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## Migration and Gender for Iranian LGBT

Kameel Ahmady

### Abstract

This article specifically addresses the country of the Islamic Republic of Iran and the very important issues pertaining to LGB individuals in Iran and their migration process. LGB individuals suffer from human rights violations and are denied the basic freedom of being who they are due to their sexual orientation or gender identity. Faced with official intransigence many LGB are compelled to escape persecution in their countries of origin and seek refuge in countries that provide them greater protection. Their sexual orientation becomes an issue when seeking asylum. This article explores the relationship between gender and the migration process. The article offers an account of the complexity of LGB seeking asylum as they face a myriad of threats, risks and vulnerabilities throughout all stages of the displacement cycle.<sup>1</sup>

### Introduction

LGBT migration is the movement of lesbian, gay, bisexual, transgender, individuals (LGBT) around the world and domestically often to escape discrimination or ill treatment due to their gender and or sexual orientation. In reality, their immigration journey and asylum protection exemplifies a dramatic and often brutal experience. The migration process itself creates opportunities for homophobic target forms of discrimination and human rights violations. Indeed, often the immigration experience itself is a repeat of the very factors that forced LGBTs to emigrate in the first place: brutish treatment, open disdain for their mere existence, sexual assaults and the chronic hovering presence of anxiety and fear. The relationship between gender and sexual orientation is a severely understudied aspect of migration often assumed to be exclusively driven by income gaps between origin and destination countries. This results in the extreme vulnerability and specific challenges of LGBT migrants mostly given second shift.<sup>2</sup>

### Transgender

It is challenging for all asylum seekers to demonstrate that they are at risk of persecution but the challenges are even more daunting for individuals who identified as transgender applicants. Transgender fall within two main categories of gender identity: ‘normative’, where one’s biological sex and felt gender are in alignment, and ‘transgender’, where one’s felt gender differs from one’s biological sex. Transgender identity challenges the binary conception of sexuality.<sup>3</sup> In the culture of homophobia there is an irrational fear of gay, lesbian, bisexual, and transgender individuals.<sup>4</sup> Similar to homophobia,<sup>5</sup> transphobia is prevalent in many parts of the globe, even in countries where it is legal to be transgender.<sup>6</sup>

Transgender identity often excludes people from the protections of citizenship in their country of origin, and puts them at risk for forced sterilisation, castration, corrective rape, domestic violence,

<sup>1</sup> Forced Migration Review, Issue 42, (April 2013), *Ensuring protection for LGBTI Persons of Concern*, [www.fmreview.org/sogi](http://www.fmreview.org/sogi)

<sup>2</sup>Fagan, J., and Houdart, F. (July 2014) The World Bank, *Pink Migration - Rising Tide of LGBT Migrants?*

<sup>3</sup> Edited Adams, M., and Bell, A. (2007). *Teaching for Diversity and Social Justice*. 3<sup>rd</sup> edition, Routledge.

<sup>4</sup>Edited Renzetti, C., and Edleson, J. (2008). *Encyclopedia of Interpersonal Violence*, SAGE Publications.

<sup>5</sup> Potok, M. (February 2011), Intelligence Report, Issue 140, *Anti-Gay Hate Crimes*

<sup>6</sup> Bach, J. Forced Migration Review, *Assessing Transgender Asylum Claims* | [www.fmreview.org/technology](http://www.fmreview.org/technology)

forced sex work, institutionalised violence and even execution. In Europe, many countries require people to be sterilised before they can legally change gender. One of the biggest challenges lies in the public and authorities' lack of awareness that gender is different from biological sex. 'Transitioning' is the outward process of publicly assuming one's felt gender through clothing, behaviour, hormone use or surgery. In Indonesia, the national government recognises a transgender person only after s/he has undergone gender alignment surgery but people in the earlier stages of transition, or those with no desire for surgery, are unprotected. Many transgender people live in chronic fear of discovery.

Even after reaching a receiving host country, transgender asylum seekers continue to be at risk. Research has identified transgender people as "particularly vulnerable to physical, sexual and emotional abuse within asylum detention centres and community-based single sex shared accommodation" and therefore "at a high risk of self-harm or suicide" during the asylum process.<sup>7</sup>

Although the international LGBT community is slowly gaining worldwide legal and social recognition, in the Middle East, the situation for the LGBT community remains stagnant and dismal.<sup>8</sup> Across the Middle East, the LGBT community faces varying degrees of repression, due to laws explicitly directed against them and social stigma enveloped in disgust, disdain and hatred. However, Tel Aviv has frequently been referred to as one of the most gay-friendly cities in the world,<sup>9</sup> famous for its annual Pride Parade and gay beach.<sup>10</sup> Nevertheless, with the exception of Israel,<sup>11</sup> most Middle Eastern countries openly condemn the LGBT community. Consequently, the LGBT community in the Middle East exists covertly and subversively with many members of the community living in chronic and sustained fear of being discovered. Barring a few exceptions, the outlook for LGBT individuals in the Middle East is bleak, or even outright deadly. LGBT individuals often face major struggles in their quotidian lives and many of their struggles are social in origin, such as being bullied in school, disowned, raped, beaten by family members or feeling compelled to run away from home, a phenomenon seen in most parts of the world, including the United States. These abuses are often not reported to authorities due to the threat of additional violence from the officials themselves.<sup>12</sup>

The narrative of "LGBT rights" itself is used as a tool of oppression. Hate crimes against queer communities are very much a part of their existence. Even the nominally inclusive term 'LGBT' that represents lesbian, gay, bisexual, and transgender sexualities, is restrictive. In the Middle East this term is viewed as a Western ideology, reflecting a history constructed in the West, loaded with struggles, accomplishments, experiences, and identities unique to Western societies, and not necessarily applicable to Iranian society. For these reasons, even this 'progressive' terminology can be alienating, as it fails to describe the struggles of sexual orientation and gender identity in Iran.

In Yemen, Mauritania, Nigeria, Qatar, Saudi Arabia, Afghanistan, Somalia, (in some southern regions), Sudan, the United Arab Emirates and Iran homosexuality may be punishable by death.<sup>13</sup> In

<sup>7</sup> Cowen, T., Stella, F., Magahy, K., Strauss, K., and Morton, J. (March 2011) Equality Network BEMIS and GRAMnet, *'Sanctuary, Safety and Solidarity: Lesbian, Gay, Bisexual, Transgender Asylum Seekers and Refugees in Scotland'*

<sup>8</sup> Whitaker, B., and Wilson, A. (June 2011), *Unspeakable Love: Gay and Lesbian Life in the Middle East*, University of California Press

<sup>9</sup> Calgary Herald, (June 2011) *The World's Most Gay Friendly Places* Retrieved from <http://www.nytimes.com>

<sup>10</sup> Grant, A., (July 2010). "Dispatch | Gay Tel Aviv". *The New York Times*.

<sup>11</sup> The Independent, (September 2008) *The Five Most Improved Places For Gay Tolerance*, Retrieved [www.independent.co.uk/life-style/love-sex/taboo](http://www.independent.co.uk/life-style/love-sex/taboo)

<sup>12</sup> LGBT Rights in Iran | Middle East Research and Information, Retrieved [www.merip.org/lgbt-rights-iran](http://www.merip.org/lgbt-rights-iran) ...

<sup>13</sup> Bearak, M., and Cameron, D. (June 2016) *The Washington Post*, *Here are the 10 Countries Where Homosexuality May Be Punished by Death*

101, boulevard Raspail, 75006 Paris – France Tel: +33(0)1 47 20 00 94 – Fax: +33 (0)1 47 20 81 89 Website: [www.ags.edu](http://www.ags.edu) (Please cite this paper as the following: Author (2016). Title. *The Journal of International Relations, Peace and Development Studies*. Volume 4.

Algeria, Bangladesh, Chad, Malaysia, Maldives, Pakistan, Qatar, Somalia and Syria, homosexuality is illegal.<sup>14</sup>

Many Islamic societies prohibit homosexuality and in many of these countries it is sanctioned by death. In Islamic societies, both judicial and extra-judicial measures taken against homosexuality communicate a clear message that homosexuality is wrong, immoral, illegal and thus punishable.<sup>15</sup> In Islamic countries, LGBT individuals<sup>16</sup> lack legal protection and face widespread social stigma in the countries that are heavily influenced by conservative and religious values. LGBT identity is negated by the law itself.<sup>17</sup> For example, there have been a number of reliable reports of extra judicial persecution, assault, and murder of gay men in Iraq.<sup>18</sup> The Penal Code of Iran is based on strict Sharia law that reserve some of the harshest penalties for those convicted of same-sex sexual conduct. For example, under Article 124, a man found guilty of kissing another man “with lascivious intent” is punishable “by up to 60 lashes of the whip. Under Article 123, the Penal Code further stipulates that “if two men, unrelated to one another, lie, without necessity, naked under the same cover, they will each be punished by up to 99 lashes of the whip.”<sup>19</sup>

Research published by the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) serves as a stark reminder of just how widespread such criminalisation can be. In a total of 74 countries, same-sex sexual contact is a criminal offence. In 13 countries, being gay or bisexual is punishable by death. These are: Sudan, Iran, Saudi Arabia, Yemen, Mauritania, Afghanistan, Pakistan, Qatar, UAE, parts of Nigeria, parts of Somalia, parts of Syria and parts of Iraq. In 17 countries, bans are in place to prohibit 'propaganda' interpreted as promoting LGBT communities or identities. These are; Algeria, Egypt, Libya, Morocco, Nigeria, Somalia, Tunisia, Iraq, Iran, Jordan, Kuwait, Lebanon, Qatar, Saudi Arabia, Syria, Lithuania and Russia. In 17 countries, bans are in place to prohibit 'propaganda' interpreted as promoting LGBT communities or identities. These are: Algeria, Egypt, Libya, Morocco, Nigeria, Somalia, Tunisia, Iraq, Iran, Jordan, Kuwait, Lebanon, Qatar, Saudi Arabia, Syria, Lithuania and Russia. 40 countries retain a 'gay panic' clause which enables people to use as a defence for committing crimes such as assault or murder that they were provoked because the person was gay, lesbian or bisexual.<sup>20</sup>

None of the Islamic countries can be said to offer social or legal environments that are supportive of LGBT, at least not at the present time.<sup>21</sup> Same-sex relationships have historically existed and continue to persist even in today’s toxic environment, though silenced and under-recognized. The lives of LGBT Iranians are readily hidden, sheltered, or censored from public appearances. It is almost as if they do not exist.<sup>22</sup> There is a lack of social community support mechanisms in place or enough affirmative Islamic organizations for LGBT individuals that can provide the social and psychological

<sup>14</sup>Maldives Penal Code, s411; Pakistan Penal Code (Act XLV of 1860), See also, Whipple, S. (May 2012 ) Political Science 14, *Homosexuality in Africa: The Causes of State discrimination Based on Race*

<sup>15</sup> Jaspal, R., (2018) Islam and Homosexuality: Identity, Threat and Sexual Health among Muslim Gay. In: J.M. Ryan and H. Rizzo, eds. *Sexualities in the Contemporary Middle East*

<sup>16</sup> Jaspal, R., (2018) Islam and Homosexuality: Identity, Threat and Sexual Health among Muslim Gay. In: J.M. Ryan and H. Rizzo, eds. *Sexualities in the Contemporary Middle East*

<sup>17</sup> Ottosson, D. (May 2010 ) ILGA, , The International Lesbian, Gay, Bisexual, Trans and Intersex Association, *State-sponsored Homophobia: A World Survey of Laws Prohibiting Same sex Activity Between Consenting Adults*

<sup>18</sup> Global justice Project Iraq (May 2009), *Homosexuality and the Criminal Law in Iraq*, Retrieved at [gipi.org/.../21/homosexuality-and-the-criminal-law-in-iraq](http://gipi.org/.../21/homosexuality-and-the-criminal-law-in-iraq)

<sup>19</sup> Parsi, A. (January 2015) , Harvard International Review, *Iranian Queers and Laws Fighting for Freedom of Expression*

<sup>20</sup> Fenton, S. (May 2016) The Independent, *LGBT Relationships Are Illegal in 74 Countries.*

<sup>21</sup> LGBT Activism in the Middle East and North Africa (April 2018) *Audacity in Adversity*, Retrieved at [www.hrw.org/report/2018/04/16/audacity-adversity](http://www.hrw.org/report/2018/04/16/audacity-adversity)

<sup>22</sup> LGBT Activism in the Middle East and North Africa (April 2018) *Audacity in Adversity*, Retrieved at [www.hrw.org/report/2018/04/16/audacity-adversity](http://www.hrw.org/report/2018/04/16/audacity-adversity)

comfort so desperately needed. Whilst the public display of ISIS, LGBTs' persecutions have attracted international attention over the past years, as in Syria. The situation was already precarious for LGBT individuals long before ISIS took control. Indeed, the situation began to rapidly deteriorate for Iraq's LGBT community after the fall of Saddam Hussein in 2003. Islamist groups emerged from this political chaos and began targeting gay people, killing an estimated 200 LGBT people in 2012 alone.<sup>23</sup> Today, these same groups have partnered with the Iraqi government in the fight against ISIS, giving them the freedom to continue their persecution of LGBT individuals.<sup>24</sup>

### Iranian Laws

With respect to LGB individuals, Iran's legal system is emblematic, unequivocal and adamant in its non-acceptance and non-recognition of homosexuality. With the approval and ratification of Parliament and the Guardian Council in Articles 108 through 140 of the Iranian Civil Code distinctly deal with same-sex sexual activities and their punishments in detail. The adverse and broad-ranging impact of these laws and punishment of criminalizing consensual, private same-sex conduct between two adults are punctilious in its interpretation that same sex relationships are simply wrong. An Iranian member of parliament Mohsen Yahyavi blatantly admitted that the government in Iran believes that homosexuals should be executed or tortured and possibly both.<sup>25</sup> The Judiciary does not acknowledge the concept of sexual orientation other than heterosexuality and thus from a legal standpoint there are no homosexuals or bisexuals, only persons committing homosexual acts. As Iran is ruled by Shari law, there is a particularly harsh legal stance on homosexuality including lashes and death penalty. Homosexual relation without anal penetration carries a penalty of 100 lashes and anal intercourse will be punished with death by hanging.<sup>26</sup> According to Sharia law individuals can be convicted of homosexuality only if they confess four times or if four "righteous" Muslim men testify they witnessed a homosexual act taking place.<sup>27</sup> In essence, the mainstream Islamic stance on homosexuality is fundamentally negative.

The new Islamic Penal Code targets those whose sexuality is believed to defy social norms and serves as a justification for state action to remove the "offenders" from the community. Within the structure of many penal codes, if not in the minds of the general public, sodomy laws are conflated with crimes of moral turpitude such a rape, sexual assault, incest and sexual abuse of children. This has let the public to believe that homosexuality is on par with abhorrent crimes of sexual violence with acts of non-procreative sex and innocent defenceless children.<sup>28</sup> Rape and child sexual abuse are reprehensible and heinous crimes; being LGBT is not. As recognised by the American Psychiatric Association, pedophilia is not a sexual orientation,<sup>29</sup> whilst homosexuality is a sexual orientation. Unfortunately homosexuals and other members of the LGBT community are often lumped with paedophiles and sexual deviants that justifies their ostracisation from society, punishment and execution.<sup>30</sup>

<sup>23</sup> McDonald, J., (September 2015), *Iraq's Queer Community to Receive Support & Protection From New Organization*, Retrieved at [www.out.com/news-opinion/2015/9/29/iraqs-queer](http://www.out.com/news-opinion/2015/9/29/iraqs-queer).

<sup>24</sup> McDonald, J., (September 2015), *Iraq's Queer Community to Receive Support & Protection From New Organization*, Retrieved at [www.out.com/news-opinion/2015/9/29/iraqs-queer](http://www.out.com/news-opinion/2015/9/29/iraqs-queer)

<sup>25</sup> The Daily Mail Online, (November 2007), *Gays should be tortured and hanged*. Retrieved at [www.dailymail.co.uk/news/article](http://www.dailymail.co.uk/news/article),

<sup>26</sup> Parsi, A., (January 2015) Harvard International Review, *Iranian Queers and Laws Fighting for Freedom of Expression*, See also, Jaspal, R. (2018) *Islam and Homosexuality: Identity, Threat and Sexual Health among Muslim Gay*. In: J.M. Ryan and H. Rizzo, eds. *Sexualities in the Contemporary Middle East*

<sup>27</sup> Jaspal, R. (2018) *Islam and Homosexuality: Identity, Threat and Sexual Health among Muslim Gay* in: J.M. Ryan and H. Rizzo, eds. *Sexualities in the Contemporary Middle East*,

<sup>28</sup> Jaspal, Rusi . (2018) *Islam and Homosexuality: Identity, Threat and Sexual Health among Muslim* In: J.M. Ryan and H. Rizzo, eds. *Sexualities in the Contemporary Middle East*.

<sup>29</sup> Wetzstein, C. (October 2013), The Washington Times, *APA to correct manual: Pedophilia is not a 'sexual Orientation*.

<sup>30</sup> Schlatter, E. and Steinback, R. (December 2010) *Alternet Media* , *10 Hateful Anti-Gay Myths Debunked*

Homosexuality has always been a contentious topic in Iran due to the stigma surrounding homophobia views of certain members of society. Iran is a traditional society that operates on a basic premise that homosexuality is an abnormality.<sup>31</sup> Mashregh News- a news website "close to the security and intelligence organizations, has described homosexuals as "individuals who have become mentally troubled in natural human tendencies, have lost their balance, and require psychological support and treatment."<sup>32</sup> Traditional society dealing with what are assumed abnormalities such as heterosexuality is neither a new story in Iran nor is the combat against it, but the manner in which Iran exposes perceived "abnormalities" to maintain control over its sexual minorities is yet a controversial issue rooted in its past and in the present. From the work of Mehrangiz Kar of the International Gay and Lesbian Human Rights Commission concludes that "the dominant political elite, relying on an official religious stance, refuses to tolerate any non-conforming sexual conduct or gender expression."<sup>33</sup> Security officers often raid the parties and other gatherings of LGBT Iranians, sometimes leading to arrests and detainment of LGBT rights activists who then face additional obstacles in their efforts to accommodate their identity in the current context of Iranian society.<sup>34</sup>

Not only are there explicit laws forbidding homosexuality, the government's attitude towards LGBT manifests itself in non-codified forms, including unofficial policies that are intolerant towards LGBTs. These policies often discourage sexual minorities from reporting hate crimes which will expose them to an even greater risk of abuse and labelling LGBT as a mental illness<sup>35</sup>

### **LGBT Existence in Iran**

Iran is strongly patriarchal and by its nature, extols masculinity. Gender binary is the classification of sex and gender into two distinct, opposite and disconnected forms of masculine and feminine.<sup>36</sup> In Iran there is no standardized measure of gender binaries.<sup>37</sup> Sexual desires are bound to intricate social definitions to such a significant extent that sometimes it is difficult for homosexuals themselves to distinguish, understand and accept their own orientations. In Iran, when enquiring about someone's gender, one cannot find an appropriate response that yields a third possibility. Either one is a man or a woman. This fact is so categorically that it has left no room for doubt.<sup>38</sup> Any departure from this system of sexual classification in Iran is categorized under the auspice of mental and behavioural disorders. In Iran, complementarity and unity of the two sexes, each associated with distinguishable gender roles is emphasised.<sup>39</sup>

The societal control element has always prevailed. It is the method and approach in which Iran exposes these assumed abnormalities in order to maintain control over its sexual minorities. The current Iranian penal code upholds a zero-tolerance approach with respect to LGBT individuals, but often these rules and regulations exist only in law. Then there are moments when the laws roar in

<sup>31</sup> Afshari, R. (September 2016), Human Rights Quarterly, Vol. 38 No. 3, pp. 814-834. Project MUSE, *LGBTs in the Islamic Republic of Iran*.

<sup>32</sup> Mashregh News. *Understanding the Evident and Hidden Dimensions of the Promotion of Homophilia in the World*

<sup>33</sup> Mehrangiz K, (July 2015) Lesbian, Gay, Bisexual and Transgender Rights in Iran, Analysis from Religious, Social, Religious, Social, Legal and Cultural Perspectives, IGLHRC,

<sup>34</sup> Parsi, A. (January 2015) , Harvard International Review *Iranian Queers and Laws Fighting for Freedom of Expression*

<sup>35</sup> O'Flaherty, M., and Fisher, J. ( January 2008) *Sexual Orientation, Gender Identity and International Human Rights Law: Contextualising the Yogyakarta Principles*, Human Rights Law Review : Volume 8, Issue 2, pages 207–248,

<sup>36</sup> Card, C. (1994). *Adventures in Lesbian Philosophy*. Indiana University Press. p. 127.

<sup>37</sup> Whitaker, B.( June 2016) The Guardian International Edition Newspaper, *LGB Rights , Everything you need to know about being Gay in Muslim Countries*

<sup>38</sup> Yip, A.K.T., (2004). *Embracing Allah and sexuality? South Asian non-heterosexual Muslims in Britain*. In: P. Kuman and K. Jacobsen, eds., *South Asians in the Diaspora: Histories and Religious Traditions*.

<sup>39</sup> Jaspal, R. (February 2014). *Homosexuality in Islam*. Paper presented at the European Society for Sexual Medicine and European Federation of Sexology Joint Annual Conference, Istanbul, Turkey

ferocious intimidating application. In cases of LGBT sanctions, paradoxically whilst there still is a great deal of pressure and oppression in Iranian society- including the fact that LGBT individuals are not immune from arbitrary arrests<sup>40</sup>- the draconian and strict rules of sanctions are sometimes jettisoned in feigned tolerance and may not be as heavy handed as they were in the past. But the fear of crack-down is always a hovering threat and omniscient. In April 2017, 30 gay individuals at a party in Bagh-e Bahadoran located in Isfahan were arrested. The Iranian Railroad for Queer Refugees (IRQR) reported that the men were charged with sodomy, drinking alcohol, and using psychedelic drugs. IRQR also reported that the men would be sent to Esfahan's Medical Jurisprudence department for anal examination in order to provide evidence of homosexual acts to the court."<sup>41</sup>

By and large, LGBTs find it daunting to "come out" and declare their true sexual orientation. This is not only an Iranian issue, but commonplace in countries where heterosexual unions are the only recognized ones and non-heterosexual identity has been frowned upon.<sup>42</sup> In such societies, a man is expected to marry, and as long as he fulfils his procreative obligations, the community does not probe into his extracurricular activities.<sup>43</sup> Some Iranian gay men, who are in heterosexual marriages prefer prostitution as the preferred way to have same-sex affairs. For others, staying in the closet is the only viable option.<sup>44</sup>

Cringly odd, the life of transgender individuals, *albeit* by no means perfect, is more comfortable than the life of homosexuals. For homosexuals in Iran it is quite daunting to openly declare their true sexual orientation. Iran is also the only Muslim country in that gives transgender citizens the right to have their gender identity recognized by the law.<sup>45</sup> Unlike homosexuals, Iran has liberal laws with regards to transgender individuals, with an encouraging government that is very supportive of financing sex changing surgeries. The 1980 Fatwa by Ayatollah Khomeini, Iran's late Supreme Leader, declared that sex assignment surgery is a "solution" to gender identity disorder. He allowed the government through this religious ruling to supervise such surgeries<sup>46</sup> commonly referred to as Gender Confirmation Surgery (GCS).<sup>47</sup> However, a deeper probe on the Iranian governments' stance on allowing GCSs reveals that it is actually another tool to destroy and persecute gays and lesbians in Iran as they are still very much ostracised. Despite the surgery, transsexual Iranians do not enjoy a privileged status in society.<sup>48</sup> There is a belief, played out by the religious clerics and supported by the government, that a person is trapped in a body of the wrong sex,<sup>49</sup> as individuals with psychosexual problems.<sup>50</sup> Iranian homosexuals are encouraged to undergo sexual reassignment surgery for their own benefit, thus discouraging LGBT to live their lives in an open and peaceful manner.

Although GCS is not an official government policy forcing gay men or women to undergo gender reassignment, the pressure can be intense. The end result is that these individuals are now compelled to live with the pain and emotional scars. There are cases of mistreatment where the patient needs

<sup>40</sup> Human Rights Violations on the Basis of Sexual Orientation, Gender Identity, and Homosexuality in the Islamic Republic of Iran, IGLHRC Submission to the 103<sup>rd</sup> Session of the Human Rights Committee ,(17 October- 4 November 2011)

<sup>41</sup> Spencer, R.( April 2017) , Jihad Watch blog affiliated with the David Horowitz Freedom Center, *Islamic Republic of Iran Arrests Over 30 Gay Men, Will Subject Them to Sodomy Tests.*

<sup>42</sup> Bancroft, J. D. and June Machover Reinisch, (October 1990) *Adolescence and Puberty*, Oxford University Press, USA

<sup>43</sup> Labi, N. (May 2007) The Atlantic Magazines , *The Kingdom in the Closet*

<sup>44</sup> Rasmussen, S. (December 2014) The Vocativ Newsletter, *Living Dangerously: What It's Like To Be Gay In Iran*

<sup>45</sup> Bagri N. T. (April 2017) Quartz News, *Iran's Policies about Transgender Rights Are Unique*

<sup>46</sup> Alipour, M.( 2016) , *Islamic Shari'a Law, Neotraditionalist Muslim Sholars and Transgender Sex-Reassignment Surgery: A Case Study of Ayatollah Khomeini's and Sheikh al-Tantawi's fatwas*, International Journal of Transgenderism, Volume 18, Issue 1, pages 91-103

<sup>47</sup> Gender Confirmation Surgeries, American Society of Plastic Surgeons. Retrieved at [www.plasticsurgery.org/reconstructive-procedures](http://www.plasticsurgery.org/reconstructive-procedures),

<sup>48</sup> Dehghan, K. ( May 2012) The Guardian International Edition, *Iran Persecution of Gay Community Revealed*

<sup>49</sup> Hamedani, A. (November 2014), BBC Persia Magazine, *The Gay People Pushed to Change Their Gender*

<sup>50</sup> Hamedani, A. (November 2014), BBC Persia Magazine, *The Gay People Pushed to Change Their Gender*

hospitalization after the surgery. Such cases of mistreatment may be seen as culminating in a medical recommendation for sex reassignment surgery and the accompanying hormonal drug therapy. Between 2006 to 2010, over 1,360 gender reassignment operations were performed in Iran.<sup>51</sup> These operations almost invariably lead to serious physical complications, depression, and in some cases, suicide. Despite the high number of gender confirmation surgeries performed in Iran, the quality of the work is poor.<sup>52</sup> Naturally this begs the question: how many LGBT did not genuinely desire the surgery?

Further, many employers openly discriminate against people they deem as queer, rendering trans-identified individuals with little financial means and resulting in poor economic survival. As sex work can be conducted legally in Iran through the Shiite notion of a temporary marriage, participation in sex work is common and protected. For a trans-identified person who has undergone GCS, it is legal to have a temporary marriage conducted as often as one per hour because there is no chance of pregnancy and thus negating any future parental responsibilities on the part of the soliciting party. The Iranian administrative system often plays a role in transgender victimization which repeatedly occurs at various familial, societal and state levels. This has been mentioned in many ethnographic studies such as the one undertaken by Najmabadi (2013).<sup>53</sup> The study illustrates how gender and sexual minorities in Iran have opted to approach the Iranian bureaucratic order through the discourse of “needs” and not “rights.” Transgender individuals use the fractious Iranian bureaucracy to their advantage in order to shape the various rules and regulations that will give them access not only to medical resources, but also a space of relative manoeuvre through which they can create liveable lives.

In 2010, the Office for the Socially Harmed at the Welfare Organization of Iran responded to the strategic lobbying and activism by trans-identified individuals by reclassifying their military exemption from the “mental disorders clause” (Section 33.8) to the “glandular disorders clause” (Section 30)46. As this “glandular disorders clause is now clearly displayed on their identification, this has, at least in theory, reduced the amount of discrimination trans-identified men receive when seeking employment. The glandular disorders clause is viewed as a more socially-permissible exemption. Najmabadi explains that “For legal and medical authorities, sex change surgeries are explicitly framed as the cure for a diseased abnormality, and on occasion they are proposed as a religion-legally sanctioned option for heteronormalizing people with same-sex desires or practices.”<sup>54</sup>

### **Human rights violations in Iran**

Iran’s penal laws against homosexuality grossly violate and carry on violating numerous basic universal human rights. In October 2017, Dr. Ahmed Shaheed, UN special rapporteur on human rights in Iran, stated that Iran’s penal system fails to conform to international human rights standards because it, for example, classifies homosexuality as a capital offense.<sup>55</sup>

In 2010, Human Rights Watch published a study on homosexuals and other sexual minorities’ circumstances in Iran. Human Rights Watch reported that because the courts’ investigations of “morale issues” are not public, it was problematic to determine with precision how many people have been executed because of same-sex relationships. Amnesty International estimated that since 1979

<sup>51</sup> Hamedani, A. (November 2014), BBC Persia Magazine, *The Gay People Pushed to Change Their Gender*

<sup>52</sup> Bagri N.T. (April 2017), Quartz News, *Iran's Policies about Transgender Rights Are Unique*

<sup>53</sup> Najmabadi, A. (December 2013) *Professing Selves: Transsexuality and Same-Sex Desire in Contemporary Iran*,

<sup>54</sup> Najmabadi, A., (Fall/Winter 2008), The Feminist Press, *Women's Studies Quarterly* 36(3-4): 23-42. *Transing and Transpassing Across Sex Gender Walls in Iran.*

<sup>55</sup> *Iran: Still Hostile to Gays* | Retrieved at [www.defenddemocracy.org/media-hit/iran-still-hostile-to-gays](http://www.defenddemocracy.org/media-hit/iran-still-hostile-to-gays)

about 5000 people have been executed because of same-sex relationships<sup>56</sup> The UN Special Rapporteur Asma Jahangir, in her second report on the situation of human rights in Iran covering the period January 1 – June 31, 2017, drew on information from a number of experts and civil society sources, including the Abdorrahman Boroumand Foundation, to describe Iran’s “serious human rights challenges.” She noted that Iranian law continues to permit capital punishment for homosexuality. Jehangir criticized the Iranian’s Judicial System in her report and condemned the imposition of the death penalty for the crime of homosexuality that is considered illegal in Iran.<sup>57</sup> Her influential comments have exposed the prevailing harsh circumstances LGBT individuals face in Iran and have also given a ray of hope that efforts are in process to bring peace and comfort in LGBT’s marginalized lives.

Iran is one of the seven countries in the world that still employs the death penalty for homosexuality<sup>58</sup>. With respect to executions in general, Iran also has the largest number of executions of any country proportional to its population. Only China executed more people in sheer numbers than Iran.<sup>59</sup> Overall, in 2009, Iran executed 388 people.<sup>60</sup> Between 2010 and 2014, executions rose dramatically with a total of at least 3,242 executions.<sup>61</sup>

Iran continues to execute juveniles despite being a signatory to various human rights treaties and instruments. In 2007, Iran executed eight juvenile offenders. In 2008 and 2009, it was the only country to carry out executions of minors, in violation of its obligations under the Convention on the Rights of the Child. In 2013 and 2014, Iran carried out at least 11 juvenile executions.<sup>62</sup> And these are the one we are aware of.

In 2014 two men, Abdullah Ghavami Chahzanjiru and Salman Ghanbari Chahzanjiri, were hung in southern Iran on August 6 possibly for consensual sodomy.<sup>63</sup> It is uncertain whether or not they were executed for being gay or merely smeared with homosexuality as there are conflicting stories: one Iranian source said they were, another source was vague about their “crimes” but called them “immoral villains. In 2011 three Iranian men were executed after being found guilty of charges related to homosexuality.<sup>64</sup> The men, only identified by their initials, were hung in the South-western city of Ahvaz, the capital of Iran’s Khuzestan province. A judiciary official publically stated that the three convicts were sentenced to death based on acts against Sharia law and “bad deeds”. Iran Human Rights Organization based in Norway, said the men were charged with *Lavat*, sexual intercourse between two men.<sup>65</sup> In 2007 it was announced that 20 criminals would be hung in Tehran on a variety of charges, including rape and sodomy.<sup>66</sup> No further details of the case were made public.

In 2005 the highly publicized and public executions of two teenage boys, Mahmoud Asgari and Ayaz Marhoni, who were hung in public for their alleged involvement in sodomy and rape, brought to the

<sup>56</sup> Iran: *UK Grants Asylum to Victim Of Tehran Persecution Of Gays*, (February 2011) The Daily Telegraph. See also, Encarnación, O. G. (May 2017). Foreign Affairs. *The Global Backlash Against Gay Rights Movement*.

<sup>57</sup> United Nations, General Assembly, *Situation of Human Rights in the Islamic Republic of Iran* report of the Secretary-General, A/72 /332 (14 August 2017 ) available from undocs.org A/72 /332

<sup>58</sup>Carroll, A., and Itaborahy, P., (May 2015) 10th edition, ILGA, *State Sponsored Homophobia; A World Survey of Laws: Criminalisation, Protection and Recognition of Same-Sex Love*

<sup>59</sup> Hall, J. (January 2016), The Independent, *Which Country Executes the Most People?*

<sup>60</sup> Ghaemi, H., (October 2010) *Iran Primer: The Islamic Judiciary*

<sup>61</sup> Ghaemi, H. (October 2010) *Iran Primer: The Islamic Judiciary*

<sup>62</sup> Amnesty International Press Release, (July 2014,) *Iran: Youth at Risk of Hanging Amid Disturbing Rise in Juvenile Executions*

<sup>63</sup> Michaelson, J., ( August 2014) The Daily Beast, *Iran’s New Gay Executions*

<sup>64</sup> Dehghan, K., (September 2011) The Guardian International Edition, *Iran Executes Three men on Homosexuality Charges*

<sup>65</sup> Dehghan, K., (September 2011) The Guardian International Edition, *Iran Executes Three men on Homosexuality Charges*

<sup>66</sup>Out Right International, (July 2007) *Iran: IGLHRC Condemns Continued Use of Sodomy Laws To Justify Executions and Arbitrary Arrests*

surface the unpredictability and harshness of Iran’s draconian view of homosexuality.<sup>67</sup> There are disturbing and flinching photos of the hangings that were widely distributed on the Internet. Both teenagers were juveniles at the time of the offense, and one was believed to have been a juvenile at the time of his execution. It is still uncertain whether or not the dual executions were carried out specifically because of their homosexuality<sup>68</sup>. To this day, the facts on the charges against them were based are obscure and inconclusive.

Similarly, a teenage boy named Makwan Moloudzadeh was found guilty of *Lavat* (sodomy rape) and executed for raping three teenage boys when he was 13, even though all witnesses retracted their accusations and Moloudzadeh withdrew a confession. Normally as a minor the death penalty would not be applicable.<sup>69</sup> There was an international outcry and a nullification of the death sentence by Iranian Chief Justice Ayatollah Syedxecut.<sup>70</sup> The planned execution was a violation of two international treaties signed by Iran that outlaw capital punishment for crimes committed by minors, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child. Nevertheless, Moloudzadeh was hung without his family or his attorney being informed until after the fact.<sup>71</sup> In 2016 Amnesty International reported that Iran had executed Hassan Afshar, a 19-year-old who was arrested in December 2014 when he was 17 years old. Amnesty also reported that during the two month trial, he lacked access to a lawyer. Although Afshar was accused of forcing another teen to have gay sex, he maintained that the sex was consensual and the victim had willingly engaged in gay sex. Magdalena Mughrabi, Deputy Middle East and North Africa Program Director at Amnesty International has stated that Iran has proven its sickening enthusiasm for putting juveniles to death, in contravention of international law, knows no bounds.<sup>72</sup>

Any discussions on Iran’s sexual minorities and their social plights and day to day experiences, mandates a comprehensive insight into the dual societal context of religion and law that are often directed towards this silent and often terrified community. This would also include an examination of web of Iran’s patriarchal social and cultural infrastructures that highly influence religion and laws. The issue of sexual orientation in Iran is a complicated maze of intricacies and unknown territories that has undermined the social lives of many sexual minorities in Iran. Although most of the international community has acknowledged a spectrum of sexual orientations that has gone beyond biological definitions, in Iranian society sexual orientations are viewed as an aberration. As aptly stated “There is no dialogue, no discussion about us or our lives. Iranian LGBT live behind closed doors and high walls.”<sup>73</sup> This lack of acknowledgement is due to Iran’s unacceptance of sexual minorities firmly rooted in its long-lasting norms, resistant traditions and most importantly in the powerful role of religion. This has of course made any effort to shed light on the issue even more difficult.

## Immigration

Stoking fears of immigration has seeped worldwide from Western politics, President Donald Trump’s chronic references to it, Brexit that arguably would not have happened without it, to the strident

<sup>67</sup> Kim, R., (August 2005) *The Nation*, *Witnesses to an Execution*.

<sup>68</sup> Kim, R., (August 2005) *The Nation*, *Witnesses to an Execution*.

<sup>69</sup> Amnesty International Press Release, (December 2007), *Iran: Execution of Child Offender Makwan Moloudazdeh*, Retrieved at [www.amnesty.org/en/press-releases/2007/12/](http://www.amnesty.org/en/press-releases/2007/12/).

<sup>70</sup> Statement of the International Gay and Lesbian Human Rights Commission. 18. See, also Dahl F., *Iran Seen Hanging Man for Raping Boys*, (December 2007) . Reuters via the International Herald Tribune

<sup>71</sup> BBC NEWS | Middle East, (December, 2007) *Iranian Hanged After Verdict Stay* BBC News.

<sup>72</sup> Press Release, Amnesty International, (August 2016) , *Iran: Hanging of Teenager Shows Authorities’ Brazen Disregard for International Law*

<sup>73</sup> Told to a Tehran Bureau correspondent, *The Guardian International Edition*, (January 2013) , *Growing up Gay in Iran*

nationalists wield power in Italy, Hungary, Poland and Austria that have gained influence.<sup>74</sup> Concerns about immigration have been raised in all countries worldwide and Iran is of no exception. In Iran, migration “has produced and hosted abundant flows of emigration and immigration, a steady coming and going mainly driven by key political events.”<sup>75</sup> For example, Iran’s harsh stance on homosexual orientation undoubtedly fuels the panic to try to leave. Many countries have expressed openly their reluctant to take on refugees for a wide variety of reasons ranging from demographics, economic interests, and labour market fears to blatant racism. Undoubtedly this has resulted in restrictive immigration policies and has been associated with a rise in nationalism.

Refugee flees for various reasons: as victims of natural disasters that makes living in their country unsustainable or victims who are fleeing civil war and strife. LGBT individuals flee because of their LGBT identity. They carry a dual burden: their existence as a refugee and their existence as a LGBT individual. These dual entities rendered their experience of belonging to an unacceptable social group and to marginalization based on profound distancing from traditional support systems and resources.<sup>76</sup> For many Iranian LGBT individuals, this marginalization adds another layer to the already formidable barriers and daunting process of seeking asylum.<sup>77</sup> Asylum seekers who are LGBT often face barriers that others do not.<sup>78</sup>

LGBT Iranians face punishment and bullying as the social stigma remains still rampant, and homosexuality is still punishable by death. The consequences of a same-sex relationship deemed a punishable crime or even death in Iran, the negative view of society, the harassment of LGBT people by government and family pressures force many LGBT people to seek asylum in countries where the life situation is better. Seeking asylum is difficult as many LGBT individuals are leaving friends, family, culture and employment for a chance at freedom. The ability to fly to a safe country requires money and knowledge. Once arriving in an unfamiliar country, LGBT asylum seekers frequently face the daunting task of building new lives in an unfamiliar and often hostile environment. Obtaining asylum status is not the end of the journey; it is the beginning of an adaptation process to a new life—just without the fear of being legally rejected. Gaining asylum can be a painful, alienating process.<sup>79</sup>

LGBT immigrants are seen frequently immigrating to Canada, Great Britain, and the United States. It was only in 2013 that the European Court of Justice declared sexual orientation to be grounds for seeking asylum in line with the EU’s ‘Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity’ issued by the United Nations High Commissioner for Refugees (UNHCR) in 2008. It stipulates that: ‘A person cannot be expected or required by the state to change or conceal his or her [sexual] identity in order to avoid persecution.’<sup>80</sup> Nor is there a duty to be ‘discreet’ or take certain steps to avoid persecution, such as living a life of isolation, or refraining from having intimate relationships.”<sup>81</sup>

By and large, LGBT Iranians flee to Turkey to receive refugee status from the UNHCR in order to be resettled in Australia, Canada or the United States. Yearly hundreds of individuals from the Middle

<sup>74</sup> The Economist, (August 2018) *The Way Forward on Immigration to the West*

<sup>75</sup> Financial Tribune, Economy Business And Markets (December 2016) , *A Look at Iran’s Migration Profile*

<sup>76</sup> La Fountain-Stokes, Lawrence M. (2007) *Queer Migrations: Sexuality, U.S. Citizenship, and Border Crossings*, The Americas, vol. 63 no. 4, pp. 671-672. Project MUSE,

<sup>77</sup> La Fountain-Stokes, Lawrence M. (2007) *Queer Migrations: Sexuality, U.S. Citizenship, and Border Crossings*, The Americas, vol. 63 no. 4, pp. 671-672. Project MUSE,

<sup>78</sup> National LGBTQ Task Force, Stronger Together, (October 2015) *A Guide to Supporting LGBT Asylum Seekers*

<sup>79</sup> National LGBTQ Task Force, Stronger Together, (October 2015), *A Guide to Supporting LGBT Asylum Seekers*

<sup>80</sup> Baetz, J, (November 2013) , The Associated Press ,*EU Court: Homosexuality Can Be Grounds for Asylum*,

<sup>81</sup> UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity, 21 November 2008 para 26.

East apply for resettlement overseas every year because of increased discrimination against their sexuality or gender identity. They wait for their cases to be processed by the UNHCR, or they move to a third country. Iranian LGBT refugees in central Anatolia in Turkey wait an average of two years for their cases to be processed before being resettled in Europe or North America.<sup>82</sup>

## Turkey

The Republic of Turkey is bordered by eight countries: Greece, Bulgaria, Georgia, Armenia, Iran, Iraq, Syria as well as the Azerbaijani exclave of Nakhichevan, the Aegean Sea, the Black Sea and the Mediterranean Sea.<sup>83</sup> Turkey is the only NATO member state to border Iran, Iraq, Syria, and three former Soviet Republics: Armenia, Azerbaijan, and Georgia.<sup>84</sup> Turkey is also enduring the spillover of refugees from the Syrian war. For example in 2015, 2.2 million Syrians fled to Turkey, according to Human Rights Watch. Afghan and Iraqi refugees have settled in Turkey as well.<sup>85</sup>

Turkey has become a country of transit for immigrants, a country of transit to the European Union immigration and asylum and a country for mixed migration flows from Asia and Africa to Europe. This country has bear witness to the rise in the numbers of LGBT asylum seekers in recent years. This has had a profound impact on the changing patterns of immigration into Turkey as at one time there were growing concerns in Europe that if Turkey were to become a member of the EU, there would be a massive wave of immigration from Turkey to the more prosperous members of the union.<sup>86</sup>

Although Turkey is amongst the original signatories of the 1951 Convention relating to the Status of Refugees, Turkey is also amongst a very small number of countries that maintains a "geographical limitation" to the agreement's applicability as defined in Article 1.B(1)(a) of the Convention.<sup>87</sup> "The roots of the geographical limitation date back to the original 1951 Geneva Convention, which concerned itself only with persons who had become refugees as a result of events that occurred before January 1, 1951. This means that The Convention offered signatories the option of limiting their protection to persons who had been rendered refugees as a result of events in Europe."<sup>88</sup> Accordingly, Turkey does not grant refugee status to asylum seekers coming from outside Europe, and maintains a two-tiered asylum policy.<sup>89</sup> Despite this geographical limitation to the 1951 Refugee Convention, in 2013 Turkey adopted a comprehensive, EU-inspired Law on Foreigners and International Protection (LFIP), which establishes a dedicated legal framework for asylum in Turkey and affirms Turkey's obligations towards all persons in need of international protection, regardless of country of origin, at the level of binding domestic law.<sup>90</sup> The law also created the Directorate General of Migration Management (DGMM) mandated to take charge of migration and asylum.<sup>91</sup>

Facing persecution, violence and even death, Iranian LGBT refugees flee most commonly to Turkey, where they seek asylum status from the UNHCR. Iran may enforce the death penalty for consensual

<sup>82</sup> Crowder, N., (March 2015), The Washington Post, *Seeking Home: The lives of Gay and Transgender Asylum Seekers of the Middle East*

<sup>83</sup> National Geographic Family Reference Atlas of the World, (7th Ed.)

<sup>84</sup> Banani, D., (December 2003), *Reforming History: Turkey's Legal Regime and Its Potential Accession to the European Union*. Boston College International Comparative Law Review, Vol 6. Issue 1,

<sup>85</sup> Jafar, A., and Shahtakhtinski, I. ( August 2016) *Asylum Seekers from Turkey*, Retrieved at [www.islawfirm.com/asylum-seekers-from-turkey](http://www.islawfirm.com/asylum-seekers-from-turkey),

<sup>86</sup> Kirisci, K., (November 2003) Migration Policy Institute, *A Transformation from Emigration to Immigration*

<sup>87</sup> United Nations General Assembly Resolution 4 29(V) of 14 December 1950, at <http://www.unhcr.org/refworld/docid/3b00f08a27.htm>

<sup>88</sup> UN High Commissioner for Refugees, "States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol.

<sup>89</sup> Kirisci, K., (November 2003) Migration Policy Institute, *A Transformation from Emigration to Immigration*

<sup>90</sup> Author Independent, Asylum Information Database, *Introduction to the Asylum Context in Turkey*, Retrieved at [www.asylumineurope.org/reports/country/turkey](http://www.asylumineurope.org/reports/country/turkey) Turkey

<sup>91</sup> Author Independent, Asylum Information Database, *Introduction to the Asylum Context in Turkey*, Retrieved at [www.asylumineurope.org/reports/country/turkey](http://www.asylumineurope.org/reports/country/turkey) Turkey

same-sex conduct and has, by some estimates, executed thousands of LGBT individuals.<sup>92, 93</sup> However, fleeing to Turkey is not entering the Magic Kingdom of Acceptance. It can also be a potentially troubling as Iran's neighbouring country Turkey may not protect LGBT rights any better.

In the understandable need to flee, some persecuted LGBT individuals end up in a neighbouring country that is dangerously homophobic and where the prejudice against sexual minority is high. Consequently some LGBT individuals only feel marginally safer and legally stable. Many LGBT individuals arrive in Turkey to confront another stratum of violence and harassment by local communities and other refugees.

“LGBTs are among the most marginalized and vulnerable asylum seekers and refugees in Turkey today. The protections extended by the government of Turkey and UNHCR allow these individuals to escape the severe mistreatment, torture, and death they face in their countries of origin. Unfortunately, their physical survival is often mired in new dangers and deprivations in Turkey.”<sup>94</sup>

In April 2015 a Pew Research disclosed that only 4% of respondents in Turkey rated homosexuality as morally acceptable, 12% as not moral issue, and 78% as morally unacceptable.<sup>95</sup>

Whilst awaiting the determination of their refugee status in Turkey, many LGBT avoid the police, are afraid to leave their homes, and have very limited access to social support, employment, and medical care.<sup>96</sup> A report by the Organization for Refuge, Asylum, and Migration also confirmed that many LGBT refugees in Turkey are afraid to leave their apartments because of targeted violence from locals and other refugees. There have been reports that LGBT Iranian exiles have been subjected to a string of violent hate attacks and murders in Turkey.<sup>97</sup> According to a 2012 report by the International Gay and Lesbian Human Rights Commission, crimes against LGBT people often go unpunished because Turkey has no specific legislation to protect them. In addition to having meagre non-existent financial means or resources to provide for themselves whilst seeking asylum in Turkey, LGBT individuals have very limited rights under the Turkish Law 187, including limited access to employment and universal health care.<sup>98</sup>

Until they have official documentation, asylum seekers are in limbo: they face the daily fear of being arrested or deportation. As most make this hellish journey penniless or with sparse financial resources, many have little or no money. They must seek employment, housing, and survive without a social support system.<sup>99</sup> Reports have seeped out that LGBT Iranian exiles have been subjected to a string of violent hate attacks and murders in Turkey.<sup>100</sup> Abuses against LGBT people and their advocates are rife in Turkey.<sup>101</sup>

<sup>92</sup> Grungras, N., Levitan R., Slotek A. (2009) The Fletcher Journal of Human Security, 41 VOLUME XXIV

<sup>93</sup> IRQR, (June 2016) *World Refugee Day and Plight of LGBT Refugees*, Retrieved at [irqr.ca/2016/?p=410](http://irqr.ca/2016/?p=410)

<sup>94</sup> Grungras, N., Levitan R., and Slotek, A. 2009 The Fletcher Journal of Human Security, 41 VOLUME XXIV *Unsafe Haven: Security Challenges Facing LGBT Asylum Seekers and Refugees in Turkey*

<sup>95</sup> LGBTI Equal Rights Association for Western Balkans and Turkey, 8 March 2017 [www.lgbti-era.org/content/turkey](http://www.lgbti-era.org/content/turkey)

<sup>96</sup> Grungras, N., Levitan R., and Slotek, A. 2009 The Fletcher Journal of Human Security, 41 VOLUME XXIV *Unsafe Haven: Security Challenges Facing LGBT Asylum Seekers and Refugees in Turkey*

<sup>97</sup> Dehghan, S. (February 2017) The Guardian International Edition, *US Travel Ban Leaves Iranian LGBT Refugees in Limbo*

<sup>98</sup> Grungras, N., Levitan R., and Slotek, A. 2009 The Fletcher Journal of Human Security, 41 VOLUME XXIV *Unsafe Haven: Security Challenges Facing LGBT Asylum Seekers and Refugees in Turkey*

<sup>99</sup> Iranian Queer Watch Report *The Iranian Railroad for Queer Refugees*, Retrieved at [irqr.net/2016/wp-content/uploads/2016/01/IQW-Report.pdf](http://irqr.net/2016/wp-content/uploads/2016/01/IQW-Report.pdf)

<sup>100</sup> Dehghan, S., (February 2017) The Guardian International Edition, *US Travel Ban Leaves Iranian LGBT Refugees in Limbo*

<sup>101</sup> Dehghan, S., (February 2017), The Guardian International Edition, *US Travel Ban Leaves Iranian LGBT refugees in Limbo*

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According to a 2012 report by the International Gay and Lesbian Human Rights Commission, it was opined that the Turkish government views Iranian refugees as a short-term problem, because they cannot ever permanently live in Turkey. <sup>102</sup>These asylum seekers' stay in Turkey is limited until resettlement, typically to the United States, Canada or Australia. As previously stated although Turkey is one of the original signatories of the 1951 Refugee Convention, which is considered the backbone of the international asylum system, Turkey does not accept permanent refugees from Iran or any other part of the Middle East, Africa, or Asia. Turkey applies a geographical limitation to the Refugee Convention, meaning that that vast majority of forced migrants entering its borders today—refugees from the Middle East, Asia, and Africa—are not accorded asylum in Turkey. Instead the responsibility for their protection falls primarily to UNHCR, which is charged with finding them a durable solution, usually involving resettlement. <sup>103</sup>

Whilst in Turkey, LGBT refugee applicants are subject to the country's complex asylum procedures<sup>104</sup> a process fraught with anxiety and that often feels incomprehensible and capricious. Even more daunting is the resettlement process itself. It is a rigorous process to determine whether or not there are legitimate claims being made and not everyone is successful in convincing the UNHCR or the country to which they have fled that they are LGBT and that returning to their country of origin is unthinkable. Previously, the waiting time in Turkey was between 10-14 months. Now it can take up to 3 years. During this waiting period <sup>105</sup> those LGBT asylum seekers must economically fend for themselves.

Many LGBT asylum seekers described invasive questioning regarding their sexual history and sexual experiences during their temporary asylum interviews such as being asked about their favourite sexual positions and the number of sex partners they had. Many of the interviews were not conducted in private with police officers in the room who mocked or laughed at them during their interviews.<sup>106</sup> Although Turkey's asylum regulation encourages asylum seekers to apply for work permits, very few asylum seekers or refugees have ever been granted such authorization.<sup>107</sup> The work permit process is both expensive and administratively complicated. Many look for illegal employment opportunities.<sup>108</sup>

LGBTs are among the most marginalized and vulnerable asylum seekers and refugees in Turkey today. The protections extended by the government of Turkey and UNHCR allow these individuals to escape the severe mistreatment, torture, and death they face in their countries of origin.<sup>109</sup> Unfortunately, their physical survival is often mired in new dangers and deprivations in Turkey. Some of these perils and threats stem from a dearth of resources at the local, national, and international levels. Others result from fear, lack of knowledge, and deeply-ingrained societal prejudices. These entities are often the mirror image of the grim and lamentable continuation seen in their country of origin.

<sup>102</sup> Kalantari, S., (April 2015) Vice News, *Transgender Iranian Refugees Are Struggling to Outrun Prostitution and Violence*

<sup>103</sup> Russel, S., (November 2002 ) Refugees: *Risks and Challenges Worldwide*, Retrieved at [www.migrationpolicy.org/programs/migration-information-source](http://www.migrationpolicy.org/programs/migration-information-source)

<sup>104</sup> Grungras, N., Levitan R., and Slotek, A. (2009) The Fletcher Journal of Human Security, 41 VOLUME XXIV *Unsafe Haven: Security Challenges Facing LGBT Asylum Seekers and Refugees in Turkey*

<sup>105</sup> Grungras, N., Levitan R. and Slotek, A. 2009 The Fletcher Journal of Human Security, 41 VOLUME XXIV *Unsafe Haven: Security Challenges Facing LGBT Asylum Seekers and Refugees in Turkey*

<sup>106</sup> Grungras, N., Levitan R. and Slotek, A. (2009) The Fletcher Journal of Human Security, 41 VOLUME XXIV *Unsafe Haven: Security Challenges Facing LGBT Asylum Seekers and Refugees in Turkey*

<sup>107</sup> Turkish Labour Law for Foreigners, Feb 2 2003, Law No. 4817, Art. 12.

<sup>108</sup> Kalantari, S., (April 2015) Vice News, *Transgender Iranian Refugees Are Struggling to Outrun Prostitution and Violence*

<sup>109</sup> Grungras, N., Levitan R. and Slotek, A. (2009) , The Fletcher Journal of Human Security, 41 VOLUME XXIV *Unsafe Haven: Security Challenges Facing LGBT Asylum Seekers and Refugees in Turkey*

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## Canada

One fifth of the Canadian population is foreign-born.<sup>110</sup> Canada is considered to be a vibrant multi-ethnic democracy that enjoys a global reputation as a defender of human rights. The government has taken significant steps domestically to advance the rights of LGBTs including passing legislation to protect transgender people from discrimination and creating a non-binary gender option on passports. Same-sex sexual activity has been lawful in Canada since June 27, 1969, when the Criminal Law Amendment Act (also known as Bill C-150) came into force upon royal assent.<sup>111</sup> Canada has frequently been referred to as one of the most gay-friendly countries in the world, with its largest cities featuring their own gay areas and communities, and being named amongst the most gay-friendly cities in the world.<sup>112</sup>

As Iranian politics have undergone dramatic changes in the last 40 years, so has the nature of Iranian migration to Canada. As the Middle East crisis in Syria and surrounding countries worsens, it seems that LGBT Iranian refugees and regular applicants who wish to migrate to Canada have to face a very rigorous screening process that citizens of many other nations do not. How to balance between national security concerns and the rights of immigrants to a fair process is becoming a very difficult act for the current government.<sup>113</sup>

Previously Canada had officially requested that Iranian refugees who identified as LGBT be quickly processed and settled in Canada at a high priority. Since 2015, this has changed attributed in part to Prime Minister Justin Trudeau's promise to prioritize refugees fleeing the crisis in Syria.

Saghi Ghahraman, the head of the Canada-based Iranian Queer Organisation stated "We don't like to think it, but it seems that Prime Minister Trudeau's campaign promise to bring in 25,000 Syrian refugees had an impact even though they said right at the beginning that it wouldn't impact all other refugees, it did. Even if the refugee admissions system resumes processing applications, and these LGBT refugees from Iran are allowed to enter the U.S., Ghahraman says there is doubt about whether or not they want to go."<sup>114</sup> Ghahraman, stated that up until 2013, the wait-time for the LGBT to be determined and resettled by the UNHCR in Turkey was about a year and a half, which was barely manageable. The war in Syria changed things as the United States and Canada undertook resettlement of large number of displaced Syrians. LGBT wait-time before resettlements went up to three years. It is highly plausible that the Syrian civil war has had an impact.<sup>115</sup>

In 2017 Canada started referring LGBT Iranians to the United States for resettlement. Under the previous Harper government, conservatives gained international praise for the programme that brought hundreds of LGBT asylum seekers from Turkey. It was explicitly said as Canada increased the number of referrals for Syrians, Canada decreased the number of referrals from Iran. Canada's federal immigration department has acknowledged it resettled fewer LGBT Iranians from Turkey, in order to make space for the late-2015 Syrian airlift.<sup>116</sup> "We never stopped taking LGBTQ Iranians. We had a large flow of referrals that involved Iranians. As we increased the number of referrals for Syrians, we

<sup>110</sup>Peñaloza, M., (January 2017) KPBS News, *For A Stark Contrast To U.S. Immigration Policy, Try Canada*

<sup>111</sup> Government of Canada. September 9, 2010, Rights of LGBTI persons, [www.canada.ca/.../services/rights-lgbti-persons.html](http://www.canada.ca/.../services/rights-lgbti-persons.html).

<sup>112</sup> CBC News, (November 2011), *Ottawa Introduces First 'Gay Village'*.

<sup>113</sup> Allard, J., (September 2015), Immigration News, *Has Canada Turned Back the Clock with Iranian Immigration?*

<sup>114</sup> CBC Radio, (February 2017) *LGBT refugees From Iran Are Asking Why It's Become Harder For Them To Come to Canada*

<sup>115</sup> Dehghan, S., (February 2017), The Guardian International Edition, *US Travel Ban Leaves Iranian LGBT Refugees in Limbo*

<sup>116</sup> Robertson, D., (March 2017), Xtra News, *Canada's Immigration Department Acknowledges Drop in LGBT Refugees from Iran*, Retrieved at [www.dailyxtra.com/canadas-immigration-department](http://www.dailyxtra.com/canadas-immigration-department)

decreased the number of referrals from Iranians,” says David Manicom, the associate assistant deputy minister for Strategic and Program Policy.<sup>117</sup>

Whilst data on how many refugees identify as gender and sexual minorities is hard to come by, the immigration department’s internal figures show an 85 percent drop in all Iranians resettled to Canada through the UNHCR. LGBT Iranians in Turkey, and their advocacy groups, say referrals drastically slowed starting in November 2015, as the Syrian program got underway. Six-month delays grew into year-long holds, before the UNHCR started referring the refugees to the US by October 2016. The department’s data shows that Canada took in 1,022 Iranians through that process in 2014, 374 in 2015 and just 152 in 2016.<sup>118</sup> Ghahraman reported that if Canada does not change its procedures for LGBT applicants from Iran, they will continue to be stuck in Turkey, a country that also struggles with homophobia. "These are the gay and lesbian and Trans people, who are at risk by their Turkish neighbours, and by their Iranian neighbours," Ghahraman says. "They cannot get a job. When they get a job they are attacked, they are asked for sexual favours."<sup>119</sup>

The government was under increased pressure to explain why it started turning away LGBT Iranian refugees during the Syrian airlift, ending a program that resettled hundreds of persecuted Iranians through UNHCR. Canadian Prime Minister Justin Trudeau cried during a formal apology to LGBT individuals on behalf of Canada. He stated “For the oppression of the lesbian, gay, bisexual, transgender, queer, and two-spirit communities, we apologize. He continued, wiping tears away from his eyes with a handkerchief. “On behalf of the government, parliament, and the people of Canada, we were wrong, we are sorry, we will never let this happen again.”<sup>120</sup>

### United States

Asylum is a United States legal mechanism for protecting immigrants who have been persecuted or believe they will be harmed if they go back to their country of origin. The United States takes the lion’s share of refugees resettled from Turkey. Once asylum status is granted, individuals can remain in the United States, obtain a work permit, be entitled to some public benefits, and eventually apply for a green card and United States citizenship. It is the United States Citizenship and Immigration Services (a branch of the U.S. Department of Homeland Security) makes the decision whether or not to grant asylum status. Immigration and Asylum based on gender orientation.

The framework of asylum relief in the United States (as well as internationally) is based on the definition of the term “refugee” which means someone who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership in a particular social group, was outside of his or her native country and due to that fear, was unable or unwilling to avail him or herself of the persecution in that country.<sup>121</sup> Asylum seekers in the United States have the burden of proof to demonstrate that they were subjected to persecution and they possess a reasonable fear of future persecution.

Many LGBT have been granted asylum under the particular social group category. In order to qualify as a particular social group for asylum purposes, a group must have a common, innate characteristic

<sup>117</sup> Robertson, D., (March 2017) , Xtra News, *Canada’s Immigration Department Acknowledges Drop in LGBT Refugees from Iran*, Retrieved at [www.dailyxtra.com/canadas-immigration-department](http://www.dailyxtra.com/canadas-immigration-department)

<sup>118</sup> Robertson, D., (March 2017) , Xtra News, *Canada’s Immigration Department Acknowledges Drop in LGBT Refugees from Iran*, Retrieved at [www.dailyxtra.com/canadas-immigration-department](http://www.dailyxtra.com/canadas-immigration-department)

<sup>119</sup> CBC Radio, (February 2017) *LGBT Refugees From Iran Are Asking Why It’s Become Harder For Them To Come to Canada*

<sup>120</sup> Beeitbart News (Nov 2017) , *Trudeau Cries During Apology to ‘LGBTQ2’*

<sup>121</sup> 8 C.F.R. § 208.13(b)(1), 1208.13(b)(1)

that they either cannot change or should not have to change because it is fundamental to their identities or consciences. Those who are LGBT fits these categories, because they have a common characteristic and, even if one were to argue that it could be changed, their orientation is something fundamental to their identity and therefore should not be changed.<sup>122</sup> In other words, homosexuality must be a permanent and an inherent characteristic to be considered by U.S. immigration officials.

What is of primordial importance is that the LGBT individual must be physically present in the United States. There are two processes to get asylum in the United States aptly referred to as “Affirmative” and “Defensive” asylum processes.

A person must file for asylum within one year of their last entry into the United States. The burden is on the asylum applicant to prove that he or she applied within one year of entering the United States, and must prove so by clear and convincing evidence. This rule is strictly applied and enforced notwithstanding the two exceptions to this rule. First, a person can file for asylum past the one year deadline if they can demonstrate changed circumstances. Sometimes the reasonable fear of future persecution may not have existed when entering the United States, but change circumstances in their country of origin, (such as a change in government) has now created a reasonable fear or a change in an individual’s personal circumstances (such as a change in religion,) The second exception is if there are extraordinary circumstances that prevented an individual from applying for asylum within the one year deadline. These exceptions are rarely granted, rarely given out and only when someone clearly fits the requirements<sup>123</sup>.

An affirmative application starts with the asylum applicant filing for I-589 with the government. A few months later, the Asylum Office will schedule an interview with the asylum applicant. The asylum applicant is required to provide his or her own interpreter, and the asylum applicant’s attorney is allowed to attend as well. The LGBT Iranian asylum applicant must show that the LGBT community in their home country is sufficiently visible and that one’s treatment is tantamount to persecution on account of their LGBT identity or sexual orientation. Many LGBT in Iran demonstrate a prima case for claiming asylum: violation of LGBT rights is a violation of human rights; homosexuals and bisexuals are under a real fear of persecution and harassment in Iran and the fact they are in danger of being arrested and punished. It is highly plausible that Iranian LGBT can meet the legal definition of a well-founded fear of persecution.

A few months after the interview, the Asylum Officer will issue its decision.

Whilst UNHCR is obligated to create an environment of trust and respect during refugee status determination interviews (RSD) many LGBTs described interview techniques that were invasive, inappropriate, or prurient. For instance, whilst describing a twelve-hour gang rape by Iranian state security agents, a transgender asylum seeker was asked to provide explicit sexual details. Similarly, a gay man was repeatedly asked to describe whether his partner had used any “liquids, instruments, or drugs” during his first sexual experience. Another man recalled his UNHCR interviewer stating that it was unlikely that he was gay because he had been married to a woman in his home country. Likewise, interviewees who dressed and behaved in what is deemed as masculine were

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<sup>122</sup> Political Asylum USA.com, Retrieved at [www.politicalasylumusa.com](http://www.politicalasylumusa.com)

<sup>123</sup> Political Asylum USA.com, Retrieved at [www.politicalasylumusa.com](http://www.politicalasylumusa.com)

asked why they did not dress “more femininely.” Interviewees also reported that at least one of UNHCR’s Farsi interpreters referred to gay men using a term that derogatorily implied prostitution.<sup>124</sup>

The application is reviewed and questions are asked. In the vast majority of cases a decision is made within two weeks either granting or denying the asylum claim. A denial means the individual will be placed in removal proceedings and the case will be referred to an immigration judge, who either will grant or deny the asylum. A denial is appealable and the individual can legally remain whilst waiting for a final decision.<sup>125</sup>

The reports of treatment of LGBT detainees obtained through Freedom of Information Act, or FOIA, requests and through complaints filed by immigrant rights groups reveal that much like in the general prison population—where LGBT inmates are 15 times more likely to be sexually assaulted than the general population.<sup>126</sup> In November 2013 a Centre for American Progress (CAP) report found that LGBT held in immigration detention facilities are 15 times more likely to be sexually assaulted.<sup>127</sup> The UN Rapporteur on Torture found the treatment of LGBT immigrants in U.S. detention facilities to be in violation of the Convention against Torture.<sup>128</sup>

### Visibility

Visibility in the asylum gender discourse has a particular meaning.<sup>129</sup> It does not mean whether or not someone looks like they are LGBT but rather whether or not the culture sufficiently considers them to be a separate group from other people. In the United States, judges and immigration officials require that homosexuality must be socially visible in order for sexual persecution to be a viable complaint. Essentially it means their culture sufficiently considers them to be a separate group from other people. Whether or not there is sufficient visibility depends on the facts of the case but in general the threshold is met if the government has any discriminatory attitudes or practices directed at anyone who is LGBT. On one hand, courts have granted claims based on LGBT status for people from Albania, Argentina, Guyana, Indonesia, Jamaica, Lebanon, Morocco, and Uganda and have rejected claims from Mexico, Peru, Nigeria, and Zimbabwe.<sup>130</sup>

A further requirement is that in the United States the LGBT asylum seeker must also show persecution on account of their sexual orientation or identity. As previously discussed, Iranian society views homosexuality harshly with laws explicitly directed against them and the wider social stigma enveloped in disgust. Homosexuality is a crime in Iran. If a country makes it criminal for an LGBT person to have sex, then prosecution for that crime may be enough to show persecution.

### Conclusion

Iran has been at the centre of the abundant flows of emigration and immigration for various reasons<sup>131</sup> including gender. Iranian LGB individuals suffer from human rights violations and are denied basic freedoms. Abuses are perpetrated by the Iranian government, the judiciary system and by non-state

<sup>124</sup> Grungras, N., Levitan R. and Slotek, A. (2009), The Fletcher Journal of Human Security, 41 VOLUME XXIV *Unsafe Haven: Security Challenges Facing LGBT Asylum Seekers and Refugees in Turkey*

<sup>125</sup> Asylum Fact Sheet | Transgender Law Center,

<sup>126</sup> Gruberg, S., (November 2013), Center for American Progress, *Dignity Denied: LGBT Immigrants in U.S. Immigration Detention*

<sup>127</sup> Mullins, D., (November 2013) America Aljazeera, Report: *LGBT Immigrant Detainees Face Higher Risk of Sexual Assault, Abuse*

<sup>128</sup> Houdart, F., and Fagan J., The World Bank, (July 2014), *Pink Migration - Rising Tide of LGBT Migrants?*

<sup>129</sup> Marouf, F., (2008) The Emerging Importance of Social Visibility" in Defining a Particular Social Group and Its Potential Impact on Asylum Claims Related to Sexual Orientation and Gender, Scholarly Works. Paper 419. <http://scholars.law.unlv.edu/facpub/419>

<sup>130</sup> Political Asylum USA.com, Retrieved at [www.politicalasylumusa.com](http://www.politicalasylumusa.com)

<sup>131</sup> Hakimzadeh S., (September 2006.) *A Vast Diaspora Abroad and Millions of Refugees*, Retrieved at [www.migrationpolicy.org/programs/migration-information-source](http://www.migrationpolicy.org/programs/migration-information-source)

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actors such as schools, communities and families. No one is held accountable for these violations of basic rights and many LGBT individuals whose lives are fraught with fear have no choice but to attempt to migrate. Their gender is the reason for fleeing.

LGBT refugees face legal challenges not experienced by non-LGBT refugees. That said, it is critical that there is a supportive and protective LGBT frame work for individuals who are facing the dual challenges: those associated with being a refugee and those associated with their sexual orientation or gender identity. These challenges require sensitivity, and an appreciation of evolving identities within the sexual spectrum. Support is needed whilst they are still in transit countries such as Turkey for example to assist them in finding their way through the harrowing bureaucratic maze they face in order to gain asylum, to help them get settled and to cope with establishing a new life in LGBT friendly countries. In Turkey, LGBTs are among the most marginalized and vulnerable asylum seekers and refugees as their physical survival is often mired in new dangers and deprivations in Turkey.<sup>132</sup>

LGBT Iranians are in a precarious position in today’s world of hardening stoic attitudes towards their community, particularly when they must leave their country of origin out of a reasonable fear of persecution and encountered further persecution along the path to safety. LGBT individuals’ gender ought not to be the cause of their pain and risk of life.

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<sup>132</sup> Grungras,N, Levitan R. and Slotek, A., (2009) The Fletcher Journal of Human Security, 41 VOLUME XXIV *Unsafe Haven: Security Challenges Facing LGBT Asylum Seekers and Refugees in Turkey*

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