rights
ORAM: Organization for Refugee, Asylum & Migration
SOGI: Sexual orientation and gender identity
UN: United Nations
UNFE: United Nations Free & Equal
UNHCR: United Nations High Commissioner for Refugees

Summary

This policy report aims to address the unique needs of a vulnerable population, namely LGBTI refugees, as well as advocate for the protection of universal human rights and equality within a local context. The numbers are difficult to estimate, but one organization estimates that there are around 175 million LGBTI individuals living in ‘persecutory environments’ (ORAM, 2012). LGBTI refugees “tend not to disclose socially stigmatizing information pertaining to their sexual orientation or gender identity (SOGI)” during the process of seeking refuge (Millo, 2013: 1). Therefore, there is need for mainstreaming practices and policies across all refugee related organizations. It is becoming increasingly clear that LGBTI

refugees in transit and destination cities face high levels of violence and discrimination. Moreover, the National Center for Lesbian Rights notes that there is a lack of reporting and documentation of violence against lesbians around the world (NCLR, 2013). The same is likely true for transgender and intersex individuals.

This report calls attention to LGBTI refugees, yet acknowledges that many policies, programs and protections are both necessary and equally relevant to asylum seekers. LGBTI individuals fleeing persecution of any kind and by any means deserve equal human rights protections. Achieving this goal will only be attained through greater awareness, enhanced cooperation and well-informed strategies coupled with multi-level policy changes and implementation. Another aim of this report is to provide policy recommendations to facilitate the mainstreaming of more inclusive practices. City governments, NGOs and citizens can also use this information to create more inclusive public policy and take direct action in their cities.

Introduction

Vulnerable populations of refugees often face higher threats of violence and institutional neglect due to the overlapping problems they face. Some vulnerable societal groups are women, children, elderly, ethnic minorities and also Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) individuals. All refugees face immense challenges that are not discussed at length in this report. Rather, the aim is to call attention to the complex challenges faced by one often overlooked group of refugees. It must also be noted that the category of LGBTI is an immensely heterogeneous group. For example, some individuals who are persecuted for being associated with LGBTI identity may not identify as such. In addition, services and support offered based on sexual orientation do not benefit transgender or intersex people. The categories of 'refugee', 'vulnerable populations' and 'LGBTI' are thus insufficient and can complicate theoretical and practical solutions. Therefore, the primary aim of this report is to call attention to the need for more specialized solutions for refugees on an individual basis. With that understanding, the report examines the role of cities and local communities as a potential source of and location for more individualized solutions.

LGBTI refugees are at a greater risk of violence by host communities and fellow refugees, as well as psychological trauma and prejudice from judiciary actors and local law enforcement. The Parliamentary Assembly of the Council of Europe passed Resolution 2128 in June 2016 on Violence Against Migrants,

which noted the high rates of violence against LGBTI refugees in Europe.¹ In addition, psychological trauma is a common result of sexual orientation and gender identity (SOGI) persecution. One study of 53 LGBTI refugees called *Invisible in the City* found that 44 percent were experiencing Post-Traumatic Stress Disorder (Millo, 2013: 2). Studies show that discrimination by police and judges sometimes prevents protection and equal treatment (Spijkerboer and Jansen, 2011; Varady, Escot and Ellis, 2014). Moreover, translators and the staff of refugee organizations can be a source of prejudice. In a survey of 29 LGBTI refugees, 15 reported not feeling comfortable discussing SOGI in front of their interpreter (Luit, 2013). Staff training procedures, anti-discrimination laws specifying SOGI equality and local laws which aim to prevent police discrimination in interactions with foreign-born members of communities (e.g. Sanctuary City Ordinances) may decrease discrimination against LGBTI refugees.

Thus, this report examines some key challenges and possible solutions to protecting LGBTI refugees in cities. A brief introduction to the international legal framework and political agenda identifies policy limitations and points to gaps cities might fill. It then highlights the role of cities: building safer communities for LGBTI refugees while implementing policies and providing resources which enable equal opportunities for human development. Subsequently, case studies of two cities, San Francisco and Istanbul, are examined to provide concrete examples and generate discussion about local solutions and challenges. Finally, the report makes policy recommendations to actors at the local level.

International Framework

The 1951 Refugee Convention and its 1967 Protocol give states the power to determine who is and is not accorded refugee status (United Nations, 1967). LGBTI individuals are not mentioned as a category eligible for refugee status under the terms of the convention, but the European Union and most refugee receiving countries do have legal precedents establishing LGBTI individuals as a social group eligible to claim asylum. In addition, long legal debates stem from the need to demonstrate a ‘well-founded’ ‘fear’ of ‘persecution’, where each term represents a complicated legal history in each receiving country.² The

¹ The accompanying report for the resolution noted that ‘in Germany, for example, in the period from 1 August to 31 December 2015, the association of gays and lesbians for the states of Berlin and Brandenburg reported 95 cases of physical violence, including sexual attacks against migrants’ (Rigoni 2016: 8).

² For a more in-depth analysis of legal challenges, see Weßels, J. (2011) ‘Sexual Orientation in Refugee Status Determination’ *Refugee Studies Centre*. The report describes the need to prove the three conditions beyond ‘particular social group’ of ‘well-founded’ ‘fear’ of ‘persecution’.

process is further complicated by the need to ‘prove’ that a person is LGBTI if that is the basis of their asylum claim. Some requests are denied based on a judge’s disbelief of a SOGI claim (Fassin & Salcedo, 2015). Stereotyping is also a problem. During interviews with UNHCR staff and foreign government officials, LGBTI refugees must adapt to constructed identity categories and ‘the applicant must be ‘gay enough’ for the government to find that they have met their burden of proof’ (Morgan 2006: 136). Judicial disbelief regarding the credibility of LGBTI identity led to the rejection of 38 percent of such cases in Australia from 2004 to 2007 (Millbank, 2009: 8). Seen in this light, the current legal burden deals not only with proof of a claimed identity and examples of ‘persecution’ but also individual homophobia and stereotyping within judicial systems (Weßels, 2011).

State policies also directly impact the legal circumstances LGBTI refugees face. More than 74 countries criminalize homosexual acts through explicit laws (Carroll & Itaborahy, 2015). However, an extreme degree of punishment for violating the law in the country of origin is what constitutes valid ‘persecution’ rather than the existence of the law itself.³ Some countries which do not explicitly criminalize homosexuality lack anti-discrimination laws. In these countries, LGBTI citizens are subject to discrimination by members of the community and even law enforcement officers. The OHCHR considers all of these laws, even if they are not enforced, a violation of international human rights treaties, but the political will to accept LGBTI refugees changes with political leadership and national legal precedent.⁴ In 1981, the Netherlands became the first country to acknowledge sexuality as a cause of persecution (Spijkerboer and Jansen, 2011). Since then, the United States, Canada, New Zealand, Australia, the United Kingdom, Germany, Finland, Belgium and France are among the countries which have granted refuge or asylum for SOGI claims (LaViolette, 2010). According to Millbank (2009: 13), ‘sexual orientation was accepted as the basis for a particular social group claim in most major refugee receiving nations by the mid-1990s.’ In total, at least 37 states have given asylum on these grounds (UNFE, 2014).

³ In Europe, the CJEU found in *X, Y, Z v. Minister voor Immigratie en Asiel* that the existence of laws criminalizing homosexuality does not amount to persecution as defined by the 1951 Refugee Convention that requires a ‘sufficiently serious’ violation of fundamental rights (UNHCR, 2014).

⁴ ‘Such laws violate an individual’s right to be free from discrimination, which is enshrined in article 2 of the Universal Declaration of Human Rights and core international human rights treaties, as well as the rights to be protected against unreasonable interference with privacy and arbitrary detention, protected by articles 12 and 9 of the Universal Declaration and articles 17 and 9 of the International Covenant on Civil and Political Rights. Furthermore, laws that impose the death penalty for sexual conduct violate the right to life, as guaranteed by article 3 of the Universal Declaration and article 6 of the International Covenant on Civil and Political Rights. Such laws, even if they are never enforced, breach State obligations under international human rights law.’ (OHCHR 2012: 28)

While broader refugee protections are needed at the international and national levels, varying interpretations of the Refugee Convention are sometimes contested and as a result limit its reach. Many LGBTI refugees face immense subjective and legal battles without the support of any friends or relatives and, therefore, rely on their local communities. Seen in this light, it is useful to consider the ways cities can provide sanctuary.

The Role of Cities

Examples of policies, services and organizations are presented in each case study below, but it is useful to begin by understanding of the role of cities. LGBTI refugees are impacted indirectly and directly by cities. Indirectly, cities can either foster cultures of diversity and inclusion, or homogeneity and segregation, depending on the kinds of narratives and initiatives they develop, or restrict. This is evidenced by cities which support or allow diverse cultural festivals and neighbourhood gatherings (e.g. Pride parades, art festivals and political protests) versus those which limit cultural expression. Cities also directly influence the lives of immigrants, refugees and asylum seekers through policies, services and events. Policies created at the local level can protect the human rights of all citizens. Moreover, cities can directly foster a culture of acceptance and solidarity by creating neighbourhood and community spaces that foster civic participation among diverse groups. Free language classes are an example of a local initiative that offers a valuable skill to all new members of a community. Along these same lines, cities can offer workshops which help guide residents through bureaucratic processes such as starting a business, finding a job and securing housing. LGBTI individuals must determine the perceived safety of exposing their identity across all of these contexts while also making friends and building support networks. Policies and narratives are mechanisms cities can use to ensure the safety and support of LGBTI refugees.

Local organizations also support the vulnerable group intentionally and incidentally. Some LGBTI community organizations provide a valuable safe space for refugees to connect with local populations and other refugees. Major urban centres that have more LGBTI organizations are usually more appealing locations of refuge. However, while some organizations think metropolitan areas are best (ORAM, 2012: 8), others feel rural areas with accepting cultures are equally suitable (UNHCR, 2013). All NGOs must mainstream policies in light of the implicit support they may offer to LGBTI refugees who do not disclose their SOGI. Offering a diverse array of support groups and services to different populations in many languages is key to helping vulnerable populations. Nevertheless, LGBTI refugees are not solely reliant on

organizations and physical spaces. They also create private groups on social media and utilize personal networks to share information on topics like governmental procedures and social events.

Case Studies:

San Francisco and Istanbul offer valuable insights for understanding how LGBTI refugees and asylum seekers may find a sense of home and belonging in local spaces. They also highlight areas that still require attention. While the two cities differ greatly in the availability of resources, they also take different approaches to – and have different histories with – LGBTI refugees and the LGBTI community as a whole. Individuals arriving in San Francisco usually expect to remain, while Istanbul is often perceived as a temporary place of residence. In light of their financial, historical and temporal differences, the following case studies are not comparisons but rather an attempt to shed light on some protection gaps and successful policies regarding LGBTI refugees.

San Francisco

San Francisco has a history founded on immigration, resettlement, integration and diversity. The city's culture and its collective identity were born out of diverse groups of people arriving in its spaces. In recent decades, it has drawn people from around the world for its unique culture of diversity and acceptance. Politically, the city is characterized by a strong civil society and an active local government. Former Mayor Harvey Milk was assassinated for his work on sexual orientation equality in 1978 but the community adopted his causes and has become a global leader in the protection of SOGI rights. LGBTI imaginaries around the world are familiar with San Francisco's role as a legal and metaphorical 'Sanctuary City'.

In 1989, San Francisco passed the City and County of Refuge Ordinance, also known as the 'Sanctuary City' Ordinance. The law prevents employees of the city from inquiring about the immigration status of those they serve. The Human Rights Commission of San Francisco enforces these types of anti-discrimination laws. Individuals must file an official complaint to the commission, but not everyone protected under such ordinances is aware of the legal framework and process. Therefore, in addition to enforcing city, state and federal anti-discrimination laws, the commission also aims to educate and advocate for vulnerable populations. In 2015, the SF Human Rights Commission, with the SF LGBT Center,

authored a report called *LGBTQI Violence Prevention Needs Assessment* to promote policies for a safer city. Theresa Sparks, the transgender Executive Director of the commission, leads groundbreaking programs for reducing transgender inequality and violence.⁵ In 2014, the city allocated \$2 million to local programs working with transgender residents (Griffin & Broadus, 2015: 38). More generally, the city supports the community with grants for special programs and events such as the annual LGBTI Pride Parade.

While all of these laws and programs serve LGBTI refugees within the community, some organizations pay special attention to this vulnerable group. Local and international organizations with headquarters in San Francisco are focused on LGBTI refugees. On the local level, community organizations provide medical and legal services at reduced rates or free of charge to LGBTI refugees and asylum seekers. The Transgender Law Center, located near San Francisco, not only provides legal support but also works to change policies and perceptions affecting transgender refugees and asylum seekers. Community support groups focused on other issues often incidentally include LGBTI refugees. The group *Hermanos de Luna y Sol* was created to reduce the risk of HIV infection among Spanish speaking immigrants but is also a source of broad information for participants.⁶ QueerROC is a recurring LGBTI community meeting started by the Arab Resource and Organizing Center to support Arab refugees and asylum seekers in San Francisco. It began in 2014 and has since grown to include the broader Arab LGBTI community.

The Organization for Refuge, Asylum & Migration (ORAM) is based in San Francisco but works internationally. Their programs assist with the international process of resettling LGBTI refugees while also offering legal representation and assistance. Recognizing the importance of cities, ORAM released a report in 2012, *Rainbow Bridges*, demonstrating ways to build local networks and supportive communities for LGBTI refugees. By starting and training what it calls 'Guardian Groups' in San Francisco, the organization empowers community allies to sponsor LGBTI refugees by helping them access local services, develop social networks and become financially independent.⁷ In the San Francisco Bay Area, an organization called Jewish Family & Community Services of the East Bay connects LGBTI refugees with volunteers

⁵ More transgender individuals were murdered in the US in 2015 than any other recorded year (Griffin & Broadus 2015).

⁶ A representative from the Center for Gender & Refugee Studies stated in an interview with the author that many clients discovered their work through *Hermanos de Luna y Sol*.

⁷ Canada has taken this process nationwide under its Private Sponsorship of Refugees Program. The [City of Quebec sponsorship program](#) is a local adaptation of the national program. In Vancouver, an NGO called [Rainbow Refugee Committee](#) specifically connects LGBTI refugees with local groups and is expanding to Toronto and Montreal. COC Netherlands is a national LGBTI organization with 24 local chapters which established a refugee 'buddy project' called [Cocktail](#).

who offer housing, English lessons and many other services upon arrival.⁸ ORAM did, however, note that some communities are more likely to offer this support than others:

In San Francisco, the case for resettling LGBTI refugees has received particularly enthusiastic support from queer-friendly congregations. The call to help refugees resounds strongly in these communities, which often include people who have experienced rejection from families, their home churches, and their hometowns because of their sexual orientation or gender identity. (ORAM, 2012: 17)

In an interview with Galen, a member of a San Francisco Guardian Group, the subject of support was mentioned in multiple contexts. ORAM provides legal support to the refugees and, in some cases, Guardian Groups are able to provide financial support. However, Galen noted that psychosocial support was an essential part of the program. Conversations about cultural differences and daily frustrations are common. 'I try to position myself as the person they can get mad at,' he said. The refugees benefit from the strong friendships which are sometimes forged via correspondence years before the refugee arrives. These connections contribute to the nature of some cities as reference points of acceptance, hope and aspiration in the imaginaries of many LGBTI refugees.

However, Galen also noted that the community has not responded to the needs of LGBTI refugees as well as it could. During the AIDS crisis, community associations helped to find housing for support and treatment but now there is a lack of housing for this vulnerable group. Galen noted that there is clear need for more resources and collaboration. In 2014, the mayor of San Francisco granted funding to 13 NGOs to provide legal representation for individuals facing deportation, and these NGOs joined together to form the San Francisco Immigrant Legal Defense Collaborative. This collaboration led to renewed funding and boosted the capacity of its members by sharing resources. Local organizations serving LGBTI refugees could join together in similar partnerships.⁹

⁸ Other services provided by the organization include assistance enrolling in benefits programs and the health care system; providing referrals to educational and vocational resources and services; providing counseling and mental health services; and support with social integration.

⁹ Another alliance building network, [Rainbows United](#), is a monthly meeting in Brussels of LGBTI asylum seekers and the NGOs who support them.

Istanbul

Turkey, situated at a geographical and cultural crossroads, has been a point of convergence for centuries. In 1858, the former Ottoman Empire decriminalized sex acts when it adopted the Napoleonic Code of 1813. It occurred during the Tanzimat, a fifty-year modernization period that left a strong legacy on contemporary Turkey. The country is sometimes considered the safest in the Middle East for LGBTI individuals. Others, however, consider it part of Europe. The organization Transgender Europe noted in its annual Trans Murder Monitoring report that it is the most dangerous European country for transgender individuals.

Turkey maintains section B of Article 1 of the Refugee Convention according to which it applies the Convention only to European refugees (United Nations, 1967). Therefore, the country is only considered a 'Transit Country' for LGBTI refugees. UNHCR works with ORAM and other organizations to register as many of these vulnerable refugees as possible. However, wait times can range from a few months to several years and LGBTI refugees still require protection during these long periods of uncertainty and waiting.

In light of the ongoing war, Syrians who enter Turkey are considered 'guests' by the government and are therefore they only refugees who are allowed to live in Istanbul while they wait for their case to be accepted by a refugee receiving country. Refugees from other countries are assigned locations outside of the three largest Turkish cities and many LGBTI refugees are inadvertently placed in local communities that are unaccepting or even dangerous. Refugees are required to make scheduled visits the local police station where they have been assigned to check-in using a fingerprint. Some LGBTI refugees choose to live in larger cities with LGBTI communities and travel to their assigned location when necessary. This highlights the notion that LGBTI refugees should be allowed to live where they choose. Moreover, the random distribution of refugees highlights the need for mainstreaming protection of LGBTI refugees in Turkish cities of all sizes.

The city of Istanbul has a complicated history with the LGBTI community. In 2003, the city allowed the first Gay Pride Parade but has never provided funding for the event. The parade was held in Istanbul every year until 2015 when the city authorities prohibited the event due to alleged security concerns. In 2015 and 2016, members of the LGBTI community who defied the ban and gathered in the streets were

shot with rubber bullets, tear gas and water cannons. Lambda Istanbul is the LGBTI community organization that plans the annual parade and provides many services to the community. It was granted official NGO status within the city in 2006, but in 2008 a court allowed the Directory of Associations of Istanbul and the Governor's Office to close the organization after they claimed Lambda Istanbul was 'against the law and morality'.¹⁰ The ruling was overturned in 2008 and the Supreme Court of Justice set a precedent to allow the freedom of associations of LGBT organizations (Öz, 2010).¹¹ Recently, Lambda Istanbul created Tea and Talk, community meetings for the local LGBTI refugees and wider community. They began with meetings in Turkish and English but later added Arabic meetings to support the incoming LGBTI refugees from Syria.

Istanbul also has some measures to protect human rights of LGBTI individuals. On December 24th, 2012, the Provincial Human Rights Board of Istanbul ruled in favour of a gay referee who had been fired from his job with the Turkish Football Federation on SOGI grounds. The Board found that the applicant's rights to life, equality, non-discrimination, privacy, family life and employment had been violated.¹² However, many cases go unnoticed and citizens fear bringing a case to the Human Rights Board because they are not protected by any national or local anti-discrimination laws. Moreover, the board lacks adequate enforcement power and may not consider a case brought by a refugee or Syrian 'guest'.

Therefore, many LGBTI refugees rely heavily on each other. They find information on services and procedures from secret Facebook groups created by individuals in similar situations. Organizations like Kaos GL Association and the Association for Solidarity with Asylum-Seekers and Migrants (ASAM) are Ankara-based organizations that facilitate events and help LGBTI refugees increase their network in Turkey. Yet, social life is secondary to shelter and many struggle to find housing in a non-threatening environment. In an interview with the author, an Istanbul based photojournalist documenting LGBTI refugees in the Middle East for over seven years said he once had five or six gay refugees temporarily staying in his apartment. His photographs capture the positive relationships of care and friendship that can be found in these informal arrangements.¹³ Jarrar, an LGBTI Syrian refugee in Istanbul, said in an

¹⁰ Beyoğlu/Istanbul Civil Court of First Instance Number 3 Case Number; 2009/65, Decision Number: 2009/69

¹¹ Case Number 2008/4109 ruled on November 25th, 2008. See the 2010 [Council of Europe report](#) for more information on the laws affecting SOGI in all forty-seven member states.

¹² These are protected under Articles 2, 8 and 14 of the European Convention and Articles 10, 20, 48 and 49 of the Turkish Constitution. See the [European Equality Network](#) for more information.

¹³ See [Bradley Secker's website](#) to view numerous photojournalism projects featuring LGBTI refugees.

interview with the author that he would not feel safe in a centre providing shelter to LGBTI refugees due to the high exposure it would create.¹⁴ Nevertheless, informal support amongst friends does not suffice and resources must be mobilized to provide fundamental safety and shelter to this vulnerable group.

Conclusion

Categories for refugees and vulnerable populations mask specific needs and unique circumstances. Local actors have the most ability to disaggregate and nuance broad categories such as LGBTI, 'vulnerable populations' and 'people of concern'. The Refugee Convention does not ensure protection of LGBTI individuals fleeing identity persecution and the majority of LGBTI refugees do not disclose their identity. Many refugees hold intersectional identities, which complicate archaic conceptions of citizenship, sexuality and gender. By mainstreaming training for all organizations and government employees, prejudice and discrimination can be diminished. Anti-discrimination laws from local, national and international levels help to protect all citizens.

Many reports have outlined extensive lists of recommendations and this report has not captured them all (Spijkerboer & Jansen, 2011; Millo, 2013; Stuart, 2013). Some LGBTI refugees are unable to access information and services in cities of refuge due to language barriers or lack of support structures and networks. Moreover, limited resources, dangerous living situations, psychological trauma, discrimination and a life of secrecy are too often a reality for LGBTI refugees in host countries.

At the national level, states must take necessary measures to expedite the processing time for asylum and refuge requests and dramatically increase the number of LGBTI refugees they accept. Societies must move beyond the archaic requirements of 'proving' sexual orientation and gender identity. States should mobilize resources to provide a sufficient financial stipend for the first year after resettlement and all countries should pass laws to create refugee and asylum seeker sponsorship programs. While states work to make these necessary changes, diverse local actors must take steps to fill the gaps in the present system by mainstreaming inclusive practices and taking specific steps to support LGBTI refugees in cities.

¹⁴ [Schwulenberatung Berlin](#) is an example of a local solution providing housing to 120 LGBTI refugees.

Recommendations:

- Cities should provide temporary housing for LGBTI refugees where possible and appropriate.
- Cities must support and collaborate with NGOs in providing special programs and information in many languages (e.g. mental health services, language classes and useful databases of resources).
- Cities must provide compliant systems with adequate enforcement mechanisms to process claims of violence and discrimination amongst all inhabitants.
- Cities should condone, facilitate and financially support festivals and events which promote public awareness of diversity within communities.
- Organizations focused on supporting refugees and asylum seekers must work together to create innovative, comprehensive programs for LGBTI individuals.
- LGBTI community organizations must implement programs for refugees and asylum seekers in their programs and foster community support of this vulnerable group.
- NGOs offering special services must provide ongoing free or low-cost services (e.g. psychological and legal) to LGBTI refugees and asylum seekers.
- All local and international refugee organizations must ensure the staff is trained to be aware of the specific vulnerabilities of LGBTI individuals and how to provide appropriate services. Trainings should be supplemented with additional LGBTI awareness resources.

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