

# LGBTIQ+ Prioritization in Refugee Admissions – The Case of Norway

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*This article discusses some of the normative bases for the recent (2020) Norwegian policy prioritizing LGBTIQ+ refugees in refugee admissions. It argues that, when properly interpreted, this policy is compatible with the UNHCR vulnerability selection criteria but is not independently supported by it. Combined with some of the broader moral principles guiding refugee admissions – including both state-based and refugee-based reasons in refugee resettlement – the article provides qualified support for the Norwegian policy of LGBTIQ+ refugee prioritization. Drawing from some of the specifics of LGBTIQ+ refugee resettlement and integration, the article nevertheless points to certain limitations of such a policy in so far as refugees' own agency is concerned. The article emphasizes the need to listen to refugees' own voices in the selection and resettlement processes, including cases where the default position of LGBTIQ+ prioritization may be overridden by LGBTIQ+ persons' own interests in being resettled elsewhere.*

**Keywords:** LGBTIQ+, Norwegian refugee policy, priority setting, refugee selection, LGBTIQ+ integration

## Introduction

In 2020 Norway introduced a policy for prioritizing LGBTIQ+<sup>1</sup> refugees in refugee admissions (Regjeringen 2020a). This policy applies to Norway's refugee quota (currently at 3000 per year), giving priority to LGBTIQ+ refugees both as individuals and as a group. In this paper, I explore some of the possible interpretations of this policy, and its normative foundations. More specifically, I discuss three possible bases for the Norwegian policy of LGBTIQ+ refugee prioritization: 1) the UNHCR vulnerability criteria for selection, 2) state-based reasons, pertaining to states' abilities and willingness to protect LGBTIQ+ persons against *non-asylum grounding* injustices, and 3) refugee-based reasons, pertaining to refugees' own interests and agency. I argue that, properly construed, this policy of LGBTIQ+ prioritization is compatible with, yet not independently supported by, the UNHCR vulnerability criteria for selection. Combined with some of the broader moral principles guiding refugee admissions – including both state-based and refugee-based reasons in refugee resettlement – I offer qualified support for the

Norwegian policy of LGBTIQ+ prioritization in the present circumstances of LGBTIQ+ rights protection (or lack thereof) around the world. Drawing from some of the specifics of LGBTIQ+ refugee resettlement and integration, including some of the specific risk factors of refugees who are LGBTIQ+, I nevertheless point to certain limitations of the policy in so far as refugees' own agency is concerned. These limitations strongly point towards the need to listen to the refugees' own voices in the selection and resettlement processes, including cases where the default position of LGBTIQ+ prioritization may be overridden by LGBTIQ+ persons' own interests in being resettled elsewhere.

I proceed as follows. Beginning with a brief overview of some of the relevant debates in the political theory of LGBTIQ+ refugeehood, I situate the present discussion on the Norwegian prioritization policy within these debates. In the next section, I elaborate on some details, as well as yet unclarified aspects, of this policy. I follow this with an assessment of the policy in light of the UNHCR vulnerability criteria for selection. The two following sections provide the main body of this article by discussing some of the broader normative bases, as well as limitations, of setting priorities in refugee admissions. I discuss some of the *state-based reasons* for selecting certain groups of refugees over others and then elaborate on so-called *refugee-based reasons* for prioritizing LGBTIQ+ persons in resettlement. Before concluding the article, I address some of the limitations of such a policy in so far as refugees' own interests and agency are concerned.

## Political theory of LGBTIQ+ refugeehood

Recent years have seen increased attention being paid to the specific ethical questions relating to LGBTIQ+ persons in the refugee regime (see e.g. Spijkerpoer 2013; Danisi et al. 2021; Ritholtz & Buxton 2021, 2023; Vitikainen 2020, 2022). Since the precedent set by the Netherlands in 1981, there has been a slow but steady movement towards accepting Sexual Orientation and Gender Identity (SOGI)-based claims for asylum in many countries. The UNHCR now recognizes LGBTIQ+ persons as constituting a Particular Social Group (PSG) in light of the Refugee Convention (UN 1951; see also UNHCR 2008; 2010; 2012; 2021a), and also identifies LGBTIQ+ persons among the most vulnerable groups of refugees in need of special protection (UNHCR 2022).

The ethical questions relating to the status and treatment of LGBTIQ+ persons within the refugee regime are, however, far from settled. Debates over what qualifies as the relevant kind of persecution of LGBTIQ+ people, and the means of identifying those genuinely in fear of such persecution, have often dominated the discussions on LGBTIQ+ asylum and refugee status determination processes.<sup>2</sup> Much less attention, however, has been paid to the difficult issues of whether, given the extremely low numbers of refugees who will find safety,<sup>3</sup> states should be permitted to choose which groups of refugees they admit. This relative lack of literature on the permissible grounds for selecting and giving priority to some groups of refugees over others is not, of course, restricted to questions relating to LGBTIQ+ persons, but to the ethics of forced displacement more generally (for some notable exceptions, see articles in Lippert-Rasmussen and Vitikainen 2020; Vitikainen and Lippert-Rasmussen 2020). Given the relative consensus on failures of the rich, Western liberal states to admit enough refugees (e.g., Carens 2013; Gibney 2014; Owen 2016b; Parekh 2016, 2020), debates on the permissible selection

criteria may indeed seem misplaced and distracting from the real issue at hand, that is, the obligations of states to admit far more refugees than they are currently doing (Fine 2020).

In real-world politics, decisions about selecting some refugees for resettlement, while leaving others behind, do however happen on a regular basis. The UNHCR uses special priority situation assessments as bases for giving priority to certain refugees in resettlement and also lists several demographic groups – including single women, children, and LGBTIQ+ individuals – as groups to be prioritized when selecting refugees for resettlement (UNHCR 2022a). Several states, including Norway, have committed to following the UNCHR priority assessments, although, as the present discussion demonstrates, some have also adopted their own, additional policies of prioritization. Against this background, this paper takes on the task of evaluating one such policy – namely, the 2020 Norwegian policy decision to give priority to LGBTIQ+ refugees in resettlement – in order to see how, and indeed whether, this policy may be justified, both in light of Norway's already existing international commitments and in light of some of the broader moral principles guiding refugee admissions.

### **Some details on the Norwegian resettlement quota and LGBTIQ+ prioritization policy**

As it stands, the Norwegian policy for prioritizing LGBTIQ+ refugees in refugee admissions is unique. The policy is set to apply to Norway's refugee quota, thus having limited scope of application. The Norwegian international refugee quota (i.e. resettlement quota) typically stands at 3000 refugees per year. During the 2020/2021 pandemic, the intake of quota refugees was seriously reduced or partially halted. In 2020, 1527 quota refugees (out of the 2401 who were granted such status) entered Norway (UDI 2020). In comparison, Norway admitted 3291 quota refugees (UDI 2016) in 2016. Norway's refugee quota system allows for a certain amount of flexibility, making it possible (albeit not necessarily probable) that the numbers of quota refugees admitted to Norway will temporarily increase in the near future and offset some of the effects of COVID-19 related reductions. While the refugee quota admissions saw a slight increase (3638 persons) in 2021 (UDI 2021), Norway has as of 2023 reduced the yearly quota from 3000 to 2000, in order to cater to the high influx of refugees from Ukraine (UNHC 2023). Assuming this reduction to be temporary, in the remainder of this paper, I continue to refer to Norway's typical refugee quota of 3000.

The governmental decision to prioritize LGBTIQ+ refugees in refugee quota admissions came in the middle of the pandemic (July 2020) when most admissions were suspended. This, together with the later developments of reducing the quota due to the regional developments in Ukraine, makes it difficult to assess the actual impact and implementation of such a policy decision. While Norway remained committed to the 3000 per year refugee quota, and to relocating an even more modest number of 50 asylum seekers (UNHCR 2021b) in 2021, no official data is available on the effects of the new prioritization policy on the numbers of LGBTIQ+ refugees (or relocated asylum seekers). Moreover, as the government's guidelines for working with quota refugees indicate, LGBTIQ+ persons are only one of three groups of refugees that Norway is set to prioritize. The other two groups are

vulnerable women and families with children under the age of 18 (Regjeringen 2020b: 6). At least at first glance, this multiplicity of prioritized groups would also seem to be in line with Norway's ongoing commitments to the UNHCR recommendations regarding priority situations (Regjeringen 2019: 3), including the protection of other vulnerable groups of refugees, including women and children.

The fact that Norway is committed to giving priority not only to LGBTIQ+ persons, but also to two other groups of refugees, makes the Norwegian policy decision to prioritize LGBTIQ+ refugees especially difficult to assess. This challenge arises already at the level of interpreting what the act of 'prioritization' in refugee selection might mean. On the one hand, we can understand prioritization in terms of lexical priority, entailing a view of all 3000 quota refugees being members of the prioritized group(s). On the other hand, we can think of prioritization in terms of weighted preference, making admission somewhat easier and more frequent for the members of the prioritized group(s), as opposed to the non-prioritized refugees. Given the role of the new policy, not as a singular policy of prioritization, but an additional policy to already existing ones, it is highly unlikely that the new policy should be interpreted as providing a comprehensive, lexical prioritization of LGBTIQ+ persons in the refugee quota. That is, it is highly unlikely that the LGBTIQ+ status of a refugee would trump all other priority situations, resulting in *all* of Norway's 3000 quota refugees being LGBTIQ+. It is somewhat more likely that LGBTIQ+ refugees will be given some weighted preference in the quota admissions, although the details and the effects of such weighted preference, also in relation to the other prioritized groups, remain to be seen. In short, LGBTIQ+ refugees are unlikely to be given a right of way to pass the rest of the quota admissions (lexical priority), even if they are given a fast track or parallel line of admission, making gaining admission somewhat easier and more frequent alongside the other prioritized groups of refugees (weighted preference).

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### **LGBTIQ+ refugee prioritization & UNHCR vulnerability criteria for selection**

Given the background of Norway's ongoing commitments to the UNHCR recommendations regarding priority situations, it is worth assessing whether the new policy of LGBTIQ+ refugee prioritization can be supported by or, for that matter, shown to conflict with these recommendations. The UNHCR priority situation assessments play an important role in the international system of refugee resettlement. These assessments consider both regional variations (e.g., newly erupted crisis situations requiring an immediate heightened response) as well as

variations in the vulnerability of different groups of refugees. For the present purposes, I focus only on the vulnerability criteria for selection.<sup>4</sup>

According to the UNHCR, specifically vulnerable refugees are viewed as facing heightened protection risks as persons “who face specific barriers due to discrimination, their identity, or other factors that prevent them from fully enjoying their rights or accessing services they need” (UNHCR 2022a). Groups viewed as specifically vulnerable include “girls and boys, including unaccompanied and separated children; persons with serious health conditions; persons with special legal or physical protection needs; single women; women-headed households; older persons; persons with disabilities; and persons of diverse sex, sexual orientation or gender identity (LGBTI individuals)” (UNHCR 2022a). Notably, UNHCR recognizes individual variations in the heightened protection risks of refugees. Belonging to any of the above categories does not automatically mean that one would be at heightened risk, although the categories are often used as a *de facto* basis for priority situation assessments. This means that refugees who are members of the above categories, especially women and children as well as LGBTIQ+ persons, have substantively higher chances of being resettled than, say, adult, able-bodied, cis-gendered, heterosexual men.

While the UNHCR vulnerability criteria for refugee selection explicitly mention LGBTIQ+ individuals, this does not necessarily mean that the UNHCR criteria could also be seen as providing independent support for states, such as Norway, to adopt policies of LGBTIQ+ refugee prioritization. On the contrary, nothing in the UNHCR selection criteria would make LGBTIQ+ individuals special in comparison to the other specifically vulnerable groups. This suggests a view that any prioritization policy specifically targeting LGBTIQ+ individuals must draw its justification from additional factors, not incorporated in the UNHCR vulnerability criteria. I will return to some of these factors in the following sections.

Furthermore, depending on the finer details of how the Norwegian prioritization policy is interpreted, this policy may or may not be compatible with the UNHCR vulnerability assessments. First, it is unlikely that the Norwegian policy, if understood in terms of lexical priority, would be compatible with the UNHCR vulnerability assessments. Nothing in the UNHCR criteria distinguishes LGBTIQ+ individuals as being *more* vulnerable, or at even *further* heightened risk than the other specifically vulnerable groups. As noted in the previous section, such lexical prioritization would also go against Norway’s own continuing commitment to (also) protect other specifically vulnerable groups, thus suggesting a more modest, weighted preference-based system of prioritization. While the UNHCR selection criteria do not provide independent support for either type of prioritization (lexical priority or weighted preference), it may nevertheless be the case that only the latter, weighted preference, can be viewed as compatible with the UNHCR vulnerability assessments. After all, and contrary to the lexical priority view, such a system recognizes that at least in some cases, the overall vulnerability assessments may support selecting (some) non-LGBTIQ+ individuals over (some) LGBTIQ+ individuals, even if some weighted preference for LGBTIQ+ persons is warranted.

Second, it is worth noting that there is a fair amount of unclarity on whether the UNHCR vulnerability assessments and the Norwegian prioritization policy target the same groups of LGBTIQ+ individuals, thus casting some doubt on the

present scope of the Norwegian policy. In the public description of the governmental decision (Regjeringen 2020a), including some of its rationale, the policy is described as applying to LGBTIQ+ refugees. When translated into the governmental guidelines for working with quota refugees (Regjeringen 2020b), the group set for prioritization, however, are LGBTIQ+ persons. Note that these two groups (LGBTIQ+ refugees and LGBTIQ+ persons among refugees) are distinctively different in scope. While LGBTIQ+ refugees are typically viewed as people fleeing persecution based on their sexual orientation or gender identity (SOGI), refugees who are LGBTIQ+ constitute an undoubtedly larger group. This group also includes LGBTIQ+ individuals who are fleeing for other reasons (e.g., religious or ethnic persecution), and who also happen to be LGBTIQ+. Notably, the specifically vulnerable refugees identified by the UNHCR, include “persons of diverse sex, sexual orientation or gender identity (LGBTI individuals)”, making no reference to the initial causes of fleeing.<sup>5</sup> While it is thus relatively clear that, according to UNCHR, the specifically vulnerable refugees include (or at least *should* include) all LGBTIQ+ individuals among refugees, it remains an open question whether the Norwegian policy of prioritization follows, in principle or in practice, this broader definition of LGBTIQ+ persons within the refugee regime. I argue in the following sections that there are compelling reasons for both UNHCR and the Norwegian prioritization policy to adopt this broader definition, as the normative bases for prioritizing LGBTIQ+ individuals apply equally to all refugees who are LGBTIQ+.

## **LGBTIQ+ refugee prioritization & state-based reasons in refugee selection**

Having discussed the Norwegian policy in the light of the UNHCR priority situation assessments, and having shown that, while potentially compatible, the UNHCR assessments provide no independent support for such prioritization, I now discuss some of the further grounds that states such as Norway may nevertheless have for prioritizing LGBTIQ+ persons in refugee admissions. My focus in the present section is on what I call ‘state-based reasons’ in refugee resettlement. In the following section, I turn to the types of reasons derived from the legitimate rights and interests of refugees themselves (‘refugee-based reasons’), that may be given for admitting certain (groups of) refugees over others.

One of the central questions in the ethics of refugee resettlement concerns the fair distribution of refugees among potential refugee-hosting countries. These distribution issues include both questions about the numbers of refugees that each state should admit and the possible criteria via which the refugees to be resettled are selected. These two issues – numbers and selection criteria – may be connected in various ways. For example, it has been widely recognized that a state’s ability to admit and integrate refugees into its social fabric plays an important role in the number of refugees that a state can be expected to resettle.<sup>6</sup> The number of refugees that a state can admit and integrate may, however, depend on who these refugees are, and especially how costly their integration into the host society is likely to be. The realistic prospects of successful integration<sup>7</sup> of any one refugee may depend on various factors. These factors might include cultural proximity, language capacity, employability, the existence of support networks such as family, country of origin

community and possible special needs to be catered to (e.g., medical conditions). Notably, these factors are both *state-* and *refugee-dependent*, making the prospects of successful integration of some groups of refugees (say, R1) more likely in some groups of states (say, S1), and other groups of refugees (R2) in other groups of states (S2). For example, from the perspective of the prospects of successful integration, it may be sensible to resettle French-speaking refugees to e.g., France or Canada, while refugees with other languages may be better resettled elsewhere. Different kinds of matching schemes (e.g., Jones & Teytelboym 2017) have been developed to match the potential refugee host state's (or state areas', e.g., Andersson et al. 2018) interests and needs with those of the prospective refugees being resettled.

While the potential refugee-hosting countries may thus have an interest in resettling refugees who are (in accordance with the variety of factors described above) likely to successfully integrate and contribute to their new society (without creating extensive costs), most resettlement countries are also committed to following the UNHCR recommendations regarding priority situations in their quota admissions. This means that the refugees to be resettled are likely to be among those who are most vulnerable, including women, unaccompanied children, LGBTIQ+ persons, and persons least likely to be repatriated. While such commitment to the UNHCR priority situation assessment in no way negates the state- and refugee-dependent factors above, it does show that the relevant states' interests in resettlement are not based *solely* on states' own interests to resettle those refugees that fit or benefit them most. On the contrary, the resettlement states are *also* committed to taking the specific needs of refugees into account with regard to their chances of success elsewhere. After all, the most vulnerable refugees, including women, unaccompanied children and LGBTIQ+ persons, are prioritized in resettlement precisely because their prospects of success (even their basic needs and safety) outside the potential refugee resettlement countries (including refugee camps, transit countries, refugee routes, reception centres) are viewed to be even lower than average. This, I believe, has some important implications especially for the case of refugees who are LGBTIQ+, and the ways in which the so-called *state-based reasons* to admit and to prioritize LGBTIQ+ persons in refugee admissions are understood.

### ***Three types of state-based reasons***

By state-based reasons in refugee resettlement, I refer to those considerations that can be traced back to the interests, needs or duties of states to resettle (particular groups of) refugees, as opposed to the interests, needs or duties of refugees themselves. As will become evident, this distinction between state-based and refugee-based reasons is far from clear-cut. For example, some of the moral duties of states may be derived from the interests or rights of refugees. However, for the time being, I will maintain this distinction and discuss those considerations that individual states may have in resettling (particular groups of) refugees, that is, refugee resettlement from the perspective of the refugee-hosting states. For the present purposes, I identify three different types of state-based reasons: 1) System-based reasons pertaining to upholding the legitimacy of the international state-based system; 2) Self-serving reasons pertaining to the interests of states to admit those most likely to integrate successfully; and 3) Vulnerability-based reasons



pertaining to the interests of states to provide protection to certain groups of refugees in the face of other states failing to do so.

Starting with system-based reasons, we can think of state-based reasons to resettle refugees as being based on the general functioning of the international, state-based system that distributes the responsibility for any individual among the states that this system is composed of.<sup>8</sup> As part of this system, states have a duty to provide protection to those persons (refugees) whose own states have failed to protect them or, as is often the case, who are actively persecuting<sup>9</sup> them. The international, state-based system would risk losing its legitimacy without such a system of protection aimed at correcting the failures of some states towards their own citizens.<sup>10</sup>

While such international contractual grounds for refugee protection can already be seen as state-based reasons in the sense of upholding the legitimacy of this system, the different states in this system also have more individuated, and often self-serving, interests in resettling particular groups of refugees: those groups they see as most likely (and cost-effectively) to be integrated. Notably, however, such interests of states to admit refugees who are most likely to integrate successfully need not be seen as interests that would benefit *only* the resettling state, but they can also be seen as contributing to the overall resettlement and protection of refugees between states. Admitting refugees who are most likely to integrate successfully will (at least in an ideal world) also increase the numbers of refugees that a state is able to admit and integrate, thereby increasing the numbers of refugees to be resettled.<sup>11</sup> Thus, a state-based system that aims to match refugees with the interests and needs of the states may contribute to a system where the greatest numbers of refugees can be settled.

However, while such a system of matching refugees with states where they have the greatest chance of integrating successfully may (in an ideal world) support a system that maximizes the number of refugees being resettled, it may not stand scrutiny in light of the broader, humanitarian grounds for the refugee regime. As mentioned, the purpose of the refugee regime is to provide protection to those whose own states have failed them and who therefore have nowhere else to turn besides the international community. Furthermore, while every refugee has a right to international protection, it is also the case that some refugees are more vulnerable and subject to a variety of human rights violations than others. These human rights violations can also occur once the refugees have already fled their country of origin, finding themselves at different stages in refugee routes, transit countries, and refugee camps. Were each state now to only admit those refugees whom they view as most likely (and cost-effectively) to successfully integrate, the system could potentially provide protection to the largest *number* of refugees, but via creating a systematic bias against some groups of refugees. For example, refugees with marketable skills, a higher level of education, language competence, and without major physical or psychological needs, would likely be resettled first. On the other hand, those with lower levels of marketable skills or having special medical needs, would be resettled last. However, a system that would systematically resettle the strongest and those most likely to succeed at the cost of the most vulnerable would be contrary to the general humanitarian purpose of the refugee regime in protecting the most vulnerable. This is also the case even if such a system would result in the greatest number of refugees being resettled.<sup>12</sup>

### *State-based reasons and LGBTIQ+ prioritization*

How does all this translate in the case of refugees who are LGBTIQ+ and the reasons that states like Norway may have for prioritizing LGBTIQ+ refugees in refugee resettlement?

On the most general level, as regards the state-based reasons related to maintaining the legitimacy of the international order, there seem to be no particular reasons why countries such as Norway should prioritize LGBTIQ+ persons over any other group of refugees. Norway, as part of the international state-based system, has a duty to admit refugees (as not admitting them would endanger the legitimacy of this system), but this duty alone does not specify what particular groups of refugees Norway should admit.

It is also not obvious whether LGBTIQ+ persons should be given priority in resettlement based on the second type of state-based reasons that pertains to each state's interests in resettling those refugees most likely (and cost-effectively) integrated. Refugees who are LGBTIQ+ do not constitute a homogenous group who possess the sorts of characteristics or skills that would match them with the interests of any particular state, thus making them more likely (as a group) to be successfully integrated (as opposed to refugees who are not LGBTIQ+). On the contrary, as LGBTIQ+ persons continue to be subjected to various forms of injustice, discrimination and disadvantage across the globe, including in the potential refugee receiving countries, LGBTIQ+ refugees may, qua LGBTIQ+, actually be *less* likely to integrate successfully than refugees who are not LGBTIQ+.

This brings me to the third type of state-based reason for prioritizing certain groups of refugees over others, which pertains to the specific vulnerability of refugees and the likelihood of them being protected and successfully integrated elsewhere. I maintain that such reasons continue to be state-based, albeit not in the sense of them relating to the interests of any individual state to admit those refugees most likely to be successfully integrated, but to the more general moral reasons of states to provide safety to those refugees that are least likely to be protected and successfully integrated elsewhere. That is, states may – in upholding a system designed to give protection to those most vulnerable – have strong moral reasons to admit and prioritize those groups of refugees that other states, or the international community as a whole, are least likely to protect. This is due to these states being in a specific, and relatively unique, position to do so.

As regards refugees who are LGBTIQ+, the case unfolds as follows: Those states most willing and able to protect LGBTIQ+ persons within their territory have strong moral reasons to admit and prioritize refugees who are LGBTIQ+, as they are currently among the relatively small number of states that are able and willing to do so.<sup>13</sup> That is, the relatively small number of LGBTIQ+ friendly states (typically, western liberal democracies with strong LGBTIQ+ rights and protections, such as Norway), have moral reasons to protect specifically *this* group of refugees, as they are among the relatively few that de facto provide such protection. The same, it should be noted, does not apply to refugees who are not LGBTIQ+. All other things being equal, the number of states both willing and able to protect non-LGBTIQ+ persons (qua non-LGBTIQ+) far exceeds the number of states that also extend such protection to LGBTIQ+.

Here I wish to clarify two points: First, it should be emphasized that this is simply a game of numbers based on the present circumstances of LGBTIQ+ persons

around the world, and the kinds of protections that different states, including potential refugee receiving states, can and will provide to LGBTIQ+ persons. This also means that the situation may well change in the future. For example, if most states, including potential refugee receiving states, became more LGBTIQ+ friendly and offered extensive protection and recognition to LGBTIQ+ persons, such state-based reasons for LGBTIQ+ friendly states, such as Norway, to prioritize LGBTIQ+ persons in resettlement would disappear. This is simply because there would then be a substantively larger number of states that could then do the work that Norway (among others) is currently doing.

Secondly, when I refer to any particular state's ability and willingness to offer adequate protection to LGBTIQ+ persons, my view of this protection extends beyond the minimal protection and provision of safety against the kinds of atrocities that refugees are fleeing. Thus, I do not refer only to the protection that LGBTIQ+ persons deserve against persecution (i.e., acts that would ground them asylum elsewhere), but also protection against other, *non-asylum-grounding injustices*. That is, LGBTIQ+ persons are specifically vulnerable also after having fled their country of origin, not necessarily because they would continue to be persecuted elsewhere (although this may also be the case), but because of the widespread homophobia, discrimination and disadvantage that also prevail in countries that are, broadly speaking, viewed as 'safe' for LGBTIQ+ persons. For example, many Eastern European, Central American and Asian countries may be viewed as 'safe' countries, where the treatment of LGBTIQ+ persons may not be 'bad enough' to ground asylum elsewhere, but where the situation of LGBTIQ+ persons is nevertheless substantively worse than in self-proclaimed LGBTIQ+ friendly states such as Norway.<sup>14</sup>

Considering state-based reasons in this third way, that is, via the reasons that states may have to admit and prioritize refugees whom they are relatively uniquely positioned to protect – we may arrive at an alternative matching system of refugees and resettling states. In this system, instead of matching the state's interests and needs with the refugee's skills and abilities, the matching operates at the level of basic rights protection. States willing and able to protect specific groups of people with specific characteristics (e.g., LGBTIQ+) are matched with refugees with such characteristics. Thus, the system can maintain some of the benefits of alternative matching systems (i.e., states continue to receive those refugees that 'fit' them best) but without replicating the systemic, and morally unacceptable, bias of these systems. In other words, the system aims to ensure that the most vulnerable and least likely to be protected will be resettled to countries that offer them protection and where their prospects of successful integration are the highest.

## Refugee-based reasons in refugee admissions

In the previous section, I discussed three types of reasons that states may have for resettling refugees and, more particularly, for resettling particular groups of refugees, such as LGBTIQ+. I began by showing how the general legitimacy of the international system created an obligation for states to offer protection to those persons (refugees) that had been failed by their own states. However, this obligation said nothing about those particular refugees that any particular state should resettle.<sup>15</sup> Furthermore, the individual states' interests in resettling refugees who can most likely and cost-effectively be resettled could, at least in ideal

circumstances, create a system where the maximum numbers of refugees would be resettled. However, such a matching system would also run counter to some of the more general moral principles of the refugee regime. As an alternative, I suggested a system that would consider the actual number of states willing and able to protect persons with certain characteristics against a variety of *non-asylum grounding injustices* and match these refugees with the aforementioned states. This system of matching would still be state-based, but it would not be based on resettling those refugees who would benefit the state most. Rather, it would be state-based in the sense of states resettling those refugees they are uniquely positioned to protect in the face of other states not being able, or willing, to do so. From this perspective, Norway's policy of prioritizing LGBTIQ+ refugees draws its justification from Norway's relatively unique position in the international community, being both able and willing to protect LGBTIQ+ persons (including refugees who are LGBTIQ+) from a number of injustices they would be subjected to elsewhere, including in some other refugee-hosting countries.

It should be noted that such grounds for Norway's prioritization policy are not, contrary to how it may at first appear, identical to the grounds that states may have for admitting refugees based on their duties to 'take up the slack' of other states. According to this argument, states' duties to admit refugees may increase due to the non-compliance of other states to do their fair share in refugee resettlement (see e.g., Owen 2016b; Stemplowska 2016). In Norway's case that would mean that Norway could be seen as having a duty to admit far larger numbers of refugees, due to some other states not admitting their fair share. However, this is not, strictly speaking, what is going on here. While part of the justification for Norway to prioritize LGBTIQ+ refugees stems from other states (including some refugee-hosting states) failing to provide adequate protection for LGBTIQ+ persons, it is not the case that Norway's general duties to admit refugees would therefore be increased. That is, Norway is not taking up the slack – at least not in the sense of doing more than its fair share in refugee resettlement<sup>16</sup> – but it is simply using the failure of other states as a criterion of selection. Regardless of the actions of other states, Norway continues to commit to a refugee quota of 3000 persons per year. Nevertheless, due to the failures of other states to provide protection to particular groups of refugees (such as LGBTIQ+), it prioritizes this group of refugees in its selection process for the quota.

Provided that we can now see how the Norwegian prioritization policy connects and draws from some of the state-based reasons in refugee resettlement, let us now turn to how such a policy would fare when viewed from the perspective of refugees themselves.

Notably, it remains a contested issue as to what extent refugees' own views of their eventual country of resettlement should be taken into account in the distribution of refugees among refugee-receiving countries. Refugees are viewed as having a right to international protection, but they are not typically viewed as having a right of say as to who provides this protection.<sup>17</sup> Having said that, there is no doubt that refugees' interests and needs play a crucial part in refugee resettlement, regardless of whether refugees are seen to have a right of say in their eventual country of resettlement. It is clear for example, that the very basic rights of refugees against persecution operate at the very basis of the refugee regime. Furthermore, as highlighted by the UNHCR vulnerability assessments, refugees'

specific needs are considered when selecting those small numbers of refugees that are actually resettled.<sup>18</sup> To some extent, the state-based matching systems of refugee resettlement also take refugees' needs and interests into account, even if indirectly, by aiming to locate those refugees whose skills, interests, and abilities would best benefit the resettling state. The alternative matching system suggested earlier also draws heavily from the idea that refugees' specific needs and interests should play a central role in the eventual resettlement, matching refugees with particular characteristics (such as LGBTIQ+) with those states that are both willing and able to protect people with these characteristics. This is important as refugees should not be subjected to injustice, including a variety of non-asylum grounding injustices.<sup>19</sup> From the perspective of refugees' own interests not to be subjected to these injustices, such as wide-spread discrimination, homophobia or social stigma, the Norwegian prioritization policy would seem to stand defended.

### ***Refugees' own views and the need to listen to them***

At least at first glance, the Norwegian policy of LGBTIQ+ refugee prioritization would seem to fare well in light of refugees' own interests in not being subjected to injustice (qua being LGBTIQ+). The question remains however whether such a policy really takes refugees' *own* interests into account, as described and defined by refugees themselves. Note that refugees' interests can be defined either objectively (pertaining to some general principles of refugees, for example, having an interest in leading good lives or not being discriminated against) or subjectively, by listening to what refugees themselves want.<sup>20</sup> This need to listen to refugees' own voices has recently been emphasized by a number of scholars (Gibney 2015; Owen 2018; Fine 2019; Parekh 2020) emphasizing the need to respect refugees' own agency.

Instrumentally, listening to refugees' own views on where they want to be resettled is likely to play a positive role in the successful integration of refugees, as it is at least plausible to think that one's prospects of success are increased by being in a place where one wants to be. However, refugees' subjective views on where they want to be resettled may not always correspond to the objectively defined factors that support integration. Refugees may, for example, lack accurate knowledge of the destination countries and either under- or overestimate their prospects of success in these places. At other times, however, refugees' subjective views may be more accurate than any objectively defined criteria, which is also highlighted by the case of refugees who are LGBTIQ+.

As an example, let us examine some of the most common factors viewed as increasing refugees' wellbeing and prospects of success in their country of destination. These factors include a variety of traditional support networks, such as those based on religion, family, and country of origin community (see e.g. UNHCR 2021a). Broadly speaking, this means that refugees from certain faith communities may have better prospects of success in countries or areas where they are able to join with other members (refugees and non-refugees) of the same religious denomination, or that refugees who are resettled with their families tend to fare better than those disconnected from their family. Indeed, there is no denying the potential benefits of one's country of origin communities in helping newcomers navigate the cultural and social systems in their new home country.

However, for refugees who are LGBTIQ+, each of the above mentioned factors that are commonly seen as supporting integration often pose specific

risks, including in their new countries of residence (UNHCR 2021a). Family and country of origin community are often among the key reasons why LGBTIQ+ persons flee in the first place, and the effects of religious communities, especially very conservative ones, tend not to be very positive for refugees who are LGBTIQ+. Thus, the factors contributing to the well-being and integration of refugees who are LGBTIQ+ may be very different from, or even the opposite of the factors commonly viewed as contributing to the well-being and integration of other refugees.

Of course, this is not to say that having personal support networks would not also be important for refugees who are LGBTIQ+, but that the nature of these networks may be crucially different from the common support networks of non-LGBTIQ+ refugees. Instead of family or country of origin communities, for example, such support networks may be understood in terms of networks within LGBTIQ+ communities (including other LGBTIQ+ persons with refugee backgrounds) that may also be crucial for providing access to e.g., legal information and support services specifically for LGBTIQ+ persons. In some cases, the existence of a family or country of origin community may, of course, also play a positive role for LGBTIQ+ persons – but whether it does or not, can only be known and communicated by the refugees themselves.

Considering the often different needs and risks of refugees who are LGBTIQ+ (versus non-LGBTIQ+ refugees), the Norwegian policy of LGBTIQ+ prioritization may thus need to be evaluated in terms of its ability to cater to such needs while protecting LGBTIQ+ refugees against the specific risks. Furthermore, much of this evaluation will depend on the details of how such policy is understood and especially how well supported the integration is of those refugees who have already entered Norway. Provided that the policy of prioritizing LGBTIQ+ refugees comes with a substantive commitment to also provide adequate and specific LGBTIQ+ related support to the refugees that enter Norway via this system of prioritization, such a policy may also be viewed as being grounded in the refugee-based interests of the LGBTIQ+ refugees themselves.

Having said that, it is important to qualify the extent to which any general policy, including LGBTIQ+ prioritization, can be viewed as grounded in the interests of refugees themselves. As already mentioned, refugees' own interests can be interpreted both in terms of some objectively defined, yet refugee-dependent, assessment criterion. An example of such an assessment criterion would be refugees' interest in not being subjected to a variety of non-asylum-grounding injustices (such as homophobia or SOGI-based discrimination). On the other hand, refugees' own interests can also refer to the refugees' own subjectively interpreted interests that may or may not align with the objectively defined interests in question. For example, while we may argue relatively non-controversially that all refugees who are LGBTIQ+ also have an interest in not being subjected to SOGI-based discrimination (objectively defined interest), this may not always be the most important or overriding interest that they themselves view should guide their resettlement processes (subjective views). After all, being LGBTIQ+ and having an interest in not being disadvantaged qua LGBTIQ+ may play a relatively minor role for some refugees. Other interests such as family life, employment prospects or religion may well override some LGBTIQ+ persons' concerns for not being subjected to SOGI-based injustices. Thus, when asked for their own views, some refugees who are LGBTIQ+ may prefer being resettled in other, less LGBTIQ+

friendly countries or in areas where they – with full knowledge of this fact – could be subjected to e.g. SOGI-based discrimination. This preference is thus *despite* being against their objectively defined interests in not being subjected to a variety of non-asylum-grounding injustices qua LGBTIQ+.

### ***Refugees' own interests and LGBTIQ+ prioritization***

Recognizing that some refugees who are LGBTIQ+ may have subjectively defined interests that are potentially in tension with their objectively defined interests in not being subjected to a variety of SOGI-based injustices, I wish to end this article by discussing some of the implications of these tensions for the Norwegian LGBTIQ+ prioritization policy. I identify three issues of clarification that relate to the general justification of such policy, the extent to which the act of 'listening' should influence the implementation of such policy, and the scope of application to LGBTIQ+ refugees and refugees who are LGBTIQ+.

First, as argued above, the general state-based reasons for western liberal states such as Norway to give priority to LGBTIQ+ persons in refugee admissions are derived from their relatively unique position to protect LGBTIQ+ persons, not only against SOGI-based persecution, but also against a variety of other *non-asylum-grounding injustices*. This rationale is complemented by some of the refugee-based reasons, namely the objectively defined interests of LGBTIQ+ persons not to be subjected to injustices qua LGBTIQ+. Note that these general rationales for the policy of prioritization apply independently of LGBTIQ+ persons' subjectively defined interests that they may on occasion view as more central to their identities and life-plans than their interests in not being subjected to SOGI-based injustices. Being thus, the subjectively defined interests of refugees themselves may not provide sufficient grounds to abandon the default position of prioritizing LGBTIQ+ persons in refugee admissions, although – should the considerations of respecting refugees' own agency and their views on where to resettle be taken seriously – this default position may sometimes need to be adjusted.

Second, and in connection with the previous point, it should be clarified to what extent listening to refugees' own voices should guide policy decisions to start with. While it is generally agreed that refugees have a right to international protection, they are typically not viewed as having a right to decide where this protection takes place. This general principle should of course also apply to refugees who are LGBTIQ+. However, not having a right to choose one's place of resettlement does not mean that the resettling states should not listen to refugees' own views on the matter. As mentioned earlier, this listening may have various positive consequences, including understanding the differing special needs of different (groups of) refugees – as demonstrated by the example case of the specific risk factors of refugees who are LGBTIQ+. Thus, my intention has not been to argue that states would be obliged (legally or morally) to follow refugees' views on where they wish to be resettled, but simply that states should take the interests and views of refugees into account with the other normatively relevant considerations, such as different states' willingness and ability to protect refugees against a variety of non-asylum-grounding injustices, as discussed in the context of state-based reasons for LGBTIQ+ prioritization. After all, the processes of admission and resettlement – whether at the international level of resettlement distribution or at the state level of refugee integration – continue to be complex processes in which the interests of

*both* the potential resettling states and the refugees themselves should be adequately accounted for.

Finally, it should be emphasized that the moral grounds for western liberal, LGBTIQ+ friendly states both to give priority to LGBTIQ+ persons in refugee admissions and to listen to refugees' own views in resettlement, should be understood as applying both to LGBTIQ+ refugees and refugees who are LGBTIQ+. Further, the default position of giving priority to LGBTIQ+ persons and listening to their voices applies regardless of whether the refugees in question view their interests in not being subjected to SOGI-based injustices as particularly strong, and whether being LGBTIQ+ plays a significant or a relatively minor role in their lives. Recall that the general rationale for states like Norway to prioritize LGBTIQ+ persons in refugee admissions is based on Norway's relatively unique position to protect LGBTIQ+ persons against a variety of SOGI-based injustices, and thus to protect the objectively defined interests of LGBTIQ+ persons not to be subjected to these injustices. However, a refugee's likelihood of being subjected to such injustices in their new country of resettlement may not depend on whether the initial causes for fleeing were SOGI-based, as homo- and transphobia and SOGI-based discrimination are of fairly indiscriminatory nature, potentially extending to all LGBTIQ+ persons, LGBTIQ+ refugees and refugees who are LGBTIQ+. Furthermore, while being LGBTIQ+ may play a relatively minor or even trivial role in some LGBTIQ+ people's lives, this does not eradicate the danger of them still being subjected to a variety of SOGI-based injustices, or their interests in not being subjected to these injustices qua LGBTIQ+. It only means that, for some LGBTIQ+ persons, these interests may not rank particularly high in relation to their other interests in life. Refugees who are LGBTIQ+ may no doubt occasionally prefer to sacrifice their interests in not being subjected to SOGI-based injustices for the fulfilment of their more highly valued interests in life. However, I do not think that this provides a major challenge to the Norwegian policy of prioritizing LGBTIQ+ persons in refugee admissions. On the contrary, given the relatively indiscriminatory nature of SOGI-based injustices and the nature of the interests that the Norwegian prioritization policy is set to protect, there seems to be every reason to uphold this general policy while remaining open to the idea that, on occasion, listening to the voices of refugees themselves could direct the state towards slightly different applications of this policy.

## Conclusion

My purpose in this paper has been to assess some of the grounds by which the new Norwegian policy of giving priority to LGBTIQ+ refugees in refugee resettlement could be justified. Starting from the relevant international agreements, and Norway's already existing commitment to the UNHCR priority situation assessments, the Norwegian policy seems to be, if not independently supported by such assessments, at least not obviously in opposition to them. The UNHCR includes persons of "diverse sex, sexual orientation or gender identity (LGBTI individuals)" on its list of specifically vulnerable persons and often assesses these persons as requiring priority in resettlement. The extent to which the Norwegian prioritization policy is compatible with the UNHCR vulnerability assessments will, however, depend on two factors. The first factor is how the policy of priority is understood (lexical vs. weighted). The second factor rests on the understanding of



who the refugees to be prioritized actually are (LGBTIQ+ refugees versus refugees who are LGBTIQ+).

I argue that the state-based grounds for countries like Norway to prioritize refugees who are LGBTIQ+ are primarily derived from the relatively unique position that these states hold in being both able and willing to protect LGBTIQ+ persons against a variety of injustices, including non-asylum-grounding injustices (such as SOGI-based discrimination and social stigmatization). Such state-based reasons are not, however, entirely independent from what I have called refugee-based reasons, as the moral grounds for states to offer protection to precisely *this* group of refugees may be inherently connected to the specific interests that refugees have for not being subjected to injustice. Protecting refugees' interests in not being subjected to injustice (qua LGBTIQ+) provides refugee-based reasons for states, such as Norway, to give priority to refugees who are LGBTIQ+ when connected to the relatively unique position of Norway as being both willing and able to protect LGBTIQ+ persons against such injustices.

I believe I have shown how the Norwegian policy for prioritizing LGBTIQ+ refugees in refugee resettlement is compatible with the UNHCR priority situation assessments (when understood in terms of weighted preference and applied to all refugees who are LGBTIQ+), and supported by both state-based and refugee-based reasons in resettlement. However, I provide some qualifications to the general applicability of my argument. While defending a general compatibility of the LGBTIQ+ refugee prioritization policy with the specific kinds of interests of LGBTIQ+ persons not to be subjected to a variety of injustices (qua LGBTIQ+), I also recognized the possibility that some LGBTIQ+ persons may not view these interests as the most prevalent or decisive for them, or as something they would wish should guide their processes of resettlement. While this concern is undoubtedly very real, it may nevertheless not be substantive enough to counter the general UNHCR, state-based and refugee-based reasons for the LGBTIQ+ refugee prioritization. Recognizing the potential discrepancies in refugees' objectively and subjectively defined interests may nevertheless suggest both caution against too rigid an understanding and application of those interests that can be objectively viewed as important to the LGBTIQ+ refugees themselves, as well as the need to listen and be sensitive to the voices of refugees themselves during the processes of refugee selection and resettlement.

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## Notes

<sup>1</sup> I follow the abbreviation used by the Norwegian government: LGBTIQ+ (or LHBTIQ+ in Norwegian) that refers to Lesbian, Gay, Bisexual, Trans, Intersex, Queer, and other nonconforming sexual orientations or gender identities. This is also the abbreviation adopted by the UNHCR (2021a), while some older documentation utilized abbreviations such as LGBTI (UNCHR 2010; 2012), and LGBT (UNHCR 2008).

<sup>2</sup> It is impossible to provide a comprehensive overview of these two strands of debate. For some notable contributions regarding the ‘reasonable fear of persecution’ requirement, including problematics of ‘discretion’, see Millbank 2009; 2013; Weßels 2013; Danisi et al. 2021; On some recent work on the credibility assessments of LGBTIQ+ asylum claimants, see e.g. Selim et al. 2022; Ferreira 2023.

<sup>3</sup> According to UNCHR (2022b), there were 89.3 million forcefully displaced persons worldwide, of which 27.1 million were refugees. During 2021, 57 500 persons were resettled, bringing the resettlement rate to a fraction of one percent, regardless of which number (only officially recognized refugees, or all forcefully displaced persons, including internally displaced people) were used as the basis of calculation.

<sup>4</sup> This is not to say that the vulnerability assessments could not also be applied in situations where newly erupted crises require a heightened response, nor that in some cases, the “ordinary” vulnerability assessments may be put aside due to such a heightened response. For the sake of simplicity, I will not discuss the specificities of such cases in this paper.

<sup>5</sup> Of course, this applies to all identified groups (incl. girls and boys, women, people with disabilities etc.), highlighting both the nature and loci of the specific vulnerabilities concerned. However, of the groups identified, it should be noted that there is a certain distinctiveness to the group of LGBTIQ+ individuals, as the identifying marker of this group often (albeit not always) also operates as the identifying marker of the persecution that some members of this group are fleeing. This is far less common in the other identified groups, as in most (albeit not all) cases, such as women, children, or people with disabilities tend to be fleeing for other reasons than for being persecuted qua women, children, or disabled. (For a more nuanced view on how structural injustices may also operate as grounds for refuge, see Parekh (2012)).

<sup>6</sup> As indicated in the previous section, there is also a common agreement that most western liberal states in the Global North would have an ability to admit and integrate many more refugees than they currently do and are willing to commit to. I will largely sideline this issue here.

<sup>7</sup> How ‘successful integration’ is interpreted in the host society, and to what extent this factor *should* be guiding states’ decisions to admit some refugees over others may be contested. As Patti Lenard (2023, ch. 7) has recently argued, our understanding and in particular states’ duties to facilitate integration may vary, depending on the specific backgrounds of newcomers (e.g. refugees in general, and LGBTIQ+ refugees in particular). For my present purposes, I need not commit to any particular view of ‘successful integration’, but simply acknowledge that the prospects of refugees’ integration may, from a state-based perspective, operate as one of the rationales that states give for selecting some refugees over others.

<sup>8</sup> For prominent arguments to this effect, see Carens 2013; Owen 2016a. There are also other ways to ground duties of resettlement, such as the humanitarian duties of rescue (e.g., Singer & Singer 2010; Miller 2016) and contribution-based principles (e.g., Parekh 2016; 2020). I will return to some of the more general humanitarian grounds later, but for the time being, my focus is on the international contractual case.

<sup>9</sup> I will not take a stand on the persecution requirement here. See Kuosmanen 2014; Cherem 2015; Lister 2016 for retaining of the persecution requirement; for definitions extending beyond the persecution requirement, see e.g. Shacknove 1985; Gibney 2004; 2015; Betts 2013; Carens 2013; Miller 2016.

<sup>10</sup> As David Owen (2016a) has forcefully argued, from the perspective of the international order, the refugee system can be understood as a type of legitimacy-repair system necessary to uphold the legitimacy of the international order.

<sup>11</sup> I am fully aware that this may not be the case in the non-ideal world in which we live.

<sup>12</sup> The more general moral principles adopted will determine much of this: from a purely consequentialist cost-benefit analysis viewpoint it may well be that a system maximizing the numbers of refugees to be resettled should be viewed as the best one, even if such a system would in effect prevent those most vulnerable from being resettled.

<sup>13</sup> For a more detailed argument to this effect, see Vitikainen 2020. For the current situation of LGBTIQ+ protections and persecution, see ILGA 2020.

<sup>14</sup> As a third point of clarification, while my focus here is on refugees who are LGBTIQ+, I do not wish to discard the possibility of other groups of refugees who could be similarly situated (i.e., systematically discriminated in a large number of countries), thus providing strong moral reasons for those states willing and able to protect them to admit and prioritize these other groups.

<sup>15</sup> This should not exclude the possibility of other considerations that may speak for the responsibilities of particular states to accept particular groups of refugees, such as in cases when that state has been (unjustly) causally contributing to the creation of such groups (see e.g., Blake 2012; Soultter 2014). However, in the absence of such considerations, the legitimacy of the international order argument provides no guidance as to which particular states should admit which particular groups of refugees.

<sup>16</sup> Admittedly, this relies on an assumption that the costs of resettling LGBTIQ+ refugees and non-LGBTIQ+ refugees are roughly the same.

<sup>17</sup> As Joseph Carens aptly puts it, “Refugees have a moral right to a safe place to live, but they do not have a moral entitlement to choose where that will be.” (Carens 2003: 2016) This lack of moral entitlement to choose one’s place of resettlement does not, however, mean that there would be no moral reasons for states to also take refugees’ interests into account and to listen to refugees themselves in their quests for resettlement. (For some recent arguments to this effect, see Gibney 2015; Owen 2018; Fine 2019; Vitikainen 2022.)

<sup>18</sup> See endnote 3 above.

<sup>19</sup> For a threefold categorization of refugees’ interests into (1) interest in safety, (2) interests in not being subjected to injustice, and (3) interests in a good life, and an argument for the default primacy of the second category over the third in refugee resettlement, see Vitikainen 2022.

<sup>20</sup> Note that the distinction made here between the objective and subjective assessment of refugees' interests aims not to exclude the idea that in some important senses, also the objectively assessed interests of refugees may be subject-dependent (i.e. the relevant conditions for a good life for one person may be different from the relevant conditions for another) – although even in these cases the measures of assessment are externally defined, while in the case of refugees' subjectively defined interests, the measures of assessment may be whatever the person themselves decides it to be.

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