

Envisioning LGBT Refugee Rights in Canada:

Is Canada a Safe Haven?



 envisioning global LGBT human rights

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Acknowledgements

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Front cover: *No Easy Walk To Freedom (91 min. 2014) Directed by Nancy Nicol, Envisioning Global LGBT Human Rights and Naz Foundation India Trust, New Delhi.*

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J-FLAG and Envisioning Caribbean Team rally, Emancipation Square, Kingston, Jamaica, 2013.



Envisioning global LGBT human rights team, World Pride, Toronto, 2014.

About Envisioning Global LGBT Human Rights

Envisioning Global LGBT Human Rights is a partnership of mutual learning that brings together 31 community-based partners as well as lawyers, academics, community-based researchers, videographers and students, based in 12 countries. The project sought to develop an international, intersectional approach, working with domestic and international legal professionals, academics and community-based researchers and partners.

This report is an outcome of the Canada Research Team's work, one of five research teams that make up the Envisioning Global LGBT Human Rights partnership. The research goals of the Canada Research Team were to investigate LGBT asylum, and make recommendations in light of recent refugee law and policy changes in Canada.

The domestic research was limited to the Greater Toronto Area, a region that represents Canada's primary immigration and refugee destination.¹ Toronto is also known to be the

Note on Terminology:

The use of terms with regard to sexual or gender identity is complex, with historical, regional, cultural, class and activist implications. The terms lesbian, gay, bisexual, transgender (LGBT) are used throughout this project and are used by many activists and human rights workers internationally. Others may use "queer" or "sexual minorities" as umbrella words. Our use of LGBT is meant to be neither all-embracing nor exclusive. As our research encompasses many regions and communities we acknowledge that terminology may differ from place to place or topic to topic. Most sodomy laws do not mention "homosexuality" (a term coined in 1867). Terminology differs in different countries, and is complex to interpret. Criminal codes may refer to: "sodomy", "the habitual practice of debauchery", "indecency", and "carnal intercourse against the order of nature." Moreover, laws are interpreted through domestic jurisprudence in complex ways.

1 Newbold, B., and P. DeLuca: (2007). "Short-term residential changes to Toronto's immigrant communities: evidence from LSIC Wave 1", *Urban Geography*, 28(7).

primary destination for LGBT newcomers in Canada.² According to the National Household Survey (NHS) in 2011 over 381,700 newcomers, approximately one-third of all newcomers to Canada (32.8%), settled in Toronto, making up 6.9% of the city's population.³ Additionally, the Greater Toronto Area (GTA) provided the opportunity to bring together a range of community partners from different ethno-cultural communities, who in responding to increasing numbers of LGBT refugees have pioneered programs specifically to provide support services to these LGBT newcomers.

The international research of the Envisioning project focused on Commonwealth countries that maintain criminal code sanctions against same-sex intimacy, working with partners in selected countries where such laws are currently being challenged (India, Uganda, Kenya, Botswana, St. Lucia, Jamaica, Belize and Guyana). While the countries of Envisioning's international partnerships are limited in number, nonetheless these countries represent some significant developments in LGBT human rights internationally. They provided case studies on conditions faced by LGBT populations, which in turn informed the research on asylum.

Working with international partners, Envisioning has produced a number of video shorts and documentary films, which represent a valuable resource on the experiences of LGBT people. **"Telling Our Stories"** is a collection of 5-minute video portraits of LGBT activists and community members created by Envisioning partners in India, Africa and the Caribbean. Envisioning documentaries include: **"No Easy Walk to Freedom"** (2014, 91 min., directed by Nancy Nicol with Naz Foundation India Trust) which examines the movement to decriminalize homosexuality in India; **"And Still We Rise"** (2015, 70 min., directed by Richard Lusimbo, Sexual Minorities Uganda and Nancy Nicol) which documents resistance to the Anti-Homosexuality Act (AHA) in Uganda; and, **"The Time Has Come"** (2013, 30 min., directed by Kim Vance, John Fisher, Shehrezade Kara, ARC International) which traces developments on LGBT human rights at the United Nations.



*No Going Back demonstration,
No Easy Walk To Freedom (91 min. 2014)*



*2014 Uganda Pride,
And Still We Rise (70 min. 2015)*



*UN conference speaker, Joey Joleem Siosaia,
The Time Has Come (30 min. 2013)*

To access Envisioning publications and documentaries, and for more information, please see: www.envisioninglgbt.com
Follow us on Facebook: www.facebook.com/envisioninglgbthumanrights
and on Twitter: <https://twitter.com/EnvisioningLGBT>

2 Cooney, D. (2007). Queer newcomers land among friends. Xtra! Canada's Gay and Lesbian News. Retrieved from: http://www.xtra.ca/public/Toronto/Queer_newcomers_land_Among_Friends-2989.aspx.
3 National Household Survey (2011): Retrieved from: <https://www12.statcan.gc.ca/nhs-enm/2011/ref/index-eng.cfm>

Foreword

A Perfect Storm: The intersection of Canadian refugee policy changes and international developments affecting LGBT refugee claimants

The international landscape for LGBT human rights is dramatically shifting. On the one hand, there has been a significant growth of LGBT rights organizing in both the Global South and the Global North and at the international level, such as the United Nations. This has led to advances in LGBT rights and created momentum for further change. At the same time there is ongoing entrenched homo-bi-transphobia, and significant setbacks in some regions. These developments set the background in which LGBT asylum seekers come to Canada.



Launch, First Pride in Uganda, Kampala, 2012 (left to right: Richard Lusimbo, Frank Mugisha, Bishop Senyonjo, Kasha Jacqueline). Production still from documentary And Still We Rise (2015, 70 min.) directed by Richard Lusimbo and Nancy Nicol, Envisioning Global LGBT Human Rights and Sexual Minorities Uganda.

In November 2014, the Trans Murder Monitoring Project for the International Transgender Day of Remembrance reported a total of 226 cases of reported killings globally of transgender people, in particular Trans women, from October 1, 2013 to September 30, 2014.⁴ These murders are related to systemic oppression, including discrimination in housing, employment, healthcare, and physical and sexual assault, which in turn is often rooted in extreme poverty and a lack of employment options making sex work the only job option available.

75 countries, one-third of countries in the world, continue to criminalize same-sex sexual activity, and more countries subject individuals to risks, abuses, harassment and human rights violations on the basis of their gender and sexuality.⁵ In these countries, “LGBT people are considered to be illegal, immoral and criminal, and deemed not to deserve the same legal protections as other people”.⁶

8 countries legislate for the death penalty on the basis of sexual orientation, but only 5 (Mauritania, Sudan, Iran, Saudi Arabia and Yemen) actually implement it. Further, Iraq has judges and militias throughout the country that issue the death sentence for same-sex sexual behaviour and some provinces in Nigeria and Somalia officially implement the death penalty.⁷

LGBT people are subject to discrimination in access to housing, employment, health and education; eviction from their homes by landlords and violence from family members and in public spaces. In some countries news

4 Transrespect vs. Transphobia. (2014). Retrieved from: http://www.transrespect-transphobia.org/en_US/tvt-project/tmm-results/tdor-2014.htm

5 Carroll, A. and Itaborahy, L. (May 2015). “ILGA Report: State Sponsored Homophobia: A World Survey of Laws: Criminalization, Protection and Recognition of Same-Sex Love.

6 Carroll, A. and Itaborahy, L. (May 2015). “ILGA Report: State Sponsored Homophobia: A World Survey of Laws: Criminalization, Protection and Recognition of Same-Sex Love.

7 Carroll, A. and Itaborahy, L.. (May 2015). “ILGA Report: State Sponsored Homophobia: A World Survey of Laws: Criminalization, Protection and Recognition of Same-Sex Love.

media and tabloids perpetuate profoundly negative stereotypes, as well as outing LGBT activists and human rights defenders, which in turn may result in violence. Lesbians are often subjected to sexual violence, including rape and so-called “corrective rape”. These crimes are seldom reported because of social stigma and fear of further violence and abuse.



No Going Back demonstration, Delhi 2013. Production still from documentary No Easy Walk To Freedom (2014, 91 min.) directed by Nancy Nicol, Envisioning Global LGBT Human Rights and Naz Foundation India Trust, Delhi.

Troubling as well, in December 2013 the Indian Supreme Court recriminalized homosexuality in India, upholding a colonial era law and overturning a historic 2009 Delhi High Court ruling that had struck down s. 377 of the Indian penal code.⁸

In addition, in recent years there has been a new wave of criminalization of “homosexual propaganda”, emerging first in Russia in 2006. To date such new laws have been passed in Algeria, Lithuania, Nigeria, Burundi, Cameroon, Uganda and Russia and discussions are on-going in other countries where negative developments may yet occur.⁹ Recent developments in Russia and some countries in Africa seek to regulate

and prevent NGOs that support LGBT rights from accessing international funding in an effort to repress LGBT rights organizing. These developments violate freedom of expression and association, and undermine efforts to advance human rights and public education in this area.

Nigeria’s Same Sex Marriage (Prohibition) Act of 2013,¹⁰ signed into law in January 2014, imposes a penalty of 14 years imprisonment on a person who enters into a same-sex marriage and criminalises the registration and meetings of “gay clubs, societies and organisations”. In Gambia, the President signed into law the Criminal Code (Amendment) Act¹¹ in October 2014, which provides for an offence of “aggravated homosexuality” with a penalty of life imprisonment. “Aggravated” cases include repeat offences - in other words, continuing to practice same-sex intimacy. In Malawi, the Marriage, Divorce and Family Relations Act¹² was signed into law by the President in April 2015. The Act defines marriage as between spouses of the opposite sex and imposes a criminal penalty of a fine or five years imprisonment if a marriage is celebrated knowing that it does not comply with the Act.

In the Caribbean region, while legal challenges against existing anti-gay laws are proceeding in Belize, Trinidad and Tobago and Jamaica, legislation remains very hostile to LGBT people. All Anglophone countries in the region still criminalise same-sex activity between consenting adults.¹³ Moreover, the lack of legal recognition regarding gender identity contributes to a cycle of violence, exclusion and poverty affecting transgender people.

One internationally high profile example provides a case study of the human rights violations that

8 *Koushal vs. Naz*, India Supreme Court Ruling. Retrieved from: <http://judis.nic.in/supremecourt/imgs1.aspx?filename=41070>

9 Carroll, A. and Itaborahy, L. (May 2015). “ILGA Report: State Sponsored Homophobia: A World Survey of Laws: Criminalization, Protection and Recognition of Same-Sex Love.”

10 *Same-Sex Marriage (Prohibition) Act*. Nigeria 2013. Retrieved from: <http://www.placng.org/new/laws/Same%20Sex%20Marriage%20%28Prohibition%29%20Act,%202013.pdf>.

11 Supplement “C” to the Gambia Gazette No. 15 of 16th October, 2014. Criminal Code (Amendment) Act, 2014: Accessed online from: http://www.hrw.org/sites/default/files/related_material/Gambia%20Criminal%20Code%20Act%202014.pdf

12 Marriage, Divorce and Family Relations Bill. (2015). The Malawi Gazette. Retrieved online from: <http://malawi24.com/wp-content/uploads/2015/02/Malawi-Marriage-Divorce-and-Family-Relations-bill-2015.pdf>.

13 Carroll, A. and Itaborahy, L. (May 2015). “ILGA Report: State Sponsored Homophobia: A World Survey of Laws: Criminalization, Protection and Recognition of Same-Sex Love.”

produced a large number of displaced persons due to violence and persecution against LGBT people. In December 2013, the Ugandan parliament passed the Anti-Homosexuality Act (AHA), and the President signed the Act into law in February 2014. In the space of a few months, from December 2013 to May 2014, Sexual Minorities Uganda documented 162 incidents of wide-spread human rights violations, finding that:

“The passing of AHA unleashed a wave of extreme and violent homophobia throughout Uganda including violent attacks, arbitrary arrests, blackmail, evictions, closure of services, and denial of services to LGBT people, and ‘a concerted effort to drive LGBTI civil society underground.’”¹⁴

A large number of LGBT people fled the country as a result of the law being passed. A few who had the means to obtain visas sought asylum in the West including Canada, but a far larger

number fled to neighbouring Kenya, ending up in refugee camps where local experts documented dangerous conditions, serious human rights violations, police intimidation and violence.¹⁵ According to local agencies working in the area of refugee protection, such developments “threatened to overwhelm existing mechanisms to provide sanctuary or protection to at risk populations”.¹⁶

In Kenya, National Gay and Lesbian Human Rights Commission director, Eric Gitari, who researched and documented conditions in the refugee camps for LGBT Ugandans, stated :

“So these are people who are simply crossing the border to save their lives and they come with nothing...And if you are Ugandan in Dadaab refugee camp in Kenya, people always presume you’re gay...One of the problems that we have been documenting involves police brutality where LGBT refugees...were rounded up at night and they were taken in the middle of a field by administration police, they were asked at gun point whether they were gay, they denied it, they were taken to the local police station ... where the police read to them the sexual offenses in section 162 [of the Criminal Code]... Then the next morning they were returned to the camp without any charges and they were taken to this group...(who) advised them never, ever confess to law enforcement officers that they are gay because they will be arrested.”¹⁷

As well, Gitari notes that:

“There is homophobia in the asylum regime, where sometimes ... refugees come and tell



Maurice Tomlinson, J-FLAG and Envisioning Caribbean Team rally, Emancipation Square, Kingston, Jamaica, 2013.

- 14 Sexual Minorities Uganda. (2014) *From Torment to Tyranny: Enhanced Persecution in Uganda Following the Passage of the Anti-Homosexuality Act 2014, 20 December 2013—1 May 2014.*
- 15 Gitari, E. (2014). *Is Canada a Safe Haven for Refugees?* Envisioning Global LGBT Human Rights Panel Speaker at World Pride Human Rights Conference. Toronto, ON.
- 16 Dolan, C. (2014). Refugee Law Project, Kampala, Uganda. Interview by Richard Lusimbo, Envisioning Global LGBT Human Rights.
- 17 Gitari, E. (2014). *Is Canada a Safe Haven for Refugees?* Envisioning Panel Speaker at World Pride Human Rights Conference. Toronto, ON.

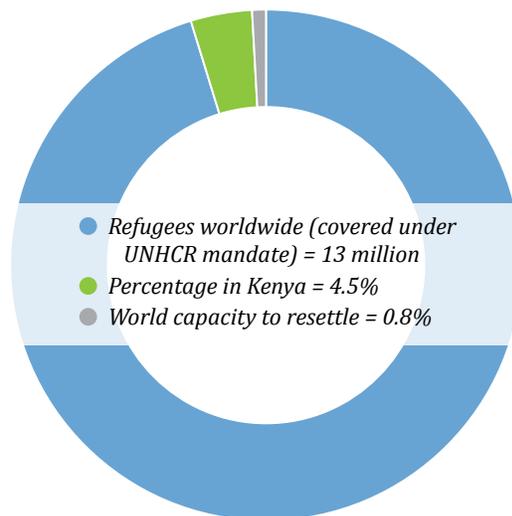
their stories to people at the reception centre who have the UNHCR badges, thinking that these guys are the UNHCR officers, but they are actually hired. But what happens is these folks, who are also refugees who are hired by the UNHCR to work in the reception centre, they go and tell stories from these refugees to the folks within the camp. So your story is not a secret. There's no confidentiality, your file is not closed and sealed. And so homophobic attacks, homophobic ridicule and related incidents still continue to follow you in your country of first asylum while you're seeking durable solutions."¹⁸

While by no means conclusive, these developments create particular challenges for Canada in fulfilling and upholding its international commitments and obligations to protect human rights and to provide sanctuary for people fleeing persecution due to their sexual orientation, gender identity or gender expression.

The Geneva Convention nexus of membership in a particular social group was interpreted to include sexual orientation and gender identity by a Canadian Federal Court in 1993 and by the UNHCR in 1995. Yet, since that time, international migration has become increasingly restrictive for all immigrants and refugees. People are spending longer times in refugee camps, in miserable conditions, without proper sanitation, housing, healthcare, or medication and where LGBT people may also find themselves at risk of violence. Isaac Otidi Amuke writes: "UNHCR points out that there are 13 million refugees spread across the world – with over 586,000 in Kenya as of May 2015 – and of that only 100,000 of the global refugee population can be resettled annually."¹⁹

How is Canada Responding to these Challenges?

Canada acknowledges persecution on the grounds of sexual orientation and gender identity as grounds for refugee protection. It has an obligation to apply those criteria throughout the world, both to people who arrive in Canada and claim protection as well as to those seeking asylum from abroad. Canada also has a resettlement program where the government selects people in refugee camps for resettlement. In fact the current Federal government in recent years has stated that this program acts as a counterweight to so-called "queue jumpers." The implication is that refugees should wait patiently in refugee camps to be selected. But this prospect holds particular risks for LGBT people.



18 Gitari, E. (2014). *Is Canada a Safe Haven for Refugees?* Envisioning Global LGBT Human Rights Panel Speaker at World Pride Human Rights Conference. Toronto, ON.

19 Amuke, I. (2015). *Facing the Mediterranean* (data by Eva Camps, Senior Protection Officer at UNHCR Nairobi). Retrieved from: <http://www.commonwealthwriters.org/facing-the-mediterranean-part-3/>.

Under UN refugee policy as an at-risk group, LGBT people in refugee camps, particularly in countries where there are criminal code laws against same-sex intimacy, should be among those selected from refugee camps and resettled, including being brought to Canada.²⁰ In reality, however, accessing that protection is extremely difficult. For a good number of LGBT refugees the act of coming out may intensify the danger they are in, including the very real risk of a confidentiality leak – while at the same time the longer they are in the refugee camp the more chance there is of being identified as LGBT and subject to violence.

“Imagine that you spend your entire life living in a place where being LGBT is heavily stigmatized and probably criminalized. So you’ve hidden your identity your entire life and it’s something for which you can be thrown in prison, you can be killed. How on earth are you going to know that now that you’re in another country where it’s also criminalized, you can ask yet another state halfway around the world to protect you because you are gay.... it’s very rare for somebody to claim refugee status overseas, based on sexual orientation.”²¹

Canada is one of 42 states that have granted asylum to individuals on the basis of persecution owing to sexual orientation or gender identity, and it has a history of being a world leader in progressive asylum policy.²² However, recent developments suggest that rather than increasing or maintaining protection for refugees, Canada is becoming decidedly unwelcoming.²³ According to UNHCR, Canada’s ranking of receiving asylum claims (among industrialized nations) slipped from 5th in 2010 to 15th in 2014. The number of asylum claims received in 2012 was 20,500; in 2013 it dropped by half to 10,380; and in 2014 it was 13,450.²⁴

The research for this report has been conducted during a period in which significant changes were implemented to Canada’s asylum and refugee determination process. Bill C-31 took effect in December 2012 and is now enforced as the Protecting Canada’s Immigration System Act.²⁵ The Act resulted in a number of changes with significant negative impacts on refugees and immigrants.²⁶ These changes have also had a particular and disproportionately negative impact on LGBT claimants. We hope this report and recommendations will provide useful information and analysis to address the issues identified through this research.

20 “Resettlement may be the only viable durable solution for LGBTI refugees facing intolerance and heightened risk in countries of first asylum, and emergency processing or evacuation may be required as lengthy processing can exacerbate the security risks.” UNHCR Resettlement Handbook, p 200. <http://www.unhcr.org/4a2ccf4c6.html>

21 Wyrzykowski, P. (2014). *Is Canada a Safe Haven for Refugees?* Envisioning Panel Speaker: World Pride Human Rights Conference. Toronto, ON.

22 UNHRC Annual Report. (May 2014): UN Human Rights Council. Human Rights Council Twenty-ninth session Agenda items 2 and 8 Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General.

23 Soennecken, D. (2014). “Shifting Up and Back: The European Turn in Canadian Refugee Policy. CMS 2 (1): 101-122 DOI: 10.5117/CMS2014.1.SOEN.

24 UNHCR Asylum Trends 2014, Levels and Trends in Industrialized Countries. (2015) www.unhcr.org

25 Bill C-31: *An Act to amend the Immigration and Refugee Protection Act, the Balanced Refugee Reform Act, the Marine Transportation Security Act and the Department of Citizenship and Immigration Act, 2012, c17(60-61)*, online: <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5697417&File=24>.

26 No One is Illegal Vancouver Unceded Coast Salish Territories. (2015). Never Home: Legislating Discrimination in Canadian Immigration Retrieved from: <http://neverhome.ca>

Is Canada a Safe Haven?

The Envisioning Global LGBT Human Rights research sought to consider how homo-bi-transphobia are represented and reflected not only in the social, political and legal structures of the countries where LGBT refugees originate, but also in Canadian social, political and legal structures. Homo-bi-transphobia intersects with discrimination based on different categories of identity (race, gender, class, ability, religion and others) to create deeply personalized and complex experiences. These issues must be addressed in considering to what extent LGBT refugees can find a safe haven in Canada.

With regard to racism, it is noteworthy that of the 92 refugee participants in this study 68% self-identified as Black and another 14% self-identified as members of groups that are considered racialized in Canada. Examples of the systemic racism that face them in Canada are provided in the literature review *Colour Coded Health Care*.²⁷

“Researchers have documented evidence of racist discourse in Canada’s English-language press (Tator & Henry, 2002), racial inequities in Canadian education and jurisprudence (Razack, 1998, 2002), racially unjust immigration policies (Calliste, 1993, 2000; Stasiulis & Bakan, 2003), racial profiling and racist policing (Tator & Henry, 2006), and other indications of racial injustice too numerous to mention.”

This report suggests a number of recommendations that can be used to develop policies and assist service providers who work with LGBT refugees and refugee claimants to address intersections of oppression. It also points to the need for a larger vision of systemic change and social justice.

As well, it is important to acknowledge the resilience, persistence, and successes of LGBT asylum seekers. The report includes multiple voices of asylum seekers, and seeks to expose both the challenges they face as well as the resilience they demonstrate through their journey to find safe haven in the face of egregious human rights violations.

Note on Terminology:

The Canadian refugee protection system uses the term “refugee claimants” for persons whose claim has not yet been decided and “refugees” or “Convention refugees” for those who have been accepted. However, within the settlement sector many people use the term “refugee” to refer to anyone who has fled their country to escape persecution, regardless of their status in Canada. This report follows the latter practice. “Asylum seekers” is another term used internationally.

27 Nestel, S. (2012). *Colour Coded Health Care: The Impact of Race and Racism on Canadians’ Health*. Wellesley Institute. Toronto, ON.

Research Process and Methodology

This report summarizes the research undertaken by the Envisioning Global LGBT Human Rights Canada Research Team from 2012-2014. It focuses on the following issues:

- 1) Emergent trends and root causes of forced migration of LGBT people
- 2) How changes implemented under the Protecting Canada's Immigration System Act have impacted LGBT refugees
- 3) Experiences and obstacles for LGBT refugees in navigating the system: from arrival in Canada, through the claims process, to accessing services and settling in Canada
- 4) Issues of safety and security, settlement, oppression/violence, identities, health and mental health
- 5) Experiences of service providers who work with LGBT refugees, and how and to what extent the needs of refugee claimants are being met by community agencies and services
- 6) How the Immigration and Refugee Board of Canada (IRB) addresses specific issues that arise with LGBT refugee claims

This report is one of a number of outcomes from the Envisioning project's research on LGBT refugee claimants in Canada. To initiate the work, the Canada Research Team convened a roundtable in Toronto with agencies that serve LGBT refugees and refugee claimants, to engage the broader community working with LGBT refugees, consult on what areas of research were needed, and inform and guide the research goals.

The roundtable report, *Envisioning LGBT Refugee Rights in Canada: Exploring Asylum Issues* was published in June 2012. It identified a number of areas where research was needed on LGBT refugee issues, including: i) the experiences of LGBT refugees and obstacles that they encounter, ii) the legal and social service contexts that affect LGBT refugee claimants, iii) the impact of changes to Canada's immigration and refugee policy and law during this period,

and iv) the need to raise awareness about the impact of these legal and policy changes with refugee claimants, service agencies, the general public and public policy administrators.

In response to the fourth recommendation, Envisioning Global LGBT Human Rights published its second report, *Envisioning LGBT Refugee Rights in Canada: The Impact of Canada's New Immigration Regime* in June 2014. The report focused specifically on the implementation of Bill C-31 and the impact of the resulting Protecting Canada's Immigration System Act on LGBT refugees in Canada. It was based on research conducted between October 2013 and June 2014.

In January 2015 Envisioning released three information sheets:

- 1) "Making an LGBTI Refugee Protection Claim in Canada" contains information and resources on the claims process, both general and specific to LGBT persons. This sheet is available in English, French, Arabic, Russian and Spanish.
- 2) "Mental Health Challenges for LGBT refugees in Canada" surveys common stressors and resulting mental health challenges.
- 3) "Lesbian and Gay Refugee Issues: A Review of Federal Court Jurisprudence" contains an outline of Canadian Federal Court appeal decisions over the past 10 years that have overturned rejections of lesbian and gay asylum claims.

This report, *Envisioning LGBT Refugee Rights in Canada: Is Canada a Safe Haven?*, is Envisioning's third and final report on LGBT asylum. It presents an analysis of the data collected between June 2012 and May 2014 in focus groups with LGBT refugees on their experiences and the obstacles they face, together with research data collected through key informant interviews with service providers, professionals and organizations who work closely with LGBT refugees.



J-FLAG and Envisioning Caribbean Research Team, Emancipation Square, Kingston, Jamaica, 2013.

Participatory Action Research

The research methodologies and activities for this research were developed through an extensive participatory process informed by participatory action research. The most important factor in participatory action research is the development of a collaborative relationship between community-based research participants and partners and academic-based researchers, to produce knowledge for the benefit of the community that the research is based on.²⁸ This has the potential to create outcomes, recommendations and knowledge that can be used to improve both community services and public policies. This methodology has guided the Envisioning Global LGBT Human Rights team.

This collaborative effort involved all at the table contributing to research design, surveying

and prioritizing issues, drafting questions, coordinating and facilitating focus groups and interviews, monitoring and discussing effects of legislative and policy changes on the settlement sector and its service recipients and discussion of developments in refugee processes and immigration laws.

Community researchers and partners brought different skills and expertise to the table—while some partners were directly involved with settlement services serving LGBT refugees, other partners brought expertise in LGBT health, refugee and immigration services, and contemporary developments in national and international LGBT issues. This structure provided an opportunity to share knowledge and to assess our work on an ongoing basis. Students associated with the project worked alongside academic researchers and community partners and researchers, gaining research

28 Nicol, N., Gates-Gasse, E., & Mulé, N. (2014). Envisioning Global LGBT Human Rights: Strategic Alliances to Advance Knowledge and Social Change. *Scholarly and Research Communication*, 5(3): Toronto, ON.

skills as well as concrete experience with community based knowledge and challenges faced by community partners.

Community partners provided crucial access to vulnerable populations that would have otherwise been very difficult to reach. They hosted, facilitated and participated in focus groups with asylum seekers, provided crucial follow-up, and identified culturally specific mechanisms for counselling and support in the event that participation in the research triggered painful memories.

During the design of the study and the drafting of the questions (available in the appendices of this report), the goal was to foster collaborative exchange between the frontline experiences of the community partners and the critical analysis of the new Protecting Canada's Immigration System Act provided by the community based, professional and academic members of the team. Nonetheless, differences between and among academic and community-based researchers were often felt, and it is important to acknowledge the varying experience, work-based expectations, priorities and access to resources of these groups in conducting the research. Such differences created power imbalances and challenges that required self-awareness, on-going dialogue, focus and support to team members to sustain the goals of the research project.

The project sought to implement an integrated anti-oppressive research model that recognizes different forms of oppression and exploitation in relation to sexual orientation, gender identity and gender expression. Through the participation of diverse ethno-cultural community partners in all aspects of the research, the project sought to gain insights into the particular experiences and obstacles LGBT refugees encountered from different contexts and experiences, and to share those insights across the research project. Through this approach the project also sought

to not impose identity makers (such as LGBT), or assumptions of normalized heterosexuality and minoritized homosexuality on diverse forms of same-gender eroticism and gendered identities.

The intersection of ethno-cultural diversity with sexual orientation and gender identity in a context of structural inequity is a complex territory, particularly when researching a highly vulnerable group of people from vastly different backgrounds and experiences. LGBT people exist within every country, community, identity group, faith and context; and people from all those groups exist within LGBT communities. Moreover different forms of oppression (racism, sexism, homo-bi-transphobia) are interconnected and reflect the experiences of multiple forms of discrimination.²⁹

The challenges encountered by participants in this research study reflect the way in which laws, policies and services continually reinforce and support intersecting forms of oppression.

Through an intersectional analysis a person's experience may be considered as a whole, not merely as a string of characteristics. Learning from the personal struggles, as well as the achievements of refugee claimants, is necessary in order to develop policies and services which can effectively challenge discrimination and oppression.

As the research progressed, knowledge mobilization strategies were discussed and community partners contributed extensively to community outreach utilizing their networks and resources. Community partners and researchers alongside academic and student members of the research team contributed to dissemination of preliminary results at public forums and conferences. All research outcomes, including all three reports and fact sheets, were widely distributed and are available on the Envisioning website at: www.envisioninglgbt.com.

29 Collins, P. (1990). "Learning Form the Outsider Within: The Sociological Significance of Black Feminist Thought". In *Beyond Methodology: Feminist Scholarship as Lived Research*. Eds. Fonow and Cook. Indiana University Press.

Data Collection: Focus Groups and Interviews

A total of 92 refugees participated in the study. Twenty-one focus groups were conducted between 2012 and 2014. Sixteen of the focus groups and one individual interview were with LGBT refugee claimants (for a total of 17). There were seven focus groups with pre-hearing claimants, eight with post-hearing claimants, and two with both pre and post-hearing claimants.

The remaining four focus groups were held with community service providers, who identified themselves as being employed in various roles within their organizations (i.e. directors, settlement workers, counsellors, refugee service coordinators, health workers, youth workers and advocates). Community and other organizations represented in this study are: Access Alliance Multicultural Health and Community Services, Alliance for South Asian AIDS Prevention, Black Coalition for AIDS Prevention, Canadian Centre for Victims of Torture, Cross Cultural Learning Centre, FCJ Refugee Centre, Metropolitan Community Church Toronto, Rainbow Health Ontario, Supporting Our Youth, The 519, West Neighbourhood House (formerly St. Christopher House), and Women's College Hospital.

All of the participants in this study were asked to review and sign consent forms that stated the purpose of Envisioning's research, informed them how their narratives would be used in this project, and stated that the research would be anonymous. The forms and procedures were in accordance with the ethics approval the study received from the York University Research Ethics Board, which is in compliance with the Tri-Council Policy Statement on Research Involving Human Participants.

Refugee claimants were asked to complete a demographic form where they were asked to self-identify themselves under the following categories: Birth Country; Language (Spoken); Gender Identity; Sexual Identity; Ethnic and/or Racial Identity; Age. Refugee Claimants were also asked when they arrived in Canada, what year and

month they started the refugee process, whether they made a Port of Entry or Inland claim, and, if applicable, when the process was completed.

The charts below provide a summary of the data collected on these forms. Please note, some participants did not complete entire forms. In several cases, participants chose to self-identify by selecting multiple terms under each category (therefore the percentage totals may not equal 100%). Some participants also chose to describe themselves by selecting the option to write in their own category of identity (i.e. under Ethnic and/or Racial Identities some participants chose to self-identify as multi-racial).

Categories such as Ethnic and/or Racial Identity, Sexual Identity and Gender Identity are complex and can be controversial. Gaining an overview of the identities of the participants was important in order to consider the types of discrimination they face, such as racism. The research team sought to work within the categories that are most often used in the refugee claims process, and the demographic form was developed using resources from Envisioning community partner, The 519.

The majority of the refugee claimants who participated in this study came from Uganda (15), Jamaica (13), Nigeria (12), Saint Lucia (8), the Bahamas (7), Barbados (4) and Russia (4). There were 2 participants from each of the following countries: Antigua, Turkey, St. Kitts, Cameroon, Trinidad and Tobago and 1 participant each from Iran, Namibia, India, Suriname, China, Swaziland, Grenada, Guyana, Bahrain, Gambia, Egypt, Djibouti and St. Vincent and Grenadines.

A total of 46 participants identified their first language spoken at home to be English. 8 participants listed Luganda and 7 reported Yoruba. 5 participants spoke Rukigra, 4 spoke Russian and 3 spoke Turkish. Patois, Creole, Edo and Arabic were identified by 2 participants each. Farsi, Spanish, Afrikaans, Kashmiri, Somali, Tamil, Chinese, Swati, Igbo and Luo were identified by 1 participant each.

Table A: Gender Identities of Refugee Claimants

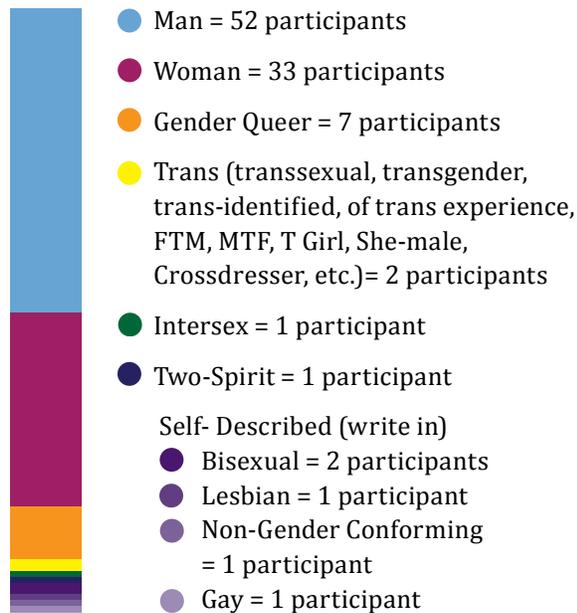


Table B: Sexual Identities of Refugee Claimants

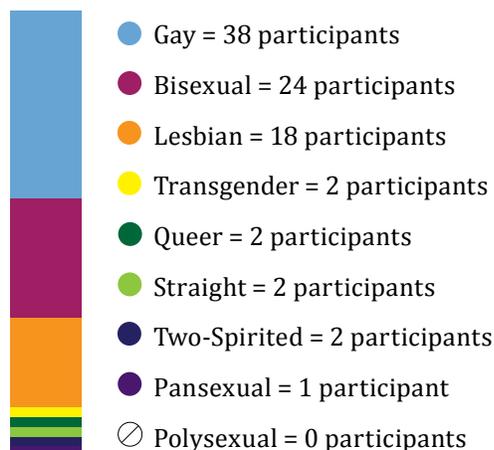


Table C: Ethnic and/or Racial Identities of Refugee Claimants

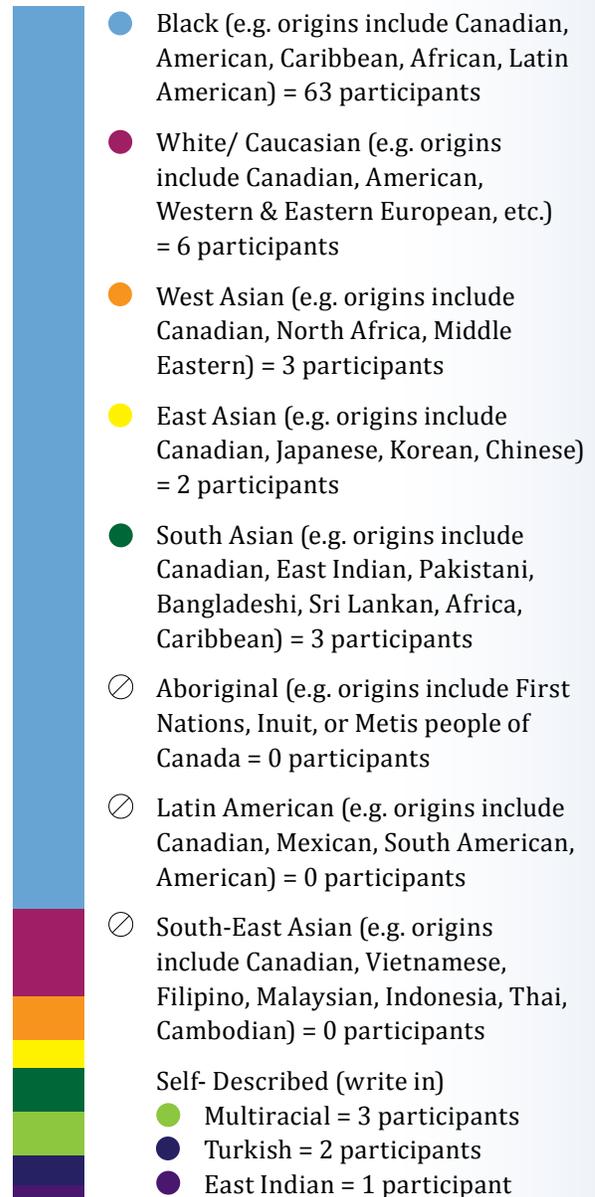
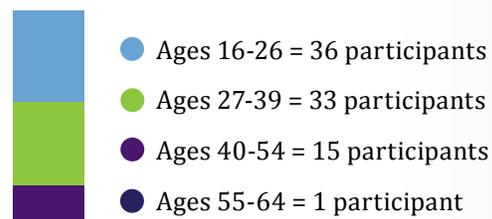


Table D: Ages of Refugee Claimants



Research Findings

The findings of this research have been summarized under four areas: 1) arrival in Canada and claiming asylum; 2) settlement in Canada, 3) service providers' experiences, and 4) perspectives from an interview conducted with representatives of the Immigration and Refugee Board (IRB).

Arrival in Canada and Claiming Asylum

Experiences of Arriving in Canada

Several participants spoke about their lack of knowledge about Canada and about the refugee claim process. Many participants spoke about the fear and anxiety they experienced when they made their initial asylum claim at their port of entry (Toronto's Pearson Airport). For example, one participant spoke about his sense of insecurity meeting Border Control Officers:

"He was asking me questions, like, 'why are you here? Why did you make the claim?' I didn't really look into their eyes... because when I saw that they were very intimidating...they were asking me stuff like I was a criminal back home."

For many refugee claimants, fears of detention and deportation were also a significant source of anxiety and often made it difficult for them to look past their arrival and consider the challenges they would encounter while resettling in the GTA.

One participant told a story of arrival in which the stresses that are built into the system almost led to the exact opposite of asylum: sending a bisexual activist back to their country:

"When I came to Toronto, I didn't know anyone. But here I was at the airport and they asked me where I was going. I said I was going to a conference. They said, 'but you're here [and] it's in Vancouver'.... They said 'That's not possible. Why didn't you go straight?' But I said 'I have a right'. So the lady took me on and said 'You are going back to your country'... I was like what's this? What is happening? It was really hard. But later on she said, 'You look stressed. What's your problem? Will you please tell me what's happening? Why are you here? Tell me the truth. I don't want a lie.' But because I come from Africa, you're too shy. You keep to yourself. And I was coming from a group that was not accepted in my country. She said 'Please tell me. Feel free. Otherwise you are boarding the next plane'. It took me time to tell her the truth. I told her 'I am seeking for asylum. I fled my country. I'm a gay activist and a bisexual'."

In this situation, the official at the airport sensed that the traveler was keeping something back. She took the time to provide a full explanation, give reassurance and push for the truth. Sensitivity was necessary to overcome the traveler's shyness and reluctance to say what she could not in her country of origin. This is a model for all frontline border officials.

For many participants, experiences of racialization intersected with their experiences of sexual identity and gender identity discrimination. A transsexual participant spoke about encountering Islamophobia on arrival in Canada, and related it to the global aftermath of 9/11:

"I come from Arab country and I also have history of military services so it was one of the things. It was like oh God, you know, first of all, you not going to believe that is me on the passport, you know, because I look quite

different than I do in my passport photograph ... And I said you know I'm transsexual man... this woman came and she took my finger prints and my picture...she was like, 'do you come from a religious family'? [I realized] the consequences of 9/11 was going down on me."

Another participant spoke about the racism and stigma attached to arriving from certain countries:

"For me I was very afraid, because you know the stigma coming out from Jamaica.... You can be treated very badly...they are going to say 'oh Jesus another Jamaican', and we are bunch of crooks and we are bunch of whatever you call, con artist, or whatever. We have a reputation of always trying to run a racket. But as gay person, it, it is life and death for us."

The Claims Process

When a person makes a claim for protection, the Canada Border Services Agency (CBSA) determines if they are eligible to make a claim. Eligible claimants are then assessed by the Refugee Protection Division of the Immigration and Refugee Board (IRB). An IRB official decides whether the claimant meets the definition of "refugee" set out in the UN *Convention Relating to the Status of Refugees*.

The Protecting Canada's Immigration System Act, which came into effect on December 15, 2012 instituted a number of changes which all have particular impacts for LGBT refugees, including:

- 1) A two-tiered system based on a Designated Country of Origin (DCO) list
- 2) Significantly shortened timelines for the refugee determination process
- 3) Restrictions on Pre-Removal Risk Assessment (PRRA), and Humanitarian and Compassionate Consideration.

Prior to the implementation of the Protecting Canada's Immigration System Act, refugee claimants had 28 days from making a claim at a port of entry to submit their Personal Information Form (PIF), which explains a claimant's story and is crucial in establishing credibility. As well, during this same timeframe, refugee claimants also need to find a lawyer (while not mandatory, some form of legal representation is strongly recommended), secure financial assistance if necessary, and gather the required documentation and evidence to support their claim.

However, under the new law, claimants now have only 15 days to submit their statement, re-named Basis of Claim (BOC), and to complete these steps. For those claimants making inland claims this timeframe can be even shorter.³⁰ The research indicates that these time restrictions severely limit a claimant's ability to gather evidence to support their claim and prepare for their hearing.

Designated Countries of Origin

Included in the changes is implementation of the designated countries of origin (DCO) list. The DCO list is comprised of countries that are considered by the Minister of Citizenship and Immigration to respect human rights and offer state protection and which "do not normally produce refugees." According to the Government of Canada's Immigration and Citizenship website, "The aim of the DCO policy is to deter abuse of the refugee system by people who come from countries generally considered safe."³¹

However, even though a country is on the DCO list, there may still be persecution against a particular minority and extremely dangerous conditions. In the case of persecution on the grounds of sexual orientation and gender identity, it is important to recognize that the existence of legal prohibitions

30 Inland claims are refugee claims made at a Citizenship and Immigration (CIC) office in Canada. A port of entry (POE) claim is made at a land border crossing, airport or seaport.

31 Citizenship and Immigration Canada (CIC). (2014). *Designated Countries of Origin*. Retrieved from <http://www.cic.gc.ca/english/refugees/reform-safe.asp>.

is not sufficient to understand anti-LGBT human rights violations and persecution. There can be a significant disconnect between official state policy and social tolerance for LGBT people which may present very real dangers for LGBT minorities. Some countries where homosexuality is not criminalized still have high incidences of violence against people on the grounds of their sexual orientation and/or gender identity and expression.

All claimants have only 15 days to file their BOC. Hearings for claimants from non-DCO countries must take place within 60 days of starting their claim for Port of Entry (POE) claims and 45 days for Inland claims. These short timelines pose particular hardships for LGBT claimants in gathering the supporting documentation that they need. For claimants from DCO countries, the timeline is even shorter. The hearing must take place within 45 days for POE claims and 30 days for Inland claims. Under the previous system, the timeline for the hearing was a maximum of two years.

Refugee claimants from DCOs are also restricted from being given work permits while a decision is being made about their claim. If a claimant does not receive a decision in 180 days after their hearing, they are then eligible for a work permit for the duration of their wait.³² This work permit is only valid for 6 months, compared to 12 months for other claimants.

The accelerated timelines deny access to a fair process for all refugee claimants, and this is even more of an issue for applicants from DCO countries since they are rushed through the claim process. LGBT refugees are disproportionately negatively impacted. Claimants from a DCO were also denied eligibility for certain procedural protections, such as the Refugee Appeals Division, a

basic right afforded to claimants under the determination system for non-DCO countries.³³ However, on July 23, 2015 in the case, *Y.Z. v. Canada (Citizenship and Immigration)*, the Federal Court ruled that the DCO violates the charter rights of refugee applicants who come from DCO countries by denying them access to appeals. As Justice Keith M. Boswell wrote:

“The distinction drawn between the procedural advantage now accorded to non-DCO refugee claimants and the disadvantage suffered by DCO refugee claimants...is discriminatory on its face. It also serves to further marginalize, prejudice, and stereotype refugee claimants from DCO countries which are generally considered safe and ‘non-refugee producing’. Moreover, it perpetuates a stereotype that refugee claimants from DCO countries are somehow queue-jumpers or ‘bogus’ claimants who only come here to take advantage of Canada’s refugee system.”³⁴

As a result of this ruling, all failed DCO refugee claimants are now entitled to appeal negative decisions at the IRB’s Refugee Appeal Division (RAD).

Notably, the three applicants who successfully challenged the constitutionality of the DCO policy identified as LGBT persons: a gay man from Croatia fearing persecution as a Serb and because of his sexual orientation, and a gay couple from Hungary whose fear was based on their sexual orientation and the fact that one is also a national of Romania. Although the refugee protection division had initially found their claims credible, they were all denied refugee status on the basis of their national origins (Croatia, Hungary and Romania) as they are considered safe countries.

32 Citizenship and Immigration Canada (CIC). (2014). *Designated Countries of Origin*. Retrieved from <http://www.cic.gc.ca/english/refugees/reform-safe.asp>.

33 Canadian Association of Refugee Lawyers (CARL). (2012, December 14). Designated Country of Origin Scheme is Arbitrary, Unfair, and Unconstitutional. Retrieved from: <http://www.carl-acaadr.ca/our-work/issues/DCO>.

34 *Y.Z. v. Canada (Citizenship and Immigration)*. S.C. 2015

Proving Identity

The Canadian government recognizes persecution based on sexual orientation and gender identity (SOGI), yet it demands additional evidence in order to be able to administer such a claim. LGBT refugees are required to provide documentation not only of persecution but also ‘proof’ of their sexual orientation and/or gender identity. To do so they may provide police reports, medical files or other forms of testimonies, all of which can be extremely difficult or impossible to obtain.

Not all refugee claimants have access to the kinds of information needed to prove their sexual orientation or gender identity due to persecution in their home country, lack of a supportive community or family support, and lack of access to resources. Moreover, there is a scarcity or absence of reports or documentation of abuses of LGBT people, particularly on LBT people.³⁵ Research indicates particular obstacles that suggest that bisexuality may be poorly understood by refugee decision makers.³⁶

At present, there is disproportionate emphasis on ‘credibility’ and the onus is on LGBT claimants to produce highly personal evidence to substantiate their SOGI status. This can be very intrusive as well as an affront to dignity, particularly given cultural contexts for many people. As well, this is highly inequitable and creates an additional burden for the claimant, where LGBT refugees feel compelled to ask sexual partners or family members to provide letters. The experience can be highly traumatizing and trigger painful memories. As one participant stated:

“To me like... to write up your story... it’s very painful and someone said you’re...I think you’re supposed to have more time to fill out your PIF. And the way they have it you write an entire story, to me it’s very painful because you have to try to live it over.”

Prior to their arrival in Canada, many of the LGBT refugee claimants in this study lived lives of silence and social isolation due to discrimination and fear of persecution. UNHCR Guideline No. 9, on refugee claims based on sexual orientation and/or gender identity, notes that LGBT individuals frequently keep “parts of their lives secret” and that may also result in “significant psychological and other harms”.³⁷ Envisioning’s 2014 report recommended that “Canada’s refugee regime should be brought into compliance with international standards, particularly in regard to UNHCR Guideline No. 9 from 2012.”³⁸

The immigration and refugee regime throws newcomers grappling with identity issues, that may extend to deeply private matters, into highly stressful situations where their identity must be demonstrated. As one of the participants noted:

“You just got here, you’re still traumatized, then you haven’t got rest. You’re still worried, where do I go from here? You know no one, and nothing, then you have this officer right in front of you...and you’re still traumatized about everything that happened. I think, I can say what I’m running away from and stuff, but it won’t be as clear as when I’m talking to someone after I’ve relaxed and someone that I trust.”

35 Amnesty International, *Crimes of Hate, Conspiracy of Silence: Torture and Ill-Treatment Based on Sexual Identity* (London: Amnesty International 2001).

36 Rehaag, S. (2008). Patrolling the Borders of Sexual Orientation: Bisexual refugee claims in Canada. 53 *McGill Law Journal* 59; Rehaag, S. (2009). Bisexuals Need Not Apply: A comparative appraisal of refugee law and policy in Canada, the United States, and Australia. 13 *International Journal of Human Rights* 415.

37 UNHCR Guidelines on International Protection No. 9 (2012) Concealment of sexual orientation and/or gender identity. Retrieved from: <http://www.unhcr.org/50ae466f9.pdf>

38 Envisioning Global LGBT Human Rights (2014) *Envisioning LGBT Refugee Rights in Canada: The Impact of Canada’s New Immigration Regime*

Moreover, stereotypical, uninformed or Eurocentric conceptions of LGBT identity continue to be a problem in assessing LGBT asylum claims. LGBT asylum seekers coming from the Global South do not necessarily identify with or have knowledge of terminology understood in the West. As well, individuals may accept or reject particular labels as representative of their identities or experiences.

Lidstone notes, “the identity categories of lesbian, gay, bisexual and transgender emerged from...an Euro-American or Western context to dominate global discussions of sexual and gender difference” and therefore may not resonate or be recognizable to some refugee claimants.³⁹ As well, according to Valentine, “the distinction between sexual orientation (homosexual, heterosexual, bisexual) and gender identity (transsexual or transgender) is itself a relatively recent invention.”⁴⁰

The complexity of this process also places service providers in a very problematic position. Two participants explained:

“We are in fact perpetuating the binary of gay or LGBT community having to prove themselves. The question is never asked of a straight couple what your sexual orientation is and so something has already been predefined as normative and you have to prove it...even for the policy makers, the very attempt to ask for a letter to prove that somebody belongs to an LGBT community or not, there could be huge issues. Especially coming from India, I can explain HUGE issues where people do not want to be seen or identified as one, but too suffer persecution.... What purpose is it going to serve? We have to be careful if it's going to be counterproductive in the end for getting those letters.”

“I do understand the issues of putting yourself in boxes, as well I mean how do you prove [sexual orientation or gender identity]? But at the same time though that's the system that you're dealing with, so are you setting your client up for failure if you don't prove...How will you be able to do that because that's the language that the authority understands?”

LGBT refugees cannot claim asylum simply because they are LGBT, but because they are persecuted based on this identity. The central question for a decision-maker should therefore be proving the threat of persecution, and not proving identity.

Moreover, international jurisprudence has examined the practice of asking for proof of identity based on sexual orientation or gender identity in light of the potential to violate human rights. For example, on December 2, 2014, the European Court of Justice⁴¹ ruled on appeals from three gay Africans seeking asylum in the Netherlands. The Court held that “human rights law there bars officials attempting to determine whether the applicants are in fact gay from basing their inquiry on homosexual stereotypes, from asking detailed questions about sexual practices, from requiring them to submit to ‘tests’ to establish their homosexuality or to provide evidence such as films of them engaging in homosexual conduct. The court also found it is inappropriate to decide that applicants are not credible merely because they did not declare their sexual orientation in their first encounter with authorities.”⁴²

39 Lidstone, R., Jordan, S., Bahreini, R. (2010). LGBT (Lesbian, Gay, Bisexual, Transgender) Refugees and Sexual Orientation / Gender Identity Asylum: An Annotated Bibliography of Selected Legal and Social Scientific Publications. Compiled for the Gender and Sexuality Working Group of the Refugee Research Network. Toronto, ON.

40 Valentine, D. (2007) *Imagining Transgender: Ethnography of a Category*. Durham, NC: Duke University Press.

41 Judgement of the European Court of Justice (2014, December 2). Retrieved online from: <http://curia.europa.eu/juris/document/document.jsf?docid=160244&doclang=en>.

42 Leonard, A. (2014). “Gay Asylum Claims Made Easier by European Court Ruling. Retrieved from: <http://gaycitynews.nyc/gay-asylum-claims-made-easier-european-court-ruling/>

Impact of the Claims Process and Accelerated Timelines

Refugees who make claims based on persecution of their sexual orientation or gender identity and/or expression have often lived in defiance of or hiding from social pressures, stigma, and violence in their home countries. As several service providers noted, the claim process itself can make LGBT refugees feel persecuted and/or threatened:

“You feel like you are being persecuted, proving yourself. But there’s a constant fear that once it gets rejected you have openly declared as LGBT and you will be deported back to your country...once you’ve declared yourself and you go back, you know you are going to face persecution.”

For many refugee claimants the process is a major source of anxiety and fear:

“Even the morning of the hearing I swear in my head I used the bathroom like twenty times and I haven’t been there, I was just so nervous y’know? And, but my lawyer was there. He said to relax, but it’s still nervous because you’re hearing all these remarks about the new system because it gives you less time for preparation.”

Focus group participants in this research spoke extensively about the lasting impact that the process has on their mental health, experiences of oppression, sense of security and ability to handle past traumas, issues which are exacerbated by the accelerated timelines.

As well, the shortened timelines contribute to significant barriers that claimants face in obtaining documents necessary to substantiate their claim. One participant raised concerns with regard to the impact on transgender and transsexual refugees of the shortened timelines, as follows:

“In the beginning of August I arrived and got to my doctor ... the beginning of October. And he ...managed to give a letter, stating my diagnosis, and, but that is not enough see, because for transsexuals you have to go through with CAMH [Centre for Addiction and Mental Health]. I have been on the waiting list for CAMH for a year and three months and I just went to see them for my first appointment... So it’s like, how could you do all of that in a month if you are transsexual. You can’t, you know. So it’s really depended on you, for example for me, not bring[ing] any medical records from my country because my doctor would not even give it to me, because he could lose his licenses... I even try to contact him through somebody else and he still refused to give it.”

UNHCR Guideline No. 9 mentions that, “Due to their often complex nature, claims based on sexual orientation and/or gender identity are generally unsuited to accelerated processing or the application of ‘safe country of origin’ concepts”.⁴³

43 UNHCR Guidelines on International Protection No. 9 (2012) (para.59) <http://www.unhcr.org/50ae466f9.pdf>

Fleeing Violence, Seeking Security



Desmond from St Lucia: "One thing I've said to my mom.. for me to be living in St Lucia and having her to bury me, I'm seeing it's one of the hardest things a parent have to do, which is one of the initial reasons I said it's better for me to find somewhere safe where I can be me than to have my mom go through this kind of problem. Because I saw what it was for my friend's parents to go through after their death. I didn't want to put my family in this." Capturing LGBT Migration from the Caribbean to Canada, a photo-essay by Ulleli Verbeke (SASOD Guyana and Envisioning Global LGBT Human Rights)

The majority of the participants spoke openly about persecution and violence they had experienced and/or witnessed at home and which had led to their decision to flee their home to seek asylum elsewhere:

"I mean, I am aware of members who have been beaten, who have been stabbed, whose hands have been cut, who are currently dead. And I mean some situations can be made to look like a suicide, some situations you can see it point blank, the brutality of the beating, of the violence involved."

Many participants experienced physical incidents of violence. Most also experienced structural forms of violence that contributed to their decision to seek asylum:

"I've known people who have lost their jobs when it was discovered that they're gay." ⁴⁴

Similarly to the refugee claimants, service providers also identified 'safety' and 'security' as a major issue. While refugee claimants often expressed beliefs that their initial feelings of insecurity and fear would subside with time, many service providers described how the current political and social conditions in Canada, including the impact of the implementation of the Protecting Canada's Immigration System Act, lack of funding and community resources, and systemic discrimination around racialized and sexualized identities, contribute to ongoing experiences of insecurity for many refugees. As one service provider noted:

"People are afraid, very afraid of the changes and they know that the changes are coming not to make things better - but they are afraid not just about these changes but for the next ones, because they just feel like they are losing rights."

LGBT people seek asylum under conditions of considerable distress. According to a 2009 study, 45% of lesbians and 24% of gay men reported in their refugee claim in Canada physical and or sexual violence and assault.⁴⁵ Many LGBT refugees have spent their entire lives hiding their sexual or gender identity. Requiring claimants to document, record and reveal this information and/or experiences of trauma in such a short time frame can create extreme levels of anxiety and stress. One transsexual participant in our study noted:

"I [felt] completely naked. I felt stripped ... especially for me because I'm transsexual... So I felt that he was, I was telling him what was under my clothes. And I didn't need to tell him all that, and I didn't need to tell anyone. I mean I didn't need to tell you I was transsexual... I had to view it in a sense that, you know, this is what they are going to know and this is what they have to know, so for me to be safe."

44 Structural violence refers to the ways in which social structures (i.e. political, economic, legal, and social systems) prevent people from fulfilling their basic needs.

45 Millbank, J. (2007). Constructing the Personal Narratives of Lesbian, Gay and Bisexual Asylum Claimants. *Journal of Refugee Studies*, 22:1. Toronto, ON.



A and H, from Jamaica: "The only stories that make headline news in Jamaica about lesbian women are the dead ones. Only those who end up dead. The ones who get raped, you never hear anything about. You hear about it at a gay party that you attend, or a gay friend that you know says, you know this happened to this person." Capturing LGBT Migration from the Caribbean to Canada, a photo-essay by Ulleli Verbeke (SASOD Guyana and Envisioning Global LGBT Human Rights)

By requiring claimants to label and prove an often hidden and stigmatized identity, Canada's claims process requires applicants to disclose deeply intimate and at times traumatic experiences. For LGBT refugees, whose survival has typically required being cautious about who they reveal themselves to, the disclosure of this information can be very difficult or impossible. By asking claimants to reveal these experiences, Canada's refugee system neglects to acknowledge how being vigilant, cautious with trust and remaining hidden are survival tactics that do not disappear upon a claimant's arrival. As a result, undertaking a refugee claim is often difficult and precarious for LGBT refugee claimants.

While many participants spoke critically about how the asylum process itself contributes to refugees' ongoing feelings of fear and insecurity, other participants spoke at length about how their arrival and settlement in Canada made them feel safer:

"When I came, I saw people were free. They were free to be themselves, actually enjoy

it...one of the ladies walked me to The 519 [community centre whose programs serve the LGBT community]...this helped...to keep a long story short, am I safe? Yeah."

Claimants with Spouses and/or Children

Canadian immigration law allows for sponsorship of spouses, including same-sex spouses. Same-sex partners may be recognized as conjugal spouses under common law in Canada even where their country of origin does not recognize same-sex relationships or same-sex marriage. The problem however becomes how to prove that the relationship is a 'true' relationship, given that many same-sex couples seeking asylum in Canada may have never lived together due to persecution.

There are other challenges in proving that a same-sex spousal relationship is genuine. Some refugees may have been or are currently in a heterosexual marriage, or have children through heterosexual marriage, due to cultural, societal and family pressures in their home country. In

a recent book on African sexualities, a chapter by Notisha Massaquoi provides insights on this issue, including this interview with a gay refugee from Uganda:

“I am appealing. My claim was denied in 2006. I was told that I was not believed to be gay since I have six children. How can an African man of forty-six years not have children? My father had ten children by the time he was my age. A man with no children will not be taken seriously...It has nothing to do with being gay.”⁴⁶

As well, there is a stereotype that lesbian and gay refugees do not have children and that having a child may cast doubt on the credibility of their claim to be gay or lesbian - even though LGBT families have gained visibility, legal rights and recognition in Canada.

Access to Information and Services in the Claims Process



Dud, from Guyana. “I totally empathize with people’s plights while they’re living there. That’s why I can never, ever go back...I just felt the country take so many steps forward, now they take so many steps backwards. I felt totally disappointed.”
Capturing LGBT Migration from the Caribbean to Canada, a photo-essay by Ulleli Verbeke (SASOD Guyana and Envisioning Global LGBT Human Rights)

Refugee claimants require immediate access to reliable information and specialized services. However, systemic barriers in Canada make it difficult for new arrivals to obtain information and services they need. The shortened timelines create further challenges. Problems in accessing services and information can be compounded by homophobia and transphobia.

Focus group participants shared stories and testimonies that demonstrated significant differences in experience between LGBT claimants who had friends or relatives already in Canada and those who did not, with the former having greater access to information and services. A number of participants spoke about difficulty finding a lawyer, or finding a lawyer with experience specifically in preparing LGBT refugee claims. As one service provider noted, it is also difficult for people working in this sector to keep track of these changes:

“What we’re finding is that there is a lot of confusion within the current refugee population and within our own people who are knowledgeable about this because, I was confused because he was talking about, well if you come in and claim at the border you have a different timeline than if you come in and claim.”

Difficulty accessing information and services can leave new arrivals vulnerable to uninformed or unscrupulous persons. For example, a participant stated:

“My first lawyer I found in the newspaper, because at the time when I came to Canada my English was like very, very, very, very poor... we met in Tim Hortons and he, like, we talked about the details and I gave him my pictures, I signed some forms and I gave him 500 bucks or something and he said that like, “Now wait, I’m going to go and make my, your refugee claim.” So, I just sit and I’ve been waiting for a long time, and like after, after two months I tried to call him to ask what’s going on, like I had questions, and so I couldn’t even reach him. No voicemail, nothing.”

46 Massaquoi, N. (2013). No Place Like Home: African Refugees and the Emergence of a New Queer Frame of Reference. *Sexual Diversity in Africa, Politics, Theory, Citizenship*. Eds S.N. Nyeck and Marc Epprecht, McGill-Queen’s University Press.

Settlement in Canada

Introduction

As refugees navigate a highly stressful claims process, they also face the challenges and struggles of settling in a new country. In this section, we discuss re-settlement in the Greater Toronto Area (GTA), focusing on issues of security and safety (in housing, employment, health and access to health services, and mental health); exploring concepts of identities; and discussing participants' experiences of oppression, violence and discrimination.

It is important to note that the refugee claimants demonstrated many personal strengths, resilience and determination. When we asked what advice they would give to someone else in their situation, there were some inspiring and insightful responses:

“At times personally I felt like I was overwhelmed like I had so much to do, had to be getting up everyday, preparing to go to this appointment and the next appointment and the third appointment and I was just like, y’know what? I came here, it’s something I have to do, I’m gonna do it. I’m gonna go attend the meetings. I’m gonna go attend any and every group that I can get involved with and I’m gonna just put myself out there. I’m not gonna slow down until I know for a fact that yeah, everything is gonna go in my favour. Yeah so you have to be persistent. Don’t give up [because] you think something may be too hard.”

As another participant noted:

“people need to know that there is help and where to get it from, because it’s so amazing, I mean, the length that the government and volunteers would go to in order to assist people seeking a better life ... they just need to know where specifically to get the services as soon as possible.”

Nevertheless, many of the experiences that the participants shared demonstrate that there are numerous challenges LGBT refugee claimants encounter when settling in Canada. One of the primary themes identified by participants was security, or feelings of safety and the lack of it. This theme is reflected in interviewees' experiences upon their arrival in Canada, as well as once they have settled or attempted to settle in the GTA. The following analysis of security examines four sub-themes: housing, employment, health and accessing healthcare services, and mental health.

Housing

After their arrival, many participants identified 'housing' or accessing housing services to be a top concern:

“When I first step out of the airport, what comes in my mind is accommodation. How, where, am I going to sleep? How am I going to move? When I came out, it took me awhile...I was wandering and wandering and wandering. I saw a cab driver. I moved away from the airport to be comfortable with myself. He looked like an African. I asked him 'where is there a shelter that I can sleep?' He said 'hotel', I said 'no'. Like a shelter or a church where they can accommodate you for a while. I am just coming from Nigeria... I was in the shelter for almost 2 months.”

Some participants felt that being identified as a member of the LGBT community, a refugee, or a person receiving social assistance through Ontario Works had an impact on their ability to access basic services such as housing:

“I have done a number of interviews where I took a view of their house and they ask 'are you going to school or are you working?' That's the number one question and I can't answer any of the above because I am not doing either, because I don't have a working permit and I don't have a study permit. So I'm like, I try to twist it and be like 'oh, I just got here' such and such. Then they would ask 'oh,

do you have an I.D?’ and then you only have the refugee I.D. So, if you do take that out, automatically it’s a no.”

Another participant noted:

“It’s very hard to find housing in terms of being an immigrant or refugee claimant, because of the discrimination when it comes to those things.”

For several refugee claimants participating in this research, the experience of being able to be open about sexuality created vulnerabilities related to housing:

“For me, it was hard, because I was staying with a guy and things went bad and he ended up kicking me out and I had to stay in a shelter. I ended up living with a guy, a guy who I was dating. And when basically shit hits the fan, I was just like ‘oh my gosh, I am in one of this horrible situation.’”

For many trans people the ability to access public spaces (like housing shelters) is often limited and restricted. It is estimated that two-thirds of trans people living in Ontario avoid public spaces because of fear of prejudice, violence, harassment or being outed.⁴⁷ As such, trans refugee claimants often face greater personal security challenges when searching for housing and accommodation.⁴⁸

Many LGBT people seek asylum without supports from family, extended family or their community due to homophobia, and hence often must rely on shelters for accommodation. This reality however exposes them to other vulnerabilities. A number of participants identified homophobia and transphobia within shelters as a problem:

“I ended up living in a youth shelter. I had to be DL⁴⁹ because of the guys there. I couldn’t be myself. I only told my staff, my case worker. So that was psychologically messing me up.”

Building and maintaining new social support networks takes considerable energy and time for many refugee and immigrant groups. Fear of homophobia and persecution prevents many LGBT refugees from openly sharing their sexual orientation or gender identity with other members of their ethno-cultural community (an issue explored further in this report’s section on Intersecting Identities).

Employment

For many of the LGBT refugee claimants in this study, economic security was an important factor in their overall sense of personal safety. Finding employment was identified as a primary concern, which echoes the findings for all immigrants from the *Making Ontario Home* study by Ontario Council of Agencies Serving Immigrants.⁵⁰ A 2004 report by Statistics Canada stated that: “Among persons aged 25 to 54 with a university degree, unemployment for recent immigrants has consistently been at least triple the rate for the Canadian—born.”⁵¹ Unemployment and poverty are not only more common for immigrants, but for racialized immigrants in particular.

The structural inequalities that these newcomers face are described in *Canada’s Colour Coded Labour Market: The Gap for Racialized Workers*, which gives statistical evidence that demonstrates how “racialized Canadians face barriers to jobs compared to non-racialized Canadians [and] also experience a significant gap in pay.”⁵² Moreover, when looking at employment earnings by gender,

47 Scheim A, Bauer G, Pyne, J. (2014). Avoidance of Public Spaces by Trans Ontarians: The Impact of Transphobia on Daily Life. *Trans PULSE e-Bulletin*, 16. 4(1). Toronto, ON.

48 Lehmann, G. (2014). Understanding LGBTQ Migration: Foundations for Impactful LGBTQ+Newcomer Services. Rainbow Health Ontario Conference Workshop. Toronto, ON

49 DL or ‘down low’ – slang for keeping your sexual orientation hidden

50 Ontario Council of Agencies Serving Immigrants (2012) *Making Ontario Home*. 2012 Accessed at: <http://www.ocasi.org/MOH>

51 Statistics Canada (2004) <http://www.statcan.gc.ca/pub/75-001-x/10604/6921-eng.htm>

52 Block, S. and Galabuzi, G. (2011). *Canada’s Colour Coded Labour Market: The Gap for Racialized Workers*. The Wellesley Institute. Toronto, ON.

there is also a significant gendered dimension to Canada's racialized income gap.

Many participants had a difficult time finding stable forms of employment. Several participants spoke about facing discrimination in employment and other areas because their documents identify them as refugees. Some pointed out that refugees receive Social Insurance Numbers beginning with "9", which therefore reveals their status. This only changes on receiving permanent resident status, which can take a year or more.

"...when the government actually takes our means of identification [passport], it creates a problem. When, you know, we have to use the refugee paper and then it becomes now this whole, it defines you..."

One obstacle was the common practice of employers refusing to hire newcomers because they didn't have 'Canadian experience.' The Ontario Human Rights Commission clearly identifies this as a discriminatory practice and recommends that employers, unions, regulatory bodies and government agencies work to remove this barrier.⁵³ As the experiences of participants demonstrate, this remains a barrier:

"Many [employers] keep asking me for Canadian experience...I just came here, how am I supposed to get Canadian experience?... because we come from different countries and maybe our education system is different...they tell you to start from the bottom."

Structural problems with recognition of qualifications and education also impede employment for newcomers. One participant shared a perspective that exposes the impact of systemic de-skilling that non-recognition of international educational credentials represents:

"I basically decided I'm starting over, and when I actually looked at it, I told myself I don't care if Canada doesn't even recognize

my two degrees. I'm starting over. I went back to school to become a cook. It's something I love in terms of cooking for myself and family, so that was basically a simple field to try to explore."

The inability to find employment was a source of anxiety and depression for some participants and at times was also a direct result of discrimination:

"It is very depressing because I've never been on welfare. I didn't even know what a welfare cheque looked like."

"When people see that you're a refugee, you're on Ontario Works, they have this tendency to really look down on you and really think that you come from nothing and so that was one of my worst fears."

"You have to respect me as an individual...I've been trying to get a job within my field and it's just proven very difficult."

These experiences demonstrate strong links between feelings of personal security (including having reliable employment and an income) and refugee claimants' overall sense of well-being.

Health and Accessing Healthcare Services

Refugee claimants and service providers spoke extensively about the many challenges LGBT refugees encountered when attempting to access healthcare services in the GTA. In June 2012, the federal government introduced severe cuts to the Interim Federal Health Program (IFHP), which provides limited, temporary coverage of healthcare benefits to protected persons, including resettled refugees, refugee claimants and certain other groups. Prior to the cuts, the IFHP provided access to medical care, diagnostic services and laboratory testing as well as medications, emergency dental care and vision care.⁵⁴

53 Ontario Human Rights Commission. (2013). *Removing the 'Canadian Experience' Barrier*. Toronto, ON.

54 Canadian Council for Refugees (CCR). (2013). *CCR decries dramatic drop in refugees resettled to Canada*. Retrieved from: <http://ccrweb.ca/en/bulletin/13/03/07>



Grace, from Jamaica: "I've been told on so many occasions, you just need to find a good man to give you a good time...So as I got older, I got more depressed because I was living a lie and I didn't know how to deal with it. I didn't. There's no outlet in Jamaica to share it with...you don't know who to trust." Capturing LGBT Migration from the Caribbean to Canada, a photo-essay by Ulleli Verbeke (SASOD Guyana and Envisioning Global LGBT Human Rights)

The changes introduced by the federal government barred all refugees, excluding government assisted refugees, from accessing medication coverage, and vision and dental coverage through IFHP. The changes also restricted refugees from DCOs from accessing health coverage, including for urgent or essential care, unless it was an issue: a) of public health concern, and b) of public security concerns (defined as psychotic conditions where a person has been identified as being a danger to others, but not including suicidal intent).⁵⁵ For the refugee claimants who participated in our study, these changes made it extremely complicated and difficult to access basic healthcare services and/or to find a healthcare provider:

"Well, the government basically [gave] you this paper...it entitles [you] to have healthcare or what not...most health institutions [do] not recognize this piece of paper, they try to down play you...it kind of leaves me in a place where I am afraid to go

to those places where I'm like 'maybe they might turn me down, maybe they are going to embarrass me'...so I try not to get sick."

"When I got there and gave her the paper, the first thing she said, which I was so, I was not only offended but it was just so degrading, she was like, 'oh you are one of those people' and I was like 'excuse me?'...she was like 'I don't mean Black, I mean refugee'...I was like, wow."

"I had challenges finding an immigration doctor...the doctor doesn't practice immigration medicine anymore...it is hard to get a family doctor...I have been searching for a family doctor since December [2011]." [Interview in January 2013].

In particular, service providers spoke extensively about the lack of access to HIV/AIDS related health services:

"We deal with HIV stuff. Services for women, especially women who have sex with women, WSW communities. There is a need, there is always a demand coming up. But as far as being able to offer a support space for them, resources allocated for them, as far as my program goes none of that can touch it, right. As far as funding goes from an HIV perspective, more of it is allocated towards men."

Although LGBT refugees have many different health needs and require access to a variety of health services, claimants who are also living with HIV/AIDS often face specific challenges:

"LGBT clients who are PHA's - the PHA is a person living with HIV and AIDS - sometimes they leave their countries because their sexualities are exposed ... sometimes if they are HIV positive they might face double stigma."

55 Canadian Council for Refugees (CCR). (2013). *CCR decries dramatic drop in refugees resettled to Canada*. Retrieved from: <http://ccrweb.ca/en/bulletin/13/03/07>

Mental Health

As noted in Envisioning's fact sheet "Mental Health Challenges for LGBT Refugees in Canada", the mental health challenges for many LGBT refugees reflect experiences of high levels of stress and isolation in their countries of origin, and as a result of the refugee claim process itself. Many LGBT refugee claimants are unable to process trauma and mental health issues or access services and support both in the country of origin and during the refugee process, arriving in Canada.⁵⁶

"I got so depressed. I mean it was awhile, like when I came up here, I just tried to forget everything that happened to me...so when I had to fill my PIF, to write my story I would cry every day. I was even thinking about committing suicide. I got to the point where I was like, I couldn't deal with it anymore...and I had no one to talk to and it was very stressful."

As previously discussed, LGBT refugee claimants face difficulties accessing safe housing, finding reliable employment, and navigating the refugee claims process—all of which can have a significant impact on one's mental health. One service provider noted:

"The process, even while they are here, compiling this documentation and they don't have money or they don't know anything how to navigate around the city, what to do, language skills are not that good sometimes and they are supposed to provide all this documentation, massive. And then the impact on their health, their stress levels, and then all kinds of health issues come up as a result. So many of them are depressed, some have PTSD because of their background."

Several refugee claimants spoke about the various methods they used to cope with their feelings of depression and/or anxiety:

"For me personally, I always prayed that night wouldn't come...when I am alone, I

feel cramped. I have to take medication, a sleeping pill...sleep is hard because of the agony I passed through back home. It's like they are coming after me all the time."

Research has shown that LGBT people experience mental health stress more frequently than people who fit within more normative categories of sexual and gender identity. In particular, Trans people experience extremely high levels of hatred, violence and institutional discrimination. As noted in Envisioning's previous work on LGBT refugees and mental health issues, "the Minority Stress Model describes a state of chronic psychological strain resulting from stigma, expectations of rejection and discrimination, decisions about disclosure of identity, and the internalization of homophobia" that can lead LGBT refugee claimants to use external coping and numbing mechanism such as alcohol, drugs or tobacco.

It is important to note that in spite of the challenges described here, many LGBT refugee claimants exhibit exceptional resilience in their ability to live with the trauma, anxiety and/or depression that may be a result of their experiences. Access to appropriate mental health services can make a substantial contribution. Mental health professionals must seek to gain knowledge of LGBT refugees' lives and mental health needs in order to address their trauma. As several of the refugee claimants noted, being able to access counselling services before, during and after the claims process would be extremely beneficial:

"I think there needs to be some counselling, like from a psychologist or like from an actual counsellor before you do your PIF or after you do your PIF because initially you start...to develop symptoms of PTSD."

"I would really like it if I had the opportunity to have been counselled. I would have accepted and would go...counselling can actually help you in a lot of ways."

56 Envisioning Global LGBT Human Rights (2014). *Mental Health Challenges for LGBT refugees in Canada*. Toronto, ON.

Additionally, systemic racism can have a significant impact on health and well-being.⁵⁷ LGBT refugees have intersecting identities that include sexual/gender identities as well as racial and immigrant identities. According to a report by the Centre for Addiction and Mental Health, “Immigrants are less likely than their Canadian counterparts to use a mental health service in primary care or specialty settings...Studies reported that mainstream mental health care was considered inconsistent with the values, expectations, and patterns of help-seeking of IRER [immigrant, refugee, ethno-racial and racialized] groups.”⁵⁸

The report also states: “Institutionalized discrimination has been a way of considering structural barriers to accessing mental health care by IRER groups. The argument has not been that practitioners directly and actively discriminate against particular groups but that the system of care works to offer poorer access and treatment to these groups. One size fits all services ignore the differential needs, presentation of problems and desires of groups and could lead to poorer outcomes.”⁵⁹

LGBT refugee claimants need access to legal, health and social service professionals who have experience with LGBT issues as well as asylum and settlement issues. While many LGBT refugees may not be ready to address their mental health issues until they have achieved personal and economic security, many will if their illness becomes unmanageable. Service providers need adequate financial and human resources to make available effective mental health services.

Intersecting Identities

As highlighted in the section on the claims process, issues of identity have complex and profound effects on LGBT refugees. The requirement to prove sexual orientation or gender identity and persecution on those grounds, can be extremely difficult, if not impossible, and was extremely traumatic and difficult for many refugees in this study. The process forces asylum seekers to re-live past experiences of violence and oppression. They are often fearful that by identifying as LGBT, family members or others in their home country will be informed, which in turn could place them or others in their home country at risk. As one participant stated:

“That’s scary because in my country, you dare not say I am a homosexual, I’m gay. Especially to immigration or government agency, that’s scary...I might not trust the person who is right there asking the questions. She might arrest me and, kill me or something.”

Refugee and migration scholars have shown that kinship and ethnic or co-national networks provide economic resources and information that are important in the process of migration and resettlement. But LGBT refugees may feel they are not able to disclose their sexual orientation or gender identity within networks and services specific to their communities of origin.

As Notisha Massaquoi writes:

“Many transnational subjects from African locations...are not prepared to place themselves in the role of the other within their communities in terms of sexual orientation (Abou-Rihan 1994 and Khayatt

57 Nestel, S. (2012). *Colour Coded Health Care: The Impact of Race and Racism on Canadians’ Health*. Wellesley Institute. Toronto, ON.

58 Hansson E, Tuck A, Lurie S and McKenzie K, for the Task Group of the Services Systems Advisory Committee, Mental Health Commission of Canada. (2010). Improving mental health services for immigrant, refugee, ethno-cultural and racialized groups: Issues and options for service improvement.

59 Hansson E, Tuck A, Lurie S and McKenzie K, for the Task Group of the Services Systems Advisory Committee, Mental Health Commission of Canada. (2010). Improving mental health services for immigrant, refugee, ethno-cultural and racialized groups: Issues and options for service improvement.

2002). It is often physically dangerous to do so in their countries of origin and although human rights are protected by legislation in the West, the risk of loss, being ostracized from family and community, and banishment into a Canadian environment that is not always supportive of difference, particularly racial deviation from white heteronormativity, is too great.”⁶⁰

LGBT refugees often feel forced to choose between their ethno-cultural identities, or their religion, and their sexual and/or gender identities, which in turn can deepen experiences of isolation, violence and emotional distress. As one participant noted:

“when somebody said... whatever [homophobic remark], and it’s coming from your own people, you just find it more, you know... Yes, you understand racism, and yes, you understand the bigger picture of white supremacy and so on, but you know what, it’s just too painful, that you don’t have time to break it down ...You just don’t have time for that and your own people shouldn’t be doing that to you.”

In order to provide support within communities of origin, some ethno-cultural community groups have developed programs either specifically for LGBT clients or openly welcoming and supportive to LGBT clients. In the GTA some examples are: Women’s Health in Women’s Hands, Black Coalition for AIDS Prevention, Asian Canadian AIDS Services, Alliance for South Asian AIDS Prevention, and Africans in Partnership Against AIDS. There are also faith-based groups such as Salaam Queer Muslim Community, Metropolitan Community Church Toronto and groups within various faith based communities that are LGBT-positive. Some of these organizations provide specific programs for LGBT refugees.

Oppression, Violence, Discrimination and Emerging Trends

As noted in the foreword to this report, while LGBT rights organizing has grown, particularly in the Global South, there are also troubling new developments that expand categories of criminalization and persecution. The creation of new laws criminalizing so-called ‘promotion of homosexuality’ violates freedom of association and puts LGBT people as well as advocates for LGBT rights in danger. These developments highlight what may be characterized as an emerging trend in LGBT asylum cases. LGBT activists, like many other LGBT refugee claimants, live in fear of being identified and in fear of being targeted by homo-bi-transphobic individuals, press or police because of their activism on LGBT rights. A number of participants spoke of how their work as activists seeking to advance LGBT rights in their country exposed them to violence, forcing them to seek asylum even against their strong desire to remain in their country to continue to work for change.

A participant who self-identified as an LGBT activist and who was forced to flee told researchers the following:

“I was beaten by some police officers in February of 2007. This happened in front of 200 people and after that incident I had to go and live in hiding...not being able to be myself...it’s changing a way of life...I didn’t go back home, I couldn’t...[as] death was imminent.”

Another activist participant described a conversation with her partner, and what happened to them when she was ‘outed’ in the local press:

60 Massaquoi, N. (2013). “No Place Like Home: African Refugees and the Emergence of a New Queer Frame of Reference” in *Sexual Diversity in Africa, Politics, Theory, Citizenship*. Eds S.N. Nyek and Marc Epprecht, McGill-Queen’s University Press.

“then she told me, ‘you’re in ____ [the newspaper], you’re on top page. People have been calling me since morning asking me if I knew who you are, they’re asking me about my association with you and stuff like that’. I felt, I don’t know, I felt numb. To be sincere, I just froze... And then that evening, when I called ____ back, she told me the landlord has said that we should leave because he saw the newspapers and he’s a very staunch Catholic, and he says that he cannot accommodate any homosexuals in his house. So we have to leave, ‘you have to leave or I call the police.’”

At the same time, it remains the case that most LGBT asylum seekers who took part in this study were not activists, and many had no exposure to LGBT rights organizing groups in their country even if such groups existed. Much homo-bi-transphobic violence also occurs out of the public eye: within the private sphere of the family, or in the workplace, social spaces or at school. Persecution may be perpetrated by the state, police, neighbours, religious groups, members of the community, and by family members depending on circumstances.

Refugee claimants may be reluctant or afraid to ask their family members for support because of past experiences of violence and trauma. Many LGBT refugee claimants live double lives in which they keep their sexual orientation or gender identity a secret from their family and friends. As one participant revealed:

“I had threats back home...from my ex and family members. I have brother here...within a matter of days he said ‘OK get out of my house’...I mean, you think you’re safe, then you lose another family member.”

Oppression and discrimination against LGBT refugees is systemic and rooted in a political, legal and social system that assumes heterosexuality and cisgender identities to be the norm. When we think about the experiences of oppression, violence and discrimination that LGBT refugees experience, we need to consider both the physical manifestations (i.e. beatings, sexual violence, assault causing bodily harm)

and how homo-bi-transphobia are represented and reflected in the social, political and legal structures of the countries of origin of LGBT refugees, as well as in Canadian social, political and legal structures.

Service Providers’ Experiences

Introduction

Sharing numerous frontline experiences, service providers shed light on the impacts of the changes to refugee policy and law on LGBT refugees and on their own capacity to adequately address pressing needs in the context of these changes. Significantly, many expressed great concern regarding the Federal government’s changes and what they identified as a conservative ideological drive behind an increasingly punitive approach to refugees.

In this section service providers discuss five areas of focus: 1) barriers to accessing services; 2) service providers and the claims process; 3) the need for training; 4) fear and anxiety provoked by recent policy changes in Canada’s refugee system, coupled with budget cuts; and 5) critiquing the current refugee system.

Barriers to Accessing Services

Service providers participating in this study outlined numerous barriers and challenges that refugees face including: lack of knowledge of services and how to navigate the system; finding quality services whether specialized within the LGBT communities or in mainstream service organizations; locating experienced and skilled lawyers and counsellors; and facing long waiting lists for services. Safe settings may be created within drop-in LGBT services, but environs outside them can be quite unsafe. Additional issues include finding adequate services for children of refugees, balancing demands of being a refugee along with responsibility for their children and family in their country of origin [such as sending money back home], and encountering

homo-bi-transphobia, racism, and other forms of discrimination from service providers.

Language barriers are a significant concern for many LGBT refugees both in terms of access to services as well as concerns with regard to confidentiality,

“For the Francophone it is about the size of the community and accessing the community. ... for them they don’t speak English. ...you can hold on one hand in terms of the services that are available in French. And they don’t, they feel like when you tell one person they, everyone in their community will know. Everybody, about their sexual... Like it is really, really tough to access anything with HIV and anything with mental health and housing.”

“...the IRB brings an interpreter and you just check off a box to say I need an interpreter. And even then I’m not sure that an LGBT person is fairly treated or properly represented by somebody who is an interpreter from their community, who is maybe homophobic. So it’s that kind of, you need to get somebody who speaks Somali but is also not a homophobic Somali.”

LGBT refugees with disabilities can be faced with a particular set of barriers,

“... sometimes refugees they start to display mental health issues because of the lengthy process. So as another point, because of the burden of health care, many people are afraid of displaying any disability or documents of health issues because they are afraid that they or the process is going to be refused, or somehow they are going (the process) to get affected because of disability or mental health issues.”

The lack of basic survival resources and impact of low or lack of income is described,

“... Yes, how do they get food? They can’t travel, they can’t use public transport. They don’t have money. It’s such a... I feel

sometimes so *helpless*, because what can I do? [laughter]. I wish there is a big fund somewhere for these people to get access and or some agency that can provide TTC passes or tokens, things like that.”

Service Providers and the Claims Process

Service providers interviewed spoke extensively about the burdens created by the claims process. The shortened timelines create extreme difficulties for their clients in obtaining documentation to support their claim. Letters from community organizations (like churches, community centres, and cultural organizations) are often included in LGBT refugee claims as evidence to support their sexuality and/or gender identity. If refugees and refugees are expected to file their claim within 15 days of their arrival, how can they be expected to establish these types of relationships with community organizations? Several service providers pointed out that:

“there are requirements for us to do a letter for them. They can’t just walk in one day and say, it’s my first time here, I need a letter. You have to attend [our program] regularly and establish some sort of relationship with the organization.”

The implementation of the new changes to the refugee determination system has resulted in a multi-layered impact that negatively impacts LGBT refugees. The system undermines the ability of refugees to access needed expertise to develop their claims, increases the workload of already overworked and under-resourced frontline workers, and silences service providers from being able to advocate for effective change. Coupled with a climate of budget cuts and the Federal government’s political rhetoric emphasizing the need to ‘weed’ out false claims rather than provide protection, many service providers are concerned about the impact on LGBT refugees, and indeed all refugees.



Envisioning Global LGBT Human Rights Africa Research Team. World Pride, Toronto, Canada, 2014.

Education and Training

Many challenges LGBT refugees face in accessing services are an extension of the challenges workers in mainstream services (organizations or services that are not LGBT-identified) are struggling with in working with these populations. They often are unaware that their service recipients include LGBT people and when or whether to ask pertinent questions.

“For me the main barrier is to ask or not to ask. And then how do you ask? In which context do you ask?... that’s the main barrier for me, in my office, for me interviewing people or whatever. So how the person is going to take the question? Know what I mean? So we have a debate in my office, should we ask the question to everybody? ... you ask the person about the question, how important is that question for their future in Canada?”

Service providers noted the need for more training on sexual orientation, gender identity and gender expression in immigration and refugee settlement services:

“Agencies need training as [there] is so much homophobia within [some] agencies. When I presented about LGT newcomer issues to different staffs at different locations there was [always] somebody saying ‘I don’t have such clients’...and that was [a] myth.”

“I think we need to access these services providers, for instance, the lawyers and legal aid to make them more aware of the LGBTQ issues...there [are] LGBTQ specific needs...at the shelters, at the airports, how to be more inclusive. We have to have workshops.”

Some service providers grapple with developing services to meet the needs of LGBT refugees, while others passively choose not to address these issues, or in some cases resist inclusion of LGBT issues. Some opt for an anti-oppressive practice route (generalized approach to oppressions) rather than the LGBT sensitivity training route (with a specified focus on LGBTs). Hence, training on LGBT issues needs to be taken up at all levels of the organization, from board of directors to frontline staff. Efforts to sensitize the clients about the LGBT people among them are also desirable.

To address these concerns, there are a small number of training projects and initiatives such as the Positive Spaces Initiative by OCASI, Rainbow Health Ontario's Training Program and Planned Parenthood Toronto's youth-facilitated T.E.A.C.H. Program, that mainstream settlement and resettlement services are encouraged to use.

Given the need for service providers to provide sensitive, equitable services to their service recipients it is incumbent upon them to receive the training they require in order to do so.

Fear and Anxiety

As evidenced by interviews with service providers, changes to refugee and immigration policy by the federal government, including the shortened timelines for the refugee claims process, coupled with budget cuts and strained resources, resulted in significant stresses on service providers, staff and agencies working with refugee claimants during the period of this study. Several participants noted that they often found themselves going above and beyond their professional roles in order to provide information and support to LGBT refugees. In some cases, the workload of service providers has been tripled due to system limitations. Job insecurity, precarious funding, and political tensions over policy issues leads to high levels of stress and anxiety, as illustrated by the following comments from service providers:

"It's a constant struggle. This is not going to be practical for me to survive because I am going to be out of a job in a couple of years. But at the same time I can't stop with what's going on now There is a constant trying to find a solution to this, how do we make this sustainable, do we look for other sources of funding? Do we have to go to private sources of donations and all that other stuff? What are these other funding sources we can access? How can we access them because everyone else is going through the same problem and everyone else is rushing through the same door looking for other options?"

"Everyone is playing hunger games of sorts, because everyone is competing for the same thing and if you got it, then some other program would cease to exist and it was a mess, because, not a mess but it was just very sad to see because this is what it has come down to. We have to come in front of [city] councillors and beg for the same pot of money, and justify why our programming is better than the other groups, not directly not saying 'oh our program is better' but justify your existence. But you know their situations.... And it makes you think 'What was the logic here?'"

One participant pointed to the increased pressure on settlement sector workers due to inadequate resources in other services such as legal services:

"now with these changes people feel more insecure because what they see is [that]... the settlement work in particular is getting more legalized so [service providers] need to learn more in depth immigration law...and sometimes go beyond what [the] person actually [knows]...and agencies are [pushing] the settlement workers to do that kind of work."

Other participants referred to the precariousness of employment, as in this example,

"I think you're consistently fighting for your job. You feel it by your supervisor, you feel it by everybody. You feel it, you are always under a contract so you never feel settled...so you're stressed about that...about keeping up and doing your work."

Being on the frontlines, service providers are able to observe and experience impacts of cuts and vulnerability created by changes to the system:

“more and more CIC funded⁶¹ programs are being cut... CIC makes up the bulk of it, you know, the bulk of funding for new immigrants. Refugee claimants, it’s like they are at the bottom rack. It’s like the government is not really interested in funding programs for that particular programs. So, even in the last few years they might have changed a lot of the refugee laws. They have also in particular they taken away a lot of funding from settlement works, refugee claimant populations.”

At the same time, service provider participants spoke about an ‘advocacy chill’ within charities in the non-profit sector in Canada, especially in social services—including the immigrant and refugee-serving fields. In a working environment characterized by short term contracts and inadequate resources, service providers spoke about their fears of threats to their government funding should they engage in advocacy to bring attention to LGBT asylum issues and problems.

In 2012, the federal government “deployed denunciatory rhetoric against environmental organizations and charities, increased enforcement of regulations governing resources that charities devote to political activities and added environmental organizations to Canada’s anti-terrorism strategy as a potential national threat.”⁶² It was also at this time that the Canada Revenue Agency (CRA) began a ‘blitz’ investigating charitable status of agencies advocating for positions that did not agree with those of the federal government or promoting policies not aligned with the federal

government’s.⁶³ LGBT-based specialized services, whether stand alone or housed within larger agencies, as well as LGBT groups who have charitable status have similarly experienced advocacy chill due to the strict regulation of charities and what is considered political activity in this country,⁶⁴ all of which were corroborated by the participants of this study.

As one participant stated:

“you’re not allowed to advocate...but you are constantly bombarded with these things that need some sort of advocacy. And, so your hands are kind of tied.”

Likewise, another participant said,

“Kenney [former Minister of Citizenship and Immigration] has kind of made it clear that - speak out against me, your family is threatened - because you somehow get an audit in terms of Revenue Canada around your charitable status, because you are now engaging in advocacy that is against government policy...people are being scrutinized and in fear that their funding, their CIC funding will not be renewed.”

Critiquing Refugee Policy

Service providers were generally highly critical of the current system, questioning whether it is designed to assist refugees and refugee claimants or on a more punitive path to weed out ‘bogus refugees’.⁶⁵ To some service providers this is part of a larger agenda, sold to Canadians as cost

61 Citizenship and Immigration Canada (CIC) provides a certain amount of funding for programs in support of refugees. However, many agencies that receive the funding have charitable status, which they utilize for fundraising purposes. They are limited to using a maximum of 10% of their funding for “advocacy” or they risk loss of their charitable status.

62 Kirby, G. (2014). “An Uncharitable Chill: A Critical Exploration of How Changes in Federal Policy and Political Climate are Affecting Advocacy-Orientated Charities.” Royal Roads University: Master of Arts Thesis. Retrieved August 23, 2015 from <http://garethkirby.ca/thesis/posting-final-version/>

63 Voices-Voix. (2015). Canadian Charities and the Canada Revenue Agency. Retrieved August 23, 2015 from <http://voices-voix.ca/en/facts/profile/canadian-charities-and-canada-revenue-agency>

64 Mulé, N. (2011). Advocacy Limitations on Gender and Sexually Diverse Activist Organizations in Canada’s Voluntary Sector, Canadian Journal of Nonprofit and Social Economy Research 2 (1), pp. 5 – 23. <http://www.anserj.ca/index.php/cjnser/article/viewFile/52/18>

65 Speaking Notes for the Honourable Jason Kenney, P.C., M.P. Minister of Citizenship, Immigration and Multiculturalism. News Conference. Ottawa, ON February 16, 2012. Accessed at: <http://www.cic.gc.ca/english/department/media/speeches/2012/2012-02-16.asp>

saving, but in reality is a process of determining who is 'legitimate' and who is 'illegitimate.'

"I am talking about IFH. I am talking about the C-31...the government has been using... the language of entitlements - that folks who are coming from outside are getting what Canadians don't have...it's pitting those who are deemed as a legitimate against those who are deemed as illegitimate. So it's also impacting not just...refugee claims but also ... migrant work and work permits...the whole language around 'the people who are coming in to take our jobs'...it's a scapegoat to use the language of cost savings for Canadians."

The service providers' critiques of the current refugee claims process reflect on the ways in which heterosexuality, Eurocentrism and whiteness are intrinsically privileged within the social structures of Canada, which are reflected in refugee and immigration policy.

The everyday lived experiences of the LGBT refugees and service providers who participated in this study are important examples of how federal policy and law regarding immigration reflect major flaws in the current legal and political practices of the Canadian nation-state. Moreover, these laws and policies create inequities that operate along intersectional asymmetries of geopolitics, class, race, gender, sexuality and ability. A person's ability to access travel documents, cross borders, sustain themselves and gain access to permanent status is constrained or enabled by these factors. For many LGBT refugees, and in particular for those who are racialized, including the majority of refugees who took part in our study, this means attempts to re-settle in Canada often occur in precarious economic social environments that are highly racialized, gendered, sexualized and classed.

Immigration and Refugee Board (IRB)

Given the numerous policy changes that came into play as a result of new legislation during

the time of this study, we felt it was important to interview policy makers to get their perspective on the new policies and how these policies impact on LGBT refugee claimants. Despite repeated attempts to secure interviews with policy makers at both the provincial (Ontario) and federal levels who work on refugee issues, our requests were not responded to.

Representatives of the Immigration and Refugee Board (IRB) agreed to an e-mail interview in which members of their staff responded to our interview questions and provided us with an electronic transcript. Our interview questions were focused on current law both international and domestic, as well as guidelines, how the decision-making process is facilitated, the impact of new policies on this process, the training of IRB members and their recognition of LGBT and intersectional needs. The responses we received to these questions produced themes related to safety and identity determination, the claims process, decision-making and training.

It is useful to read the quotations below from the IRB interview in comparison with the findings of Envisioning's previous report, *Envisioning LGBT Refugee Rights in Canada: The Impact of Canada's New Immigration Regime*. Among the recommendations, the following are relevant to the IRB interview:

- Canada's refugee regime should be brought into compliance with international standards, particularly in regard to UNHCR Guideline No. 9 from 2012, in regard to:
 - evidentiary matters and claimants' testimony - (report p 8)
 - case by case evaluation (report p 8)
 - excessive reliance on credibility assessment; (report p 8)
 - use of stereotyping (report p 9)
- Training and education on a regular basis, in conjunction with LGBT rights groups
- An official Guideline on the concerns, needs and issues faced by LGBT asylum seekers, as well as offering best practices for overcoming them during adjudication.

Background Information

To provide contextual background on the work of the IRB, this section focuses on concrete and factual information drawn from the responses received from the IRB. According to the IRB, the United Nations High Commissioner for Refugees (UNHCR) Guidelines are not binding on the Refugee Protection Division (RPD) members, according to Canadian jurisprudence, they nevertheless can be considered in interpreting legislation, especially when Canadian legislation or jurisprudence is unclear. The Courts sometimes resort to this when examining new or novel issues. Yet, the IRB made clear that the RPD is not bound by international jurisprudence. They are instead bound to follow jurisprudence from the Refugee Appeal Division (RAD), decided by a three-member panel made up of the Federal Court of Canada, the Federal Court of Appeal and the Supreme Court of Canada. Nevertheless, in our view new decisions and guidelines can be developed that take into account both UNHCR Guidelines and international jurisprudence, such as the December 2nd, 2014 European Court of Justice ruling referred to above.

The IRB pointed out that the UNHCR SOGI Guidelines (Guidelines on International Protection No. 9, Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A (2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees), figure prominently in the training of RPD decision makers. Such training consists of sensitivity training pre adjudication of claims and capturing numerous issues taken up in IRB's guidelines regarding vulnerable persons, gender issues, cross-cultural awareness and techniques on questioning.

The IRB explained that further to claimant testimony and counsel submissions and arguments, RPD decision makers have access to the Research Directorate produced National Documentation Packages (NDP), which contain Response to Information Requests (RIRs) on the treatment of LGBTs and information on state protection. Independent of any division of the IRB, the Research Directorate gathers

information through established protocols. However, in the event that the NDP does not have an RIR on the treatment of a particular group of LGBTs, RIRs can also be requested by RPD members for specific hearings. Below we provide an analysis of their responses to our questions:

Safety and Identity Determination

Applicant safety in disclosure of sexual orientation/gender identity and the complications therein in the IRB's need to determine an identity during the claims process can prove a challenge for both claimants and RPD members. IRB stated:

“A challenge that is widely known is that country of origin information on sexual minorities is often lacking, due to repressive reporting environments, the reality that many support networks work “under the radar” due to the precariousness of this work, stigma around the issue, etc. ... As a result, just as many other research units contend with, our Research Directorate also encounters the challenges of finding relevant country of origin information on sexual minorities.”

The IRB acknowledges the difficulties in gathering information in countries of origin in which LGBTs are repressed. However, note use of the terminology ‘sexual minorities’, which obscures gender identity and expression. Are they meaning for it to be all encompassing? Is gender identity/expression being sidelined? Further, what training is provided to IRB members with regard to finding relevant country of origin information to inform IRB assessors?

The problematic of requiring ‘proof’ of one’s sexual orientation is not limited to the requirement itself, but also in the kinds of questions being asked of LGBT claimants which this study’s participants indicated as sometimes being heterosexist, cisnormative and based on Western labelling practices. Furthermore, the

equality-based approach applied to ‘all claims’ oftentimes overlooks particular issues specific to LGBTs, of which “proving” one’s sexual orientation is one. IRB stated:

“On the subject of ‘proving’ one’s sexual identity, decision makers must consider the credibility of all claims. This assessment will be undertaken on a case-by-case basis, weighing the evidence and testimony. That said, we are aware of the difficulties of ascertaining whether an individual’s claim is credible based on their sexual orientation. As stated above, members have been given training on questioning vulnerable persons.”

The December 2nd, 2014 European Court of Justice ruling cited in the Claims Process section of this report may prove instructive to the question of ‘proving identity’, demonstrating that this kind of change is possible where there is political will.

Given the series of restrictions in new policy, the IRB outlines a number of accommodations to assist refugee claimants in the process. IRB stated:

“A range of accommodations are possible. Some of the most common accommodations requested and provided are (1) altering the usual order of questioning (allowing counsel to question first); (2) having a decision maker of a particular gender; (3), creating a less formal setting; and allowing a personal support person to be in attendance.”

The IRB also highlights important recognition of intersectionality of social location and varying forms of oppression. IRB stated:

“If the claimant’s sexual orientation puts the claimant at risk or heightens a risk from another ground, such as political opinion, the member will consider that in his or her examination of all the circumstances of the case.”

Claims Process

The claims process, which includes processing, accepting and denying a claim is a critical stage in a refugee claimant’s journey towards their goal of resettlement, yet one that presents unique expectations due to the LGBT-identity claim. IRB stated:

“These claims [LGBT] are treated similarly to other claims, since every decision is based on the particular circumstances of the claim. As with all claims, a body of jurisprudence helps to inform decision makers on the array of issues that can arise in the hearing room. Legal tests and guidance on state protection, internal flight alternatives, etc. ... are applied in these claims. That said, members are also trained on these types of claims, in support of understanding how these claims may present differently than other claims from the same country.”

This ‘equality-based’ approach can be highly problematic, as the circumstances of LGBT refugee claims have unique challenges. The body of jurisprudence has been seen to be unfair to LGBTs in part because it is premised on North American notions of heteronormativity and cisnormativity. Yet, the IRB does acknowledge difference based on LGBT claims, and this is part of the training of RPD members. Also, the IRB has committed to producing a SOGI-specific guideline. IRB stated:

“A stand-alone SOGI (sexual orientation and gender identity) Guideline has been discussed at the Board. The Board is slated to author this Guideline this fiscal year [this response received March 2015], and will consult with external stakeholders on its content at a date yet to be determined.”

Data indicates higher refugee claimant rates among gay men over lesbians, bisexuals and trans persons (LBT) and the IRB’s response below may be a direct corollary. Yet, LBT claimant testimonials can become overly burdensome, for the heavy responsibility of proof of persecution rests on the shoulders of the claimant in the absence of country of origin materials. IRB stated:

“The research directorate is finding, more and more, that information pertaining to gay men is emerging from countries abroad, but the treatment of lesbians, bisexuals, trans and intersex individuals is more challenging to find. In cases where country information is difficult to obtain, members may put more emphasis on the testimony of the claimant.”

The one time that NGOs are mentioned is framed as a compliment towards the system. IRB stated:

“We have also received feedback from the NGO community that claimants experience a great deal of relief when their claim is heard in a few months, as it doesn’t prolong the anxiety of not knowing what their futures will be. Nevertheless, the system is built to allow for requests from counsel/claimants, and members are empowered to grant extensions and change the date and time of a proceeding based on the particular circumstances of the claim.”

This is in sharp contrast to the substantial evidence provided by NGOs, some of it in our research, that the accelerated timelines have created a negative impact on most claimants, with particular hardship impact on LGBT claimants. This is not entirely lost on the IRB, as they acknowledge difficult circumstances that they may grant extensions for. IRB stated:

“However, members [of a specialized team of RPD] may allow a change of date of the initial hearing if it is necessary for reasons of fairness or natural justice. Some examples are, in appropriate cases, the RPD may grant a change of date to enable the claimant to retain the services of a counsel, to seek medical attention, or to prepare for the hearing. Members will look at such factors as whether the claimant has acted diligently, whether there is documentation corroborating the reasons for the request, and the profile of the claimant, such as whether or not the claimant is a vulnerable person.”

Although it is important that this flexibility exists and that LGBT people are included in the IRB’s Guideline on Vulnerable Persons, what remains unclear is how many claimants are informed of this option, what RPD members would consider due diligence on the part of the claimant and what factors constitute a ‘vulnerable person,’ as much discretion lies with the members.

Decision-Making

Much hangs in the balance for LGBT refugees when it comes to decision-making on the part of RPD members on the former’s refugee claim applications. The judicial process counter-balanced by the realities of any given case can create a tenuous circumstance regarding the outcome of an LGBT refugee claim. IRB stated:

“We are again talking about the plausibility of events, credibility and internal consistencies in the claimant’s narrative, and supporting documents (when available).”

The judicial process places great emphasis on these elements for corroborating evidence. Yet, this is steeped in problems – unique situations happen beyond plausibility; the claimant (particularly if traumatized) may have great difficulty maintaining internal consistencies, hence potentially compromising their credibility; the kinds of supporting documents that continue to be used (i.e. membership in LGBT organization) are problematic, as such documentation places burden of proof on LGBT organizations, many of whom take issue with the system requiring proof of identity. Given the degree of discretion on the part of RPD decision makers regarding procedural accommodations it is important that the specific needs of LGBT claimants are included. IRB stated:

“Although LGBTI claimants could request procedural accommodation prior to the amendment to the guidelines, formally recognizing this group within the Guidelines was important in terms of recognizing, as well as heightening the awareness of decision makers of, the ways in which LGBTI

claimants' hearing process may need to be altered in order to better enable LGBTI claimants to relay their narrative."

Despite increased policy restrictions regarding refugees and refugee claims, the system allows for some flexibility to assist in complicated claims. IRB stated:

"The decision maker will make interlocutory decisions based on the specific circumstances of the claim."

Education and Training

Training for RPD members who make the all-important decisions regarding the fate of a refugee claimant's application is crucial, particularly with regard to having knowledge and a sensitized understanding of the highly specified circumstances of LGBTs. IRB stated:

"RPD decision makers received sensitization training before they began adjudicating claims, which covered a range of issues from the IRB's own guidelines on vulnerable persons and gender, as well as training in cross cultural awareness and questioning techniques. Then, during the second year of the new system (2013), every RPD decision maker participated in a targeted training session [regarding LGBTs] delivered by Nicole LaViolette, a professor in the faculty of law at the University of Ottawa who specializes in the rights of sexual minorities and refugee protection. The SOGI Guidelines are heavily referenced throughout her training materials and during her in-person session with members. ... a dedicated session of this nature is not slated to happen in the short term ... Furthermore, RPD decision makers have directly cited the UNHCR Guidelines in their decisions. The Guidelines also very much inform the research/methodology of the IRB's Research Directorate, thus informing the production of Response to Information Requests (RIRs)."

A positive development is the training that RPD members receive, and in particular LGBT specified training. This training needs to be ongoing and new experts sought, given the passing of Dr. LaViolette. It remains unclear if and when such specialized training will take place and whether there are resources to support training, if it is still seen as a priority, or if there is political will.

It is also encouraging to see the UNHCR Guidelines actively being made use of by RPD decision makers. IRB stated:

"A great degree of energy and time goes into the production of the Research Directorate's Response to Information Requests on SOGI claims ... One great benefit of the way the Research Directorate does its research is that researchers are able to conduct interviews with subject matter specialists. These specialists are described in the reports (for instance by credential or affiliation), but they are not named, and so the researchers have experienced success with conducting complex and detailed interviews with advocates within countries of origin, which better enables decision makers to question claimants, as well as assess the plausibility of testimony. In this sense, the Research Directorate is able to fill in gaps that exist in online country of origin information, or to obtain information on countries that are notoriously difficult to obtain information from on the subject of LGBTI treatment. The information provided by the Research Directorate allows members to make informed decisions on the broadest range of evidence available, enhancing the quality of decisions."

The work of the Research Directorate is presented as comprehensive and commendable, yet it is important that the barriers to gathering data beyond gay men and the heavy burden of proof placed upon LGBT claimants is not lost sight of when making use of RIRs.

The IRB, as with all other stakeholders in the refugee process, has had to adjust and revise its own processes to meet the demands of new

legislation and ensuing policies. Simultaneously, the IRB is faced with specified issues and needs of varying populations seeking refugee status in Canada. The LGBT populations have a unique set of issues and needs based not only on their sexual orientation and gender identity/expression, but importantly how they are treated by society, whether in their home countries or in Canada itself through our citizenship and immigration policies.

Efforts are being undertaken by the IRB to address the concerns of LGBT populations seeking asylum and refugee status, but when contrasting the responses of the IRB with the experiences of our participants – both service recipients and service providers – there is clearly more work required. Given the IRB's significant role in the refugee process, it is incumbent upon them to meet the needs of the LGBT populations in an equitable and sensitive manner.

Conclusions: Is Canada a Safe Haven?

To the question: Is Canada a safe haven for LGBT refugees we can answer a qualified yes - however the study identifies serious obstacles, which may be summarized as:

- 1) Very few LGBT asylum seekers are able to get to Canada and many are currently living in highly dangerous circumstances as at-risk populations in refugee camps.
- 2) LGBT refugees who do arrive in Canada must navigate and negotiate a complex claims process within a limited time frame that severely limits a claimant's ability to produce the documentation necessary for their claim.
- 3) At present, there is a disproportionate emphasis on 'credibility' in the claims process which places the onus on LGBT claimants to produce highly personal evidence to substantiate their sexual orientation or gender identity. This is very stressful and highly intrusive, as well as an affront to dignity, particularly given cultural contexts for many LGBT people.
- 4) There are problems and gaps in settlement and support services for LGBT refugees that make it difficult for claimants to access safe housing, reliable employment, and other necessary social services like healthcare, mental health services and counselling.
- 5) Service providers working with LGBT refugees often work in precarious situations in which their programs are underfunded and understaffed. While some services have been developed to address LGBT asylum issues, the services are often dependent on funding project by project. Greater

stability is needed through core funding to LGBT-specific and mainstream asylum services. Education and training on LGBT asylum issues are needed in refugee and immigration services that do not specialize in LGBT asylum, as well as for legal services, legal aid, Canadian border services, and at the IRB, including translation services at refugee hearings.

- 6) For most LGBT refugee claimants, arrival and claiming asylum, as well as the experience of settlement in Canada, are shaped by incidents of homo-bi-transphobia and racism. A critical race perspective on LGBT asylum that considers how racialized identities intersect with LGBT issues is needed to address this issue.

While efforts have been made to make this study comprehensive, we recognize that there are limitations in our work and further research is needed.

More research is needed on non-English speaking LGBT asylum seekers. A limitation of our study was that all of the focus groups and interviews for this study were conducted in English. We recognize that non-English speaking LGBT refugees in Canada have special needs on which very little research exists. A recent joint study by OCASI and FrancoQueer (a provincial group concerned with the social, legal, and economic well-being of Francophone LGBTIQ communities including immigrants and refugees), highlights this issue along with several other complex challenges of being a new immigrant, racialized and LGBTQ.⁶⁶

Secondly, there is a need for greater in-depth research on LGBT refugees and intersections

66 Gates-Gasse, E. and Lassonde, J. (2015). Ontario Council of Agencies Serving Immigrants and FrancoQueer. The Settlement and Integration Needs of Francophone LGBTQIA Immigrants and Refugees in Ontario. Needs Assessment Report. Toronto, ON.



Delhi Pride, 2012.

of identities, for example racialization, faith-based discrimination such as Islamophobia, and ability. Ability issues vary considerably across demographic groups and understanding the sources of these differences remains an area of active research. On-going problems of inappropriate application of Eurocentric definitions of sexual orientation and gender identity, coupled with the high participation of racialized peoples in this study, point urgently to the need for further study on LGBT asylum through the lens of a critical race analysis.

Thirdly, the research design of this project focused on experiences of navigating the claims process as an individual. Some focus group participants did refer to their partner and in some case to their children. More research is needed into the experiences of LGBT refugee claimants with spouses or partners, and on LGBT refugees with children, or other dependents.

Finally, while we sought interviews with policy makers to get their perspectives on the recent changes to Canadian immigration and

refugee law, only the Immigration and Refugee Board (IRB) responded to our request. As a result, despite our concerted efforts to obtain interviews, the perspectives of Canadian policy makers are largely absent from this report, hence the importance of their involvement in future research.

The results of this study clearly demonstrate the need for systemic change that sensitively and effectively addresses the unique needs of LGBT refugees. The report and recommendations speak to the need for change in resettlement, assessing sexual orientation and gender identity claims, provision of services for LGBT asylum seekers, the need for more education, awareness and training across all sectors working with asylum seekers, from IRB decision makers to refugee services to settlement services for LGBT newcomers. The implementation of the Protecting Canada's Immigration System Act did not address problems identified by previous studies on LGBT refugee determination, and in fact, has created further barriers to LGBT asylum seekers.

Recommendations

RESETTLEMENT

1. The UNHCR should implement ongoing anti-homo-bi-transphobia / anti-racism/ anti-discrimination awareness building, and training for all staff and volunteers at refugee camps regarding the human rights of LGBTs, including for those people who do not have identity documents that match their gender identity and/or gender expression.
2. The UNHCR should develop and implement a system of ongoing monitoring to ensure the safety and security of LGBT people in refugee camps. Where possible, UNHCR should work with local LGBT rights organizations to assist with mitigating suffering and protecting LGBT asylum seekers.
3. The UNHCR should prioritize expedited processing of at risk LGBT refugees for resettlement, and ensure that this process will not subject them to breach of confidentiality potentially compromising their safety and security.
4. Canadian consulate staff working in refugee camps and in Canadian consulates should be trained to recognize persons in need of protection on the basis of their LGBT status and work to ensure their safety in refugee camps.

CLAIMS PROCESS

5. Given increased awareness of the specific persecution of LGBT people in certain parts of the world, the federal government should consider creating a 'special class' (similar to the Source country class that was in place until 2011) for those making a refugee claim on the basis of sexual orientation / gender identity (SOGI) persecution, allowing for such claims to be made more effectively

from outside Canada, and allowing such claims to be expedited to reduce the vulnerability of the claimants.

6. The central question for decision-makers should be on proving the threat of persecution on the grounds of SOGI, not on proving identity. Although this principle can encounter practical challenges during implementation, it nevertheless is the right course of action because fairly assessing the SOGI of claimants in a refugee proceeding is often impossible. Not all refugee claimants have access to the kinds of information needed to prove their SOGI due to persecution in their home country, lack of a supportive community and lack of access to resources.
7. If decision makers continue to require proof of identity in assessing SOGI claims, the IRB should incorporate international human rights jurisprudence such as the 2014 European Court ruling and UNHRC SOGI Guideline 9 on SOGI refugee claims. Minor discrepancies in claimants' explanation of their identities should not distract from their 'credibility' if the rest of their account has been consistent. A late declaration of SOGI or reticence to do so should not be interpreted as a 'lack of credibility'.
8. The report provides several instances whereby Western/Eurocentric cultural norms appear to be the standard used to define SOGI. Such norms are not universal, and refugee claimants originating from non-Western and non-European cultures cannot be expected to know or subscribe to them. The IRB should recognize such biases and make a conscious effort to avoid them.
9. IRB Guidelines on SOGI, currently in development, should be based on the most recent UNHCR SOGI Guidelines and relevant

international and domestic jurisprudence and developed in consultation with relevant stakeholders, including LGBT refugees, frontline agencies, LGBT activists and academic and community-based researchers involved with this study.

10. While the IRB Guidelines on Vulnerable Persons make explicit reference to LGBT individuals, procedural accommodation issues need to be balanced with the line of questioning, so that the latter is non-adversarial. Given the significant challenges, traumatic experiences, and systemic barriers LGBT claimants experience, particularly those claimants that face multiple discrimination factors such as race, it is especially important that oral questioning should take place in a non-adversarial environment, to convey a sense of respect and safety so the claimant is better able to respond accurately, and is not further traumatized. Other guidelines such as UNHRC SOGI Guidelines should also be incorporated. These considerations should inform decision-making.
11. In some countries LGBT organizations or organizations that support LGBT rights, or provide services to LGBT clients, have been shut down or threatened with closure by authorities. Individual LGBT people and or allies have been subjected to persecution because of their support for LGBT rights. In recent years some countries have introduced laws that criminalize 'promotion' of homosexuality or 'promotion of unnatural acts', in violation of freedom of expression. We urge the IRB to put resources into tracking this concerning development.

DESIGNATED COUNTRIES OF ORIGIN

12. Given the Federal Court ruling, that denying refugee claimants from Designated Countries of Origin access to the Refugee Appeal Division (RAD) is a violation of the Canadian Charter of Rights and Freedoms,

the federal government should immediately increase resources for the RAD to address the backlog that is likely to ensue.

13. In order to address the inequitable treatment of DCO refugee claimants, and the serious impact on LGBT claimants in particular, the federal government needs to abolish the DCO construct immediately.

SETTLEMENT IN CANADA

14. All levels of government must ensure that they invest in funding settlement and resettlement services across the entire region including in smaller communities, particularly for vulnerable populations including LGBT people. Often, specialized services for LGBT people are not available outside large urban centres.
15. The federal government needs to fund professional development activities for the immigrant and refugee-serving sector, including the development and delivery of education and training to counter homo-bi-transphobia, racism, prejudice and discrimination.
16. All funders that require data collection and reporting for the delivery of refugee settlement and resettlement services should support and encourage the collection and reporting of disaggregated data, including SOGI - but only where it is voluntarily disclosed.

HOUSING

17. Hostel and shelter service providers need to be responsive to the unique and specific housing needs of LGBT refugee claimants, especially to ensure the safety and security of Transgender/Transsexual/Two-spirited people.
18. Hostels and shelters need to make appropriate and safe accommodation arrangements available including gender neutral

washrooms. Hostels and shelters should introduce anti-violence and anti-harassment policies if not already existing and enforce such policies where they do exist.

19. The Province of Ontario needs to ensure that all municipalities make access to affordable housing, including shelter services, a priority for LGBT refugees in particular, given their extensive vulnerabilities.
20. The City of Toronto needs to ensure that its Shelter Standards (currently under revision) are revised to cover not only the needs of Transgender/Transsexual/Two-spirited people, but also those of LGB people.
21. Training of staff working in shelters and hostels on Transgender/Transsexual/Two-spirited needs recommended in the Shelter Standards must be made compulsory and the revised standards implemented.

EMPLOYMENT

22. We urge that employers, unions, regulatory bodies and government agencies heed the Ontario Human Rights Commission's recommendation to consciously and actively work to remove the 'Canadian experience' barrier that places refugees at a disadvantage and which the OHRC clearly identifies as a discriminatory practice.
23. All levels of government, human rights agencies and employers, unions, regulatory bodies and government agencies need to draw attention to and address racism in the work setting and how this disproportionately affects racialized refugees, including LGBTs, who are further stigmatized.

MENTAL HEALTH

24. The federal government needs to reinstate the Interim Federal Health Program (IFHP) as per the judgment of the federal court.

25. The federal and provincial governments need to increase resource allocations to counselling and mental health support services that are sensitive to, and aware of, LGBT asylum seeker issues in order to improve access to services pre, during and post the BOC process, given the traumatizing effect this has on the mental health of many LGBT refugee claimants.
26. The production of mental health information (both hard copy and digital) that is inclusive of LGBT refugees, translated in different languages and made accessible and available at crucial points of entry would improve access to services for LGBT refugees and claimants.

SERVICE PROVIDERS

Canada Border Services Agency (CBSA)

27. Training the CBSA can help reduce the anxiety of LGBT claimants once they arrive, and ensure that claimants are not barred from accessing the refugee claim process due to ignorance and prejudice.

Immigration and Refugee Board of Canada (IRB)

28. IRB staff training needs to continue and should cover the complexity of LGBT claimant issues and should further inform and enhance the line of IRB questioning, as recommended in the UNHCR SOGI Guidelines.

Immigration lawyers, consultants and translators

29. Training of immigration lawyers, consultants and translators is needed on the specific issues faced by LGBT refugee claimants, including covering issues relating to evidence requirements, to assist LGBT refugee claimants in preparing claims.

REFUGEE AND IMMIGRATION RESETTLEMENT SUPPORT

30. Restrictions on all Charities' advocacy activities need to be reviewed and loosened. Service providers must be permitted to address core and systemic issues affecting the populations they serve without fear of loss of funding or charitable status.
31. Improved job security for service providers in the settlement and resettlement sector is needed, given the stressors of their job environment and the social issues they are working with in addressing refugee and asylum seeking concerns.
32. Mainstream settlement and resettlement service organizations for immigrants and refugees need to provide ongoing training for staff, volunteers, interns and members that addresses homo-bi-transphobia using an anti-oppression lens. With training and better funding mainstream services can more readily provide services for LGBT populations.
33. Immigrant and refugee-serving organizations should build internal awareness and capacity to advocate for equity, access and human rights of LGBT clients where necessary.
34. Specialized LGBT services for asylum seekers and refugees need to be better funded and resourced to meet the high demand for such services

RESOURCES FOR THE IRB

35. The Federal government should increase resources for the IRB in order to avoid delays and backlog in processing claims. In particular, the federal government should assign an adequate number of decision makers to the IRB.
36. Adequate and designated funding should be allocated to the IRB's Research Program to further strengthen research on LGBT refugees, and LBTs in particular, which would in turn enhance the quality of decisions made.

RESEARCH FUNDING

37. This report's conclusions identify a number of areas where further research is needed. Research collaborations between universities and community organizations and groups would fill the gap in these areas. Research funds designated for LGBT asylum issues should be allocated to universities, research centres and institutions, and community based organizations to address these gaps.

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Appendix A: Focus Group Questions with LGBT refugees, Pre and Post-Hearing

Question sets and group definitions

Each focus group uses one of the two question sets with one of the two groups:

- Set A questions – Accessing Community Services and Support
- Set B questions – Refugee Claim Process (for those still completing the process, skip the last question)
- Pre-Hearing refugees – those who have not yet had a final hearing
- Post-Hearing refugees – those who have had a final hearing (but may not yet have received a decision on their case)

DISCUSSION QUESTIONS: Accessing Community Services and Support

1. When you first arrived in Toronto: What were some of the most important things you needed to do to take care of yourself? What was the hardest need for you to meet? (Use flip chart to list and group to structure the focus group)
2. For most important and challenging explore with group members:
 - How did you try to meet this need? (How did you know/think to do/try this?)
 - What help did you get?
 - How did you find out how to get this help? (Explore informal networks as well as community referrals)
 - What challenges came up when you (looked for shelter, applied for welfare,)?
 - When you accessed/tried to access <service X> what challenges did you encounter?
 - What worked well/helped you access <service X>
 - What help or resources would you have liked to have?

3. a. How do you think your experience of (looking for housing/going to the clinic) might have been impacted?
 - By being lesbian, gay, trans, bi? (Ask about and use identity terms people are using most comfortably)
 - By being a refugee claimant?
 - By being a person of colour?
- b. Alternate: May work better to ask for one account per person of their most frustrating experience trying to access a service and then listen/probe for impacts of racism, xenophobia, poverty & classism, heteronormativity/homophobia, transphobia, sexism as well as other conditions that impacted access.

Think of one time you tried to access a service or get help that was extremely hard. Can you tell us about that time?

- Sample probes:
 - When they asked you < X >, what do you think was happening?
 - How did the person react when they saw your ID? What do you think was happening?
 - It sounds like...made you uncomfortable, can you say why?
4. If mental health didn't come up in 1 then ask: What did you do to take care of yourself emotionally during your application? In the first month? In the time right before your hearing? In the time right after your hearing?
 - What was most difficult for you?
 - What was most helpful to you?
 - What services or resources did you turn to? (Explore access and suitability of service issues)
 5. Wrap up question, what is one thing you have learned that you would like others to know? (Can be other claimants, service providers...)

DISCUSSION QUESTIONS: The Refugee Claim Process

1. What ideas did you have about refugee claims or refugees before you came to Canada?
2. How did you find out you could make a refugee claim based because of persecution of your sexuality or gender identity?
3. What, if any, help did you get to prepare for the eligibility interview?
4. Can you tell us about how the eligibility interview went for you?

Follow-up questions: (Often, these answers will be embedded in participants' accounts, and so it won't be necessary to ask directly. Use as probes if needed.)

- How did you describe the reason for making a refugee claim?
 - How did you feel about talking about your reason for making a claim with the officer.
 - How did the officer respond?
 - What might have helped you feel more comfortable saying what you needed to say?
 - Is there anything that would have made it easier for you to talk about the reasons for making a claim?
5. Can you talk about how things went after the eligibility interview, what steps did you take to prepare your Personal Information Form? (This will become the Basis of Claim form under the new system)

**Follow up questions
(Again, use as probes if needed):**

- How did you find a lawyer?
- How did you learn about legal aid?
- Can you describe what it was like for you when you applied for legal aid?
- What, if any, help did you receive with your legal aid application?

What was most helpful to you while you were preparing your PIF?

What kind of help or support would you have liked to have had while you were preparing your PIF?

6. You had a month to prepare your PIF, besides preparing your PIF, what other things were doing that month?
 - What was important to you in that first month of your application?
 - What kinds of help would you liked to have had, that you didn't?
 - What was most helpful to you during that first month of your application?
7. Can you describe what you did to prepare for your hearing?
 - What help did you get preparing?
 - What challenges came up?
 - What was most helpful to you in preparing for your hearing?
 - What kinds of help would you have liked to have that you didn't?
8. Are you comfortable talking about the hearing itself?
 - What was the most challenging part of the hearing?
 - What helped you get through the hearing?
 - What help would you have liked to have?
9. Wrap up question, looking back at the process, knowing you have made it through, what is one thing you have learned that you would like others to know?

Appendix B: Service Provider Focus Group Questions

1. Please provide a short description of the work that you do.
2. Describe some of the reasons for, or experiences of, forced migration of your LGBT asylum seeking clients that stand out in your mind? Anecdotally, have you noticed patterns? Changes over the years (Bill C-31)?
 - E.g. what constraints on mobility are you aware of? (Visa and income requirements?)
3. In your experience, did many of your LGBT clients come to Canada knowing they could claim refugee status as a result of discrimination based on their sexual orientation or gender identity?
 - If yes, do you know how they got this information?
 - If no, how do they learn this information once they arrive, and how does not knowing at first impact their claims process?
4. What kind of barriers do your clients experience in accessing services, either your own or other services (that may or may not be LGBT specific)?
5. Do LGBT clients request letters documenting the use of your agency's services to support their claim?
 - If yes, does your agency provide these letters?
 - Why or why not?
 - Does your agency have a formal (or informal) policy around this practice?
6. How does the refugee claims process impact your LGBT clients, given their experiences in fleeing and their various identities?
 - E.g. disclosing status (to CBSA officials, lawyers, settlement workers given experiences of persecution)?
7. How are the recent changes to the refugee determination system (or what was Bill C-31) (both its announcement and now the beginning of implementation) affecting LGBT refugees who come to you to access services?
 - E.g. their decision making processes, emotional/psychological impacts, disclosure of sexual orientation, the process itself, detention, settlement, access to and in/eligibility for services etc.
8. How is the current funding and political environment affecting you, your agency, and the services it provides?
 - E.g. Visa changes, IFH cuts, CIC funding cuts, comments and actions by Minister Kenny
 - How are the recent changes to the refugee determination system (or what was Bill C-31) affecting yourself as a service provider, your agency and the services it provides?
9. Do you have LGBT refugee clients who have disabilities, and if so, what are some of the particular problems they experience, both during the claims process and in accessing services?
10. Do you see any gaps in service for particular groups within the LGBT refugee community?
11. Any last final thoughts or comments?

Envisioning Global LGBT Human Rights team, World Pride conference, Toronto, 2014.



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