

LGBTI refugees: what refugee professionals need to know

Mary Kapron

Professor Nicole LaViolette, Faculty of Common Law
Undergraduate Research Opportunity Program

1. Introduction

In the 1990s, sexual orientation and gender identity were recognized as grounds for refugee protection under the 1951 United Nations Refugee Convention. Since that time, the number of lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals fleeing persecution and claiming refugee status on the basis of sexual orientation and gender identity has increased significantly. LGBTI refugee claimants face double-marginalization as both forced migrants and sexual minorities.

As a result of the unique hardships they face, the Organization for Refuge, Asylum and Migration (ORAM) in collaboration with the United Nations High Commission for Refugees (UNHCR) began to develop a collaborative training program for refugee professionals to improve their knowledge on asylum issues related to sexual orientation and gender identity and to assist adjudicators to better determine the eligibility of LGBTI refugee claimants for international protection. This project creates an annotated bibliography focusing on LGBTI identities, protection gaps specific to LGBTI individuals, credibility issues in LGBTI claims and resettlement challenges for LGBTI individuals. It will serve as a practical tool for refugee professionals, adjudicators and organizations serving refugees with the goal that it will improve the treatment of LGBTI refugee claimants.



2. Methodology

Identification of scholarly sources through a systematic search of social science and legal research databases.

“lgbti” + “refugee” + “claim”
in westlaw canada
in int'l journal of human rights
in int'l journal of refugee law
in harvard journal of law & gender
in canadian review of sociology
in pyscinfo
in journal of social work

Review Analyze
Categorize Summarize



4. Conclusion

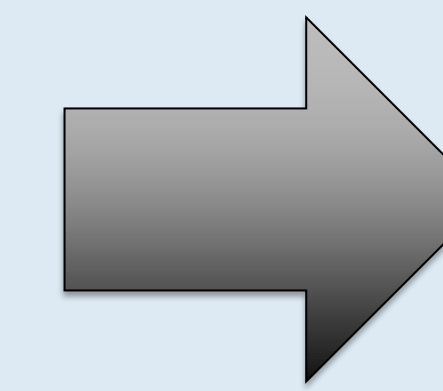
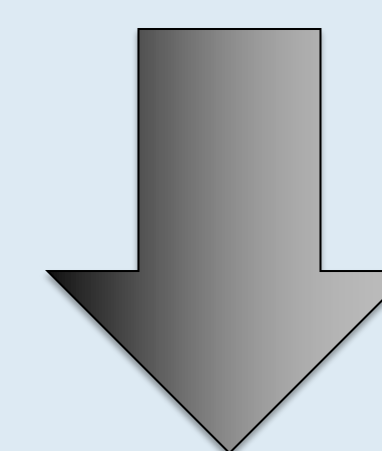
Through a systematic search of social science and legal research databases, this project has generated a comprehensive annotated bibliography of scholarly sources from a variety of disciplines including law, psychology, sociology and social work. The research highlights the unique and complicated challenges that LGBTI refugee claimants face in navigating refugee status determination processes and in integrating into and accessing social services in the country of refuge. The annotated bibliography will be integrated in the training modules to serve as a practical tool in future training sessions and as an additional resource for refugee professionals, adjudicators and organizations serving refugees. It will improve their knowledge on asylum issues related to sexual orientation and gender identity and will assist adjudicators to better determine the eligibility of LGBTI refugee claimants for international protection. Additionally, it serves as a comprehensive collection of scholarly literature to date on issues facing LGBTI refugee claimants.

3. Results

Navigating the refugee status determination process



Over 175 million LGBTI individuals live under conditions of violence. An estimated 3000 receive international protection each year.



Challenges in fulfilling elements of convention refugee definition

- (1) Membership in ‘particular social group’
 - Disbelief in claimant’s sexual orientation or gender identity
- (2) Persecution vs. discrimination
 - More sympathetic when homosexuality is illegal in country of origin
 - Less sympathetic when country of origin is working towards respect for LGBTI individuals
- (3) ‘Private sphere’ vs. ‘public sphere’ harm
 - Focus on state persecution – violence against sexual minorities often committed by non-state actors such as family members

Barriers to adjudication of LGBTI claims

- (1) Credibility
 - Use of highly stereotyped Westernized notions of sexual orientation that do not apply to claimants
- (2) Evidentiary issues
 - Lack of human rights documentation on persecution of LGBTI individuals
- (3) State protection
 - Failure to report violence – in many countries this is not possible, claimant would have to ‘out’ him or herself
- (4) Adjudicator prejudice
 - Adjudicators may be homophobic or have negative perceptions of LGBTI individuals

Literature cited

Christi Jo Benson, “Crossing Borders: A Focus on Treatment of Transgender Individuals in U.S. Asylum Law and Society” (2008-09) 30 Whittier LR 41 at 53-56.
Jenni Millbank, “From Discretion to Disbelief: Recent Trends in Refugee Determination on the Basis of Sexual Orientation in Australia and the United Kingdom” (2009) 13:2 Int’l JHR 391.
National Center for Lesbian Rights, “The Challenges to Successful Lesbian Asylum Claims” (2013).
Nicole LaViolette, “Independent Human Rights Documentation and Sexual Minorities: An Ongoing Challenge for the Canadian Refugee Determination Process” (2009) 13:2 Int’l JHR 450.
Organization for Refuge, Asylum and Migration, “Opening Doors: A Global Survey of NGO Attitudes Towards LGBTI Refugees and Asylum Seekers (2012).
Shana Tabak & Rachel Levitan, “LGBTI Migrants in Immigration Detention: A Global Perspective” (2014) 37 Harvard J L & Gender 1.
Victoria Neilson, “Globalization, Security and Human Rights: Immigration in the Twenty-First Century: Homosexual or Female? Applying Gender-Based Asylum Jurisprudence to Lesbian Asylum Claim” (2005) 16 Stan L & Pol R 417.

Acknowledgements

This project would not have been possible without the generous opportunity provided by the University of Ottawa through the Undergraduate Research Opportunity Program (UROP). Many thanks to Ms. Pascale Lafrance and Ms. Fabienne Tougas for their role in providing this opportunity to students and for their assistance throughout the duration of the Program.
Special thanks to Professor Nicole LaViolette for supervising this project and for all of her support, guidance and expertise. Without her, this project would not have been possible.

Further information

For further information, please contact Mary Kapron at (613)233-8940 or via mkapr015@uottawa.ca

For more information on the Organization for Refuge, Asylum and Migration’s (ORAM) training program in collaboration with the United Nations High Commission for Refugees (UNHCR), please visit: <http://www.oraminternational.org/>