

# Human Rights Are Universal. Aren't They?

## The Precarious Situation of Women and LGBTIQ Refugees in Britain

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### **The 'refugee crisis' and human rights legislation**

The year 2015 marks the beginning of the so-called 'refugee crisis' in collective European memory. The sudden arrival of large numbers of refugees from other continents was a hot topic, passionately discussed by politicians, the media and civil society. True, unending civil wars, hunger and poverty had driven millions of people from their homes in Africa and Asia, but of the 23 million refugees and asylum seekers counted worldwide in 2017 only 3.2 million arrived in the European Union (UNHCR 2019a; Bundeszentrale für politische Bildung 2018) and only 162,202 arrived in the United Kingdom (UNHCR 2019a). Other nations, especially neighbouring countries took in infinitely more: Turkey, for example, neighbour to Syria, hosted 3.8 million refugees and asylum seekers, Pakistan and Uganda 1.4 million each, Lebanon

1.0 million, Iran 979,519, Ethiopia 892,021 and Jordan 734,841 (UNHCR 2019a). This shows that numbers alone cannot explain the outbreak of the so-called 'crisis' in Europe.

Why was the reaction in many European countries so strong? In general the exclusionary reflex is triggered by a construction of an idealised European self and a demonised non-European other. The European self is seen as characterised by enlightenment, progress, liberty, peace and – particularly important – human rights (Spijkerboer 2018). No need to say in detail what identifies the 'European-other'... Yet the power of such prejudices is – for complex historical reasons, which cannot be dealt with here – differently strong in the various European countries. Therefore one has to look closely at the individual nations, for the situations vary greatly.

Most Eastern European countries, which achieved national

independence only in the 1990s, flatly refused to share in the distribution of refugees, while Italy, as one of the first destinations after the flight across the Mediterranean, but also Sweden and Germany were very welcoming in the beginning until public protest from the Right enforced a more restrictive immigration policy, though, with the exception of Italy under the new populist government, the doors have not been shut completely. Sadly Britain, however, according to an article in *The Guardian*, is “one of the worst places in western Europe for asylum seekers” (Lyons et al. 2017). Since 2010 the Conservative-Liberal Democrat Coalition Government and the following Conservative one have pursued a tough anti-immigration policy, which targets Eastern Europeans (especially Romanians and Bulgarians, who gained the right to work in the UK in 2014) and asylum seekers alike. When in 2012 Theresa May as Home Secretary declared her notorious policy of creating a ‘hostile environment’ for foreign newcomers in the hope they might voluntarily leave, this was originally aimed at illegal immigrants, but in effect it also hit other groups such as recognised refugees, Eastern Europeans and even black citizens who had lived and worked in Britain for decades such as members of the *Windrush* generation (a scandal which caused a public outcry and forced the government to apologies and compensations). Some

of the administrative measures of May’s policy affecting asylum seekers are: smaller financial support than in other countries, the provision of substandard housing, the right to work as late as 12 months after application (in Germany after 3), urging landlords, doctors and banks to check people’s legal status and even sending out vans carrying posters with “In the UK illegally? Go home or face arrest.” In a sinister way the policy has worked: Britain lodges only 3% of applicants for asylum in Europe and with 28% has the lowest rate of approval (compared to the European average of 65%) (Lyons et al. 2017).

As far as human rights are concerned, they are in Britain currently defined by the Human Rights Act of 1998, which incorporated the European Convention on Human Rights (ECHR) into domestic law. (Not surprisingly considering the Brexit vote, the Conservatives plan to leave the Convention, repeal the current Act and replace it by a more British “Bill of Rights”.) Basic rights under the Human Rights Act of 1998 which are particularly important for asylum seekers include the rights to life, liberty, family life, respect for privacy, freedom of thought, conscience and religion, freedom from discrimination and degrading treatment. The UN Refugee Convention of 1951, signed by 149 nations and included in British law with the 1993 Asylum and Immigration

Appeals Act, had ruled an even more essential right: it prescribes that nobody can be sent back to a country where he/she faces threats to life or freedom.

Although, as we have seen, the pride in the definition and legal implementation of universal human rights are an essential part of the construction of the Western self, in reality the devotion to the high principle is often not more than lip-service. Gender plays an important role in the practical application of the law, and certain groups are in danger of being especially disadvantaged. Though feminist and queer perspectives have gained influence in refugee law in recent decades, they are increasingly being neglected in practice as the current legal policy discourse on refugee law is becoming more and more restrictive. Consequently, the legal duty to protect women and minorities not fitting into the heteronormative pattern is more and more disregarded. In the following we will focus on women and LGBTIQ (lesbian, gay, bisexual, transgender, inter and queer) people among the refugees – both groups particularly at risk of violation – and see how far the treatment by the British legal and administrative system complies with the demands of universal human rights. We will look at three areas in some detail, in which the gender aspect has special weight: family reunification, the concept of so-called *safe countries of*

*origin* and modalities of accommodation.

## The situation of female and LGBTIQ refugees in Britain:

### A. Family reunification

Family reunification is one of the increasingly rare possibilities for legal entry to the UK as to other European countries: through this measure, a family



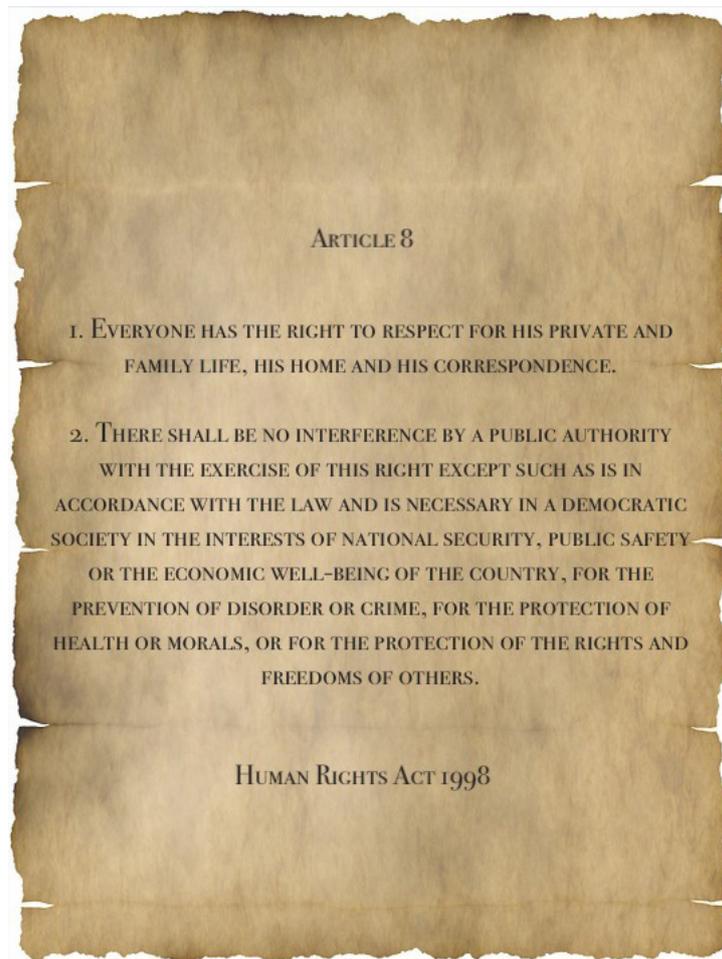
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member with a secured status can bring over members of the nuclear family. The right to family reunification is part of the right to family life, which – in the UK – results from Article 8 of the Human Rights Act of 1998. It is also guaranteed explicitly in Article 10 of the UN-Convention on the Rights of the Child (CRC) and as part of the right to family life.

Yet eligibility is restricted to the immediate family as it existed before the claiming refugee's flight, and the only people automatically eligible to join the refugee in the UK are the spouse or same sex partner and dependent children

under the age of 18. In the UK refugee children cannot apply to bring over their parents and/or siblings. For children this

deadly Mediterranean migration route.



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means a loss of the right to family and thus a violation of the UN Convention on the Rights of the Child. Wives and mothers are also particularly affected by this regulation, as their husbands usually flee before them, while they remain in insecure crisis areas or in precarious and dangerous stopovers, such as refugee camps. Restricting family reunification thus discriminates particularly women and children, who due to a lack of legal channels, flee via the dangerous and often

In the case of polygamy, second or third wives are particularly disadvantaged, since only monogamous marriage is legally recognised. Only one wife will be eligible for family reunification, but the question is how to decide which one. In order to obtain asylum due to family reunification a so-called *genuine relationship* has to be proved. Other wives and their children are condemned to remain within the country of origin. It is not difficult to imagine that an abandoned and single wife's living

conditions will become very hard.

For LGBTIQ persons, too, restricting family reunification has significant consequences. Civil partnerships and homosexual couples and spouses are in principle also recognised within the framework of family reunification. Yet an unmarried partner is eligible to family reunification only, if the couple has been living together for at least two years and the relation existed before the recognised refugee left the country of their former residence. For many same-sex couples coming from countries where homosexuality is stigmatised it is impossible to prove this. Thus they are robbed of their right to family.

All this shows that due to the highly formalised consideration of the conditions, many close people are excluded from family reunification. The definition of the asylum seeker's family members should be more realistically defined to avoid unnecessary and cruel separations, as separated families suffer serious psychological consequences (Beaton & Musgrave & Liebl et al. 2018).

Nevertheless these consequence are ignored if not even political calculus, as some politicians cynically hope thus to diminish incentives for migration. Yet in the long history of migration deterrence has never proved an effective tool. As long as conditions in the countries of origin remain existentially

critical, migration will continue. Restricting family reunification only leads to a violation of human rights.

### **B. The *Safe Countries of Origin* concept**

Another area in which universal human rights are endangered and women and LGBTIQ people are particularly disadvantaged is the concept of the so-called *safe countries of origin*. In Britain as in many other European states asylum applications by citizens from these countries undergo so-called *swift processing*, which means a fast-tracked examination of the claimants' application at the border and in transit zones and weaker safeguards for claims deemed 'manifestly unfounded' including restrictions on appeal, quick deportation and re-entry bans. Although there is no international obligation to compile a list of *safe origin countries*, the UK has done so: it is enacted in the Nationality, Immigration and Asylum Act 2002 (NIAA) and is compiled by the Secretary of State for the Home Department, who can add or subtract countries from it (with the approval of Parliament). According to section 94(5) NIAA, those countries are considered to be safe in which "there is in general [...] no serious risk of persecution of persons entitled to reside". Further it is demanded that "removal to that State or part of persons entitled to reside there will not in general contravene

the United Kingdom's obligations under the Human Rights Convention".

Interestingly, the number of countries designated as *safe countries of origin* differs significantly between EU-Member-States. While Sweden, Italy and Portugal have rejected the concept completely, the UK follows the Netherlands with the highest number on the list (European Migration Network 2018). Currently 94(4) NIAA contains Albania, Jamaica, Macedonia, Moldova, Bolivia, Brazil, Ecuador, South Africa, Ukraine, Kosovo, India, Mongolia, Bosnia-Herzegovina, Mauritius, Montenegro, Peru, South Korea and Serbia. The following states are considered safe only for men: Ghana, Nigeria, The Gambia, Kenya, Liberia, Malawi, Mali and Sierra Leone.

Even though the UK regularly reviews the list, there is no clear fixed timespan for updating. This leads to the problematic situation that the classification of countries as 'safe' often stands in sharp contrast to the actual human rights situation, the high number of asylum seekers belying the term 'safe'. One comes to the conclusion that the categorisation as *safe* or *insecure countries of origin* represents a political rather than a humane decision. For example, Ukraine was not taken from the list throughout the escalation of violence in 2014.

Especially for the LGBTIQ community the assumption of a safe

country is short-sighted as their particular situation has not been considered in the security categorisation of countries and sexual minorities are discriminated in many so-called safe states, for instance in many Arab and some Caribbean countries. Recognising gender-related causes of flight requires gender sensitivity and corresponding knowledge – in many cases merely a desideratum. The case of the Jamaican national Jamar Brown is an example: Brown applied for asylum in the UK on the ground that as a homosexual he feared persecution if he returned to Jamaica. He was detained to be sent home as Jamaica was on the list of safe states. He appealed, and his claim was successful: The Supreme Court found that persecution is a *general* risk for the LGBT[IQ] community in Jamaica, if not for the majority of the population. (Supreme Court 2015). Therefore, his detention as well as the decision to place Jamaica on the list was unlawful.

The principally dangerous situation of divorced or single women, victims of human trafficking and prostitution and other women who are not part of a heteronormative nuclear family in many parts of the world – not only in the 8 African countries on the British list considered secure only for men – is also disregarded in assessing a country as 'safe', as in general only the danger of political prosecution, not gender-related violence is acknowledged as a reason for protection.

Thus the concept of *safe countries of origin* deprives many asylum seekers of their basic rights to life, liberty, integrity, anti-discrimination and their access to protection as stipulated in international law, but also in national law, namely in the Human Rights Act of 1998 and in the Asylum and Immigration Appeals Act of 1993.

### C. Accommodation

The reception and accommodation system for refugees in the UK is a third area in which basic human rights, particularly in the case of women and LGBTIQ people, are endangered.

Any asylum seeker who asks for support gets accommodation in reception centres, called *initial accommodation centres*, each of which accommodates around 200 people. People are supposed to stay there for only a short period, but due to a lack of proper alternative housing, the time spent there often amounts to weeks. The conditions in these *initial accommodation centres* are often appalling and have been repeatedly criticised for failing to provide security, particularly for women, respect for privacy and basic levels of hygiene (cases of rats, mice and bugs have been cited). There is no guarantee that single people will be accommodated on single sex corridors. Rooms are lockable, but some inmates have to share with a stranger, which neutralises the benefit.

The Home Affairs select Committee, after receiving several reports from women who feel unsafe, has made strong recommendations in this regard. The Committee was especially critical of the conditions for pregnant women and new-born babies. Though nuclear families are normally kept together, the accommodation frequently fails to meet the needs of persons with mobility or other special health problems. Food is provided at fixed times and there is very little choice, dietary or religious needs are not always taken into account. Additionally, this affects the right to family: the joint preparation and consumption of meals is an essential part of family life. Especially for smaller children, family should be the place and parents the persons who satisfy their basic needs. Children who experience their parents as powerless in the face of an all-determining institution cannot develop a stable fundamental confidence. The unsatisfactory state of these accommodations may be due to a variety of reasons like incompetence, lack of suitable buildings, staff or money, but one may also suspect that Theresa May's 'hostile environment' policy is a motivating force preventing efforts for improvement.

This suspicion is even stronger in the case of the 10 *immigration removal centres*, in which between 2,000 and 3,000 persons considered to have no right to stay in UK are locked up before

deportation. Some are arrested right after arrival, others after years of living in the country. The UK, Ireland and Denmark are the only European countries without a legal time limit for keeping immigrants imprisoned, who have not committed any criminal offence. In all other EU member states the time limit is a maximum of 18 months (Directive 2008/115/EC). One of the centres, Yarl's Wood in Bedfordshire, is reserved for women, 85% of them victims of rape and other gender-based acts of violence. The health and living conditions there are so unspeakable that in 2018 the women protested with public demonstrations and that 120 went on hunger strike.

If an applicant qualifies for support, s/he is moved into smaller units, flats and shared houses in the same region managed by private companies contracted by the Home Office. Asylum seekers have no choice of location. Accommodation is available in the North, Midlands and South West of England and in Wales and Scotland, not in the South or in London. The situation in dispersed accommodation is, however, not significantly better than in the *initial accommodation centres*. Even though people are granted more autonomy, there are frequent reports of slow or inadequate repairs and bad sanitary conditions. Complaints concern a general lack of cleanliness, the lack of heating or hot water, windows

and doors that cannot be locked and a lack of basic amenities like cookers, showers, washing machines, sinks. All these are violations of basic living standards according to European law.

Sexual violation poses a particular problem. Refugee women and girls are no longer a minority, but form almost half of the world's registered refugees (UNHCR 2019b), and more than 50% of them are children under the age of 18 (UNCHR 2018). Female refugees are particularly vulnerable to violence, more than any other female population group in the world. The danger often begins in the country of origin, where due to a lack of legal protection they have to expose themselves to risks of violence in order to escape their situation: human smuggling, forced prostitution, rape and other forms of sexualised violence are not uncommon on the way to a seemingly safe destination. Nevertheless, once arrived in the UK, they cannot feel completely secure either. For one thing the accommodation situation, as we have seen, does not provide sufficient protection, for another the women cannot count on special legal help, as the UK has not – as 33 other European countries have done – ratified the “Council of Europe Convention on preventing and combating violence against women and domestic violence”, also called Istanbul Convention, of 2018, which considers protection against sexual violence a



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human right to be watched over by the state. Thus due to their precarious legal status and financial dependence, refugee women in Britain again must fear abuse and sexual violence by perpetrators within or without the asylum system (Baillot & Conelly 2018). For LGBTIQ people the situation often looks similar.

**I**t should not go unmentioned that there are a number of organisation across the country, some of them working nationwide like Women for Refugee Women, Safer Refuge Women's Project and UK Lesbian and Gay Immigration Group, others locally, which try to ease the fate of female and LGBTIQ refugees by supporting them in legal matters, health problems or protest actions and helping in many other ways. It is a small consolation, but an important one.

## Conclusion

**M**igration is not something that happens to Europe. Europe has been a leading protagonist in creating this 'crisis', partly through its colonialist history, partly because of pursuing economic or military aims in Africa and Asia. In this article we hope to have shown that the asylum reception system in the UK endangers basic human rights of asylum seeking refugees and that women and LGBTIQ persons as especially vulnerable groups are particularly affected. Not only repeatedly revealed cases of discrimination, harassment and violence to female and LGBTIQ asylum applicants in detention centres show that standards of protection are neglected, but it is also crucial to realise the role of structural discrimination, which, based on prejudices deeply

rooted in society, means institutional disadvantaging of people on the grounds of gender, religion or race.

**N**arratives, which consider migration of refugees from outside Europe as the irregular and undesirable influx of the Other, as something that has to be prevented, fuel a hostile climate which is a fertile soil for structural discrimination. The same holds true of discourses in which war and conflict are described as drivers of 'migrant flows' and not with a view to the suffering victims. A 'Fortress Europe' policy is no solution to the true causes of this 'crisis'. The global north has to accept its responsibility as the rich part of the world and own up to its share in creating the reasons for migration. After its long history of colonialism, Britain in particular has to recognise that this history is not over yet as long as people, seeking shelter and protection, have to face racism in their daily lives in a hostile environment ignoring their needs and rights. Decency demands to work for providing a peaceful environment for the victims of war and expulsion, especially for the weakest among them, based on the ideas of dignity and equality.

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