

WHO IS PROTECTING LGBTI PERSONS OF CONCERN? EXAMINING THE FACTORS  
THAT EXPLAIN THE LOW LEVEL OF IMPLEMENTATION OF THE UNHCR'S AGD  
POLICY IN THE MENA REGION

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## Abstract

The purpose of this paper is to highlight the underlying factors that contribute to a lack of consolidated effort within the global refugee regime to sustain meaningful engagement with LGBTI persons of concern in the Middle East and North Africa (MENA) region in order to respond to their unique needs and protection risks. Specifically, this paper argues that the pervasive nature of the structures within which the UNHCR operates explains the low level of implementation of the AGD Policy in the MENA region with respect to providing adequate protection, assistance, and solutions for LGBTI asylum-seekers and refugees. Based on specific factors that can be observed at the macro, meso, and micro levels of analysis, this paper will offer some recommendations to improve the degree of support that is offered by the contemporary refugee regime to LGBTI asylum-seekers and refugees in the MENA region.

## Introduction

### *Topic Background*

In 2018, the United Nations High Commissioner for Refugees (UNHCR) consolidated its commitment to understanding and addressing the diverse needs and protection risks of refugee, displaced, and stateless men, women, boys, and girls in their updated *Policy on Age, Gender and Diversity* (AGD).<sup>1</sup> In applying an AGD approach to all aspects of their work, this Policy aims to “ensure that persons of concern can enjoy their rights on an equal footing and participate meaningfully in the decisions that affect their lives, families, and communities.”<sup>2</sup> Whereas forced displacement and statelessness impact persons of concern differently, particularly along the axes of age, gender, and diversity, the UNHCR recognizes the importance of considering the overlapping and intersectional factors that render a person’s experience of displacement and statelessness unique in order to develop informed and effective responses to the issues these individuals face. In particular, asylum-seekers and refugees with a diverse sexual orientation or gender identity (SOGI), such as lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons of concern, face distinct vulnerabilities that characterize the complex nature of their experience of forced displacement or statelessness. In addition to facing severe discrimination and violence in their countries of origin — including sexual abuse, lack of police protection, exclusion from access to basic services, arbitrary detention, and social and familial ostracism — the challenges, threats, and barriers faced by LGBTI asylum-seekers and refugees

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<sup>1</sup> UNHCR. (2018). *UNHCR Policy on Age, Gender and Diversity*. Geneva: UN Refugee Agency.

<sup>2</sup> *Ibid.*, pp. 4.

are frequently compounded in situations of forced displacement.<sup>3</sup> Despite the UNHCR’s vision to “promote further the empowerment of all persons of concern through a more robust integration of an AGD approach into its work,” the distinct gap between the interest in responding to the needs of LGBTI persons of concern and the implementation of a durable protection architecture continue to exacerbate the reality that many LGBTI asylum-seekers and refugees are still unable to secure even their most basic human rights.<sup>4</sup>

### *Research Question and Main Argument*

The purpose of this paper is to interrogate the underlying factors that contribute to a lack of consolidated effort at the international level to sustain meaningful engagement with LGBTI persons of concern in order to respond to their unique needs and protection risks. Specifically, this paper seeks to emphasize how the pervasive nature of the structures within which the contemporary refugee regime operates explains the low level of implementation of the AGD Policy with respect to providing adequate protection, assistance, and solutions for LGBTI asylum-seekers and refugees. To provide a clear scope for evaluating the situation of LGBTI persons of concern, this paper will focus on explaining the constraints that limit the successful implementation of the UNHCR’s AGD Policy in the Middle East and North Africa (MENA) region. Finally, based on the factors that can be observed at the macro, meso, and micro levels of analysis, this paper will offer some recommendations to improve the degree of support that is offered by the contemporary refugee regime to LGBTI asylum-seekers and refugees in the MENA region.

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<sup>3</sup> UNHCR. (2015). *Protecting Persons with Diverse Sexual Orientations and Gender Identities: A Global Report on UNHCR’s Efforts to Protect Lesbian, Gay, Bisexual, Transgender and Intersex Asylum-Seekers and Refugees*. Geneva: UN Refugee Agency.

<sup>4</sup> UNHCR. (2018). *UNHCR Policy on Age, Gender and Diversity*. Geneva: UN Refugee Agency.

## *Note on Terminology*

Currently, there exist a wide variety of terms that are used to refer to the populations studied in this paper. While acknowledging that the use of terminology is evolving, for the sake of consistency, this paper adopts several key terms to represent the issue and populations it discusses. Following the UNHCR's *Guidelines on International Protection No. 9*, this report defines sexual orientation as "each person's capacity for emotional, affective and sexual attraction to, and intimate relations with, individuals of the same gender or more than one gender."<sup>5</sup> Gender identity, on the other hand, refers to "each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth."<sup>6</sup> The acronym sexual orientation or gender identity (SOGI) represents these two identity axes when discussed together as a single topic.

## Case Study: LGBTI Asylum-Seekers and Refugees in the MENA Region

### *General Overview of LGBTI Persons of Concern in the MENA Region*

Hostility, violence, and discrimination directed toward LGBTI persons in countries of operation significantly affect the UNHCR's ability to carry out its protection mandate.<sup>7</sup> For this reason, it is important to broadly understand the legislative, social, and cultural contexts in which LGBTI persons live to better frame the challenges and successes of UNHCR operations in

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<sup>5</sup> UNHCR. (2012). *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*. Geneva: UN Refugee Agency.

<sup>6</sup> *Ibid.*, pp. 1.

<sup>7</sup> UNHCR. (2015). *Protecting Persons with Diverse Sexual Orientations and Gender Identities: A Global Report on UNHCR's Efforts to Protect Lesbian, Gay, Bisexual, Transgender and Intersex Asylum-Seekers and Refugees*. Geneva: UN Refugee Agency.

implementing the AGD Policy. According to contemporary literature on the global state of SOGI-related issues, the MENA region represents a particularly high concentration of intolerance towards the LGBTI community. While historians note that the thirteenth and fourteenth centuries saw a relative openness towards homosexuality in the MENA region, to the extent that homoerotic poetry and visual art were widely considered part of a refined sensibility, the modern MENA region views the subject of diverse SOGI differently.<sup>8</sup> Although there is no single explanation for the pronounced hostility towards LGBTI persons in the MENA region today, it is likely that a combination of factors including European colonial influence, violent culture wars, and the rise of Islamic fundamentalism are collectively responsible for restricting the degree of sexual freedom that exists in MENA states in the twenty-first century.

### *Legal Situation*

To understand the precarious situation of LGBTI persons and the marginalized space they occupy within the MENA region, it is particularly useful to consider the prevalence of statutory laws that exist at the level of the nation state to limit or completely restrict the expression of diverse SOGI. According to the International Lesbian, Gay, Bisexual, Trans, and Intersex Association's (ILGA) *Report on State-Sponsored Homophobia*, the MENA region represents the highest concentration of states who have enacted laws that directly criminalize same-sex sexual activity in the world.<sup>9</sup> Based on a survey of the ILGA's findings, a mix of "conservative religious teaching, tradition, social order, and ignorance" has fuelled the legislative imposition of severe criminal sanctions by state actors in the MENA region that effectively

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<sup>8</sup> The Economist. (2018). *How Homosexuality Became a Crime in the Middle East*. London: The Economist Newspaper Limited.

<sup>9</sup> Itaborahy, P., & Zhu, J. (2013). *State-Sponsored Homophobia, A world Survey of Laws: Criminalization, Protection, and Recognition of Same-Sex Love*. Brussels: International Lesbian, Gay, Bisexual, Trans and Intersex Association.

normalize the proliferation of persecutory environments in which LGBTI persons are barred from exercising equal rights.<sup>10</sup> In taking a closer look at the criminalization of homosexuality in this context, criminal sanctions in MENA states range from monetary fines and imprisonment sentences of up to eight years, to public flagellation and even the death penalty.<sup>11</sup> For instance, in Saudi Arabia, where the application of Islamic Sharia law criminalizes the act of sodomy, the punishment for a married man is death by stoning, while the punishment for an unmarried man is 100 blows of the whip and banishment for one year.<sup>12</sup> While laws targeting LGBTI persons may be written to criminalize specific sexual acts as opposed to the broader identities of a person with a diverse SOGI, it is important to note however that “such laws may nonetheless be used to prosecute individuals who identify as LGBTI,” or who are presumed by authorities to exhibit the traits of someone belonging to that group.<sup>13</sup> Therefore, the existence of laws that directly criminalize same-sex relations is not the only determining factor in whether or not LGBTI persons are at risk of being persecuted for their diverse SOGI. For example, in MENA states where there are no legislative provisions that expressly criminalize same-sex relations, the protection of public morals and public order, which are particularly elastic concepts and therefore open to interpretation by authorities, are used as legal justifications to limit the rights of LGBTI persons.<sup>14</sup> For instance, Egyptian law enforcement officers cited a 1961 law against ‘debauchery’ to justify the mass arrest and criminal prosecution of LGBTI persons during a high-profile raid

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<sup>10</sup> Ibid., pp. 10.

<sup>11</sup> Ibid., pp. 11.

<sup>12</sup> Schmitt, A., & Sofer, J. (1992). *Sexuality and Eroticism Among Males in Moslem Countries*. New York: The Haworth Press.

<sup>13</sup> UNHCR. (2015). *Protecting Persons with Diverse Sexual Orientations and Gender Identities: A Global Report on UNHCR's Efforts to Protect Lesbian, Gay, Bisexual, Transgender and Intersex Asylum-Seekers and Refugees*. Geneva: UN Refugee Agency.

<sup>14</sup> Ibid., pp. 13.



of a gay-friendly club in Cairo in 2001, despite the fact that homosexuality is not considered illegal under Egypt's penal code.<sup>15</sup>

### *Forms of Persecutory Harm*

While the element of discrimination is often central to claims made by LGBTI persons of concern in the MENA region, they also frequently reveal experiences of “serious physical, and in particular, sexual violence [...] that constitute acts of harm and mistreatment so serious in nature that they would, generally, reach the threshold of persecution within the meaning of the 1951 Convention.”<sup>16</sup> However, LGBTI persons can also experience lesser forms of physical and psychological harm, including “harassment, vilification, intimidation, and psychological violence that can rise to the level of persecution, depending on the individual circumstances of the case and the impact on the particular applicant.”<sup>17</sup> More specifically, transgender persons, as an even smaller group, will often have distinct experiences of persecution that could, for example, relate to an increased risk of exposure to harm if their gender identity is not legally recognized.<sup>18</sup>

Whereas these experiences of persecutory harm often precipitate forced displacement or statelessness, LGBTI persons of concern in the MENA region are also subject to severe social exclusion and violence in various accommodation settings in countries of asylum by both the host community and the broader community of asylum-seekers and refugees.<sup>19</sup> In most cases

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<sup>15</sup> Jankowicz, M. (2017). *Jailed for Using Grindr: Homosexuality in Egypt*. London: The Guardian News and Media Limited.

<sup>16</sup> UNHCR. (2008). *UNHCR 2008 Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*. New York: UN Refugee Agency.

<sup>17</sup> *Ibid.*, pp. 9.

<sup>18</sup> Mule, N., & Gates-Gasse, E. (2012). *Envisioning LGBT Refugee Rights in Canada: Exploring Asylum Issues*. Toronto: Envisioning Global LGBT Human Rights.

<sup>19</sup> UNHCR. (2015). *Protecting Persons with Diverse Sexual Orientations and Gender Identities: A Global Report on UNHCR's Efforts to Protect Lesbian, Gay, Bisexual, Transgender and Intersex Asylum-Seekers and Refugees*. Geneva: UN Refugee Agency.

where an individual in the MENA region flees their country of origin due to a well-founded fear of persecution on SOGI-related grounds, it is likely that they will arrive in another MENA country where they continue to be vulnerable to the same or similar protection risks. These threats extend to areas where LGBTI persons live, work, and convene, and implicate various aspects of their lives, including “their rights to fairly avail of local law enforcement and judicial services, arrange appropriate living arrangements, access health services, and remain free from subjection to violence” on account of their SOGI.<sup>20</sup> Consequently, geography plays an important role in the outcome of LGBTI persons of concern. Furthermore, even in instances where LGBTI persons of concern feel it is safe enough to reveal their SOGI in MENA countries of asylum, prejudice among local law enforcement and state judicial bodies against LGBTI persons often inhibit these individuals from being able to access justice mechanisms and receive the kinds of support they require.<sup>21</sup>

### *Agents of Persecution*

Agents of persecution toward LGBTI persons in the MENA region broadly fall under two categories, and may be perpetrated either by state actors, for example, through the criminalization of consensual sexual relations between persons of the same sex, or by non-state actors.<sup>22</sup> Furthermore, instances where a state’s inaction may be persecutory include “failure of the police to respond to requests for assistance and refusal by the authorities to investigate, prosecute or punish individuals inflicting harm on LGBTI persons.”<sup>23</sup> Contrastingly, persecution

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<sup>20</sup> Ibid., pp. 28.

<sup>21</sup> Ibid., pp. 28.

<sup>22</sup> UNHCR. (2008). *UNHCR 2008 Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*. New York: UN Refugee Agency.

<sup>23</sup> Ibid., pp. 13.

may also be perpetrated by state actors through the “degrading treatment inflicted by those under their direct control.”<sup>24</sup> For example, international human rights organizations have documented numerous cases in which gay refugees and asylum-seekers in Lebanon have been subject to forensic anal investigations by the Lebanese Internal Security Forces as part of police investigative procedures to determine a suspects’ sexual behaviour.<sup>25</sup> In MENA states where acts of war have precipitated the break down of societal order, such as Iraq, the lack of a stable centralized government has allowed Islamist militias and vigilantes to impose their own idea of justice. Terrorist militant groups such as the Islamic State have become “notorious for gruesomely murdering people suspected of being gay by throwing them off buildings and stoning them to death.”<sup>26</sup> On the other hand, non-state actors, whether family members, neighbours, strangers or work colleagues, can either be “directly involved in persecutory acts, including through physical abuse and forced marriage, or indirectly by exposing the individual concerned to harm, for example, by reporting his or her conduct or sexual orientation to the authorities.”<sup>27</sup> In an article published by the Human Rights Watch on the state of SOGI-related issues in Syria, it was noted that LGBTI persons often face a double threat when it comes to their SOGI: “they’re being persecuted by the Syrian army and by militant groups while their families often reject them, or worse.”<sup>28</sup> Moreover, the Human Rights Watch recorded that gay men in

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<sup>24</sup> Ibid., pp. 13.

<sup>25</sup> Human Rights Watch. (2012). *Lebanon: Stop ‘Tests of Shame’*. New York: Human Rights Watch.

<sup>26</sup> The Economist. (2018). *How Homosexuality Became a Crime in the Middle East*. London: The Economist Newspaper Limited.

<sup>27</sup> UNHCR. (2008). *UNHCR 2008 Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*. New York: UN Refugee Agency.

<sup>28</sup> Reid, G. (2014). *The Double Threat for Gay Men in Syria*. New York: Human Rights Watch.

particular have long been the target of honour killings, as their SOGI is often viewed as disgracing the reputation of their entire family.<sup>29</sup>

## UNHCR Response and Policy Mechanisms

### *AGD Policy Framework*

As previously mentioned, the UNHCR’s updated Policy on AGD represents the organization’s most recent effort to focus the purview of their operations on the people they serve. In effect, this Policy consolidates the UNHCR’s existing commitment to a strong AGD orientation by advancing the UNHCR’s *Strategic Directions 2017-2021* which emphasize the organization’s commitment to “(i) [drawing] on the rich range of experiences, capacities, and aspirations of refugee, displaced, and stateless women, men, girls, and boys; and (ii) [being] accountable to the people we [UNHCR] serve, listening and responding to their needs, perspectives, and priorities.”<sup>30</sup> The scope of the UNHCR’s Policy on AGD covers “all persons of concern to UNHCR, and applies to all operations and Headquarters in all areas of UNHCR’s work.”<sup>31</sup> More specifically, the UNHCR applies an AGD approach to their work by outlining core actions in the following areas of engagement: AGD-inclusive programming, participation and inclusion, communication and transparency, feedback and response, organizational learning and adaptation, and gender equality and commitments to women and girls.<sup>32</sup> Taken together, these six areas of engagement comprise the framework for “achieving accountability to persons

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<sup>29</sup> Ibid., pp. 1.

<sup>30</sup> UNHCR. (2017). *UNHCR’s Strategic Directions 2017-2021*. Geneva: UN Refugee Agency.

<sup>31</sup> UNHCR. (2018). *UNHCR Policy on Age, Gender and Diversity*. Geneva: UN Refugee Agency.

<sup>32</sup> Ibid., pp. 8.

of concern, within an AGD approach.”<sup>33</sup> Within this framework, the AGD Policy broadly recognizes LGBTI persons under the category of gender. It is worthwhile mentioning, however, that the recognition of LGBTI persons of concern in the AGD Policy appears only once in the entire 25 page document, whereas reference to other affected persons such as women and youth collectively appear over 100 times. Nevertheless, the UNHCR insists that efforts to include considerations for LGBTI persons are present in their overall AGD approach. Despite the fact that compliance with this Policy is mandatory, the present conditions in which LGBTI asylum-seekers and refugees are fleeing persecution in the MENA region show that there has been a particularly low level of implementation when it comes to responding to the needs and protection risks of this vulnerable group, a trend which will be explored in greater detail in the next section of this paper.

#### *2017 UNHCR AGD Accountability Report*

To examine the progress made in implementing the AGD approach across all areas of the organization’s work, the UNHCR published its *2017 AGD Accountability Report* as a way of addressing the key challenges that were reported by diverse groups of concern during participatory assessments and identifying promising practices that were implemented by the UNHCR and its partners to overcome these challenges.<sup>34</sup> With respect to LGBTI asylum-seekers and refugees, the assessment of operations revealed that the most commonly cited protection challenges faced by LGBTI persons of concern are “difficulties in identifying them due to their fear of making themselves visible, as well as stigma and discrimination arising from both their

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<sup>33</sup> Ibid., pp. 8.

<sup>34</sup> UNHCR. (2017). *UNHCR Age, Gender and Diversity Accountability Report 2017*. Geneva: UN Refugee Agency.

own communities and the host communities where they live, which negatively impacts their safety and security.”<sup>35</sup> Furthermore, the report also emphasized that low staff and partner capacity in understanding the protection issues of LGBTI persons of concern limit the protection and solutions provided to them.<sup>36</sup> In order to improve the identification of LGBTI persons and SOGI-specific outreach initiatives, one operation in the MENA region increased its efforts to systematically identify LGBTI refugees and include them in focus group discussions.<sup>37</sup> According to the report, the operation used the “UNHCR’s asylum procedures to systematically identify LGBTI refugees and displayed posters in interview rooms and waiting areas promoting UNHCR as a safe space for LGBTI individuals.”<sup>38</sup> As a result of these efforts, the operation reported a 36 per cent increase from the previous year in the number of LGBTI refugees who self-identified.<sup>39</sup> In addressing protection and solutions for LGBTI persons of concern, the report summarized specific measures taken by operations in the MENA region to mitigate the threats toward LGBTI individuals in camp settings, such as monetary support and access to livelihood opportunities; however, in many situations, the main solution for LGBTI persons facing discrimination and other protection risks remains resettlement.<sup>40</sup>

#### *2015 UNHCR Report on Protecting Persons with Diverse SOGI*

In addition to the UNHCR’s analysis of the organization’s progress towards implementing the AGD Policy, the UNHCR also published a document in 2015 that specifically

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<sup>35</sup> Ibid., pp. 29.

<sup>36</sup> Ibid., pp. 29.

<sup>37</sup> Ibid., pp. 30.

<sup>38</sup> Ibid., pp. 30.

<sup>39</sup> Ibid., pp. 30.

<sup>40</sup> Ibid., pp. 31.

analyzed the organization’s efforts to address the needs and protection risks of LGBTI asylum-seekers and refugees entitled *Protecting Persons with Diverse Sexual Orientations and Gender Identities*.<sup>41</sup> The report compiles key findings from a project undertaken globally between July 2014 and May 2015 to assess progress made by UNHCR country and regional operations to effectively protect LGBTI asylum-seekers and refugees.<sup>42</sup> Based on their findings, the report highlights that “legislative, social, and cultural discrimination against LGBTI persons is pervasive globally, and that such discrimination significantly impedes UNHCR’s LGBTI-focused protection efforts.”<sup>43</sup> Specifically, identification and outreach to LGBTI persons of concern in the MENA region remains one of the persistent challenges faced by UNHCR operations. Whereas many LGBTI persons in forced displacement are at a “high risk of remaining invisible in countries of asylum due to the fear of further persecution by state and non-state agents,” the report points to the need for UNHCR operations to focus on implementing registration and reception measures that simultaneously foster a safe and inclusive space for LGBTI persons of concern and affirm that fear of persecution because of SOGI are legitimate grounds for asylum claims.<sup>44</sup> The report concludes that a large majority of the challenges surrounding protection work focused on LGBTI persons of concern stem from “the criminalization of LGBTI identity, expression, and association in many countries of operation.”<sup>45</sup> Moreover, it also notes that despite the UNHCR’s efforts to consolidate its commitment to understanding and addressing the

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<sup>41</sup> UNHCR. (2015). *Protecting Persons with Diverse Sexual Orientations and Gender Identities: A Global Report on UNHCR’s Efforts to Protect Lesbian, Gay, Bisexual, Transgender and Intersex Asylum-Seekers and Refugees*. Geneva: UN Refugee Agency.

<sup>42</sup> Ibid., pp. 5.

<sup>43</sup> Ibid., pp. 6.

<sup>44</sup> Ibid., pp. 19.

<sup>45</sup> Ibid., pp. 9.

diverse needs and protection risks LGBTI asylum-seekers and refugees through several policy, procedural, and operational guidelines relating to SOGI, offices need to be better supported and trained to translate these macro-level guidelines into concrete, implementable protection measures.<sup>46</sup>

*2008 UNHCR Guidance Note on Refugee Claims Relating to SOGI*

Pursuant to the UNHCR's mandate, the 2008 *Guidance Note on Refugee Claims Relating to SOGI* aims to enhance the delivery of protection to LGBTI asylum-seekers and refugees by clarifying applicable law and legal standards.<sup>47</sup> By recognizing the substantial progress in the analysis and interpretation of SOGI in the context of contemporary refugee law, this Note draws upon a growing jurisprudence at the international and regional levels to analyze the current state of LGBTI persecution and identify positive practices developed by states in their asylum decisions. Under Section C, the Note articulates important information on the convention grounds contained in the refugee definition, specifically, that they are not mutually exclusive, and in the case of LGBTI persons of concern, may overlap.<sup>48</sup> As such, the "transgression of social or religious norms, including by expressing one's sexual orientation or identity, may be analyzed in terms of political opinion, religion or membership of a particular social group."<sup>49</sup> Furthermore, the Note affirms that it has been well established that sexual orientation constitutes an innate characteristic that is fundamental to human dignity, and therefore no one should be

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<sup>46</sup> Ibid., pp. 9.

<sup>47</sup> UNHCR. (2008). *UNHCR 2008 Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*. New York: UN Refugee Agency.

<sup>48</sup> Ibid., pp. 14.

<sup>49</sup> Ibid., pp. 14.



compelled to forsake it.<sup>50</sup> Thus, “requiring a person to conceal his or her sexual orientation and thereby give up those characteristics, contradicts the very notion of ‘particular social group’ as one of the protected grounds in the 1951 Convention.”<sup>51</sup> What is important to remark about the circulation of this Note within the international community, however, is that it was not positively received by all member states.<sup>52</sup> In fact, several state actors from the MENA region took this opportunity to criticize the UNHCR’s imposition of the organization’s interpretation of the concepts of SOGI on all member states, citing that every state has the right to hold their own beliefs on the meaning of SOGI.<sup>53</sup>

### Factors Impacting the Outcomes and Policy Constraints

#### *Macro Level Factors*

The study of macro level factors that constrain the successful implementation of the UNHCR’s AGD Policy in the MENA region is defined by the effect of large-scale social processes on the overarching institutional and cultural conditions in which LGBTI persons of concern live. Based on the pervasive nature of state-sponsored homophobia in the MENA region, state legislations represents one of the most influential macro level factors to affect the UNHCR’s AGD approach in the context of LGBTI persons of concern. According to a recent survey of UNHCR offices in the MENA region, laws criminalizing LGBTI identity, expression, and association pose a “significant challenge to establishing partnerships and referral pathways

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<sup>50</sup> Ibid., pp. 15.

<sup>51</sup> Ibid., pp. 15.

<sup>52</sup> Lavolette, N. (2010). *The UNHCR’S Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity: A Critical Commentary*. International Journal of Refugee Law.

<sup>53</sup> Ibid., pp. 7.

with NGOs and other actors to assist with LGBTI-specific outreach.”<sup>54</sup> For example, LGBTI-specific outreach initiatives may pose a risk to the safety of UNHCR staff and partners in MENA states where such activities may be perceived as promoting illegal activities. Consequently, the prevalence of state legislations that target LGBTI persons weakens the UNHCR’s ability to undertake the core actions outlined in the AGD framework’s areas of engagement. Another macro level factor that discreetly reinforces the existence of barriers that limit the UNHCR’s capacity to empower LGBTI persons of concern through the integration of an AGD approach in its work in the MENA region is the omnipresence of heteropatriarchal culture. Whereas the broader social and cultural climate in MENA countries is oriented towards maintaining traditionally-held values and beliefs regarding SOGI, the proliferation of gender norms effectively limit the meaningful participation of individuals with a diverse SOGI in community and decision-making structures.<sup>55</sup>

### *Meso Level Factors*

The study of meso level factors that constrain the successful implementation of the UNHCR’s AGD Policy in the MENA region is defined by the range of interactions between group entities that exert social control over the population in which LGBTI persons of concern live. Given their ability to exercise compulsory power within the public sphere to ensure that people adhere to societal norms and regulations, including those that limit the expression of individuals with a diverse SOGI, law enforcement in the MENA region represents an important meso level factor that constrains the effectiveness of the UNHCR in sustaining continuous and

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<sup>54</sup> UNHCR. (2015). *Protecting Persons with Diverse Sexual Orientations and Gender Identities: A Global Report on UNHCR’s Efforts to Protect Lesbian, Gay, Bisexual, Transgender and Intersex Asylum-Seekers and Refugees*. Geneva: UN Refugee Agency.

<sup>55</sup> UNHCR. (2017). *UNHCR Age, Gender and Diversity Accountability Report 2017*. Geneva: UN Refugee Agency.

meaningful engagement with LGBTI persons of concern as a part of their AGD framework. In MENA countries where the enforcement of social practices by authorities produces a hostile environment in which the LGBTI community is stigmatized, persons of concern are more “reluctant to come forward and share their concerns or seek protection out of fear of being the target of discrimination.”<sup>56</sup> Given the centrality of participatory engagement to the AGD approach as a way of pursuing protection, assistance, and solutions that take into account the perspectives and priorities of LGBTI persons of concern, this reluctance effectively impedes the UNHCR from carrying out its protection mandate. A second meso level factor that disrupts the UNHCR’s ability to promote further the empowerment of all persons of concern within the AGD Policy in the MENA region is the religious community. In almost all countries within the MENA region, Islam is recognized as the official state religion.<sup>57</sup> Correspondingly, traditional interpretations of sacred Islamic texts such as the Quran and the Hadiths serve as a major source of religious law and moral guidance in MENA countries, and therefore exert powerful social control over members of society. Whereas religious doctrine in this context is often used to justify the prejudicial treatment of LGBTI persons and fuel ideologies of distrust towards diverse SOGI, there is a point of contention that exists between the UNHCR’s vision of empowering LGBTI persons of concern and the perceived position of those same individuals within society by the religious community.

### *Micro Level Factors*

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<sup>56</sup> Ibid., pp. 30.

<sup>57</sup> Itaborahy, P., & Zhu, J. (2013). *State-Sponsored Homophobia, A world Survey of Laws: Criminalization, Protection, and Recognition of Same-Sex Love*. Brussels: International Lesbian, Gay, Bisexual, Trans and Intersex Association.

The study of micro level factors that constrain the successful implementation of the UNHCR’s AGD Policy in the MENA region is defined by the nature of everyday social interaction between individuals and the scope of human agency that shape the unique conditions in which individual LGBTI persons of concern live. Whereas the nuclear family unit symbolizes the most important socializing agent in most cultures that comprise the MENA region, familial relations therefore represent a decisive micro level factor that affects the ability of LGBTI persons of concern to express their SOGI. As was previously discussed, LGBTI persons in the MENA region who have either chosen to publicly express their SOGI, or who are suspected to be associated with the LGBTI community, have historically been the target of honour killings and various forms of abuse by family members for being perceived as disgracing the status of one’s kin. Even in situations where LGBTI persons are not subject to direct forms of bodily harm, isolation and ostracism from one’s family can have a “severe impact on their ability to come forward and access protection services that address their specific needs.”<sup>58</sup> For these reasons, familial relations may significantly hamper the UNHCR’s commitment to ensuring that LGBTI persons of concern can “participate meaningfully in the decisions that affect their lives, families, and communities.”<sup>59</sup> Another micro level factor that constrains the individual agency of LGBTI persons is individual security. In effect, threats to individual security, whether in the form of physical, emotional, or psychological harm, underly the experience of nearly every LGBTI asylum-seeker and refugee in the MENA region. Consequently, previous experience of violence or discrimination that threatened to compromise one’s individual security often hinders the

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<sup>58</sup> UNHCR. (2015). *Protecting Persons with Diverse Sexual Orientations and Gender Identities: A Global Report on UNHCR’s Efforts to Protect Lesbian, Gay, Bisexual, Transgender and Intersex Asylum-Seekers and Refugees*. Geneva: UN Refugee Agency.

<sup>59</sup> UNHCR. (2018). *UNHCR Policy on Age, Gender and Diversity*. Geneva: UN Refugee Agency.

willingness of LGBTI persons of concern to identify themselves according to their SOGI, thereby problematizing the UNHCR's capacity to identify an entire category of people they are accountable to in the AGD Policy.<sup>60</sup>

## Conclusion

### *Summary of Findings*

In summary, this paper has identified some of the underlying factors that constrain the successful implementation of the UNHCR's AGD Policy in the MENA region. In a survey of the current situation faced by LGBTI persons of concern, contemporary research literature highlights the significant protection risks that stem from the prevalence of negative attitudes and feelings towards persons with diverse SOGI in MENA countries, even in places where statutory laws directly criminalizing LGBTI expression and activity are non-existent. Where factors that can be observed at the macro, meso, and micro levels of analysis show that the pervasive nature of structures within which the contemporary refugee regime operates hinders the consolidated effort of the UNHCR to sustain meaningful engagement with LGBTI persons of concern, the reality for many LGBTI asylum-seekers and refugees in the MENA region is that these barriers continue to compound their experience of forced displacement or statelessness, thereby impeding them from securing even their most basic human rights.

### *Recommendations*

In thinking about what measures might be necessary to improve the level of implementation of the AGD Policy in the MENA region, the question of the UNHCR's role in

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<sup>60</sup> UNHCR. (2017). *UNHCR Age, Gender and Diversity Accountability Report 2017*. Geneva: UN Refugee Agency.

providing effective protection to LGBTI asylum-seekers and refugees points to an important debate over the organization's non-political mandate. Based on the current situation of LGBTI persons in the MENA region, this paper holds the view that the UNHCR's protection mandate requires the organization to function as a political agency in the sense of trying to influence public authorities to protect LGBTI persons of concern through humanitarian advocacy that focuses on the delivery of basic human rights. While protesting governments in the MENA region to change their legislation regarding the legality of same-sex sexual activity extends beyond the organization's purview and risks further compromising the safety of LGBTI asylum-seekers and refugees, there are other ways for the UNHCR to promote the protection of LGBTI persons of concern that would allow the agency to maintain the fiction that they are a completely non-political organization. For example, working closely with national and international NGOs that are directly engaged with the LGBTI community in the MENA region, such as the ABAAD Resource Centre for Gender Equality and Rainbow Railroad, would enable the UNHCR share information on affected people and build upon best practices for implementing identification and outreach initiatives. From an operational perspective, the UNHCR should continue to focus on increasing awareness among staff in country and regional offices regarding the particular challenges of identifying, receiving, and registering LGBTI persons of concern. One problem that is often associated with identifying LGBTI asylum-seekers and refugees is that status determination is heavily influenced by the perception of stereotypes. Therefore, by openly discussing the concepts of SOGI in the context of UNHCR operations and developing standard operating procedures on this matter, staff will be able to better respond to LGBTI persons of concern fleeing persecution on the grounds of SOGI.

## *Outlook for LGBTI Asylum-Seekers and Refugees in the MENA Region*

Although the UNHCR has affirmed its commitment to the protection of LGBTI persons of concern through the implementation of the AGD Policy, significant challenges still remain. While there are certainly issues in translating the AGD framework as it is written into actionable change, it is apparent that the largest challenge surrounding protection work focused on LGBTI persons of concern in the MENA region stem from the criminalization of LGBTI identity, expression, and association in many countries of operation.<sup>61</sup> It is likely that the best approach the UNHCR can take involves a combination of improvements to the identification and outreach of LGBTI persons of concern, capacity building, and the displacement conditions of LGBTI asylum-seekers and refugees in the MENA region. In conclusion, it is imperative that the contemporary refugee regime continue to consider the plight of the LGBTI community in the MENA region in its response to protecting the lives of those with a diverse SOGI who are experiencing forced displacement or statelessness.

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<sup>61</sup> UNHCR. (2015). *Protecting Persons with Diverse Sexual Orientations and Gender Identities: A Global Report on UNHCR's Efforts to Protect Lesbian, Gay, Bisexual, Transgender and Intersex Asylum-Seekers and Refugees*. Geneva: UN Refugee Agency.

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