

## UNEQUAL IN EXILE: GENDER EQUALITY, SEXUAL IDENTITY AND REFUGEE STATUS

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### Introduction

*All human beings are born free and equal in dignity and rights. All human rights are universal, interdependent, indivisible, and interrelated. Sexual orientation and gender identity are integral to every person's dignity and humanity and must not be the basis for discrimination or abuse.<sup>1</sup>*

Promoting gender equality as well as equal rights for sexual minorities has been problematic even in the most advanced of countries. One has only to follow the battles around marriage equality in the United States or the controversy around the repeal of the 'Don't ask, don't tell' policy for homosexuals serving in the U.S. military to get a sense of how loaded and divisive these issues are in the West. When one considers the countries and contexts that the majority of refugees are fleeing in sub-Saharan Africa, the Middle East, and South Asia, and the policies and practices of the countries they are fleeing to—countries such as Uganda, Pakistan, and Ethiopia—the very idea of gender equality, let alone protection under the law for sexual minorities, is elusive, unrealistic, and potentially risky.

The United Nations High Commissioner for Refugees (UNHCR) however, and the broader international humanitarian community working with refugee populations, are tasked with promoting gender equality through their work and the protection of all persons of concern—especially the most vulnerable, which includes lesbian, gay, bisexual, transgendered,<sup>2</sup> and intersex<sup>3</sup> (LGBTI)<sup>4</sup> refugees.

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<sup>1</sup>*The Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity*, March 2007, p. 6.

<sup>2</sup> While there is no universally accepted definition of 'transgender', UNHCR's guidance note defines the term to refer to men and women whose gender identity does not align to their assigned sex. Transgender does not imply any specific form of sexual orientation and may include transsexuals and cross-dressers. They could identify as female-to-male or male-to-female, and may or may not have undergone surgery and/or hormonal therapy. UNHCR, *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, UNHCR, Geneva, 21 November 2008.

<sup>3</sup> Intersex in humans refers to intermediate or atypical combinations of physical features that usually distinguish female from male. This is usually understood to be congenital, involving chromosomal, morphologic, genital and/or gonadal anomalies, such as diversion from typical XX-female or XY-male presentations, e.g., sex reversal (XY-female, XX-male), genital ambiguity, or sex developmental differences. An intersex individual may have biological characteristics of both the male and the

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Addressing these issues in countries with repressive and, at times, discriminatory laws and policies is a challenging and potentially self-defeating exercise. As a case in point, at least 76 United Nations (UN) Member States criminalise same-sex acts among consenting adults and seven of those states (Iran, Mauritania, Saudi Arabia, Sudan, Yemen, and parts of Somalia and Nigeria) maintain the death penalty for consensual homosexual acts.<sup>5</sup>

Yet, as UNHCR affirmed in its Expert Roundtable on Asylum-Seekers and Refugees Seeking Protection on Account of their Sexual Orientation<sup>6</sup> and Gender Identity,<sup>7</sup>

LGBTI persons are entitled to all human rights on an equal basis as others. These rights are enshrined in international human rights and refugee law instruments. States have a duty to protect asylum seekers and refugees from human rights violations regardless of their sexual orientation and gender identity.<sup>8</sup>

The disconnect and incongruity between international law and UN policy on the one hand and national legislation and host country practice on the other often results in an overly cautious refugee protection regime (UNHCR, donor governments, and UNHCR's implementing non-governmental organisation (NGO) partners), heightened protection risks for sexual minorities, and the flagrant disregard of international commitments signed on to by many refugee-hosting governments.

### I. Legal Framework

The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol detail international obligations for the treatment of people fleeing across borders due to persecution or a well-founded fear of persecution on the grounds of race, religion, nationality, membership of a particular social group,

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female sexes. *Intersexuality* as a term was adopted by medicine during the 20th century and applied to human beings whose biological sex cannot be classified as clearly male or female. From Wikipedia: <http://en.wikipedia.org/wiki/Intersex>, accessed 19 January, 2011

<sup>4</sup> As this paper does not deal with the specific and unique concerns facing intersex persons, they will not be referenced unless otherwise noted.

<sup>5</sup> M. O'Flaherty & J. Fisher, 'Sexual Orientation, Gender Identity and International Human Rights Law: Contextualising the Yogyakarta Principles', *Human Rights Law Review*, 2008-8, p. 208.

<sup>6</sup> Sexual orientation is understood to refer to each person's capacity for profound emotional, affectional, and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender. *The Yogyakarta Principles, supra*, note 1, p. 6.

<sup>7</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. *Ibid*, p.6.

<sup>8</sup> UNHCR, *Summary Conclusions: Asylum-Seekers and Refugees Seeking Protection on Account of their Sexual Orientation and Gender Identity*, Expert Roundtable, Geneva, Switzerland: 30 September – 1 October, 2010.

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or political opinion.<sup>9</sup> The UNHCR not only supervises the Convention but is also mandated to provide international protection to refugees and promote durable solutions to their problems.<sup>10</sup> While four of the grounds for persecution referenced in the Convention are relatively straightforward, ‘membership of a particular social group’ can be interpreted narrowly or expansively, thereby limiting or creating access for particularly vulnerable individuals based on gender, gender-identity, sexual orientation, and the experience of gender-based violence.

Depending on an individual’s particular circumstances and his or her society of origin, several categories of particular social groups have been recognised, including subgroups of women, families, occupations, conscientious objectors and homosexuals.<sup>11</sup> As UNHCR’s Guidelines on Gender-Related Persecution note, “an applicant’s sexual orientation can be relevant to a refugee claim where he or she fears persecutory harm on account of his or her actual or perceived sexual orientation, which does not, or is seen not to, conform to prevailing political, cultural, or social norms.”<sup>12</sup>

While the refugee definition applies to all persons without distinction as to sex, age, disability, sexual orientation, marital status, family status, race, religious belief, ethnic or national origins, political opinion, or any other status or characteristic,<sup>13</sup> its application is based on a process of inquiry during which time specific considerations, such as persecution related to gender and sexual orientation, need to be revealed, questioned, and weighed. As such, the text and purpose of the 1951 Convention requires a gender-inclusive and gender-sensitive interpretation.<sup>14</sup> Recognising that there are gaps both in the Convention and in its interpretation, in 2001 UNHCR undertook an extensive, year-long consultative process known as the Global Consultations on International Protection. The aim of the Consultations focused not only on strengthening support for the Convention but also on tackling and developing guidance on emerging issues and grey areas that were perhaps less relevant at

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<sup>9</sup> Article 1 of the UN Convention Relating to the Status of Refugees as amended by the 1967 Protocol provides the definition of a refugee: “A person who owing to a 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.” See also D. Ottoson, *State-sponsored Homophobia: A world survey of laws prohibiting sex-same activity between consenting adults*, Brussels: ILGA Report, International Lesbian Gay Association 2010, p.4.

<sup>10</sup> UNHCR, *Protecting Refugees: A Field Guide for NGOs*, Geneva: Atar SA, 22.

<sup>11</sup> V. Turk & F. Nicholson, ‘Refugee protection in international law: an overall perspective’, in: E. Feller, V. Turk & F. Nicholson (eds.), *Refugee Protection in International Law: UNHCR’s Global Consultations on International Protection*, Cambridge: Cambridge University Press 2003, p. 17.

<sup>12</sup> UNHCR, *UNHCR 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, Geneva: 7 May 2002, paras. 6-7.

<sup>13</sup> R. Haines, ‘Gender-related persecution’, in Feller, *supra* note 11, p. 324.

<sup>14</sup> *Ibid.*, p. 326.

the time of the drafting of the 1951 Convention.<sup>15</sup> Among the less-defined issues addressed were those of relevance to this article, ‘membership of a particular social group’ and ‘gender-related persecution’.

Following deliberations during the Global Consultation process on defining ‘membership of a particular social group’, in 2002 UNHCR released guidance with the following definition: “a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience, or the exercise of one’s human rights.”<sup>16</sup> Aleinikoff’s paper,<sup>17</sup> which was an outcome of the Global Consultation process, presents concrete case examples for application of refugee status based on membership of a particular social group. His examples include sexual orientation in countries where such is criminalised and where local and State police either tolerate or encourage violence against homosexuals, and spousal abuse where local authorities do not intervene and social norms allow husbands to discipline their wives.<sup>18</sup>

## II. Identification

As explained above, gender-related persecution and persecution based on sexual identity can be justification for refugee status on the ground of ‘membership of a particular social group’. Although the term ‘gender-based violence’ has generally been used to refer to violence against women and girls, it also encompasses violence against women and men because of how they experience and express their gender and sexuality.<sup>19</sup> Refugees, however, may not be aware that persecution and violence resulting from their sexual identity or gender can be the basis for asylum application. In addition, those responsible for conducting refugee status determinations (RSD), whether UNHCR protection staff or host government employees, may not be sensitive to gender-related persecution claims nor to persecution based on sexual orientation. In host countries with homophobic legislation and social practice, such as Uganda where the government carries out the RSD procedures, this can be extremely problematic for LGBT asylum seekers. Access for LGBT persons to State protection will clearly be impeded in situations where same-sex relations are criminalised in the country of asylum.<sup>20</sup> Further, as a result of shame, homophobia and repressive laws, many asylum seekers will not identify what

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<sup>15</sup> For a complete overview of the global consultations refer to the entire publication by E. Feller, V. Turk & F. Nicholson, *supra* note 11.

<sup>16</sup> UNHCR, ‘Guidelines on International Protection: “Membership of a Particular Social Group” within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees’, UN doc. HCR/GIP/02/02, 7 May 2002.

<sup>17</sup> T.A. Aleinikoff, ‘Protected characteristics and social perceptions: an analysis of the meaning of “membership of a particular social group”’, in Feller, *supra* note 11, pp. 263-311.

<sup>18</sup> *Ibid.*, pp. 304 & 308.

<sup>19</sup> UNHCR, *The Protection of Lesbian, Gay, Bisexual, Transgender and Intersex Asylum-Seekers and Refugees: Discussion Paper*, Geneva: 22 September 2010, para. 15.

<sup>20</sup> UNHCR, *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, Geneva: 21 November 2008, para. 22.

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often is their primary reason for fleeing and applying for refugee status. Women fear admitting rape and domestic violence, girls may not state that they are fleeing female genital mutilation and LGBT refugees will seldom self-identify in front of unknown and possibly prejudiced RSD officials.

The protection of refugee women and LGBT refugees not only requires a gender-sensitive interpretation of the definition of refugee, but also a gender-sensitive RSD procedure.<sup>21</sup> Often women's refugee status is derivative, based on their husband's claim, for example, while in many cases their own claim for refugee status may be as strong as, or stronger than, that of their male relative.<sup>22</sup> If women are not interviewed separately they can risk being denied asylum based on any gender-related persecution claim they may have.

Similarly, LGBT refugees risk having their claim denied if they are not able to speak openly about their sexual identity, how they were treated in their home countries based on that identity, and how it led to their flight. In Iraq for example, there is a growing body of evidence that gay men are being selectively targeted, attacked and killed by both Sunni insurgent groups and Shia militias.<sup>23</sup> As a result, gay Iraqi men flee to Lebanon, Jordan and Syria. Their persecution claim for refugee status is based almost exclusively on their sexual orientation which they must be able to articulate in order to have their asylum application approved in spite of repressive host country laws toward LGBT persons.

### III. Inclusion

A report by the Organization for Refuge, Asylum and Migration (ORAM) and the Helsinki Citizens' Assembly on LGBT refugees in Turkey found that having escaped persecution in their countries of origin, LGBT refugees confront significant new challenges to their safety, security and protection in Turkey. They are required to live in small, interior towns and wait a year or more to be recognised as refugees. Many fear leaving their homes due to targeted violence from local communities. They have very limited access to social support, employment, or medical care and local police are often not responsive to their complaints of violence and harassment.<sup>24</sup>

Most of those interviewed report having been physically attacked at least once –beaten, sexually assaulted, threatened with weapons, followed home and propositioned for sex.<sup>25</sup> Interviews with LGBT refugees in Kampala, Uganda

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<sup>21</sup> Haines, *supra* note 13, p. 349.

<sup>22</sup> *Ibid.*

<sup>23</sup> S. Corrêa, R. Petchesky & R. Parker, *Sexuality, Health and Human Rights*, London and New York: Routledge, Taylor and Francis Group 2008, p.201.

<sup>24</sup> Helsinki Citizens' Assembly and the Organization for Refuge, Asylum and Migration, *Unsafe Haven: The Security Challenges Facing Lesbian, Gay, Bisexual and Transgendered Asylum Seekers and Refugees in Turkey*, June 2009, p. 1.

<sup>25</sup> *Ibid.*, p. 7.

found similar problems.<sup>26</sup> The refugees, who had formed their own association, highlighted discrimination from their own community as well as from the host community; many had been kicked out of their homes by their parents and siblings and moved frequently due to harassment and violence experienced at the hands of neighbouring host community members. Many supported themselves by working as commercial sex workers; the only livelihood option they deemed viable—a livelihood strategy that heightened their risk of violence, arrest, and disease. Until a local human rights organisation found a Congolese doctor who would provide medical care for them, they had difficulty accessing appropriate, sensitive health services. They also highlighted security as their foremost concern. Many reported being raped, either in their home countries or by clients in Uganda. Two weeks before the author's meeting with them, the female leader of their association had been abducted and raped and in 2009 a member of the association disappeared and group members fear he was murdered.<sup>27</sup>

Fearing for their safety, few LGBT refugees are going to access services, especially when those services are not gender or LGBT-sensitive. In fact, in Turkey, as a result of harassment and violence, many LGBT refugees feared leaving their homes and minimised the time they spent outside.<sup>28</sup> In addition to the verbal harassment and physical attacks by the local population, LGBT refugees reported harassment and marginalisation by other asylum seekers and refugees—some even said that they were treated more harshly by other refugees than by the local Turkish population.<sup>29</sup> Similarly, the LGBT refugees interviewed in Kampala were among the most isolated, marginalised, fearful group of refugees this author has met in more than 20 years of international refugee work.

The term 'double marginality' has been coined to highlight how the effect of being both LGBT and a refugee is not simply the cumulative sum of belonging to both groups but rather that these marginalisations are compounded, yielding profound distancing from traditional support systems and resources.<sup>30</sup> Others refer to this as intersectionality—the multiple forms of discrimination that can affect the lives of women<sup>31</sup> (refugee + female or female + black) which can also be applicable to LGBT refugees. Not surprisingly, LGBT refugees report avoiding language classes and vocational training courses because of mistreatment by other asylum seekers and refugees.<sup>32</sup> LGBT refugees reported not only being denied social services, but also being subject to degrading treatment by service

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<sup>26</sup> Based on the author's focus group discussion with 20 LGBT refugees from the Great Lakes living in Kampala, Uganda on 2 October 2010.

<sup>27</sup> *Ibid.*

<sup>28</sup> Helsinki Citizens' Assembly, *supra* note 23, p. 18.

<sup>29</sup> *Ibid.*, p. 19.

<sup>30</sup> T. Randazzo, 'Social and Legal Barriers: Sexual Orientation and Asylum in the United States', in: E. Luibhéid and L. Cantu (eds.), *Queer Migrations: Sexuality, U.S. Citizenship, and Border Crossings*, Minneapolis, MN: University of Minnesota Press 2005, p. 38.

<sup>31</sup> A. Edwards, 'Transitioning Gender: Feminist Engagement with International Refugee Law and Policy 1950 – 2010', *Refugee Survey Quarterly: Gender Equality and Refugee Women*, 2010-29, p. 39.

<sup>32</sup> *Ibid.* p. 20.

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providers and other consumers.<sup>33</sup> The very few LGBT refugees who managed to find employment report harassment, exploitation and violence at the work place as well as termination from their work because of their sexual orientation or gender identity.<sup>34</sup> They also reported mental health problems such as depression, anxiety, suicidal thoughts and feelings of loneliness and isolation, with little access to mental health services and no one to talk to about these feelings.<sup>35</sup>

Other, non-LGBT refugee women may face some of the same problems with access to services and/or, at times, the services offered may further heighten their vulnerability. Often, in an attempt to address inherent gender inequality, service providers target or prioritise women for training and employment programmes. While considered good practice, there is little recognition about how these programmes might both add to their overwhelming responsibilities and workloads and how they might actually heighten their risk of gender-based violence. These programmes can also further marginalise and emasculate men leading to frustration, idleness, and the potential for violence. For example, our research in the Somali camps in Ethiopia found NGO programmes targeting women with income generation projects such as selling biscuits and vegetables door-to-door throughout the camps. However, when the women returned home, their spouses demanded the money they earned and beat them if they refused to hand over their earnings.<sup>36</sup>

When programming in refugee settings and addressing marginalisation it is important to identify who is being excluded, which age cohorts, which gender, including looking at the intersectionality of multiple factors or characteristics. Only by identifying those who are being socially excluded can one ensure that programmes and services promote access and inclusion.

Traditional thinking has been that refugee women and children are *de facto* vulnerable and marginalised.<sup>37</sup> They are often seen as helpless, as victims and as needy. Fortunately, over the past 20 years, views have shifted towards seeing women as actors and economic agents. The humanitarian community has begun to recognise women's resilience, their ability to adapt and to provide for their children under the most harrowing of circumstances and their willingness to put their own health and safety at risk for the sake of their families. As we assess opportunity and the social, human and financial assets refugees possess or have access to, we are likely to find that those most marginalised are not women and children at large but rather adolescent boys, married girls, the elderly, those with disabilities and LGBT refugees.

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<sup>33</sup> Helsinki Citizens' Assembly, *supra* note 23, p. 27.

<sup>34</sup> *Ibid.*, p. 24.

<sup>35</sup> *Ibid.*, p. 27.

<sup>36</sup> Women's Refugee Commission, *Working Women at Risk: The Links between Making a Living and Sexual Violence for Refugees in Ethiopia*, September – October 2008, report found at: [http://www.womensrefugeecommission.org/component/docman/cat\\_view/68-reports/80-livelihoods?orderby=dmdate\\_published&ascdesc=DESC&start=10](http://www.womensrefugeecommission.org/component/docman/cat_view/68-reports/80-livelihoods?orderby=dmdate_published&ascdesc=DESC&start=10) (17 April 2011).

<sup>37</sup> Edwards, *supra* note 20.

During an assessment of urban refugee livelihoods in Kampala, single female heads of household came across as highly vulnerable and marginalised. Interestingly though, married women seemed often to fare better than married refugee men. The women tended to be more creative in finding ways to adapt their skills and experiences to the urban job market; refugee men seemed far less able, or perhaps willing, to do this. As a result, many of the refugee men felt like failures – no longer able to provide for their families. The author heard stories of refugee men committing suicide or leaving their families out of shame at their inability to support and protect their spouses and children.<sup>38</sup>

Refugees in urban settings generally attempt to access host government services—schools and health care as well as specialised services which may be implemented by UNHCR’s NGO partners—vocational training programmes, food assistance, micro-finance loan programmes and the like. Access to the former is often limited due to costs associated with those services as well as cultural and linguistic barriers. Access to the latter is often restricted by transportation costs, eligibility criteria and the, often very limited, numbers of refugees served through such programmes. In camp settings, access to services is more often limited by refugees’, especially women’s, time constraints, the lack of services (such as secondary or tertiary education), and the quality of the services provided (vocational training programmes, for example, that are completely disconnected from job market realities).

Further, NGOs may intentionally or unintentionally restrict access to their programmes – targeting only women, for example, or selecting 200 programme participants based on the recommendations of refugee leaders which are sometimes self-serving. NGOs have also been known to establish their own vulnerability criteria for participant selection—orphans, widows, unaccompanied children etc.—which may not reflect the vulnerabilities the community itself would identify. More often than not the objectives of the services designed and implemented have little to do with promoting gender equality and equal access for all.

#### **IV. Equality**

While the term ‘gender’ is often conflated with ‘women’, gender actually refers to the social differences between females and males throughout the life cycle that are learned, and though deeply rooted in every culture, are changeable over time and have wide variations both within and between cultures.<sup>39</sup> Men and women interpret their gender through varied, diverse constructs and one’s sexual identity and gender identity may or may not match and overlap in socially recognised ways. Sexual expression is one variant of one’s gender

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<sup>38</sup> Based on the author’s household interviews conducted with Congolese and Burundian refugees in Kampala from 27 Sept. – 7 Oct. 2010.

<sup>39</sup> Inter-Agency Standing Committee, *Women, Girls, Boys and Men: Different Needs – Equal Opportunities, Gender Handbook in Humanitarian Action*, Dec. 2006, p. 1.

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construct and as such, gender is inclusive of sexual orientation and sexual identities.

We need to understand ‘gender’ expansively—inclusive of both the different socially constructed roles males and females enact but also recognising those differences within and between males as well as within and between females. We need to stop conflating ‘gender’ with ‘sex’ and recognise that biological genitalia may have little to do with identity and the presence or absence of ‘male’ and ‘female’ socially prescribed characteristics, attitudes, and aptitudes. Undertaking a gender analysis, therefore, is more complex than assessing how men and women access services and opportunities but includes how subgroups within the male and female populations have access to these same opportunities and the specific barriers or challenges they face in doing so. This requires that gender analysis and gender-sensitive assessments go both broader and deeper. This, however, seldom happens. We ask ‘have women been consulted?’ instead of asking ‘which women have been consulted and which men?’

A Human Rights First report, for example, notes the inadequate recognition of LGBT refugees as a category of persons with particular needs and highlights how UNHCR’s primary tools to identify at-risk individuals and specific needs within refugee populations—included the Heightened Risk Assessment Tool; the Age, Gender, and Diversity Mainstreaming Framework; and the Participatory Assessment Tool—contain limited reference to sexual orientation or gender identity as a basis of vulnerability, thereby limiting the ability of UNHCR and partner staff to identify and recognise the protection needs of LGBT refugees.<sup>40</sup> When such individuals and populations are not identified, their invisibility limits understanding and inhibits appropriate policy development and programmatic responses.

Gender equality is likewise not interchangeable with women’s equality. It is more inclusive. The term more correctly refers to the equal enjoyment by females and males of all ages and regardless of sexual orientation, of rights, socially valued goods, opportunities, resources and rewards.<sup>41</sup> The UN has the responsibility to ensure that all its actions promote and protect gender equality.<sup>42</sup> Yet, even the UN entities couch discussion about gender equality in terms of women’s equality and not about equality for sub-groups of women and men—women and men who stand outside the mainstream, who challenge cultural norms and socially prescribed roles, including LGBT persons.

What would it really mean to promote equal access and opportunity for *all*? Not just the men and women who live up to their socially defined gender roles

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<sup>40</sup> Human Rights First, *Persistent Needs and Gaps: The Protection of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Refugees: An Overview of UNHCR’s Response to LGBTI Refugees and Recommendations to Enhance Protection*, 30 September 2010.

<sup>41</sup> Inter-Agency Standing Committee, *ibid.*, p.1.

<sup>42</sup> See United Nations Rule of Law website at: [http://www.unrol.org/article.aspx?article\\_id=28](http://www.unrol.org/article.aspx?article_id=28).

but all men and women, gay and straight, disabled, young and old, migrant and refugee? If we are to achieve the Millennium Development Goals (MDGs), including Goal #3, “promote gender equality and empower women”, isn’t inclusive equality for *all* a prerequisite? Yet, as countries struggle and plough ahead in an attempt to meet the MDGs, how much discussion or attention has been focused on LGBT rights and equality for LGBT persons? Scant, little, none... Does this imply that gender equality is not inclusive, not for all? Does this imply that gender equality is only for those who adopt the gender roles deemed socially or normatively acceptable at this moment in time? And if we do not have the guidance and leadership from the UN and governments at the top of the food chain how can we ever expect to protect those doubly marginalised by inequality like the LGBT refugees around the world?

The Swedish International Development Cooperation Agency (SIDA) notes that gender and sexuality are both social constructs, that both are about values and meanings and concerned with norms that permit and constrain certain forms of social and sexual expression. That ultimately both are about power and politics.<sup>43</sup> Women’s sexuality and the sexuality of LGBT persons are repressed by the types of sexual relations that are permitted and proscribed in different contexts. We cannot assume that work on gender will address issues around repressive notions of sexuality. Sexual rights, however, were affirmed as human rights in the Beijing Platform for Action.<sup>44</sup>

Sweden’s international policy expands on the Platform for Action and states that “...all people, irrespective of sex, age, ethnicity, disability, gender identity, or sexual orientation, have a right to their own body and sexuality”.<sup>45</sup> The question, therefore, is if we can achieve gender equality without addressing sexual rights? The two are entangled and fundamentally linked. The ability to have control over one’s body is impacted by gender power relations and heterosexual male gender privilege. Further, sexuality is a fundamental expression of one’s gender identity. “Sexuality matters because it is about power and without basic rights over our own bodies and over fundamental life choices, many other rights become simply unattainable”.<sup>46</sup>

In the context of refuge and displacement, sexual harassment, abuse, sexual violence and homophobia may not only be heightened, they may be much more difficult to mitigate. Linguistic and cultural barriers, unaccustomed social norms and lack of access to systems of justice may make recourse all but impossible. In addition, the social exclusion and physical insecurity experienced by all refugees, and especially by LGBT refugees, further increases their vulnerability. Gender and sexuality are intricately intertwined with discrimination, social exclusion, gender-based violence, and risk of HIV. As a

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<sup>43</sup> A. Runeborg, *Sexuality: A Missing Dimension in Development. SIDA Concept Paper – Brief Version*, Swedish International Development Cooperation Agency, Stockholm: May 2008, p. 5.

<sup>44</sup> Fourth World Conference on Women, *Platform for Action*, Beijing, 1995, para. 96.

<sup>45</sup> Sweden’s international policy on Sexual and Reproductive Health and Rights, Ministry of Foreign Affairs, 2006, p.8.

<sup>46</sup> Runeborg, *supra* note 42, p. 7.

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consequence of these linkages and as various forms of sexual expression become both more openly acknowledged as well as more fluid,<sup>47</sup> can we really talk about gender equality without specifically referencing sexuality and gender identity?

### Conclusion

All UN agencies, including UNHCR, are mandated to promote gender equality through their policies and programmes. One could argue however that no UN agency interprets this mandate as inclusive of promoting equality for LGBT persons. There is an assumption that one can promote and perhaps, at some point, achieve gender equality without acknowledging and addressing the needs of some 5 to 10 percent of the populations they serve.<sup>48</sup> LGBT persons are not only left out of the gender and gender equality conversations, they are overlooked, ignored and further disenfranchised by the religious mores, punitive laws and social norms in place. For LGBT refugees this is highly problematic. Not only may their sexual orientation and gender identity be the primary basis for their persecution claim, the countries of asylum where they flee for protection and safety are often as discriminatory and repressive as those they have left.

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<sup>47</sup> Sexual fluidity: Studies show that sexuality and gender are not black or white concepts. These aspects of identity formation lie along a continuum where on one end people strongly feel heterosexual or homosexual with regards to sexuality, and male or female with regards to gender identity. Most people lean towards and identify more with their male or female gender and their heterosexual orientation. Whereas gay, bisexual, asexual, and transgender people have a mental notion of where they lie on the continuum and firmly establish that as their identity. Some people experience sexual fluidity—people who experience more homosexual desires one day or for a period of time, and then reverse for a period of time to have more heterosexual desires. This concept is forcing us to reconsider our ideas about sexuality and gender identity at <http://queersunited.blogspot.com/2009/01/open-forum-sexual-fluidity.html> (15 April 2011)

<sup>48</sup> Percentages are nearly impossible to specify due to prejudice, fear of self-identifying, and definitions, such as identifying as bisexual and/or gay, differences between how one defines oneself as opposed to one's sexual practices, or on the basis of incidences versus prevalence. Many men, for example, engage in sexual activity with other men but do not define themselves as gay or even bisexual. A significant number of studies have been conducted in an attempt to document the percentage of LGBT persons within a given population. Findings vary from 1 to 15 percent, acknowledging potential under-reporting based on the afore-referenced issues. Two of the most famous studies of the demographics of human sexual orientation were Dr. Alfred Kinsey's *Sexual Behavior in the Human Male* (1948) and *Sexual Behavior in the Human Female* (1953). These studies used a seven-point spectrum to define sexual behaviour from 0 for completely heterosexual to 6 for completely homosexual. Kinsey concluded that a small percentage of the population were to one degree or another bisexual (falling on the scale from 1 to 5). He also reported that 37 percent of men in the U.S. had achieved orgasm through contact with another male after adolescence and 13 percent of women had achieved orgasm through contact with another woman.  
[http://en.wikipedia.org/wiki/Demographics\\_of\\_sexual\\_orientation](http://en.wikipedia.org/wiki/Demographics_of_sexual_orientation) (21 January 2011)