

Blind Alleys

PART III

*A Tri-Country Comparative Analysis:
Mexico, South Africa, and Uganda*

February 2013

The Unseen Struggles
of Lesbian, Gay, Bisexual,
Transgender and Intersex
Urban Refugees in Mexico,
Uganda and South Africa



Acknowledgements

This report was funded in part by a grant from the **United States Department of State**. The opinions, findings, and conclusions herein are those of the authors and do not necessarily reflect those of the United States Department of State.

The field research underlying this report was designed and conducted collaboratively by **ORAM** and several organizations in Uganda, South Africa, and Mexico. We thank the **Refugee Law Project (RLP)** at the School of Law of Makerere University in Uganda, which collaborated with ORAM on all aspects of the research and writing in Uganda. We convey special thanks to the refugee support group **Les Anges**, which provided us with essential insights as well as access to its members. We are proud to partner with RLP on the Uganda findings (see Part II of this publication). In Mexico, we thank refugee NGO **Sin Fronteras IAP**, which gave us advice and essential access to its clients. In South Africa, we express our gratitude to **Gender Dynamix, Holy Trinity Catholic Church, Lawyers for Human Rights**, and **PASSOP**.

This report is the result of the dedication of many individuals who are committed to research excellence and refugee protection. This project was conceived and directed by **Neil Grungras** and was brought to completion by **Cara Hughes** and **Kevin Lo**. Writing, editing, and project management were provided by **Charles Cohen, Steven Heller, Eunice Lee, Max Niedzwiecki, Charmaine Hedding, Ian Renner**, and **Beth Schecter**.

We thank **Siobhan McGuirk, Sanjula Weerasinghe, Elba Coria, Dusty Araujo, Oscar Aguil Berra**, and **Rachel Levitan** for their work coordinating and conducting the field research. We are particularly grateful to **Magdalena Aguilar Pulido, Anahid Bazarjani, Sarah Bluestone, Maia Bouatouch-Legrand, Ivan Contreras, Alan Delamora, Michael Gale, Nicholas Hersh, Elodie Joubert, Lucie Leblond, Minjae Lee, Marta Mateos, Darren Miller, Josselin Moreau, John Odle, Oraneet Orevi, Jenna Pierce, Odessa Powers, Aly Quiroz-Perez, Peter Stark, Alex Sheldon, Marjolaine Vignola**, and **Anna von Herrmann**. These dedicated interns and volunteers pored over thousands of pages of interview transcripts and translations over the course of months, assuring that every word and every comment by interviewees were meticulously taken into account in this report.

Cover art is by **Marconi Calindas**, an accomplished Filipino artist based in San Francisco. His paintings use vibrant colors and lines to express social and environmental concerns. The cover art, "To Carry You," emphasizes the support that LGBTI refugees desperately need on the complex path to safety. More information about the artist is available at www.marconicalindas.com.

These pages would be empty but for the refugees who bravely recounted their sagas seeking protection, as well as the dedicated NGO, UNHCR, and government staff who so earnestly shared their experiences and understandings of the refugees we all seek to protect. Were it not for the candor and commitment of all who participated in the study, the most salient recommendations of this report would have remained unstated.

SIGRID RAUSING TRUST



Blind Alleys

The Unseen Struggles of Lesbian, Gay, Bisexual, Transgender and Intersex Urban Refugees in Mexico, Uganda and South Africa

PART III

A Tri-Country Comparative Analysis: Mexico, South Africa, and Uganda

TABLE OF CONTENTS

I. EXECUTIVE SUMMARY	1
II. INTRODUCTION	2
A. Focus Countries: South Africa, Mexico, and Uganda	3
i. South Africa	3
ii. Mexico	4
iii. Uganda	4
B. Methodology	5
C. Summary of Principal Recommendations	6
III. BACKGROUND: SGN REFUGEES	7
IV. KEY FINDINGS	9
A. Abuses by State Authorities are Commonplace	10
B. Assaults by Local Populations and Other Refugees are Ubiquitous	11
C. Isolation Severely Limits SGN Refugees' Ability to Survive	12
D. Access to Health Care is Severely Hampered by Discrimination	12
E. Access to Information and Social Networks is Essential to SGN Refugee Survival	13
V. KEY RECOMMENDATIONS	14
A. Conduct Trainings	14
i. Internal Trainings	15
ii. External & Inter-Agency Trainings	15
B. Create and Inform SGN Information Networks	15
C. Partner with Local Non-profit Organizations	15
D. Create Comprehensive Advocacy and Service Programs	16
i. Legal Advocacy	16
ii. Sexual and Gender-Based Violence and Persecution Unit	17
iii. SGN Refugee Support Group	17
E. Assure Refugee Recognition and Improve Resettlement	17
i. UNHCR	17
ii. Resettlement Country Governments	18
VI. CONCLUSION	18

Glossary of Terms

SEXUAL ORIENTATION AND GENDER IDENTITY

Bisexual refers to an individual who has the capacity for profound emotional, affectional, and/or sexual attraction to and/or intimate and sexual relations with people regardless of their gender or sex.¹

Gender Expression refers to the outward expression of an individual's gender, typically (though not limited to) through appearance, speech, behavior, mannerisms, and movement.

Gender Identity is each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth.²

Gay refers to a self-identifying man who has the capacity for profound emotional, affectional and/or sexual attraction to and/or intimate sexual relations primarily with other men.³

Homophobia refers to a hatred or fear of homosexuals – that is, lesbians and gay men – sometimes leading to acts of violence and expressions of hostility.⁴

Intersex refers to a person who is born with reproductive or sexual anatomy and/or chromosome patterns that do not fit typical definitions of male or female.⁵

Lesbian refers to a self-identifying woman who has the capacity for profound emotional, affectional, and/or sexual attraction to and/or intimate and sexual relations primarily with other women.⁶

LGBTI is the acronym for “lesbian, gay, bisexual, transgender, and/or intersex.”

Sexual Orientation refers to a person's capacity for profound emotional, affectional, and/or sexual attraction to and/or intimate and sexual relations with individuals of a different gender, the same gender, or more than one gender.⁷

Sexually and Gender Non-conforming (SGN) is an umbrella term used to refer to individuals whose sexual practices, attractions, and/or gender expression are different from the societal expectations based on their assigned sex at birth.⁸

Transgender is “[a]n umbrella term for people whose gender identity, expression, or behavior is different from those typically associated with their assigned sex at birth.”⁹

A **transgender woman** is a person who was assigned male at birth but identifies as a woman.¹⁰

A **transgender man** is a person who was assigned female at birth but identifies as a man.¹¹

Transphobia refers to negative attitudes and feelings toward transgender people. Transgender people feel that their gender identity (self-identification) does not correspond to one's assigned sex (identification by others as male or female based on genetic sex).¹²

REFUGEES AND ASYLUM

An **asylum seeker** is someone who has applied for or is in the process of seeking asylum from the government of the country of asylum, but who has not yet been granted that status.

Information Systems refer to the combination of people, processes, data, and technology. A website with job postings is an example of an information system.

Persecution, for the purposes of this report, refers to serious harm or threats of harm perpetrated on account of race, religion, nationality, political opinion, or membership of a particular social group. There is no universally accepted definition of “persecution.” Threats to life or freedom and/or other serious human rights abuses always amount to persecution; however, lesser harms or threats may cumulatively constitute persecution. Adjudicators should generally apply a totality-of-the-circumstances test to assess persecution.¹³

A **refugee** is a person “who owing to a 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.”¹⁴

Refugee Status Determination (RSD) is the process through which state officials in the country of asylum or UNHCR determine if an asylum seeker is a refugee based on “eligibility criteria under international or regional refugee instruments, national legislation or UNHCR's mandate.”¹⁵

Social Network refers to a group of individuals who share a commonality. The common element of the social networks discussed in this report is the bond between refugees based on their common SGN status.

ACRONYMS

AIDS	Acquired Immunodeficiency Syndrome
HIV	Human Immunodeficiency Virus
LGBTI	Lesbian, Gay, Bisexual, Transgender, and Intersex
NGO	Nongovernmental Organization
ORAM	Organization for Refugee, Asylum & Migration
PRM	U.S. Department of State's Bureau of Population, Refugees and Migration
RSD	Refugee Status Determination
SGN	Sexual and Gender Nonconforming
SGBV/P	Sexual and Gender Based Violence or Persecution
UNHCR	United Nations High Commissioner for Refugees

1 See *Media Reference Guide – Transgender Glossary of Terms*, GAY & LESBIAN ALLIANCE AGAINST DEFAMATION (GLAAD), [hereinafter *GLAAD Guide*] <http://www.glaad.org/reference/lgb> (last visited Nov. 5, 2012).

2 INT'L COMM'N OF JURISTS, THE YOGYAKARTA PRINCIPLES: PRINCIPLES ON THE APPLICATION OF INTERNATIONAL HUMAN RIGHTS LAW IN RELATION TO SEXUAL ORIENTATION AND GENDER IDENTITY 6 n.2 (2007), available at http://yogyakartaprinciples.org/principles_en.pdf (last visited Nov. 5, 2012).

3 *GLAAD Guide*, *supra* note 1.

4 *Homophobia*, ANTI-DEFAMATION LEAGUE, <http://www.adl.org/hatepatrol/homophobia.asp>

5 *FAQ*, ADVOCATES FOR INFORMED CHOICE, <http://aiclegal.org/faq> (last visited June 6, 2012)

6 *GLAAD Guide*, *supra* note 1.

7 INT'L COMM'N OF JURISTS, THE YOGYAKARTA PRINCIPLES: PRINCIPLES ON THE APPLICATION OF INTERNATIONAL HUMAN RIGHTS LAW IN RELATION TO SEXUAL ORIENTATION AND GENDER IDENTITY 6 n.1 (2007), available at http://yogyakartaprinciples.org/principles_en.pdf.

8 See *Trans Basics: Glossary of Terms*, GENDER IDENTITY PROJECT OF THE LESBIAN, GAY, BISEXUAL, & TRANSGENDER COMMUNITY CENTER, <http://www.gaycenter.org/gip/transbasics/glossary> (last visited Nov. 5, 2012).

9 NAT'L CTR. FOR TRANSGENDER EQUAL., TRANSGENDER TERMINOLOGY 1 (2009), available at http://transequality.org/Resources/NCTE_Trans-Terminology.pdf.

10 *Id.* at 1.

11 *Id.*

12 *GLAAD Guide*, *supra* note 1.

13 UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, ¶ 51, U.N. Doc. HCR/IP/4/Eng/REV.1 (1992).

14 Convention Relating to the Status of Refugees art. 1 § 2, July 28, 1951, 189 U.N.T.S. 150.

15 UNHCR, Self-Study Module on Refugee Status Determination 2 (Sept. 1, 2005), <http://www.unhcr.org/refworld/pdfid/43141f5d4.pdf>.

I. Executive Summary

Sexually and gender non-conforming (SGN) individuals are among the most vulnerable forced migrants in the world today. Persecuted by their families, communities, and governments in dozens of countries worldwide, they escape across international borders, often to find themselves shunned, abused, and persecuted yet again. While complete or accurate data on the numbers and demographic distribution of SGN refugees will likely never be available, it appears that most flee to urban centers. There, they often find environments no more tolerant than the ones they fled. They seek relative safety through isolation and anonymity.

Blind Alleys is a hallmark multi-country investigation of the protection of SGN urban refugees. In the disparate urban environments of Mexico, Uganda, and South Africa, ORAM's research found clear patterns of dangerous protection gaps. Our findings detail how SGN refugees are doubly marginalized: first because they are refugees, and again based on their sexual orientation and/or gender identity. This extreme marginalization renders these refugees particularly vulnerable to abuses by state and private actors alike. In all three of the countries examined, the refugees face discrimination and/or violence by state authorities, albeit with varying levels of severity. This mistreatment includes arbitrary arrests, beatings, sexual violence, extortion, and harassment. The same refugees also report suffering discrimination and abuse from locals and other refugees. Our findings bear out that for SGN refugees, crippling isolation is related to barriers accessing health care, employment, and other vital services.

This Part III of *Blind Alleys* provides an overview of our findings, along with a broad summary of our recommendations to stakeholders including governments, NGOs, and the United Nations High Commissioner for Refugees (UNHCR).

Part II of this publication sets out in three chapters our detailed findings on Mexico, South Africa, and Uganda. Of the three, Mexico provides the most survivable environment for SGN forced migrants. Yet despite the positive legal environment and the relative improvement of Mexico in relation to countries of origin, SGN refugees there report abuse by criminal gangs (particularly along migratory routes), discrimination by locals and other migrants, and extortion by the authorities. A similar dichotomy exists in South Africa between one of the most progressive constitutions in the world and the harsh reality these refugees must face on the ground. SGN refugees there confront widespread xenophobia and homophobia, corrective rape¹⁶, and other violence by both official and non-state actors. In addition, these individuals face discrimination in housing, health care, and the asylum process. In Uganda, our findings indicated extreme levels of harassment, discrimination, arbitrary arrest, extortion, physical/verbal abuse, and rape at the hands of locals, other refugees, and Ugandan police. For a detailed look at each of these countries' conditions for SGN refugees, Part II of the report is available online at www.oraminternational.org.



This publication introduces the term “sexually and gender nonconforming” (“SGN”) to refer to refugees of variant sexual orientations and gender identities. “SGN” is offered as an alternative to the prevalent Western agglomeration “LGBTI” (Lesbian, Gay, Bisexual, Transgender, and Intersex). While the LGBTI rubric has been adopted in many communities worldwide, most members of sexual and gender minorities are either unaware of the terminology or actively avoid such self-identification. “SGN” is an attempt to encompass all sexual and gender minority refugees, including those who do not conform to Western constructs.

¹⁶ Corrective rape refers to sexual violence specifically targeting SGN individuals for the ostensible purpose of turning them straight or punishing them for stepping outside accepted sexual and gender norms. See J.A. Nel & M. Judge, *Exploring Homophobic Victimization in Gauteng, South Africa: Issues, Impacts and Responses*, 21 ACTA CRIMINOLOGICA, no. 3, 2008 at 19, 24 n.2 (“Corrective rape seeks to justify the rape of those people who are perceived to not conform—or to disrupt—expected gender roles, behaviour and/or presentation.”); Emma Mittelstaedt, Comment, *Safeguarding the Rights of Sexual Minorities: The Incremental and Legal Approaches to Enforcing International Human Rights Obligations*, 9 CHI. J. INT’L L. 353, 354 n.8 (2008) (“Corrective rape” is the term used to describe the practice of raping African women and girls thought to be lesbians with the claimed purpose of turning them into ‘real African women’—the underlying belief being that homosexuality is a ‘disease’ imported by the white colonial empire.”).

Blind Alleys is available
in its entirety at
www.oraminternational.org

Part I contains our detailed guidance and recommendations for NGOs, governments, UNHCR and program funders. Part I sets out several approaches and strategies applicable to a variety of legal, economic, and social environments. Our recommendations include:

- Training agencies, protection officers, RSD staff, and NGOs which provide refugee assistance (e.g., information on SOGI claims and sensitive interviewing techniques);
- Ensuring SGN inclusion at each stage of refugee processing (e.g., adopting intake and RSD forms which allow full articulation of claims based on sexual orientation, gender identity, and gender expression);
- Securing recognition of SGN refugees by domestic protection authorities;
- Providing UNHCR mandate protection where domestic protection is unavailable;
- Expediting consideration of refugee claims of vulnerable SGN individuals;
- Creating information networks to improve SGN refugees' access to information systems;
- Fast-tracking resettlement of particularly vulnerable SGN refugees;
- Increasing the numbers of SGN refugees accepted for resettlement;
- Forming partnerships with organizations focused on sexual and gender minorities; and
- Initiating comprehensive advocacy and service efforts that connect organizations working in legal aid, sex and gender based violence, human rights issues, and refugee support.

II. Introduction



This report documents and analyzes protection gaps experienced by sexually and gender non-conforming (SGN)¹⁷ refugees in three focus countries: South Africa, Mexico, and Uganda. Through analysis of these disparate environments, our findings provide a broad overview of SGN refugees' experiences and reveal challenges and needs that cut across various countries and contexts. These results are based on 147 interviews conducted with SGN refugees and a broad collection of stakeholders, including representatives of local NGOs and service providers, refugee-serving NGOs, human rights and government asylum authorities, LGBTI organizations and community members, police, educational, and health authorities, international refugee NGOs, and the United Nations High Commissioner for Refugees (UNHCR).

SGN individuals are among the world's most vulnerable refugees. Most have fled persecution in their home countries on their own, without the support of their families or communities. Many have endured abuse, violence, rape, and torture. As a result, their physical and psychological health is often compromised. In countries of transit, the combined effects of these forced migrants' SGN identity and foreign status often yield a double marginalization

¹⁷ The acronym "LGBTI" is used increasingly in the refugee field to refer collectively to individuals of variant sexual orientations or gender identities. See, e.g., U.N. High Comm'r for Refugees, Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, U.N. Doc. HCR/GIP/12/01 (Oct. 23, 2012), available at <http://www.unhcr.org/refworld/docid/50348afc2.html>. The "LGBTI" agglomeration is based on modern Western constructs which are unknown or are avoided in many areas of the world. "LGBTI" further presumes that members of its constituent groups identify within the fixed categories of "lesbian," "gay," "bisexual," "transgender," and "intersex." In actuality, SGN persons worldwide are largely unfamiliar with or decline to adopt these identities. When refugee adjudicators and others require conformance to these narrow categories in order to qualify applicants as "members of a particular social group," those who do not conform may be excluded from protection. See Laurie Berg & Jenni Millbank, Constructing the Personal Narratives of Lesbian, Gay and Bisexual Asylum Claimants, 22 J. REFUGEE STUD. 195 (2009).

including social exclusion, severe discrimination, and violence at the hands of the local community, authorities, and fellow refugees. Urban centers offer SGN refugees anonymity, some level of tolerance, local LGBTI communities, and opportunities for economic survival. At the same time, cities are often characterized by violent personal crime, high living costs, extreme income disparities, and intricate social and physical environments that can be difficult to navigate. Our research focused on SGN refugees in urban areas of Mexico, South Africa, and Uganda. Based on this work and on ORAM's knowledge in other areas of the world, we are able to draw and extrapolate key conclusions regarding the state of SGN urban refugees worldwide.

SGN individuals are just now beginning to enter the consciousness of agencies and organizations charged with refugee protection. There is a pressing need for information on the protection gaps facing these refugees in countries of transit, as well as appropriate mechanisms to narrow those gaps. This comparative report seeks to guide the United Nations High Commissioner for Refugees (UNHCR), governments, funders, and non-governmental organizations (NGOs) in their protection of SGN refugees in urban settings. The report systematically details sparsely-available information about these individuals and makes practical recommendations for their protection.

A. FOCUS COUNTRIES: SOUTH AFRICA, MEXICO, AND UGANDA

Our research was undertaken with the assumption that although the survival environment in each country studied is unique, SGN refugees worldwide share many common experiences. South Africa, Mexico, and Uganda were chosen because of their widely variant legal, social, and

economic environments for refugees in general and for SGN people in particular. Through analysis of the findings, we provide a broad overview of SGN refugees' experiences and we reveal challenges and needs which cut across a broad spectrum of countries and contexts.

i. South Africa

South Africa boasts one of the world's most progressive legal environments for both refugees and SGN individuals. The South African Constitution was the first in the world to enshrine equal rights for SGN citizens.¹⁸ South Africa is also the only country on the continent with an openly SGN community and infrastructure.¹⁹ The country has enacted exemplary laws governing refugee status determination and has extended to asylum seekers and refugees most of the rights accorded to citizens. This includes the right to work.²⁰ Compared with other states in the region, South Africa enjoys a modern and advanced economy that offers many migrants a chance to survive. For these reasons, SGN individuals fleeing persecution often see South Africa as a viable destination.²¹

In contrast, the lived realities of SGN refugees in South Africa can be exceedingly harsh. The South African asylum system is severely overburdened, resulting in inefficiencies and barriers which prevent individuals from accessing the legal rights and services to which they are entitled.²² Discrimination against

While the situation for SGN refugees in South Africa is complex, it is characterized largely by a stark disparity between official legal rights and their practical enjoyment.

18 UK HOME OFFICE BORDER AGENCY COUNTRY OF ORIGIN INFORMATION SERVICE, SOUTH AFRICA COI REPORT §19.03 (2010); Jacklyn Cock, *Engendering Gay and Lesbian Rights: The Equality Clause in the South African Constitution*, 26 *Women's Stud. Int'l F.* 35, 35 (2002).

19 HUMAN RIGHTS WATCH & INT'L GAY AND LESBIAN HUMAN RIGHTS COMM'N, *MORE THAN A NAME: STATE SPONSORED HOMOPHOBIA AND ITS CONSEQUENCES IN SOUTHERN AFRICA* 179 (2003) [hereinafter *MORE THAN A NAME*].

20 U.N. HIGH COMM'R FOR REFUGEES, *UNHCR STATISTICAL YEARBOOK* 40 (2009).

21 *MORE THAN A NAME*, *supra* note 2, at 179 ("South Africa is the only country on the continent to have openly gay and lesbian bars, newspapers and magazines, NGOs and community centers. It even has, in Cape Town, a tourist industry catering to gay visitors. Many gay and lesbian people from surrounding countries told us they hoped, someday, to emigrate to South Africa.").

22 Jeff Crisp & Esthe Kiragu, *Refugee Protection and International Migration: A Review of UNHCR's Role in Malawi, Mozambique and South Africa*, UN HIGH COMM'R FOR REFUGEES (Aug. 2010), <http://www.unhcr.org/4c629c4d9.html>.



Photo by Andreas Nilsson
<http://www.flickr.com/photos/andreasnilsson1976/287955203/>

Most refugees do not perceive Mexico as a country of final destination. An overwhelming majority of SGN forced migrants in Mexico are in transit to other countries, notably the United States or Canada.

foreigners and xenophobia are pervasive challenges to refugees' struggle to integrate and survive.²³ Furthermore, progressive legislation has not diminished violence, oppression, marginalization, and discrimination that SGN individuals face on the ground.²⁴ While the situation for SGN refugees in South Africa is complex, it is characterized largely by a stark disparity between official legal rights and their practical enjoyment.

ii. Mexico

Most refugees do not perceive Mexico as a country of final destination. An overwhelming majority of SGN forced migrants in Mexico are in transit to other countries, notably the United States or Canada.²⁵ These refugees, particularly those coming from Central America, travel along dangerous migratory routes. On these routes, SGN individuals are doubly marginalized and are often abused by criminal gangs and by other migrants.²⁶

The legal environment for SGN individu-

als in Mexico features several positive developments. Same-sex marriage has been legal in Mexico since a 2010 Mexican Supreme Court decision, and a 2011 amendment to the Mexican Constitution protects against discrimination on the basis of "sexual preferences."²⁷ Mexico City, the country's capital, is particularly progressive and protective in both legal and social spheres.²⁸ However, societal discrimination based on sexual orientation and gender identity is prevalent in other areas of the country, and violent hate crimes are common.²⁹

iii. Uganda

Uganda is located in the Great Lakes region of East Africa, an area which has been plagued by conflict for decades. The country enjoys a less developed economy than Mexico or South Africa. According to UNHCR statistics, refugees in Uganda are largely from neighboring countries including Burundi, the Democratic Republic of Congo, Eritrea, Ethiopia, Rwanda, Somalia, Sudan, and South Sudan.³⁰ Refugees in Uganda's urban areas continue to face many substantive and procedural barriers to obtaining refugee status and successfully integrating into the local society. Serious problems, including "lack of standard official procedures and misunderstandings relating to international obligations[,] can lead to delays, unwarranted rejection of refugee status and general confusion among asylum seekers."³¹

Unlike their counterparts in South Afri-

23 FORCED MIGRATION STUDIES PROGRAMME, UNIVERSITY OF THE WITWATERSRAND, NATIONAL SURVEY OF THE REFUGEE RECEPTION AND STATUS DETERMINATION SYSTEM IN SOUTH AFRICA 22 (Feb. 2009).

24 Press Release, Univ. of the W. Cape Cmty. Law Ctr., Call on South African Government to redeem itself at UN by protecting the rights of LGBT People (Dec. 17, 2010), available at http://www.peopletoparlament.org.za/focus-areas/human_rights_democracy/press-releases/LGBT/view.

25 UNHCR Hails Mexico as New Refugee Law Comes into Force, UN High Comm'r for Refugees (Jan. 28, 2011), available at <http://www.unhcr.org/refworld/docid/4d465de62.html>.

26 See Interview by ORAM with MX - S12 (stating that "when one has several [disadvantageous] traits, discrimination increases").

27 US DEP'T OF STATE BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, 2010 COUNTRY REPORT ON HUMAN RIGHTS PRACTICES IN MEXICO (2011), available at <http://www.state.gov/g/drl-rls/hrrpt/2010/wha/154512.htm> [HUMAN RIGHTS PRACTICES IN MEXICO 2010]; ENADIS 2010: NATIONAL SURVEY ON DISCRIMINATION IN MEXICO (2011), available at <http://www.conapred.org.mx/redes/userfiles/files/ENADIS-2010-Eng-OverallResults-NoAccess.pdf>.

28 US DEP'T OF STATE BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR 2006 COUNTRY REPORT ON HUMAN RIGHTS PRACTICES IN MEXICO (2007), available at <http://www.state.gov/g/drl-rls/hrrpt/2006/78898.htm>.

29 HUMAN RIGHTS PRACTICES IN MEXICO 2010, supra note 26; Laura Maciel, *Hate Crimes Against Homosexuals, in The Darkness...*, CNN Mexico (May 17, 2011), available at http://www.asylumlaw.org/docs/sexualminorities/MexicoCNO_51711.pdf (translation by Dusty Aranjó on file with author).

30 UNHCR, 2012 COUNTRY OPERATIONS PROFILE UGANDA (2012) available at <http://www.unhcr.org/pages/49e483c06.html>.

31 REFUGEE LAW PROJECT, LEGAL AND PSYCHOSOCIAL DEPARTMENT, http://www.refugeelawproject.org/legal_a/d.php (visited August 6, 2012).

ca and Mexico, SGN refugees in Uganda are systematically deprived of legal protection specifically because of their non-conforming sexual orientation or gender identity. The Ugandan Penal Code criminalizes consensual same-sex sexual activity between adults.³² In this restrictive legal environment, SGN individuals are denied access to police protection and are incarcerated without trial or conviction. They are often harassed, arrested arbitrarily, and tortured.³³

A devastating new threat to SGN refugees was added to these realities in the Ugandan so-called Anti-Homosexuality Bill (AHB), first proposed in 2009 and reintroduced in 2012. The AHB includes a number of draconian new measures punishing same-sex conduct and criminalizing persons or organizations providing support to LGBTI individuals. Known versions of the bill would create an environment where any support for LGBTI issues or individuals could be penalized as “promotion of homosexuality.”³⁴ The AHB not only criminalizes homosexuality; it would require medical workers and other service providers to disclose their knowledge of a person’s homosexuality or face criminal charges.³⁵ If the AHB is passed as promulgated, providing assistance to LGBTI refugees could be legally targeted and punished.

The social environment for SGN refugees

None of the recommendations in this report should be understood to advocate for NGO activities that violate the laws of any country. NGOs working in hostile environments are urged to be mindful of potential state or non-state hostility or targeted legal action against those undertaking SGN-identified protection activities. NGOs are advised to confer with trusted legal counsel during program planning stages and to develop activities and materials accordingly.

in Uganda is similarly difficult. SGN persons there suffer pervasive discrimination in education and employment. They are often expelled from their homes, schools, and jobs merely for being SGN.³⁶ Non-state actors commit abuses with impunity, knowing that law enforcement authorities often will not protect SGN people or prosecute aggressors.³⁷

Although it is a destination country for refugees from other East African states, Uganda produces its own refugees in high numbers. For SGN refugees who face one of the world’s most restrictive legal and social environments, meaningful international protection in Uganda is often unattainable.

B. METHODOLOGY

This report is based on voluminous field research in three focus countries: South Africa, Mexico, and Uganda. Approximately fifty SGN refugees and stakeholders, including representatives of refugee-serving NGOs, LGBTI organizations, UNHCR, and government agencies, were interviewed in each of the countries studied. A total of 147 interviews were conducted in a variety of languages, including English, French, Luganda, Spanish, and Swahili, according to pre-formulated topics and questions. All relevant interviews

Uganda’s Anti-Homosexuality Bill includes a number of draconian new measures punishing same-sex conduct and criminalizing persons or organizations providing support to LGBTI individuals.

32 Sections 145 through 148 of the Penal Code Act of 1950 (“Penal Code”), commonly referred to as the “sodomy” laws, are Uganda’s primary effective provisions criminalizing same-sex acts, including consensual acts. Section 145 prohibits “unnatural offences” (defined as “carnal knowledge of another person against the order of nature”) and imposes a penalty of life in prison. Any “attempt to commit” an unnatural offence (Section 146), or any “act of gross indecency” or “attempt to procure” such an act, whether conducted in public or in private (Section 148), entails a punishment of seven years in prison. Section 147 imposes a penalty of fourteen years in prison for anyone who “unlawfully and indecently assaults a boy” less than eighteen years old, which effectively includes consensual same-sex acts between teenage boys. Penal Code Act of 1950, as amended, §§145-48, LAWS OF UGANDA Cap. 120 (Rev. ed. 2000), as amended, Penal Code (Amendment) Act of 2007.

33 AMNESTY INTERNATIONAL, AMNESTY INTERNATIONAL REPORT – UGANDA (2011), available at <http://www.amnesty.org/en/region/uganda/report-2011>. *Gay Man From Uganda Seeks Fear-Based Relief from Deportation*, CAIR COALITION (April 16, 2012), available at <http://www.caircoalition.org/2012/04/16/gay-man-from-uganda-seeks-fear-based-relief-from-deportation/>.

34 Anti-Homosexuality Bill, 2009, Parl. Bill [18] cl. 13(1)(e) (Ug.).

35 Anti-Homosexuality Bill, 2009, Parl. Bill [18] cl. 14 (Ug.).

36 INT’L GAY & LESBIAN HUMAN RIGHTS COMM’N, SHADOW REPORT ON THE VIOLATION OF THE HUMAN RIGHTS OF LESBIAN, BISEXUAL, TRANSGENDER (LBT), AND KUCHU PEOPLE IN UGANDA (Oct. 2010), available at <http://www.iglhrc.org/binary-data/ATTACHMENT/file/000/000/445-1.pdf>.

37 GLOBAL FORUM FOR MSM & HIV, EFFECTS OF A TWO YEAR SUSTAINED ANTI-GAY CAMPAIGN ON HEALTH SEEKING BEHAVIOUR OF THE SEXUAL MINORITIES IN UGANDA (2010), available at <http://www.msmtg.org/files/msmtg/SubSaharanAfrica/EffectsUganda.pdf>.

were transcribed and, where necessary, translated into English. This resulted in over 2,000 pages of transcripts, which were coded and categorized into areas of protection gaps and issues. This data was in turn aggregated into three separate “findings” papers on Uganda, Mexico, and South Africa.³⁸ Stakeholders

were also interviewed for recommendations on proposed manners of narrowing the protection gaps identified. These findings and recommendations were then analyzed and summarized into this comparative report and into Part I of this trilogy: *Guidance for NGOs, Governments, UNHCR, and Program Funders*.

³⁸ Interviews cited in this report are coded in the following way: Country abbreviation – Interviewee identity abbreviation & Number interview with that particular identity within that country. For example: MX - G1 means the interview is from Mexico and it is the first interview with a gay refugee. The following country abbreviations are used in this report: South Africa = SA; Uganda = UG; and Mexico = MX. The following identity abbreviations are used in this report: G = gay; L = lesbian; TW = trans woman; TM = trans man; and S = stakeholder.

C. SUMMARY OF PRINCIPAL RECOMMENDATIONS

Our findings reveal deep and dangerous protection gaps for SGN urban refugees in all three countries. We provide a blueprint for multi-faceted solutions directed towards ameliorating those gaps in these countries and worldwide.

Based on our findings and analysis — and above all based on the direct feedback of SGN refugees and the advocates working to assist them — we make the following recommendations to NGOs, governments, and other stakeholders in several key areas:

Build knowledge and capacity through ongoing, context-specific trainings.

These trainings will encourage staff to engage openly with issues of sexual orientation and gender identity while avoiding stereotypes and uninformed assumptions. More accepting environments for SGN refugees will emerge as a result.

Form and inform SGN information networks.

Since SGN refugees are often isolated and unable to access the information and services they need to survive, it is important to foster robust information networks. Built on existing social systems and technologies, these networks can allow refugees to support one another during their displacement and enable NGOs to effectively connect them with needed resources.

Partner with local organizations that focus on, and/or are rooted in, the LGBTI community.

These partnerships are essential to building effective referral pathways and identifying SGN refugees who are hiding in the shadows. NGOs can provide insights about SGN refugees and promote ways of filling their basic needs within host communities.

Develop comprehensive advocacy and service efforts focused on SGN refugees.

These should include legal aid, programs to prevent and ameliorate the effects of sexual and gender-based violence, partnerships among groups that represent a broad array of human rights issues, and refugee support groups.

Improve RSD and resettlement of vulnerable SGN refugees.

UNHCR is urged to expedite consideration of SGN claims and to fast-track resettlement referral of recognized SGN refugees. In countries where domestic systems do not protect SGN people adequately, the refugee agency is urged to wield its mandate RSD authority. UNHCR should likewise implement and utilize forms and data systems which are SGN-inclusive. Resettlement country governments should accept direct referrals of SGN refugees where international protection is unavailable or inaccessible. Governments are also advised to resettle and place SGN/LGBTI refugees in locations with established LGBTI communities, and to increase the number of SGN refugees accepted for resettlement.

III. Background: SGN Refugees

The number of SGN people who seek and receive protection through the international refugee system is unknown. UNHCR does not maintain formal statistics regarding these refugees and asylum seekers.³⁹ Moreover, at the time of publication, of the 100 nations with functioning asylum systems,⁴⁰ statistics on LGBTI cases considered or granted are available only for Belgium, Norway, and the United Kingdom.⁴¹ While the number of countries reporting is too small and their cultures too proximate (all are in Western Europe) to allow accurate extrapolation to other areas of the world, the available statistics indicate that between four and six percent of asylum seekers and refugees may be fleeing their countries because of their sexual orientation or gender identity. It is likely that the vast majority of LGBTI refugees and asylum seekers conceal their identities and their motivations for flight from adjudicators and service providers alike.

Thus, already among the world's most pervasively and violently persecuted people, SGN individuals confront immense barriers to international refugee protection. While over 175 million live under conditions of peril or violence worldwide, ORAM estimates that fewer than 2,500 attain international protection in a given year based on their SGN identity.⁴²

Those whose sexual orientation or gender identity is perceived as digressing from cultural norms often face systematic violence including rape, physical attack, torture, and murder.⁴³ They are subjected to arbitrary detention, denial of rights to assembly, expression, and information, and discrimination in employment, health, and education.⁴⁴ In many areas of the world, SGN individuals are routinely denied access to police protection and even suffer violence at the hands of law enforcement authorities.⁴⁵ More than seventy-six countries criminalize same-sex relations for men, women, or both.⁴⁶ At the time of publication, seven countries — Mauritania, Sudan, Iran, Saudi Arabia, Yemen, and some parts of Nigeria and Somalia — prescribe the death penalty for consensual same-sex relations. Others punish seemingly nonconforming sexual orientations or gender identities.⁴⁷ Many countries also apply morality laws or ostensibly neutral legislation to restrict LGBTI individuals' rights to free speech, assembly, privacy, and personal dignity.⁴⁸ These environments pose severe, and most often insurmountable, barriers to refugees' "coming out," or self-identifying as sexual and gender minorities. This is true in their home countries as well as in countries of asylum.



While over 175 million live under conditions of peril or violence worldwide, ORAM estimates that fewer than 2,500 attain international protection in a given year based on their SGN identity.

39 See HUMAN RIGHTS FIRST, PERSISTENT NEEDS AND GAPS: THE PROTECTION OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX (LGBTI) REFUGEES (2010), available at http://www.humanrightsfirst.org/wp-content/uploads/pdf/Persistent-Needs_LGBTI_Refugees_FINAL.pdf (citing the need to fill gaps in policy and practice concerning LGBTI refugees).

40 See UN HIGH COMM'R FOR REFUGEES, 2010 UNHCR STATISTICAL YEARBOOK 41 (10th ed. 2011), available at <http://www.unhcr.org/4ef9cc9c9.html>.

41 See U.K. HOME OFFICE NAT'L ARCHIVES, CONTROL OF IMMIGRATION: QUARTERLY STATISTICAL SUMMARY 3 (2d ed. 2008), available at <http://webarchive.nationalarchives.gov.uk/20110218142807/rds.homeoffice.gov.uk/rds/pdfs09/immq408.pdf> (noting that of the 25,670 asylum applications submitted in the United Kingdom in 2008, an estimated 1,200 to 1,800 were based on sexual orientation or gender identity); see also REFUGEE SUPPORT, OVER NOT OUT: THE HOUSING AND HOMELESSNESS ISSUES SPECIFIC TO LESBIAN, GAY, BISEXUAL AND TRANSGENDER ASYLUM SEEKERS 8 (2009), available at http://www.refugeesupport.org.uk/documents/MST_LGBTexec_screen_0509.pdf (noting that in Belgium the proportion in 2010 was 522 LGBT applicants out of 13,170 total asylum applicants); Letter from Official, Norwegian Directorate of Immigration, Asylum Department (Feb. 3, 2012) (noting that UDI cautions that its statistics are based on manual reporting and that the actual number of refugees seeking protection on account of sexual orientation or gender identity based persecution may be higher) (on file with author).

42 See *infra* Figure 1.

43 UN High Comm'r for Refugees, *Discriminatory Laws and Practices and Acts of Violence Against Individuals Based on Their Sexual Orientation and Gender Identity: Rep. of the U.N. High Commissioner for Human Rights*, Human Rights Council, ¶1, U.N. Doc. A/HRC/19/41 (Nov. 17, 2011) available at http://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.41_English.pdf [hereinafter *Discriminatory Laws and Practices*].

44 *Id.* ¶¶ 47–65.

45 *Id.* ¶¶ 35–36, 42.

46 LUCAS PAOLI ITABORAHY, INT'L LESBIAN, GAY, BISEXUAL, TRANS AND INTERSEX ASS'N, STATE-SPONSORED HOMOPHOBIA 4 (2012).

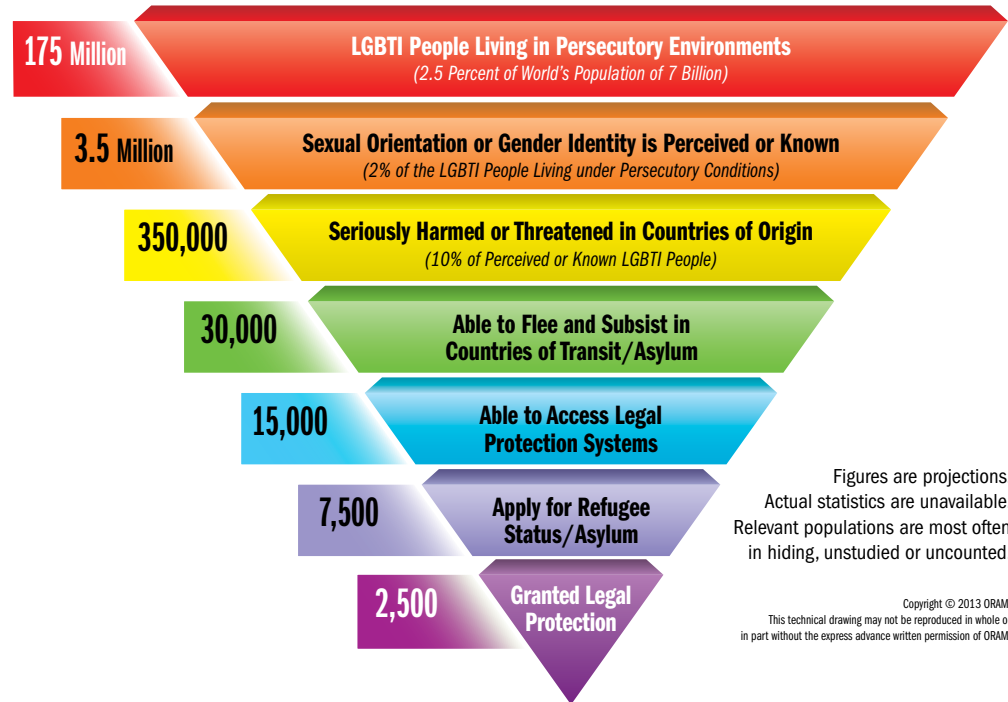
47 *Id.*

48 See, e.g., HUMAN RIGHTS WATCH, WE ARE A BURIED GENERATION: DISCRIMINATION AND VIOLENCE AGAINST SEXUAL MINORITIES IN IRAN 22 (2010), available at http://www.hrw.org/sites/default/files/reports/iran1210webcover_1.pdf (explaining that LGBT individuals in Iran are routinely subject to charges "related to offenses against public morals or chastity instead of sexual crimes"). See generally *Discriminatory Laws and Practices*, *supra* note 42, at 15.

FIGURE 1

Flow of Lesbian, Gay, Bisexual, Transgender, and Intersex People Through the International Protection System

(Estimated figure per year)



The scant statistics available indicate that most of the SGN individuals who seek protection based explicitly on their sexual orientation or gender identity do so in LGBTI-“tolerant” countries including the United Kingdom, Belgium, the Netherlands, the United States, Canada, and Australia. These nations boast LGBTI communities that enjoy recognized legal rights, as well as economies that permit socially marginalized populations to survive. In contrast, many of the countries to which SGN individuals flee are adjacent to and share cultural characteristics with the refugees’ home countries, including hostility towards SGN people.⁴⁹ In addition, other migrants, with whom SGN refugees must often

interact, carry their home-country attitudes to their countries of passage. As a result, while environments for LGBTI people are less hostile in some countries of asylum than in others, serious survival challenges are ubiquitous.

Refugees who are identified as SGN report they are profoundly marginalized on that account and are excluded from meaningful protection. These individuals commonly undergo consistent, often violent harassment by local communities and refugee populations.⁵⁰ Most are denied adequate police protection or are targeted for harassment, extortion, or violence by the authorities.⁵¹ These same refugees are also marginalized as foreigners. They therefore have difficulty securing adequate housing, health care, and employment.⁵²

The inverted triangle (Figure 1) shows how few of the SGN individuals who face

49 See, e.g., *Straight but Narrow*, Economist (Feb. 4, 2012), <http://www.economist.com/node/21546002> (“[O]f the seven countries that impose the death penalty for homosexuality, all are Muslim.”). See generally, Phillip Tahmindjis, *Sexuality and International Human Rights Law*, 48 J. HOMOSEXUALITY 9, 21–22 (2008) (“[W]hile the application of human rights generally to GLBT communities is uneven, there is no question that the GLBT rights movement is developing, although the principal advances to date have been in western countries.... [I]n some regions, antipathy to GLBT rights can be so strong that nice questions of legal definition and process do not have an opportunity to arise.”).

50 ORAM, UNSAFE HAVEN: THE SECURITY CHALLENGES FACING LESBIAN, GAY, BISEXUAL & TRANSGENDER ASYLUM SEEKERS & REFUGEES IN TURKEY 3-5 (June 2011).

51 *Discriminatory Laws and Practices*, *supra* note 42, ¶¶ 35–36.

52 *Id.* ¶¶ 54–57.

persecution worldwide actually access the international refugee protection system. In this diagram, of 175 million persons in peril in their home countries worldwide, only 17,500 manage to escape. Of these, only 7,500 seek legal protection. Of those, only 5,000 are actually able to apply for refugee status or asylum. In the end, only a tiny handful of the world's imperiled SGN people — estimated by ORAM at fewer than 2,500 per year worldwide — are granted legal protection based on

their sexual orientation or gender identity.⁵³ These estimates do not include the vast majority of persons who are believed to conceal their identities from adjudicators or who obtain refugee protection on grounds unrelated to their sexual orientation or gender identity.

⁵³ Based on available figures for particular countries, one can extrapolate that between 4 and 6 percent of the asylees in key countries of destination could be lodging claims based on their LGBTI status. See REFUGEE SUPPORT, OVER NOT OUT: THE HOUSING AND HOMELESSNESS ISSUES SPECIFIC TO LESBIAN, GAY, BISEXUAL AND TRANSGENDER ASYLUM SEEKERS 8 (2009), available at http://www.refugeesupport.org.uk/documents/MST_LGBTExec-_screen_0509.pdf (stating that of 25,670 asylum applications submitted in the United Kingdom in 2008, an estimated 1,200 to 1,800 were based on sexual orientation or gender identity); see also OFFICE OF THE COMM'R GENERAL FOR REFUGEES AND STATELESS PERSONS, 2010 ANNUAL REPORT 11-12 (2011), available at http://www.cgra.be/en/binaries/2010%20Annual-%20EN_tcm266-151869.pdf (stating that in Belgium in 2010, 522 out of a total of 13,170 applications were based on sexual orientation or gender identity).

IV. Key Findings

Our research aims to shed light on the most significant protection gaps confronting urban SGN refugees. In our interviews with refugees and other stakeholders in Mexico, Uganda, and South Africa, we discovered that SGN refugees in all three countries face similar challenges in their attempt to survive and to navigate the displacement cycle. These challenges include:

- Pervasive abuse by state authorities and government officials;
- Exclusion and harassment by local populations and other refugees;
- Isolation and discrimination preventing access to services, employment, and integration;
- Insufficient and unavailable health care, especially for unique needs of SGN people; and
- Inadequate access to information systems and social networks.

In Section V, we provide key recommendations on how to address these patterns of discrimination and persecution, as well as specific recommendations for UNHCR and governments of resettlement countries.





“When the police know where they live, they will harass them constantly. When they are blackmailed by police, they have to give in for survival.”

A. ABUSES BY STATE AUTHORITIES ARE COMMONPLACE

SGN refugees in Mexico, Uganda, and South Africa all report discrimination and/or violence by state authorities, albeit at varying levels of severity. The most widespread and serious abuses were reported in Uganda. All interviewees known as SGN reported having been arrested or abused by Ugandan police, often multiple times. Police also target SGN refugees for extortion. One stakeholder observed, “When the police know where they live, they will harass them constantly. When they are blackmailed by police, they have to give in for survival.”⁵⁴ Many interviewees report physical and sexual violence in police detention, including rape by officers and prison guards.⁵⁵ Refugees in Uganda who successfully conceal their SGN identity tend to report less violence, harassment, and extortion by the state authorities.⁵⁶ The regular abuse results in pervasive feelings of helplessness and heightened physical insecurity. One interviewee expressed the opinion that criminalization of same-sex relations is at the root of the problem: “Police mistreat us, beat us, take our money, rape us.... We don’t have

security because it’s illegal. If it was legal we would have security.”⁵⁷

In Mexico, refugees generally reported positive interactions with the authorities, although a few had experienced verbal abuse and discrimination by police and other officials. Rather than characterizing this treatment as abuse, interviewees commonly perceived official harassment as an inevitable fact of life. Some refugees in Mexico reported being subjected to violence, threats, or sexual exploitation. For instance, a transgender interviewee stated that some police officers had attempted to coerce her into sex in exchange for “a pack of cigarettes or whatever [she] asks for.”⁵⁸ The vast majority of interviewees described extortion by police, again “normalizing” these occurrences as unavoidable. One interviewee explained why he could not report that a guard had stolen money from him in detention: “[I]f I denounce[d] him, he would’ve lost his job, he would’ve killed me.... Here in Mexico it’s like this.... That is the law in Mexico.”⁵⁹

While SGN refugees in South Africa reported little physical violence by the authorities, many had experienced arbitrary arrest, harassment, extortion, and discrimination. Most interviewees believed this mistreatment was due to their nationality. A few stakeholders reported that government officials in South Africa discriminate on account of sexual orientation or gender identity.⁶⁰ Many SGN refugees also reported extortion by police, security guards, and other government officials. Some interviewees said they had been forced to pay bribes in order to gain access to Refugee Reception Offices.⁶¹

⁵⁴ Interview with UG – S5.

⁵⁵ Interview with UG – G5; UG – TW3.

⁵⁶ Interview with UG – L3.

⁵⁷ Interview with UG – L8.

⁵⁸ Interview by ORAM with MX – TW2.

⁵⁹ Interview by ORAM with MX – G1.

⁶⁰ Interview by ORAM with SA – 47.

⁶¹ Interview by ORAM with SA – 12/SA – 29.

B. ASSAULTS BY LOCAL POPULATIONS AND OTHER REFUGEES ARE UBIQUITOUS

By definition, refugees and asylum seekers are outside their countries of origin. As new arrivals in an unfamiliar place, they face a myriad of new challenges. Refugees are confronted with the daunting tasks of securing employment and shelter, accessing vital services, and procuring basic necessities. SGN refugees usually face these challenges in utter isolation from their families, from whom many are in fact escaping. SGN migrants must simultaneously navigate new languages, cultures, and social environments. In many countries, racism and xenophobia pose additional barriers to successful integration, and local communities subject incoming refugees to violent hate crimes and discrimination.⁶²

While refugee communities usually provide critically-needed support, SGN individuals are most often excluded from these social networks.⁶³ SGN refugees are doubly marginalized; they are discriminated against by local communities hostile to both refugees and SGN individuals, while they are victimized by other refugees.⁶⁴ These realities are common to Uganda, South Africa, and Mexico alike.

SGN refugees' common experiences of abuse include verbal harassment, ostracism, discrimination and physical violence. In Uganda, refugees report widespread violence by locals and other refugees. Common forms of physical violence include rape, beatings, stoning, and robbery. Eight of the eleven male SGN refugees we interviewed in Uganda had been raped. All lesbian interviewees had ex-

perienced some form of sexual violence. Only a small percentage of SGN refugees feel they can practically or safely live with their partner in Uganda. Most emphasized that they had to hide their SGN identity from neighbors and landlords. Many interviewees reported positive experiences with faith-based communities only if they concealed their SGN identities.

In South Africa, SGN refugees reported severe double marginalization on account of being foreigners and because of their sexual orientation or gender identity. More than half of the interviewees reported having been injured, threatened, or robbed in line outside a Refugee Reception Office. "Corrective rape" is a concern for all lesbian and transgender refugees.⁶⁵ As one advocate summarized: "[Y]ou have the migrant community, and you have the queers, and where do they fit in? The gay community doesn't want them, the South African community doesn't want them. You have hate crimes, corrective rape, you've got xenophobia ...and there's not really a legitimate space for them to exist."⁶⁶ Seven of eleven refugees reported having at least one LGBT friend in South Africa, and noted that they received support from an LGBT individual, organization, or community. Only one of eleven reported positive relations with non-LGBT persons in South Africa. Most attributed this to being SGN or foreign.

In Mexico, the refugees interviewed reported abuse not only by criminal gangs, but also by other migrants. Most serious abuses

"You have the migrant community, and you have the queers, and where do they fit in? The gay community doesn't want them, the South African community doesn't want them. You have hate crimes, corrective rape, you've got xenophobia...and there's not really a legitimate space for them to exist."

62 UN Refugee Agency Outlines Strategy to Fight Xenophobia and Racism, UN NEWS CENTRE (Dec. 23, 2009), <http://www.un.org/apps/news/story.asp?NewsID=33330&Cr=racism&Cr1#.UJ1QmchXh8>.

63 ORAM, RAINBOW BRIDGES: A COMMUNITY GUIDE TO REBUILDING THE LIVES OF LGBTI REFUGEES AND ASYLEES 1 (2012).

64 HUMAN RIGHTS FIRST, PERSISTENT NEEDS AND GAPS: THE PROTECTION OF LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND INTERSEX (LGBTI) REFUGEES 6 (2010).

65 Corrective rape refers to sexual violence specifically targeting SGN individuals for the ostensible purpose of turning them heterosexual or punishing them for stepping outside accepted sexual and gender norms. See J.A. Nel & M. Judge, *Exploring Homophobic Victimisation in Gauteng, South Africa: Issues, Impacts and Responses*, 21 ACTA CRIMINOLOGICA, no. 3, 2008 at 19, 24 n.2 ("Corrective rape seeks to justify the rape of those people who are perceived to not conform—or to disrupt—expected gender roles, behaviour and/or presentation."); Emma Mittelstaedt, Comment, *Safeguarding the Rights of Sexual Minorities: The Incremental and Legal Approaches to Enforcing International Human Rights Obligations*, 9 CHI. J. INT'L L. 353, 354 n.8 (2008) ("Corrective rape" is the term used to describe the practice of raping African women and girls thought to be lesbians with the claimed purpose of turning them into 'real African women'—the underlying belief being that homosexuality is a 'disease' imported by the white colonial empire.).

66 Interview by ORAM with SA – 3; SA – 36.

Pervasive discrimination compounds the marginalization and isolation already plaguing SGN refugees. Particularly in Uganda, interviewees reported isolating themselves to avoid problems with employers, landlords, and others.

by non-state actors reportedly occurred along migratory routes. Consistent with the reports of refugees, stakeholders said transgender women are particularly vulnerable. While many SGN refugees reported that Mexico was an improvement over their country of origin, many nevertheless said they were isolated and lacked community support.

C. ISOLATION SEVERELY LIMITS SGN REFUGEES' ABILITY TO SURVIVE

Due to discrimination, harassment, violence, and isolation, SGN refugees in all three countries reported extreme difficulties subsisting and accessing services. In Uganda, SGN refugees who managed to obtain jobs reported being sexually abused by their employers and discriminated against by their fellow employees. Many fear seeking work. Legitimate employment opportunities are rare and several refugees report having resorted to sex work.

In South Africa, xenophobia and homophobia are major obstacles for all refugees in the employment context. SGN refugees report experiencing both in the hiring process and in the workplace. Several of the SGN refugees we interviewed there reported performing survival sex work.

In Mexico, job discrimination remains an obstacle for SGN refugees, and can be either a barrier to initial hiring or a reason for dismissal. SGN refugees experience a real and perceived lack of employment opportunities. Significantly, most of the refugees interviewed in Mexico had obtained at least part-time work.

Pervasive discrimination compounds the marginalization and isolation already plaguing SGN refugees. Particularly in Uganda, interviewees reported isolating themselves to avoid problems with employers, landlords,

and others.⁶⁷ The same phenomenon is present in Mexico, where several interviewees reported sequestering themselves to avoid harm.

D. ACCESS TO HEALTH CARE IS SEVERELY HAMPERED BY DISCRIMINATION

Each country and context poses unique challenges for SGN refugees needing medical care. In some countries, treatment for certain health conditions is universally or practically unavailable. Where laws criminalize nonconforming sexual orientations or gender identities, seeking medical treatment can result in other harm.⁶⁸ Our findings reveal several barriers common to SGN refugees across widely varying environments.

The exceptional vulnerability of SGN refugees results in part from their need for specialized health services. In the case of transgender persons, this includes hormone therapy. SGN refugees also need tailored HIV/AIDS treatment and counseling for rape and other psychological trauma. To be effective, all must occur in safe environments. All SGN refugees we interviewed reported having limited access to these health services. In Uganda, the high percentage of SGN refugees involved in survival sex makes HIV/AIDS prevention and care a particularly significant health issue. The high incidence of pregnancy from rape creates a particular need for safe abortion options. Since medical abortion is illegal in Uganda, refugees often risk their lives with unqualified doctors or by self-induced abortion. Even in the face of urgent health needs, most SGN refugees reported that they avoid hospitals for fear of discrimination and mistreatment in Uganda. For example, one refugee report-

⁶⁷ See Interview with UG – G5; UG – G9.

⁶⁸ See e.g. HUMAN RIGHTS WATCH, HATED TO DEATH: HOMOPHOBIA, VIOLENCE AND JAMAICA'S HIV/AIDS EPIDEMIC 4 (2004).

ed treating himself for a genital condition to avoid invasive questioning at the hospital.⁶⁹

In South Africa, SGN refugees reported discrimination and xenophobia in the health sector. One interviewee reported that a health care professional had told her to return to her country.⁷⁰ Consistent with other SGN refugees' stories, another interviewee recounted that a hospital had refused to treat her without proof of refugee status, although asylum seekers in South Africa are in fact legally entitled to medical care.⁷¹ Transgender and gender-variant individuals appear to encounter more difficulties accessing health services than most other refugees. While many SGN refugees' mental health needs remain unmet, several of our interviewees in South Africa said they had received counseling and health services from NGOs.⁷²

The Mexican government offers several health services gratis and without regard to immigration status. This is particularly true in preventative care, post-rape treatment, prenatal care, and HIV/AIDS treatment. Nonetheless, significant gaps in health care appear to affect the refugee population, as some providers are unaware of these rights.⁷³ Improved access to psychological care would benefit SGN refugees, who are particularly isolated. Among these, transgender interviewees, who appear to have access to and awareness of hormone therapy in Mexico, lack adequate psychological care. Interviewees in Mexico reported discriminatory attitudes among health care providers, with lesbians reporting more intolerance and misinformation than gay men.⁷⁴

E. ACCESS TO INFORMATION AND SOCIAL NETWORKS IS ESSENTIAL TO SGN REFUGEE SURVIVAL

To navigate unfamiliar legal and social systems, refugees everywhere require access to accurate information. This is particularly true for urban refugees, who must survive in complex and intricate social and physical environments. Information is crucially needed on migration routes, legal status, refugee status determination procedures, employment, medical care, physical safety, and housing. SGN refugees require additional information specific to their sexual orientation or gender identity.

For most refugees, fellow migrants are an invaluable source of essential information and support. Social and information networks offer critically needed tools and are readily accessible. However, for SGN refugees, the very act of seeking out information can bring new perils. As a result, most isolate themselves. For these refugees, online communities and information accessible through computers and mobile technology can be particularly valuable. Our research in all three countries corroborated that while information and social networks are of paramount importance, fear of discrimination and abuse posed barriers to their accessing these systems for SGN individuals. We also found that legal and social restrictions directly hamper SGN refugees' access to information.

In Uganda as elsewhere, SGN refugees are isolated from Ugandans and other refugees alike. SGN refugees commonly rely on one another for emotional support and survival information in a hostile environment. Because of the need to stay hidden, along with high costs of computer access and low computer literacy, word of mouth is the preferred method of information sharing among

For most refugees, fellow migrants are an invaluable source of essential information and support. Social and information networks offer critically needed tools and are readily accessible. However, for SGN refugees, the very act of seeking out information can bring new perils.

69 Interview with UG – G6.

70 Interview by ORAM with SA – L1.

71 Interview by ORAM with TW – 2.

72 Interview by ORAM with SA – G1; SA – S5; SA – S22; SA – S24.

73 Interview by ORAM with MX – S16.

74 Interview with ORAM with MX – L3.

SGN refugees in Uganda. However, because concealment of one's SGN identity is essential to one's safety, it can be difficult for SGN refugees to find one another in the absence of alternative community structures.

In South Africa, access to computers and mobile telephones is more common, and many SGN refugees rely on online social networks and technology to find emotional support, employment, and housing. Nevertheless, widespread societal homophobia and fear of abuse forces SGN refugees to refrain from seeking or sharing information online;

especially when using computers in public areas.⁷⁵

In Mexico, SGN refugees rely on information systems at three distinct phases of their displacement: before entering the country, during the refugee status determination process, and while trying to integrate into local society. These information systems are comprised primarily of other SGN refugees' word-of-mouth. SGN refugees in Mexico are also beginning to use digital tools including the Internet.

⁷⁵ Interview by ORAM with SA – S17.

v. Key Recommendations



Based on our research in Uganda, South Africa, and Mexico and informed by our experience with SGN refugees in other countries worldwide, ORAM identified five key recommendation areas relevant to diverse legal, economic, and social environments. These encompass:

- Training agencies and NGOs engaged in refugee protection;
- Creating information networks to improve SGN refugee access to information systems;
- Forming partnerships with organizations rooted in and/or focused specifically on the LGBTI community;
- Initiating comprehensive advocacy and service efforts that unite legal aid, concern for sexual and gender-based violence, partnerships with diverse human rights groups, and refugee support groups; and
- Improving RSD and resettlement processing for SGN refugees by UNHCR and resettlement countries.

Detailed guidance on implementing our recommendations in each of these areas is contained in *Part I: Guidance for NGOs, Governments, UNHCR, and Program Funders*.

A. CONDUCT TRAININGS

In all three countries, the advocates we interviewed believe overwhelmingly that increased education, awareness, and trainings for adjudicators, NGO service providers, and others charged with refugee protection will help narrow protection gaps for SGN refugees. They suggested conducting trainings with groups including broad-based service organizations, local police and government agencies, and the community at large. Based on these discussions, we recommend that refugee-serving NGOs conduct both internal and external trainings that cultivate knowledge about SGN refugees, dispel stereotypes, and introduce best practices, procedures, and tools.

i. *Internal Trainings*

NGOs should develop and implement sensitization trainings to increase awareness of SGN refugees and their needs and to foster positive attitudes. Where possible, NGOs are encouraged to employ openly identified SGN individuals in these trainings. Research reveals that contact and personal engagement with someone who is openly SGN-identified is far more effective at lowering barriers and breaking down stereotypes and prejudices than being told that one's beliefs are wrong.⁷⁶ Sensitization trainings are necessary for staff at all levels; particularly for those who interact directly with refugees. These trainings should be offered on a regular basis to refresh learning and account for staff turnover.

We also recommend training on:

- Implementation of procedures, such as codes of conduct, prohibiting discrimination on the basis of sexual orientation and gender identity;
- Best practices in the field; and
- Tools such as guides for appropriate interviews.

The combination of these efforts will help create non-threatening, affirming environments for SGN refugees.

ii. *External & Inter-Agency Trainings*

Organizations that have learned how to work effectively with SGN refugees are encouraged to share their knowledge and tools with others through community outreach and external trainings. These trainings can be carried out within particular countries of first asylum or across borders. It is likely that service providers in certain areas will become adept at working with SGN refugees more easily than others. Efforts to spread the knowledge gained in one country or part of the world can be encouraged and facilitated by refugee agencies and organizations including UNHCR, the

United States Department of State, and international NGOs.

B. CREATE AND INFORM SGN INFORMATION NETWORKS

To alleviate SGN refugees' isolation and inability to access the services and information they need to survive, NGOs can foster robust information networks. These systems allow refugees to support one another and enable NGOs to effectively connect their clients with resources. NGOs can use existing technologies and social networks, including online forums and websites, to disseminate information about relevant laws and procedures and local LGBTI-friendly organizations and service providers. Technology can also be leveraged to connect SGN persons with one another and to yield information on survival and emotional support, even when physically separated. As the cost of accessing these technologies through mobile technology decreases, it will be easier for the refugees to rely on them for their needs. Meanwhile, NGO service providers are encouraged to maximize free access to computers for refugees at their premises.

C. PARTNER WITH LOCAL NON-PROFIT ORGANIZATIONS

We strongly urge refugee service providers to develop relationships with local LGBTI organizations, welcoming faith-based community groups, and other SGN-friendly service providers. These partnerships open referral pathways, which are essential to SGN refugees who are isolated from the general refugee population. Collaboration also builds across-the-board capacity among NGOs and opens new sources of support within host countries. NGOs are likewise encouraged to join and support coalitions of organizations serving LGBTI individuals and refugees, where available. This is particularly important in countries or communities where LGBTI people are severely ostracized, criminalized, or otherwise persecuted.

Bridging the Information Gap

The ORAM Information Center for South Africa

To build upon the widespread use of existing technological resources among SGN refugees, ORAM launched the ORAM Information Center for South Africa (ORAMIC), a first-of-its-kind online resource designed to increase access to information among SGN refugees and other relevant stakeholders. The website, at www.oramsouthafrica.org, is comprised of three main components: informational sections, a resource directory, and an online discussion forum.

Each informational section offers practical guidance to SGN refugees navigating the refugee status determination process in South Africa. This includes up-to-date information on how to seek asylum, the rights of refugees and asylum seekers, and dangers and challenges faced by SGN refugees in South African society. The resource directory provides descriptions and contact information for South African NGOs and service providers working across a number of fields, including education, employment, housing, health care, and legal services, with a focus on SGN-friendly organizations. Through the ORAM South Africa online forum, users can communicate and share information with other SGN refugees, ensuring an anonymous space in which refugees can safely obtain critical information and emotional support.

These resources enable refugees to build information-sharing networks despite isolation and physical separation and allow NGOs to effectively connect refugees with the resources available to assist them.

⁷⁶ E.g., L. Marvin Overby & Jay Barth, *Contact, Community Context, and Public Attitudes Toward Gay Men and Lesbians*, 34 POLITY 434 (2002); see also ORAM, *OPENING DOORS: A GLOBAL SURVEY OF NGO ATTITUDES TOWARDS LGBTI REFUGEES AND ASYLUM SEEKERS 16* (2012), available at <http://oraminternational.org/en/publications>.

Despite best efforts to provide support for SGN refugees, no single organization can provide complete protection. NGO coalitions are key to capacity-building and strengthening of services, especially where the target client population overlaps with a variety of communities. Other organizations, particularly those that are LGBTI-focused, can help meet the needs of SGN clients. They may have access to the local LGBTI network and have the ability to advise on finding health services, non-discriminatory employment, and LGBTI-safe neighborhoods. Alliances can thus bring great improvement to the lives of NGO clients.

Collaboration with welcoming faith-based organizations brings immense potential to lessen the suffering of SGN refugees. Faith-based organizations are uniquely positioned to provide support to refugees because they are committed to helping others. Their fellowship often transcends racial, cultural, economic, sexual orientation, gender identity, and other boundaries. In recent years, a number of congregations, and even entire denominations, have become more vocal in their support for LGBTI rights.⁷⁷ This is true in South Africa, Mexico, and even in Uganda.⁷⁸

We recognize that NGOs operating in countries that criminalize same-sex relationships and/or gender non-conformity face very serious challenges. At the same time, the need for protective and inclusive measures is often most urgent in these countries. Precisely in these contexts, partnerships and coalitions between NGOs can facilitate efforts which require collective strength. NGOs operating in hostile climates should seek support and assistance from ORAM, UNHCR, and other leading NGOs and IGOs that can effectively reach and understand LGBTI refugees.

⁷⁷ *Religion, Faith, and Values*, GAY AND LESBIAN ALLIANCE AGAINST DEFAMATION, <http://www.glaad.org/programs/faith> (last visited Nov. 6, 2012).

⁷⁸ *Christian Church Directory*, GAYCHURCH.ORG, http://www.gaychurch.org/Find_a_Church/find_a_church.htm (last visited Nov. 27, 2012).

D. CREATE COMPREHENSIVE ADVOCACY AND SERVICE PROGRAMS

The concerns of SGN refugees cannot be addressed through any single approach. Borrowing largely from the work of partners in Uganda,⁷⁹ we recommend that SGN refugees be served through comprehensive approaches that to the greatest extent possible transcend differences in organizational mission. Effective approaches emphasize social networks and support systems that SGN refugees will need to access existing services in urban areas. Key elements of any comprehensive approach include legal aid, programs to prevent and ameliorate the effects of sexual and gender-based violence, partnerships with diverse human rights groups, and fostering refugee support groups.

i. Legal Advocacy

An effective and comprehensive service program often includes legal support for SGN refugees, either in-house or in collaboration with legal advocacy partners. Where feasible, legal services should encompass assistance in refugee status determination and preparation for articulating one's identity at the all-important refugee interview. Related legal services include deportation defense, securing bail, and averting imprisonment. Legal aid is particularly helpful where criminal codes, anti-vagrancy laws, and other provisions are used to target SGN persons. In jurisdictions that accord basic rights to SGN individuals, effective legal advocacy often focuses on securing those rights through law enforcement. For example, legal representatives can follow up on police reports and request protection from private individuals.

⁷⁹ They are Refugee Law Project, its separate Gender & Sexuality Team, and their associate LGBTI-refugee support group, Les Anges.

ii. *Sexual and Gender-Based Violence and Persecution Unit*

We recommend that NGOs also create internal units dedicated to the needs of victims of sexual and gender-based violence and persecution (SGBV/P). The aim of these units is to provide comprehensive health care and support to these refugees, as well as to perform outreach and advocacy related to SGBV/P, HIV/AIDS, sexual minorities, sexual reproductive health rights, and gender. The SGBV/P unit may be designated to serve as the preferred direct contact for client intake, referral, and counseling.

iii. *SGN Refugee Support Group*

NGOs can work directly with SGN refugees to create support groups specifically for SGN refugee communities. These groups are an antidote to isolation and a catalyst to forming community among refugees. These safe spaces are vital shelters from the discrimination and violence of daily life for SGN persons. Support groups should be designed to:

- Maximize emotional support;
- Advise on surviving in the country of transit;
- Provide referrals to SGN-friendly service providers; and
- Stage group activities and educational events.

E. ASSURE REFUGEE RECOGNITION AND IMPROVE RESETTLEMENT

UNHCR and resettlement country governments can do much to assist SGN refugees to reach safety as quickly as possible and to improve the support networks available to these refugees throughout their displacement cycle.

The recommendations below are intended to build on the work that has already been done to protect this marginalized and vulnerable population.

i. *UNHCR*

In its role as the official intergovernmental refugee agency, UNHCR has already made great strides toward increasing its understanding and protection of SGN refugees. To augment its essential work, UNHCR is advised to:

- Utilize mandate RSD authority to recognize SGN refugees who will not be protected by domestic asylum systems or policies;
- Track vulnerable SGN cases filed with domestic asylum authorities in countries where adequate protection is of concern;
- Implement information forms and data systems which fully encompass claims and protection grounds specific to SGN people;
- Expedite consideration of the claims of particularly vulnerable SGN refugees;
- Fast-track resettlement referral of vulnerable SGN refugees;
- Ensure that the vulnerabilities of SGN refugees are clearly and timely conveyed to resettlement country governments;
- Develop and distribute training materials regarding claims based on sexual orientation and gender identity;
- Sensitize and train all UNHCR headquarters and field staff on sensitive and effective protection of SGN asylum seekers and refugees;
- Train RSD staff in the identification of potential SGN claims and in methods to elicit relevant testimony in a safe and welcoming manner;
- Train field staff continually on use of the October 2011 UNHCR Guidelines on International Protection No. 9: Claims

to Refugee Status based on Sexual Orientation and/or Gender Identity;

- Train interpreters on the best practices for working with SGN applicants, including issues of confidentiality, impartiality, and respect. Ensure that interpreters are aware of and employ appropriate terminology for use with SGN applicants;
- Collaborate with relevant organizations to create safe zones where asylum seekers and refugees can feel secure in sharing their SGN identity; and
- Encourage all states to recognize SGN people as “members of a particular social group” for refugee protection purposes.

ii. *Resettlement Country Governments*

Key resettlement countries, most notably the United States, Canada, and Australia, are urged to augment their commitments as safe havens for SGN refugees. Resettlement country governments are advised to provide their

staff with continual SGN refugee sensitization, adjudication, and protection training. We urge resettlement country governments to further build on their lifesaving protection efforts on behalf of SGN refugees as follows:

- Collaborate with local grassroots organizations to create infrastructures supporting SGN refugees and asylum seekers;
- Increase acceptance of direct referral of SGN refugees where international protection is unavailable or inaccessible;
- Fast-track resettlement SGN refugees who are in danger of imminent targeting or harm;
- Place and resettle SGN refugees to locations with established LGBTI communities;
- Allow same-sex couples to resettle concurrently and to the same location; and
- Increase the number of SGN refugees accepted for resettlement.

VI. *Conclusion*



ORAM’s extensive field research in South Africa, Uganda, and Mexico revealed that SGN refugees are subjected to marginalization far more acute and more dangerous than most other refugees. Protection gaps facing SGN refugees include violence by state authorities, local communities, and other refugees, and seemingly insurmountable barriers to health care, employment and vital services. Many of these challenges are exacerbated by crippling isolation. Based on this research and on ORAM’s extensive experience with SGN refugees in other locations, we have developed recommendations intended to guide refugee service providers and other stakeholders in how best to address the needs of SGN refugees struggling to survive in urban environments. These key findings and recommendations are summarized here in Part III, and are presented in further detail in Parts I and II of this publication.

While our initial investigation uncovered several key issues, further research and information on protection gaps affecting SGN urban refugees is essential. More importantly, there is a pressing need for direct intervention by refugee-serving NGOs, UNHCR, and government agencies in countries of first asylum. ORAM urges these groups and other stakeholders involved in refugee protection to implement the recommendations in this report through practical projects aimed at narrowing the protection gaps for SGN refugees worldwide.

ABOUT ORAM

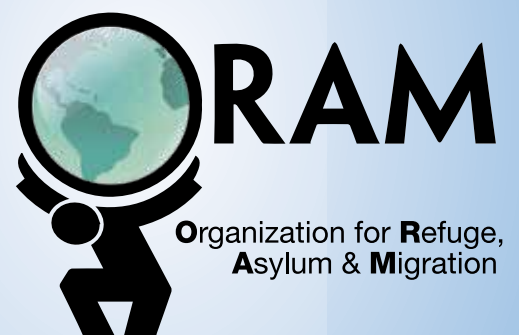
ORAM — Organization for Refuge, Asylum & Migration is the leading agency advocating for lesbian, gay, bisexual, transgender, and intersex (LGBTI) refugees worldwide. Based in San Francisco in the United States, ORAM is the only international NGO that focuses exclusively on refugees and asylum seekers fleeing sexual orientation and gender identity-based violence.

ORAM works to carry out its worldwide mission on multiple fronts, from direct client assistance and global advocacy to logistical support and training. Among ORAM's many groundbreaking undertakings are its comprehensive and innovative trainings and its work in the assisted resettlement of LGBTI refugees. Through these strategic activities, ORAM is expanding the international humanitarian agenda to include LGBTI persons and to secure LGBTI refugees' safety. Concurrently, ORAM advocates within a broad range of communities to include these refugees within their scope of protection.

Informed by its intensive legal fieldwork, ORAM conducts international and domestic advocacy to protect LGBTI individuals fleeing persecution worldwide through collaboration with a wide array of NGO partners. ORAM continuously provides educators, community leaders, and decision-makers with much-needed information about LGBTI refugees.

ORAM's publications meld legal expertise with research-based insights in the social sciences and thorough knowledge of current events. These are informed by ORAM's comprehensive community-based understanding of LGBTI issues. Together these three pillars yield an unsurpassed capacity to bring about real change.

As a steward and educator on LGBTI refugee issues, ORAM develops and provides targeted, culturally-competent trainings for refugee protection professionals, adjudicators, and other stakeholders worldwide. This report is intended to inform such trainings.



www.oraminternational.org