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LGBT+ rights as human rights and migration:  
the case of queer refugees through the lens of  
regional organizations and regional human rights  
systems

Master's thesis

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## **Acknowledgements**

By this point, I have come to believe that no idea and no project is just “one man’s job”. On the contrary, if the global health crisis of COVID-19 has taught us anything so far, it is that conditions, people, and the support we receive from them can bring us closer to any goal.

Starting this postgraduate program and coming from a completely different scientific field, I initially thought that I would not fully meet the demands of this program. In the end, reality has refuted me, which I owe to the people supporting me in this feat.

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## **Abstract**

Human rights is a concept that emerged relatively late in world history. Undoubtedly, the protection of, for example, foreigners in ancient times is a - small, but remarkable - example, but for centuries human rights were intertwined in societies with the respective religious value systems and did not deviate significantly. After two world wars and as societies evolve, new terms and new facts are constantly emerging, having made the need for redefinition of human rights even more urgent, while regional human rights systems have been developed around the world to defend such rights institutionally, through a broader and coordinated production of region-wide policies.

Although a hundred years ago, it would have been unthinkable to talk about LGBT rights, the aforementioned evolution of societies internationally and the real living conditions today allow us to conceptualize, redefine the human rights framework, including LGBT rights. . We are therefore in a position to understand the context of these rights and their gross violation on an international level.

For the average “western” individual - though it would be very interesting to discuss what and to what extent everyone considers as "West" - it may be unthinkable to be persecuted in one's own country for one's sexual orientation or gender identity. However, in many non-Western countries this happens with increasing frequency (e.g. Nigeria, Chechnya, Islamic countries, etc.). The result of persecution for reasons of sexual orientation or gender identity is flight, i.e. migration. More and more LGBT individuals are resorting to this solution in order to avoid significant threats - even against their lives - in their country.

The purpose of this thesis is to first explore the context of LGBT rights as it has formed throughout the years, focusing further on linking the current state of those rights to refugee flows and to the policies regional systems and, more specifically, regional organizations have generated with regard to LGBT asylum seekers and their asylum claims on the basis of their sexual orientation and/or gender identity. By attempting this comparison, the thesis will attempt to arrive at reflections and conclusions regarding the various policies, practices or procedures and to propose necessary changes, if and when this emerges from the research.

## Introduction

We live in a world where the discussion of social issues and the reflection on them is conducted freely, every day, in all aspects of daily life – for the most of the western world, that is. Interpersonal, open discussions, internet and social media discussions, workshops and conferences on human rights are held by the thousands around the world every year. For scholars and academics studying human rights, however, it is common knowledge that those rights do not – and cannot – have a clear, linear representation throughout history<sup>1</sup>.

The notion of human rights is believed to be as ancient as civilization itself<sup>2</sup> and it is definitely closely linked to the construction of citizenship and the state<sup>3</sup> as a form of political organization of human societies. However, in many historical phases, human rights tend to appear merely as "whispers" in various revolutionary declarations, canonical texts, state laws and other regulatory frameworks<sup>4</sup>, as they were characterized by very different, subjective, conflicting and often self-defeating universalities. Even in cases when human rights were accorded and protected within the different states of the world, rights were not equal among individuals under those same accords. It would have been inconceivable for the precursors of modern human rights regulatory texts that – for instance – a monarch, a (male) citizen and a slave would have had the same rights with regard to freedom, human dignity and equality before justice<sup>5</sup>. Favoritism and distinctions applied to the rights of rich and poor individuals, aristocrats and ordinary citizens, members of the clergy and their flock, even male and female persons.

It was not until after the atrocities of World War II and the subsequent need for change, and definitely not until 1948 and the Universal Declaration of Human Rights (UDHR), that human rights took a turn towards notions like universality, equality, and

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<sup>1</sup> “*A Brief History of Human Rights*,” Amnesty International, November 6, 2019, <https://www.amnesty.nl/a-brief-history-of-human-rights>.

<sup>2</sup> Ibid.

<sup>3</sup> Kerry O'Halloran, *Sexual Orientation, Gender Identity and International Human Rights Law: Common Law Perspectives* (London: Routledge, Taylor & Francis Group, 2020), page 30.

<sup>4</sup> Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, Mass: Harvard University Press, 2010), 13.

<sup>5</sup> “*A Brief History of Human Rights*,” Amnesty International, November 6, 2019, <https://www.amnesty.nl/a-brief-history-of-human-rights>

indivisibility. In times when humanity was coming out of a war that truly devastated it, the UDHR was the first universal legal text according a wide range of human rights to people, and – while making prominent that shared rights are essential globally – is considered to be the foundation of modern international human rights law<sup>6</sup>.

In truth, human rights has been a topic of discussion and a field of social conflict long before World War II and it continued to be so even after it. Being a disruption on the global *status quo*, World War II has put forth new humanistic ideologies and has birthed in its aftermath the perfect terrain for the weakening and questioning of colonial and religious moralities that insisted on women or people of color being inferior, or LGBT+ individuals being sinners<sup>7</sup>. Thus, the Cold War era could also be described as a chronology of milestones, whereby socially disadvantaged groups were able to come forth and – through everyday struggle and globally spreading social justice movements – assert their rights. One of those disadvantaged groups were LGBT+ individuals, who fought for their right to freedom, dignity, recognition of identity, and inclusion.

After a brief analysis on the history and dynamics of LGBT+ rights globally and the problematic of countries disrespecting, disregarding and violating them, this dissertation will first attempt to highlight the struggles these violations inflict on LGBT+ individuals, posing a great and everyday risk to their safety and forcing them to flee their countries seeking decent and free living conditions. Within this scope, key aspects of this dissertation will be the intersection between human rights and LGBT+ rights with regard to how the latter were introduced in international human rights law and, more precisely, how this intersectional view is beginning to shape the asylum legislation in regional organizations and regional human rights systems, in an attempt to outline what institutional and legal provisions are there for an LGBT+ individual, in order for them to apply for asylum on grounds of their sexual orientation and gender identity, and initiate further discussion on what needs refining in asylum application processes among those regional mechanisms.

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<sup>6</sup> “Protect Human Rights,” United Nations (United Nations), accessed September 13, 2021, <https://www.un.org/en/our-work/protect-human-rights>.

<sup>7</sup> Kerry O'Halloran, *Sexual Orientation, Gender Identity and International Human Rights Law: Common Law Perspectives* (London: Routledge, Taylor & Francis Group, 2020).

## **Methodology**

The research and writing of this dissertation was conducted in the midst of the COVID-19 crisis that began in 2020 and still plagues the world. Without access to libraries - except in the last months of my work - my research was conducted mainly through electronic sources, e-books and articles from various library and journal databases, websites of international and regional organizations, and NGO websites such as ILGA World or International Amnesty.

This paper will first examine LGBT+ rights historically and in the context of various international regulatory texts, as well as cases of infringement of these rights and its outcomes on the lives of LGBT+ individuals, in an attempt to demonstrate why more and more LGBT + individuals resort to fleeing and seeking international protection.

The concept of international protection, as described between regional organizations and regional human rights systems, will then be explored, with an emphasis on legislation and jurisprudence for granting international protection to persons based on their sexual orientation and gender identity.

Finally, attempts will be made to draw conclusions from this comparison, as well as to make suggestions for reviewing the procedures governing the granting of asylum to applicants on the basis of their sexual orientation and gender identity.

## **On the terms used in this dissertation**

One of the first things one encounters in the study of international human rights treaties is the premise that all people are born free and equal<sup>8</sup>. Although in the past it did not find universal application - as some people were “more equal” than others - this premise applies (or, should apply) today to all people regardless of their gender, nationality, color, religion, sexual orientation and gender identity<sup>9</sup>. In this dissertation, terms such as “LGBT+”, “queer”, “sexual orientation”, or “gender identity” will come up frequently. As these terms, although found mainly in gender studies or social anthropology works,

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<sup>8</sup> United Nations. *Universal Declaration of Human Rights*. 1948. Article 1.

<sup>9</sup> Principle 1 in the Yogyakarta Principles at: <https://yogyakartaprinciples.org/principle-1/>.

are inextricably linked to the research on this work and its results presented here, it is deemed necessary that their definitions be provided.

The acronym “LGBT+”<sup>10</sup> refers to lesbian, gay, bisexual and transgender individuals, whereas the “plus” symbol signifies the acronym being open to more gender identities and sexual orientations not specifically covered by it as it is. Though there have been and are still appearing more alternatives to the acronym itself, the “LGBT+” acronym will be used throughout this work to signify the group of people who are being discriminated against, due to their sexual orientation and/or gender identity (SOGI), which differs from mainstream binary sex and gender conceptions<sup>11</sup>.

The “LGB” letters of the acronym refer to a person’s sexual orientation, a term that is better defined as a person’s physical, romantic and/or emotional attraction towards other people and is considered an integral characteristic of every person’s identity<sup>12</sup>. Homosexual persons – that is gay men and lesbian women – are attracted to individuals of the same sex as themselves, whereas bisexual people may be attracted to individuals of the same and/or different sex. Sexual orientation should not be confused with gender identity though.

In the Western world, gender is considered a bipolar concept, only distinguishing between male and female, usually based on the anatomical and reproductive features of the human body. However, apart from the anatomical view, there are many other characteristics, such as gender identity or gender expression, that determine gender in its entirety, thus making the aforementioned binary vision somewhat short-sighted,

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<sup>10</sup> The acronym is admitted to be inadequate in including all groups of people non conforming to the mere binary sex and gender norms, and there have been propositions to alter or expand it according to what is perceived as politically correct. For further information, see Kerry O'Halloran, *Sexual Orientation, Gender Identity and International Human Rights Law: Common Law Perspectives* (London: Routledge, Taylor & Francis Group, 2020), 15.

<sup>11</sup> Kerry O'Halloran, *Sexual Orientation, Gender Identity and International Human Rights Law: Common Law Perspectives* (London: Routledge, Taylor & Francis Group, 2020), 15.

<sup>12</sup> United Nations. *Living Free and Equal* (New York. 2016), 18.

incapable of grasping the wider spectrum that truly constitutes gender<sup>13</sup>. As it is adequately summarized in the Yogyakarta Principles' introduction<sup>14</sup>,

*Gender identity is understood to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.*

Persons whose gender identity corresponds with the sex assigned at birth are described as *cisgender*, whereas those persons whose gender identity is different from the sex assigned at birth are described as *transgender* or just *trans*. Moreover, the term “transgender” is considered an umbrella term used to describe several other identities<sup>15</sup> not conforming to cisgender norms.

Gender expression, a term that also comes up frequently throughout the respective literature, is defined as the way in which a person's gender is expressed, not only through a person's actions and overall appearance, but also through the way a person dresses or speaks, that might be nevertheless irrelevant to that person's biological sex, gender identity or sexual orientation<sup>16</sup>.

Finally, sex characteristics refer to a person's physical characteristics with regard to sex, such as a person's genitalia, hormones, chromosomes etc.. “Sex characteristics” will be a term referred to in this dissertation on intersex individuals, who are born with physical characteristics that do not fall into the socially and medically defined "male - female" dipole<sup>17</sup>. For these individuals, these characteristics may be apparent before or at birth, or they may appear later in life<sup>18</sup>. As those characteristics usually do not apply directly to medical or social norms, the intersex population can be subject to discrimination and

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<sup>13</sup> Justin Healey, ed., *Sexual Orientation and Gender Identity*, vol. 378 (Thirroul, NSW: The Spinney Press, 2014), 1.

<sup>14</sup> Introduction to the Yogyakarta Principles at: <http://yogyakartaprinciples.org/introduction/>.

<sup>15</sup> See, further, United Nations. *Living Free and Equal* (New York. 2016), 18.

<sup>16</sup> UN Office of the High Commissioner for Human Rights, *Born Free and Equal: Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law*, 2nd ed. (OHCHR, 2019), 5

<sup>17</sup> Carpenter, Morgan. “*Intersex Human Rights, Sexual Orientation, Gender Identity, Sex Characteristics and the Yogyakarta Principles plus 10.*” *Culture, Health & Sexuality* 23, no. 4 (2020): 516–32. <https://doi.org/10.1080/13691058.2020.1781262>.

<sup>18</sup> *Ibid.*

stigma, whereas their basic human rights are often grossly violated in the biggest part of today's world<sup>19</sup>.

The above terms - sexual orientation, gender identity, or even sex characteristics - are neither identical nor synonymous, yet they coexist within each of us. Understanding the complexity of these terms, primarily means understanding the complexity and diversity of the people of this world, so that one can understand why some people - more than others - are subject to daily exclusion and discrimination, leading in blatant violations of their rights.

LGBT+ persons are individuals whose characteristics "deviate" from the heteronormative norms or do not fit into the binary system "male/female", so in most parts of the world they face significant challenges, discrimination based on their sexual orientation or their gender identity, marginalization and violence.

The extent and intensity of the challenges of LGBT+ people may vary from country to country and from context to context, but it is real, and often causes a person to choose to flee and seek asylum and better living conditions in another country. Whether and to what extent this is easy or possible, or whether asylum claims are justifiable on grounds of sexual orientation and/or gender identity, those are some of the main questions in this dissertation.

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<sup>19</sup> Ibid., page 2.

# 1 LGBT+ rights globally: international legal framework for LGBT+ individuals

## 1.1 Before World War II

Being able to write about LGBT+ rights in the context of a dissertation for a public university postgraduate program signified a certain privilege. Being able to write about LGBT+ refugees from the security of one's homeland and the warmth of one's home signifies privilege. Once this privilege is checked and recognized, one has to "thank" for it – or, at least, acknowledge – the battles fought years before, as well as the struggles of people who tried to tackle and are still battling marginalization from "inside the margins", dating back to the mid-19th century<sup>20</sup>.

Long before World War II and the subsequent abrupt birth of regulatory framework and scholarly works on human rights, LGBT+ people around the globe were not just marginalized and socially excluded. In most cases, homosexuality or atypical gender expression was frowned upon, ridiculed, persecuted and even criminalized, either due to social stereotypes or religious beliefs, while the pathologization<sup>21</sup> of homosexuality by Western psychiatrists only exacerbated the problem<sup>22</sup>. In this historical context, when even the discussion of sexuality and gender issues was considered scandalous and could lead to criminal prosecutions, State and Church – institutions that have been imposing, according to Foucault<sup>23</sup>, a terrible repression status quo around sexuality – led passionate campaigns against homosexuals, either on the basis of them being a disruption in the natural order or sinners before the eyes of God<sup>24</sup>. In this time, the time of State's and Church's "*endeavor to expel from reality the forms of sexuality that were not amenable to*

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<sup>20</sup> Laura A. Belmonte, *The International LGBT Rights Movement: A History* (London: Bloomsbury Academic, 2021), page 1.

<sup>21</sup> Michel Foucault, *The History of Sexuality, Vol. 1: An Introduction* (New York: Pantheon Books, 1978), 36.

<sup>22</sup> Laura A. Belmonte, *The International LGBT Rights Movement: A History* (London: Bloomsbury Academic, 2021), page 9.

<sup>23</sup> Foucault, Michel. *The History of Sexuality, Vol. 1: An Introduction*. New York: Pantheon Books, 1978.

<sup>24</sup> Laura A. Belmonte, *The International LGBT Rights Movement: A History* (London: Bloomsbury Academic, 2021), pages 11-13.

*the strict economy of reproduction*”<sup>25</sup>, homosexuality was in most countries punishable by imprisonment, exile, castration or even death<sup>26</sup>.

In the late 1700s, the impact of the Enlightenment ideas on individual rights and freedoms brought about the first early changes, whereas the State’s disengagement from the Church in the aftermath of the French Revolution launched a crescendo of decriminalization of homosexual sexual practices in countries of the West. Though it did not happen overnight – and the Church was constantly making prominent it should not – things were starting to change for sexual minorities. By the end of 1800s, sodomy laws were starting getting criticized, even repealed in some few cases, whereas the diverse sexuality of prominent people of the time, such as Oscar Wilde, and their persecution based on their sexuality drew attention on these issues and fired up discussions on the matter amongst the civil society. After that, academics, scholars and philosophers started deviating from Christian morality, which in its turn allowed them to write past the common belief that homosexuality was a disruption in natural order. Thus, amidst the incremental detachment from religious ethics and the burgeoning social and scholarly discussion of the matter such as that at hand, fragments of organized pro-LGBT+ movements started making their appearance<sup>27</sup>.

By the beginning of the twentieth century, conceptions around sex and gender were already starting shifting<sup>28</sup> and narratives of lesbian and gay individuals started surfacing. In academia, discussions around gender identity and homosexuality began shedding light to these terms<sup>29</sup>, whereas communities, such as *Scientific Humanitarian Committee* in Berlin and the *British Society for the Study of Sex Psychology*<sup>30</sup> started advocating

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<sup>25</sup> Michel Foucault, *The History of Sexuality, Vol. 1: An Introduction* (New York: Pantheon Books, 1978), 36.

<sup>26</sup> Laura A. Belmonte, *The International LGBT Rights Movement: A History* (London: Bloomsbury Academic, 2021), page 11.

<sup>27</sup> Belmonte, Laura A. *The International LGBT Rights Movement: A History* (London: Bloomsbury Academic, 2021), pages 9-40

<sup>28</sup> Ibid. page 41-42

<sup>29</sup> For prominent examples such as that of Magnus Hirschfeld or Sigmund Freud, see further Belmonte, Laura A. *The International LGBT Rights Movement: A History* (London: Bloomsbury Academic, 2021), pages 41ff.

<sup>30</sup> Ibid.

LGBT+ rights and their social recognition, campaigning at the same time against their legal persecution.

The aftermath of World War I found the West in constant change: once powerful monarchies crumbled to the ground, creating instability – more prominently in Central and Eastern Europe - and many right-wing governments appeared in the western countries<sup>31</sup>. As borders were drawn anew on the map, new countries appeared, along with new political and social cleavages, whereas the Great Depression only made things worse. In its dawn, World War II found the West even so divided, in a climate of political extremism, especially in Europe where Fascism started flourishing in Germany<sup>32</sup>, as well as in Spain and Italy. This new turn toward the right-wing brought about new enforcements of anti-gay legislation, oppressive stances and persecuting practices were reignited in big cities of the West – even those that have formerly been brimming with LGBT+ subcultures. The most prominent example of such persecutions can be found in Hitler’s Germany.

As the Nazi regime campaigned for a “Clean Reich” in an effort to pass the Nazi agenda and their ideals onto the German civil society, homosexuals – although never targeted for mass extermination - were persecuted and sent in concentration camps<sup>33</sup>, were they were imprisoned, experimented on, tortured and viciously killed.

Contrary to what one might expect, the end of World War II or the downfall of Hitler’s regime did not automatically lead to the improvement of LGBT+ individuals’ lives. After all, the world had to tend to its wounds, which were a lot and in various fields. As described before, human rights were in the past neither universal, nor equal and indivisible. A crescendo of changes led from one improvement to the other, whereas the culmination of this crescendo, of course, was the consequent change in the attitude of the

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<sup>31</sup> Terry Jones, “Political Change after the Great War,” Oxford Open Learning, 2014, <https://www.ool.co.uk/blog/political-change-great-war/>.

<sup>32</sup> de Bromhead, Alan, Kevin O'Rourke, and Barry Eichengreen. “*Right-Wing Political Extremism in the Great Depression*.” VOX, CEPR Policy Portal, 2012. <https://voxeu.org/article/right-wing-political-extremism-great-depression>.

<sup>33</sup> Belmonte, Laura A. *The International LGBT Rights Movement: A History* (London: Bloomsbury Academic, 2021), pages 62-64.

international community towards human rights, a change that began with the Universal Declaration of Human Rights.

## **1.2 The Universal Declaration of Human Rights (UDHR) and LGBT+ rights**

In a legal system as vast and obscure as the international legal system there is no higher legislative institution or body, that can create, impose and successfully uphold laws and rules universally. Therefore, rules and laws governing and regulating international cooperation in various aspects of the global community's life derive from a certain framework that has been reciprocally negotiated between states or among international organizations, agreed to and accorded<sup>34</sup>. Before World War II, there have been fragments of individual rights<sup>35</sup>, based mostly on customs, legal provisions or ideas valid only in certain spatiotemporal contexts.

Those spatially and temporarily confined sets of norms were in their majority incorporated in the UDHR<sup>36</sup>, the predecessor and foundation of every single international human rights treaty since. Signed in 1948 and adopted by the United Nations General Assembly, the UDHR contains thirty articles determining core human rights, based on the notions of universality, equality, non-discrimination, interdependence and indivisibility<sup>37</sup>.

Starting with the monumental “all human beings are born free and equal in dignity and rights”<sup>38</sup>, the UDHR vested upon people fundamental rights of life, liberty, security or equality before the law, access to justice, freedom of speech, association and assembly, or freedom of religion, universally and without concern as to their “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”<sup>39</sup>. Albeit rather vague, the mere mention of “other status” in the UDHR's Article 2 was of great significance to sexual and gender minorities, as it protects specific

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<sup>34</sup> Provost, René, *International Human Rights and Humanitarian Law* (Cambridge, United Kingdom: Cambridge University Press, 2004), 127.

<sup>35</sup> It is better described by Wiktor Osiatýnski as sets of individual privileges in: Osiatýnski, Wiktor. “*The Historical Development of Human Rights*,” in *Routledge Handbook of International Human Rights Law* (London: Routledge, 2013), pp. 9-24.

<sup>36</sup> Ibid.

<sup>37</sup> “*The Foundation of International Human Rights Law*,” United Nations (United Nations), accessed September 22, 2021, <https://www.un.org/en/about-us/udhr/foundation-of-international-human-rights-law>.

<sup>38</sup> “*Universal Declaration of Human Rights*,” United Nations (United Nations), accessed September 22, 2021, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>, Article 1.

<sup>39</sup> Article 2, UDHR

and non specific categories of people, thus being open to further interpretations – so as to include LGBT+ people<sup>40</sup>. The mere existence of “other status” in such a significant international legal text has been ever since the cornerstone of people's institutional claims worldwide over issues of SOGI, as it protects .

Furthermore, Articles 1 and 2 highlight the freedom and equality among people regardless of their status, as well as the universality and indivisibility of those virtues, thus laying the foundation for the elimination of discrimination against certain groups. Those, along with Article 3, showcase the need of sexual and gender minorities and their right to live and prosper, freely and securely around the world.

Article 6 bestows upon people the right to an identity, a right longed for and coveted by the LGBT+ community. Stating that “everyone has the right to recognition everywhere as a person before the law”, Article 6 could finally lead to the social and institutional recognition of the LGBT community for their distinctive identity<sup>41</sup>.

Another set of rights of great importance to the LGBT+ community – even by extension – are the freedom of expression, and the freedom of association and assembly included in UDHR’s Articles 19 and 20. Recognizing the right of people to express themselves without fear of persecution or sanction gave room to LGBT+ narratives to start being expressed and heard, whereas freedom of association and assembly meant – first and foremost – that sexual and gender minorities could form communities, instead of hidden, often persecuted subcultures. Furthermore, if viewed together, the rights arising from Articles 19 and 20 meant that LGBT+ individuals were able to freely gather and form collectives and communities in order to pursue common goals<sup>42</sup>, thus leading, albeit step-by-step, in today’s LGBT+ organizations, striving for visibility and tolerance, and advocating for a better social and legal/institutional status.

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<sup>40</sup> Brown, Dara P. (2017) "*LGBT Rights are Human Rights: Conditioning Foreign Direct Investments on Domestic Policy Reform*," Cornell International Law Journal: Vol. 50 : No. 3 , Article 6. Available at: <https://scholarship.law.cornell.edu/cilj/vol50/iss3/6>.

<sup>41</sup> Kerry O'Halloran, *Sexual Orientation, Gender Identity and International Human Rights Law: Common Law Perspectives* (London: Routledge, Taylor & Francis Group, 2020), page 32.

<sup>42</sup> Ibid.

Of course, it was not merely the Articles mentioned above that acted as a springboard for the LGBT+ community to claim more rights. By extension of the “other status” term to the LGBT+ community, rights mentioned in other articles - although a little later historically - were also of great significance to them and helped shape their contemporary status. For example, the right to privacy and family life, as described in Article 12, has provided a solid basis for court case law on LGBT + rights, while the right to marry and to found a family under Article 16 is a long-standing request of the community<sup>43</sup>. The UDHR may not have mentioned the LGBT+ individuals per se, it has though surely laid the foundation for the improvement of their lives, their social and legal status, raising their claims on a State level. As States were now the agents in charge of complying with the provisions of the Declaration and safeguarding the rights of their citizens, they were now obliged to ensure equal rights for all. However, despite this obligation, they were late in doing so.

### 1.3 After the UDHR

As the LGBT+ community reached, along with the rest of the world, the post-war era, an era of newly found ideals for freedom and human rights, and though they have been violently persecuted by the Nazis during World War II, their oppression narratives did not reach out as widely as they should amongst the people<sup>44</sup>, and, as mentioned before, sexual minorities and their explicit protection eluded the UDHR’s articles<sup>45</sup>. On the contrary, despite the existence of the UDHR and its provisions on freedom and human dignity, most of the states of the world started functioning in a renewed heteronormative context, pushing the LGBT+ back in the margins<sup>46</sup>. However, the UDHR was succeeded

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<sup>43</sup> Ibid, page 33.

<sup>44</sup> As Belmonte points out, it was not until the 1970s that the LGBT+ movement reinvented the pink triangle – the mark sewed on prisoners’ uniforms at Nazi concentration camps to identify them as gay – as a global symbol of gay liberation. More information on the matter at: Mullen, Matt. “*The Pink Triangle: From Nazi Label to Symbol of Gay Pride*.” History.com. A&E Television Networks, June 3, 2019. <https://www.history.com/news/pink-triangle-nazi-concentration-camps>.

<sup>45</sup> Belmonte, Laura A. *The International LGBT Rights Movement: A History* (London: Bloomsbury Academic, 2021), pages 71-72.

<sup>46</sup> During the Cold War, individuals of “deviant” sexual orientation or gender identity/expression were perceived as communists, and started losing their jobs and being socially excluded. In the East, anti-gay laws were reinstated in the USSR. Though Stonewall riots created a wave of organized advocating, setbacks like the AIDS epidemic pushed the LGBT+ community back in the margins. See further: Belmonte, Laura A. *The International LGBT Rights Movement: A History* (London: Bloomsbury Academic, 2021), Chapters 3-4.

by other legal texts, which tried to remedy the shortcomings of their predecessor and, together with the case law of international courts that based their decisions on them, led to a more adequate framework for the protection of LGBT + rights by the beginning of the 21st century.

In 1950, following the standards set by the Universal Declaration of Human Rights and under the auspices of the Council of Europe, the European Convention on Human Rights (ECHR) was published. Being in force since 1953, the ECHR and the protocols that followed it are legal texts of utmost importance for human rights and their protection on the European continent. As far as LGBT+ rights are concerned, it does not seem to deviate much from its predecessor, the UDHR. According to the ECHR, all persons, regardless of “sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”<sup>47</sup> may enjoy the rights and freedoms deriving therefrom. However, this did not necessarily mean that the LGBT+ people were able to benefit directly at that time from it. Contrary to the aforementioned provisions described by Article 14 of the ECHR, there have been cases of LGBT+ cases dismissed or ruled against on grounds of exception. A most distinguishable example of this was the cases of German gay men, convicted to imprisonment, brought before the newly established European Court of Human Rights (ECtHR)<sup>48</sup>.

Before the end of the war and while Hitler was still in power, laws prohibiting homosexuality were not only kept in effect, but they were broadened even<sup>49</sup>. For instance, the infamous Paragraph 175, which was part of the German Empire’s criminal code as early as 1871, and which was stipulating the prohibition of same sex relations and sexual practices, was broadened<sup>50</sup> and utilized by Hitler’s regime to further their persecution of

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<sup>47</sup> Council of Europe. “*European Convention on Human Rights*.” Accessed August 24, 2021. [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf), Article 14.

<sup>48</sup> Laura A. Belmonte, *The International LGBT Rights Movement: A History* (London: Bloomsbury Academic, 2021), 74.

<sup>49</sup> United States Holocaust Memorial Museum. “*Paragraph 175 and the Nazi Campaign against Homosexuality*.” Holocaust Encyclopedia. United States Holocaust Memorial Museum, May 4, 2021. <https://encyclopedia.ushmm.org/content/en/article/paragraph-175-and-the-nazi-campaign-against-homosexuality>. Accessed on 11/05/2022.

<sup>50</sup> Before Hitler’s era, Paragraph 175 criminalized sexual practices and relations between men – women were excluded. More at: United States Holocaust Memorial Museum. “*Paragraph 175 and the Nazi Campaign against Homosexuality*.”

homosexual people<sup>51</sup>. After the war was over and Germany was divided, in the west part – reputedly, the “progressive” and “civilized” part – Paragraph 175 was kept in effect, thus leading to recurring sanctions of homosexual people<sup>52</sup>. When cases of jailed West German gay men were brought before the ECtHR, the latter ruled that their convictions were justified under Article 8 of the ECHR exceptions<sup>53</sup>.

The ECHR might have had provisions for people of “other status”, which – if widely interpreted – could be broadened to include LGBT+ people, but such provisions were at that time vague and open to various interpretations. Naturally, as described further in this dissertation, the term “other status” has been since then supplemented or otherwise interpreted by the various executive or judicial bodies internationally, so as to include other minority groups, such as the LGBT+, whereas new international legal texts have been more specifically written, for the same purpose.

During the Cold War era, the entire world seemed to be tackling postwar problems one by one, as many issues needed addressing and many “wounds” needed healing – some more desperately than others. Nevertheless, the issues of the underprivileged were once more met with reluctance, indisposition, even negligence. That alone, especially in times of a blooming international cooperation towards healing and redeeming, was enough to prompt people to form collectives, in their attempt to hold their ground in their respective communities and be able to be heard, to advocate for their rights. Various forms of movements formed back then, advocating for civil rights for certain underprivileged groups, such as women, people of color, or the LGBT+<sup>54</sup>. Especially for the LGBT+, it was the Stonewall riots in 1969, almost in the middle of the Cold War era, that distinguishably showed that the international LGBT+ community was ready for advocating of their rights more actively and more politically<sup>55</sup>. Although it is a fact that

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<sup>51</sup> Olivier Pieper and Nicole Goebel, “Germany's 'Gay' Paragraph 175 Abolished 25 Years Ago,” DW.com (Deutsche Welle, June 11, 2019), <https://www.dw.com/en/germanys-gay-paragraph-175-abolished-25-years-ago/a-49124549>.

<sup>52</sup> Laura A. Belmonte, *The International LGBT Rights Movement: A History* (London: Bloomsbury Academic, 2021), 73.

<sup>53</sup> Ibid., 73-74.

<sup>54</sup> Laura A. Belmonte, *The International LGBT Rights Movement: A History* (London: Bloomsbury Academic, 2021), 109.

<sup>55</sup> Ibid.

Stonewall riots did not “invent” LGBT+ activism<sup>56</sup>, nor did they instantly make things better for the LGBT+, they did shine on the movement’s perennial demands for fundamental rights recognition transnationally, leading to the strengthening of the existing LGBT+ collectives and the sprouting of even more new ones around the globe<sup>57</sup>, advocating toward equality up until nowadays. And they were able to do so by invoking international accords, such as those that emerged after the UDHR and the ECHR.

Taking effect in 1976 and attempting to shed more light in the relevant human rights law internationally, both the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) tried to encompass even more individuals by their provisions.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) took effect in 1976 and it vests certain economic, social and cultural rights to people, including rights such as that of social security or that of fair conditions of work. Articles such as 2.2 or 3 act as precursors - once again, by extension or subsequent judicial interpretation - of the rights of LGBT+ persons, either listing discriminatory categories, which may be extended to LGBT+ persons, or declaring equal rights between men and women, thus creating the right ground for non-discrimination on the grounds of sexual orientation, but also extending these rights and protections to the workplace (Articles 6 and 7)<sup>58</sup>.

Completing a trifecta with regard to human rights, the International Covenant on Civil and Political Rights (ICCPR), also taking effect in 1976, completes – along with the UDHR and the ICESCR – the International Bill of Human Rights<sup>59</sup>. Not only does the ICCPR ensure rights, such as those of freedom from discrimination, right to equality between men and women, or freedom of expression – which have been nevertheless already within the scope and provisions of the other two – but it provided the opportunity

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<sup>56</sup> Greggor Mattson, “*The Stonewall Riots Didn’t Start the Gay Rights Movement*,” JSTOR Daily (ITHAKA, June 12, 2019), <https://daily.jstor.org/the-stonewall-riots-didnt-start-the-gay-rights-movement/>.

<sup>57</sup> History.com Editors, “*Stonewall Riots*,” HISTORY (A&E Television Networks LLC, May 31, 2017), <https://www.history.com/topics/gay-rights/the-stonewall-riots>.

<sup>58</sup> Kerry O'Halloran, *Sexual Orientation, Gender Identity and International Human Rights Law: Common Law Perspectives* (London: Routledge, Taylor & Francis Group, 2020), page 52.

<sup>59</sup> Human Rights Committee. “*Background to the International Covenant on Civil and Political Rights and Optional Protocols*.” OHCHR. United Nations. Accessed June 20, 2022. <https://www.ohchr.org/en/treaty-bodies/ccpr/background-international-covenant-civil-and-political-rights-and-optional-protocols>.

to individuals under the jurisdiction of signatory State parties to file complaints of human rights violations before the Human Rights Committee<sup>60</sup>. Once more, certain rights within the provisions of the ICCPR may be of importance to the LGBT+ community, such as the principle of non-discrimination (Article 2), the right to privacy (Article 17), or even the right to marriage (Article 23)<sup>61</sup>.

The aforementioned international texts – though, as mentioned before, vaguely and under certain veneers – have set the ground for further protection of the LGBT+ persons. They did not only provide the LGBT+ community with arguments to use making their case for equality and more rights, but they rekindled the discussion about those rights globally, leading to a more active and more adequate advocating towards those rights. Although facing significant set-backs in their course towards more rights – one huge set-back being, for example, the AIDS epidemic and the subsequent “frenzy” of society and the media<sup>62</sup> – the LGBT+ community forged alliances and rallied to get institutions such as the UN itself or the Amnesty International to protect their rights<sup>63</sup>. Many LGBT+ collectives were formed back then, all reiterating the need of broadening of the equality spectrum and the bestowment of basic human rights on the community’s members. It was between the 80s and the dawn of the new millennium that those collectives fought really hard to bring their cases before regional courts and international institutions, which ultimately led to a global shift of social and institutional mentality, with states shaping their legislation accordingly, expanding its scope to include LGBT+ people, where and when this was possible<sup>64</sup>. By the end of the 20<sup>th</sup> century, things have certainly started seeming less dim and less gloomy for the LGBT+ community.

#### **1.4 LGBT+ rights developments in the 21<sup>st</sup> century**

As early as the late 1990s, both the LGBT+ community itself and the international LGBT+ rights movement began to come to the fore. Having surpassed – to the extent that

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<sup>60</sup> Human Rights Committee. “*Background to the International Covenant on Civil and Political Rights and Optional Protocols*.” OHCHR. United Nations. Accessed June 20, 2022. <https://www.ohchr.org/en/treaty-bodies/ccpr/background-international-covenant-civil-and-political-rights-and-optional-protocols>.

<sup>61</sup> Kerry O'Halloran, *Sexual Orientation, Gender Identity and International Human Rights Law: Common Law Perspectives* (London: Routledge, Taylor & Francis Group, 2020), page 51.

<sup>62</sup> Ibid., pages 145ff.

<sup>63</sup> Ibid., page 146.

<sup>64</sup> Ibid., pages 147ff.

this was possible - the negative publicity of the 80s and the consequent intolerance, homophobia, transphobia and stigma, and having a renewed vision and new means at its disposal, the claim of rights for the community would flourish unprecedentedly. Although social acceptance and inclusion has been - and probably still is - a major issue and a constant request of the community, in most of the western world things are starting to change for the better.

The technological development of recent decades and the development of media that enabled networking worldwide has been an important resource in the hands of the international LGBT+ rights movement, facilitating the dissemination of their messages and demands.

From a social point of view, these media facilitated the – slow, but steadily increasing – change in the perception of the world about LGBT+ people. As early as the late 90's, many public figures internationally began to talk about their experiences, coming out and telling their stories<sup>65</sup>. Cinema and arts in general, which began to include issues of sexual orientation and gender identity (albeit in somewhat more conventional directions at that time), but also the huge boom in the fields of anthropological research and gender studies, certainly contributed to this perception shift for the society.

The widening of the spectrum of gender and sexuality, which came through research in the aforementioned fields, led on the one hand to the escalating use of terms, which until then were not widely known, on the other hand brought to the fore identities that for most of history remained hidden in the shadows.

After this scholar and social representation, it was time for the LGBT+ movement to pursue changing the established institutional structures. Having at its disposal the technological and scholar means mentioned above, the LGBT+ movement has expanded its reach around the world, spatially widening the field of activity, seeking more rights

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<sup>65</sup> Bonnie J. Morris, “*History of Lesbian, Gay, Bisexual and Transgender Social Movements*,” American Psychological Association, 2009, <https://www.apa.org/pi/lgbt/resources/history>.

and freedoms on the path to equality, trying to bring about change at a supranational level<sup>66</sup>.

It was in this context that a new international human rights text came to be: the Yogyakarta Principles<sup>67</sup>. This text was an effort to extend human rights protections as accorded in international human rights law to LGBT+ people, and – though it is not part of the normative legal framework<sup>68</sup>, hence not strictly binding for States – it outlined their obligations toward those marginalized on the basis of SOGI<sup>69</sup>. The Principles were created by a group of human rights experts in 2006, at Gadjah Mada University in Yogyakarta, Indonesia<sup>70</sup>, as an effort to remedy gross human rights violations worldwide against persons on the basis of their SOGI<sup>71</sup>.

The aim of the initial 29 Principles, all referring to the application of the long-existing international human rights legislation to LGBT+ people, was to outline the existing human rights violations against people on the basis of their SOGI, to display how the existing human rights laws must be applied to remedy those violations, and to “*spell out the nature of the obligation on states for implementation of each of the human rights*”<sup>72</sup>.

The Principles were supplemented in 2017 with another set of principles, occasioned by international developments with regard to SOGI and human rights, such as newly developed jurisprudence and scholarly work by that time<sup>73</sup>. The new Principles included, as Carpenter (2020) perfectly summarizes:

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<sup>66</sup> Laura A. Belmonte, *The International LGBT Rights Movement: A History* (London: Bloomsbury Academic, 2021), page 171.

<sup>67</sup> Full text available at: <https://yogyakartaprinciples.org/>

<sup>68</sup> Kerry O'Halloran, *Sexual Orientation, Gender Identity and International Human Rights Law: Common Law Perspectives* (London: Routledge, Taylor & Francis Group, 2020), page 54.

<sup>69</sup> Thoreson, R.R. (2016). *Yogyakarta Principles*. In *The Wiley Blackwell Encyclopedia of Gender and Sexuality Studies* (eds A. Wong, M. Wickramasinghe, R. Hoogland and N.A. Naples). <https://doi.org/10.1002/9781118663219.wbegss452>

<sup>70</sup> O'Flaherty, Michael. “*The Yogyakarta Principles at Ten*.” *Nordic Journal of Human Rights* 33, no. 4 (2015): 280–98. <https://doi.org/10.1080/18918131.2015.1127009>.

<sup>71</sup> *Ibid.*, page 281.

<sup>72</sup> *Ibid.*, pages 283-284.

<sup>73</sup> Morgan Carpenter, “*Intersex Human Rights, Sexual Orientation, Gender Identity, Sex Characteristics and the Yogyakarta Principles plus 10*,” *Culture, Health & Sexuality* 23, no. 4 (2020): pp. 516-532, <https://doi.org/10.1080/13691058.2020.1781262>, page 8.

*“the elaboration of two new concepts: ‘sex characteristics’ and ‘gender expression’, alongside nine new Principles on rights to bodily and mental integrity, truth, legal recognition, state protection, freedom from criminalisation, protection from poverty, sanitation, enjoyment of information and communication technologies, and cultural diversity”<sup>74</sup>.*

The Principles – both in their original and supplemented forms – were, already from the time they were launched, used and referenced within various contexts in the Western world<sup>75</sup>, having an important impact on actions from governments, supranational institutional bodies and courts<sup>76</sup>. Key developments of the significance and the influence of the Principles include the adoption of the terms “sexual orientation” and “gender identity”, as listed in and defined by the Principles, by treaty bodies and other institutions and their employment in policy making procedures, as well as by courts in their judgments<sup>77</sup>, on an international, regional and national level.

By 2008 – just a year after the launch of the original Yogyakarta Principles – the UN Declaration on Sexual Orientation and Gender Identity<sup>78</sup> came to be, affirming that all accorded human rights must be applied to all human beings regardless of their SOGI and condemning at the same time the human rights violations based on people’s SOGI<sup>79</sup>. Until today, many resolutions, joint statements and reports<sup>80</sup> have been issued with regard to SOGI and the human rights protection of the LGBT+ persons by the UN’s instruments, most of which on the same direction as the Yogyakarta Principles, aiming to affirm that accorded human rights must be extended to persons discriminated against on grounds of SOGI.

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<sup>74</sup> Ibid.

<sup>75</sup> Kerry O'Halloran, *Sexual Orientation, Gender Identity and International Human Rights Law: Common Law Perspectives* (London: Routledge, Taylor & Francis Group, 2020), page 55.

<sup>76</sup> Michael O'Flaherty, “*The Yogyakarta Principles at Ten*,” *Nordic Journal of Human Rights* 33, no. 4 (2015): pp. 280-298, <https://doi.org/10.1080/18918131.2015.1127009>, page 287.

<sup>77</sup> Ibid., pages 287ff.

<sup>78</sup> Full text available at: <https://digitallibrary.un.org/record/644995?ln=en>

<sup>79</sup> Kerry O'Halloran, *Sexual Orientation, Gender Identity and International Human Rights Law: Common Law Perspectives* (London: Routledge, Taylor & Francis Group, 2020), page 54.

<sup>80</sup> Kim Vance et al., “The Rice of SOGI: Human Rights for LGBT People at the United Nations,” in *Envisioning Global LGBT Human Rights: (Neo)Colonialism, Neoliberalism, Resistance and Hope*, ed. Nancy Nicol (London: University of London Press, 2018), pp. 223-246, pages 230-231.

However, if the international human rights law, the Yogyakarta Principles, even the UN resolutions have had such a strong influence on the international legal status quo and truly led to a human rights inclusive protection, why are we still talking about human rights violations against LGBT+ people? If the existing international human rights law system was indeed adequately protecting LGBT+ individuals, why are people still forced to flee their countries for reasons of sexual orientation and / or gender identity?

### **1.5 The current global state for LGBT+: why do people flee?**

With the legal system being a quasi “living organism”, developments and legal progress has never had a linear trajectory<sup>81</sup>, as it can be influenced spatially and temporally by many factors - social, political, ethical, procedural, even religious. In this context, despite the enormous flourishing of international law and jurisprudence regarding the protection of LGBT+ individuals, many states choose to protect their sovereignty from external, supranational interventions<sup>82</sup>, often preventing the protections provided by international conventions and institutions from exceeding and affecting their national legislation due to factors, such as those mentioned above. Thus, while international conventions and legal texts have so far improved the social and political life of LGBT+ people worldwide, and in most countries homosexuality or diverse gender identity/expression are no longer considered criminal acts, there certainly are countries and wider areas of the world, in which divergences from what is considered "normal" in relation to SOGI are socially reprehensible<sup>83</sup>, without the subjects being institutionally and legally protected.

Both exclusion and discrimination against LGBT+ persons globally are multifaceted phenomena; they may occur within the family, within narrower or wider social contexts, they can even manifest themselves at the political or institutional level, whereas their levels vary spatially and depending on the context. Stemming from intolerance, homophobia/transphobia and a misguided – usually moral or religious – perception of what is “normal”, negative attitudes toward LGBT+ persons may take the form of

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<sup>81</sup> Lucas Ramon Mendos et al., *State-Sponsored Homophobia 2020: Global Legislation Overview Update* (Geneva: ILGA World, 2020), page 23.

<sup>82</sup> <sup>82</sup> Laura A. Belmonte, *The International LGBT Rights Movement: A History* (London: Bloomsbury Academic, 2021), page 195.

<sup>83</sup> “LGBTIQ+ Refugees,” UNHCR, accessed April 12, 2022, <https://www.unhcr.org/handbooks/ih/age-gender-diversity/lgbtiq-refugees>.

familial exclusion, social exclusion, violence, persecution, torture, imprisonment, even execution, for individuals transgressing sexual or gender norms<sup>84</sup>.

More and more states have proceeded throughout the years in decriminalizing homosexuality and have put in place legislation protecting the LGBT+ from discrimination, violence and hate crimes, while they recognize rights, such as that to marriage or gender recognition<sup>85</sup>. According to ILGA World's exceptional work on mapping what is described in the relevant field as "state-sponsored homophobia" throughout the world, most of the countries in the Americas and Europe, as well as in Oceania, have until today decriminalized homosexuality<sup>86</sup> (in the sense of same-sex sexual acts between consenting adults, with the word "acts" being the operative word) and diverse gender identity/expression, and – though, in the vast majority of them, LGBT+ rights are not protected constitutionally – LGBT+ persons are having certain rights acknowledged and protected. Unfortunately, there are truly few states today, in which the LGBT+ persons enjoy simultaneously a full palette of recognized human rights, institutional protection and acceptance<sup>87</sup>, with Malta being an impeccable example of what could be described as full (constitutional, institutional and legal) LGBT+ rights protection<sup>88</sup>.

Evidently, it goes without saying that there still are globally varying degrees of exclusion and persecution – even in States that are considered to constitute "the West" – so a distinction of great importance must be made at this point, as is made among the respective literature, between state and non-state persecution<sup>89</sup>. Seeing the dynamically

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<sup>84</sup> Edward Ou Jin Lee, "Tracing the Coloniality of Queer and Trans Migrations: Resituating Heterocisnormative Violence in the Global South and Encounters with Migrant Visa Ineligibility to Canada," *Refuge: Canada's Journal on Refugees* 34, no. 1 (2018): pp. 60-74, <https://doi.org/https://doi.org/10.7202/1050855ar>, page 63.

<sup>85</sup> Legal gender recognition refers to laws and policies making it possible for trans and gender diverse people to change their gender and names on official state documents, as described in: Zhan Chiam et. al., "Trans Legal Mapping Report 2019: Recognition before the law" (Geneva: ILGA World, 2020).

<sup>86</sup> Lucas Ramon Mendos et al., *State-Sponsored Homophobia 2020: Global Legislation Overview Update* (Geneva: ILGA World, 2020), pages 325 ff.

<sup>87</sup> Lucas Ramon Mendos et al., *State-Sponsored Homophobia 2020: Global Legislation Overview Update* (Geneva: ILGA World, 2020).

<sup>88</sup> *Ibid.*, pages 189, 329.

<sup>89</sup> Carroll, A., and L. Mendos. *State-Sponsored Homophobia 2017: A World Survey of Sexual Orientation Laws: Criminalisation, Protection and Recognition*. Geneva: International Lesbian, Gay, Bisexual, Trans and Intersex Association ILGA, 2017.

escalating numbers in asylum applications of LGBT+ people and trying to understand why these people chose to leave their country, their families, the life they had, trying to find better conditions and prospects in other countries, one comes upon numerous testimonies, most of which are plain “confessions”, confidential and behind closed doors, about the circumstances that forced them to do so. Trying to make sense of a world that turns against people who are, for example, of a different sexual orientation and to answer the very simple question “why does one choose to run away?”, only then does one realize the burden and daily cost of living in certain environments.

Persecution of LGBT+ individuals in certain countries can translate to discrimination, violence, and/or death, and it is stemming either from state or non-state actors<sup>90</sup>. In a more “western” environment, where the State is theoretically treating its citizens equally, recognizing and applying protections to its most vulnerable members, persecution may take the form of discrimination, exclusion, hate speech, even domestic violence, most commonly deriving from non-state actors, such as families, individual communities, the Church or radical groups, all of which are though not only frowned upon, but tackled and exterminated from public life through a State’s laws. However, in large areas of the world, that is not the case, not in the least.

In many countries discrimination and violence does not only come from non-state actors, but the State itself. Not only are States not offering broad protection to LGBT+ individuals from hate speech, domestic violence, non-consensual medical acts, or hate crimes, but they even criminalize being LGBT<sup>91</sup>. In those countries, trans identities and behaviors are considered illegal and may lead to severe penalties before the law – or whatever is in effect as such, e.g. the Sharia Law – whereas same-sex sexual acts for lesbians, gay and bisexual people can be treated in the same manner or worse.

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<sup>90</sup> Carroll, A., and L. Mendos. *State-Sponsored Homophobia 2017: A World Survey of Sexual Orientation Laws: Criminalisation, Protection and Recognition*. Geneva: International Lesbian, Gay, Bisexual, Trans and Intersex Association ILGA, 2017.

<sup>91</sup> Chiam, Z., S. Duffy, M.G. Gil, L. Goodwin, and Patel N.T.M. *Trans Legal Mapping Report 2019: Recognition before the Law*. Geneva: ILGA World, 2019., page 10.

As of 2020, a total of 69 states worldwide – most of them in Africa and Asia – had laws in effect criminalizing same-sex sexual acts between consenting adults<sup>92</sup>, without always being specific about what constitutes a criminal act and what does not. In some cases, the legislation clearly describes which acts fall within the scope of an anti-LGB law, while in other cases the boundaries are more indistinct, using vague terms such as "acts against nature", "indecent", "immoral acts" etc.<sup>93</sup>, thus allowing laws to be interpreted at the discretion of legal bodies and state representatives, subsequently leading to the instrumentalization of said laws for the persecution of LGB people. Among these countries, only two – Egypt and Iraq – do not have legislation that expressly criminalizes acts of LGB people, yet they have laws in place that target LGB people and thus de facto criminalize them<sup>94</sup>. In the rest of those countries, not only is diverse sexual orientation prosecuted, but it is punishable by imprisonment<sup>95</sup>. In Barbados, Guyana, Sudan, Tanzania, Uganda, and Zambia in particular, being an LGB person is punishable by life imprisonment, while in Brunei, Iran, Mauritania, Nigeria, Saudi Arabia, Yemen, Afghanistan, Pakistan, Qatar, United Arab Emirates and Somalia being LGB is punishable by death<sup>96</sup>.

For trans people, the case is somewhat different. As trans people are, in most countries of the world, disproportionately persecuted on irrelative grounds, unrelated to their gender identity per se<sup>97</sup>, it is more difficult to distinguish whether those diverse identities are criminalized or not. However, in Brunei, Gambia, Indonesia, Jordan, Kuwait, Lebanon, Malawi, Malaysia, Nigeria, Oman, South Sudan, Tonga, and the United Arab Emirates<sup>98</sup>, trans people or people that are not conforming to gender norms are continuously risking incarceration on the grounds of their identity or behavior. In those countries, laws that are

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<sup>92</sup> Lucas Ramon Mendos et al., *State-Sponsored Homophobia 2020: Global Legislation Overview Update* (Geneva: ILGA World, 2020), page 113.

<sup>93</sup> Lucas Ramon Mendos et al., *State-Sponsored Homophobia 2020: Global Legislation Overview Update* (Geneva: ILGA World, 2020).

<sup>94</sup> Lucas Ramon Mendos et al., *State-Sponsored Homophobia 2020: Global Legislation Overview Update* (Geneva: ILGA World, 2020).

<sup>95</sup> *Ibid.*, page 325 ff.

<sup>96</sup> *Ibid.*

<sup>97</sup> Chiam, Z., S. Duffy, M.G. Gil, L. Goodwin, and Patel N.T.M. *Trans Legal Mapping Report 2019: Recognition before the Law*. Geneva: ILGA World, 2019., page 8

<sup>98</sup> *Ibid.*, page 11

explicitly prohibiting a “male person posing as a woman” or vice versa<sup>99</sup> are causing trans people to hide their identities from state and non-state actors, in fear of not only prosecution, but also societal violence and hate crimes, as the state is incapable or unwilling to protecting them.

Having practically no legal rights to dignity and safety in their home countries<sup>100</sup>, facing discriminatory policies in every aspect of their everyday life and violent acts, including physical attacks, sexual violence or killings, bias-based hate speech and/or motivation to violence, many LGBT+ people chose to shift their status. With no state-appointed rights with regard to their SOGI and no state protection against non-state persecution, they chose to leave their homes and seek international protection in other countries, in which they would feel – and would be legally – safe to do so. What happens though once they leave their country? What legal framework gives them rights when they cease to be citizens of their homeland? Is the fear of what might happen to them in their home country reason enough for them to be recognized with a new set of rights as refugees? And, what exactly is a “refugee”?

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<sup>99</sup> Ibid.

<sup>100</sup> Alex Redcay, Wade Luquet, and McKenzie E. Huggin, “Immigration and Asylum for Lesbian, Gay, Bisexual, and Transgender Individuals,” *Journal of Human Rights and Social Work* 4 (2019): pp. 248-256, <https://doi.org/10.1007/s41134-019-00092-2>.

## 2 LGBT+ refugees through the lens of international law

### 2.1 International legal framework for refugees

The mobility of people from one place to another is not something unprecedented in human history. Floods, famine, wars, political and social instability... There have been various reasons forcing one to leave their settlements and seek out better ones. History is replete with examples of displaced groups of people who, for reasons of survival, chose to leave their native country and settle elsewhere<sup>101</sup>. Of course, the world is not the same throughout time. The existence of borders and the legal parameters that govern them must always - as far as modern times are concerned - be taken into account. However, in the globalized environment we live today, issues that threaten societies, regions and nations surpass those borders and take on global dimensions<sup>102</sup>. This globalization provides an initial foundation for asylum claims, as it extends a State's obligation to provide sanctuary in a wider context.

Of course, not all nations share the same ideals, nor does every person face the same threats in them. In a fully globalized environment with shared and standardized behaviors, morals and laws, no individual would have the need – or the choice – to seek refuge in another country<sup>103</sup>. Today's incomplete globalization is the reason behind the need to flee and seek refuge<sup>104</sup>, whereas the failure of the State to deal with asylum claims in an adequate national manner has made prominent the need for a shared legal framework<sup>105</sup>.

In general, from a displaced person's perspective, one must have a serious and substantiated, well-proven reason to enter a country, and of course, from a State's perspective, one needs a solid legal framework to grant rights for as long as a displaced

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<sup>101</sup> Alexander Betts, James Milner, and Gil Loescher, *UNHCR: The Politics and Practice of Refugee Protection* (London: Routledge, 2012), page 7.

<sup>102</sup> David John Frank, "Making Sense of LGBT Asylum Claims: Change and Variation in Institutional Contexts," *New York University Journal of International Law & Politics* 44, no. 2 (January 2012): pp. 485-495, available at: <https://nyujilp.org/wp-content/uploads/2010/06/44.2-Frank.pdf>, last accessed August 22, 2022.

<sup>103</sup> Ibid.

<sup>104</sup> Ibid.

<sup>105</sup> Christina M. Cerna, ed., *Regional Human Rights Systems: Volume V*, 1st ed. (London: Routledge, 2016), xiii.

person stays in a country. After World War II and its subsequent displacement of people all over the globe, this legal framework started being provided by international law, thus forming a globalized human rights regime<sup>106</sup>.

The right to people seeking international protection is in the first place acknowledged by the UDHR. Among its provisions, Article 14(1)<sup>107</sup> states that “*Everyone has the right to seek and to enjoy in other countries asylum from persecution*”. The main legal framework for refugee protection and asylum is the Convention Relating to the Status of Refugees, signed in 1951, and its 1967 Protocol, which not only provide the necessary definition of the term “refugee”, among others, but it also serves as the legal basis for the universal protection of refugees today. According to the Convention<sup>108</sup>, a refugee is a person who is outside of their home country “*owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion*”. To those persons, who had lost legal protections granted to citizens of a state, the Convention does not only provide a set of individual social, economic, and civil rights<sup>109</sup>, but it also points out the States’ obligations towards them the most important of which being that of non-refoulement, their obligation not to return them to a country where they might face persecution<sup>110</sup>.

With the mandate to aid the UN with regard to refugees globally and to implement the Geneva Convention, the office of the United Nations High Commissioner for Refugees (UNHCR) was also created. As the Convention itself does not outline the way in which the States are granting international protection to refugees, the mission of the UNHCR is

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<sup>106</sup> David John Frank, “Making Sense of LGBT Asylum Claims: Change and Variation in Institutional Contexts,” *New York University Journal of International Law & Politics* 44, no. 2 (January 2012): pp. 485-495, available at: <https://nyujilp.org/wp-content/uploads/2010/06/44.2-Frank.pdf>, last accessed August 22, 2022.

<sup>107</sup> “Universal Declaration of Human Rights,” United Nations (United Nations), accessed September 22, 2021, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>, Article 14(1).

<sup>108</sup> Article 1A(2)

<sup>109</sup> Alexander Betts, James Milner, and Gil Loescher, *UNHCR: The Politics and Practice of Refugee Protection* (London: Routledge, 2012), page 16

<sup>110</sup> Alexander Betts, James Milner, and Gil Loescher, *UNHCR: The Politics and Practice of Refugee Protection* (London: Routledge, 2012), page 16

up until today to protect and aid them<sup>111</sup>, by being the key agent connecting several state and non-state actors on an international, regional and national level towards this goal<sup>112</sup>.

Residing at the core of both the Convention's provisions and the UNHCR's goals are human life, dignity, individual freedoms and protection, for individuals fleeing environments where those were not granted<sup>113</sup>, yet neither the Convention nor the UNHCR's scope initially had provisions specifically for LGBT+ refugees. Of course, with the legal system being – as mentioned before – a quasi living organism, constantly evolving and adapting to new standards, and with the ever growing awareness about the rights of LGBT+ individuals<sup>114</sup>, the scopes of both the Convention and the UNHCR have been broadened to include this group also.

## 2.2 International protection of LGBT+ refugees

The formation of the contemporary international human rights regime, through various treaties and international human rights bodies, and their view on human rights as being inherent to human nature<sup>115</sup>, made possible for the extension of said rights to special groups of individuals, such as that of the LGBT+.

As was the case of the UDHR, broadly interpreted by various legal bodies to include LGBT+ individuals, so was the case of the 1951 Geneva Convention. Seen in a narrow way, none of the five grounds – race, religion, nationality, membership of a particular social group (PSG), or political opinion – on which an individual can be regarded as a refugee can be applied to LGBT+ persons<sup>116</sup>. However, a broader interpretation of the PSG membership can extend the refugee status to LGBT+ individuals as well.

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<sup>111</sup> United Nations High Commissioner for Refugees. "History of UNHCR." UNHCR, The UN Refugee Agency. UNHCR. Accessed August 21, 2022. <https://www.unhcr.org/history-of-unhcr.html>.

<sup>112</sup> Alexander Betts, James Milner, and Gil Loescher, *UNHCR: The Politics and Practice of Refugee Protection* (London: Routledge, 2012), page 104

<sup>113</sup> Türk, Volker. "Ensuring Protection to LGBTI Persons of Concern." *International Journal of Refugee Law* 25, no. 1 (March 2013): 120–29. <https://doi.org/10.1093/ijrl/eet005>.

<sup>114</sup> Ibid.

<sup>115</sup> David John Frank, "Making Sense of LGBT Asylum Claims: Change and Variation in Institutional Contexts," *New York University Journal of International Law & Politics* 44, no. 2 (January 2012): pp. 485-495, available at: <https://nyujilp.org/wp-content/uploads/2010/06/44.2-Frank.pdf>, last accessed August 22, 2022.

<sup>116</sup> Irene Manganini, *The Refugee Status Determination of Transgender Asylum-Seekers: A Queer Critique* (Geneva: Global Migration Centre, 2020), page 16.

The most important condition to establish refugee status is a justified fear of persecution and, as was previously described, there are countries, where being LGBT+ is considered a crime and can result to persecution, prosecution, even death. Membership of PSG and its extension to LGBT+ individuals is a relatively new development. Starting with the 2002 UNHCR Guidelines No. 1<sup>117</sup> and supplementing with more texts over the years, the UNHCR tried to cover the gap in the Conventions provisions and extend PSG membership to LGBT+ individuals<sup>118</sup>.

Another set of tools with regard to LGBT+ refugees – however not strictly legal – were the Yogyakarta Principles, in particular Principle 23<sup>119</sup>, according to which the States should ensure the application of the human right to asylum to persons of diverse SOGI and accept it as ground of granting refugee status, without discrimination with regard to their policies and practices. Sounding as a reiteration of provisions already in place by the Geneva Convention or the UNHCR Guidelines, Principle 23 has however made prominent that the aforementioned provisions are to be extended to LGBT+ persons, which has been consequently adopted by a series of jurisprudence of international judicial bodies.

In general, international legal and non-legal texts have certainly changed the situation for LGBT+ refugees for the better, yet States are far from having a fully outlined, clearly structured context for protecting them. Exactly as LGBT+ rights in general, LGBT+ refugee protections and rights are applied in varying and dynamically shifting degrees globally, as their refugee protection and asylum procedures are not standardized under international law. In this vast and rather vague international legal context, dealing with migration – one of the greatest humanitarian crises of the 21<sup>st</sup> century – certainly has to be carried out in an organized manner. For that reason, States rely on a more clearly outlined mechanism, such as this of regional cooperation.

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<sup>117</sup> *Guidelines on International Protection No. 1: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees* (HCR/GIP/02/01), available at: <https://www.unhcr.org/publications/legal/3d58ddef4/guidelines-international-protection-1-gender-related-persecution-context.html>, Accessed 21 August 2022

<sup>118</sup> Irene Manganini, *The Refugee Status Determination of Transgender Asylum-Seekers: A Queer Critique* (Geneva: Global Migration Centre, 2020), page 16 ff.

<sup>119</sup> “Relating to the Right to Seek Asylum (Principle 23),” [Yogyakarta Principles](https://yogyakartaprinciples.org), accessed August 22, 2022, <https://yogyakartaprinciples.org/relating-to-the-right-to-seek-asylum-principle-23/>.

### **3 The case of LGBT+ refugees through the lens of regional organizations and regional human rights systems**

#### **3.1 From international to regional human rights protection**

Migration in general, as well as the case of LGBT+ refugees in particular, sheds a rather glaring light on the failures and shortcomings of international (human rights) law, as well as international refugee law – and it is only logical, considering how both are shaped, outlined, kept and abode by.

In a constantly and dynamically globalizing international society, international law is still a rather unwieldy tool, mainly because it was not initially designed to “bind” the States to notions such as this of global justice, but it has merely outlined their obligations toward international order<sup>120</sup>. In other words, international law is more concerned with how States interact with each other, rather than acting as a concrete, binding in a strict sense legal framework<sup>121</sup> governing and regulating global issues and challenges. Mainly out of respect in each other’s sovereignty and domestic jurisdiction, States tend to utilize and benefit from international law to the end of maintaining stability and peace, rather than condoning further influence over how they tackle crises in a globalized and coordinated manner.

It is only recently that this perspective shifted toward other goals, as States – primarily the sole subjects of international law – allowed for other entities, such as organizations and non-governmental groups to be included as subjects in the international legal system, and this due to the expansion of international human rights law, which in its turn provided individuals and collectivities certain sets of rights under international law<sup>122</sup>. In an ever expanding scope of the international law and the vastness of today’s globalized international society, States – which, as described above, are rather reluctant to sign their institutional integrity over to a central supranational entity, since they do not always share

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<sup>120</sup> John Baylis, Steve Smith, and Patricia Owens, *The Globalization of World Politics: An Introduction to International Relations*, 6th ed. (Oxford: Oxford University Press, 2014), page 280.

<sup>121</sup> Ibid.

<sup>122</sup> Ibid., page 281

common ideals, interests, goals, etc. – have responded with narrower, regional arrangements of cooperation<sup>123</sup>.

Though the word “regional” may semantically point to a strict, geographical understanding of the term and the aforementioned arrangements, scholars agree there is more to it<sup>124</sup>. Those regional arrangements may also be interpreted in the sense of an imagined community or an interconnection between different, sovereign States, sharing certain patterns of behavior and varying degrees of mutual interdependence towards promoting common interests and achieving common goals<sup>125</sup>. The process of forming said arrangements between States, covering a plethora of mutual economic, social, political, or security interests<sup>126</sup>, is described as regionalization<sup>127</sup>, which may manifest either as regional cooperation in said domains, or as regional integration<sup>128</sup>.

Regional cooperation has may be functional – that is, cooperation and joint action in particular areas (e.g. energy) – or economic cooperation, political cooperation or cooperation for promoting joint foreign and security policies, without the aforementioned domains to be necessarily interconnected, or having “*any consequence for the international status of participating countries beyond normal obligations under international law*”<sup>129</sup>. On the other hand, regional integration refers to the various processes by which States sign certain parts of their sovereignty over to supranational institutions, in order to first create a common framework of action with regional sets of rules, and then further act as one entity in their international affairs<sup>130</sup>. In this context, States – either by cooperative, or integrated arrangements – form supranational, regional organizations and institutions, as well as regional systems of cooperation.

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<sup>123</sup> Rick Fawn, “‘Regions’ and Their Study: Wherefrom, What for and Whereto?,” *Review of International Studies* 35, no. S1 (2009): pp. 5-34, <https://doi.org/10.1017/s0260210509008419>, page 5.

<sup>124</sup> Cf. Fawn (2009), Baylis et al. (2014), Mathew & Harley (2016).

<sup>125</sup> Penelope Mathew and Tristan Harley, *Refugees, Regionalism and Responsibility* (Cheltenham: Edward Elgar Publishing Limited, 2016), page 24.

<sup>126</sup> More on the reasons for forming regional arrangements in: Mary Farrell, Hettne Björn, and Luk van Langenhove, eds., *Global Politics of Regionalism: Theory and Practice* (London: Pluto Press, 2005), pages 42-43.

<sup>127</sup> John Baylis, Steve Smith, and Patricia Owens, *The Globalization of World Politics: An Introduction to International Relations*, 6th ed. (Oxford: Oxford University Press, 2014), page 402.

<sup>128</sup> Ibid.

<sup>129</sup> Ibid.

<sup>130</sup> Ibid., pages 402f.

Regional organizations nowadays vary in terms of form, participation by member-States, degrees of interdependence, and in terms of mandate. They constitute formal international organizations, including more than two member-States of the same region, they are built on the basis of codified treaties and have multifaceted mandates<sup>131</sup>. In simpler words, regional organizations serve multiple purposes at a time, and entail a wide variety of areas of action. In the domain of human rights, regional organizations have – although in varying degrees from one another – gained a distinct and outstanding role<sup>132</sup>, developing constantly expanding institutional structures, such as normative frameworks, as well as issuing policies with regard to human rights, addressing, promoting and upholding them both amongst their member-States, as well as in the wider international system, raising regional human rights to one of the greatest achievements of the 20<sup>th</sup> century in the field of international law<sup>133</sup>.

On the other hand, regional human rights systems – a rather underrepresented term in scholarly research, which has received little attention<sup>134</sup> – have a singular mandate: to effectively deal with the shortcomings of the international human rights protection and remedy the States’ and UN’s “inadequacy” in the domain of human rights on a supranational level. In a world where fundamental human rights vested upon people by the UN are being violated repeatedly, without an international human rights court (on a UN level, that is), and with States simply unable to uphold and protect human rights in their territories, regional human rights systems have undertaken the task of providing the victims with a last refuge against violations of their rights, mostly through regional human rights courts<sup>135</sup>.

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<sup>131</sup> Sören Stapel, *Regional Organizations and Democracy, Human Rights, and the Rule of Law: the African Union, Organization of American States, and the Diffusion of Institutions* (Cham: Palgrave Macmillan, 2022), page 94.

<sup>132</sup> Ibid., page 3.

<sup>133</sup> Alexandra Huneeus and Mikael Rask Madsen, “*Between Universalism and Regional Law and Politics: A Comparative History of the American, European and African Human Rights Systems*,” *International Journal of Constitutional Law* 16, no. 1 (January 2018): pp. 136-160, <https://doi.org/https://doi.org/10.1093/icon/moy011>, page 136.

<sup>134</sup> Ibid., page 136.

<sup>135</sup> Christina M. Cerna, ed., *Regional Human Rights Systems: Volume V*, 1st ed. (London: Routledge, 2016), page xiii.

With its key terms roughly defined by this point, the present thesis will proceed in examining how the aforementioned regional configurations address the issue of the human rights protection for refugees and LGBT+ refugees in particular. With regard to regional organizations, I understand that not every one of them is of importance for the task at hand. Thus, regional and sub-regional organizations, whose mandate does not relate to or include refugee protection, will be not included in the following examination.

### 3.2 Regional responses to refugee protection

The first ever international legal text to give a quasi definition to the term “refugee” was the United Nations Convention relating to the Status of Refugees. In its Article 1A (2)<sup>136</sup>, a refugee is defined as a person who, “*owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it*”. Although the this Convention’s definition set out to have a universal application, it was – at the time of its drafting – spatiotemporally limited to the great refugee waves caused by World War II in Europe<sup>137</sup>. From that time on, and as regional organizations dealing with human rights and refugee rights began to form, the 1967 Protocol Relating to the Status of Refugees was brought about as a remedy to those spatiotemporal limitations of the initial definition<sup>138</sup>.

The first regional response was realized in the African continent<sup>139</sup>, where States that formed the *Organization of African Unity* adopted a wider definition of the term “refugee”, spreading to people “*fleeing generalized violence, as well as those fleeing persecution for reasons connected to the five established grounds*”<sup>140</sup>. In this direction,

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<sup>136</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <https://www.refworld.org/docid/3be01b964.html> [accessed 29 September 2022]

<sup>137</sup> Penelope Mathew and Tristan Harley, *Refugees, Regionalism and Responsibility* (Cheltenham: Edward Elgar Publishing Limited, 2016), page 33.

<sup>138</sup> Ibid.

<sup>139</sup> Ibid.

<sup>140</sup> Ibid.

following African countries' lead, other regional organizations and arrangements in Europe and the Americas have tried to widen the scope of the aforementioned refugee definition, or put in place provisions for people fleeing due to reasons other and further than fear of persecution on the grounds mentioned in the Convention's text<sup>141</sup>. Even in regions such as the Asia-Pacific and the Middle East, where universal instruments are impeded being applied due to customary international law<sup>142</sup>, there are provisions – although limited and problematic in terms of implementation – being applied to refugees.

Addressing the refugee issue on a regional level – and not leaving it solely depending on international institutions, such as the 1951 Convention and its subsequent Protocol – meant that the international refugee protection regime was supplemented in a way that strengthened it and led to a better implementation of said protections and provisions<sup>143</sup>. States can, on a regional level, act in a more centralized and thus coordinated way, a way that ensures no State will be, in theory, burdened more than the other, while simultaneously addressing regional concerns<sup>144</sup>; that, in its turn, can only have a positive impact on the real subjects in need of protection, which are not the States involved, but the refugees themselves.

### **3.3 Membership of a particular social group (PSG)**

As was described in previous chapters of this thesis, the world is not what it used to be when the first international legal texts with regard to human rights and refugees rights were drafted and put in effect. Recognizing basic rights to people, such as the right to life and dignity or the right to one's identity was necessitated by war and international conflict. While humanity never really ceased facing those plights, moving to the 21<sup>st</sup> century it is also called to address social issues as well, such as the human rights of socially excluded communities and minorities. In doing so, international law had to adapt and expand itself, in order to include them. In this regard, the umbrella-term of “membership of a particular group” (MPSG), found in both the UDHR and the 1951 Convention, had to be further concretized.

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<sup>141</sup> Penelope Mathew and Tristan Harley, *Refugees, Regionalism and Responsibility* (Cheltenham: Edward Elgar Publishing Limited, 2016), page 34.

<sup>142</sup> Ibid.

<sup>143</sup> Ibid., page 59.

<sup>144</sup> Ibid.

As was the case of the UDHR, the 1951 Refugee Convention did not – and, if viewed strictly, is still not – include SOGI as a ground for the refugee status<sup>145</sup>. Refugees applying for asylum are even nowadays covered by the MPSG ground, which has been made possible through a wider interpretation of the MPSG term by national and regional courts<sup>146</sup>.

For instance, in the US, federal cases Acosta (1985) and Toboso-Alfonso (1990) have paved the way of interpreting MPSG ground, so as to cover refugees fleeing their country due to their SOGI<sup>147</sup>. In the Acosta case, in which the *ejusdem generis* doctrine was applied, persecution due to MPSG was interpreted as persecution due to an innate and immutable characteristic, commonly shared between people of a PSG – such as the LGBT+, whereas, in the Toboso-Alfonso case, persecution due to one's sexual orientation was for the first time recognized, by applying the MPSG ground, as a ground for granting asylum, thus extending the MPSG ground of the Convention to LGBT+ refugees<sup>148</sup>.

However, could one say that the MPSG provision – and its wide margin of interpretation – is to be found within regional organizations and/or regional human rights systems? Do regional organizations extend the MPSG provision so as to include SOGI as a ground for refugee status, and – if so – to what extent? Is the MPSG provision nowadays even enough for LGBT+ refugees?

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<sup>145</sup> Begazo, Maria Guadalupe, *The Membership of a Particular Social Group Ground in LGBTI Asylum Cases Under EU Law and European Case-Law: Just Another Example of Social Group or an Independent Ground?*, in Güler Arzu, et al., eds., *LGBTI Asylum Seekers and Refugees from a Legal and Political Perspective: Persecution, Asylum and Integration* (Cham, Switzerland: Springer, 2019), page 165.

<sup>146</sup> Ibid., page 167,

<sup>147</sup> Ibid., pages 168 ff.

<sup>148</sup> Ibid.

### **3.4 LGBT+ refugees under the lens of regional organizations and regional human rights systems**

#### **3.4.1 After the 2015 refugee crisis**

Answering the questions posed above is not an easy task, especially under the rules and restrictions that exist when writing a master's thesis. One would have to delve deep into significantly large bodies of research literature on regional human rights systems and the institutions that comprise them, searching for primary and secondary texts, as well as testimonies, which would require a commensurate extent.

The regional human rights systems around the world - according to the literature - are three: the Inter-American, the African and the European human rights systems<sup>149</sup>, within which broad or narrow regional institutions and mechanisms operate, whose object among others is not only the protection of human rights in general, but also specifically the protection of refugees and asylum seekers, on grounds and reasons determined by each one individually. Between the years, these institutions and mechanisms have acted on a regional level to accommodate claims for international protection. Especially for Europe, which has "traditionally" hosted refugees since the great geopolitical crises of the last century, those claims peaked in 2015 with the global refugee crisis brought about by the political and territorial upheavals in the Middle East, and especially in Syria. This crisis was characterized by many as the greatest humanitarian crisis in modern history<sup>150</sup>, especially since it created immense refugee flows not only to Europe, but also to countries of the African continent.

For the above reasons, moving forward in this paper I chose not to refer at all to the American regional human rights system, and to focus more on Europe and Africa, in an attempt to outline the main mechanisms in place to protect the human rights of refugees, and more specifically of LGBT+ refugees.

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<sup>149</sup> "Regional Systems," International Justice Resource Center, November 19, 2021, <https://ijrcenter.org/regional/>.

<sup>150</sup> "The Global Refugee Crisis in 2015," Amnesty International, August 16, 2021, <https://www.amnesty.org/en/latest/news/2015/12/global-refugee-crisis-2015-gallery/>.

Another reason for my decision was the fact of the cooperation of the main institutions of the two regional human rights systems, namely the European Union and the African Union, in the direction of promoting interregional dialogue and dealing with the refugee crisis. In the midst of this dialogue, one may find interesting to see how a regional intergovernmental organization such as the EU - which for some may be viewed, even ostensibly, an LGBT+ “Zion” - cooperates with a regional organization, in some of the member-states of which institutional protections of the human rights of LGBT+ people remain vague at large, incomplete, or even non-existent.

### **3.4.2 Europe as safe haven for LGBT+ refugees – institutions and mechanisms**

As mentioned above, the European continent - especially since the end of the Second World War - is "traditionally" the piece of land where refugee flows end up in order to remedy the conditions that forced them to flee and to seek out a better way of living. It is true that developments, decisions, innovative legal and institutional frameworks for the protection of refugees in the second half of the 20th century developed rapidly and on many levels on the continent. The coexistence of two regional bodies that promote transnational communication and multilateral cooperation at supranational level, the Council of Europe (CoE) and the European Union (EU), has been a springboard for the creation of a significant legislative framework for refugees and asylum<sup>151</sup>.

As a union with elements of federalization, with several attempts to create a quasi-"constitution", but also clear supranational jurisdiction in specific areas, the EU already in the late 1990s laid the foundations of a centralized system for the management of asylum applications, namely the Common European Asylum System (CEAS), consisting of a series of important Regulations, the most prominent of which being the Dublin Regulation<sup>152</sup>, Directives, such as Directive 2011/95<sup>153</sup>, or Directives 2013/32<sup>154</sup> and 2013/33<sup>155</sup>, as well as significant case law<sup>156</sup>.

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<sup>151</sup> Nuno Ferreira, “Reforming the Common European Asylum System: Enough Rainbow for Queer Asylum Seekers?,” *GenIUS - Rivista Di Studi Giuridici Sull'Orientamento Sessuale e l'Identità Di Genere* 2 (2018): pp. 25-42, <https://doi.org/10.31235/osf.io/xag5u>, Introduction.

<sup>152</sup> European Union, Convention Determining the State Responsible for Examining Applications for Asylum lodged in one of the Member States of the European Communities ("Dublin Convention"), 15 June 1990, Official Journal C 254, 19/08/1997 p. 0001 - 0012, available at: <https://www.refworld.org/docid/3ae6b38714.html> [accessed 18 December 2022]

Following the 2015 refugee crisis, the EU “responded” with the *European Agenda on Migration*<sup>157</sup>, which aspired to complement the existing refugee legal framework and offer clear guidance, as well as simplified procedures, for processing asylum claims, common across all member-states, upholding as its main aim the protection of the fundamental rights of refugees<sup>158</sup>.

Although its intention certainly was to outline as much as possible the procedures and admissibility processes for all refugees, regardless of the grounds on which their claim was made, the SOGI notion seems to have eluded the EU asylum law, save for Article 10(1)(d) of Directive 2011/95, vaguely referring to SOGI as follows:

*“a group shall be considered to form a particular social group where in particular:*

- members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and*

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<sup>153</sup> European Union: Council of the European Union, Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 20 December 2011, OJ L. 337/9-337/26; 20.12.2011, 2011/95/EU, available at: <https://www.refworld.org/docid/4f197df02.html> [accessed 18 December 2022]

<sup>154</sup> European Union: Council of the European Union, Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), 29 June 2013, OJ L. 180/60 -180/95; 29.6.2013, 2013/32/EU, available at: <https://www.refworld.org/docid/51d29b224.html> [accessed 18 December 2022]

<sup>155</sup> European Union: Council of the European Union, Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), 29 June 2013, OJ L. 180/96 -105/32; 29.6.2013, 2013/33/EU, available at: <https://www.refworld.org/docid/51d29db54.html> [accessed 18 December 2022]

<sup>156</sup> Nuno Ferreira, “Reforming the Common European Asylum System: Enough Rainbow for Queer Asylum Seekers?,” *GenIUS - Rivista Di Studi Giuridici Sull’Orientamento Sessuale e l’Identità Di Genere* 2 (2018): pp. 25-42, <https://doi.org/10.31235/osf.io/xag5u>, Introduction.

<sup>157</sup> European Union: European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A European Agenda on Migration, 13 May 2015, COM(2015) 240, available at: <https://www.refworld.org/docid/555c861f4.html> [accessed 18 December 2022]

<sup>158</sup> Nuno Ferreira, “Reforming the Common European Asylum System: Enough Rainbow for Queer Asylum Seekers?,” *GenIUS - Rivista Di Studi Giuridici Sull’Orientamento Sessuale e l’Identità Di Genere* 2 (2018): pp. 25-42, <https://doi.org/10.31235/osf.io/xag5u>, pages 26-27.

- *that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society.*”<sup>159</sup>

Falling somewhat short in terms of terminology and legally binding provisions toward LGBT+ refugees, one could hope that the EU law on LGBT+ refugees would be supplemented by the European Union Court of Justice (CJEU) case law. However, according to Ferreira<sup>160</sup>:

*“The CJEU has also had a growing number of opportunities throughout the years to establish a position in relation to SOGI asylum claims, even if it has not entirely seized the opportunity to vindicate the need for international protection of these individuals”.*

Cases such as the joined cases C-199/12, C-200/12 and C-201/12<sup>161</sup>, in which was defined that criminal laws targeting homosexuals lead to the fact that those persons belong to a particular social group for the purposes of the Refugee Convention<sup>162</sup>, the joined cases C-148/13 to C-150/13<sup>163</sup>, leaving Directive 2011/95/EU open to wider interpretation on a national legislation level<sup>164</sup>, or even the case C-473/16<sup>165</sup>, which led to wide critique against dehumanizing procedures certain member-states of the EU use on LGBT+ individuals in order to assess their SOGI, certainly shed more light on the SOGI

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<sup>159</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, Article 10(1)(d)

<sup>160</sup> Nuno Ferreira, “Reforming the Common European Asylum System: Enough Rainbow for Queer Asylum Seekers?,” *GenIUS - Rivista Di Studi Giuridici Sull’Orientamento Sessuale e l’Identità Di Genere* 2 (2018): pp. 25-42, <https://doi.org/10.31235/osf.io/xag5u>, page 30.

<sup>161</sup> X, Y, Z v Minister voor Immigratie en Asiel, C-199/12 - C-201/12, European Union: Court of Justice of the European Union, 7 November 2013, available at: <https://www.refworld.org/cases,ECJ,527b94b14.html> [accessed 18 December 2022]

<sup>162</sup> Nuno Ferreira, “Reforming the Common European Asylum System: Enough Rainbow for Queer Asylum Seekers?,” *GenIUS - Rivista Di Studi Giuridici Sull’Orientamento Sessuale e l’Identità Di Genere* 2 (2018): pp. 25-42, <https://doi.org/10.31235/osf.io/xag5u>, page 30.

<sup>163</sup> A, B, C v. Staatssecretaris van Veiligheid en Justitie, C-148/13 to C-150/13, European Union: Court of Justice of the European Union, 2 December 2014, available at: <https://www.refworld.org/cases,ECJ,547d943da.html> [accessed 18 December 2022]

<sup>164</sup> Nuno Ferreira, “Reforming the Common European Asylum System: Enough Rainbow for Queer Asylum Seekers?,” *GenIUS - Rivista Di Studi Giuridici Sull’Orientamento Sessuale e l’Identità Di Genere* 2 (2018): pp. 25-42, <https://doi.org/10.31235/osf.io/xag5u>, page 31.

<sup>165</sup> Case C-473/16, F v. Bevándorlási és Állampolgársági Hivatal (Office for Immigration and Citizenship, Hungary), ECLI:EU:C:2018:36, European Union: Court of Justice of the European Union, 25 January 2018, available at: <https://www.refworld.org/cases,ECJ,5a69e9d54.html> [accessed 19 December 2022]

asylum claims, highlighting their inefficiencies and bringing about discussions on how they could be supplemented in the future.

In this very direction, of identifying gaps in the legal framework and trying to secure the rights of LGBT+ refugees within its jurisdiction, the Council of Europe has taken important steps, highlighting how in many countries of the world today LGBT+ people are still persecuted, how stereotyping and disbelief hinder the asylum procedure and should be avoided, by making specific proposals to its Member States<sup>166</sup>. However, due to the fact that it does not have close jurisdiction over the procedures followed by them, all it can do is push towards the realization of these specific objectives.

Even with the shortcomings in legislation governing LGBT+ asylum, procedural gaps and the fact that these are only minimally implemented, Europe clearly has a lot to offer compared to other regions. And this, not only because of the procedures and laws that are common at the level of regional bodies, but also at the level of political and social culture of most of its member states in such matters. With the exception of a few Eastern European countries, LGBT+ people can generally enjoy a fair degree of protection - provided, in case they are refugees, that they are accepted as such. Given that procedures and legislation need to be supplemented, what does tomorrow hold for European asylum policies? What are Europe's next moves in this field?

### **3.4.3 The European Union's externalization of refugee policies**

In the wake of the post-Brexit era, the news that the UK is planning to board flights and send refugees, who have arrived in the country seeking asylum, to Rwanda has been shaken the internet, without being particularly well received. As a matter of fact, a major agreement was signed on April, 14<sup>th</sup> 2022 between the U.K. and Rwanda, according to which the U.K. will deport asylum seekers from its territory and resettle them to Rwanda<sup>167</sup>. And the U.K. is not the only one implementing such policies, as the use of

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<sup>166</sup> Council of Europe, "Open Minds Are Needed to Improve the Protection of LGBTI Asylum Seekers in Europe," Commissioner for Human Rights (Council of Europe, October 18, 2018), <https://www.coe.int/en/web/commissioner/-/open-minds-are-needed-to-improve-the-protection-of-lgbti-asylum-seekers-in-europe>.

<sup>167</sup> Tazreena Sajjad, "Western Countries Are Shipping Refugees to Poorer Nations in Exchange for Cash," The Conversation, November 4, 2022, <https://theconversation.com/western-countries-are-shipping-refugees-to-poorer-nations-in-exchange-for-cash-185758>.

countries like Rwanda for resettling asylum seekers is trending among so-called Western states for some time now. In 2014, Israel implemented a similar policy, sending those rejected for asylum to Rwanda, as well as Uganda<sup>168</sup>. Under the pressure of a significant refugee population, Denmark opted to follow those examples, passing a law in 2021, allowing asylum seekers to be moved to a third country, until their asylum claims are processed<sup>169</sup>. Though the EU is currently denying the possibility of similar externalization procedures, it does externalize its refugee policies – in a more indirect way, that is – through the *European Union Emergency Trust Fund*<sup>170</sup>.

Sprawling across three regions of the African continent, the Sahel and Lake Chad, the Horn of Africa and North Africa and having 26 partner countries, the *European Union Emergency Trust Fund* “was created to address the root causes of instability, forced displacement and irregular migration and to contribute to better migration management”<sup>171</sup>. In an effort to tackle irregular migration and dangerous Mediterranean crossings of hundreds of thousands of refugees, the EU’s solution may be addressing the causes of irregular migration, but critics believe that the intention here might lie elsewhere: why, of course “outsourcing” refugee admission and thus curbing the refugee flows<sup>172</sup>.

Whether these policies have practicality and morality colliding, that remains to be seen from what their results will be in the long run. What is quite problematic is, that this “curbing” of the refugee flows might have serious implications for LGBT+ persons currently needing to flee their countries on this specific ground. For, as it was stated earlier in this thesis, there are not many developing countries where SOGI issues are addressed adequately. Of course, some African countries are safer than other, but how

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<sup>168</sup> Nita Bhalla, “Besides Britain, Which Nations Send Asylum Seekers Overseas?,” Context (Thomson Reuters Foundation, June 20, 2022), [https://www.context.news/socioeconomic-inclusion/besides-britain-which-nations-send-asylum-seekers-overseas?utm\\_source=news-trust&utm\\_medium=redirect&utm\\_campaign=context&utm\\_content=article](https://www.context.news/socioeconomic-inclusion/besides-britain-which-nations-send-asylum-seekers-overseas?utm_source=news-trust&utm_medium=redirect&utm_campaign=context&utm_content=article).

<sup>169</sup> Ibid.

<sup>170</sup> “EU Emergency Trust Fund for Africa,” EU Emergency Trust Fund for Africa - European Commission, accessed December 19, 2022, [https://ec.europa.eu/trustfundforafrica/index\\_en](https://ec.europa.eu/trustfundforafrica/index_en).

<sup>171</sup> Ibid.

<sup>172</sup> Gianna-Carina Grün, “How the EU Spent Billions to Halt Migration from Africa,” dw.com (Deutsche Welle, April 12, 2022), <https://www.dw.com/en/how-the-eu-spent-billions-to-halt-migration-from-africa/a-61362906>.

safe is “safe” when it comes to sufficient protection? Do the LGBT+ persons face difficulties all over the continent? What about those persons living in countries where being an LGBT+ is punishable by incarceration or even death? How do the aforementioned policies help tackle the roots of their reasons to flee?

#### **3.4.4 Protection of LGBT+ refugees in Africa**

As in the biggest part of today’s world, LGBT+ individuals in Africa experience exclusion, discrimination, violations of their fundamental human rights, persecution – and, in certain African countries, even more so<sup>173</sup>. LGBT+ persons may face incarceration in Kenya, Malawi, Senegal, and Gambia, even life imprisonment in Uganda, Tanzania, and Sierra Leone, whereas in Sudan, Mauritania, Somali, and parts of northern Nigeria they may face the death penalty<sup>174</sup>. Efforts from institutions both regional and international to remedy the situation<sup>175</sup> for the LGBT+ people in certain parts of Africa have not gone a long way, leaving the LGBT+ community as prey to discriminatory, persecutory and violent practices<sup>176</sup>. In order to avoid said attitudes and practices, stigma, and victimization, LGBT+ people have two main choices: either to censor and conceal their innate characteristics and behaviors<sup>177</sup>, or to be lead to forced displacement<sup>178</sup>, thus resorting to fleeing through the northern route towards Europe or through the southern route to countries in Sub-Saharan Africa<sup>179</sup>.

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<sup>173</sup> Izugbara, Chimaraoke, Seun Bakare, Meroji Sebany, Boniface Ushie, Frederick Wekesah, and Joan Njagi. “Regional Legal and Policy Instruments for Addressing LGBT Exclusion in Africa.” *Sexual and Reproductive Health Matters* 28, no. 1 (2020). <https://doi.org/10.1080/26410397.2019.1698905>, page 101.

<sup>174</sup> Ibid.

<sup>175</sup> See for example: *Common African Position* in Izugbara, Chimaraoke, Seun Bakare, Meroji Sebany, Boniface Ushie, Frederick Wekesah, and Joan Njagi. “Regional Legal and Policy Instruments for Addressing LGBT Exclusion in Africa.” *Sexual and Reproductive Health Matters* 28, no. 1 (2020). <https://doi.org/10.1080/26410397.2019.1698905>

<sup>176</sup> Izugbara, Chimaraoke, Seun Bakare, Meroji Sebany, Boniface Ushie, Frederick Wekesah, and Joan Njagi. “Regional Legal and Policy Instruments for Addressing LGBT Exclusion in Africa.” *Sexual and Reproductive Health Matters* 28, no. 1 (2020). <https://doi.org/10.1080/26410397.2019.1698905>.

<sup>177</sup> Thomas Spijkerboer, ed., *Fleeing Homophobia* (London: Routledge, 2013), page 2, Introduction by Sabine Jansen.

<sup>178</sup> David Sinclair and Giulia Sinatti, “Re-Thinking Protection for LGBTI Refugees in Kampala, Uganda: A Relational, Trust-Based Approach,” *Refugee Survey Quarterly* 41 (2022): pp. 26-51, <https://doi.org/10.1093/rsq/hdab010>, page 29.

<sup>179</sup> Cristiano D’Orsi, *Asylum-Seeker and Refugee Protection in Sub-Saharan Africa: The Peregrination of a Persecuted Human Being in Search of a Safe Haven* (London: Routledge, Taylor & Francis Group, 2017), Introduction.

In terms of refugee flows in general, the three major refugee-hosting countries only in 2013 were Kenya, Chad and Ethiopia, whereas countries like Somalia and Sudan – previously mentioned for their implementation of death penalty to LGBT+ individuals – ranked among the major source-countries not only in Africa, but in the world in total<sup>180</sup>. With significant numbers of persons seeking asylum in the continent, the need of tackling things in a coordinated way was prominent.

The necessity of regional cooperation in Africa coincided with the emergence of anti-colonialism politics<sup>181</sup>, when the continent's States set out to unite with one another in solidarity towards common goals and interests, establishing in 1963 the Organization of African Unity (OAU)<sup>182</sup>, the predecessor of today's African Union (AU). Built on values shared by the post-colonial States, such as freedom, equality, justice, and dignity<sup>183</sup>, the OAU's initial 32 States agreed to work together towards achieving "*a better life for the peoples of Africa*", defending "*their sovereignty, their territorial integrity and independence*", eradicating all forms of colonialism on the continent, as well as promoting "*international cooperation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights*"<sup>184</sup>.

With regard to refugees, the OAU's intention of promoting universally accorded values was imprinted on the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa<sup>185</sup>. Providing a definition to the term "refugee" almost identical to that of UN's 1951 Convention<sup>186</sup>, and also expanding it to "*also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously*

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<sup>180</sup> Cristiano D'Orsi, *Asylum-Seeker and Refugee Protection in Sub-Saharan Africa: The Peregrination of a Persecuted Human Being in Search of a Safe Haven* (London: Routledge, Taylor & Francis Group, 2017), page 1.

<sup>181</sup> John Baylis, Steve Smith, and Patricia Owens, *The Globalization of World Politics: An Introduction to International Relations*, 6th ed. (Oxford: Oxford University Press, 2014), page 407.

<sup>182</sup> Penelope Mathew and Tristan Harley, *Refugees, Regionalism and Responsibility* (Cheltenham: Edward Elgar Publishing Limited, 2016), page 163.

<sup>183</sup> Organization of African Unity (OAU), *Charter of the Organization of African Unity*, 25 May 1963, available at: <https://www.refworld.org/docid/3ae6b36024.html> [accessed 29 September 2022], Preamble.

<sup>184</sup> Organization of African Unity (OAU), *Charter of the Organization of African Unity*, 25 May 1963, available at: <https://www.refworld.org/docid/3ae6b36024.html> [accessed 29 September 2022], Article II (1).

<sup>185</sup> Organization of African Unity (OAU), *Convention Governing the Specific Aspects of Refugee Problems in Africa ("OAU Convention")*, 10 September 1969, 1001 U.N.T.S. 45, available at: <https://www.refworld.org/docid/3ae6b36018.html> [accessed 29 September 2022]

<sup>186</sup> *Ibid.*, Article I (1).

*disturbing public order*”<sup>187</sup>, the OAU Convention also used the MPSG term, without however concretizing the term or extending it to SOGI, as was the case in the UN’s Convention. Nevertheless, the OAU Convention is regarded a significant achievement for addressing, promoting and protecting fundamental human rights on the continent, where human rights and refugee rights protection was otherwise practically non-existent<sup>188</sup>.

In 1994, on the 25<sup>th</sup> anniversary since the adoption of the 1969 OAU Convention, and as the refugee crisis was dynamically increasing in terms of numbers of forcibly displaced persons, the OAU took part, together with the United Nations High Commissioner for Refugees (UNHCR), in a Symposium in Addis Ababa, Ethiopia<sup>189</sup>. The three-day-long Symposium concluded with a joint Declaration, known as the Addis Ababa Document on Refugees and Forced Population Displacements in Africa, which included recommendations to addressing and remedying the refugee issues amongst OAU member States, none of which though referred even remotely to SOGI as ground for refugee status recognition.

Although vague in terms of wording – and nature – roots for substantial provision to LGBT+ refugees were included, as presented before, in the OAU’s Convention. On this aspect, other institutions have been put in place, such as the 1981 African Charter of Human Rights<sup>190</sup> or the 1998 Protocol<sup>191</sup>, which established the African Commission on Human and Peoples’ Rights (ACHPR) and the African Court of Human and Peoples’ Rights (AfCHPR) respectively, which complemented the African regional human rights system towards a more efficient protection of fundamental human – and, by extension, refugee – rights. Even under OAU’s successor organization, the African Union (AU), and

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<sup>187</sup> Ibid., Article I (2).

<sup>188</sup> Sören Stapel, *Regional Organizations and Democracy, Human Rights, and the Rule of Law: the African Union, Organization of American States, and the Diffusion of Institutions* (Cham: Palgrave Macmillan, 2022), page 120.

<sup>189</sup> Organization of African Unity (OAU), *Addis Ababa Document on Refugees and Forced Population Displacements in Africa*, 10 September 1994, available at: <https://www.refworld.org/docid/3ae68f43c.html> [accessed 30 September 2022], Foreword.

<sup>190</sup> Organization of African Unity (OAU), *African Charter on Human and Peoples’ Rights (“Banjul Charter”)*, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), available at: <https://www.refworld.org/docid/3ae6b3630.html> [accessed 30 September 2022]

<sup>191</sup> Organization of African Unity (OAU), *Protocol to the African Charter on Human and People’s Rights on the Establishment of an African Court on Human and People’s Rights*, 10 June 1998, available at: <https://www.refworld.org/docid/3f4b19c14.html> [accessed 30 September 2022]

up to today, those mechanisms fill in the democracy and human rights gaps of the overall system, which – although it did not dramatically change – did improve significantly throughout the years.

The AU was created in 2002 in Durban, South Africa, after member States of its predecessor (OAU) agreed to form a new organization, which would realize Africa's true potential and would shift its focus, from the anti-colonialism politics, on which the initial OAU was founded, to promoting pan-African development and bringing the continent to the new millennium<sup>192</sup>. With regard to the issue at hand, the UNHCR<sup>193</sup> informs us as follows:

*“Forced displacement has always been high on the agenda of the AU, and the Organization for African Unity (OAU) that preceded it. Under their watch, landmark treaties on refugees and on internal displacement have been adopted and have helped millions in Africa and beyond.”*

By using the word “landmark”, UNHCR not only refers to the OAU Convention, but also to other legal texts and regional institutions, created by or under the auspices of the AU, which form the wider African human rights system. Empirically though, those mechanisms do not offer a comprehensive protection to LGBT+ refugees, neither do they address said issues. On the contrary, neither the mechanisms put in place by the OAU, nor those of the AU are actively tackling LGBT+ individuals' problems, their fears or insecurities, not only for citizens, but also for refugees seeking protection.

To this day, Kenya is the second biggest refugee hosting country in Africa<sup>194</sup>. Over 1.000 of its over 500.000 refugees have sought asylum on grounds of SOGI<sup>195</sup>, from countries where SOGI is criminalized or punishable by death. However, even under the provisions of the regional asylum regulations, LGBT+ refugees face *“a similarly hostile and*

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<sup>192</sup> “About the African Union,” African Union, February 10, 2022, <https://au.int/en/overview>. Last accessed 29/09/2022.

<sup>193</sup> United Nations High Commissioner for Refugees. “African Union.” UNHCR, The UN Refugee Agency. Accessed September 30, 2022. <https://www.unhcr.org/african-union.html>.

<sup>194</sup> “Refugees,” UNHCR Kenya, accessed December 12, 2022, <https://www.unhcr.org/ke/who-we-help/refugees>.

<sup>195</sup> Kate Pincock, “LGBTI Refugees Seeking Protection in Kenya Struggle to Survive in a Hostile Environment,” The Conversation, May 16, 2022, <https://theconversation.com/lgbti-refugees-seeking-protection-in-kenya-struggle-to-survive-in-a-hostile-environment-182810>.

*homophobic environment to that which they had fled – on top of marginalization related to their refugee status”*,<sup>196</sup>.

Centralized and regionalized as they may be, efforts and responses toward the LGBT+ refugees in Africa are currently coming short. Even more so, they do point out one significant issue with SOGI asylum claims in general: however comprehensive and competent the law provisions might be on paper, empirical knowledge might suggest otherwise. Cases of LGBT+ persons in Africa, who have come across violent practices by non-state actors (e.g. “corrective” rapes of lesbian or gay refugees) or state actors (e.g. arrests of trans individuals and rape in prison)<sup>197</sup>, are but mere signifiers of how unprotected LGBT+ individuals are by the institutions at place. Furthermore, the mere inability of governments to protect LGBT+ refugees can only make apparent, how a more comprehensive, concerted regional approach toward effectively protecting LGBT+ refugees is imperatively needed. Unfortunately, my research thus far has not shown examples of such cases reaching the African Court of Human Rights (whereas, in the European case, that has at least happened in some cases), apart from some cases<sup>198</sup> presented before national judicial bodies, where the LGBT+ people having the same fundamental human rights as everyone else was reiterated. And this, in its turn, only supports the argument that a concerted regional response is more or less absent – and yet imperatively needed.

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<sup>196</sup> Ibid.

<sup>197</sup> Duncan Breen, *The Road to Safety: Strengthening Protection of LGBTI Refugees in Uganda and Kenya* (New York: Human Rights First, 2012), page 7.

<sup>198</sup> Graeme Reid, “Africa Rulings Move LGBT Rights Forward,” Africa Rulings Move LGBT Rights Forward (Human Rights Watch, October 28, 2020), <https://www.hrw.org/news/2015/08/05/africa-rulings-move-lgbt-rights-forward>.

## **Final remarks**

Having tried at the beginning of this work to form - primarily for myself, but also for the reader - an image of the human rights of LGBT+ people, on the one hand in a historical context, and on the other hand at the level of international law, I now find myself in a position to better comprehend how much an average white, privileged person can ignore about the plight of less privileged individuals and groups around the world. My goal in the first part of my work was not to “persuade” that LGBT+ individuals deserve equal rights as much as every other privileged individual in the world, but to comment and highlight how “universal rights” may not be as universal, as one might have thought. The notion, that humanity in general has made progress on the field of human rights, appears vague, as it might be elusive and not always applicable. One can definitely not deny the amount of work done on human rights – both by institutions and civil society alike – but there appears to be room for improvement, especially in regions and countries where merely being an LGBT+ person is considered an infelicity, a cardinal sin, or even a crime. Undeniably, most of the (western) world has worked on building more tolerant societies and stronger, more adequate international and regional institutions toward that end; however, the mere existence of people fleeing their home due to their alleged or real being LGBT+ can only signify the need for more: more adequacy among institutions to put pressure on the fight against state-sponsored homophobia and persecutions, more effectiveness in protecting the people in their countries, more comprehensiveness in the general approach towards human rights for the LGBT+ in general.

Especially on the issue of LGBT+ refugees, my intention in this work was to comprehend first, and then present how LGBT+ refugees come to be, what forces them to flee their homelands, as well as how and to what extent they are tend to by the international human rights institutions. While doing that, I hope I managed to highlight the intersectional nature of the issue at hand, since these people are excluded and marginalized on at least two levels: primarily because of their inherent characteristic - be it their sexual orientation, gender identity, or their gender expression - and on the other hand for their refugee status.

Since the enormous humanitarian crisis of the last decade, the peak of which - at least in the case of refugee flows in Europe - took place in 2015, a truly incredible number of people have been forced to leave behind everything familiar, to avoid threats to their life, their well-being, and their dignity. This has given new impetus to research into the issue and to furthering the debate on finding solutions, globally and regionally.

In the case of LGBT+ refugees, regional responses to the issue were presented in this paper. On the one hand, the case of significant European institutions and part of their active mechanisms - regulatory and non-regulatory - was presented, and an attempt was made to point out the gaps that exist for the effective protection of the rights of LGBT+ refugees. The same effort was made for Africa, which - in the inevitable comparison one makes - falls short in proposals, solutions, effectiveness and results.

In particular, the case of the European Union demonstrated with particular clarity how an ostensibly holistic approach to the issue can in practice leave entire groups of people/refugees stranded between vague terms in legal texts, and the discretion and interpretation of decision-making bodies on asylum applications. In fact, since the judiciary body of the Union tries - without always succeeding to the fullest - to suggest interpretations of core human rights terms, such as that of the membership of a particular group, as broad as possible, the need to revive the debate within the regional framework and the imperative of work towards the reformulation of key terms regarding LGBT+ refugees becomes evident. On the other hand, the new effort to curb refugee flows and stop them essentially at their root certainly offers no solutions - especially for groups of people whose countries are already failing to ensure basic human rights.

The case of Africa leaves a bitter "aftertaste". In earnestly trying to shake off its colonial past, taking major steps towards regionalization and establishing policies of centralizing decision-making at the supranational level, it really seems to forget to focus on the needs of all its people. While it has apparently created the necessary institutions, it does not have a holistic approach - at least as Europe does - and it fails, in the context of the protection of LGBT+ refugees, to effectively protect the victims of violence, to ensure safe shelters for them, and to improve their access to procedures and mechanisms to protect their rights and life in general.

Concluding this work and seeing how regional cooperation toward the refugee crisis never ceases to dynamically broaden around the world, and in particular how more and more regional organizations are leaving strict economical and safety issues behind and try to include in their scope other issues, such as these of migration and asylum, I find certainly interesting, that a broader, more comprehensive work be done – at least on a scholarly level – including all regional organizations and regional human rights systems in a single project, a project which will effectively map every law, provisions, regulation and rule in force regarding the protection of LGBT+ refugees. Especially for cases like that of the Asia-Pacific region, but also the Americas, for which either there is not much evidence, or the evidence is multilayered and intertwined, it would be interesting to see how other regions of the world deal with LGBT+ refugees, to what extent and with what means at their disposal, in an attempt to more comprehensively map out the different approaches and come up with more specific suggestions on the ones mentioned here.

Believing that societal needs for even more fairness and more justice around the world only keep growing and finding that the current approaches demand significant revision, I remain having high hopes that more and more countries of this world are persuaded to address the fundamental causes of LGBT+ refugeeness, withdrawing discriminatory practices and laws towards LGBT+ persons and working on a concerted regional way toward a universal human rights regime that is fair and just to everyone, so that no one feels the need to flee in the future.

## References

- “About the African Union.” African Union , February 10, 2022.  
<https://au.int/en/overview>.
- Baylis, John, Steve Smith, and Patricia Owens. *The Globalization of World Politics: An Introduction to International Relations*. 6th ed. Oxford: Oxford University Press, 2014.
- Belmonte, Laura A. *The International LGBT Rights Movement: A History*. London: Bloomsbury Academic, 2021.
- Betts, Alexander, James Milner, and Gil Loescher. *UNHCR: The Politics and Practice of Refugee Protection*. London: Routledge, 2012.
- Bhalla, Nita. “Besides Britain, Which Nations Send Asylum Seekers Overseas?” Context. Thomson Reuters Foundation, June 20, 2022.  
[https://www.context.news/socioeconomic-inclusion/besides-britain-which-nations-send-asylum-seekers-overseas?utm\\_source=news-trust&utm\\_medium=redirect&utm\\_campaign=context&utm\\_content=article](https://www.context.news/socioeconomic-inclusion/besides-britain-which-nations-send-asylum-seekers-overseas?utm_source=news-trust&utm_medium=redirect&utm_campaign=context&utm_content=article).
- Breen, Duncan. *The Road to Safety: Strengthening Protection of LGBTI Refugees in Uganda and Kenya*. New York: Human Rights First, 2012.
- “A Brief History of Human Rights.” Amnesty International, November 6, 2019.  
<https://www.amnesty.nl/a-brief-history-of-human-rights>.
- Brown, Dara P. (2017) "LGBT Rights are Human Rights: Conditioning Foreign Direct Investments on Domestic Policy Reform," *Cornell International Law Journal*: Vol. 50 : No. 3 , Article 6. Available at:  
<https://scholarship.law.cornell.edu/cilj/vol50/iss3/6>
- Carpenter, Morgan. “Intersex Human Rights, Sexual Orientation, Gender Identity, Sex Characteristics and the Yogyakarta Principles plus 10.” *Culture, Health & Sexuality* 23, no. 4 (2020): 516–32. <https://doi.org/10.1080/13691058.2020.1781262>.
- Carroll, A., and L. Mendos. *State-Sponsored Homophobia 2017: A World Survey of Sexual Orientation Laws: Criminalisation, Protection and Recognition*. Geneva: International Lesbian, Gay, Bisexual, Trans and Intersex Association ILGA, 2017.
- Cerna, Christina M., ed. *Regional Human Rights Systems: Volume V*. 1st ed. The Library of Essays on International Human Rights. London: Routledge, 2016.
- Chiam, Zhan, Sandra Duffy, Matilda Gonzales Gil, Lara Goodwin, and Nigel Timothy Mpemba Patel. *Trans Legal Mapping Report 2019: Recognition before the Law* . Geneva: ILGA World, 2020.

- Council of Europe. "European Convention on Human Rights." Accessed August 24, 2021. [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf).
- Council of Europe. "Open Minds Are Needed to Improve the Protection of LGBTI Asylum Seekers in Europe." Commissioner for Human Rights. Council of Europe, October 18, 2018. <https://www.coe.int/en/web/commissioner/-/open-minds-are-needed-to-improve-the-protection-of-lgbti-asylum-seekers-in-europe>.
- de Bromhead, Alan, Kevin O'Rourke, and Barry Eichengreen. "Right-Wing Political Extremism in the Great Depression." VOX, CEPR Policy Portal, 2012. <https://voxeu.org/article/right-wing-political-extremism-great-depression>.
- D'Orsi, Cristiano. *Asylum-Seeker and Refugee Protection in Sub-Saharan Africa: The Peregrination of a Persecuted Human Being in Search of a Safe Haven*. London: Routledge, Taylor & Francis Group, 2017.
- "EU Emergency Trust Fund for Africa." EU Emergency Trust Fund for Africa - European Commission. Accessed December 19, 2022. [https://ec.europa.eu/trustfundforafrica/index\\_en](https://ec.europa.eu/trustfundforafrica/index_en).
- Farrell, Mary, Hettne Björn, and Luk van Langenhove, eds. *Global Politics of Regionalism: Theory and Practice*. London: Pluto Press, 2005.
- Fawn, Rick. "'Regions' and Their Study: Wherefrom, What for and Whereto?" *Review of International Studies* 35, no. S1 (2009): 5–34. <https://doi.org/10.1017/s0260210509008419>.
- Ferreira, Nuno. "Reforming the Common European Asylum System: Enough Rainbow for Queer Asylum Seekers?" *GenIUS - Rivista di studi giuridici sull'orientamento sessuale e l'identità di genere* 2 (2018): 25–42. <https://doi.org/10.31235/osf.io/xag5u>.
- Foucault, Michel. *The History of Sexuality, Vol. 1: An Introduction*. New York: Pantheon Books, 1978.
- "The Foundation of International Human Rights Law." United Nations. United Nations. Accessed September 22, 2021. <https://www.un.org/en/about-us/udhr/foundation-of-international-human-rights-law>.
- Frank, David John. "Making Sense of LGBT Asylum Claims: Change and Variation in Institutional Contexts." *New York University Journal of International Law & Politics* 44, no. 2 (January 2012): 485–95. <https://nyujilp.org/wp-content/uploads/2010/06/44.2-Frank.pdf>.

- “The Global Refugee Crisis in 2015.” Amnesty International, August 16, 2021. <https://www.amnesty.org/en/latest/news/2015/12/global-refugee-crisis-2015-gallery/>.
- Grünn, Gianna-Carina. “How the EU Spent Billions to Halt Migration from Africa .” dw.com. Deutsche Welle, April 12, 2022. <https://www.dw.com/en/how-the-eu-spent-billions-to-halt-migration-from-africa/a-61362906>.
- Güler Arzu, Maryna Shevtsova, and Denise Venturi, eds. *LGBTI Asylum Seekers and Refugees from a Legal and Political Perspective: Persecution, Asylum and Integration*. Cham, Switzerland: Springer, 2019.
- Healey, Justin, ed. *Sexual Orientation and Gender Identity*. 378. Vol. 378. Issues in Society. Thirroul, NSW: The Spinney Press, 2014.
- History.com Editors. “Stonewall Riots.” HISTORY. A&E Television Networks LLC, May 31, 2017. <https://www.history.com/topics/gay-rights/the-stonewall-riots>.
- Human Rights Committee. “Background to the International Covenant on Civil and Political Rights and Optional Protocols.” OHCHR. United Nations. Accessed June 20, 2022. <https://www.ohchr.org/en/treaty-bodies/ccpr/background-international-covenant-civil-and-political-rights-and-optional-protocols>.
- Huneus, Alexandra, and Mikael Rask Madsen. “Between Universalism and Regional Law and Politics: A Comparative History of the American, European and African Human Rights Systems.” *International Journal of Constitutional Law* 16, no. 1 (January 2018): 136–60. <https://doi.org/https://doi.org/10.1093/icon/moy011>.
- Izugbara, Chimaraoke, Seun Bakare, Meroji Sebany, Boniface Ushie, Frederick Wekesah, and Joan Njagi. “Regional Legal and Policy Instruments for Addressing LGBT Exclusion in Africa.” *Sexual and Reproductive Health Matters* 28, no. 1 (2020). <https://doi.org/10.1080/26410397.2019.1698905>.
- Jones, Terry. “Political Change after the Great War.” Oxford Open Learning, 2014. <https://www.ool.co.uk/blog/political-change-great-war/>.
- Lee, Edward Ou Jin. “Tracing the Coloniality of Queer and Trans Migrations: Resituating Heterocisnormative Violence in the Global South and Encounters with Migrant Visa Ineligibility to Canada.” *Refuge: Canada’s Journal on Refugees* 34, no. 1 (2018): 60–74. <https://doi.org/https://doi.org/10.7202/1050855ar>.
- “LGBTIQ+ Refugees.” UNHCR. Accessed April 12, 2022. <https://www.unhcr.org/handbooks/ih/age-gender-diversity/lgbtiq-refugees>.
- Manganini, Irene. *The Refugee Status Determination of Transgender Asylum-Seekers: A Queer Critique*. Geneva: Global Migration Centre , 2020.

- Mathew, Penelope, and Tristan Harley. *Refugees, Regionalism and Responsibility*. Cheltenham: Edward Elgar Publishing Limited, 2016.
- Mattson, Greggor. “The Stonewall Riots Didn’t Start the Gay Rights Movement.” JSTOR Daily. ITHAKA, June 12, 2019. <https://daily.jstor.org/the-stonewall-riots-didnt-start-the-gay-rights-movement/>.
- Mendos, Lucas Ramon, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Ilia Savelev, and Daron Tan. *State-Sponsored Homophobia 2020: Global Legislation Overview Update*. Geneva: ILGA World, 2020.
- Morris, Bonnie J. “History of Lesbian, Gay, Bisexual and Transgender Social Movements.” American Psychological Association, 2009. <https://www.apa.org/pi/lgbt/resources/history>.
- Mullen, Matt. “The Pink Triangle: From Nazi Label to Symbol of Gay Pride.” History.com. A&E Television Networks, June 3, 2019. <https://www.history.com/news/pink-triangle-nazi-concentration-camps>.
- O’Flaherty, Michael. “The Yogyakarta Principles at Ten.” *Nordic Journal of Human Rights* 33, no. 4 (2015): 280–98. <https://doi.org/10.1080/18918131.2015.1127009>.
- O’Halloran, Kerry. *Sexual Orientation, Gender Identity and International Human Rights Law: Common Law Perspectives*. London: Routledge, Taylor & Francis Group, 2020.
- Pieper, Olivier, and Nicole Goebel. “Germany’s ‘Gay’ Paragraph 175 Abolished 25 Years Ago.” DW.com. Deutsche Welle, June 11, 2019. <https://www.dw.com/en/germanys-gay-paragraph-175-abolished-25-years-ago/a-49124549>.
- Pincock, Kate. “LGBTI Refugees Seeking Protection in Kenya Struggle to Survive in a Hostile Environment.” The Conversation, May 16, 2022. <https://theconversation.com/lgbti-refugees-seeking-protection-in-kenya-struggle-to-survive-in-a-hostile-environment-182810>.
- “Principle 1.” Yogyakartaprinciplesorg. Accessed November 14, 2021. <http://yogyakartaprinciples.org/principle-1/>.
- Provost René. *International Human Rights and Humanitarian Law*. Cambridge, United Kingdom: Cambridge University Press, 2004.
- Redcay, Alex, Wade Luquet, and McKenzie E. Huggin. “Immigration and Asylum for Lesbian, Gay, Bisexual, and Transgender Individuals.” *Journal of Human Rights and Social Work* 4 (2019): 248–56. <https://doi.org/10.1007/s41134-019-00092-2>.

- “Refugees.” UNHCR Kenya. Accessed December 12, 2022.  
<https://www.unhcr.org/ke/who-we-help/refugees>.
- “Regional Systems.” International Justice Resource Center, November 19, 2021.  
<https://ijrcenter.org/regional/>.
- Reid, Graeme. “Africa Rulings Move LGBT Rights Forward.” Africa Rulings Move LGBT Rights Forward . Human Rights Watch, October 28, 2020.  
<https://www.hrw.org/news/2015/08/05/africa-rulings-move-lgbt-rights-forward>.
- “Relating to the Right to Seek Asylum (Principle 23).” Yogyakartaprinciples.org. Accessed August 22, 2022. <https://yogyakartaprinciples.org/relating-to-the-right-to-seek-asylum-principle-23/>.
- Sajjad , Tazreena. “Western Countries Are Shipping Refugees to Poorer Nations in Exchange for Cash.” The Conversation, November 4, 2022.  
<https://theconversation.com/western-countries-are-shipping-refugees-to-poorer-nations-in-exchange-for-cash-185758>. .
- Sinclair, David, and Giulia Sinatti. “Re-Thinking Protection for LGBTI Refugees in Kampala, Uganda: A Relational, Trust-Based Approach.” *Refugee Survey Quarterly* 41 (2022): 26–51. <https://doi.org/10.1093/rsq/hdab010>.
- Spijkerboer, Thomas, ed. *Fleeing Homophobia*. London: Routledge, 2013.
- Stapel, Sören. *Regional Organizations and Democracy, Human Rights, and the Rule of Law: the African Union, Organization of American States, and the Diffusion of Institutions*. Cham: Palgrave Macmillan, 2022.
- Türk, Volker. “Ensuring Protection to LGBTI Persons of Concern.” *International Journal of Refugee Law* 25, no. 1 (March 2013): 120–29.  
<https://doi.org/10.1093/ijrl/eet005>.
- UN Office of the High Commissioner for Human Rights. *Born Free and Equal: Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law*. 2nd ed. OHCHR, 2019.
- United Nations High Commissioner for Refugees. “African Union.” UNHCR, The UN Refugee Agency. Accessed September 30, 2022. <https://www.unhcr.org/african-union.html>.
- United Nations High Commissioner for Refugees. “History of UNHCR.” UNHCR, The UN Refugee Agency. UNHCR. Accessed August 21, 2022.  
<https://www.unhcr.org/history-of-unhcr.html>.

- United States Holocaust Memorial Museum. "Paragraph 175 and the Nazi Campaign against Homosexuality." Holocaust Encyclopedia. United States Holocaust Memorial Museum, May 4, 2021. <https://encyclopedia.ushmm.org/content/en/article/paragraph-175-and-the-nazi-campaign-against-homosexuality>.
- "Universal Declaration of Human Rights." United Nations. United Nations. Accessed September 22, 2021. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.
- Vance, Kim, Nick J. Mulé, Maryam Khan, Cameron McKenzie, Adrian Jjuuko, Richard Lusimbo, Nick J. Mulé, Susan Ursel, Amar Wahab, and Phyllis Waugh. "The Rice of SOGI: Human Rights for LGBT People at the United Nations." Essay. In *Envisioning Global LGBT Human Rights: (Neo)Colonialism, Neoliberalism, Resistance and Hope*, edited by Nancy Nicol, 223–46. London: University of London Press, 2018.
- "The Yogyakarta Principles." Yogyakartaprinciplesorg. Accessed November 14, 2021. <https://yogyakartaprinciples.org/>.