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A NEW BALANCING ACT FOR SEXUAL MINORITY REFUGEES? IMPACTS OF REFUGEE REFORM FOR LGBTQI ASYLUM IN CANADA

Article by **Erika Gates-Gasse**, OCASI Senior Policy and Research Coordinator & Envisioning Canada Research Team Community Chair & **Kathleen Gamble**, PH. D. Candidate in Gender, Feminist and Women's Studies at York University

This article summarizes some emerging issues from the on-going analysis of the Canadian research data of the Envisioning LGBT Human Rights Research Project in conjunction with how the implementation of Bill C-31, or the "Protecting Canada's Immigration System Act", impacts particularly marginalized groups like LGBTQI asylum seekers. Among the changes introduced by Bill C-31 which have particular impacts for LGBTQI refugees are significantly shortened timelines for the refugee determination process, a two-tiered system based on a Designated Country of Origin list, and a ban on Pre-Removal Risk Assessments and Humanitarian and Compassionate consideration.

The Envisioning Global LGBT Human Rights Research Project is an international community-based research initiative focusing on research and analysis of the criminalization of Lesbian, Gay Bi, Trans, Queer and Intersex (LGBTQI) peoples in Commonwealth countries, resistance to criminalization and work to advance LGBTQI rights, asylum issues affecting LGBTQI peoples in Canada, and interaction between International Human Rights Mechanisms and LGBTQI rights initiatives.

This article summarizes some emerging issues from the on-going analysis of the Canadian research data in conjunction with how the implementation of Bill C-31, or the so-called "Protecting Canada's Immigration System Act", impacts LGBTQI asylum seekers.

Envisioning emphasizes the involvement of both community and academic participants in the process of defining and developing research goals. Our methodology is based on an integrated anti-oppression model, committed to a research process that recognizes racialized, gendered and class forms of oppression and exploitation in relation to sexuality/gender orientation/expression.

IMPORTANCE OF THE ENVISIONING PROJECT

While this article specifically focuses on the research being conducted by the Envisioning Canada Research Team, the project is international in scope. Envisioning's international partners are based in Commonwealth countries, in recognition that homosexuality continues to be criminalized in two-thirds of Commonwealth nations as a legacy of British laws introduced through colonialism (Human Rights Watch, 2008). International Envisioning community partners are based in India, Botswana, Uganda, Jamaica, St. Lucia, Belize and Guyana, and a large part of their research is focused on video-documenting their human rights work and organized resistance to the criminalization of LGBTQI peoples. Initial research results, including video documentation, can be found on the Envisioning website at www.envisioninglgbt.

com. In addition, there is a legal team that is studying the interaction between International Human Rights Mechanisms and LGBTQI rights initiatives, and finally the Canada Research Team, whose work is the focus of this article.

CANADA RESEARCH TEAM

In partnership with service providers, community groups and LGBTQI rights organizations in Toronto, Envisioning is conducting research on LGBTQI asylum in Canada with the goal of creating better knowledge about:

- experiences and obstacles for LGBTQI asylum seekers with the refugee determination system, especially in light of the implementation of Bill C-31; and
- experiences and obstacles for LGBTQI asylum seekers in accessing services; and
- the emerging trends and root causes of forced migration for LGBTQI people. The research is focused on the Greater Toronto Area, the top destination for refugees coming to Canada (CIC, 2013).

Envisioning community partners include OCASI – the Ontario Council of Agencies Serving Immigrants, Black-CAP, The 519 Community Centre, Rainbow Health Ontario, EGALE, Africans in Partnership Against AIDS, and Alliance for South Asian AIDS Prevention. Some partners are directly involved with providing settlement services, while others bring expertise in policy initiatives, and they all bring experience and knowledge of the issues affecting the communities they serve. The community partners have been involved in the entire research design and implementation process, and are shaping what the knowledge mobilization outcomes will be.

Thus far, the research has included a Roundtable event with service providers in February 2012, 12 focus groups and interviews with asylum seekers and Convention refugees organized by community partners since January 2013, and 4 focus groups with service providers, along with a review and analysis of changes to immigration and refugee laws and policies in Canada.

BILL C-31, OR THE "PROTECTING CANADA'S IMMIGRATION SYSTEM ACT"

As eloquently explained by Sharalyn Jordan, Canada Research Team member:

> *Refugees who have made claims based on persecution of their sexual orientation or gender identity have lived in defiance of social erasure, stigma, and threatened or actual violence in their home countries. In migrating to Canada they have engaged with immigration and border systems that enable and restrict mobility based on the priorities of global capitalism, neo-colonialism and post-9/11 notions of security. Undertaking an asylum application entails accessing and working within a refugee system that was not designed with Lesbian Gay bi Trans Queer refugees in mind; requiring claimants to name and prove an often hidden and stigmatized identity, and to disclose experiences, some traumatic, that are deeply intimate… For queer refugees, survival has typically required being vigilant, cautious with trust, and conforming to remain hidden. These survival tactics do not disappear on departure* (Jordan, 2009).

Access to good information and services are crucial to supporting LGBTQI refugees in making successful claims, but claimants experience significant barriers to this access. And Bill C-31 has further complicated the situation for LGBTQI refugees.

Bill C-31, or the "Protecting Canada's Immigration System Act", came into effect on December 15, 2012. It is an even more draconian iteration of what had been Bill C-11, the "Balanced Refugee Reform Act", which died on Parliament floor when the Conservative government dissolved Parliament on March 26, 2011 to call an election. Bill C-31 was introduced and passed under a majority Conservative government, which significantly reduced the ability for negotiation and compromise on the final version of the bill. Among the changes introduced by Bill C-31 are significantly shortened timelines for the refugee determination process, a two-tiered system based on a Designated Country of Origin (DCO) list, and a ban on Pre-Removal Risk Assessments (PRRA) and Humanitarian and Compassionate consideration, which all have particular impacts for LGBTQI refugees.

Accelerated timelines to submit documentation and to prepare for a hearing are undermining the ability of LGBTQI asylum seekers to have a fair process. Claimants now have only 15 days to submit their Basis of Claim (BoC) form, which explains a claimant's story and is crucial in establishing their credibility. Previously the deadline was 28 days. In addition, claimants must submit all supporting documentation 50 days after starting their claim, and their hearing can take place 10 days later, only 60 days after initiating their claim. The timelines are even shorter for claimants coming from Designated Countries of Origin (DCO), countries which are considered "safe" by the Minister of Citizenship and Immigration Canada. However, the DCO list does not consider that while a country may be relatively "safe" for most groups, it may not be for others, such as Roma peoples in Hungary or LGBTQI peoples in Mexico. DCO claimants face even shorter timelines than non-DCO claimants, with 15 days to file their BoC, 35 days to submit all documentation, and their hearing can take place within 45 days of starting their claim. And DCO claimants do not have access to the Refugee Appeals Division, a crucial safety net.

Many focus group participants spoke about the lasting mental health impacts of stigma, oppression and trauma, some very briefly and some in more detail. They spoke about needing time and trust before being able to speak about their experiences, time to gain a sense of safety, time that the current system does not allow for. For example, Umair[1] spoke about the serious depression he experienced as he began processing his past and his decision to seek counseling. However, in his second session his counselor asked him some questions about his sexual orientation, at which point he stopped talking and refused to come back. Based on his experiences in his home country, he was terrified of being arrested. It took him months to become comfortable with the idea that Canada is "safe" and to consider counseling again. Under the current system, he would not have the time to start to build that trust and process his trauma, and because of the 2012 cuts to the Interim Federal Health program, as a claimant he would not even be able to access psychological support services.

With shortened timelines, immediate access to reliable information and specialized services is urgent. The focus group results pointed to significant differences in experience between those LGBTQI claimants with friends or relatives already in Canada and those without as a result of access to information and services. For instance, it appears that those with connections in Canada are often advised not to make their refugee claim at the Port of Entry, but to enter the country (if they have the appropriate visa) and make an inland claim after contacting a lawyer, gathering documentation to support their case, and accessing services to start the settlement process.

This extra time is vital to ensuring a successful claim, especially when it comes to documentation. Homophobic and transphobic violence often occurs in the private realm: unlike civil conflicts, people experience sexual orientation and gender identity (SOGI) persecution in isolation (Ottoson, 2008). "Queer refugee claimants need to do things like ask people they've had sexual relationships with to provide letters, recover old hospital records, and sift through newspaper stories to try to make the hidden, visible, or for trans claimants the inconsistent, coherent" (Jordan, 2009). Family, friends and home country officials may refuse (or take a long time) to provide access to what evidence is available. Reaching out for help in obtaining documents and evidence may also put the LGBTQI claimant, and their family and friends, at risk of (greater) persecution. As a result, evidence is often limited. Before Bill C-31, lawyers had time to build trust and get to know their client, to determine with them what evidence was critical to pursue. The extra time afforded by waiting and initiating an inland claim is significant, now that there is so little time once the claim clock starts ticking.

Those without prior knowledge of the system are not able to take advantage of this extra time, and are also at a disadvantage in accessing the appropriate services. Amina[2] spoke about the impact of not having information about which lawyers have expertise with LGBTQI refugee cases. She navigated the system far enough to apply and qualify for Legal Aid. But when she was presented with a long list of lawyers to choose from, she had no idea if any of them had expertise in LGBTQI cases and also did not realize the importance of this. The result is that she now has serious concerns about her lawyer's ability to adequately represent her and win her case. Not having access to appropriate services or experiencing a delay in accessing those services can have significant negative consequences on the outcome of a claim, especially with shortened timelines. Even excellent decision makers make incorrect decisions when the evidence before them is inadequate (Jordan & Morrisey, 2009).

Given the challenges described in this article, in addition to many, many more that can't be covered, strong safety nets are critical to safeguard against LGBTQI claimants falling through the cracks and being deported back to situations of persecution. However, Bill C-31 has reduced safeguards to a shocking degree. While the good news is that the Refugee Appeals Division (RAD) was finally implemented through Bill C-31, the timeline for filing and perfecting an appeal is only 15 days, while previously it was a total of 45 days. DCO claimants, who face the shortest timelines, have no access to the RAD.

For all intents and purposes, unsuccessful claimants also no longer have access to Pre-Removal Risk Assessments (PRRA) and Humanitarian & Compassionate (H&C) consideration. PRRAs are a crucial safeguard for LGBTQI claimants, allowing them to bring forward new information that was not included in their unsuccessful claim, and are meant to ensure that they will not be deported to a country where they would be at danger or risk of persecution. However, unsuccessful non-DCO claimants are banned from applying for a PRRA for one year after their hearing, during which time they will likely be deported, while unsuccessful DCO claimants are banned for 3 years from applying for a PRRA. All unsuccessful claimants also face a one-year ban on applying for H&C consideration, which cannot be accessed from outside of the country.

The full impacts of Bill C-31 on LGBTQI refugees, especially within the context of multiple intersecting oppressions, are only starting to be grasped by the public, academic and policy communities. The impacts have been more evident to those working on the front-lines, and Envisioning Canada Research Team will be working to continue bringing attention to the lived-experiences of LGBTQI refugees. The Canada Research Team will be releasing tools and resources with input from stakeholder, including a final report to be released in the winter of 2015.

NOTES

[1] Not his real name

[2] Not her real name

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DE NOUVEAUX OBSTACLES POUR LES RÉFUGIÉS APPARTENANT À UN GROUPE SEXUEL MINORITAIRE : LES EFFETS DE LA RÉFORME DE LA LOI SUR LES RÉFUGIÉS SUR LES DEMANDEURS D'ASILE LGBTQI

Article par **Erika Gates-Gasse**, coordinatrice principale de la recherche et des politiques OCASI et présidente de l'équipe de recherche canadienne d'Envisioning et **Kathleen Gamble**, candidate au doctorat en études des femmes, du féminisme et du genre à l'Université York

Cet article offre une synthèse de quelques enjeux émergeant des recherches actuelles de l'équipe de recherche canadienne du groupe Envisioning LGBT Human Rights Research Project en rapport avec les effets de la mise en œuvre du projet de loi C-31, ou Loi visant à protéger le système d'immigration du Canada, sur des groupes marginalisés tels que les demandeurs d'asile de la communauté LGBTQI. Parmi les changements introduits par le projet de loi C-31 qui ont une incidence particulière sur les réfugiés LGBTQI, il y a la réduction des délais accordés au processus de l'octroi de l'asile, l'établissement d'un système à deux vitesses basé sur une liste de Pays d'origine désignés (POD) et l'impossibilité de faire appel à l'Examen des risques avant renvoi (ERAR) et aux considérations d'ordre humanitaire.

Le projet de recherche *Envisioning Global LGBT Human Rights* est une initiative de recherche communautaire internationale basée au Centre de recherches féministes de l'Université York qui est axée sur la recherche et l'analyse de la criminalisation d'individus s'identifiant comme étant gai, lesbienne, bisexuel, transgenre, queer et intersexuel (LGBTQI) dans des pays du Commonwealth, de la résistance à la criminalisation et de la défense des droits de la communauté LGBTQI, des enjeux liés aux demandes d'asile par les individus LGBTQI au Canada, et de l'interaction entre les instruments internationaux relatifs aux droits de l'homme et les initiatives de défense des droits LGBTQI.

Cet article offre une synthèse de quelques enjeux émergeant de l'analyse actuelle de l'équipe de recherche canadienne du groupe *Envisioning* en rapport avec les effets de la mise en œuvre du projet de loi C-31, la soi-disant Loi visant à protéger le système d'immigration du Canada, sur les demandeurs d'asile LGBTQI.

Envisioning encourage la participation de la communauté et du milieu universitaire dans le processus de définition et du développement d'objectifs de recherche. Notre méthodologie est basée sur un modèle intégré anti-oppression qui reconnait les formes d'oppression et d'exploitation liés à la race, au sexe et à la classe sociale en rapport avec la sexualité/à l'expression/l'orientation de genre.

IMPORTANCE DU PROJET *ENVISIONING*

Bien que cet article concerne spécifiquement la recherche menée par l'équipe d'*Envisioning* du Canada, le projet a une portée internationale. Les partenaires internationaux d'*Envisioning* sont basés dans les pays du Commonwealth ; l'homosexualité continue d'être considérée illégale dans deux tiers des pays du Commonwealth, un legs des lois britanniques introduites par le colonialisme (Human Rights Watch, 2008).