physical and psychological violence; he was released after ten days but expected a criminal sentence of imprisonment for seven years or even the death penalty. Both applicants’ claims for protection were refused in the first instance of the asylum proceedings. In both cases the Head of the Office for Foreigners decided that the situation in Uganda did not pose a real risk of persecution on the basis of sexual orientation. In the case of the first applicant the decision was reversed in the second instance by the Refugee Board which concluded that the mere existence and execution of the provisions penalising homosexual acts may be sufficient to grant a refugee status. In the second case the Refugee Board held that the claimant’s homosexual orientation was not effectively established notwithstanding the sexologist’s medical certificate and the material presented by the applicant. (This decision was later reversed by the administrative court).

Conclusion
CEE countries are bound by international standards concerning refugees and asylum seekers. Nevertheless, the practice of their national asylum authorities concerning LGBTI claims definitely falls below these standards. Given the low number of LGBTI asylum seekers in the CEE region, national asylum authorities appear to lack expertise in dealing with such claims and might easily err both in assessment of individual circumstances of the applicants and the objective situation in their country of origin. This reality should encourage all stakeholders – government officials and human rights NGOs – to cooperate more closely in order to exchange information and good practices.

Anna Śledzińska-Simon anna.sledzinska@gmail.com is Assistant Professor, Faculty of Law, University of Wrocław, Poland. Krzysztof Śmięk ksmiszek@gmail.com is a member of the Polish Society of Antidiscrimination Law and Human Rights Chair in the Faculty of Law and Administration at the University of Warsaw, Poland. He served as Polish expert on the Fleeing Homophobia project.

The article draws on the results of the Fleeing Homophobia project. Final report at: http://tinyurl.com/Fleeing-Homophobia-report

Global human rights frameworks applicable to LGBTI migrants
Shana Tabak and Rachel Levitan

Sexual minorities leave home for a variety of reasons but their departure is often due to the identity-based violence, discrimination and harassment they face at the hands of state actors, family and community. Although no international legal instrument exists to specifically protect the human rights of LGBTI individuals, over recent years international legal bodies have interpreted basic human rights provisions to apply to LGBTI populations, holding that the reference to ‘sex’ in Article 26 (the ICCPR’s principal anti-discrimination provision) incorporates sexual orientation.1 Similarly, the Committee on Economic, Social and Cultural Rights (the authoritative interpretive body of the International Covenant on Economic, Social and Cultural Rights – ICESCR) proscribes any discrimination on the basis of sexual orientation.2 Consequently, States Parties to the ICCPR and the ICESCR must ensure protection of Covenant rights for all LGBTI people, including migrants, within their territories as set out in both treaties.

Beyond these international legal protections of LGBTI individuals, regional human rights bodies
have also affirmed that human rights law must apply to those discriminated against on the basis of sexual orientation or gender identity. Most recently, the European Court of Human Rights held that segregating LGBTI detainees violates their human rights and amounts to torture, inhuman or degrading treatment if it deprives them of meaningful access to detention centre services or is tantamount to penal solitary confinement. The Inter-American Commission on Human Rights’ jurisprudence has increasingly addressed the human rights of LGBTI people, holding for the first time that the American Convention on Human Rights bars discrimination based on sexual orientation.

In addition to these human rights standards, in 2006 a group of legal experts drafted the Yogakarta Principles, guidelines that address how basic human rights tenets relate to sexual minorities. Although these principles are not binding on states, they articulate the primary international law protections for sexual minorities and offer states guidance on best practices for ensuring human rights of LGBTI populations.

Shana Tabak tabak@wcl.american.edu is a Practitioner-in-Residence at American University’s International Human Rights Law Clinic. Rachel Levitan rslevitan@gmail.com is Senior Counsel (Refugees and Migration) at HIAS www.hias.org

LGBTI refugees: the Brazilian case
Henrique Rabello de Carvalho

Brazil has a long tradition of providing shelter and protection to people persecuted for political, racial and social reasons. Following the directives of UNHCR concerning the definition of a ‘social group’ as a cohesive and vulnerable group whose members share essential characteristics of identity, Brazil’s National Committee for Refugees (CONARE) has determined that sexual minorities should be considered as a social group for the purposes of applying the 1951 Refugee Convention and Brazil’s Refugee Law.

In analysing the question of the well-founded fear of persecution as grounds for claiming asylum, CONARE includes consideration of the criminalisation of sexual relations between same-sex adults when assessing the potential risk to life or freedom of the refugee applicant in their country of origin. 78 countries out of 193 still have legislation criminalising same-sex consensual acts between adults. Punishments range from a number of lashes (e.g. Iran) or two months in prison (e.g. Algeria) to life imprisonment (e.g. Bangladesh) or even death (Iran, Mauritania, Saudi Arabia, Sudan, Yemen). By contrast, in May 2011 the Supreme Court of Brazil recognised that homosexual couples have the same rights as heterosexual couples, including the right to being treated equally and the right not to be discriminated against.

However, public policies in defence and in favour of LGBT people are neither sufficient nor effective in reducing homophobic violence in Brazil. Violence against gays and lesbians – including murder – continues to rise. Brazil has no hate crime law and no public institution or specific project monitoring the occurrence of homophobic crimes and violence. A bill criminalising homosexuality has been pending in the National Congress for more than ten years.

In the meantime, recognition of sexual minorities as a social group in terms of claiming and providing asylum means that Brazil’s Refugee Law and the 1951 Refugee Convention continue to be the most powerful tools in the defence of LGBTI refugee rights in Brazil.

Henrique Rabello de Carvalho is a lawyer in Rio de Janeiro and member of LGBTI Rights Commission of the Brazilian Bar Association; he was formerly a lawyer with Caritas and the UNHCR office in Rio de Janeiro. This article reflects the personal views of its author henrique.carvalho@aol.com

1. Established by the Ministry of Justice.

3. ECHR, X v. Turkey (application no. 24626/09)