



**A note on the reference to NGOs in the guidance section
‘Protection’ in UK Home Office Sexual Orientation and
Gender Identity Country Policy and Information Notes**

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A note on the reference to NGOs in the guidance section 'Protection' in UK Home Office Sexual Orientation and Gender Identity Country Policy and Information Notes

Background

This note was prepared by ARC for a July 2018 meeting with the Head of the Country Policy and Information Team (CPIT) of the UK Home Office. This team is responsible for producing reference documents used by decision-makers containing country information and guidance to assess asylum claims known as Country Policy and Information Notes (CPINs).

This note is intended as a guide for legal practitioners and decision-makers when assessing the availability of effective protection in SOGI claims in respect to Albanian, Indian, Kenyan, Ukrainian and South African nationals. It should not be submitted in isolation as evidence to the UK Home Office, the Tribunal or other decision makers in asylum applications or appeals, but complemented by case-specific country of origin information research.

The reference of NGOs in SOGI CPINs

Out of currently 23 published SOGI CPINs¹, those on the following four countries contain a reference to NGOs being able to assist individuals seeking protection from the state in the respective guidance section of the CPIN [emphasis added]:

- [Albania: Sexual orientation and gender identity](#), May 2017
"2.4.6 There are also a number of non-governmental organisations in Albania which advocate for LGBT rights and the LGBT community and enjoy good co-operation with the police. **These organisations may be able to assist the person to avail themselves of the protection of the state** (see Support groups). [...]"
- [India: Sexual orientation and gender identity](#), February 2017
"2.4.6 Various non-governmental organisations advocate for LGBT rights and **may also assist the person to avail themselves of the protection of the state** (see Societal treatment and attitudes). [...]"
- [Kenya: Sexual orientation and gender identity](#), March 2017
"2.4.4 A number of LGBT NGO groups are active and provide support to LGBT persons, and **may be able to assist in accessing protection** (see NGO activities and Police protection against violent attacks). [...]"
- [Ukraine: Sexual orientation and gender identity](#), July 2017
"2.4.4 There are also a number of non-governmental organisations in Ukraine which are active in LGBT issues and **who may potentially assist the person to avail themselves of the protection of the state** (see Civil society organisations). [...]"

Including such reference to NGOs is not only confusing but ultimately might lead to decision-makers dismissing societal persecution claims by asylum seekers from these countries based on their sexual orientation and gender identity as the guidance in these CPINs implies that:

1. NGOs may be able to provide some form of protection themselves; and/or
2. NGOs can assist individuals to obtain state protection.

In contrast, whilst the SOGI CPIN on South Africa also contains the questionable supposition that LGBT groups may be able to assist in accessing protection from the state, it at least clarifies that these organisations are not able to provide protection themselves [emphasis added]:

¹ As of 17th September 2018, 23 SOGI CPIN's have been published on Afghanistan, Albania, Algeria, Bangladesh, The Gambia, Ghana, India, Iran, Jamaica, Kenya, Liberia, Mali, Malawi, Mauritius, Morocco, Nigeria, Pakistan, South Africa, Sri Lanka, Turkey, Uganda, Ukraine and Zimbabwe.

- [South Africa: Sexual orientation and gender identity](#), July 2017
 “2.4.6 South Africa also has a vibrant civil society, including many LGBT groups, which provide a range of services to LGBT persons. **These groups may be able to assist LGBT persons in accessing protection from the state, although they are not able to provide protection themselves** (see Civil society). [...]”

The Home Office’s Asylum Policy Instruction (API) on ‘Assessing credibility and refugee status’ published in January 2015 suggests that “authorities or organisations controlling all or a substantial part of the State” can provide sufficient protection [emphasis added]:

*Caseworkers must consider whether **protection afforded by the authorities or organisations controlling all or a substantial part of the State** is available to an individual regardless of their race, ethnicity, sexual orientation, disability, religion, class, age, gender, occupation or any other aspect of their identity. They must also take into account whether or not the claimant has sought protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so, or the reason for not doing so.²*

The API does not provide any specific guidance on the ability of non-state agents to provide protection who are not in control of “all or a substantial part of the State”.

None of the country of origin information included in the ‘country information’ section of the above mentioned four CPINs document a scenario where NGOs may be able to provide some form of protection and/or can assist individuals to obtain state protection (see Annex I below for the COI analysis). Instead the CPINs guidance appear to a) equate the existence of shelters, which offer temporary accommodation, with effective protection or b) liken the work of an NGO such as awareness raising to being able to assist individuals in accessing state protection, which clearly does not always follow.

² UK Home Office, [Asylum Policy Instruction: Assessing credibility and refugee status](#), 6 January 2015, Section 8: Sufficiency of protection and internal relocation 8.1 Sufficiency of protection, p. 36

Annex I: COI analysis

In the case of the **Albania** ‘Sexual orientation and gender identity’ (SOGI) CPIN, the country information included and based on a range of sources reports that [emphasis added]:

- “a number of domestic and international human rights groups generally operated without government restrictions, investigating and publishing their findings on human rights cases”
- “Government officials generally were cooperative and responsive to their [domestic & international human rights groups] views”
- “LGBT community was organized also through its own organizations that are **increasingly better protecting their rights as citizens**”
- “A good cooperation has begun between NGOs of LGBT community with the State Police authorities and media institutions”.³

This country of origin information (COI) suggests that NGOs are able to generally operate without any restrictions, including investigating and publishing their findings of human rights violations. However, just because one source states that NGOs are “increasingly better protecting their rights as citizens” does not equate to the fact that NGOs are able to provide effective, durable protection when an individual has a fear of persecution.

Additional COI included in this CPIN lists four LGBTI specific NGOs which are active in Albania as of April 2016: three of which mainly engage in lobbying, advocacy and awareness raising of which one also operates an LGBTI shelter (the only one in the country).⁴ The other organisation “promotes legal and social protection of marginalised groups including LGBTIQ”.⁵ According to additional sources included in the CPIN, Alliance against Discrimination LGBT’s (Aleanca kundër Diskriminimit LGBT (Aleanca) shelter ‘STREHA’ is “a temporary transitional service for young LGBTI people (18-25) years [sic] who have been evicted from their homes or are under threats of violence and need shelter [...] was able to assist to [sic] 18 beneficiaries in 2015”.⁶

A closer look at these two organisations, Alliance against Discrimination LGBT – Aleanca – and Open Mind Spectrum Albania (OMSA), reveals that [emphasis added]:

- Alliance against Discrimination LGBT (Aleanca kundër Diskriminimit LGBT (Aleanca) shelter ‘STREHA’ **“has a capacity of 8 beds** and is intended to provide assistance and services to homeless LGBT youth, and works for the reintegration and empowerment as part of society”⁷;
- Open Mind Spectrum Albania’s (OMSA) website states that the organisation works to “protect” the rights of a number of vulnerable communities including “LGBTQI (Lesbian, Gay, Bisexual, Transgender, Queer, Intersex)” in “the structures of justice and **providing legal assistance** to them through a qualified staff for these issues; **raising awareness** of the Albanian society over their problems by increasing the level of informing the public and

³ UK Home Office, [Albania: Sexual orientation and gender identity](#), May 2017, 7. Support groups, 7.1 Non Governmental Organisations (NGOs), paras. 7.1.1 and 7.1.2

⁴ UK Home Office, [Albania: Sexual orientation and gender identity](#), May 2017, 7. Support groups, 7.1 Non Governmental Organisations (NGOs), para. 7.1.3

⁵ UK Home Office, [Albania: Sexual orientation and gender identity](#), May 2017, 7. Support groups, 7.1 Non Governmental Organisations (NGOs), para. 7.1.3

⁶ UK Home Office, [Albania: Sexual orientation and gender identity](#), May 2017, 7. Support groups, 7.2 Shelter, paras. 7.2.1 and 7.2.3

⁷ STREHA, [Rreth Qendrës Streha](#), Undated [Last accessed: 29/03/2018]. Note that ‘Google translation’ was activated for this particular page.

institutions on issues of concern to these communities without violating the legal provisions”⁸.

Thus, information found in the public domain on Aleanca and OMSA that were referenced in the CPIN and may have been used in the guidance section to imply at paragraph 2.4.6 that “these organisations may be able to assist the person to avail themselves of the protection of the state” clearly shows that this is not the case: Aleanca operates a shelter for up to 8 homeless LGBT youth, whilst OMSA provides some form of legal advice.

The SOGI CPIN for **India** includes COI based on a range of sources describing the NGO environment as follows:

- “Advocacy groups and collectives regularly sponsored events and activities, including pride marches, cultural events, and public demonstrations of support for equal rights”
- “LGBTI groups reported that they faced widespread societal discrimination and violence, particularly in rural areas”
- “In the states of Manipur and Nagaland, the TW [trans women] expressed that the NGOs/CBOs [Community Based Organisations] were very much accessible to them; they could share any problems with the organizations and the solutions provided by them satisfied TW’s [sic] needs. They also provided interventions on livelihood and income generation activities”
- “In Karnataka and Maharashtra, TW were supported by providing access to social protection schemes such as arranging for ration cards, ID cards, bank accounts and insurance policies”.⁹

The CPIN lists in addition names of “prominent NGOs providing support, counselling and advocacy to the LGBT community”.¹⁰

None of the COI included in the ‘country information’ section of this CPIN alludes to the possibility that these NGOs “may also assist the person to avail themselves of the protection of the state” as suggested in the guidance section at paragraph 2.4.6.

The **Kenya** SOGI CPIN finds at the guidance section in paragraph 2.4.4 that “A number of LGBT NGO groups are active and provide support to LGBT persons, and may be able to assist in accessing protection (see NGO activities and Police protection against violent attacks)”.¹¹ This paragraph specifically directs users to the sub-section in the ‘country information’ section on ‘Police protection against violent attacks’, which however does not include any COI of relevance to support this point.

The COI included under sub-section ‘6.4 NGO activities’ lists a number of NGOs that provide a variety of functions for the LGBT community and on LGBTI related issues from developing training programs, raising awareness, being involved in advocacy efforts to providing health services, psychological and social support.¹²

No further information is included that supports the conclusion in the guidance section that these NGOs “may be able to assist in accessing protection”.

⁸ Open Mind Spectrum Albania (OMSA), [What we do](#), Undated [Last accessed: 29/03/2018]

⁹ UK Home Office, [India: Sexual orientation and gender identity](#), February 2017, 9. NGOs and support networks, paras. 9.1.1 and 9.1.2

¹⁰ UK Home Office, [India: Sexual orientation and gender identity](#), February 2017, 9. NGOs and support networks, para. 9.1.3

¹¹ UK Home Office, [Kenya: Sexual orientation and gender identity](#), March 2017, 2.4 Protection, para. 2.4.4

¹² UK Home Office, [Kenya: Sexual orientation and gender identity](#), March 2017, 6.4 NGO activities, paras. 6.4.1 – 6.4.6

The SOGI CPIN for **South Africa** included COI on the generally relatively free environment NGOs operate within. With special reference to “LGBT groups” the CPIN lists a number of such organisations providing a drop-in centre, direct health services, research and advocacy, as well as including sources that describe the gay nightlife.¹³

None of the information included in this section or elsewhere alludes to the fact that LGBT groups “may be able to assist LGBT persons in accessing protection from the state” as stated in the guidance section at paragraph 2.4.6.¹⁴

The **Ukraine** SOGI CPIN provides a link to an “extensive list of NGOs active in LGBT matters in Ukraine” and includes some additional information about the purpose of the Union of Gay Organizations of Ukraine (UGOU) and the hotline operated by the Gay Alliance Ukraine (GAU).¹⁵ In addition, it includes information on the shelter operated by the organisation *Insight* for “LGBT people who have escaped from the conflict-plagued areas of eastern Ukraine and Crimea” which is based in a “four-room apartment in a suburb of Kiev” and provides them with “food plus psychological, legal and social support”.¹⁶ According to a January 2018 Reuters article “The facility was launched in June 2014 to help LGBT people fleeing the conflict in the country’s east but has since opened its doors to those from other regions [...] Up to eight guests at a time can receive food, clothing, medicines, a travel card, as well as legal and psychological help, and can stay up to three months, extendable on an ad hoc basis”.¹⁷

Based on the COI included in this CPIN it is questionable what evidence paragraph 2.4.4 in the guidance section that NGOs who are active on LGBT issues “may potentially assist the person to avail themselves of the protection of the state” is based on.¹⁸

¹³ UK Home Office, [South Africa: Sexual orientation and gender identity](#), July 2017, 8. *Civil society*, paras 8.1.1 – 8.2.2

¹⁴ UK Home Office, [South Africa: Sexual orientation and gender identity](#), July 2017, 2.4 *Protection*, para. 2.4.6

¹⁵ UK Home Office, [Ukraine: Sexual orientation and gender identity](#), July 2017, 9.1 *Ukrainian LGBT organisations*, paras. 9.1.1 and 9.1.2, and 9.3 *Counselling*, para. 9.3.1

¹⁶ UK Home Office, [Ukraine: Sexual orientation and gender identity](#), July 2017, 9.2 *Shelter*, para. 9.2.1

¹⁷ Reuters, [Shunned and homeless LGBT Ukrainians find shelter in Kiev](#), 2 January 2018

¹⁸ UK Home Office, [Ukraine: Sexual orientation and gender identity](#), July 2017, 2.4 *Protection*, para. 2.4.4