

Migration and Gender for Iranian LGBT

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Accepted 10th July, 2019.

ABSTRACT

This article specifically addresses the country of the Islamic Republic of Iran and the very important issues pertaining to LGB individuals in Iran and their migration process. LGB individuals suffer from human rights violations and are denied the basic freedom of being who they are due to their sexual orientation or gender identity. Faced with official intransigence some LGB are compelled to escape persecution in their countries of origin and seek refuge in countries that provide them greater protection. Their sexual orientation becomes an issue when seeking asylum. This article explores the relationship between gender and the migration process. The article offers an account of the complexity of LGB seeking asylum as they face a myriad of threats, risks and vulnerabilities throughout all stages of the displacement cycle.

Keywords: LGB, Migration, Gender, Iran, Asylum seeker, Protection

INTRODUCTION

LGBT migration is the movement of lesbian, gay, bisexual, transgender, individuals (LGBT) around the world and domestically often to escape discrimination or ill treatment due to their gender and or sexual orientation. In reality, their immigration journey and asylum protection exemplifies a dramatic and often brutal experience. The migration process itself creates opportunities for homophobic target forms of discrimination and human rights violations. Indeed, often the immigration experience itself is a repeat of the very factors that forced LGBTs to emigrate in the first place: brutish treatment, open disdain for their mere existence, sexual assaults and the chronic hovering presence of anxiety and fear. The relationship between gender and sexual orientation is a severely understudied aspect of migration often assumed to be exclusively driven by income gaps between origin and destination countries. This results in the extreme vulnerability

and specific challenges of LGBT migrants mostly given second shift.¹

Transgender

It is challenging for all asylum seekers to demonstrate that they are at risk of persecution but the challenges are even more daunting for individuals who identified as transgender applicants. Transgender fall within two main categories of gender identity: 'normative', where one's biological sex and felt gender are in alignment, and 'transgender', where one's felt gender differs from one's biological sex. Transgender identity

¹Fagan, J. Houdart, F. The World Bank, July 28 2014, Pink Migration - rising tide of LGBT migrants?

challenges the binary conception of sexuality.² In the culture of homophobia there is an irrational fear of gay, lesbian, bisexual, and transgender individuals.³ Similar to homophobia,⁴ transphobia is prevalent in many parts of the globe, even in countries where it is legal to be transgender.⁵

Transgender identity often excludes people from the protections of citizenship in their country of origin, and puts them at risk for forced sterilisation, castration, corrective rape, domestic violence, forced sex work, institutionalised violence and even execution. In Europe, many countries require people to be sterilised before they can legally change gender. One of the biggest challenges lies in the public and authorities' lack of awareness that gender is different from biological sex. 'Transitioning' is the outward process of publicly assuming one's felt gender through clothing, behaviour, hormone use or surgery. In Indonesia, the national government recognises a transgender person only after s/he has undergone gender alignment surgery but people in the earlier stages of transition, or those with no desire for surgery, are unprotected. Many transgender people live in chronic fear of discovery.

Even after reaching a receiving host country, transgender asylum seekers continue to be at risk. Research has identified transgender people as "particularly vulnerable to physical, sexual and emotional abuse within asylum detention centres and community-based single sex shared accommodation" and therefore "at a high risk of self-harm or suicide" during the asylum process.⁶

Although the international LGBT community is slowly gaining worldwide legal and social recognition, in the Middle East, the situation for the LGBT community remains stagnant and dismal.⁷ Across the Middle East, the LGBT community faces varying degrees of repression, due to laws explicitly directed

against them and social stigma enveloped in disgust, disdain and hatred. However, Tel Aviv has frequently been referred to as one of the most gay-friendly cities in the world,⁸ famous for its annual Pride Parade and gay beach.⁹ Nevertheless, with the exception of Israel,¹⁰ most Middle Eastern countries openly condemn the LGBT community. Consequently, the LGBT community in the Middle East exists covertly and subversively with many members of the community living in chronic and sustained fear of being discovered. Barring a few exceptions, the outlook for LGBT individuals in the Middle East is bleak, or even outright deadly. LGBT individuals often face major struggles in their quotidian lives and many of their struggles are social in origin, such as being bullied in school, disowned, raped, beaten by family members or feeling compelled to run away from home, a phenomenon seen in most parts of the world, including the United States. These abuses are often not reported to authorities due to the threat of additional violence from the officials themselves.¹¹

The narrative of "LGBT rights" itself is used as a tool of oppression. Hate crimes against queer communities are very much a part of their existence. Even the nominally inclusive term 'LGBT' that represents lesbian, gay, bisexual, and transgender sexualities, is restrictive. In the Middle East this term is viewed as a Western ideology, reflecting a history constructed in the West, loaded with struggles, accomplishments, experiences, and identities unique to Western societies, and not necessarily applicable to Iranian society. For these reasons, even this 'progressive' terminology can be alienating, as it fails to describe the struggles of sexual orientation and gender identity in Iran.

In Yemen, Mauritania, Nigeria, Qatar, Saudi Arabia, Afghanistan, Somalia, (in some southern regions), Sudan, the United Arab Emirates and Iran homosexuality may be punishable by death.¹² In Algeria, Bangladesh, Chad,

² Adams, Maurianne; Bell, Lee Anne; Griffin, Pat (2007). *Teaching for Diversity and Social Justice*. Routledge. pp. 198–199. ISBN 1135928509.

³ Renzetti, Claire M.; Edleson, Jeffrey L. (2008). *Encyclopedia of Interpersonal Violence*. SAGE Publications. p. 338. ISBN 1452265917.

⁴ Potok, M. Intelligence Report, February 27, 2011, Issue Number: 140, *Anti-Gay Hate Crimes: Doing the Math*. ow

⁵ Bach, J *Assessing Transgender Asylum Claims | Forced Migration Review*, www.fmreview.org/sogi/bach

⁶ Equality Network BEMIS and GRAMnet, 2011, 'Sanctuary, Safety and Solidarity: Lesbian, Gay, Bisexual, Transgender Asylum Seekers and Refugees in Scotland

⁷ Whitaker, Brian, 27 June 2011, *Unspeakable Love: Gay and Lesbian Life in the Middle East*, ISBN-13: 978-0863564833

⁸ Calgary Herald, 29 June 2011. *The world's most gay-friendly places*".

⁹ Grant, Anthony, 2 July 2010). "Dispatch". *The New York Times*.

¹⁰ *The Independent*. London. 17 September 2008. "The five most improved places for gay tolerance".

¹¹ Shima Houshyar, October 21, 2015, - *LGBT Rights in Iran*, Middle East Research and Information Project

¹² Max Bearak and Darla Cameron, June 16, 2016 *the Washington Post*, Here are the 10 countries where homosexuality may be punished by death

Malaysia, Maldives, Pakistan, Qatar, Somalia and Syria, homosexuality is illegal.¹³

Many Islamic societies prohibit homosexuality and in many of these countries it is sanctioned by death. In Islamic societies, both judicial and extra-judicial measures taken against homosexuality communicate a clear message that homosexuality is wrong, immoral, illegal and thus punishable.¹⁴ In Islamic countries, LGBT individuals¹⁵ lack legal protection and face widespread social stigma in the countries that are heavily influenced by conservative and religious values. LGBT identity is negated by the law itself.¹⁶ For example, there have been a number of reliable reports of extra judicial persecution, assault, and murder of gay men in Iraq.¹⁷ The Penal Code of Iran is based on strict Sharia law that reserves some of the harshest penalties for those convicted of same-sex sexual conduct. For example, under Article 124, a man found guilty of kissing another man "with lascivious intent" is punishable "by up to 60 lashes of the whip. Under Article 123, the Penal Code further stipulates that "if two men, unrelated to one another, lie, without necessity, naked under the same cover, they will each be punished by up to 99 lashes of the whip."¹⁸

Research published by the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) serves as a stark reminder of just how widespread such criminalisation can be. In a total of 74 countries, same-sex sexual contact is a criminal offence. In 13 countries, being gay or bisexual is punishable by death. These are: Sudan, Iran, Saudi Arabia, Yemen, Mauritania, Afghanistan, Pakistan, Qatar, UAE, parts of Nigeria, parts of Somalia, parts of Syria and parts of Iraq. In 17 countries, bans are in place to prohibit 'propaganda' interpreted as promoting LGBT communities or identities. These are; Algeria, Egypt, Libya, Morocco, Nigeria, Somalia, Tunisia, Iraq, Iran, Jordan, Kuwait, Lebanon, Qatar, Saudi

Arabia, Syria, Lithuania and Russia. In 17 countries, bans are in place to prohibit 'propaganda' interpreted as promoting LGBT communities or identities. These are: Algeria, Egypt, Libya, Morocco, Nigeria, Somalia, Tunisia, Iraq, Iran, Jordan, Kuwait, Lebanon, Qatar, Saudi Arabia, Syria, Lithuania and Russia. 40 countries retain a 'gay panic' clause which enables people to use as a defence for committing crimes such as an assault or a murder that they were provoked because the person was gay, lesbian or bisexual.¹⁹

None of the Islamic countries can be said to offer social or legal environments that are supportive of LGBT, at least not at the present time.²⁰ Same-sex relationships have historically existed and continue to persist even in today's toxic environment, though silenced and under-recognized. The lives of LGBT Iranians are readily hidden, sheltered, or censored from public appearances. It is almost as if they do not exist.²¹ There is a lack of social community support mechanisms in place or enough affirmative Islamic organizations for LGBT individuals that can provide the social and psychological comfort so desperately needed. Whilst the public display of ISIS, LGBTs' persecutions have attracted international attention over the past years, as in Syria. The situation was already precarious for LGBT individuals long before ISIS took control. Indeed, the situation began to rapidly deteriorate for Iraq's LGBT community after the fall of Saddam Hussein in 2003. Islamist groups emerged from this political chaos and began targeting gay people, killing an estimated 200 LGBT people in 2012 alone.²² Today, these same groups have partnered with the Iraqi government in the fight against ISIS, giving them the freedom to continue their persecution of LGBT individuals.²³

Iranian Laws

With respect to LGB individuals, Iran's legal system is emblematic, unequivocal and adamant in its non-acceptance and non-recognition of homosexuality. With the approval and ratification of Parliament and the Guardian Council in Articles

¹³ Maldives Penal Code, s411; Pakistan Penal Code (Act XLV of 1860), See also Whipple, Sam (2012) Political Science 14 Homosexuality in Africa: The Causes of State discrimination Based on Race

¹⁴ Jaspal, Rusi. (2018) Islam and Homosexuality: Identity, Threat and Sexual Health among Muslim Gay. In: J.M. Ryan and H. Rizzo, eds. Sexualities in the Contemporary Middle East

¹⁵ Ibid

¹⁶ Ottosson, Daniel (may 2008) "State-sponsored Homophobia: A world survey of laws prohibiting same sex activity between consenting adults

¹⁷ Global justice Project Iraq May 21, 2009, Homosexuality and the Criminal Law in Iraq

¹⁸ Parsi, Arsham. January 14 2015, Harvard International Review Iranian Queers and Laws Fighting for Freedom of Expression

¹⁹ Siobhan Fenton, 17 May 2016. The Independent, LGBT relationships are illegal in 74 countries.

²⁰ Supra at 13

²¹ Ibid

²² McDonald James, September 29 2015, Haaretz, Iraq's Queer Community to Receive Support & Protection From New Organization

²³ Ibid

108 through 140 of the Iranian Civil Code distinctly deal with same-sex sexual activities and their punishments in detail. The adverse and broad-ranging impact of these laws and punishment of criminalizing consensual, private same-sex conduct between two adults are punctilious in its interpretation that same sex relationships are simply wrong. An Iranian member of parliament Mohsen Yahyavi blatantly admitted that the government in Iran believes that homosexuals should be executed or tortured and possibly both.²⁴ The Judiciary does not acknowledge the concept of sexual orientation other than heterosexuality and thus from a legal standpoint there are no homosexuals or bisexuals, only persons committing homosexual acts. As Iran is ruled by Shari law, there is a particularly harsh legal stance on homosexuality including lashes and death penalty. Homosexual relation without anal penetration carries a penalty of 100 lashes and anal intercourse will be punished with death by hanging.²⁵ According to Sharia law individuals can be convicted of homosexuality only if they confess four times or if four "righteous" Muslim men testify they witnessed a homosexual act taking place.²⁶ In essence, the mainstream Islamic stance on homosexuality is fundamentally negative.

The new Islamic Penal Code targets those whose sexuality is believed to defy social norms and serves as a justification for state action to remove the "offenders" from the community. Within the structure of many penal codes, if not in the minds of the general public, sodomy laws are conflated with crimes of moral turpitude such a rape, sexual assault, incest and sexual abuse of children. This has let the public to believe that homosexuality is on par with abhorrent crimes of sexual violence with acts of non-procreative sex and innocent defenceless children.²⁷ Rape and child sexual abuse are reprehensible and heinous crimes; being LGBT is not. As recognised by the American Psychiatric Association,

pedophilia is not a sexual orientation,²⁸ whilst homosexuality is a sexual orientation. Unfortunately homosexuals and other members of the LGBT community are often lumped with paedophiles and sexual deviants that justify their ostracisation from society, punishment and execution.²⁹

Homosexuality has always been a contentious topic in Iran due to the stigma surrounding homophobia views of certain members of society. Iran is a traditional society that operates on a basic premise that homosexuality is an abnormality.³⁰ Mashregh News- a news website "close to the security and intelligence organizations, has described homosexuals as "individuals who have become mentally troubled in natural human tendencies, have lost their balance, and require psychological support and treatment."³¹ Traditional society dealing with what are assumed abnormalities such as heterosexualism is neither a new story in Iran nor is the combat against it, but the manner in which Iran exposes perceived "abnormalities" to maintain control over its sexual minorities is yet a controversial issue rooted in its past and in the present. From the work of Mehrangiz Kar of the International Gay and Lesbian Human Rights Commission concludes that "the dominant political elite, relying on an official religious stance, refuses to tolerate any non-conforming sexual conduct or gender expression."³² Security officers often raid the parties and other gatherings of LGBT Iranians, sometimes leading to arrests and detainment of LGBT rights activists who then face additional obstacles in their efforts to accommodate their identity in the current context of Iranian society.³³

Not only are there explicit laws forbidding homosexuality, the government's attitude towards LGBT manifests itself in non-codified forms, including unofficial policies that are intolerant towards LGBTs. These policies often discourage sexual

²⁸ Cheryl Wetzstein - The Washington Times - October 31, 2013 APA to correct manual: Pedophilia is not a 'sexual orientation'

²⁹ Schlatter, E., Steinback, R. *Alternet Media*, December 9 2010, *10 Hateful Anti-Gay Myths Debunked*

³⁰ Afshari, Reza. "LGBTs in the Islamic Republic of Iran." *Human Rights Quarterly*, vol. 38 no. 3, 2016, pp. 814-834. Project MUSE, doi:10.1353/hrq.2016.0046

³¹ Mashregh News. Understanding the Evident and Hidden Dimensions of the Promotion of Homophilia in the World

³² Mehrangiz K, 2015 Lesbian, Gay, Bisexual and Transgender Rights in Iran, Analysis from Religious, Social, Lesbian, Gay, Bisexual and Transgender Rights in Iran, p 9 Analysis from Religious, Social, Legal and Cultural Perspectives, IGLHRC,

³³ Parsi, Arsham. January 14 2015, Harvard International Review Iranian Queers and Laws Fighting for Freedom of Expression

²⁴ *The Daily Mail Online*, November 2007 www.dailymail.co.uk/news/article - Gays should be tortured and hanged.

²⁵ Parsi, Arsham. January 14 2015, *Harvard International Review Iranian Queers and Laws Fighting for Freedom of Expression* Parish, See also, Jaspal, Rusi. (2018) *Islam and Homosexuality: Identity, Threat and Sexual Health among Muslim Gay*. In: J.M. Ryan and H. Rizzo, eds. *Sexualities in the Contemporary Middle East*

²⁶ Jaspal, Rusi. (2018) *Islam and Homosexuality: Identity, Threat and Sexual Health among Muslim In: J.M. Ryan and H. Rizzo, eds. Sexualities in the Contemporary Middle East*, . Boulder, CO: Lynne Rienner Publishers.

²⁷ Jaspal, Rusi. (2018) *Islam and Homosexuality: Identity, Threat and Sexual Health among Muslim In: J.M. Ryan and H. Rizzo, eds. Sexualities in the Contemporary Middle East*. Boulder, CO: Lynne Rienner Publishers.

minorities from reporting hate crimes which will expose them to an even greater risk of abuse and labelling LGBT as a mental illness³⁴

LGBT Existence in Iran

Iran is strongly patriarchal and by its nature, extols masculinity. Gender binary is the classification of sex and gender into two distinct, opposite and disconnected forms of masculine and feminine.³⁵ In Iran there is no standardized measure of gender binaries.³⁶ Sexual desires are bound to intricate social definitions to such a significant extent that sometimes it is difficult for homosexuals themselves to distinguish, understand and accept their own orientations. In Iran, when enquiring about someone's gender, one cannot find an appropriate response that yields a third possibility. Either one is a man or a woman. This fact is so categorically that it has left no room for doubt.³⁷ Any departure from this system of sexual classification in Iran is categorized under the auspice of mental and behavioural disorders. In Iran, complementarity and unity of the two sexes, each associated with distinguishable gender roles is emphasised.³⁸ Graph 1 shows the population of LGB in Tehran, Mashhad and Isfahan. On this basis, Tehran with 4274 homosexuals has the biggest number followed by Mashhad, 2466 and Isfahan, 2171

The societal control element has always prevailed. It is the method and approach in which Iran exposes these assumed abnormalities in order to maintain control over its sexual minorities. The current Iranian penal code upholds a zero-tolerance approach with respect to LGBT individuals, but often these rules and regulations exist only in law. Then there are moments when the laws roar in ferocious intimidating application. In cases of LGBT sanctions, paradoxically whilst there still is a great deal of pressure and oppression in Iranian society- including the fact that LGBT individuals are not

³⁴ Michael O'Flaherty and John Fisher, 2010, Gender Identity and International Human Rights Law: Contextualising the Yogyakarta Principles, Human Rights Law Review, Volume 8, Issue 2, 1 January 2008, Pages 207–248, <https://doi.org/10.1093/hrlr/ngn009>

³⁵ Claudia Card (1994). Adventures in Lesbian Philosophy. Indiana University Press. p. 127. ISBN 978-0-253-20899-6. Retrieved 18 September 2012.

³⁶ Whitaker, B. Jun 2016 The Guardian International Edition Newspaper, LGB Rights, Everything you need to know about being Gay in Muslim Countries

³⁷ Yip, A.K.T., 2004. Embracing Allah and sexuality? South Asian non-heterosexual Muslims in Britain. In: P. Kuman and K. Jacobsen, eds., South Asians in the diaspora: histories and religious traditions. Leiden: EJ Brill, pp. 294-310. ISBN 9004124888

³⁸ Jaspal, R. (2014). Homosexuality in Islam. Paper presented at the European Society for Sexual Medicine and European Federation of Sexology Joint Annual Conference, Istanbul, Turkey 1 February 2014.

immune from arbitrary arrests³⁹ - the draconian and strict rules of sanctions are sometimes jettison in feigned tolerance and may not as heavy handed as they were in the past. But the fear of crack-down is always a hovering threat and omniscient. In April 2017, 30 gay individuals at a party in Bagh-e Bahadoran located in Isfahan were arrested. The Iranian Railroad for Queer Refugees (IRQR) reported that the men were charged with sodomy, drinking alcohol, and using psychedelic drugs. IRQR also reported that the men would be sent to Esfahan's Medical Jurisprudence department for anal examination in order to provide evidence of homosexual acts to the court."⁴⁰

By and large, LGBTs find it daunting to "come out" and declare their true sexual orientation. This is not only an Iranian issue, but commonplace in countries where heterosexual unions are the only recognized ones and non-heterosexual identity has been frowned upon.⁴¹ In such societies, a man is expected to marry, and as long as he fulfills his procreative obligations, the community does not probe into his extracurricular activities.

⁴²Some Iranian gay men, who are in heterosexual marriages, prefer prostitution as the preferred way to have same-sex affairs. For others, staying in the closet is the only viable option⁴³

Cringingly odd, the life of transgender individuals, *albeit* by no means perfect, is more comfortable than the life of homosexuals. For homosexuals in Iran it is quite daunting to openly declare their true sexual orientation. Iran is also the only Muslim country in that gives transgender citizens the right to have their gender identity recognized by the law.⁴⁴ Unlike homosexuals, Iran has liberal laws with regards to transgender individuals, with an encouraging government that is very supportive of financing sex changing surgeries. The 1980

³⁹ Human Rights Violations on the Basis of Sexual Orientation, Gender Identity, and Homosexuality in the Islamic Republic of Iran, IGLHRC Submission to the 103rd Session of the Human Rights Committee ,(17 October- 4 November 2011)

⁴⁰ Spencer, R, April 2017, Jihad Watch blog affiliated with the David Horowitz Freedom Center, Islamic Republic of Iran Arrests Over 30 Gay Men, Will Subject Them to Sodomy Tests.

⁴¹ Bancroft, J. D. and June Machover Reinisch, October 28 1990, Adolescence and Puberty, Oxford University Press, USA

⁴² Labi, N. May 2007 Issue, The Atlantic, The Kingdom in the Closet

⁴³ Rasmussen, S Dec 23, 2014 The Vocativ Newsletter, Living Dangerously: What It's Like To Be Gay In Iran

⁴⁴ Bagri N.T April 2017, Quartz News, Iran's Policies about Transgender Rights Are Unique

Fatwa by Ayatollah Khomeini, Iran's late Supreme Leader, declared that sex assignment surgery is a "solution" to gender identity disorder. He allowed the government through this religious ruling to supervise such surgeries⁴⁵ commonly referred to as Gender Confirmation Surgery (GCS).⁴⁶ However, a deeper probe on the Iranian governments' stance on allowing GCSs reveals that it is actually another tool to destroy and persecute gays and lesbians in Iran as they are still very much ostracised. Despite the surgery, transsexual Iranians does not enjoy a privileged status in society.⁴⁷ There is a belief, played out by the religious clerics and supported by the government, that a person is trapped in a body of the wrong sex,⁴⁸ as individuals with psychosexual problems.⁴⁹ Iranian homosexuals are encouraged to undergo sexual reassignment surgery for their own benefit, thus discouraging LGBT to live their lives in an open and peaceful manner.

Although GCS is not an official government policy forcing gay men or women to undergo gender reassignment, the pressure can be intense. The end result is that these individuals are now compelled to live with the pain and emotional scars. There are cases of mistreatment where the patient needs hospitalization after the surgery. Such cases of mistreatment may be seen as culminating in a medical recommendation for sex reassignment surgery and the accompanying hormonal drug therapy. Between 2006 and 2010, over 1,360 gender reassignment operations were performed in Iran.⁵⁰ These operations almost invariably lead to serious physical complications, depression, and in some cases, suicide. Despite the high number of gender confirmation surgeries performed in Iran, the quality of the work is poor.⁵¹ Naturally this begs the question: how many LGBT did not genuinely desire the surgery?

⁴⁵ Alipour, M. 2016, Islamic Shari'a Law, Neotraditionalist Muslim Scholars and Transgender Sex-Reassignment Surgery: A case study of Ayatollah Khomeini's and Sheikh al-Tantawi's fatwas, International Journal of Transgenderism, Volume 18, 2017 - Issue 1 pages 91-103

⁴⁶ www.plasticsurgery.org/reconstructive-procedures, Gender Confirmation Surgeries". American Society of Plastic Surgeons.

⁴⁷ Dehghan, K. May 2012 The Guardian International Edition, , Iran's Persecution of Gay Community revealed

⁴⁸ Hamedani, A. November 5 2014 , The Gay People Pushed to Change Their Gender, BBC Persia Magazine

⁴⁹ Hamedani, A. November 5 2014 , The Gay People Pushed to Change Their Gender, BBC Persia Magazine

⁵⁰ Hamedani, A. November 5 2014 , The Gay People Pushed to Change Their Gender, BBC Persia Magazine

⁵¹ Bagri N.T April 2017, Quartz News, Iran's Policies about Transgender Rights Are Unique

Further, many employers openly discriminate against people they deem as queer, rendering trans-identified individuals with little financial means and resulting in poor economic survival. As sex work can be conducted legally in Iran through the Shiite notion of a temporary marriage, participation in sex work is common and protected. For a trans-identified person who has undergone GCS, it is legal to have a temporary marriage conducted as often as one per hour because there is no chance of pregnancy and thus negating any future parental responsibilities on the part of the soliciting party. The Iranian administrative system often plays a role in transgender victimization which repeatedly occurs at various familial, societal and state levels. This has been mentioned in many ethnographic studies such as the one undertaken by Najmabadi (2013).⁵² The study illustrates how gender and sexual minorities in Iran have opted to approach the Iranian bureaucratic order through the discourse of "needs" and not "rights." Transgender individuals use the fractious Iranian bureaucracy to their advantage in order to shape the various rules and regulations that will give them access not only to medical resources, but also a space of relative manoeuvre through which they can create liveable lives.

In 2010, the Office for the Socially Harmed at the Welfare Organization of Iran responded to the strategic lobbying and activism by trans-identified individuals by reclassifying their military exemption from the "mental disorders clause" (Section 33.8) to the "glandular disorders clause" (Section 30)46. As this "glandular disorders clause is now clearly displayed on their identification, this has, at least in theory, reduced the amount of discrimination trans-identified men receive when seeking employment. The glandular disorders clause is viewed as a more socially-permissible exemption. Najmabadi explains that "For legal and medical authorities, sex change surgeries are explicitly framed as the cure for a diseased abnormality, and on occasion they are proposed as a religion-legally sanctioned option for heteronormalizing people with same-sex desires or practices"⁵³.

⁵² Najmabadi, A. December 2013, *Professing Selves: Transsexuality and Same-Sex Desire in Contemporary Iran* Duke University Press, 0822355574, 9780822355571

⁵³ Najmabadi, Afsaneh. 2008. *Transing and Transpassing Across Sex Gender Walls in Iran*. *Women's Studies Quarterly* 36(3-4): 23-42.

Human rights violations in Iran

Iran's penal laws against homosexuality grossly violate and carry on violating numerous basic universal human rights. In October 2017, Dr. Ahmed Shaheed, UN special rapporteur on human rights in Iran, stated that Iran's penal system fails to conform to international human rights standards because it, for example, classifies homosexuality as a capital offense.⁵⁴

In 2010, Human Rights Watch published a study on homosexuals and other sexual minorities' circumstances in Iran. Human Rights Watch reported that because the courts' investigations of "morale issues" are not public, it was problematic to determine with precision how many people have been executed because of same-sex relationships. Amnesty International estimated that since 1979 about 5000 people have been executed because of same-sex relationships⁵⁵ The UN Special Rapporteur Asma Jahangir, in her second report on the situation of human rights in Iran covering the period January 1 – June 31, 2017, drew on information from a number of experts and civil society sources, including the Abdorrahman Boroumand Foundation, to describe Iran's "serious human rights challenges." She noted that Iranian law continues to permit capital punishment for homosexuality. Jehangir criticized the Iranian's Judicial System in her report and condemned the imposition of the death penalty for the crime of homosexuality that is considered illegal in Iran.⁵⁶ Her influential comments have exposed the prevailing harsh circumstances LGBT individuals face in Iran and have also given a ray of hope that efforts are in process to bring peace and comfort in LGBT's marginalized lives.

Iran is one of the seven countries in the world that still employs the death penalty for homosexuality⁵⁷. With respect to executions in general, Iran also has the largest number of executions of any country proportional to its population. Only China executed more people in sheer numbers than Iran.

⁵⁴ Iran: Still Hostile to Gays | www.defenddemocracy.org/media-hit/iran-still-hostile-to-gays

⁵⁵ "Iran: UK Grants Asylum To Victim Of Tehran Persecution Of Gays, Citing Publicity". The Daily Telegraph. London. February 4, 2011. See also, Encarnación, O. G. (February 13, 2017). "Trump and Gay Rights: The Future of the Global Movement". Foreign Affairs.

⁵⁶ United Nations, General Assembly, Situation of human rights in the Islamic Republic of Iran report of the Secretary-General, A/72/332 (14 August 2017) available from undocs.org/A/72/332

⁵⁷ ILGA, 2010, 4th ed , State Sponsored Homophobia" report.

⁵⁸Overall, in 2009, Iran executed 388 people.⁵⁹ Between 2010 and 2014, executions rose dramatically with a total of at least 3,242 executions⁶⁰.

Iran continues to execute juveniles despite being a signatory to various human rights treaties and instruments. In 2007, Iran executed eight juvenile offenders. In 2008 and 2009, it was the only country to carry out executions of minors, in violation of its obligations under the Convention on the Rights of the Child. In 2013 and 2014, Iran carried out at least 11 juvenile executions.⁶¹ And these are the one we are aware of.

In 2014 two men, Abdullah Ghavami Chahzanjiru and Salman Ghanbari Chahzanjiri, were hung in southern Iran on August 6 possibly for consensual sodomy.⁶² It is uncertain whether or not they were executed for being gay or merely smeared with homosexuality as there are conflicting stories: one Iranian source said they were, another source was vague about their "crimes" but called them "immoral villains. In 2011 three Iranian men were executed after being found guilty of charges related to homosexuality.⁶³ The men, only identified by their initials, were hung in the South-western city of Ahvaz, the capital of Iran's Khuzestan province. A judiciary official publically stated that the three convicts were sentenced to death based on acts against Sharia law and "bad deeds". Iran Human Rights Organization based in Norway, said the men were charged with *Lavat*, sexual intercourse between two men.⁶⁴ In 2007 it was announced that 20 criminals would be hung in Tehran on a variety of charges, including rape and sodomy.⁶⁵ No further details of the case were made public.

In 2005 the highly publicized and public executions of two teenage boys, Mahmoud Asgari and Ayaz Marhoni, who were hung in public for their alleged involvement in sodomy and rape, brought to the surface the unpredictability and harshness

⁵⁸ Hall, J January 2016, The Independent, www.independent.co.uk Which country executes the most people?

⁵⁹ Ghaemi, H, 19 Oct 2010 , Iran Primer: The Islamic Judiciary

⁶⁰ Ghaemi, H, 19 Oct 2010 , Iran Primer: The Islamic Judiciary

⁶¹ Amnesty International, July 15 2014, Press Release, Iran: Youth at Risk of Hanging Amid Disturbing Rise in Juvenile Executions

⁶² Michaelson, J August 21 2014, The Daily Beast, Iran's New Gay Executions

⁶³ Dehghan, K. September 7 2011, The Guardian International edition, Iran Executes Three men on Homosexuality Charges,

⁶⁴ Dehghan, K. September 7 2011, The Guardian International edition, Iran Executes Three men on Homosexuality Charges

⁶⁵Out Right International, July 8 2007 Iran: IGLHRC Condemns Continued Use of Sodomy Laws To Justify Executions and Arbitrary Arrests

of Iran's draconian view of homosexuality.⁶⁶ There are disturbing and flinching photos of the hangings that were widely distributed on the Internet. Both teenagers were juveniles at the time of the offense, and one was believed to have been a juvenile at the time of his execution. It is still uncertain whether or not the dual executions were carried out specifically because of their homosexuality⁶⁷. To this day, the facts on the charges against them were based are obscure and inconclusive.

Similarly, a teenage boy named Makwan Moloudzadeh was found guilty of *Lavat* (sodomy rape) and executed for raping three teenage boys when he was 13, even though all witnesses retracted their accusations and Moloudzadeh withdrew a confession. Normally as a minor the death penalty would not be applicable.⁶⁸ There was an international outcry and a nullification of the death sentence by Iranian Chief Justice Ayatollah Syedxecut.⁶⁹ The planned execution was a violation of two international treaties signed by Iran that outlaw capital punishment for crimes committed by minors, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child. Nevertheless, Moloudzadeh was hung without his family or his attorney being informed until after the fact.⁷⁰ In 2016 Amnesty International reported that Iran had executed Hassan Afshar, a 19-year-old who was arrested in December 2014 when he was 17 years old. Amnesty also reported that during the two month trial, he lacked access to a lawyer. Although Afshar was accused of forcing another teen to have gay sex, he maintained that the sex was consensual and the victim had willingly engaged in gay sex. Magdalena Mughrabi, Deputy Middle East and North Africa Program Director at Amnesty International has stated that Iran has proven its sickening enthusiasm for putting juveniles to death, in contravention of international law, knows no bounds.⁷¹

Any discussions on Iran's sexual minorities and their social plights and day to day experiences, mandates a comprehensive insight into the dual societal context of religion and law that are often directed towards this silent and often terrified community. This would also include an examination of web of Iran's patriarchal social and cultural infrastructures that highly influence religion and laws. The issue of sexual orientation in Iran is a complicated maze of intricacies and unknown territories that has undermined the social lives of many sexual minorities in Iran. Although most of the international community has acknowledged a spectrum of sexual orientations that has gone beyond biological definitions, in Iranian society sexual orientations are viewed as an aberration. As aptly stated, "There is no dialogue, no discussion about us or our lives. Iranian LGBT lives behind closed doors and high walls."⁷² This lack of acknowledgement is due to Iran's unacceptance of sexual minorities firmly rooted in its long-lasting norms, resistant traditions and most importantly in the powerful role of religion. This has of course made any effort to shed light on the issue even more difficult.

Immigration

LGB Iranians face punishment and bullying as the social stigma remains still rampant, although not enforced in the recent years homosexuality is still punishable by death. The consequences of a same-sex relationship deemed a punishable crime or even death in Iran, the negative view of society, the harassment of LGB people by government and family pressure force many LGB people to seek asylum in countries where the life situation is better. Seeking asylum is difficult as many LGBT individuals are leaving friends, family, culture and employment for a chance at freedom. The ability to fly to a safe country requires money and knowledge. Once arriving in an unfamiliar country, LGBT asylum seekers frequently face the daunting task of building new lives in an unfamiliar and often hostile environment.

⁶⁶ Kim, R. August 7 2005, The Nation, Witnesses to an Execution.

⁶⁷ Kim, R. August 7 2005, The Nation, Witnesses to an Execution

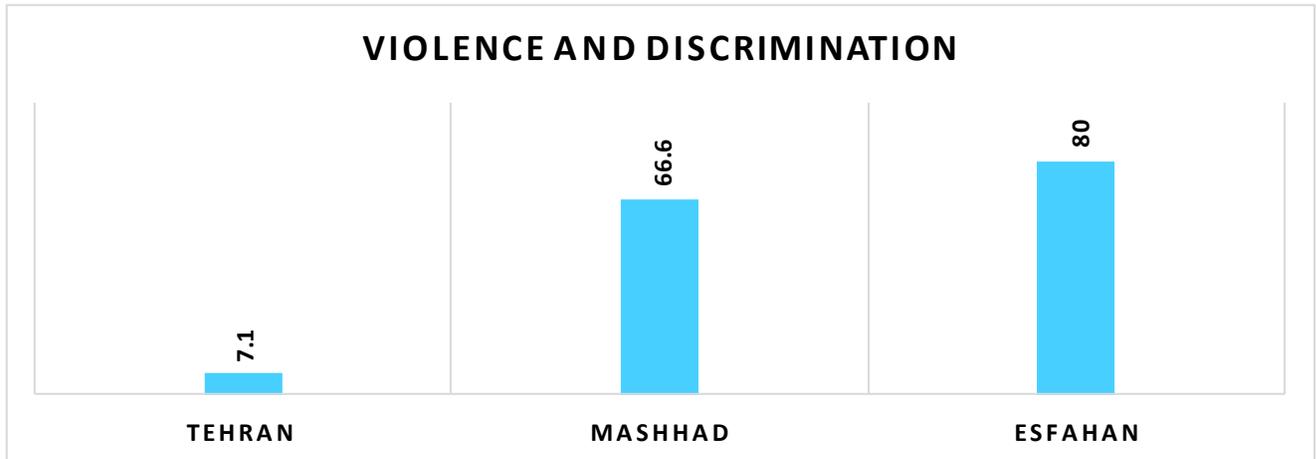
⁶⁸ Iranian hanged after verdict stay". BBC News. December 6, 2007. See also, Amnesty International Press Release after the execution of Moloudzadeh. Archived March 11, 2014,

⁶⁹ Statement of the International Gay and Lesbian Human Rights Commission. See, also Iran seen hanging man for raping boys, Frederick Dahl, Reuters via the International Herald Tribune, December 6, 2007.

⁷⁰ Iranian hanged after verdict of stay". BBC News. December 6, 2007

⁷¹ Press Release, Amnesty International, Aug 2 2016, Iran: Hanging of Teenager Shows Authorities' Brazen Disregard for International Law

⁷² Told to a Tehran Bureau correspondent, The Guardian International Edition, January 3 2013, Growing up Gay in Iran



Graph: Percentage of violence and discrimination against homosexuals

Obtaining asylum status is not the end of the journey; it is the beginning of an adaptation process to a new life—just without the fear of being legally rejected. Gaining asylum can be a painful, alienating process.⁷³

Due to lack of legal protections, LGB individuals face widespread social dishonour that are heavily influenced by conservative and religious values. In essence, their identity is negated in daily life. Graph No.2 shows the percentage of violence, discrimination and humiliation inflicted on homosexuals in Tehran, Mashhad and Isfahan. Based on the graph, most violence and discrimination is seen in Isfahan (80%) followed by Mashhad and Tehran (66.6% and 7.1% respectively). Compared to Tehran, Mashhad and Isfahan are more traditional and religious and thus consider homosexuality as an abnormality and deviation. It is unsurprising that these two cities have a high rate of violence against homosexuals.

The opponents of homosexuality see it as moral corruption or something unnatural. Homophobia and stigmatization of homosexuality in these societies are the major causes behind violence and discrimination. In Iranian society, homosexuality is punishable under the law. From a religious perspective, it is seen as an unacceptable and abnormal conduct. Since homosexuality is considered a flagrant social mismatch and is stigmatized, there are many who believe that homosexuals deserve the violence and discrimination.

In general, the public perceive homosexuals as perverts who threaten the moral health of the society. Aggressive attacks on homosexuals are still rampant; many homosexuals try to have anti-homosexual attempts categorized as hate crimes based on the law.

CONCLUSION & RECOMMENDATIONS

LGB individuals in Iran belong to a silenced minority who often are compelled to hide their sexual orientation from their families and friends out of a well-founded fear of reprisals and social rejection. In Iran, sexual minorities cannot take advantage of their constitutional and civic rights in Iran and cannot defend themselves when involved in an unhealthy violent relationship. In fact LGBT are comprehensively and systematically denied legal protection. As the laws in Iran already view their relationship as blatant contravention of religion norms and legal violations, sexual minorities already terrified of disclosure do not have a comfortable relationship with the legal system, police and/or law enforcement.

While homosexuality is contentious in many countries, in Iran it is the excuse for the possible arbitrary arrest or possible detention. Whether because of politics, religion, or common cultural practices, homosexuals within the Iran continue to fight for their lives and their right to love. Only with the cessation of these practices and the advocacy of human rights for all people will human beings truly achieve peace.

⁷³ National LGBTQ Task Force, Stronger Together, October 23, 2015, A Guide to Supporting LGBT Asylum Seekers

Stoking fears of immigration has seeped worldwide from Western politics, President Donald Trump's chronic references to it, Brexit that arguably would not have happened without it, to the strident nationalists wield power in Italy, Hungary, Poland and Austria that have gained influence.⁷⁴ Concerns about immigration have been raised in all countries worldwide and Iran is of no exception. In Iran, migration "has produced and hosted abundant flows of emigration and immigration, a steady coming and going mainly driven by key political events."⁷⁵ For example, Iran's harsh stance on homosexual orientation undoubtedly fuels the panic to try to leave. Many countries have expressed openly their reluctant to take on refugees for a wide variety of reasons ranging from demographics, economic interests, and labour market fears to blatant racism. Undoubtedly this has resulted in restrictive immigration policies and has been associated with a rise in nationalism.

Refugee flees for various reasons: as victims of natural disasters that makes living in their country unsustainable or victims who are fleeing civil war and strife. LGBT individuals flee because of their LGBT identity. They carry a dual burden: their existence as a refugee and their existence as a LGBT individual. These dual entities rendered their experience of belonging to an unacceptable social group and to marginalization based on profound distancing from traditional support systems and resources.⁷⁶ For many Iranian LGBT individuals, this marginalization adds another layer to the already formidable barriers and daunting process of seeking asylum.⁷⁷ Asylum seekers who are LGBT often face barriers that others do not.⁷⁸

The findings of the research demonstrates the participants' interest in leaving the country and immigrating in the hopes that they can live more openly in a non-repressive humane society as a LGB individual whilst having access to their basic human rights in without the fear of

⁷⁴ The Economist, August 25 2018, The Way Forward on Immigration to the West

⁷⁵ Financial Tribune, Economy Business And Markets, December 20, 2016 , A Look at Iran's Migration Profile

⁷⁶ Luibhéid, E and Cantú, L. Editors 2005. Migrations: Sexuality, U.S. Citizenship, and Border Crossings, Minneapolis: University of Minnesota Press, 2005

⁷⁷ Luibhéid, E and Cantú, L. Editors 2005. Migrations: Sexuality, U.S. Citizenship, and Border Crossings, Minneapolis: University of Minnesota Press, 2005

⁷⁸ National LGBTQ Task Force, Stronger Together, October 23, 2015, A Guide to Supporting LGBT Asylum Seekers.

persecution. They have already initiated the immigration application process of claiming asylum. Some of them had tried to immigrate at a younger age and were preparing for this process taking it in stride as if it were a normal part of their life routine. This is not as easy as it appears to be, particularly in the US.

Asylum is an immigration benefit that allows certain foreign nationals who fear persecution to remain lawfully in the U.S. indefinitely. People who are granted asylum may apply for lawful permanent residence (a green card) one year after being granted asylum. With some exceptions, an asylum application generally must be filed within one year of the applicant's last entry into the U.S.⁷⁹

Asylum claims based on persecution related to LGBT sexual orientation are particularly difficult to file, argue, and win, even with substantial evidence of persecution and ill-treatment. LGBT asylum trends in the United States are closely linked within the domestic political, social, and legal climates surrounding gays and lesbians. This situation, combined with difficulties in proving LGBT identity makes sexual orientation asylum claims especially challenging⁸⁰.

The challenge is particularly acute with a current American administration bolstered by a list of strict immigration policies that include scaling back of legal pathways to citizenship. In a speech, it was stated that the immigration system is rife with "fraud and abuse" which paves the way for millions of immigrants to enter the country illegally and that "dirty immigration lawyers" are coaching their clients to make "fake claims" to trigger "credible fear" proceedings so they can stay in the United States⁸¹.

The Islamic penal codes and laws within an anti-homosexual tense society as well as the obligatory military service have compelled LGBs to exile to another country where there are more relaxed and supportive social laws rules and wider public acceptance. Amongst the countries that are attractive include neighbouring countries such as Georgia and Turkey. Those who are in a better financial situation prefer the US, Germany or Canada.

LGBT immigrants are seen frequently immigrating to Canada, Great Britain, and the United States. It was only in 2013 that

⁷⁹ Applying for Asylum - Immigration

Equality, www.immigrationequality.org/.../applying-for-asylum

⁸⁰ The Difficulties of U.S. Asylum Claims Based on Sexual.

www.migrationpolicy.org > Migration Information Source

⁸¹ Sessions's claim that 'dirty immigration lawyers' encourage. www.washingtonpost.com/news/fact-checker/wp/2017/...

the European Court of Justice declared sexual orientation to be grounds for seeking asylum in line with the EU's 'Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity' issued by the United Nations High Commissioner for Refugees (UNHCR) in 2008. It stipulates that: 'A person cannot be expected or required by the state to change or conceal his or her [sexual] identity in order to avoid persecution.'⁸² Nor is there a duty to be 'discreet' or take certain steps to avoid persecution, such as living a life of isolation, or refraining from having intimate relationships.'⁸³

By and large, most of the Iranian LGBT flee to Turkey to receive refugee status from the UNHCR in order to be resettled in Australia, Canada or the United States. Yearly hundreds of individuals from the Middle East apply for resettlement overseas every year because of increased discrimination against their sexuality or gender identity. They wait for their cases to be processed by the UNHCR, or they move to a third country. Iranian LGBT refugees in central Anatolia in Turkey wait an average of two years for their cases to be processed before being resettled in Europe or North America.⁸⁴

Turkey

The Republic of Turkey is bordered by eight countries: Greece, Bulgaria, Georgia, Armenia, Iran, Iraq, Syria as well as the Azerbaijani exclave of Nakhichevan, the Aegean Sea, the Black Sea and the Mediterranean Sea.⁸⁵ Turkey is the only NATO member state to border Iran, Iraq, Syria, and three former Soviet Republics: Armenia, Azerbaijan, and Georgia.⁸⁶ Turkey is also enduring the spillover of refugees from the Syrian war. For example in 2015, 2.2 million Syrians fled to Turkey, according to Human Rights Watch. Afghan and Iraqi refugees have settled in Turkey as well.⁸⁷

Turkey has become a country of transit for immigrants, a country of transit to the European Union immigration and asylum and a country for mixed migration flows from Asia and Africa to Europe. This country has bear witness to the rise in the numbers of LGBT asylum seekers in recent years. This has had a profound impact on the changing patterns of immigration into Turkey as at one time there were growing concerns in Europe that if Turkey were to become a member of the EU, there would be a massive wave of immigration from Turkey to the more prosperous members of the union.⁸⁸

Although Turkey is amongst the original signatories of the 1951 Convention relating to the Status of Refugees, Turkey is also amongst a very small number of countries that maintains a "geographical limitation" to the agreement's applicability as defined in Article 1.B(1)(a) of the Convention.⁸⁹ "The roots of the geographical limitation date back to the original 1951 Geneva Convention, which concerned itself only with persons who had become refugees as a result of events that occurred before January 1, 1951. This means that The Convention offered signatories the option of limiting their protection to persons who had been rendered refugees as a result of events in Europe."⁹⁰ Accordingly, Turkey does not grant refugee status to asylum seekers coming from outside Europe, and maintains a two-tiered asylum policy.⁹¹ Despite this geographical limitation to the 1951 Refugee Convention, in 2013 Turkey adopted a comprehensive, EU-inspired Law on Foreigners and International Protection (LFIP), which establishes a dedicated legal framework for asylum in Turkey and affirms Turkey's obligations towards all persons in need of international protection, regardless of country of origin, at the level of binding domestic law.⁹² The law also created the

⁸² Baetz, J, November 8, 2013, The Associated Press, EU Court: Homosexuality Can Be Grounds for Asylum,

⁸³ UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity, 21 November 2008 para 26.

⁸⁴ Crowder, N, March 31 2015, The Washington Post, Seeking Home: The lives of Gay and Transgender Asylum Seekers of the Middle East

⁸⁵ National Geographic Family Reference Atlas of the World, (7th Ed.)

⁸⁶ Banani, D., December 1 2003, Boston College International Comparative Law Review, Vol 6. Issue 1, Reforming History: Turkey's Legal Regime and Its Potential Accession to the European Union.

⁸⁷ Jafar, A; and Shahtakhtinski, I. August 1 2016, www.islawfirm.com/asylum-seekers-from-turkey, Asylum Seekers from Turkey

⁸⁸ Kirisci, K, November 1 2003, Migration Policy Institute, 2016) A Transformation from Emigration to Immigration

⁸⁹ United Nations General Assembly Resolution 4 29(V) of 14 December 1950, at <http://www.unhcr.org/refworld/docid/3b00f08a27.htm>

⁹⁰ UN High Commissioner for Refugees, "States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol.

⁹¹ Kirisci, K, November 1 2003, Migration Policy Institute, 2016) A Transformation from Emigration to Immigration

⁹² Author Independent, Asylum Information Database, (Introduction to the Asylum Context in Turkey, www.asylumineurope.org/reports/country/turkey)

Directorate General of Migration Management (DGMM) mandated to take charge of migration and asylum.⁹³

Facing persecution, violence and even death, Iranian LGBT refugees flee most commonly to Turkey, where they seek asylum status from the UNHCR. Iran may enforce the death penalty for consensual same-sex conduct and has, by some estimates, executed thousands of LGBT individuals.⁹⁴ According to the United Nations High Commissioner for Refugees in Ankara, more than 26,500 Iranian refugees were registered as of May 2016. Around 5,000 of them are under 18 years old.⁹⁵ However, fleeing to Turkey is not entering the Magic Kingdom of Acceptance. It can also be a potentially troubling as Iran's neighbouring country Turkey may not protect LGBT rights any better.

In the understandable need to flee, some persecuted LGBT individuals end up in a neighbouring country that is dangerously homophobic and where the prejudice against sexual minority is high. Consequently some LGBT individuals only feel marginally safer and legally stable. Many LGBT individuals arrive in Turkey to confront another stratum of violence and harassment by local communities and other refugees.

"LGBTs are among the most marginalized and vulnerable asylum seekers and refugees in Turkey today. The protections extended by the government of Turkey and UNHCR allow these individuals to escape the severe mistreatment, torture, and death they face in their countries of origin. Unfortunately, their physical survival is often mired in new dangers and deprivations in Turkey."⁹⁶

In April 2015 a Pew Research disclosed that only 4% of respondents in Turkey rated homosexuality as morally

acceptable, 12% as not moral issue, and 78% as morally unacceptable.⁹⁷

Whilst awaiting the determination of their refugee status in Turkey, many LGBT avoid the police, are afraid to leave their homes, and have very limited access to social support, employment, and medical care.⁹⁸ A report by the Organization for Refuge, Asylum, and Migration also confirmed that many LGBT refugees in Turkey are afraid to leave their apartments because of targeted violence from locals and other refugees. There have been reports that LGBT Iranian exiles have been subjected to a string of violent hate attacks and murders in Turkey.⁹⁹ According to a 2012 report by the International Gay and Lesbian Human Rights Commission, crimes against LGBT people often go unpunished because Turkey has no specific legislation to protect them. In addition to having meagre non-existent financial means or resources to provide for themselves whilst seeking asylum in Turkey, LGBT individuals have very limited rights under the Turkish Law 187, including limited access to employment and universal health care.¹⁰⁰

Until they have official documentation, asylum seekers are in limbo: they face the daily fear of being arrested or deportation. As most make this hellish journey penniless or with sparse financial resources, many have little or no money. They must seek employment, housing, and survive without a social support system.¹⁰¹ Reports have seeped out that LGBT Iranian exiles have been subjected to a string of violent hate attacks and murders in Turkey.¹⁰² Abuses against LGBT people and their advocates are rife in Turkey.¹⁰³

According to a 2012 report by the International Gay and Lesbian Human Rights Commission, it was opined that the

⁹⁷ LGBTI Equal Rights Association for Western Balkans and Turkey, 8 March 2017 www.lgbti-era.org/content/turkey

⁹⁸ Grungras, N, Levitan R. and Slotek, A. 2009 The Fletcher Journal of Human Security, 41 VOLUME XXIV Unsafe Haven: Security Challenges Facing LGBT Asylum Seekers and Refugees in Turkey

⁹⁹ Dehghan, S. February 1, 2017, The Guardian International Edition, US Travel Ban Leaves Iranian LGBT refugees in Limbo

¹⁰⁰ Grungras, N, Levitan R. and Slotek, A. 2009 The Fletcher Journal of Human Security, 41 VOLUME XXIV Unsafe Haven: Security Challenges Facing LGBT Asylum Seekers and Refugees in Turkey

¹⁰¹ Iranian Queer Watch Report The Iranian Railroad for Queer Refugees, irqr.net/2016/wp-content/uploads/2016/01/IQW-Report.pdf

¹⁰² Dehghan, S. February 1, 2017, The Guardian International Edition, US Travel Ban Leaves Iranian LGBT refugees in Limbo

¹⁰³ Dehghan, S. February 1, 2017, The Guardian International Edition, US Travel Ban Leaves Iranian LGBT refugees in Limbo

⁹³ Author Independent, Asylum Information Database, (Introduction to the Asylum Context in Turkey, www.asylumineurope.org/reports/country/turkey)

⁹⁴ Grungras, N, Levitan R. Slotek, 2009 The Fletcher Journal of Human Security, 41 VOLUME XXIV Unsafe Haven: Security Challenges Facing LGBT Asylum Seekers and Refugees in Turkey

⁹⁵ World Refugee Day and Plight of LGBT Refugees

⁹⁶ Grungras, N, Levitan R. and Slotek, A. 2009 The Fletcher Journal of Human Security, 41 VOLUME XXIV Unsafe Haven: Security Challenges Facing LGBT Asylum Seekers and Refugees in Turkey

Turkish government views Iranian refugees as a short-term problem, because they cannot ever permanently live in Turkey.¹⁰⁴ These asylum seekers' stay in Turkey is limited until resettlement, typically to the United States, Canada or Australia. As previously stated although Turkey is one of the original signatories of the 1951 Refugee Convention, which is considered the backbone of the international asylum system, Turkey does not accept permanent refugees from Iran or any other part of the Middle East, Africa, or Asia. Turkey applies a geographical limitation to the Refugee Convention, meaning that that vast majority of forced migrants entering its borders today—refugees from the Middle East, Asia, and Africa—are not accorded asylum in Turkey. Instead the responsibility for their protection falls primarily to UNHCR, which is charged with finding them a durable solution, usually involving resettlement.¹⁰⁵

Whilst in Turkey, LGBT refugee applicants are subject to the country's complex asylum procedures¹⁰⁶ a process fraught with anxiety and that often feels incomprehensible and capricious. Even more daunting is the resettlement process itself. It is a rigorous process to determine whether or not there are legitimate claims being made and not everyone is successful in convincing the UNHCR or the country to which they have fled that they are LGBT and that returning to their country of origin is unthinkable. Previously, the waiting time in Turkey was between 10-14 months. Now it can take up to 3 years. During this waiting period¹⁰⁷ those LGBT asylum seekers must economically fend for themselves.

Many LGBT asylum seekers described invasive questioning regarding their sexual history and sexual experiences during their temporary asylum interviews such as being asked about their favourite sexual positions and the number of sex partners they had. Many of the interviews were not conducted in private with police officers in the room who

mocked or laughed at them during their interviews.¹⁰⁸ Although Turkey's asylum regulation encourages asylum seekers to apply for work permits, very few asylum seekers or refugees have ever been granted such authorization.¹⁰⁹ The work permit process is both expensive and administratively complicated. Many look for illegal employment opportunities.¹¹⁰

LGBTs are among the most marginalized and vulnerable asylum seekers and refugees in Turkey today. The protections extended by the government of Turkey and UNHCR allow these individuals to escape the severe mistreatment, torture, and death they face in their countries of origin.¹¹¹ Unfortunately, their physical survival is often mired in new dangers and deprivations in Turkey. Some of these perils and threats stem from a dearth of resources at the local, national, and international levels. Others result from fear, lack of knowledge, and deeply-ingrained societal prejudices. These entities are often the mirror image of the grim and lamentable continuation seen in their country of origin.

Canada

One fifth of the Canadian population is foreign-born.¹¹² Canada is considered to be a vibrant multi-ethnic democracy that enjoys a global reputation as a defender of human rights. The government has taken significant steps domestically to advance the rights of LGBTs including passing legislation to protect transgender people from discrimination and creating a non-binary gender option on passports. Same-sex sexual activity has been lawful in Canada since June 27, 1969, when the Criminal Law Amendment Act (also known as Bill C-150) came into force upon royal assent.¹¹³ Canada has frequently been referred to as one of the most gay-friendly countries in the world, with its largest cities featuring their own gay areas

¹⁰⁴ Kalantari, S. April 10, 2015 Vice News, Transgender Iranian Refugees Are Struggling to Outrun Prostitution and Violence

¹⁰⁵ Russel, S November 1, 2002 Refugees: Risks and Challenges Worldwide, www.migrationpolicy.org/programs/migration-information-source

¹⁰⁶ Grungras, N, Levitan R. and Slotek, A. 2009 The Fletcher Journal of Human Security, 41 VOLUME XXIV Unsafe Haven: Security Challenges Facing LGBT Asylum Seekers and Refugees in Turkey

¹⁰⁷ Grungras, N, Levitan R. and Slotek, A. 2009 The Fletcher Journal of Human Security, 41 VOLUME XXIV Unsafe Haven: Security Challenges Facing LGBT Asylum Seekers and Refugees in Turkey

¹⁰⁸ Grungras, N, Levitan R. and Slotek, A. 2009 The Fletcher Journal of Human Security, 41 VOLUME XXIV Unsafe Haven: Security Challenges Facing LGBT Asylum Seekers and Refugees in Turkey

¹⁰⁹ Turkish Labour Law [Law on Work Permits for Foreigners], Feb 2 2003, Law No. 4817, Art. 12,

¹¹⁰ Kalantari, S. April 10, 2015 Vice News, Transgender Iranian Refugees Are Struggling to Outrun Prostitution and Violence

¹¹¹ Helsinki Citizens Assembly Report, Jun 26, 2012 Unsafe Haven: The Security Challenges Facing Lesbian, Gay, Bisexual and Transgender Asylum Seekers and Refugees in Turkey, June 2011

¹¹² Peñaloza, M, January 26, 2017, KPBS News, For A Stark Contrast To U.S. Immigration Policy, Try Canada

¹¹³ Government of Canada. September 9, 2010, Rights of LGBTI persons, www.canada.ca/.../services/rights-lgbti-persons.html.

and communities, and being named amongst the most gay-friendly cities in the world.¹¹⁴

As Iranian politics have undergone dramatic changes in the last 40 years, so has the nature of Iranian migration to Canada. As the Middle East crisis in Syria and surrounding countries worsens, it seems that LGBT Iranian refugees and regular applicants who wish to migrate to Canada have to face a very rigorous screening process that citizens of many other nations do not. How to balance between national security concerns and the rights of immigrants to a fair process is becoming a very difficult act for the current government.¹¹⁵

Previously Canada had officially requested that Iranian refugees who identified as LGBT be quickly processed and settled in Canada at a high priority. Since 2015, this has changed attributed in part to Prime Minister Justin Trudeau's promise to prioritize refugees fleeing the crisis in Syria.

Saghi Ghahraman, the head of the Canada-based Iranian Queer Organisation stated "We don't like to think it, but it seems that Prime Minister Trudeau's campaign promise to bring in 25,000 Syrian refugees had an impact even though they said right at the beginning that it wouldn't impact all other refugees, it did. Even if the refugee admissions system resumes processing applications, and these LGBT refugees from Iran are allowed to enter the U.S., Ghahraman says there is doubt about whether or not they want to go."¹¹⁶ Ghahraman, stated that up until 2013, the wait-time for the LGBT to be determined and resettled by the UNHCR in Turkey was about a year and a half, which was barely manageable. The war in Syria changed things as the United States and Canada undertook resettlement of large number of displaced Syrians. LGBT wait-time before resettlements went up to three years. It is highly plausible that the Syrian civil war has had an impact.¹¹⁷

In 2017 Canada started referring LGBT Iranians to the United States for resettlement. Under the previous Harper

government, conservatives gained international praise for the programme that brought hundreds of LGBT asylum seekers from Turkey. It was explicitly said as Canada increased the number of referrals for Syrians, Canada decreased the number of referrals from Iran. Canada's federal immigration department has acknowledged it resettled fewer LGBT Iranians from Turkey, in order to make space for the late-2015 Syrian airlift.¹¹⁸ "We never stopped taking LGBTQ Iranians. We had a large flow of referrals that involved Iranians. As we increased the number of referrals for Syrians, we decreased the number of referrals from Iranians," says David Manicom, the associate assistant deputy minister for Strategic and Program Policy.¹¹⁹

Whilst data on how many refugees identify as gender and sexual minorities is hard to come by, the immigration department's internal figures show an 85 percent drop in all Iranians resettled to Canada through the UNHCR. LGBT Iranians in Turkey, and their advocacy groups, say referrals drastically slowed starting in November 2015, as the Syrian program got underway. Six-month delays grew into year-long holds, before the UNHCR started referring the refugees to the US by October 2016. The department's data shows that Canada took in 1,022 Iranians through that process in 2014, 374 in 2015 and just 152 in 2016.¹²⁰ Ghahraman reported that if Canada does not change its procedures for LGBT applicants from Iran, they will continue to be stuck in Turkey, a country that also struggles with homophobia. "These are the gay and lesbian and Trans people, who are at risk by their Turkish neighbours, and by their Iranian neighbours," Ghahraman says. "They cannot get a job. When they get a job they are attacked, they are asked for sexual favours."¹²¹

The government was under increased pressure to explain why it started turning away LGBT Iranian refugees during the Syrian airlift, ending a program that resettled hundreds of persecuted Iranians through UNHCR. Canadian Prime

¹¹⁸ Robertson, D., March 02, 2017, Xtra News, Canada's Immigration Department Acknowledges Drop in LGBT Refugees from Iran www.dailyxtra.com/canadas-immigration-department

¹¹⁹ Robertson, D., March 02, 2017, Xtra News, Canada's Immigration Department Acknowledges Drop in LGBT Refugees from Iran www.dailyxtra.com/canadas-immigration-department

¹²⁰ Robertson, D., March 02, 2017, Xtra News, Canada's Immigration Department Acknowledges Drop in LGBT Refugees from Iran www.dailyxtra.com/canadas-immigration-department

¹²¹ CBC Radio · February 11, 2017, LGBT refugees from Iran are asking why it's become harder for them to come to Canada

¹¹⁴ CBC News, November 08, 2011, Ottawa Introduces First 'Gay Village'".

¹¹⁵ Allard, J., September 21, 2015, Immigration News Has Canada Turned Back the Clock with Iranian Immigration?

¹¹⁶ CBC Radio · February 11, 2017, LGBT refugees from Iran are asking why it's become harder for them to come to Canada

¹¹⁷ Dehghan, S. February 1, 2017, The Guardian International Edition, US Travel Ban Leaves Iranian LGBT refugees in Limbo

Minister Justin Trudeau cried during a formal apology to LGBT individuals on behalf of Canada. He stated "For the oppression of the lesbian, gay, bisexual, transgender, queer, and two-spirit communities, we apologize. He continued, wiping tears away from his eyes with a handkerchief. "On behalf of the government, parliament, and the people of Canada, we were wrong, we are sorry, we will never let this happen again."¹²²

United States

Asylum is a United States legal mechanism for protecting immigrants who have been persecuted or believe they will be harmed if they go back to their country of origin. The United States takes the lion's share of refugees resettled from Turkey. Once asylum status is granted, individuals can remain in the United States, obtain a work permit, be entitled to some public benefits, and eventually apply for a green card and United States citizenship. It is the United States Citizenship and Immigration Services (a branch of the U.S. Department of Homeland Security) makes the decision whether or not to grant asylum status. Immigration and Asylum based on gender orientation

The framework of asylum relief in the United States (as well as internationally) is based on the definition of the term "refugee" which means someone who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership in a particular social group, was outside of his or her native country and due to that fear, was unable or unwilling to avail him or herself of the persecution in that country.¹²³ Asylum seekers in the United States have the burden of proof to demonstrate that they were subjected to persecution and they possess a reasonable fear of future persecution.

Many LGBT have been granted asylum under the particular social group category. In order to qualify as a particular social group for asylum purposes, a group must have a common, innate characteristic that they either cannot change or should not have to change because it is fundamental to their identities or consciences. Those who are LGBT fits these categories,

because they have a common characteristic and, even if one were to argue that it could be changed, their orientation is something fundamental to their identity and therefore should not be changed.¹²⁴ In other words, homosexuality must be a permanent and an inherent characteristic to be considered by U.S. immigration officials.

What is of primordial importance is that the LGBT individual must be physically present in the United States. There are two processes to get asylum in the United States aptly referred to as "Affirmative" and "Defensive" asylum processes.

A person must file for asylum within one year of their last entry into the United States. The burden is on the asylum applicant to prove that he or she applied within one year of entering the United States, and must prove so by clear and convincing evidence. This rule is strictly applied and enforced notwithstanding the two exceptions to this rule. First, a person can file for asylum past the one year deadline if they can demonstrate changed circumstances. Sometimes the reasonable fear of future persecution may not have existed when entering the United States, but change circumstances in their country of origin, (such as a change in government) has now created a reasonable fear or a change in an individual's personal circumstances (such as a change in religion,) The second exception is if there are extraordinary circumstances that prevented an individual from applying for asylum within the one year deadline. These exceptions are rarely granted, rarely given out and only when someone clearly fits the requirements¹²⁵.

An affirmative application starts with the asylum applicant filing for I-589 with the government. A few months later, the Asylum Office will schedule an interview with the asylum applicant. The asylum applicant is required to provide his or her own interpreter, and the asylum applicant's attorney is allowed to attend as well. The LGBT Iranian asylum applicant must show that the LGBT community in their home country is sufficiently visible and that one's treatment is tantamount to persecution on account of their LGBT identity or sexual orientation. Many LGBT in Iran demonstrate a prima case for claiming asylum: violation of LGBT rights is a violation of human rights;

¹²² Beeitbart News Nov 2017, Trudeau Cries During Apology to 'LGBTQ2'

¹²³ 8 C.F.R. § 208.13(b)(1), 1208.13(b)(1))

¹²⁴ Political Asylum USA.com www.politicalasylumusa.com

¹²⁵ Political Asylum USA.com www.politicalasylumusa.com

homosexuals and bisexuals are under a real fear of persecution and harassment in Iran and the fact they are in danger of being arrested and punished. It is highly plausible that Iranian LGBT can meet the legal definition of a well-founded fear of persecution.

A few months after the interview, the Asylum Officer will issue its decision.

Whilst UNHCR is obligated to create an environment of trust and respect during refugee status determination interviews (RSD) many LGBTs described interview techniques that were invasive, inappropriate, or prurient. For instance, whilst describing a twelve-hour gang rape by Iranian state security agents, a transgender asylum seeker was asked to provide explicit sexual details. Similarly, a gay man was repeatedly asked to describe whether his partner had used any "liquids, instruments, or drugs" during his first sexual experience. Another man recalled his UNHCR interviewer stating that it was unlikely that he was gay because he had been married to a woman in his home country. Likewise, interviewees who dressed and behaved in what is deemed as masculine were asked why they did not dress "more femininely." Interviewees also reported that at least one of UNHCR's Farsi interpreters referred to gay men using a term that derogatorily implied prostitution.¹²⁶

The application is reviewed and questions are asked. In the vast majority of cases a decision is made within two weeks either granting or denying the asylum claim. A denial means the individual will be placed in removal proceedings and the case will be referred to an immigration judge, who either will grant or deny the asylum. A denial is appealable and the individual can legally remain whilst waiting for a final decision.¹²⁷

The reports of treatment of LGBT detainees obtained through Freedom of Information Act, or FOIA, requests and through complaints filed by immigrant rights groups reveal that much like in the general prison population—where LGBT inmates are 15 times more likely to be sexually assaulted than the general

population.¹²⁸ In November 2013 a Centre for American Progress (CAP) report found that LGBT held in immigration detention facilities are 15 times more likely to be sexually assaulted.¹²⁹ The UN Rapporteur on Torture found the treatment of LGBT immigrants in U.S. detention facilities to be in violation of the Convention against Torture.¹³⁰

Visibility

Visibility in the asylum gender discourse has a particular meaning.¹³¹ It does not mean whether or not someone looks like they are LGBT but rather whether or not the culture sufficiently considers them to be a separate group from other people. In the United States, judges and immigration officials require that homosexuality must be socially visible in order for sexual persecution to be a viable complaint. Essentially it means their culture sufficiently considers them to be a separate group from other people. Whether or not there is sufficient visibility depends on the facts of the case but in general the threshold is met if the government has any discriminatory attitudes or practices directed at anyone who is LGBT. On one hand, courts have granted claims based on LGBT status for people from Albania, Argentina, Guyana, Indonesia, Jamaica, Lebanon, Morocco, and Uganda and have rejected claims from Mexico, Peru, Nigeria, and Zimbabwe.¹³²

A further requirement is that in the United States the LGBT asylum seeker must also show persecution on account of their sexual orientation or identity. As previously discussed, Iranian society views homosexuality harshly with laws explicitly directed against them and the wider social stigma enveloped in disgust. Homosexuality is a crime in Iran. If a country makes it criminal for an LGBT person to have sex, then prosecution for that crime may be enough to show persecution.

¹²⁸ Gruberg, S., November 25, 2013, Center for American Progress, Dignity Denied: LGBT Immigrants in U.S. Immigration Detention

¹²⁹ Mullins, D., November 25, 2013 America Aljazeera, Report: LGBT Immigrant Detainees Face Higher Risk of Sexual Assault, Abuse

¹³⁰ Houdart, F and Fagan J., The World Bank, July 28, 2014, Pink Migration - Rising Tide of LGBT Migrants?

¹³¹ Marou, F. 2008 "The Emerging Importance of Social Visibility" in Defining a Particular Social Group and Its Potential Impact on Asylum Claims Related to Sexual Orientation and Gender, Scholarly Works. Paper 419. <http://scholars.law.unlv.edu/facpub/419>

¹³² Political Asylum USA.com www.politicalasylumusa.com

¹²⁶ Grungras, N, Levitan R. Slotek, 2009 The Fletcher Journal of Human Security, 41 VOLUME XXIV Unsafe Haven: Security Challenges Facing LGBT Asylum Seekers and Refugees in Turkey

¹²⁷ Asylum Fact Sheet | Transgender Law Center,

Conclusion

Iran has been at the centre of the abundant flows of emigration and immigration for various reasons¹³³ including gender. LGB individuals in Iran belong to a silenced minority who often are compelled to hide their sexual orientation from their families and friends out of a well-founded fear of reprisals and social rejection. Iranian LGB individuals suffer from human rights violations and are denied basic freedoms. Abuses are perpetrated by the Iranian government, the judiciary system and by non-state actors such as schools, communities and families. No one is held accountable for these violations of basic rights and many LGBT individuals whose lives are fraught with fear have no choice but to attempt to migrate. Their gender is the reason for fleeing.

LGBT refugees face legal challenges not experienced by non-LGBT refugees. That said, it is critical that there is a supportive and protective LGBT frame work for individuals who are facing the dual challenges: those associated with being a refugee and those associated with their sexual orientation or gender identity. These challenges require sensitivity, and an appreciation of evolving identities within the sexual spectrum. Support is needed whilst they are still in transit countries such as Turkey for example to assist them in finding their way through the harrowing bureaucratic maze they face in order to gain asylum, to help them get settled and to cope with establishing a new life in LGBT friendly countries. In Turkey. LGBTs are among the most marginalized and vulnerable asylum seekers and refugees as their physical survival is often mired in new dangers and deprivations in Turkey.¹³⁴

LGBT Iranians are in a precarious position in today's world of hardening stoic attitudes towards their community, particularly when they must leave their country of origin out of a reasonable fear of persecution and encountered further persecution along the path to safety. LGBT individuals' gender ought not to be the cause of their pain and risk of life.

Overall, the unattainable and unfathomable living conditions in Iran and the masked lives, suppressions and hatred has caused many of the participants want to leave Iran and go no matter where. Homosexuality reports in Iran are based on antecedents of a well-founded fear of persecution and oppression. These LGBT individuals who do manage to obtain the difficult asylum status are now in a safer jurisdiction and no longer living in Iran. For the lucky ones who were able to do so, there are countless others who do not have the opportunity or financial means to leave, they remain behind.

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¹³³Hakimzadeh S., September 1 2006, A Vast Diaspora Abroad and Millions of Refugees at Home www.migrationpolicy.org/programs/migration-information-source)

¹³⁴ Grungras, N, Levitan R. and Slotek, A. 2009 The Fletcher Journal of Human Security, 41 VOLUME XXIV Unsafe Haven: Security Challenges Facing LGBT Asylum Seekers and Refugees in Turkey