

**ANNUAL CONSULTATIONS WITH NGOs
17 – 19 JUNE 2014 - International Conference Center Geneva**

SIDE MEETING

BACKGROUND PAPER

Asylum & refugee protection based on SOGI: improving status determination

Tuesday 17 June, 13h30 – 14h30 – Room 6

Moderator:

Charlene May, Regional Director (Cape Town), Legal Resources Centre

Speakers:

Neil Grungras – Founder, Executive Director, Organisation for Refugee, Asylum & Migration

Mandivavarira Mudarikwa – Attorney, Legal Resources Centre

According to Article 1 A (2) of the 1951 UN Refugee Convention read together with the 1967 Optional Protocol, the term “refugee” shall apply to any person who “...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.” (Own emphasis)

Sexually and gender non-conforming persons belong to such a *social group* and in some parts of the world increasingly face persecution from private and public bodies, forcing those who can to flee and seek asylum in the hope that their receiving country will be more accepting towards their sexual orientation and/or gender identity and allow them to live without fear of persecution.

Our experience shows that sexually and gender non-conforming persons often flee rather than approaching their own government for protection. This is largely due to the presence of homophobic laws and policies or discriminatory belief systems. As of 2014, over 80 jurisdictions criminalize private, consensual sexual conduct between adults of the same sex. (Source: Humanity Dignity Trust)

This session will focus on the experiences of sexually and gender non-conforming asylum seekers and refugees who have reported experiencing various forms of discrimination and marginalization including xenophobia, transphobia, and homophobia. Of great concern is the fact that the persecution suffered in their countries of origin appears not to automatically qualify as a “*well-founded fear of persecution*” in the eyes of status determination officers who all too often declare their claims as manifestly unfounded, and in certain cases justify the finding by stating that they have found them to not be gay.

The session will explore how claims based on sexual orientation and gender identity is adjudicated by status determination officers and will provide concrete approaches for NGOs, UNHCR and governments to improve status determination among sexually and gender non-conforming asylum seekers and refugees. The session aims to be interactive and time will be made available for participants to share their experiences and to engage with the speakers.