UNHCR and LGBTI refugees in Kenya: The limits of 'protection'

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Abstract

This paper problematises the way that protection is framed and implemented by UNHCR in relation to LGBT refugees in the context of Kenya. Despite increased international attention to LGBT refugees, the extant literature focuses on asylum-seeking at Western borders; there is a dearth of scholarship which explores the experiences of LGBT refugees within first countries of asylum in the global South. Building on critical literatures on humanitarian governance, this paper suggests that the ways that protection is framed by UNHCR, and practical restrictions on the implementation of protection in the context of Kenya, leave LGBTI refugees unsafe. Yet refugees' own attempts to secure protection for themselves, often drawing on the same discourse of human rights that UNHCR deploys in its guidance renders them even less 'protectable' by both UNHCR and Kenyan activists. This paper argues for a more critical and contextualised approach to 'protection' as a form of humanitarian assistance given its place within the broader dynamics of global refugee governance.

Introduction

In recent years, media attention and transnational activism to highlight the lack of protection afforded to lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals in the global South has proliferated, setting its sights on the failures of governments to protect and in some cases actively persecute those who identify or are identified by others as 'queer'[1]. This activism tends to assume the responsibility of states to look after its queer citizens, who are framed as rights-bearers by virtue of their humanity - and thus put pressure on them to do so (Amnesty International, 2013; HRW and PEMA Kenya, 2015). In recognition of the persecution that queer individuals face, transnational activism has also increasingly attended to migration and claims for asylum on the basis of SOGIE (sexual orientation, gender identity and expression[2]). As with all refugees, the UN Refugee Agency (UNHCR) supervises the application of the provisions of the 1951 Refugee Convention that ensure the

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[1] In using 'queer' to refer to individuals whose sexuality, gender identity or expression does not fit with normative heterosexual expectations but who may not identify with commonly used terminology like 'LGBTI'.

[2] 'SOGI' is used by UNHCR in relation to asylum cases; the acronym 'SOGIE', where the 'E' denotes 'expression'. The terms are generally used interchangeably.

protection of refugees, but since 2012 in particular has investigated and made specific recommendations about the protection needs of LGBTI[3] refugees specifically (UNHCR, 2012).

In 2014, international attention to state-condoned violence facing gays and lesbians in Uganda reached a fever pitch over the debating of an 'anti-homosexuality bill' which initially included the death penalty for 'practising homosexuals' (Human Rights Watch, 2014). Between 2014 and 2015, around 400 asylum claims from Uganda were registered with UNHCR Kenya. Countries such as Kenya, where LGBT rights are still a point of tense political negotiation despite its long history of queer activism, host a significant number of displaced people, several thousand of whom are claiming asylum from neighbouring African countries on the basis of their sexual orientation or gender identity. Yet as Zomorodi (2016) remarks, 'LGBT Ugandans who fled to Kenya expecting a safer, friendlier environment and automatic passage to the West were quickly disillusioned.' Whilst initially cases of Ugandan refugees were prioritised by UNHCR, the speed at which they were dealt with in the early months was not sustained. LGBTI refugees in 2017 found themselves facing a similarly hostile and homophobic environment to that which they had fled.

This paper draws on ethnographic research undertaken between August 2018 and January 2019 into the experiences of LGBTI refugees registered in Kakuma camp, north-eastern Kenya in order to problematise the notion of humanitarian protection in this context. After January 2019, when the author had left Kenya, many of these refugees were transferred by UNHCR to a safe house in Nairobi. Throughout the following months, antagonistic dynamics between LGBT refugees, UNHCR, its implementing agencies and the government of Kenya continued - culminating in the eviction of LGBT refugees from the accommodation UNHCR had arranged in May and June 2019. Many of these refugees then returned to Kakuma, whilst some remained in Nairobi; reports continued to emerge over the following months of brutality including violence, rape and imprisonment by both Kenyan security forces and other refugees.

In this paper, I first problematise 'protection' as both a discourse and practice. I critically interrogate both the way that protection by UNHCR is framed and understood in relation to LGBT refugees, and the way that protection is administered by UNHCR in the context of Kenya. Neither refugees' nor LGBT

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[3] Whilst I use terminology such as 'LGBTI' in this paper - on the basis that refugees themselves use it in the context of asylum claims in Kenya (ie, self-defining as 'LGBTI') – it is with the caveat that such terminology is not uncontested, and has been problematised elsewhere in the literature.

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individuals' rights are recognised by the Kenyan state, and this seriously inhibits UNHCR's capacity to protect. I then show the ways that in response, refugees in Kenya develop their own strategies for protection, forming their own support networks and advocating for international assistance. Yet these self-protection strategies have arguably rendered the LGBTI refugees who practise them even less 'protectable' by both UNHCR and local Kenyan LGBTI rights activists - compounding the difficulties they face in remaining in Kenya. When operating in contexts where LGBT refugees' rights are not recognised by refugee-hosting states, UNHCR's position as a protection actor is clearly challenged; but the answer to these limitations is not to penalise LGBT refugees for seeking other means of safety and assistance. Rather, UNHCR must reconceptualise its protection mandate with the agency and rights of refugees at the centre of dynamics.

UNHCR and LGBTI refugee protection

Historically, UNHCR has framed its protection activities in terms of human rights; for example, its protection guidance for implementing partners from 1999 frames its activities in international protection as the means 'through which refugees' rights are secured' (UNHCR, 1999, p. 14). The New York Declaration for Refugees and Migrants updates this commitment, including a section 'affirming that signatories will fully protect the human rights of all refugees and migrants, regardless of status; all are rights holders.' (UN General Assembly, 2016). Based on the 1951 Geneva Convention on Refugees, UNHCR describes the protection of refugees as its 'core mandate', and that this is always undertaken in cooperation with states (UNHCR 2002). UNHCR's 'main role in pursuing international protection is to ensure that states are aware of, and act on, their obligations to protect refugees and persons seeking asylum' (UNHCR 2002). States in turn have an obligation to cooperate with UNHCR's recommendations. Yet as Kinchin remarks, the problem remains that 'precisely which human rights UNHCR is obligated to protect, in what circumstances, and the consequences of those obligations are less clear' from a legal perspective (2016, p. 257). Tensions between the recognition of rights by UNHCR and refugees and their actual realisation (Howe and Covell 2005) and the ways that understandings of rights may conceptually also differ between states, agencies and refugees (Clark-Kazak, 2010) are disregarded within publications that outline UNHCR's position on protection.

In 2007, the Yogakarta Principles, which refer to the application of human rights law in relation to sexual orientation and gender identity, were adopted by the UN. To promote consistent interpretation of the 1951 Convention on Refugees when dealing with rights claims on the basis of sexual orientation or gender identity (SOGI), in 2012 UNHCR then published its own guidelines on international

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protection which recognised the challenges faced by individuals claiming refugee status on this basis. The guidelines assert that 'freedom of expression and association' is an entitlement of all individuals which is often not be available to LGBTI people, and therefore may justify an asylum claim (UNHCR, 2012). Whilst UNHCR attempts to introduce some nuance into these guidelines by suggesting that language used by refugees may not always ascribe to LGBTI terminology and 'may only be able to draw on (derogatory) terms used by the persecutor' (2012, p. 5), it still treats 'LGBTI' as normatively preferable for describing and understanding SOGIE claimants. Its 2012 guidance also contains no recognition of the ways that other forms of marginalisation such as gender inequality, language differences, religious beliefs and socioeconomic status might mediate the capacity of individuals to claim 'human rights' in practice.

In 2015, in a move to address the increasing numbers of people claiming asylum on the basis of sexuality, UNHCR published a report entitled *Protecting Persons with Diverse Sexual Orientations and Gender Identities* (UNHCR 2015). The report does not identify problems in specific countries, only making more general observations about 'offices in Africa' and the services they do or do not provide. Yet it raises fundamental concerns about the ways that asylum claims are dealt with, with only 20% of in-country offices having a formal focal point for LGBTI refugees. The global assessment underlying the report found that criminalisation of LGBTI identities, expression and association as a major impediment to disclosure of sexuality status, and bias in government-administered procedures. In such contexts, UNHCR runs the risk of its 'rights obligations' being in tension too with its commitment to respect local laws (Kinchin, 2016). These tensions however remain addressed by UNHCR in this or other documentation; indeed, UNHCR's main recommendations in its report into the protection of LGBTI people are around increasing training for staff around its policies and procedures (UNHCR, 2015).

The limitations noted here in UNHCR's position on LGBTI refugees are concordant with the way that incidents of anti-queer animus across Africa have been framed homogenously within the West as a 'flood of homophobia' (Thoreson, 2014), with dominant representations of LGBTI asylum-seekers in the minority North favouring generalised representations of queerness that speak to a particular narrative of sexuality and identity. In part, this homogenisation has been is driven by the way that LGBT rights have come to be defined and uncritically taken global by what Massad calls the 'gay international.' The term is used to describe the agglomeration of human rights organisations, media outlets and human rights activists which produce gays and lesbians through a universalist ontology, which positions a Western understanding of homosexuality as the only liberatory discourse

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(2002:363). Yet whilst the problematic effects of this framing has been explored elsewhere in the academic literature at the intersection of queerness and migration studies (see Puar, 2007; Shakshari, 2014; Bhagat, 2018) what is also absent within this updated documentation, and which this paper takes further, is any recognition of the tensions which UNHCR must manage in both administering its core mandate of protection and cooperating with states which are putting LGBTI refugees in danger.

Problematising protection discourse

With UNHCR framing the human rights of LGBTI refugees in relation to protection as a humanitarian imperative, it is important to critically reflect on where and how human rights intersects with humanitarianism in both theory and practice. The two frameworks have much in common in terms of their humanity and cosmopolitan purpose; both emphasize that a fundamental shared 'humanness' provides justification for the protection of all individuals. But there is also much that divides them, particularly when it comes to identifying stakeholders for accountability. Barnett (2018) and Margalit (2018) trouble the reluctance of humanitarian actors to engage in the types of political confrontation necessary to demand human rights are upheld and indeed protected - choosing rather to express this humanity in terms of benevolence. Rights are only acknowledged within humanitarian assistance when they reflect the understandings of agencies of what the community at hand needs. Rather than the practices of humanitarianism being evaluated or considered imbricated within the local political economy of aid, 'beneficiaries' are instead dismissed as inadequately grateful if they question or reject the protection available (Smirl, 2015). Through this lens, dynamics between UNHCR and refugees are seen in terms of the relations of power within which they are embedded. Protection is therefore never just a 'gift': it is premised within certain assumptions and perceptions of how beneficiaries will behave.

It is not just the absence of state protection of the rights of LGBTI refugees that has led to UNHCR becoming the primary protector of LGBTI refugees in first countries of asylum in the global South, but the legitimacy and moral authority it has been able to accrue as a protection actor (Betts et al., 2012). A body of critical literature has highlighted the ways that power relations at the heart of humanitarianism enable the reproduction of the 'protection' is a fundamental and unquestionable good (Smirl, 2015), making it difficult to question humanitarian action despite its contradictions and failures. Fassin (2011) advances the concept of 'humanitarian reason' to explain humanitarian action; this is a modern social imaginary that attributes an automatic morality to humanitarian acts, in ways that obscure political, ideological and practical interests. The relationship between humanitarian actors and 'beneficiaries' is marked by a 'radically unequal order' in which the rights of those receiving

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assistance are of secondary importance to how those giving this aid position themselves as givers (Fassin, 2011, p. 253). Both Kleinman and Kleinman (1997) and Smirl (2015) have described the individualisation of suffering and victimisation that lies at the heart of humanitarian discourse, separating these outcomes from political and economic causes (Kleinman and Kleinman, 1997, p. 10).

Contestation over epistemologies of assistance are similarly mediated by power relations. If and when 'beneficiaries' in a refugee camp adapt aid to better suit their needs, for example, this is rarely interpreted to signify a failing or misunderstanding by humanitarian actors, but as a problem with those receiving assistance (Smirl, 2015). Dubois calls attention to Western bias in interpreting the core principles of humanitarianism in ways that define people by their victimhood and helplessness (DuBois 2018). Protection relies on a 'vulnerable and needy refugee' (Fassin, 2007); a mute, depoliticised victim made irrational by their experiences and thus for whom decisions might be made (Malkki, 1996). By contrast, LGBTI rights claims within the context of the 'gay international' (Massad, 2002) demand loquacity and rationalisation in relation to a recognisable discourse of sexuality, identity and oppression (Saleh, 2020). A deeply limited vision of refugee agency emerges from this perspective; one with overlooks the ways that far from being a neutral force, humanitarian assistance itself politicises refugees. Jansen documents the ways that refugees engage with and disengage from formal aid precisely because of the ways that the 'protective' relationship between refugees and humanitarian providers that are contingent on the vulnerability of refugees may at times make them less safe (Jansen, 2016).

Yet because the contestation and dissonances of the process of rights claims are kept separate from a core humanitarian imaginary in which all assistance is inherently good – what Fassin (2011) calls 'the fantasy of a global moral community' - they continue to be repeated. This preserves an imaginary in which it is not possible for humanitarian actors to get protection wrong (Smirl, 2015, p. 18). This refusal of accountability is of particular importance given the political context in which the data presented in this paper should be understood. The so-called migration crisis in Europe has led to increasing allocation of humanitarian aid to Kenya and other countries with poor LGBT rights records in return for their pursuit of development strategies aimed at containment of refugees in East Africa. In November 2015 at the Valletta Summit on migration, the EU agreed over 1.8 billion in development aid for states in the Horn of Africa, amongst others, to come from an Emergency Trust Fund for Africa to address "the root causes of irregular migration" within Africa itself (European Commission, 2015). The same states which are pursuing these containment strategies position themselves as havens of tolerance and justice, constructed in opposition to a supposedly uncivilised global South (Massad,

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2002). At best this indicates an 'unseeing' of the protection needs of LGBTI refugees; at worst, it suggests a deep hypocrisy by countries in the global North which proclaim support for LGBT rights and SOGIE asylum at the same time as pursuing efforts to prevent LGBTI refugees ever reaching their borders.

What is not attended to in any meaningful way within the extant literature on humanitarianism, but which is important for understanding the situation in Kenya, is that humanitarian assistance is not merely an instrument of power used by the global North in the South. Whilst it is acknowledged that UNHCR must tread carefully the 'perilous path between the changing interests of states and the moral authority of a protection mandate' (Betts et al., 2012, p. 103), focus remains on world politics. Even when Fassin (2011) draws attention to the political, practical and ideological interests that shape humanitarian governance, his work only makes limited reference to the marginalisation of *local* humanitarian actors within these dynamics (Fassin, 2007, p. 514). Therefore, thinking with Foucault (1980), power may be more usefully understood as a flow between various stakeholders, rather than being an inherent quality of a particular actor like UNHCR. UNHCR makes it clear its commitment to delivering protection and other forms of assistance to refugees in accordance with the legal frameworks of countries of asylum and in ways that support host country governments (UNHCR 2015); this would suggest that at the local level UNHCR and government staff involved in the practical administration of protection will (to some extent) be able to exercise agency over its interpretation and implementation. Seeing power as not just reproduced but also negotiated creates space to see how it both 'flows' through acts of humanitarianism such as protection, and to explore contestation over protection discourse and practice (Clark-Kazak, 2010).

Whilst critical work on humanitarianism is yet to engage with the issues that are highlighted by the protection needs of LGBTI refugees, a growing body of academic research by queer theorists has drawn attention to the ways that particular discourses of sexuality have informed responses to LGBTI asylum seekers. In particular, this work has emphasized the agency of refugees in relation to the humanitarian environment, including the ways that the discourse of 'human rights' has been itself drawn upon by LGBTI refugees in order to navigate its idiosyncrasies. Yet this has largely been explored in the context of asylum in the global North; for example, learning how to speak and behave in ways that fit with homonormative narratives is perceived by many LGBTI refugees as a key strategy to a successful refugee claim in Canada (Murray, 2014). The work of Akin (2017) explores similar themes of performativity and authenticity in the adjudication process for LGBT asylum claimants in Norway, as does the findings of Raj (2017) in Australia, Lewis (2014) in the UK, and Cantu (2009) in the USA.

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These accounts however emphasize the dynamics of power at the heart of which populations are able to access safe havens, and which are denied them.

Protection in Kenya

The idea that visibility and humanity be only granted to certain groups of people is particularly pertinent within an analysis of LGBTI refugee protection in Kenya; a history of colonial and postcolonial divestment has produced inequalities that are reinstated through social divisions (Kimari, 2018). Queer Ugandan refugees fleeing to Kenya encountered similar anti-sodomy laws in Kenya as those used to harass and arbitrarily detain LGBTI individuals back home (Zomorodi, 2016). Yet a notable difference in the institutional landscape in Kenya compared to Uganda is the presence of UNHCR, which as discussed has increasingly taken up the mantle of LGBTI protection since its publication of the Guidelines on International Protection No. 9 (Claims to refugee status on the basis of sexual orientation and/or gender identity within the context of Article A(2) of the 1951 Convention on Refugees) in 2012. Over the same period of time however, the Kenyan government has become increasingly involved in the monitoring and regulation of refugee movement and work - with significant impact on the protection capacities of UNHCR.

The Westgate Mall attack by Al-Shabaab in 2013 bolstered a growing rhetoric of hostility about refugees in Kenya, with the government of Kenya responding quickly with various political moves to ostensibly promote national security. One of these has been a deliberate slowing down of the process of status determination for refugees. Despite its framing as a move towards greater efficiency as well as promoting security for Kenyans and refugees alike, under the new Refugee Affairs Secretariat created in 2017 refugees have reported even more delays in status determination processes and difficulties accessing legal documentation giving them the right to be in Kenya. Refugees arriving in Nairobi are being sent to camps to register, and those who had previously registered in Nairobi with UNHCR are issued 'waiting cards' by the government instead of receiving renewal of their documents. These cards require updating every two years, leaving recipients in a state of limbo. The delays in the granting of documentation and restrictions on movement (only permissible from the camp commandant and requiring documentation) mean that most remain in limbo in the camp unless given specific exemption and permitted to move to Nairobi.

Despite establishing guidelines and policies to promote best practice with regards to LGBTI refugees, UNHCR operates in Kenya under a government that is not only openly repressive of LGBTI individuals but also deploys a hostile stance towards all refugees. Yet since the establishment of RAS, UNHCR's

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mandate with regards to what assistance they are permitted by the government of Kenya deliver outside of camps has been continuously limited, with responsibility for urban refugees being shifted into the hands of the Kenyan government (Verdirame and Harrell-Bond, 2005; Wagacha and Guiney, 2008). UNHCR and its agencies ostensibly also offer links to services run by Kenyan LGBTI organisations, many of which do important advocacy and activist work around sexuality. Yet most of them do not work on the specific challenges of refugee marginality, and LGBTI refugees in Nairobi are in need of urgent practical assistance with healthcare and unemployment, not just protection, for survival.

It should be noted that under current social and political conditions in Kenya, these types of services are rarely even available to vulnerable Kenyans. Indeed, as noted by Bhagat, the situation refugees face in Nairobi with regards to the absence of social protection measures is entirely consistent with the neoliberal dynamic of Kenyan social policy more generally, which reflects a wider history of exclusionary racist and anti-poor strategies that harm both Kenyans and non-citizens (2019, p. 450). The only option for refugees who cannot survive independently in Nairobi is to go to one of Kenya's sprawling refugee camps, such as Kakuma, located in the north-west of the country. Here, UNHCR is the primary protection actor; but in Kakuma, the same visibility demanded of LGBTI refugees who seek asylum on the basis of their sexuality or gender identity means that they risk being victimised by other refugees.

A gap has thus emerged in refugee governance in Kenya into which LGBTI refugees can do little to escape from falling. With sped-up resettlement opportunities for the earliest SOGIE asylum seekers now stopping, sexual minority asylum seekers are now left in limbo in the country. This limbo is a dangerous space; due to the way that refugees are managed in the country, LGBTI refugees find themselves increasingly neither 'protected' in the camp nor in the city. Refugees' already-enhanced marginality due to their lack of citizenship rights leads to a 'disposability' that is clearly exacerbated for those who are further alienated from survival opportunities (Kimari, 2018; Bhagat, 2019). As Clark-Kazak points out, the power relations and structural conditions within which UNHCR has to operate often impedes the realisation of refugees' rights (Clark-Kazak, 2010, p. 65); the challenges this presents for protection are obvious.

LGBTI refugees in Kenya

The research on which this paper is based began during ethnographic fieldwork for a University of Oxford project that explored community-based social protection amongst refugees in urban, camp

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and settlement contexts in East Africa. At the time I was a research officer employed on this project. The paper centres on data from participant-observation with LGBTI refugees in Kakuma and repeated interviews with eight LGBTI refugee activists[4] who were working to protect and advocate for other SOGIE asylum seekers in Kenya, whom I met during the course of fieldwork in Nairobi and in Kakuma camp. It also draws on information gleaned from continued email correspondence in the subsequent months with and between self-identified LGBTI representatives, Kenyan INGOs, UNHCR agencies and advocates in other countries. The project I was working on was concerned with social protection mechanisms in general, but as a queer person myself I was particularly interested in understanding how LGBTI refugees were surviving in the challenging context of East Africa. Thus in parallel to the broader project, I undertook small scale research with self-identifying LGBTI refugees in sites across Uganda and in Nairobi.

In August 2018 I was working with refugee peer researchers in Kakuma to find and meet with refugee-led organisations. One of these peer researchers, Edward, was well-connected and well-known within the area of the camp where he lived; not only was he a pastor, but he also ran a small garage, repairing cars owned by wealthier refugees and local Kenyans. Edward knew of a group of 'LGBTI' refugees; indeed, one of the refugees Edward employed as a mechanic in his garage identified as gay. Edward had met other 'gay' people in his home country of Burundi. Whilst when he first heard about homosexuality he was disgusted, on coming to Kakuma and seeing the plight of the LGBTI refugees living there, he decided to try and understand where this reaction came from. 'My religion tells me I should love everyone. We are all the same.'

Edward told me that he was growing concerned about the prevalence of violence against LGBTI refugees and the discrimination they faced in trying to access services, opportunities and resources in the camp. Whilst in Mombasa and Kisumu and Nairobi, there were Kenyan organisations attempting to educate people about LGBTI issues, Edward noted that there was nothing like this happening in Kakuma. 'There are some good people working for UNHCR, and there used to be a member of staff working in protection who was gay, but they have now gone' he explained. Using his position as a pastor, Edward had met with community leaders in the camp to try and advocate for LGBTI refugees. Several religious and neighbourhood leaders came to the meeting to share their confusion and dismay at the increasing visibility of homosexuality in Kakuma. 'People don't understand why LGBTI people can't just keep quiet' Edward explained. Edward offered to introduce me to some of the LGBT refugees

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[4] Due to the sensitive and ongoing nature of the issues discussed here, all names and identifying details have been removed.

he knew were living in Kakuma, and I agreed, holding four separate discussion groups with four to five individuals at a time over the weeks I spent at the camp.

The visibility of Ugandan refugees in Kakuma and their vulnerability is a nuanced issue. By 2016, increasing numbers of Ugandan men had arrived in Kakuma from over the mountains to the west; a treacherous distance from Kampala, where many began their journey. Yet keeping quiet did not feel like an option. 'If you come to Kenya as a refugee and you're from Uganda', one refugee explained to me, when we met for lunch in a small café around three miles from the camp, 'people automatically know it's because you are gay.' This visibility presents immediate security challenges for refugees, so upon arrival, Ugandan refugees were sequestered in a 'protection zone' in Kakuma Three, under the care of one of the implementing partner organisations of UNHCR, to keep them safe.

The protection zone is a small field of plastic tents. There are basic toilet facilities, but no kitchens; refugees under protection have their food provided, and it is the same combination of corn and beans at every meal. The zone is surrounded by a wire fence, so refugees remain clustered inside the tents so that they cannot be seen from outside. Whilst there is medical care in the camp, it is inadequate to meet the needs of the growing LGBTI population; there is no testing or medication for HIV or STIs, and transgender refugees reported being mocked and denied treatment. 'We need STI testing, HIV therapy, hormones for transgender individuals – none of this is available here' explained one gay refugee who had fled Uganda in 2016. The protection area also houses other refugees who are considered at risk, including large numbers of political refugees from Ethiopia. LGBTI refugees report that many of these residents were actively hostile towards their new neighbours, harassing and condemning them. 'This is called a protection area, but it doesn't feel safe' one refugee told Edward and I, when we met at a café outside the camp at the refugee's request.

Refugees in Kakuma cited a number of reasons for going to Kakuma rather than Nairobi, where there are organisations specifically assisting LGBTI refugees; refugees in Kakuma were aware of Health Options for Young Men on AIDS/STIs (HOYMAS), an organisation which works with male sex workers; Minority Women in Action; and the Gay and Lesbian Coalition in Kenya. Some of these were practical: one refugee told us that Kakuma was the closest registration point if you pass through the mountains from Uganda. 'I arrived in Nairobi in 2015' another refugee explained 'and was told there is no registration in Nairobi, you have to go to Kakuma to register, but there you'll be safe.' Others were strategic about this; after registering in Kakuma, some refugees then aimed to get transferred to Nairobi on security grounds, where their protection needs in the city are potentially more extreme

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given the lack of institutional support. The increased urgency of the conditions in Nairobi would thus put them in closer reach of their eventual goal of resettlement.

But this is where things had begun to become more complicated. Since 2016, one refugee said, the system has been in 'chaos'. 'The Kenyan government decided that they would not register any LGBT refugees in Nairobi. There is a really high risk to LGBTI in the camp. But to get documentation is now really hard. There is a lot of bureaucracy. Since it switched over the government from UNHCR, people working for refugees just do it for the money – they don't care about us.' In Nairobi, life has therefore been getting more difficult for LGBTI refugees, whilst at the same time opportunities to be resettled have been reduced. Refugees identify delays to the Refugee Status Determination (RSD) process since responsibility was transferred from UNHCR to the Government of Kenya's Refugee Affairs Secretariat as a significant barrier. They report the same story, over and over: they are invited to their RSD interview, where their eligibility to claim asylum in Kenya is to be checked, after which they are granted leave to remain and the opportunity to be put forward for resettlement by UNHCR. But they are then informed that their initial interview will be delayed by six months; six months later, they are told there will be another delay.

Whilst UNHCR's 2012 International Protection guidelines suggest that the 'freedom of expression and association' may justify asylum claims by LGBTI refugees, in practice, being openly gay or lesbian in Nairobi is itself dangerous. Waiting in Nairobi without documentation puts refugees at risk from police harassment, which is intensified when they are openly gay or lesbian; as one refugee explained in email correspondence about a refugee who had been imprisoned for failing to repay a loan, 'when the police or even some courts learn that the accused is LGBTI, that's reason enough to convict them.' In Kakuma too, queer visibility was in tension with the perspective of the community leaders that Edward had tried to work with in Kakuma, who saw LGBTI refugees' openness as the reason for their vulnerability.

Services in Nairobi are indeed delivered to 'people of concern' who have been given leave to remain in the city by UNHCR, including LGBTI refugees for whom Kakuma is considered unsafe. These services are delivered by UNHCR's partners including the Danish Refugee Council, HIAS and the National Coalition of Churches in Kenya. Yet these services primarily take the form of psychosocial support and counselling, and small initiatives to promote self-reliance such as business training, skills development and micro-savings and loans cooperatives. LGBTI refugees can try to access these opportunities, but many are unable to capitalise on them; one queer refugee reported that he had received a loan to

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start a salon, but he was harassed by homophobic neighbours and the business was eventually burned down in an act of arson. Such examples counter the idea that refugees must 'hide in plain sight' until finding opportunities for resettlement.

Whilst UNHCR initially attempted to direct LGBTI refugees to Kenyan LGBTI groups, refugees expressed reluctance to approach them, preferring to engage in their own, direct advocacy to international audience. Indeed, whilst queer advocacy in Kenya, with its focus on legal rights for citizens, has a rich history, it was perceived by refugees I met with as irrelevant to the issues they themselves face. Many of them also did not trust organisations run by Kenyans. Becoming too embedded in Nairobi could also be potentially damaging to one's pursuit of resettlement. In an article in the Washington Post, one refugee who had been in Nairobi for three years is quoted: 'if homosexuality is decriminalized here, it will actually be worse for us… our resettlement process will slow down, or even stop. UNHCR will say we are safe now. But actually, we will be less safe' (Bearak, 2019). LGBTI refugees perceived the existing asylum process as paralysed to the point of desperation – but emphasizing their SOGIE status and focusing on resettlement was a more appealing form of action to many than finding ways to remain safely in Kenya.

Like many refugees in East Africa, LGBTI refugees also perceived the only durable solution to be resettlement outside of Kenya - and out of Africa entirely. Feeling that the protection offered by UNHCR in Kakuma camp was failing to meet the rights that LGBTI refugees felt entitled to, by 2017 refugees had begun to develop other strategies to claim these rights. It dawned on the refugees living there that despite their increasing numbers, nobody at UNHCR knew what to do with them next because of the standstill in resettlement processing. 'We came up with the idea to write our grievances to UNHCR, to get help us to get out of there. But they ignored our messages. So we started a Facebook group, and soon people from abroad began to help us.' On the Facebook group, the refugees reported the discrimination and abuse they had faced from service providers in the camp, and the homophobic attacks they had experienced from other refugees in the protection centre. 'UNHCR didn't like it. They told us to remove the posts. But the posts got us support from all over the world. People began to send us money for medication, food, transport' one refugee explained.

By early 2017, several Ugandan refugees decided to come together and formalise these activities. They set up a community-based organisation through which they would be able to organise amongst themselves and represent the needs of LGBTI refugees in the camp. It would also enable them to access funding through institutional routes, rather than just rely on informal donations. With their

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strong English skills and understanding of how international attention has rallied around an image of violence by the government of Uganda on the basis of freedoms taken for granted in the West, its leadership committee sends regular updates through Facebook about the plight of LGBTI refugees in the camp. By the end of 2016, facing mounting pressure from both the LGBTI refugee-led CBO and its international supporters, who initiated a campaign of emails and social media posts, UNHCR had started to try and come up with solutions for the LGBTI refugees.

The main demand, the Ugandan refugees told us, was for security; there was nothing their overseas supporters could do about the dangers they faced in Kakuma. But by December 2017, with no solutions in place, the LGBTI refugees in the protection centre had had enough and decided to hold a demonstration outside UNHCR's offices. 'There were 200 of us. We were tired of their empty promises. We were still most of us waiting to do RSD (refugee status determination), we had received no calls updating us. When we asked for refusal letters saying we could not get asylum in Kenya, which would allow us to go elsewhere, they refused and told us to go home.'

In December 2018, a large number of LGBTI refugees were transferred from the protection centre at Kakuma to Nairobi. Yet given the situation for LGBTI refugees already living in Nairobi, this solution appeared to merely transfer protection challenges to another space – one just as poorly equipped to deliver, if not more so, given that UNHCR has little to do with refugees in the city. In the subsequent months, there were several clashes between the growing numbers of LGBTI refugees and the Kenyan police, who became involved when a group of LGBTI refugees, sleeping rough outside UNHCR's offices in Westlands, refused to be moved on until UNHCR staff looked at their resettlement cases. This led to violent confrontations, with several LGBTI refugees claiming to have been beaten by local people as well as the police when attention was drawn to their identity.

UNHCR subsequently provided funding for a safe house for LGBTI refugees. Then in May 2019, a decision was made in the Kenyan high courts to make a decision on whether or not to overturn a colonial-era law that criminalises same-sex relations. After several years of campaigning on both sides and multiple delays, the courts decided not to change the law. The Kenyan government subsequently placed an eviction notice on the safe house, stating that by 1st June 2019, all remaining residents must leave. UNHCR's response was to provide short-term funding for LGBTI refugees who had been living there in order to find alternative accommodation – a decision not accepted by several refugees who had been resident there. Fearful of the 'hostile' Kenyan reaction and recounting a mob killing only

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days earlier, one refugee declared 'UNHCR... has decide to send another group of persons of concern who have been accommodated in the safe house into the lion's den to be also killed.'

The story was picked up by news outlets including Reuters[5] and the BBC[6]. Yet the advice from legal advocates the Africa Human Rights Commission was that the remaining refugees' refusal to move was only generating further negative attention, making them more vulnerable. This echoes the comments made by Edward, where he described communities as questioning why LGBTI refugees could not 'keep quiet.' In the subsequent months, the situation failed to improve. As of December 2019, refugees who had been moved from Kakuma to Nairobi for their protection are being advised by UNHCR to move back to Kakuma. Many of them are living on the streets in Nairobi; when they approach UNHCR's implementing partners in the city, they are told that protection is available to them at the camp they were removed from a year ago in recognition of the impossibility of ensuring their security, access to appropriate medical care, and opportunities for making a living.

UNHCR meanwhile finds itself being accused of an abdication of its mandate to protect those seeking asylum in Kenya on the basis of SOGIE by international advocates for LGBTI rights, who have struck up an intense email campaign against UNHCR officials and implementing partner staff both in Nairobi and Kakuma. It should be noted that this situation had by early 2020 unsurprisingly not led to resettlement for any of the original hundred LGBTI refugees who had been moved.

Discussion: the limits of protection

In her writing on the humanitarian response to the 2004 tsunami in Indonesia, Smirl (2015) identifies a tension in different understandings of aid within local communities and as conceived by the humanitarian imaginary; thus the part of the Maussian 'gift exchange' that relies on beneficiaries to act in ways deemed appropriate to their role in the transaction was undermined, and dissatisfaction with what INGOs were providing leading to a lack of cooperation and even violence (2015, pp. 139-140). LGBTI refugees' refusal to accept the protection they are being offered in Kenya draws on a global language of rights and recognition – the same language that UNHCR itself uses in its work with refugees. Yet the negative reactions with which LGBTI refugee activism has been met by UNHCR and

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[5] 'UNHCR moves refugees to safe houses after Kenya camp attacks.' 13th December 2018. https://in.reuters.com/article/kenya-lgbt-refugees/u-n-moves-lgbt-refugees-to-safe-houses-after-kenya-camp-attacks-idUSL3N1YH3GX
[6] 6 'Gay refugees sent back to 'homophobic Kenya camp.' 20th June 2019. https://www.bbc.co.uk/news/world-africa-48703112

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the government of Kenya illuminates the inadequacies of a narrative of 'protection' for engaging with refugees' as *rights-bearers*, as many of the LGBTI refugees whose accounts form the basis of this article were explicit about identifying.

As Fassin (2011) describes in his reflections on the ethics of humanitarian intervention, humanitarianism introduces an important distinction between those who offer assistance and those at risk; 'the former are political subjects actively committed to their aid mission, while the latter only have their recognition as victims passively subjected to the event' (2011, p. 241). A dissonance exists between what refugees are told they are entitled to (protection on the basis of UNHCR's recognition of their rights) and what they experience in Kenya (violence and discrimination). It is in the acts of those who rebel against the protection they are offered that its limitations and inadequacies are revealed and defined. LGBTI rights are recognised and to some extent enshrined in UNHCR's own protection activities, as well as internationally defined. Yet in the context of Kenya, even if it wishes, UNHCR is unable to reconcile this perspective with other expectations and translate its policies into practice (Sekinelgen, 2017).

In reaction to this, LGBTI refugees in Kenya engage with advocates both in and outside the country in order to try to reformulate other relationships which might have more of a transformative role in their everyday lives. This further undermines UNHCR's role as a protection actor, leading to the condemnation of LGBTI refugees seen in its responses to their activism. Protection thus, arguably, predicated not on rights, but on refugee passivity. Refugees who exercise agency in ways that undermine UNHCR as a protection actor must, through this logic, no longer need protecting. Yet it is clear that first countries of asylum like Kenya remain places where LGBTI refugees require protection; arguably they may need protection here even more than in their home countries, as they lack the rights to work and vote associated with citizenship, and are alienated from the immediate social networks that could protect and help them.

UNHCR's policies appear on the surface to address these vulnerabilities; LGBTI refugees are designated their own category and afforded particular forms of assistance by UNHCR and its partners. A refugee community leader in Nairobi explained that HIAS, UNHCR's operational partner for social protection in the city, invites LGBTI refugees to access counselling on a different day to other refugees to keep them safe from harassment. But such categorisation treats vulnerability as a characteristic of particular groups, rather than being relational and context-specific in the ways indicated by refugees themselves. This echoes Kleinman and Kleinman on the individualised attribution of victimhood within

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humanitarian discourse, detached from its broader causes (1997); rather than addressing any broader structural causes of LGBTI refugees' suffering, protection needs are depoliticised through the designation of LGBTI refugees as 'people of concern'.

UNHCR's framing of sexuality as a vector of vulnerability also homogenises LGBTI refugees' experiences. This is suggested by its focus in its protection manuals on the provisions it makes for LGBT refugees in different countries; there is no mention of how the needs of LGBTI refugees in these various contexts might vary. This overlooks the ways that the specific experiences of LGBTI refugees *in the context of Kenya*, as well as their gender, social support, economic resources, ethnicity, education level, age, the presence of dependents and language abilities will shape their experiences of marginality and access to protection. The most active LGBTI activists were young Ugandan men who spoke fluent English, but many of the examples they used in email correspondence of the particular suffering that LGBTI refugees were facing were those of women with children, many of whom had been targeted for sexual violence both in Kenya and in their countries of origin on the basis of their sexuality.

Whilst presenting challenges, there are evidently benefits to identifying as 'LGBTI' in a collective sense. Being visible as LGBTI is fundamental to being able to access opportunities to escape conditions in Kenya and be put forward for resettlement because of the vulnerability with which it has become synonymous. In the past five years, a number of international resettlement programmes in countries including Sweden and Canada have specifically selected LGBTI refugees who face persecution in their home countries. An LGBT Resettlement Assessment Tool was developed for use by UNHCR in 2013, after it published guidance to states and resettlement agents on how to interpret the 1951 Refugee Convention in relation to LGBTI individuals. Yet as in asylum processes, refugees must still 'translate' their experiences for international audiences in ways which render them more legitimate in the eyes of those in the West (Murray 2014). This is not without risk. As one refugee explained in an email, declaring one's sexuality on social media puts people at risk of further insecurity – yet they feel they have no other choice but to take this risk. A categorisation of 'LGBTI' also makes refugees simultaneously identifiable by the police and other community members, creating risks as often as it can provide opportunities.

This paper is not seeking to argue that the reality of delivering on protection commitments in practice is straightforward. As intimated, the relationship between UNHCR and the Kenyan government risks undermine UNHCR's functionality as a protection actor because refugees' consent to be 'protected' is

contingent on some degree of trust that such protection will indeed be delivered. In Kakuma, it has been previously documented that UNHCR complies with the government of Kenya through surveillance and risk management activities, with refugees understandably viewing these developments with hostility and suspicion (Jaji, 2012). The character of Kakuma camp has also changed in recent years under the 'self-reliance' strategy that is being deployed under the Comprehensive Refugee Response Framework (CRRF), for which Kenya is a 'roll-out' country. The CRRF has provided a discursive framework for an ideology of individual refugees overcoming the odds and embracing entrepreneurial individualism (Ilcan and Rygiel, 2015; Pincock et al., 2020). Yet this individualised 'responsibilisation' has been critiqued for the ways it creates further vulnerability for those who are already the most socially and economically marginalised (Ilcan and Rygiel, 2015; Newhouse, 2015; Easton-Calabria and Omata, 2018) which LGBT refugees certainly are.

The position of the Kenyan government on refugee affairs exacerbates tensions between UNHCR, its implementing agencies and other stakeholders on the one hand, and LGBT refugees themselves on the other. LGBTI refugees' efforts to obtain assistance through reaching beyond UNHCR Kenya and trying to mobilise advocacy to draw attention to their plight is also perceived as selfish from the perspective of humanitarian staff I spoke to in Kenya, who described the resistance of LGBTI refugees as undermining UNHCR and its partner agencies' work to protect them. According to LGBTI refugees themselves, their refusal to 'be quiet' was also used by UNHCR as an excuse for the poor treatment they had received from the police and government. Tension regarding the management of LGBT refugees in Kenya is also evidenced in the response from the African Human Rights Coalition to protests in early 2020; the AHRC emailed both donors and refugees after the protests in Nairobi to advise that the fact they even have permission to register as LGBTI refugees in Kenya is 'miraculous' and protesting was a risk to their status in Kenya.

As LGBTI refugees in Kenya have become attuned to the delays, disjunctures and contradictions within the humanitarian system, they have identified and deployed new ways to advocate for the type of 'protection' they want. This includes drawing on rights claims in order to link themselves to global LGBTI politics and vocally resisting attempts at placation. The expanded accessibility of communication technology means that sexuality activists in the minority north can also have a presence in camps like Kakuma. This happens through sending money for food, the purchase of clothes and flags for use during protests - and even visiting in person, as we heard was done by one activist from Japan in 2017. LGBTI refugees have also deployed their support from international allies in order to put pressure on UNHCR to act, including LGBT groups in Canada, the United States and

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Europe and individuals who have expressed an interest in advocating for LGBTI refugees after hearing about their plight through fora such as social media. The pleas for assistance made by refugees in Kakuma are based on their sense that UNHCR is unable to protect them there. International solidarity has come to be perceived not to be located within global protection institutions, but with individual advocates who might be able to leverage pressure on institutions from an external positioning; further undermining UNHCR's position as a protection actor.

Conclusion

Addressing the structural marginalisation of all refugees through existing modes of refugee governance means focusing less on particular sexual and gender identities as a basis for solidarity, advocacy - and indeed 'protection'. This is a challenge given the influence of the notion of the 'gay international' (Massad, 2002) within global queer advocacy, on which refugees have been able to draw to petition for assistance beyond Kenya. Yet the plight of LGBTI refugees in Kenya cannot be fully understood through a lens of homophobia in the global South. In email correspondence with their allies in other countries, refugees make reference to their sexual and gender identities – but the majority of the issues they actually describe encountering are stories of police harassment, lack of access to medication, and no shelter. A major problem with LGBTI rights activism on the basis of a homogenised understanding of sexuality is not just that it minimises the experiences of victims within a given context in favour of a framing that speaks to Western understandings of an issue; it also ignores the political specificities that have produced the incident at hand (Ní Mhaoileoin, 2019).

Existing approaches to protection also centre on the role of UNHCR and its perception and interpretation of the issues facing LGBTI refugees. This is problematic for two reasons established here. Firstly, the invocation by UNHCR of a need for more gratitude underlines the unequal power dynamics that characterise protection discourse. The 'provider-beneficiary relationship' (Pincock et al., 2020) at the heart of the humanitarian imaginary (Fassin, 2011) is shored up through UNHCR's approach to LGBTI issues, because human rights are only recognised within this approach in terms of the assistance that UNHCR is able and willing to deliver. These 'rights' overlook the broader challenges facing LGBTI refugees. Secondly, UNHCR itself is clearly limited in its capacity to deliver on these rights anyway within the context of Kenya, where colonial divestment and neoliberal economic strategies, including the push for refugee 'self-reliance' under the CRRF, have rendered refugees disposable (Bhagat 2019) regardless of their sexuality or gender identity.

Understanding the lived experiences of LGBTI refugees from their own perspectives is vital in finding more just solutions to current challenges, especially in a political climate where movement across borders is an increasingly fraught geopolitical issue. This paper has sought to provide insights into the experiences of LGBT refugees in Kenya in order to highlight the limitations of protection discourse. The narrow understanding exhibited by the international community of the needs of LGBTI refugees in relation to their sexuality and their refugee status is exacerbated by the discourse and practice of protection as a mode of governance. Protection, I have argued, is a limited and problematic way to understand the relationship between LGBTI refugees and UNHCR, and has led to UNHCR treating protection as conditional upon particular behaviour by LGBTI refugees. Openly identifying as LGBTI and engaging in activism makes refugees too visible to be able to safe in Kakuma, and puts them at odds with UNHCR. LGBTI refugees feel they are treated as even less 'protectable' by virtue of the unreasonable demands they are seen to make, which elicit little empathy from UNHCR and its partner agencies.

These challenges are not surprising, given that UNHCR operates within a system where institutions that frame their work through a discourse of 'protection' continue to participate in and reproduce inequalities - and generate rules that make protection impossible on a practical level. To begin to address the problems facing LGBTI refugees, UNHCR must first recognise the limits placed upon its protection mandate in this context. Uncoupling the situation facing LGBTI refugees in Kenya from humanitarian provision, which demands refugees' containment, passivity and gratitude, and moving towards a rights-based framing, is key. Yet care must be taken that this does not reiterate some of the problematic narratives around LGBTI rights in Africa identified elsewhere. The participation of Kenyan LGBTI rights organisations in finding sources of assistance for LGBTI refugees is hampered by the demand LGBTI refugees face to be visible in their suffering, which creates further divides. But it is also constrained by the stark reality that Ugandan LGBTI refugees in Kenya do not wish to remain there, but are kept there due to the wider policy frameworks of refugee governance.

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