

African Rainbow Family



**Submission To
All Party Parliamentary Group on Global LGBT Rights
(APPG LGBT)'s Invitation to submit written evidence on:
The UK's stance on international breaches of LGBT rights.**

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Executive Summary

- African Rainbow Family (ARF) is a dedicated support group for lesbian, gay, bisexual, transgender intersexual and queer (LGBTIQ) people of African heritage in the United Kingdom. Established in 2014, in response to African nations' wake of toxic and draconian anti-gay laws, persecutions and environment which seek to criminalise LGBTIQs for the preference of whom they choose to love.
- As a result of toxic environment from state and non state agents' homophobic attacks on LGBTIs in the countries that criminalise consensual same sex relationships, many LGBTIs have to flee for their lives and seek sanctuary in other LGBTI friendly countries. Members of ARF come from such countries where it's a crime to love or be who they are. ARF works with:
- LGBT rights movement organisations and individuals with similar values and visions to actively form links to eradicating inequalities of LGBTIQ people in the UK and beyond.
- LGBTIQ asylum seekers and refugees as a self-help group providing peer support in areas of emotional, psychological and physical needs in order to reducing isolation, low self esteem and lack of confidence.
- Signpost our over 40 members who are seeking asylum in the UK based on their sexuality to services such as Solicitors as we cannot give legal advice, medical professionals, potentially offer advice about self representation and campaign individually and collectively against immigration detention, especially of LGBTI asylum seekers. Our members gave evidence to the APPG on Refugees and Migration's Inquiry into the Use of Immigration Detention in the UK.
- Advocate for improvements in the UK asylum system and procedures for fairness to people fleeing persecution based on their sexuality or gender identity and seek for them to be treated with respect, sensitivity and dignity. Members of ARF contributed to the Investigation into the Home Office's Handling of Asylum Claims Made on the Grounds of Sexual Orientation conducted by the Independent Chief Inspector of Borders and Immigration, John Vine CBE QPM and many more platforms.
- Communities who face constant harassment, hate crimes and discrimination heaped on them by an ignorant society because of their sexuality or sexual preferences as well as trans phobia in ensuring equality and that their human rights are recognised and upheld.

This evidence is submitted on behalf of ARF and wish for ARF to be referenced in the final report. ARF intends to address The role that UK parliamentarians can play in championing LGBT rights worldwide and responding when such rights are threatened with particular respect to UK Asylum Seekers.

Global Situation For LGBTIs

1. LGBTI people around the world constantly experience discrimination and violence. Homosexuality and same-sex acts are illegal in at least 75 countries and in a number the death penalty is enforced¹. Even in parts of the world where consensual same-sex marriages and relationships are legalised, LGBTI people are not spared daily discriminations. This is noted by Prince Zeid, UN High Commissioner for Human Rights, , in a report published on discrimination and violence against individuals based on their sexual orientation and gender identity, which states:

'76...the overall picture remains one of continuing, pervasive, violent abuse, harassment and discrimination affecting LGBT and

¹ ILGA, 'State-Sponsored Homophobia: A world survey of laws: Criminalisation, protection and recognition of same-sex love' (2014) – http://old.ilga.org/Statehomophobia/ILGA_SSHR_2014_Eng.pdf

intersex persons in all regions. These constitute serious human rights violations, often perpetrated with impunity, indicating that current arrangements to protect the human rights of LGBT and intersex persons are inadequate. There is as yet no dedicated human rights mechanism at the international level that has a systematic and comprehensive approach to the human rights situation of LGBT and intersex persons'.²

LGBTI Asylum Seekers and Refugees

2. As a result of toxic environment from state and non state agents' homophobic attacks on LGBTIs in the countries that criminalise consensual same sex relationships, many LGBTIs have to flee for their lives and seek sanctuary in other LGBTI friendly countries. Members of ARF come from such countries where it's a crime to love or be who they are.

3. Seeking asylum based on one's sexual orientation and or gender identity is the most complex of all. The shame, stigma, secrecy, having to live dual lives such as forced marriages to opposite sex to shielding and covering up in order to hide our differences and conform with our societal norms, religious and cultural beliefs are very daunting. Some of us had horrific experiences of 'correctional rapes' and honour killings. Above of all, most of us do not know that our identity qualifies as a ground for asylum. When we do eventually know, it becomes very complicated navigating the asylum system as we are often faced with credibility issues such as not claiming early enough etc - forgetting that we have been in the closet all of our lives without support mechanism whatsoever but persecutions.

4. Fear of the authority for some us who have been arrested, tortured, extorted, beaten up by the police and vigilantes including all sorts of discriminations back in our countries makes it even more unavoidably difficult for us to make asylum claims or divulge any evidence of what we went through especially when we aren't provided with an enabling environment to do so. This is reiterated by the UNHCR, Guidance Note on Refugee Claims Relating to Sexual Orientation or Gender Identity, para. 35.³

5. Where some us are able to summon up courage and divulge such, the culture of disbelief is inherent in the asylum system. This is echoed by Navi Pillay, the then UN High Commissioner for Human Rights that:

'Even in countries that recognize these grounds for asylum, practices and procedures often fall short of international standards. Review of applications is sometimes arbitrary and inconsistent. Officials may have little knowledge about or sensitivity towards conditions facing LGBT people. Refugees are sometimes subjected to violence and discrimination while in detention facilities and, when resettled, may be housed within communities where they experience additional sexuality and gender-related risks. Refoulement of asylum- seekers fleeing such persecution places them at risk of violence, discrimination and criminalization. In some cases, they are returned with instructions to "be discreet", an approach criticized by UNHCR'.⁴

² Report of the Office of the United Nations High Commissioner for Human Rights, 'Discrimination and violence against individuals based on their sexual orientation and gender identity' (4 May 2015) http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Documents/A_HRC.29.23_en.doc

³ UNHCR, Guidance Note on Refugee Claims Relating to Sexual Orientation or Gender Identity, para. 35 <http://www.refworld.org/pdfid/48abd5660.pdf>

⁴ United Nations High Commissioner for Human Rights, 'Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity (2011)' – Page 13 http://www.ohchr.org/Documents/Issues/Discrimination/A.HRC.19.41_English.pdf

6. The United Nations High Commissioner for Refugees (UNHCR) recognises the layers of intersectionality that LGBTI asylum seekers face and states:

'Intersecting factors that may contribute to and compound the effects of violence and discrimination include sex, age, nationality, ethnicity/race, social or economic status and HIV status. Due to these multiple layers of discrimination, LGBTI individuals are often highly marginalized in society and isolated from their communities and families. It is also not uncommon for some individuals to harbour feelings of shame and/or internalized homophobia'.⁵

7. Stonewall in its report, 'No Going Back' equally identifies the difficulties faced by LGBTI asylum seekers and states:

'Lesbian and gay asylum-seekers feel a deep sense of shame and stigma about being gay and have rarely, if ever, spoken openly about it for fear of persecution. They also have a profound fear of authority figures because of the persecution they face in their home countries'.⁶

8. The official number of LGBT asylum seekers in the UK is unknown but an estimate of 1,200-1,800 yearly is said to be likely⁷ as no figures are published by the Home Office.

Decision making

9. ARF has growing concern in the way and manner that the Home Office makes decisions regarding asylum claims based on sexual orientation. Most of ARF group members have had their asylum claims turned down for reasons that are not in line with recognised assessment processes such as stated in The United Nations High Commissioner for Refugees (UNHCR) guidance that:

The fact that an applicant has not had any significant relationship(s) in the country of origin or in the country of asylum does not necessarily mean that he or she is not LGBT. It may, rather, be an indication that he or she has been seeking to avoid harm as explained above in paragraphs 23-26. The applicant will not always know that sexual orientation can constitute a basis for refugee status or can be reluctant to talk about such intimate matters, particularly where his or her sexual orientation would be the cause of shame or taboo in the country of origin. As a result, he or she may at first not feel confident to speak freely or to give an accurate account of his or her case. Even where the initial submission for asylum contains false statements, or where the application is not submitted until some time has passed after the arrival to the country of asylum, the applicant can still be able to establish a credible claim'.⁸

10. We feel there is no justice for LGBTI asylum seekers in the UK.^{9 10} The level of standard of proof is so high. We have been forced to produce 'pornographic' evidences to prove our sexuality

⁵ UNHCR, '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' (2012) – para 3

⁶ Stonewall, 'No Going Back' (2010) – page 3 http://www.stonewall.org.uk/what_we_do/research_and_policy/2874.asp

⁷ Metropolitan Support Trust, 'Over Not Out: The housing and homelessness issues specific to lesbian, gay, bisexual and transgender asylum seekers' (2009) – Page 11 <http://www.metropolitan.org.uk/images/Over-Not-Out.pdf>

⁸ UNHCR, Guidance Note on Refugee Claims Relating to Sexual Orientation or Gender Identity, para 38 <http://www.refworld.org/pdfid/48abd5660.pdf>

⁹ Where Is Justice And Equality For LGBT Asylum Seekers In The UK? <http://www.nationaldiversityawards.co.uk/where-is-justice-and-equality-for-lgbt-asylum-seekers-in-the-uk/>

¹⁰ The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom: A Joint Inquiry by the All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf> page68

and in fact Home Office interviewers have asked very intrusive questions about sexual activities and not one's sexual orientation.¹¹

11. A national outrage of the mistreatment of LGBTI asylum seekers erupted following concerns about the burden of proof and kinds of questions asked by the Home Office¹² Following this report, the HSSD, Theresa May MP, said the system was flawed and announced a review of the application system.¹³ A step welcomed by us.

12. Members of ARF participated in the investigation conducted by the Independent Chief Inspector of Borders and Immigration, John Vine. In his report, he found the Home Office wasn't following its own guidance and made some recommendations;¹⁴ including the need to adopt the DSSH model by S. Chelvan.¹⁵ We welcome these recommendations. However, an important opportunity was missed to make recommendation(s) for reprieve regarding asylum claims and decisions made under the flawed system.

13. In 2014, a landmark ruling was handed down at the Court of Justice of the European Union Luxembourg, in the case of A, B and C vs. Staatssecretaris van Veiligheid en Justitie. The Court clarifies the methods by which national authorities may assess the credibility of the declared sexual orientation of applicants for asylum and rejected the following:

1. **Intrusive questioning about an applicant's sexual acts**
2. **The use of explicit evidence like films documenting applicants' intimate sexual conduct.**
3. **The physical or medical tests purportedly revealing one's sexual orientation.**
4. **A delay in asserting one's LGBTI status does not necessarily indicate fraud, as allowances must be given to LGBTI applicants for the special kinds of difficulties they face.¹⁶ This ARF sees as a long awaited catalyst to vindicate LGBTI asylum claimants.**

14. The Home Office subsequently developed an Asylum Policy Instruction on SEXUAL IDENTITY ISSUES IN THE ASYLUM CLAIM^{17 18} in line with the EUCJ ruling¹⁹; we feel if adhered to, would revolutionise the decision making process.

The call for a fairer LGBT asylum system grows by the day. Human Dignity in its Policy Recommendations to the UK Government (2015), stated:

"Regarding LGBT asylum seekers, further reforms are required to address standards of Home Office decision making to ensure LGBT people who are at

¹¹ UKLGIG, 'Missing the Mark' (2013) <http://www.uklgig.org.uk/wp-content/uploads/2014/02/Missing-the-Mark.pdf>

¹² Gay asylum: how do you prove your sexuality? 2:06-3:12th minutes <https://www.youtube.com/watch?v=UlgBBHn-Ink>

¹³ Gay asylum - a change of heart from the Home Office? <https://www.youtube.com/watch?v=jnYim06ZvdY>

¹⁴ Independent Chief Inspector of Borders and Immigration: 'An Investigation into the Home Office's Handling of Asylum Claims Made on the Grounds of Sexual Orientation' (October 2014) <http://icinspector.independent.gov.uk/wp-content/uploads/2014/10/Investigation-into-the-Handling-of-Asylum-Claims-Final-Web.pdf>

¹⁵ S. Chelvan barrister, DSSH Model and LGBTI asylum claims (2014) <file:///C:/Users//Downloads/dssh-model-and-lgbti-asylum-claims.pdf>

¹⁶ Court of Justice of the European Union, A, B, C v Staatssecretaris van Veiligheid en Justitie (2014) <http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-12/cp140162en.pdf>

¹⁷ App. 1. Home Office: Asylum Policy Instruction 'Gender identity issues in the asylum claims' (2015)
Source: HHC, 'Credibility Assessment in Asylum Procedures – A Multidisciplinary Training Manual – Volume 2'

¹⁸ Asylum Policy Instruction SEXUAL IDENTITY ISSUES IN THE ASYLUM CLAIM
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/404372/EXT_Asylum_Instruction_Sexual_Identity_Issues_in_the_Asyum_claim_v5_20150211.pdf

¹⁹ Court of Justice of the European Union, A, B, C v Staatssecretaris van Veiligheid en Justitie (2014)
<http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-12/cp140162en.pdf>

real risk of persecution are granted refugee status. The asylum process should be made fairer and less traumatic for those going through it".²⁰

Detention

15. The use of indefinite detention and its effects in the UK is alarming. This prompted an inquiry into its use.²¹ The inquiry made key recommendations as contained in App.2 below²². Of particular worry is the detention of LGBTI asylum seekers as noted in the APPG on Refugee's report²³ and Peter Tatchell.²⁴

16. It is known that LGBTI detainees experience social isolation, physical and sexual violence and harassment by both facility staff and other detainees. The case with Trans detainees are more worrying. This leads to segregations of LGBTIs in detention centres by staff or self isolation by LGBTI detainees themselves. A measure that can trigger or compound severe mental health issues²⁵. Some of our members have been detained at one time or the other in the process of their asylum claims and have experienced similar consequential effects. In This report: What Happens In Detention Centres If You're Lesbian Or Gay; an ex- lesbian detainee was quoted thus:

"One day it was my turn," says Apata. "But another detainee who called herself a pastor pushed me over and said, 'The pulpit isn't meant for homosexuals.' She said she was sent to Yarl's Wood by God to come and clean it of filthy things like homosexuality."²⁶

17. It was noted by ILGA-Europe in September 2014 that:

The situation for LGBTI asylum seekers in reception facilities (including detention centres) is often problematic: in most cases they fled alone, and they have neither the support of family members nor a network of fellow expatriates. In reception centres they face homo- or transphobia, discrimination, bullying, and violence, in many cases from their countrymen. It is not unusual that upon arriving in the country where they hoped to feel safe, they feel compelled to hide in the closet again.'²⁷

18. The then UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, reported in 2010 that:

'Within detention facilities, there is usually a strict hierarchy, and those at the

²⁰ Policy Recommendations of the Human Dignity Trust: Briefing for the UK Government (2015): http://humandignitytrust.org/uploaded/Policy_Proposals_2015-2020_pdf.pdf

²¹ The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom: A Joint Inquiry by the All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf> page68

²² App. 2 The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom: A Joint Inquiry by the All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf> page68

²³ Aderonke Apata - Inquiry into the use of Immigration Detention Evidence <https://detentioninquiry.files.wordpress.com/2015/02/aderonke-apata.pdf>

²⁴ Peter Tatchell talks about the appalling treatment gay, lesbian and transgender asylum seekers receive at the hands of the UK's Home Office. Tatchell was speaking at the Secular Hall in Leicester. **The Home Office's treatment of LGBT asylum seekers (2014)** <https://www.youtube.com/watch?v=g1ZLLmmPAmQ>

²⁵ Tabak, S and Levitan, R 'LGBTI migrants in immigration detention'; Forced Migration Review, 'Sexual orientation and gender identity and the protection of forced migrants' (Issue 42 / April 2013) – Page 47 <http://www.fmreview.org/soqi>

²⁶ What Happens In Detention Centres If You're Lesbian Or Gay <http://www.buzzfeed.com/patrickstrudwick/this-is-what-happens-to-lesbian-and-gay-asylum-seekers-in-de%23.uqy9OLXQA#.vqLv2abRW>

²⁷ ILGA Europe, 'Good practices related to LGBTI asylum applicants in Europe' (2014) – Page 47 http://www.ilga-europe.org/home/news/latest/asylum_publications_launch_2014

bottom of this hierarchy, such as children, the elderly, persons with disabilities and diseases, gays, lesbians, bisexuals and trans-gender persons, suffer double or triple discrimination.' ²⁸

Conclusion

In order for the UK to champion LGBT equality globally, ARF affirms that scrutiny is applied to recommendations made and ensure that the UK looks inward whilst enforcing compliance in other countries where LGBTI people face human rights abuses. This is so that it's not seen as being hypocritical and double standard which stands to undermine the good intentions of the APPG on Global LGBT Rights.


Recommendations

- Radically reform the UK asylum system.
- People seeking safety in the UK based on their sexual orientation and gender identity must be protected and granted leave to remain.
- Home Office to acknowledge the vulnerability of LGBTI asylum seekers, adhere to its policies and guidance
- Comply with national and international guidance in assessing LGBTI asylum claims and must improve decision making.
- LGBTI asylum claims decisions made under the flawed system must be null and void as reprieve for those judged under it.
- End immigration detention of LGBTI asylum seekers and a time limit of 28 days as a last result.
- No deportation of LGBTI asylum seekers to homophobic countries where they will face criminalisation and even death.
- Adopt the 'Policy Recommendations of the Human Dignity Trust: Briefing for the UK Government'
- Publish the figures of LGBTI asylum seekers showing those detained, granted and deported

Appendix

1. Home Office: Asylum Policy Instruction '*Gender identity issues in the asylum claims*' (2015).
2. Key Recommendations of '*The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom: A Joint Inquiry by the All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration*' (2015).

²⁸ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, '*Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention*' (2010) – Page 62 http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.39.Add.5_en.pdf

 SUMMARY		CREDIBILITY ASSESSMENT IN ASYLUM CASES BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY	
		CHECKLIST	
FUNDAMENTAL PRINCIPLES	BEING LESBIAN, GAY, BISEXUAL, TRANS OR INTERSEX IS...	NOT A DISEASE	
		NOT A CHOICE	
		NOT A LIFESTYLE	
		CURRENT IDENTITY	
		A HUMAN RIGHT	
PRACTICES PROHIBITED UNDER EU LAW	NO ASSESSMENT BASED ON STEREOTYPES		
	NO QUESTIONING ON SEXUAL PRACTICES		
	NO ADMISSION OF EVIDENCE SHOWING SEXUAL ACTIVITIES		
	NO "TESTS" (MEDICAL, PSYCHIATRIC, PSYCHOLOGICAL, TEMPLATE)		
	NO REJECTION OF CREDIBILITY JUST BECAUSE OF LATE DISCLOSURE		
STANDARDS FOR PROPER CREDIBILITY ASSESSMENT	THE DSSH MODEL – HELPS YOU EXPLORE THE APPLICANT'S PAINFUL "JOURNEY"	DIFFERENCE	
		STIGMA	
		SHAME	
		HARM	
	CREATE A SAFE SPACE	TRUST, SECURITY, CONFIDENTIALITY	
		TIME	
		AWARENESS OF THE POSSIBILITY OF PROTECTION	
	FIND THE RIGHT WORDS	INTERCULTURAL COMPETENCE	
		CHOOSING THE RIGHT INTERPRETER	
	FOCUS ON MATERIAL FACTS	THE DSSH MODEL CAN SHOW YOU WHICH ELEMENTS ARE MATERIAL	
	USE CREDIBILITY INDICATORS WITH GREAT CAUTION	AWARE OF ALL LIMITATIONS AND DIFFICULTIES TYPICAL FOR GENDER-RELATED CASES	
		AWARE OF THE IMPACT OF STIGMA AND SHAME ON THE ABILITY TO TALK	
		AWARE OF THE DIFFICULTY OF SELF-IDENTIFICATION IN CERTAIN CASES	
AWARE OF THE LIMITS OF COUNTRY INFORMATION			
BE AWARE OF AND WORK ON YOUR OWN STEREOTYPES AND LIMITS			

App. 1. Home Office: Asylum Policy Instruction 'Gender identity issues in the asylum claims' (2015)

Source: HHC, 'Credibility Assessment in Asylum Procedures – A Multidisciplinary Training Manual – Volume 2'

Key Recommendations

- There should be a **time limit of 28 days** on the length of time anyone can be held in immigration detention.
- Detention is currently used disproportionately frequently, resulting in too many instances of detention. The presumption in theory and practice should be in favour of **community-based resolutions** and against detention.
- Decisions to detain should be very rare and detention should be for the **shortest possible time and only to effect removal**.
- The Government should learn from international best practice and introduce a much wider range of **alternatives to detention** than are currently used in the UK.

App. 2 The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom: A Joint Inquiry by the All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration

<https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf> page68