

Catherine Maloney

LGBTQ+ Inclusion in the UNHCR Definition of Refugee Status

The UNHCR defines a refugee as a person who, “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country” (UNHCR 14). Sexuality and gender discrimination currently do not meet the UNHCR’s qualification for refugee status. Attaining refugee status for LGBTQ+ individuals fleeing persecution is imperative for the UNHCR convention on refugees to remain inclusive and fair. An amendment to this convention is necessary to protect the LGBTQ+ community, as well as to modernize the term “refugee.” In this paper, I will delve into the history of why homosexuality is perceived negatively and the severe anti-homosexuality laws of various governments to prove why LGBTQ+ individuals fleeing persecution should qualify for refugee status.

The LGBTQ+ community has a storied history with “otherness,” beginning with British colonization. British anti-gay laws made during the Victorian period were enforced in colonial strongholds all across the globe (Baudh 287). In 2013, there were more than 80 countries with anti-homosexuality laws in place, and more than half of these countries persecuted same-sex interactions in part because they were once under British colonial rule (Human Rights Watch 86). British anti-gay sentiment stems from the Eurocentric belief that native cultures were not harsh enough on perverse sexual acts (Human Rights Watch 86). To combat these perverse behaviors, the British instituted Section 377, a law created to fill in supposed moral deficiencies pertaining to sexual behavior (Human Rights Watch 86). Even though Britain has since

decriminalized homosexuality, the effects of their law-making persists in their previous colonies (Human Rights Watch 88).

In the past, homosexuals have been commonly associated with indecent behavior, such as pedophilia and adultery, and were said to be against the natural order (Baudh 287). These past ideas have lingered in some countries, and perceptions of pedophilia and homosexuality being intertwined continues to be a large source of anti-gay sentiment. In 1977, Anita Bryant formed the first anti-gay organization in the United States, Save Our Children, Inc., in an attempt to repeal a bill that protected against discrimination based on sexual orientation (Fetner 415). Bryant's platform was based on the belief that the homosexuals had an immoral influence on children, and that they would recruit young people to become homosexuals themselves (Fetner 411). This belief is shared by Russia, which frames its anti-gay propaganda in terms of saving the children from homosexual influences (Essig 44). Russian mindsets of protecting children from homosexuality have become so strong that violent groups have formed. Occupy Pedophilia, a Russian anti-gay group with more than 500 active chapters, posts videos online of torturing, raping, and brutally murdering gay men, but Russian authorities do little to nothing to stop them from continuing their mission (Essig 45). Some countries, such as Cuba in the 1970s, express their fear of pedophilia by preventing homosexuals from taking jobs where they have influence over young people (Guerra 269). In the United States, gay men and women are still considered to be undesirable for childhood education, as they are believed to recruit their young students into becoming homosexuals (King 122).

Media has become a popular extension for anti-gay sentiment: "I think that just imposing fines on gays for homosexual propaganda among teenagers is not enough. They should be banned from donating blood, sperm. And their hearts, in case of the automobile accident, should

be buried in the ground or burned as unsuitable for the continuation of life” (Essig 39). This quote by Dmitri Kiselev, Russia’s head of media production, was recorded during a popular talk show on Russia’s second largest news channel (Essig 40). Kiselev’s anti-gay stance has heavily influenced ROSKOMNADZOR, Russia’s media agency that enforces certain guidelines for all media, which does not allow for queer representation in any way (Essig 44-45). In the United States in the 1970s, there was an outcry from the LGBTQ+ community against NBC, which was attempting to broadcast young lesbians as rapists in the film *Born Innocent* (Fetner 418). Only eight local stations did not show the film, and four sponsors of NBC withdrew their support (Fetner 418). The United States media’s representation of homosexuality remained practically nonexistent until recently—even Ellen DeGeneres’ coming out in 1997 led to the cancellation of her sitcom (Nicholson). Now there seems to be a positive transition occurring, as shows such as ‘Orange Is the New Black’ and ‘The Handmaid’s Tale’ have begun to normalize LGBTQ+ inclusion in American media (Nicholson).

In Russia, homosexuality (*mushelozhstvo*) was criminalized as early as 1716 (Essig 42). The All-Union Code 121.1 was created in 1934 with the intent of punishing homosexual men with hard labor (Essig 43). Women at this time were even more harshly punished for homosexual behaviors—they were typically diagnosed with schizophrenia and were sent to mental institutions for conversion therapy, including electroshock therapy, drugs, and medically-induced comas (Essig 43). Women who were not cured by these methods were forced to undergo involuntary sex changes, as they were thought to have more of a masculine energy than a feminine one (Essig 43). In 1993, the All-Union Code 121.1 was revoked, and in 1999 homosexuality was no longer listed as a mental illness (Essig 43).

Similar to Russia, the United States has a difficult past with homosexuality.

Homosexuality was considered by the American Psychiatric Association to be a mental illness until 1973 (Born Perfect). Conversion therapy was extremely popular as a method of ‘curing’ homosexual tendencies (Born Perfect). Treatments ranged from forced institutionalization to castration to aversion therapy—a homosexual is shown homoerotic images while a shock is administered or they are forced to vomit (Born Perfect). It was not until 2012 that the United States began to take steps to abolish conversion therapy, and still today there is not a federal law that prohibits this therapy; only California, New Jersey, Oregon, Illinois, New York, Vermont, Washington, D.C., Cincinnati, Seattle, and a few cities in Florida have protections against it as of 2018 (Born Perfect).

Great Britain also has a long history with anti-homosexuality laws. Until 1967, homosexuality was punishable by life in prison or chemical castration (History of Gay Rights in the UK). Chemical castration involves a series of harmful injections that leave its recipient impotent and weak (Jacobson). Even Alan Turing, the man who broke the Nazis’ code during World War II, was not safe from this harsh punishment (Jacobson). In 1952, Turing was arrested for indecent conduct, and opted for chemical castration so that he could continue working (Jacobson). Now, Britain is extremely progressive in its thoughts around gay rights and LGBTQ+ involvement—76% of their population as of 2013 agreed that homosexuality should be accepted (Pew).

As of 2018, only 10 countries explicitly guaranteed equality for all sexual orientations: Bolivia, Ecuador, Fiji, Malta, Mexico, New Zealand, Portugal, South Africa, Sweden, and the United Kingdom (Hutt). 73 countries maintained that homosexuality is illegal, and 8 countries had a death penalty in place: Iran, Iraq, Nigeria, Saudi Arabia, Somalia, Sudan, Syria, and

Yemen (Hutt). Through the examination of contemporary case studies in Brunei, Iran, Nigeria, Uganda, and Cameroon, I will show why LGBTQ+ inclusion in the definition of refugee is necessary.

On April 3, 2019, Brunei became the ninth country in the world to institute the death penalty for homosexuality (Tan). The new law allows for the stoning of gay men and the caning of gay women, and whipping for those who have committed an offence but have not yet gone through puberty (Tan). The law also includes punishment for abortions, sex outside of marriage, and defamation of Islam (Gunia). Prior to the induction of this law, the last execution of a Brunei citizen was in 1957 (Gunia). The reasoning behind this law stems from an increasing intolerance of the LGBTQ+ community, as well as a need for the sultan to maintain a strict hold on his country and his citizens (Gunia).

Like Brunei, Iran has anti-gay sentiment that is hyper-evident. In 2007, Iranian President Ahmadinejad gave a speech at Columbia University, during which he claimed that there were no homosexuals in Iran (Shakhsari 15). Since the Iranian revolution in 1979, the country has been compared to a prison for the LGBTQ+ community (Shakhsari 15). The Penal Code of the Islamic Republic pertains to punishment surrounding gay interactions, and prior to President Ahmadinejad's election, the punishment was determined by the extent of the sexual activity (Papan-Matin 129). Within a few weeks of his presidency, Ahmadinejad executed two teenagers for the crime of sodomy by hanging them in a public square (Papan-Matin 129). Even visitors to Iran are at risk—Mohammad Khordadian, a gay Iranian-American man, visited Iran in 2002 to see his family for the first time in 20 years, and was arrested almost immediately for “promoting depravity and corruption among the youth” (Papan-Matin 131).

Contemporary Nigeria also subscribes to anti-LGBTQ+ beliefs. In January 2014, the Same-Sex Marriage Prohibition Act was made into law by Nigerian President Goodluck Jonathan (Sogunro 47). This law prevents Nigerian citizens from identifying as part of the LGBTQ+ community or participating in homosexual activities (Sogunro 47). When the act was first instated, the punishment was 14 years in prison or being publicly lashed with a horse whip, but now with the imposition of Sharia law in 2017, homosexuals can be stoned to death (Sogunro 47, Human Dignity Trust). This act also allows organizations operating outside the law to openly hunt homosexuals, publicly torture them, and throw them to mobs where they are severely beaten (Sogunro 47).

Another contemporary example of anti-LGBTQ+ ideals comes from Uganda. In 1990, Uganda changed the punishment for unnatural intercourse from 14 years in prison to life imprisonment (Jjuuko 64). The Barometer of Gay Rights (BGR) is a tool that can be used to understand which countries accept homosexuals and to what extent they do so, and uses a scale from 0 to 30 to judge where a country stands (Dicklitch 450). In 2012, Uganda scored a 4, putting them in the 'active persecutors' category (Dicklitch 467). The Anti-Homosexuality Bill of 2009, also known as the 'Kill the Gays' bill, intended to institute the death penalty for repeat offenders, but this portion of the bill was not included because of intense international backlash (Ambrosino, Strand 917).

Current anti-gay sentiments also come from Cameroon; a country that deeply subscribes to the ideas put forth by Zimbabwean President Mugabe, who finds homosexuality "extremely outrageous and repugnant to [his] human conscience" (Nfobin 73). In Cameroon, there are three anti-gay laws, but section 347a is the one that is most used to prosecute homosexuals today (Nfobin 90). The punishment for real or perceived homosexual acts can range from fifteen days

to two years in prison, in addition to a fine of 10,000 to 100,000 francs (Nfobin 88). In 2011, three people were arrested based on perceived homosexuality because they had on makeup and were drinking Irish Cream (Nfobin 90).

Through the examination of these contemporary case studies and the UNHCR's definition of who qualifies for refugee status, it is evident that sexual orientation should be protected under this document, if we maintain that a refugee is a person who, "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country" (UNHCR 14). LGBTQ+ persons can fit into the existing framework of the convention's document under the 'membership of a particular social group' portion. The reason that this marginalized group has not been included in the document sooner pertains to three distinct problems: sexual offenses are seen as acceptable ground for persecution, sexual orientation is seen as a choice, and sexual orientation is sometimes not able to be proven (McGhee 145).

Same-sex relations have been and are still seen across the world as reason for persecution, as I have shown with multiple case examples. Most of these sexual interactions (sodomy, premarital sex, adultery) that are being criminalized are consensual—they are only illegal because of ideas present during British colonialism and extreme interpretations of religious texts. Today, gay men and women can be legally killed by public stoning and caning in Brunei, teenagers can be hanged in a public square in Iran, and members of the LGBTQ+ community in many other countries can be sentenced to life in prison for engaging in consensual sex. Even when there are not explicit death penalty laws pertaining to homosexuality, LGBTQ+ members continue fear for their lives. Violent anti-gay groups in Russia, for example, seek out

gay men and execute them on camera for the entire world to watch. When a person's life is put in danger because they engaged in a consensual, non-dangerous act and they are seeking to flee said danger, that person is a refugee by definition.

Another argument for not including LGBTQ+ members in the UNHCR's definition of who is a refugee is that sexual orientation is a choice, but this has been proven false multiple times over. Everything from genetic makeup to exposure to different levels of sex hormones to patterns of brain organization can affect a person's sexual orientation, all of which are biological characteristics (Rahman). To use this argument to not include LGBTQ+ individuals in the document is to inherently misunderstand what sexuality is—it is not a choice, it is an uncontrollable piece of biological identity. For all of this biological evidence, one cannot be proven to be LGBTQ+ through any quantifiable test. However, to this argument I say no one takes on the law of their country lightly—if a person could choose to be gay or straight, being straight would usually be the easier and safer option, as being LGBTQ+ is an incredibly difficult and dangerous weight to bear in many countries.

Including the LGBTQ+ community in the UNHCR's definition of who qualifies as a refugee would be simple and effective, and would allow the convention's definition to remain inclusive and fair to all humankind. LGBTQ+ individuals have been fighting for their rights for centuries, but there is still much more to be done. LGBTQ+ members cannot control their marginalization, so it is up to the UNHCR to reform itself so that it might serve all those in danger.

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