



**SUBMISSION TO ALL PARTY PARLIAMENTARY GROUP (APPG) ON GLOBAL LGBT
RIGHTS: INQUIRY INTO THE UNITED KINGDOM'S STANCE ON INTERNATIONAL
BREACHES OF LGBT RIGHTS**

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"I was initially refused asylum but granted refugee status in 2007. Coming to the UK changed my life. I could be my true self. I didn't need to hide anymore. In a way I have the British Government to thank but it was a very difficult process. Asylum is a dirty word because of the way the media portrays it. I couldn't even bring myself to say I was a refugee. Now I am speaking up for others who need help." – Sahara – Trans women and refugee from Nigeria

UK Lesbian and Gay Immigration Group (UKLGIG)

1. UK Lesbian and Gay Immigration Group (UKLGIG) is the only national organisation dedicated to supporting, and advocating for the rights of, lesbian, gay, bisexual, transgender and intersex (LGBTI) asylum seekers and refugees.
2. UKLGIG was founded in 1993 to campaign for equality in immigration law for same-sex couples seeking to reside in the UK. In 2003, our focus shifted to supporting LGBTI asylum seekers and refugees. UKLGIG supports in excess of 1,000 people every year. We support LGBTI asylum seekers and refugees by providing a range of services tailored to respond to the multifaceted problems they experience, including by facilitating access to specialist legal advice as well as mental and emotional support. We advocate for improvements in law and practice and are members of the Home Office's National Asylum Stakeholder Forum.
3. UKLGIG regularly collaborates with refugee, LGBTI and human rights activists, groups and organisations at home and abroad including Refugee Council, Amnesty International, UNHCR, Stonewall, Human Dignity Trust and ILGA-Europe. UKLGIG provides specialist training to lawyers, civil servants, judges and civil society actors.
4. During the course of this submission we will argue that the UK Government can and must play a greater role in promoting the human rights of LGBTI people around the world. UKLGIG has long-term experience in supporting those who have been persecuted and forced to flee their countries of origin as a result of their sexual or gender identity. We will comment on the UK Government's legal and moral responsibility to ensure that LGBTI people who are at real risk of persecution are granted refugee protection and treated with dignity and respect during the asylum process.

Executive Summary

- LGBTI people around the world experience discrimination and violence on a daily basis on account of their sexual and gender identity. The UN Secretary-General, Ban Ki Moon, has described this as 'one of the great, neglected human rights challenges of our time.'
- The UK Government has a strong track record of promoting the human rights of LGBTI people at home and abroad. However, the UK can do more and must do better. UKLGIG urges the UK Government to renew its commitment, engagement and approach including by developing a comprehensive strategy of utilising diplomacy, support and pressure to promote the human rights of LGBTI people around the world.
- UKLGIG participated in the founding meeting and launch of the All Party Parliamentary Group on Global LGBT Rights. We believe the APPG will be a vital forum for parliamentarians, activists and organisations across the public, private and third sectors to collaborate to champion the rights of LGBTI people. We commend the APPG and its officers for its swift actions in launching this first initiative.

- A practical and effective means of responding to the global persecution of LGBTI people is to commit to providing refugee protection to those in need and a fair and effective asylum system. Law, policy and practice must be reviewed in order to ensure LGBTI asylum seekers are treated with dignity and respect and those at real risk of persecution are granted refugee status.
- UKLGIG has serious concerns regarding the treatment of LGBT asylum seekers in the UK, who face significant obstacles in navigating the complex and frequently unsympathetic asylum system. The needs of transgender asylum seekers are particularly neglected.
- The standard of decision-making in the refugee status determination process must improve. Many LGBT people are refused asylum as the Home Office asserts they have failed to 'prove' their sexual or gender identity. Many LGBT asylum seekers are detained in immigration detention centres where bullying, abuse and harassment are commonplace.
- LGBTI asylum seekers and refugees have a legitimate interest in, and valuable contribution to offer, domestic and international human rights initiatives. Their voices, views and inclusion are of critical importance given their particular experiences and perspectives.

Context - LGBT Asylum Seekers and Refugees

5. In 2015, the UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, published a landmark report on discrimination and violence against individuals based on their sexual orientation and gender identity, in which he observed¹ –

'While some progress has been made since the first study in 2011, the overall picture remains one of continuing, pervasive, violent abuse, harassment and discrimination affecting LGBT and intersex persons in all regions. These constitute serious human rights violations, often perpetrated with impunity, indicating that current arrangements to protect the human rights of LGBT and intersex persons are inadequate. There is as yet no dedicated human rights mechanism at the international level that has a systematic and comprehensive approach to the human rights situation of LGBT and intersex persons.'

6. UNHCR estimates that some 42 States have granted asylum to individuals with a well-founded fear of persecution owing to their sexual or gender identity². In 2010, the Coalition Government committed as follows³ –

'We will stop the deportation of asylum seekers who have had to leave particular countries because their sexual orientation or gender identification puts them at proven risk of imprisonment, torture or execution.'

¹ Report of the Office of the United Nations High Commissioner for Human Rights, 'Discrimination and violence against individuals based on their sexual orientation and gender identity' (4 May 2015)

http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Documents/A_HRC_29_23_en.doc

² Ibid p.17

³ HM Government: 'The Coalition: our programme for government' (May 2010)

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78977/coalition_programme_for_government.pdf

7. It is not known how many LGBTI people seek asylum in the UK every year as the Home Office does not publish such statistics nor do we know how many are detained for the purposes of their asylum claim being considered. In 2009, research estimated 1,200-1,800 LGB people come to the UK as asylum seekers each year⁴.
8. The standard of decision-making in LGBT claims has been poor and LGBT applicants continue to experience a range of obstacles in navigating the complex and frequently unsympathetic asylum system in the UK. Sexual and gender identity claims are inherently complex and LGBTI people face specific difficulties not experienced by other asylum seekers. As the then UN High Commissioner for Human Rights, Navi Pillay, observed⁵ –

'Even in countries that recognize these grounds for asylum, practices and procedures often fall short of international standards. Review of applications is sometimes arbitrary and inconsistent. Officials may have little knowledge about or sensitivity towards conditions facing LGBT people. Refugees are sometimes subjected to violence and discrimination while in detention facilities and, when resettled, may be housed within communities where they experience additional sexuality and gender-related risks. Refoulement of asylum-seekers fleeing such persecution places them at risk of violence, discrimination and criminalization.'

9. Many of those with whom UKLGIG works have experienced human rights abuses and have been discriminated against, harassed, beaten and tortured because of their sexual or gender identity. Many of our clients, both male and female, are survivors of rape. Due to multiple layers of discrimination, LGBTI asylum seekers are invariably highly marginalised in society and isolated from their communities and families. Many experience feelings of profound shame and/or internalised homophobia, which impacts on their ability to present their asylum claims⁶.
10. The specific needs and experiences of trans asylum seekers are often neglected. Trans people are regarded to be “particularly vulnerable to physical, sexual and emotional abuse within asylum detention centres and community-based single sex shared accommodation” and thus “at a high risk of self-harm or suicide” during the asylum process⁷.

Decision-Making

11. Since the Supreme Court's landmark judgment in *HJ (Iran) and HT (Cameroon) v. Secretary of State for the Home Department*, [2010] UKSC 31⁸, the major obstacle applicants experience is in establishing their credibility, particularly in 'proving' their sexual or gender identity to the satisfaction of decision makers. In 2013, the Home Affairs Select Committee stated the

⁴ Metropolitan Support Trust, 'Over Not Out: The housing and homelessness issues specific to lesbian, gay, bisexual and transgender asylum seekers' (2009) – Page 11 <http://www.metropolitan.org.uk/images/Over-Not-Out.pdf>

⁵ United Nations High Commissioner for Human Rights, 'Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity' (2011) – Page 13

⁶ UNHCR, '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' (2012) – Referred to as UNHCR SOGI Guidelines below – See paragraph 3 <http://www.refworld.org/pdfid/50348afc2.pdf>

⁷ Cowen T, Stella F, Magahy K, Strauss K and Morton J, 'Sanctuary, Safety and Solidarity Lesbian, Gay, Bisexual, Transgender Asylum Seekers and Refugees in Scotland' (2011) http://www.gla.ac.uk/media/media_195792_en.pdf

⁸ *HJ (Iran) and HT (Cameroon) v. Secretary of State for the Home Department*, [2010] UKSC 31, United Kingdom: Supreme Court, 7 July 2010 <http://www.refworld.org/docid/4c3456752.html>

assessment of LGBT asylum claims is judged to be ‘particularly poor’⁹. The Law Society stated that LGBT applicants face ‘extraordinary obstacles’ to establishing their claims¹⁰.

12. The standard of asylum decision-making in LGBT cases is a matter of serious concern. LGBT asylum seekers have experienced significant and well-documented obstacles in ‘proving’ their sexual or gender identity to the Home Office’s satisfaction. Adam, a trans man and refugee from Egypt, commented:

“I was refused asylum three times. At first I didn’t even have a lawyer. When I was interviewed the Home Office’s interpreter told the official, “This is one of the strangest interviews I’ve ever done.” The Home Office refused to believe that I am trans, they treated me like a liar. They continuously referred to me as a woman. I felt like they were attacking me.”

13. In May 2014, the Home Secretary, Theresa May MP, commissioned the Independent Chief Inspector of Borders and Immigration, John Vine, to conduct an investigation into the Home Office’s handling of LGB asylum applications¹¹. The Chief Inspector found a fifth of asylum interviews contained stereotyping and a tenth contained inappropriate questions likely to elicit a sexual response¹².
14. The Chief Inspector made a series of recommendations aimed at improving the handling of such claims, all of which were accepted by the Home Office¹³. It is important to note that the Chief Inspector’s investigation did not address or critique the Home Office’s treatment of trans people or the handling of gender identity asylum claims.
15. In February 2015, the Home Office issued new policy guidance on sexual identity claims¹⁴. UKLGIG welcomed it as a ‘positive framework’ in which claims can be determined but called on the Home Office to ensure effective implementation¹⁵. The Home Office has yet to review policy guidance on gender identity claims¹⁶, issued in 2011, which has been described as ‘vague, open to misinterpretation, and, often based on normative assumptions’¹⁷.
16. The assessment of credibility in LGBTI cases needs to be undertaken in an individualised and sensitive manner. The Chief Inspector’s report must act as a catalyst for reform and we urge the Home Office to take practical steps to ensure LGBTI people can access refugee protection and are treated with dignity and respect.

⁹ For instance, see Home Affairs Select Committee report, ‘Asylum’ (2013) – See paragraph 58 <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/71/71.pdf>

¹⁰ As above - Ev 142, para 33 & Q268

¹¹ UKLGIG Public Statement dated 31 March 2014 http://uklgig.org.uk/?page_id=869

¹² Independent Chief Inspector of Borders and Immigration: ‘An Investigation into the Home Office’s Handling of Asylum Claims Made on the Grounds of Sexual Orientation’ (October 2014) <http://icinspector.independent.gov.uk/wp-content/uploads/2014/10/Investigation-into-the-Handling-of-Asylum-Claims-Final-Web.pdf>

¹³ UK Visas and Immigration and James Brokenshire MP: ‘Response to report on asylum claims on the basis of sexual orientation’ (October 2014) <https://www.gov.uk/government/publications/response-to-report-on-asylum-claims-on-the-basis-of-sexual-orientation>

¹⁴ Home Office: Asylum Policy Instruction ‘Sexual identity issues in the asylum claims’ (February 2015) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/404372/EXT_Asylum_Instruction_Sexual_Identity_Issues_in_the_Asylum_claim_v5_20150211.pdf

¹⁵ PinkNews: ‘Charity welcomes new Home Office guidance for gay asylum cases’ (17.02.2015) <http://www.pinknews.co.uk/2015/02/17/charity-welcomes-new-home-office-guidance-for-gay-asylum-cases/>

¹⁶ Home Office: Asylum Policy Instruction ‘Gender identity issues in the asylum claims’ (2011) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257387/genderissueintheasylum.pdf

¹⁷ Bach J, ‘Assessing transgender asylum claims’; Forced Migration Review, ‘Sexual orientation and gender identity and the protection of forced migrants’ (Issue 42 / April 2013) – Page 33-36 <http://www.fmreview.org/sogi>

Detention

17. LGBTI people subjected to immigration detention frequently experience social isolation, physical and sexual violence and harassment by both facility staff and other detainees. Trans detainees are particularly at risk. In some countries, LGBT detainees are often placed in segregation in response to threats and violence or as a precautionary measure, which can exacerbate or lead to severe mental health effects. LGBT detainees frequently self-isolate so as to avoid stigmatisation from other detainees¹⁸.
18. In 2010, the then UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, reported¹⁹ –

'Within detention facilities, there is usually a strict hierarchy, and those at the bottom of this hierarchy, such as children, the elderly, persons with disabilities and diseases, gays, lesbians, bisexuals and trans-gender persons, suffer double or triple discrimination.'

19. In 2014, ILGA-Europe observed²⁰ –

'The situation for LGBTI asylum seekers in reception facilities (including detention centres) is often problematic: in most cases they fled alone, and they have neither the support of family members nor a network of fellow expatriates. In reception centres they face homo- or transphobia, discrimination, bullying, and violence, in many cases from their countrymen. It is not unusual that upon arriving in the country where they hoped to feel safe, they feel compelled to hide in the closet again.'

20. Concerns about the treatment of LGBT people in immigration detention have been expressed for many years in the UK. In 2008, the Independent Asylum Commission called for an assessment of the risks to LGBT asylum seekers in detention.²¹ Despite this, little progress has been made and the scale of detention has increased. UKLGIG visits immigration detention centres on a weekly basis and we have serious concerns regarding the bullying, abuse and harassment of LGBT people. Johnson, a Ugandan refugee, observed:

"The whole place was vile. It was so homophobic. One of the guards called me a poof and there were Jamaicans who kept hurling abuse at some Iranian guys – calling them batty men. I was terrified thinking oh my God, I hope they don't know I'm one of them. There were always fights – they would provoke them and the guys would try to fight back. Eventually the gay guys had to be taken out. So it was very scary. It was awful. You can't risk being open about being gay there."

¹⁸ Tabak, S and Levitan, R 'LGBTI migrants in immigration detention'; Forced Migration Review, 'Sexual orientation and gender identity and the protection of forced migrants' (Issue 42 / April 2013) – Page 47 <http://www.fmreview.org/sogi>

¹⁹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 'Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention' (2010) – Page 62 http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.39.Add.5_en.pdf

²⁰ ILGA Europe, 'Good practices related to LGBTI asylum applicants in Europe' (2014) – Page 47 http://www.ilga-europe.org/home/news/latest/asylum_publications_launch_2014

²¹ Independent Asylum Commission, 'Deserving Dignity' (2008) - Page 50 <http://www.citizensforsanctuary.org.uk/pages/reports/DeservingDignity.pdf>

21. Increasing numbers of LGBT people have been detained for the purposes of their asylum claims being processed and assessments of suitability are invariably perfunctory²². The DFT process is increasingly used as an administrative convenience and yet it is costly, dysfunctional and unfair²³. Seeking asylum is not a crime and the detention of asylum-seekers should be avoided and only used as a measure of last resort. Furthermore, LGBT claims are complex and unsuitable for accelerated procedures²⁴. Lisa, a Ugandan asylum seeker, commented:

"My freedom has been taken away from me, my partner can't visit because she doesn't have a passport, I am suffering from depression. I can't sleep because I have nightmares. I was imprisoned in my country because I am a lesbian. I am in prison in the UK because I seek safety."

22. Tahir, a gay man from Pakistan, was detained for three weeks before being granted refugee status. He described Harmondsworth immigration detention centre as "totally unsafe" for LGBT asylum seekers²⁵. Once inside, he was subjected to verbal abuse and sexual harassment. On one occasion, he says that he was pulled into another detainee's room and sexually assaulted. Tahir says he reported the incident to a staff member, but no action was taken. Instead, staff members told him that he was "very visible," and advised him to "keep yourself down."
23. The UK detains more asylum seekers than any other country in the European Union (EU) and is alone in having no time limit on the length an individual can be subject to immigration detention. In March 2015, a cross-party group of MPs and peers demanded a fundamental change in the way that immigration detention is used in the UK and called for a 28-day time limit²⁶. The Detention Inquiry also expressed extreme concern at the ill-treatment of LGBT people in immigration detention.
24. LGBT detainees are invariably reluctant to formally challenge homophobic or transphobic incidents, including by making complaints. Our clients invariably believe such complaints will negatively impact on their asylum claim, fellow detainees will be informed thus placing them in further danger or such a complaint will not be dealt with robustly. UKLGIG was extremely concerned to be recently informed by a long-serving detention guard that trans women had previously been placed in segregation as a means of 'protecting' them from other detainees. This is an entirely unacceptable. Administrative segregation, or solitary confinement, solely because a person is LGBT can result in severe psychological harm²⁷.
25. A fundamental change in the use of immigration detention in the UK is required. A 28-day time limit on immigration detention should be introduced in line with best practice in the EU. The Government should develop and utilise alternatives to detention based on engagement with migrants and NGO stakeholders taking into account good practice.
26. In recent months, UKLGIG has raised serious concerns about the bullying, harassment and abuse of LGBT people in immigration detention centres and in community accommodation with the Immigration Minister, James Brokenshire MP, the Home Office Permanent Secretary,

²² UKLGIG, 'Missing the Mark' (2013) – Page 28

²³ See Detention Action, 'Fast Track to Despair: The unnecessary detention of asylum-seekers' (2011) <http://detentionaction.org.uk/wordpress/wp-content/uploads/2011/10/FastTracktoDespair-printed-version.pdf>

²⁴ See UNHCR SOGI Guidelines

²⁵ VICE News, 'LGBT asylum seekers say they face homophobic abuse in UK detention centres' (29.10.2014) <https://news.vice.com/article/lgbt-asylum-seekers-say-they-face-homophobic-abuse-in-uk-detention-centers>

²⁶ All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration, 'The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom' (March 2015) <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>

²⁷ See UNHCR SOGI Guidelines

Mark Sedwill, the Director-General of UK Visas and Immigration, Sarah Rapson, and other senior civil servants. The Home Office has yet to propose steps to tackle this issue.

UK's role in promoting human rights of LGBTI people

27. UKLGIG urges the UK Government to renew its commitment, engagement and approach to promoting the human rights of LGBTI people including by developing a comprehensive strategy of utilising diplomacy, support and pressure. Given the legacy of British colonial rule, the UK Government can play a central role in the global struggle for the decriminalisation of laws which criminalise and harass people on account of their sexual or gender identity.
28. UKLGIG urges the UK Government to appoint a minister or special envoy on the human rights of LGBTI people. During a recent consultation with UKLGIG clients, asylum seekers and refugees spoke overwhelmingly in favour of such an appointment.
29. UKLGIG has met the U.S. Special Envoy on the Human Rights of LGBTI Persons, Randy Berry, who expressed his desire for closer collaboration with the UK Government. Such an appointment will send a valuable signal to the rest of the world that LGBTI rights are human rights. A minister or special envoy can ensure the UK Government's efforts and activities achieve maximum effect including in intergovernmental organisations such as UN bodies and the Council of Europe.
30. UKLGIG urges the UK Government to continue to practically assist local LGBTI activists, groups and organisations. For instance, UKLGIG has seen first-hand the valuable support given by the British Embassy in Riga to local LGBTI activists over the course of many years culminating in this year's EuroPride celebrations. However, both British Embassy staff and local activists expressed disappointment that the Embassy was unable to fly the rainbow pride flag during these historic and important celebrations.
31. UKLGIG urges the UK Government, parliamentarians and NGOs to increase engagement with diaspora activists and groups. LGBTI asylum seekers and refugees have a legitimate interest in, and valuable contribution to offer, domestic and international human rights initiatives. UKLGIG consulted asylum seeker and refugee clients in advance of this week's debate in the House of Lords on the treatment of LGBTI people around the world and in preparing this submission. Their voices, views and inclusion are of critical importance given their particular experiences and perspectives.

Appendix - Recommended Materials

- UN High Commissioner for Refugees (UNHCR): *'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'* (2012)

<http://www.refworld.org/docid/50348afc2.html>

- UKLGIG: *'Missing the Mark – Decision Making on Lesbian, Gay (Bisexual, Trans and Intersex) Asylum Claims'* (2013)

<http://www.uklgig.org.uk/wp-content/uploads/2014/02/Missing-the-Mark.pdf>

- ILGA-Europe: *'Good practices related to LGBTI asylum applicants in Europe'* (2014)
http://www.ilga-europe.org/home/publications/reports_and_other_materials
- Independent Chief Inspector of Borders and Immigration, *'An Investigation into the Home Office's Handling of Asylum Claims Made on the Grounds of Sexual Orientation'* (2014)
<http://icinspector.independent.gov.uk/wp-content/uploads/2014/10/Investigation-into-the-Handling-of-Asylum-Claims-Final-Web.pdf>
- All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration: *'The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom'* (2015)
<https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>
- United Nations High Commissioner for Human Rights, *'Discrimination and violence against individuals based on their sexual orientation and gender identity'* (2015)
<http://t.co/UQBVE5YSmj>
- UKLGIG, *'Submission to the Independent Review into the Welfare in Detention of Vulnerable Persons'* (2015)
<http://uklgig.org.uk/wp-content/uploads/2015/06/UKLGIG-Submission-to-Shaw-Investigation-29.05.2015.docx>
- UKLGIG, *'Submission to Women and Equalities Committee Inquiry into Transgender Equality: Needs and Experiences of Transgender Asylum Seekers'* (2015)
<http://uklgig.org.uk/wp-content/uploads/2015/09/Submission-to-Trans-Equality-Inquiry-21.08.2015.docx>