

The Road to Safety

**Strengthening Protection for LGBTI Refugees
in Uganda and Kenya**



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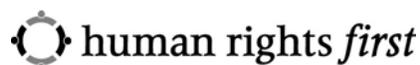
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Executive Summary

Lesbian, gay, bisexual, transgender, and intersex (LGBTI) refugees are often among the most vulnerable and isolated of refugees. This is especially true in places where they are at heightened risk due to violent attacks, discrimination, and laws that criminalize same-sex relations. In addition, in many countries around the world, LGBTI refugees are targets of bias-motivated attacks and sexual and gender-based violence. Around seventy-six countries criminalize consensual same-sex conduct.

After fleeing persecution in their own countries, LGBTI refugees often find themselves at risk again in the countries where they have sought protection. In Uganda and Kenya, for example, where research for this report was conducted, LGBTI refugees and those associated with them have been abducted, beaten, and raped. Some have been forced to relocate their homes frequently to avoid the scrutiny and potential hostility of landlords, neighbors, or other refugees who would harass, threaten or evict them if their sexual orientation or gender identity were discovered. Some examples of violence include:

- In 2010, two refugee women in Uganda were abducted and raped because they had been assisting LGBTI refugees.
- In November 2011, a gay male refugee in Uganda was locked in his home and a group of refugees tried to burn him alive.
- Five cases of “corrective rape” of lesbian or transgender male refugees in Uganda were reported by nongovernmental organizations (NGOs) between June and November 2011.
- A gay Somali teenager in Kenya was doused in gasoline in 2010 and would have been set on fire by a crowd of Somali teenagers in Eastleigh, Nairobi, if not for the intervention of an older Somali woman.

Similar incidents no doubt go unreported. Moreover, host governments aggravate the risks for LGBTI refugees by making discrimination official government policy. Ugandan law provides for a sentence of life imprisonment for same-sex conduct, and the proposed Anti-Homosexuality Bill would impose the death penalty for “aggravated homosexuality.” Public rhetoric demonizing homosexuality has been particularly vicious since the Anti-Homosexuality Bill was first introduced in October 2009, and Human Rights First’s Fighting Discrimination Program has documented violence and harassment targeting LGBTI Ugandans since then. The Government of Uganda has recently committed, in connection with the U.N. Human Rights Council review of its human rights record through the Universal Periodic Review process, to investigate and prosecute attacks on LGBTI persons. Although public rhetoric in Kenya has been generally less violent, LGBTI persons do face discrimination, harassment, and sometimes violence. A conviction in Kenya for consensual sexual conduct between men carries a five-year jail sentence.

As detailed in this report, LGBTI refugees face particular difficulties in reporting threats or attacks to the police, a problem aggravated by government policies criminalizing same-sex conduct. In this connection, LGBTI refugees are vulnerable to abuse and extortion by police officers, some of whom use laws that criminalize same-sex relations to threaten arrest unless bribes are paid. These laws, as well as broader societal discrimination, also undermine access to asylum and make it very difficult for LGBTI refugees to find effective protection and lasting solutions to their displacement. The vulnerability of LGBTI refugees is compounded by their frequent isolation from family and refugee social support networks, and a range of particular barriers they face in securing assistance from services for which they are eligible. Notably, in some cases they have been denied access to, or suffered discrimination or harassment when attempting to access, assistance from NGOs, the local offices of the U.N. High

Commissioner for Refugees (UNHCR), or health-care institutions.

International human rights protections apply to all persons, including LGBTI persons. Given the specific risks facing LGBTI refugees in Uganda and Kenya, including continual risks of violence, effective strategies should be implemented to address the significant gaps in protection facing these refugees. While the number of LGBTI refugees identified by NGOs and UNHCR is low (due in part to the challenges documented in this report), these refugees are particularly vulnerable and doubly marginalized—not only are they refugees, with all the challenges and vulnerabilities of that status, but they are also marginalized from refugee communities and support systems available to other refugees. As illustrated in this report, LGBTI refugees sometimes face acute risks due to discrimination, violence, or laws that criminalize same-sex conduct.

Human Rights First has identified a number of key steps to be taken to improve the situation of LGBTI refugees. In many cases, existing programs and resources can be enhanced or connected more effectively to address gaps in protection. These improvements can largely be achieved using existing resources but through better coordination, information, and advocacy, all leading to improved protection in both the short and long term. Not taking the steps outlined in this report would mean leaving LGBTI refugees with little protection—at risk of violent attacks at the hands of host communities and other refugees, and without protection from the police. Tackling these challenges now will help ensure that protection is provided equally and without discrimination, and will dramatically increase the safety of LGBTI refugees.

Over the last few years, UNHCR, the United States, and other key actors have made initial commitments to take steps to address the gaps in protection that put LGBTI refugees at particular risk. UNHCR has revised a number of its key refugee protection guidance documents, and has committed to take additional steps to address the specific challenges encountered by LGBTI refugees in obtaining protection and assistance. In some countries, NGOs and UNHCR have begun to develop initiatives to address the often neglected protection needs of LGBTI refugees, although, as detailed in this report, in countries such as Uganda and Kenya additional steps are urgently needed. Following a June 2011 resolution of the U.N.

Human Rights Council, the Office of the High Commissioner for Human Rights published a report in December 2011 detailing the fact that human rights laws should protect LGBTI persons, and calling on states to repeal laws that criminalize same-sex relations, to investigate incidents of violence, and to provide access to asylum, with the goal of ensuring that those seeking international protection from persecution on the basis of sexual orientation or gender identity are not returned to a situation of further persecution.

In December 2011, U.S. Secretary of State Hillary Clinton gave a historic address at the Palais des Nations in Geneva calling on states to protect LGBT persons from violence, discrimination, and other human rights violations, and stressing U.S. commitment to protecting LGBT persons. U.S. President Barack Obama simultaneously issued a Presidential Memorandum directing the U.S. Department of State, Department of Homeland Security, and other U.S. government agencies to take steps to protect the human rights of LGBT persons—including by identifying LGBT refugees, ensuring equal access to assistance and protection, and expediting resettlement of highly vulnerable persons with urgent protection needs.

In this report, Human Rights First lays out a road map of practical steps that UNHCR, the U.S. government, and other key actors should take to ensure that LGBTI refugees have equal access to protection, assistance, and durable solutions, with the goal of more effectively implementing the positive commitments that have been made to improve protection for LGBTI refugees. While this report was informed by research and experience in East Africa, most of the recommended measures apply equally in other locations where LGBTI refugees face serious protection challenges.

Many of the basic principles and recommendations detailed in this report would moreover be relevant to any other set of highly vulnerable refugees, including victims of sexual and gender-based violence, those with compelling needs for assistance, and refugees facing dire risks who are in need of expedited resettlement. As to resettlement, increasing the global capacity for expedited resettlement would address a critical gap in protection that currently leaves many refugees in life-threatening situations. The United States, moreover, has the ability to create a formal expedited resettlement program or system. The measures outlined in this report would help

improve the protection environment in host countries over the longer term, while also addressing the dire threats to the safety of individual refugees now.

The report's primary recommendations are:

- Protect LGBTI refugees from violence and assist victims of violence. UNHCR, along with NGOs that work with refugees, should help LGBTI refugees report violent incidents to the police; conduct outreach to refugee communities to tackle violence by other refugees; work with domestic LGBTI organizations to provide access to support, including emergency hotlines, legal services, and security training; and develop an effective referral system to assist LGBTI victims of bias-motivated and sexual and gender-based violence. Host countries should protect everyone, including LGBTI refugees, from bias-motivated violence and prosecute the perpetrators of such violence.
- Ensure at-risk LGBTI refugees have access to safe shelter. UNHCR and NGOs, with the support of donor states, should make safe shelter options available for LGBTI refugees at risk, including those in need of emergency shelter. Human Rights First recommends a "scattered housing" approach, with accommodation options for LGBTI refugees cases separate from where other refugee populations live. This scattered housing program should be funded by donor states, NGOs, or UNHCR, and available to small numbers of LGBTI refugees at short notice. Other shelter options may supplement this approach.
- Improve access to timely resettlement and expedited resettlement. UNHCR, the United States, and other resettlement states should strengthen mechanisms for identifying vulnerable LGBTI refugees, improve the pace of their resettlement where necessary, assess the potential use of Emergency Transit Facilities for LGBTI refugees, and significantly increase the number of expedited resettlement slots available globally. To address delays in resettlement processing, the United States should ensure the necessary coordination, staffing, and prioritization of security clearance processing and eliminate any unnecessary duplications, and extend validity periods for steps already completed.

The United States should also develop a formalized and transparent expedited resettlement program or system within the U.S. Refugee Admissions Program. It should provide emergency resettlement for applicants in extreme danger in as close to 14 days as possible from referral to departure and urgent resettlement for refugee applicants facing urgent risks within eight weeks, and in particular should:

- Improve coordination of the multiple steps in the resettlement process for expedited applicants;
 - Consistently expedite security checks for emergency and urgent resettlement cases;
 - Develop expedited resettlement guidelines for each region; and
 - Provide more rapid interviews with U.S. Citizenship and Immigration Services (USCIS) in locations where refugees at risk would otherwise need to wait for a "circuit ride" visit.
- Improve general access to protection for LGBTI refugees. UNHCR and NGOs, with support from donor states, should improve access to other protection and assistance mechanisms, including:
 - Develop joint protection strategies, including components on protection against violence, access to support for survivors of violence, access to safe shelter, access to durable solutions, and measures to improve access to existing services;
 - Continue to revise and roll out key protection tools such as the Age, Gender and Diversity Mainstreaming (AGDM) strategy and the Heightened Risk Identification Tool;
 - Further develop and provide ongoing training to address negative UNHCR and NGO staff attitudes towards LGBTI refugees;
 - Reform registration procedures and develop targeted outreach strategies to ensure that LGBTI refugees are identified and their protection needs are addressed without delay; and

- Train UNHCR staff, government officials, and adjudicators on sexual orientation and gender identity as grounds for asylum.

These and other recommendations are detailed in this report. A summary of the recommendations appears at the end of the report.

Introduction

Lesbian, gay, bisexual, transgender, and intersex (LGBTI)¹ refugees in Uganda and Kenya are among the most vulnerable of refugee populations. Due to their sexual orientation or gender identity,² they can be targeted for violence by other refugees and some members of the host populations, harassed and extorted by police officers, and marginalized from accessing services from government institutions, nongovernmental organizations (NGOs), or the U.N. High Commissioner for Refugees (UNHCR). Many live difficult and dangerous lives, trying to hide their identities, moving frequently among dwellings in urban areas to avoid large refugee populations, and in some cases, resorting to sex work to survive. Access to assistance from individuals, government health clinics, NGOs, or UNHCR is often dependent on—or perceived to be dependent on—LGBTI refugees hiding their sexual orientation or gender identity. If their identities are discovered, they can risk losing assistance and social support or being targeted for violence and marginalized by other refugees.

In Uganda, in particular, NGOs have documented numerous incidents of violent physical and sexual attacks on LGBTI refugees, some of which have resulted in horrific injuries. Because of this, one researcher noted that the LGBTI refugees that he had interviewed in Kampala “were among the most isolated, marginalized, fearful group of refugees this author has met in more than 20 years of international refugee work.”³ Other refugee groups in Kenya and Uganda also face particular vulnerabilities but LGBTI refugees are often additionally marginalized as they struggle to access the services from UNHCR, NGOs and government institutions that other refugees can access.

The Human Rights of LGBTI Persons

Under international human rights law, all persons—including LGBTI persons—are entitled to equal rights, including the rights to life, security of person and privacy, freedom from torture, arbitrary arrest and detention, and the right to be free from discrimination.⁴ In 2006, a group

of distinguished human rights experts compiled the Yogyakarta Principles, a set of principles on the application of international human rights law in relation to sexual orientation and gender identity. Recently, the international community has further enhanced efforts to address discrimination, violence, and other abuses of LGBTI persons including:

- In June 2011, the U.N. Human Rights Council passed its first resolution on sexual orientation and gender identity and requested the U.N. Office of the High Commissioner for Human Rights (OHCHR) to conduct a study on violence and discrimination on the basis of sexual orientation and gender identity.
- In December 2011, OHCHR issued the requested report documenting the types of abuse LGBTI persons face and calling upon states to repeal laws that criminalize same-sex relations, to investigate serious incidents of violence committed because of an individual’s sexual orientation or gender identity, to ensure that no one fleeing persecution on grounds of sexual orientation or gender identity is returned to persecution, and to ensure that asylum laws and policies recognize that persecution on account of one’s sexual orientation or gender identity may be a valid basis for an asylum claim.⁵
- In December 2011, U.S. Secretary of State Hillary Clinton gave an historic address at the Palais des Nations in Geneva where she outlined the need to address violence and discrimination against LGBT persons and confirmed U.S. commitment to protect the rights of LGBT persons.⁶ On the same day, U.S. President Barack Obama issued a Presidential Memorandum directing U.S. agencies to take steps to protect the human rights of LGBT persons, including LGBT refugees, and specifically committed that:⁷
 - The Departments of State and Homeland Security enhance their efforts to ensure that LGBT refugees and asylum seekers have equal

access to protection and assistance, particularly in countries of first asylum.

- The Departments of State and Homeland Security train their staff to assist LGBT refugees and ensure their ability to identify and expedite the resettlement of highly vulnerable persons with urgent protection needs.⁸

Human Rights First's Fighting Discrimination Program has documented bias-motivated violence and other discrimination that undermines the human rights of refugees, migrants, racial and religious minorities, and LGBTI persons, and has recommended that states implement measures to protect individuals from bias-motivated violence and discrimination.⁹ Human Rights First has also long advocated for the protection of refugees. In 2010, Human Rights First published a recommendations paper for UNHCR on the protection of LGBTI refugees¹⁰ and hosted a convening of international and U.S.-based NGOs in Washington, D.C., in 2011 to discuss strategies for improving protection for LGBTI refugees.¹¹

UNHCR and the Protection of LGBTI Refugees

UNHCR has taken several steps to improve protection for LGBTI refugees, beginning with a UNHCR headquarters commitment to revise a number of its policy documents and key protection tools to address the unique challenges faced by LGBTI refugees in obtaining protection and assistance. Noteworthy steps include:

- In 2008, UNHCR released a Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity.¹²
- In 2010, UNHCR hosted a roundtable of experts on Asylum Seekers and Refugees Seeking Protection on Account of their Sexual Orientation and Gender Identity and released a discussion document and summary conclusions from the roundtable.¹³
- UNHCR, working with the Organization for Refuge, Asylum and Migration (ORAM) and other NGOs, is developing a "Concept Matrix,"¹⁴ which identifies a number of steps that should be taken to address gaps in the protection of LGBTI refugees. Some of the projects identified in the April 2011 draft of the Matrix include the development of an interview and questions tool for use in refugee status

determinations; the revision of intake and registration forms to accommodate LGBTI applicants; the rollout of training for UNHCR and NGO staff on creating a safe, accessible, and inclusive protection environment for LGBTI persons; and the further revision of UNHCR policy documents and protection tools.¹⁵ Human Rights First has previously urged that the Matrix list of projects be publicly posted on UNHCR's website.¹⁶

- In 2011, UNHCR released a revised Resettlement Handbook that included a specific focus on the resettlement needs of LGBTI refugees.
- Also in 2011, UNHCR released a guidance document called "Working with lesbian, gay, bisexual, transgender and intersex persons in forced displacement," and an updated strategy to combat sexual and gender-based violence that included a specific focus on LGBTI refugees.
- In 2011, UNHCR, the International Association of Refugee Law Judges, and the European Legal Network on Asylum jointly hosted an informal expert meeting with judges and legal practitioners on refugee claims relating to sexual orientation and gender identity in Slovenia.
- At headquarters, UNHCR has provided training on sexual orientation and gender identity for its senior managers. At country level in Kenya, UNHCR has provided initial awareness training for its staff on LGBTI refugees, and in Uganda, staff have been trained more broadly on social exclusion but without a specific focus on LGBTI concerns.
- In July 2012, UNHCR and ORAM will pilot a new model of training in a single country providing focused training on LGBTI refugee protection tailored to UNHCR's different units such as Protection, Registration, and Community Services.

Human Rights First commends UNHCR on these efforts. However, there are still further measures that need to be introduced and implemented on the ground. This report provides specific recommendations that should be integrated into ongoing efforts to strengthen UNHCR's ability to protect LGBTI refugees more effectively.

Human Rights of LGBTI Persons in Kenya and Uganda

LGBTI persons face discrimination in both Uganda and Kenya. In Uganda in particular, rhetoric regarding LGBTI persons frequently includes talk of violence. Section 145 of the Ugandan Penal Code, termed “Unnatural Offences,” prohibits “carnal knowledge of any person against the order of nature.” Contravening this provision carries a risk of life imprisonment. Section 148, termed “Indecent Practices,” prohibits “any act of gross indecency with another person” and carries a seven-year jail sentence.¹⁷ New proposed legislation attempts to make such prohibitions much more severe. The Anti-Homosexuality Bill, first introduced in Uganda’s Parliament in October 2009, proposes the death penalty for “aggravated homosexuality”—including for “serial offenders” of the introduced offense of “homosexuality.” In February 2012, the bill, which has met widespread international condemnation, was resubmitted to the new Parliament for consideration after the previous convocation of Parliament adjourned in May 2011 without voting on it.

Since the public debates over the Anti-Homosexuality Bill began, one Ugandan LGBTI organization reported that intolerance and talk of violence, threats, and actual

violence towards LGBTI persons has increased significantly.¹⁸ In October 2010, the Ugandan tabloid *Rolling Stone* published a list of names under the headline of “100 Pictures of Uganda’s Top Ugandan Homos Leak,” with a subtitle of “Hang Them”. Human Rights First’s Fighting Discrimination Program has documented numerous cases of violence and harassment against LGBTI persons, including by state actors.¹⁹ In February 2012, the Ugandan Minister for Ethics and Integrity, Simon Lokodo, raided and closed a workshop in Entebbe organized by a prominent LGBTI organization,²⁰ and reportedly stated that “We do not accept homosexuality in Uganda”²¹—drawing condemnation from local and international human rights groups.²² Although there are some strong support systems run by NGOs, international organizations, and embassies²³ to protect LGBTI and other human rights defenders in Uganda, generally these are not accessible for refugees or ordinary LGBTI persons.

In Kenya, Section 162 of the Penal Code, listed under “Offences against Morality,” prohibits consensual and non-consensual “carnal knowledge... against the order of nature” of either men or women. The offense carries a sentence of 14 years for consensual acts. Section 165 prohibits acts “of gross indecency” between men, and

REFUGEE POPULATIONS IN KENYA AND UGANDA

The Governments of Kenya and Uganda host large numbers of refugees. The Government of Kenya plays host to around 601,000 refugees,²⁴ including 172,000 who fled at the time of the famine in the Horn of Africa in 2011,²⁵ making it one of the largest refugee-hosting countries in the world. The vast majority of refugees in Kenya are from Somalia and around 460,000 have settled in the massive camps in Dadaab,²⁶ with an additional camp opened in the area in 2011. In addition, Kakuma camp in the northwest of the country hosts 86,594 refugees – primarily Somali and Sudanese nationals.²⁷ In April 2012, news reports indicated that a new camp capable of hosting up to 80,000 persons will be opened near Kakuma to accommodate increased numbers of people fleeing violence between Sudan and South Sudan.²⁸ Kenya’s Refugee Act of 2006 provides the legal foundation for Kenya’s refugee policy, and the Department of Refugee Affairs has taken over registration functions from UNHCR.

The Government of Uganda plays host to 135,801 refugees,²⁹ many of whom are from the Democratic Republic of Congo but with smaller populations from Sudan, Rwanda, and Somalia. Many refugees live in refugee settlements across the country where they have access to land for housing and agriculture, provided by the Office of the Prime Minister on behalf of the Ugandan government. Uganda too has its own domestic legislation in the form of the Refugee Act of 2006, and the government conducts both registration and refugee status determination.

Refugees in Uganda and Kenya face a range of protection challenges and many have been living in refugee camps for many years. UNHCR, NGOs and other partners need to continue to address these protection challenges alongside implementing the recommendations outlined in this report.

carries a five-year jail term.³⁰ The Penal Code criminalizes sexual acts between men but makes no mention of sexual acts between women.

In Kenya, there are considerable negative attitudes towards LGBTI persons but generally without the same degree of hateful rhetoric and violence as in Uganda. Nevertheless, there have been reports of violence and threats against LGBTI persons in Kenya³¹ and LGBTI organizations in Nairobi have not yet made public their office contact details for fear of being a target for violence.³²

LGBTI Refugees in Kenya and Uganda

Both Kenya and Uganda host large refugee populations, including sizeable Congolese refugee populations. Some of the refugees in both countries have lived there for many years, while others are more recent arrivals. Human Rights First's researchers heard frequent accounts of violence or threats against LGBTI refugees committed by Congolese nationals against Congolese LGBTI persons. Large Somali refugee populations live in both countries. But despite progress by a few NGOs in identifying and assisting some LGBTI refugees in general, at the time of Human Rights First's visits in 2011 and subsequent research in 2012, NGOs and UNHCR had very limited contact with and information about Somali LGBTI refugees.

Most of the LGBTI refugees Human Rights First met with were gay men. Various NGOs suggested that gay men are generally more visible than lesbian, bisexual, transgender, or intersex refugees in their work. NGO experts reported that lesbian women and bisexual refugees tend to remain invisible by getting involved in heterosexual relationships as a means of accessing security and social support from others in their community.³³ One NGO in Uganda reported receiving a number of transgender clients, and UNHCR in Kenya reported resettling families with intersex children. One NGO also reported cases of imputed sexual orientation, in which two clients never self-identified but were identified as gay by the community and suffered a range of abuses and marginalization as a result.³⁴ Not all of the LGBTI refugees that we met fled their country of origin due solely to persecution on the basis of their sexual orientation or gender identity. In some cases, individuals fled due to other forms of persecution but then faced specific persecution due to their sexual orientation or gender identity once in the country of asylum.

During our visit to Kenya, many organizations that worked with refugees indicated—in response to our inquiries—that they had no knowledge about LGBTI refugees living in camps. Since that visit, Human Rights First has received information indicating that some LGBTI refugees live in Kakuma camp but there is no focused assistance or protection program for them there. There are also reportedly a number of LGBTI refugees in Dadaab. However, the distance to the camps is too far for Nairobi-based NGOs to provide direct assistance.³⁵ LGBTI refugees and NGOs working with them indicated that generally LGBTI people leave the camps or settlements where movement is more restricted to be in urban centers where they can retain a greater degree of anonymity.³⁶

This report is the result of a month-long field visit to Kenya and Uganda—during which we conducted more than 70 interviews with LGBTI refugees, UNHCR, and NGO staff, government officials, and other experts working with refugees or LGBTI persons as well as additional interviews, communications, and desk-based research. This report outlines concrete steps that should be taken in four overarching areas to improve protection for LGBTI refugees. These areas are:

- protection from violence and assistance to victims of violence;
- access to safe shelter for at-risk LGBTI refugees;
- access to timely resettlement, and for those facing imminent risks, expedited resettlement; and
- other measures to improve access to assistance and protection, including enhanced outreach and registration, staff training, and improved access to asylum for LGBTI persons.

For each of these four areas, the report includes a chapter that provides a comprehensive set of recommendations for states, UNHCR, and NGOs.

Some UNHCR and NGO staff are reluctant to actively work with LGBTI refugees. Assistance to refugees in Uganda and Kenya is provided by various organizations and agencies including UNHCR, local NGOs, and international NGOs. Some individuals and organizations suggested personal religious or cultural sentiments as barriers to taking a more active approach to mainstream the protection of LGBTI refugees into existing protection and assistance programs. These challenges need to be addressed through a combination of leadership from

UNHCR in developing joint strategies, clear guidance regarding policies of nondiscrimination and human rights protection, ongoing training of staff, and strict implementation of accountability measures for individuals who discriminate.

At the same time though, in both countries, some NGOs have developed capacity to assist LGBTI refugees and have rolled out training to partners. Such expertise provides an excellent resource for further capacity building. UNHCR can learn from these experiences but should also provide strong leadership to encourage all its partners to integrate LGBTI refugees into their protection and assistance programs on an equitable basis. Within NGOs and UNHCR, there are some very skilled individuals committed to addressing protection and assistance challenges facing LGBTI refugees. It is important that these staff members are given support both within the country and by UNHCR headquarters and donors in the ways outlined in this report.

In the short term, as detailed below, some LGBTI refugees face such significant protection challenges that

resettlement on an expedited basis is the only possible durable solution. Others face very limited or no opportunities for meaningful integration and thus also have few options beyond resettlement. In addition to strengthening access to resettlement as a durable solution, UNHCR and NGOs need to find ways to strengthen the protection environment for LGBTI refugees by addressing bias-related violence against LGBTI persons within refugee communities and encouraging governmental authorities—including the police—to provide greater protection to all persons, including LGBTI refugees, when they report threats or cases of violence. In addition to improving protection from violence, the Governments of Uganda and Kenya also need to ensure that their asylum systems are accessible to LGBTI refugees and that persons fleeing persecution on the basis of sexual orientation or gender identity are not denied international protection. This report makes recommendations aimed at both protecting individual LGBTI refugees in the short term and improving the protection environment for LGBTI refugees in the longer term.

CHAPTER 1

Protect LGBTI Refugees from Violence and Assist Victims of Violence

LGBTI refugees have been subjected to high levels of bias-motivated and sexual and gender-based violence in Uganda and to some threats and violence in Kenya. This chapter outlines some of the security risks that LGBTI refugees face in Kenya and Uganda and makes recommendations for host states, UNHCR, and NGOs on ways to prevent bias-motivated violence and sexual and gender-based violence against LGBTI refugees as well as strengthen protection responses when violence does occur. As detailed in this chapter, the Governments of Uganda and Kenya have the responsibility to protect all within their countries, including LGBTI refugees. This requires strengthening access to police protection and tackling police extortion and harassment of refugees and LGBTI persons. Recommended preventative and response mechanisms for UNHCR and NGOs include developing partnerships with domestic LGBTI and other human rights organizations, providing security training to persons facing high risks, developing an effective mechanism for referring survivors of bias-motivated or sexual and gender-based violence to necessary services and assistance, and documenting cases of violence against LGBTI refugees.

Preventing Bias-Motivated and Sexual and Gender-Based Violence

Human Rights First has worked consistently to encourage states, international organizations, and other actors to address bias-motivated violence, including that which targets refugees and migrants.³⁷ We have developed a Ten-Point Plan for Combating Hate Crime and have urged states—including those in Europe and North America—to implement these measures to address violence that targets people on the basis of prejudice and intolerance.³⁸ LGBTI refugees in Uganda and Kenya may face security risks, including bias-motivated violence, from a variety of sources. There are potential risks from

members of the public—especially in Uganda—as well as the risk of attacks from other refugees.³⁹

In Uganda, the escalation of violence specifically targeting LGBTI persons in recent years has been widely publicized.⁴⁰ A refugee assistance NGO in Uganda informed Human Rights First of cases of abduction and rape of refugee women who spoke out in support of LGBTI refugees; arson attacks on the homes of LGBTI refugees; brutal sexual attacks on gay refugee men resulting in crippling injuries; and the suspected murder of an LGBTI refugee who disappeared in January 2010 and has not been seen since.⁴¹ In Kenya, several gay male refugees told Human Rights First of threats from other refugees, including family members, and of their fears of having their sexual orientation discovered putting them at risk of violence and other forms of abuse.⁴² One man also reported the disappearance and suspected murder of a friend.⁴³ Human Rights First also heard of cases where refugees were attacked and marginalized on the basis of imputed sexual orientation.⁴⁴

Given the criminalization of same-sex relations in both countries, LGBTI refugees have limited access to state protection, as they risk arrest by the police if their sexual orientation or gender identity becomes known. At present, police are viewed with suspicion and fear by LGBTI refugees, and are generally seen as persecutors rather than as protectors. In both countries, police officers have extorted LGBTI persons with impunity due to their vulnerability.⁴⁵ For example, LGBTI persons have been threatened with public exposure if they refuse to pay a bribe and have few avenues of recourse in these situations.⁴⁶ In interviews with Human Rights First, LGBTI refugees reported witnessing police harassment and arbitrary arrests of LGBTI persons and refugees in Kenya and Uganda. They explained that this police conduct

convinced them that they would not be able to approach the police for protection.⁴⁷

Uganda

In Uganda, the protection environment for individuals who are identified as LGBTI is particularly difficult. Although there is currently no systematic monitoring of abuses of LGBTI persons, anecdotal accounts are commonplace and a number of high-profile incidents have been reported by human rights organizations. Since December 2009, Human Rights First's Fighting Discrimination Program has documented abductions, beatings, threats, and suspicious break-ins targeting LGBTI persons, their families, and LGBTI organizations.⁴⁸

Just prior to Human Rights First's visit to Uganda in August 2011, there was a break-in at one LGBTI organization's office. The perpetrators took the office computer, which included a database of members' names, but ignored other items of value.⁴⁹ At the same time, an attempted break-in at another prominent LGBTI organization was thwarted.⁵⁰

One local human rights advocate told Human Rights First that prior to the introduction of the Anti-Homosexuality Bill in 2009 there was discrimination and a sense of discomfort with issues relating to LGBTI persons. However, since the debates around the Bill began, this advocate reported an increase in violent rhetoric, with people speaking openly of "catching and burning gay people."⁵¹ This advocate said that people are aware that there will be little accountability for their actions as attacks on LGBTI people are often unreported or uninvestigated.⁵²

In Uganda, Human Rights First heard numerous accounts of attacks on LGBTI refugees as well as reports of attacks on individuals who are seen as being supportive to LGBTI people. In one incident in 2010, two female Congolese refugee community leaders who had spoken in support of LGBTI refugees were abducted for two days, repeatedly raped, and dumped on the side of the road. The attackers were suspected to include Congolese nationals.⁵³ In interviews with Human Rights First, a group of LGBTI refugees reported that a male friend who disappeared in January 2010 had likely been killed. The refugee had received death threats after he had spoken to other refugees about his sexual orientation.⁵⁴ Around the same time, staff working at an NGO in Uganda started receiving threats of violence due to their work with LGBTI refugees.

One staff member's house was broken into and some staff members had to move locations and avoid work for a lengthy period of time.⁵⁵

NGO staff working closely with LGBTI refugees reported incidents in which refugees discovered another refugee's sexual orientation and took action against that refugee, including, for example, by writing to the refugee's landlord demanding his eviction.⁵⁶ Landlords who have resisted these demands have been threatened with violence. Neighbors have also been known to report suspicions regarding a person's sexual orientation or gender identity to landlords or the chairperson of the local council.⁵⁷ In Uganda, the police may become involved in evictions, so if a person is evicted on the basis of sexual orientation or gender identity, the person faces further risk of police harassment, extortion, and possible arrest.⁵⁸

Some additional examples of violence committed against LGBTI refugees in Uganda include:

- In November 2011, a gay male refugee was locked in his home and a group tried to burn him alive.⁵⁹
- Five cases of "corrective rape" of lesbian or transgender male refugees were reported between June and November 2011.⁶⁰
- In September 2011, the house of a lesbian refugee was demolished by local Ugandan residents after her sexual orientation was reported to the local council by other refugees.⁶¹
- A Burundian transgender female refugee was continually arrested by police due to her sexual orientation and gender identity and then raped repeatedly in prison.⁶²
- A Sudanese lesbian woman's house was burned down by the local refugee community, which also demanded that she be fired from her job as a teacher.⁶³

Kenya

In Kenya, consensual same-sex relations are criminalized by Section 162 of the Penal Code and LGBTI persons face significant discrimination and marginalization. While LGBTI human rights advocates in Kenya reported less direct security threats than in Uganda, they have nevertheless documented accounts of physical and sexual violence against LGBTI persons.⁶⁴ Human Rights First was advised of a number of incidents in the coastal

region of Kenya including a recent incident reported by a local LGBTI organization in which a gay man was gang-raped.⁶⁵ In February 2012, a crowd surrounded and attacked an AIDS-related training meeting in the town hall that included LGBTI persons in order to “flush out” suspected homosexuals.⁶⁶

In Kenya, Human Rights First learned of a range of incidents in which LGBTI refugees were the targets of violent attacks. In most of these incidents, the threats or violence were believed to have been carried out by other refugees who learned about the victims’ sexual orientation or gender identity. These incidents include:

- The May 2011 disappearance and suspected murder of a gay male refugee. This person had received death threats after other refugees from his country discovered his sexual orientation.⁶⁷
- A gay Somali teenager was abducted in 2010 from Nairobi by a member of his family and was being taken back to Somalia for a possible honor killing, but he was eventually able to escape.⁶⁸
- In 2010, the same teenager had previously been doused in petrol and nearly set alight by a crowd of Somali youths in Eastleigh, Nairobi, but was saved by the intervention of an older Somali woman.⁶⁹
- Two Ethiopians were repeatedly beaten and robbed with impunity, and lost their jobs as the result of other Ethiopian refugees suspecting them to be gay.⁷⁰
- An Ethiopian lesbian woman was imprisoned in the family home and beaten by her brothers on account of her sexual orientation.⁷¹
- A gay Somali man received information that his uncle was looking for him in Nairobi to take him back to Somalia for an honor killing.⁷²

In both Kenya and Uganda, Human Rights First spoke with LGBTI refugees who expressed fear of harassment and violence from other refugees. In some cases, refugees had accused LGBTI refugees of “ruining our culture.”⁷³

RECOMMENDATION 1.1

The Governments of Uganda and Kenya should protect everyone, including LGBTI refugees, from violence, by investigating and prosecuting attacks, punishing police officers found guilty of extortion, and speaking

out publicly against bias-motivated violence. UNHCR should work with the police to ensure that refugees, including LGBTI refugees, can report incidents of violence and crime to the authorities without fear of harassment, extortion, or arrest. UNHCR should raise specific cases of concern with the governments and request information on progress in investigating and prosecuting these cases.

No one should suffer violence at the hands of private actors, and states have obligations to prohibit, investigate, and punish bias-motivated attacks. Similarly, as detailed by the Office of the High Commissioner for Human Rights in its December 2011 report, states have obligations to prevent violence and discrimination, including when based on sexual orientation and gender identity.⁷⁴ Article 6 of the International Covenant on Civil and Political Rights (ICCPR), to which both Uganda and Kenya are party, affirms that “every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”⁷⁵

The Government of Uganda recently accepted and agreed to implement the following recommendations at the conclusion of its Universal Periodic Review process before the U.N. Human Rights Council in October 2011:

- Investigate and prosecute intimidation and attacks on LGBT-community members and activists;
- Investigate thoroughly and sanction accordingly violence against LGBTs, including gay rights activists; and
- Take immediate concrete steps to stop discrimination and assaults against LGBT persons.⁷⁶

LGBTI persons have the same internationally recognized rights as others. Likewise, LGBTI refugees have the same rights as other refugees, including the right to protection from harassment and violence.

In Uganda, a domestic LGBTI organization informed Human Rights First that police extortion of LGBTI persons usually takes place between 3 a.m. and 6 a.m.⁷⁷ The police extortion typically involves identifying LGBTI persons and forcing them to withdraw money from ATMs to pay a bribe in order to avoid arrest under the provisions of the Uganda Penal Code criminalizing same-sex relations. Police may take pictures of LGBTI persons and threaten to expose their identities to the media if they do not pay a bribe.⁷⁸ Ugandan NGOs indicate that although,

in 2009, 72 people were arrested and investigated in the Kampala district for “unnatural offences,” and in 2010, 86 people were arrested and investigated, records show only one conviction in the district.⁷⁹ It appears that most cases are somehow settled before the matters get to court.⁸⁰ Similarly, in Kenya, police are regarded with fear due to incidents of police officers generally harassing, extorting, and arresting refugees arbitrarily.⁸¹ Some police and other officials in Kenya are known to refer to refugees as “mobile ATMs” because money can easily be extracted from them.⁸²

Uganda has an obligation to protect refugees from discrimination in terms of Section 29 (1)(c) of Uganda’s Refugee Act of 2006. This entitles refugees to “fair and just treatment without discrimination on grounds of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion.”⁸³ In order to implement this obligation, as well as the important commitments it made in October 2011 in connection with the Universal Periodic Review process, the Ugandan government should improve the protection provided to LGBTI persons, including LGBTI refugees, by requiring the Inspector General for Government and the Inspector General for Police to investigate allegations of police harassment, abuse, or refusals to open criminal cases for LGBTI persons.

Similarly, the Kenyan Constitution provides for equality and nondiscrimination as well as the duty of public officials to protect and assist vulnerable minorities.⁸⁴ The Government of Kenya should therefore continue with its efforts to develop an oversight mechanism for the police in terms of the reforms measures outlined as part of its Agenda 4 reform process.⁸⁵

Government officials have an important role to play in speaking out against bias-motivated violence, including where it targets LGBTI persons.⁸⁶ This sends a strong public message that violent crimes motivated by prejudice will not be tolerated and that perpetrators will be held accountable—which helps address the sense of impunity around bias-motivated violence.⁸⁷

UNHCR’s Policy on Refugee Protection and Solutions in Urban Areas recognizes the need to expand protection space for refugees in urban areas.⁸⁸ The protection space for LGBTI refugees in Uganda and Kenya is limited by several factors, including the criminalization of same-sex relations in both countries. However, UNHCR’s Policy on

Refugee Protection and Solutions in Urban Areas notes that:

When refugees take up residence in an urban area, whether or not this is approved by the authorities, **UNHCR’s primary objective will be to preserve and expand the amount of protection space available to them** and to the humanitarian organizations that are providing such refugees with access to protection, solutions and assistance... While the notion of protection space does not have a legal definition, it is a concept employed by the Office to denote the extent to which **a conducive environment exists for the internationally recognized rights of refugees to be respected and their needs to be met.** [Emphasis added].⁸⁹

As noted before, LGBTI refugees are entitled to the same internationally recognized rights as other refugees. It is one of UNHCR’s primary objectives to contribute to developing an environment where their rights can be respected and their needs are met.⁹⁰

In order to foster the development of that space, UNHCR should address concerns such as harassment and extortion of refugees with senior police officials in Kenya, as well as violence that specifically targets LGBTI refugees. UNHCR’s Policy on Refugee Protection and Solutions in Urban Areas foresees an increased advocacy role for the agency in urban areas with host governments. This is one area in which such advocacy is critical.⁹¹ Engaging proactively with the police is also critical to improving the long-term protection environment for LGBTI refugees and presents an opportunity to create a forum for UNHCR to share concerns raised by LGBTI refugees regarding their fear of arrest when reporting crimes to the police. UNHCR should also raise specific cases of bias-motivated violence against LGBTI refugees with the police and request that the authorities provide information on the progress in investigating and prosecuting these cases.

UNHCR should also take the lead in engaging with the Government of Uganda regarding the government’s role in protecting all refugees, including LGBTI refugees. There are training models and local resources available to support this engagement. For example, one refugee assistance NGO provides ongoing training for police and immigration officers on refugee rights and is willing to conduct trainings on social exclusion as a means to

capacitate police to improve the protection of LGBTI refugees.⁹² UNHCR should explore whether this would be most effectively facilitated with the support of the Office of the Prime Minister. UNHCR should also inform the Uganda Human Rights Commission of cases where LGBTI refugees report being refused assistance or being extorted by police.⁹³ The Office of the High Commissioner for Human Rights in both countries may also have an important role to play in encouraging the protection of all, including LGBTI persons, by the police.

Given the specific risks facing LGBTI refugees, the host governments, UNHCR, and NGOs need to take steps to ensure the protection of LGBTI refugees by working towards increasing access to police protection for LGBTI refugees, providing support to LGBTI refugees wishing to register a police case, and building stronger ties with the police.

RECOMMENDATION 1.2

The Governments of Uganda and Kenya should protect individuals from violence, discrimination, arbitrary detention, and privacy violations by removing measures that criminalize consensual same-sex acts from their respective Penal Codes and strengthening domestic mechanisms to provide equal protection to all.

Under international law, everyone, including LGBTI persons, has the right to be free from discrimination as well as the right to be free from arbitrary interference with his or her privacy.⁹⁴ Article 26 of the ICCPR notes that “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground....”⁹⁵

Criminalization laws are therefore at odds with international law as they discriminate against people on the basis of their sexual orientation or gender identity, which international law prohibits.⁹⁶

In addition, the Constitution of Uganda has provisions providing for the right to life, the right to equality, the right to privacy, and the right to respect for human dignity and protection against inhuman treatment for all.⁹⁷ The application of constitutional rights to LGBTI persons has been confirmed by recent Ugandan jurisprudence⁹⁸ and Uganda has recently committed to investigating and prosecuting cases of violence against LGBTI persons.⁹⁹

The 2010 Kenyan Constitution provides for equal protection of all persons before the law. Section 27(4) prohibits the state from discriminating either directly or indirectly against a person on any ground.¹⁰⁰ Section 21(3) also requires all public officers and state organs to address the needs of vulnerable groups in society.¹⁰¹

Article 9 of the ICCPR protects against arbitrary detention. As detailed in the OHCHR’s December 2011 report, “the criminalization of private consensual homosexual acts violates an individual’s rights to privacy and to non-discrimination and constitutes a breach of international human rights law.”¹⁰² The report also notes that “special procedures mandate holders have emphasized the link between criminalization and homophobic hate crimes, police abuse, torture, and family and community violence.”¹⁰³ As these authorities and other researchers have confirmed, the existence of criminalization laws undermines the ability of LGBTI persons (including refugees) to seek and obtain police assistance and gives rise to a culture of impunity for perpetrators of bias-motivated crimes based on sexual orientation or gender identity.¹⁰⁴ Human Rights First’s research, as detailed in this chapter, also confirms that laws that criminalize same-sex relations make LGBTI persons—in this case refugees—particularly vulnerable to the risk of police extortion and abuse, and deter them from reporting violent attacks and other crimes to the authorities.

The Governments of Uganda and Kenya should revoke the clauses in their respective Penal Codes that criminalize same-sex relations in the interests of fulfilling constitutional obligations to nondiscrimination and promoting tolerance and respect for all. Although some government representatives in both countries have stated their opposition to equal rights for LGBTI persons, both governments have a duty to provide equal treatment for all, including LGBTI persons.

In both countries there are a number of mechanisms designed to assist citizens and others to hold public officials accountable. In Uganda, the Uganda Human Rights Commission’s Tribunal has the powers of a court to perform functions including awarding compensation or restitution or directing bodies to act on a particular matter.¹⁰⁵ The Equal Opportunities Commission also has a mandate to address discrimination; Ugandan civil society activists are currently in court challenging a section of the Equal Opportunities Act that could be interpreted to mean that the Commission does not

address discrimination on the basis of sexual orientation or gender identity.¹⁰⁶ In Kenya, the Kenyan National Commission on Human Rights is mandated to investigate complaints of human rights abuses¹⁰⁷ and the Public Complaints Standing Committee has a mandate to investigate corruption or other forms of injustice.¹⁰⁸ Government officials in both countries should encourage and assist LGBTI persons, including LGBTI refugees, to make use of these mechanisms in order to support efforts to provide equitable services to all.

RECOMMENDATION 1.3

UNHCR and NGOs should assist LGBTI refugees to register complaints of violence, harassment, or other criminal activity with the police by providing staff lawyers or representatives to accompany LGBTI refugees to the police station. UNHCR and NGOs should also make use of the national human rights institutions and other national accountability mechanisms to help LGBTI refugees seek redress.

Because of the uncertainty of how police will respond when an LGBTI person attempts to report a crime in Uganda, a staff member at an NGO working with human rights defenders suggested that it is safer for LGBTI persons to first approach a supportive NGO that can assist the individual and that they can jointly approach the police.¹⁰⁹

In an incident in 2011 in Uganda, the home of a gay refugee was burned and a letter linking the attack to the refugee's sexual orientation was found at the scene. The man was lucky enough to have been woken by neighbors and was able to extinguish the blaze. However, he did not tell the police about the letter as it would have exposed his sexual orientation and he feared that the police would arrest him or further victimize him.¹¹⁰ The difficulties faced by LGBTI refugees in reporting or following up on cases where they have been attacked on the basis of their sexual orientation or gender identity contribute to a culture of impunity for perpetrators. Ugandan civil society activists also told Human Rights First that even with legal assistance, it is very difficult to ensure the police will follow up on a complaint. Some people resort to bribing the police in order to get progress on their case.¹¹¹

In Kenya, some police officers are known for harassing and extorting refugees in Nairobi and other parts of the country.¹¹² Given this, it is hard for refugees to trust police with providing protection. It is especially difficult for LGBTI

refugees given the prospect of arrest. In December 2010, the International Rescue Committee and local NGO Kituo Cha Sheria issued a press statement noting their concern regarding random police arrests.¹¹³ A joint March 2010 report by the International Rescue Committee, Refugee Consortium of Kenya, and the Humanitarian Policy Group of the Overseas Development Institute produced evidence of police harassment and extortion.¹¹⁴ A staff member at a refugee assistance NGO told Human Rights First that LGBTI persons are sometimes threatened with arrest if their sexual orientation becomes known to police as they report a matter at a police station. These threats make accessing police protection almost impossible.

A gay refugee told Human Rights First that he was walking with an openly gay Kenyan friend in central Nairobi late one night in December 2010 when police approached them. The police asked where they were coming from and insisted that "You are gay!" The police demanded money and threatened to take the two men to the police station. They did not have money to pay the bribe and, after 40 minutes, the police eventually allowed them to leave.¹¹⁵

UNHCR has previously engaged with police in Kenya to improve police awareness of refugee rights.¹¹⁶ The agency should expand on this engagement to include awareness of particularly vulnerable groups of refugees, including LGBTI refugees. UNHCR needs to approach and engage with senior police officials in Kenya in order to be able to address concerns related to harassment and extortion of refugees. Engaging proactively with the police and senior leadership in the government is also critical to improving the long-term protection environment for LGBTI refugees and provides a forum for UNHCR to share the concerns raised by LGBTI refugees regarding their fears of arrest and abuse when reporting crimes to the police.

UNHCR and NGOs should also make use of local accountability mechanisms such as the Kenyan National Commission on Human Rights and the Public Complaints Standing Committee in Kenya and the Uganda Human Rights Commission and Equal Opportunities Commission in Uganda in seeking redress.

RECOMMENDATION 1.4

UNHCR and NGOs should conduct outreach and education to refugee communities on the prevention of bias-motivated violence and the consequences for perpetrators of such violence. This should include engaging with a group of refugee leaders to use their

influence to address violence in refugee communities, including violence against LGBTI refugees.

As detailed throughout this report, LGBTI refugees in Kenya and Uganda may be targeted for violence by nationals of their own country. In some cases they may be victimized by other refugees. Given that, UNHCR and its implementing partners have a particularly important role to play in reaching out to and educating refugee communities as a means of preventing bias-motivated violence. UNHCR's Policy on Refugee Protection and Solutions in Urban Areas recognizes the need for the agency to reach out to refugee communities and to include efforts to prevent and respond to gender-based violence and human trafficking in this outreach.¹¹⁷

One strategy recommended by an expert who formerly worked with LGBTI refugees in Kenya is for UNHCR and NGOs to engage a group of influential refugee leaders and over time build a partnership with them to address violence and intolerance of LGBTI persons in refugee communities.¹¹⁸ This approach has also been initiated in Uganda by a prominent NGO.¹¹⁹ UNHCR has previously reached out to specific groups within refugee communities, for example, to seek their assistance in ensuring the day-to-day functioning of refugee camps such as in Dadaab.¹²⁰ UNHCR's manual *A Community-Based Approach in UNHCR Operations* provides additional suggestions of ways to mobilize refugee communities to strengthen their capacity to address protection risks and to resolve conflicts.¹²¹ These kinds of strategies could also be used to address conflict and violence in refugee communities towards LGBTI refugees.

Outreach strategies to refugee communities have also formed a key component of efforts to address sexual and gender-based violence (SGBV). For example, the creation of SGBV camp committees or local committees in urban areas has been successful in establishing a common understanding of SGBV, identifying focal points for assistance in the community to assist survivors, and ensuring the focal points have access to the established referral system for assistance such as health care, psychosocial support, and protection from further attacks. Utilizing this model for enhancing the protection of LGBTI refugees, UNHCR can work through these committees to provide training to key refugee leaders as well as establish communication and referral mechanisms for LGBTI refugees who have suffered violence or are at risk of harm.

A social assistance NGO in Kenya has recently hired outreach workers from the refugee community and trained them on LGBTI refugee protection and more broadly on LGBTI rights.¹²² These staff members will form a critical part of efforts to reach out to the refugee community and will help develop the most appropriate strategy for the organization to do so.

UNHCR should also take steps to inform refugee populations about the potential consequences of violence or persecution of other people on various grounds including those relating to sexual orientation or gender identity. Depending on the circumstances, consequences to a perpetrator of violence could include exclusion from refugee protection,¹²³ denial of resettlement,¹²⁴ and/or referral for criminal prosecution. This information could be communicated in a number of ways, including through written materials and verbal information provided at registration, and through the kinds of refugee committees mentioned above.

RECOMMENDATION 1.5

UNHCR should revise and make greater use of the Heightened Risk Identification Tool to identify persons at risk of violence, including LGBTI refugees. UNHCR should also add a Specific Needs Code for LGBTI refugees who face specific risks of violence on the basis of their sexual orientation or gender identity in order to identify appropriate protection responses and durable solutions.

UNHCR's Heightened Risk Identification Tool (HRIT) is intended to "enhance the identification of persons at risk by asking a series of questions to a person of concern."¹²⁵ In noting who should be interviewed using the HRIT, the *Heightened Risk Identification Tool User Guide* states, "[I]t is important to ensure an age, gender and diversity sensitive approach to reach out to and identify the risk of all individuals, including older persons, persons with disabilities, children and adolescents, lesbian, gay, bisexual, transgender or intersex (LGBTI) individuals, etc."¹²⁶ Although there are specific sections in the HRIT on older people, children and adolescents, women and girls at risk, and health and disability, LGBTI refugees are dealt with briefly in the general section on legal and physical protection through a question asking if the refugee is a "member of a religious, social, ethnic or sexual minority."¹²⁷ A footnote indicates that "sexual minority includes lesbian, gay, bisexual, transgender, or intersex."¹²⁸

Although the eventual goal is to mainstream the protection needs of LGBTI refugees, at this stage there must be specific attention paid to their unique vulnerabilities, particularly as many UNHCR staff lack knowledge of the specific needs of LGBTI refugees (as discussed in more detail in Chapter 4). The inclusion of vulnerability on the basis of sexual orientation under the general Legal and Physical Protection section in the HRIT is useful but needs to be accompanied by a more detailed section focusing on the specific needs of LGBTI refugees, such as needs related to access to health care, safe shelter, social support from family or refugee community structures, and livelihood options. In addition, a specific section in the HRIT focused on LGBTI refugees would provide very useful practical guidance on the types of questions to ask. Some important questions that should be included in the revised HRIT are:

- What is your current housing situation? How long have you been there and how long do you plan to stay? Do you feel safe there?
- How do you earn an income?
- Have you or anyone you know been threatened with violence because of your/their sexual orientation or gender identity?

The HRIT makes use of Specific Needs Codes, which are the primary standardized tool for identifying and addressing the specific needs of refugees and other “persons of concern”¹²⁹ to UNHCR.¹³⁰ Specific Needs Codes are also used in UNHCR’s database *ProGres*, which then helps determine referrals to UNHCR’s Protection or Resettlement Units or access to other assistance. At present, the Specific Needs Codes do not include any reference to gender identity and also have no specific code to identify those facing a high risk of violence on the basis of their sexual orientation or gender identity.

ProGres currently contains an inclusive Specific Needs Code (LP-MS) for those who are marginalized on the basis of “age, personal history, ethnicity, religion, nationality, social group, caste, illness, disability, gender, sexual orientation or other factors.”¹³¹ This code is used for a refugee who is “marginalized or exposed to discrimination, harassment, vilification, exclusion from participation and/or physical abuse by his/her society. Such marginalization or discrimination may be the result of prejudices, homophobia, xenophobia or other forms of

intolerance.”¹³² By covering a wide range of vulnerabilities under the same code, the important distinction between those *marginalized* on the basis of identity and those facing a high risk of *violence* on the basis of identity is lost. A Specific Needs Code for those who have been threatened with violence, violently attacked or are otherwise at a high risk of violence would help strengthen appropriate protection responses, including referrals for resettlement.

In addition, UNHCR should develop additional Specific Needs Codes specific to gay, lesbian, bisexual, transgender, and intersex refugees in order to effectively recognize that the needs of each group are different. For example, transgender refugees may need specific shelter arrangements and intersex refugees may need specific access to medical assistance. Likewise, as mentioned elsewhere in this report, some local experts told Human Rights First that gay men were often more visible in the populations they engage with, but from their work, they believed that lesbian and bisexual women may enter heterosexual marriages as a means of remaining invisible and safe.¹³³ Developing protection responses for the latter group may need to take into account the related needs of the family.

UNHCR’s guidance on *Working with lesbian, gay, bisexual, transgender & intersex persons in forced displacement* recognizes the different needs the different groups may have.¹³⁴ For this reason, UNHCR should revise the Specific Needs Codes to provide separate codes for lesbian, gay, bisexual, transgender, and intersex persons as well as separate codes for *marginalization* and *survivor of violence (or at high risk of violence)*. As discussed in Chapter 4, the confidentiality of this information must be protected.

Finally, at present the HRIT is not being used extensively in Uganda and Kenya; some UNHCR staff told Human Rights First that they found it too cumbersome.¹³⁵ During the revision process, UNHCR should seek feedback from its staff and from NGOs on how best to make the tool more practical and user-friendly.

RECOMMENDATION 1.6

UNHCR should develop partnerships to prevent and respond to violence—including partnerships with domestic human rights and LGBTI organizations that could assist LGBTI refugees with access to legal

services, emergency help lines, and other forms of support.

UNHCR should develop partnerships with domestic human rights organizations and domestic LGBTI organizations with existing security mechanisms that could assist in the protection of LGBTI refugees. For instance, LGBTI organizations in both countries have help lines that people at risk can call if they need access to emergency assistance. In Uganda, LGBTI organizations have a security team that documents cases of threats and responds to calls for assistance including by sending staff from supportive NGOs to assist a person.¹³⁶ A staff member with one LGBTI organization indicated that the organization may receive up to five calls for assistance per day. Another organization has access to a small amount of funding to assist with legal fees for people victimized on the basis of their sexual orientation or gender identity. Although activists with high profiles, such as human rights defenders, are able to access an emergency safe house, there is generally very limited capacity for emergency safe shelter for other at-risk LGBTI persons.¹³⁷

The development of the Ugandan Civil Society Coalition on Human Rights and Constitutional Law, a network of human rights organizations that includes a focus on LGBTI rights, offers a good opportunity for partnerships. The coalition currently consists of 43 Ugandan civil society organizations, including a range of LGBTI, feminist, human rights, media, and HIV-focused organizations and is led by two joint coordinators located within a small network secretariat. It is housed at Refugee Law Project, one of the main NGOs working with refugees in Uganda.¹³⁸ By mainstreaming the protection of LGBTI persons into broader human rights debates, the Coalition has established a powerful platform for advocacy and protection of LGBTI persons - including refugees - by Ugandan civil society.

In Kenya, the national LGBTI network has an existing help line and capacity to provide legal support to LGBTI persons who have been arrested on charges relating to their sexual orientation or gender identity. The organization has also developed a relationship with a police station that has been instrumental in assisting some LGBTI persons file complaints with the police.¹³⁹ In addition, there is a refugee legal service provider in Nairobi which monitors detention facilities. While this organization is not yet actively assisting LGBTI refugees, a

partnership could be developed in order to identify LGBTI refugees in detention who might be at risk of abuse.

RECOMMENDATION 1.7

UNHCR should train its Protection Officers and partners working in the camps and settlements on strategies relating to the protection of LGBTI refugees, including protection from bias-motivated and sexual and gender-based violence, in addition to its training of staff in urban areas.

UNHCR should ensure its camp- and settlement-based Protection staff and partners are sensitive to the protection needs of LGBTI refugees and are provided with guidance on how to assist them. LGBTI refugees living in Uganda's settlements told Human Rights First that they have often been harassed by other refugees and prevented from participating in activities such as attending the church by the local pastor.¹⁴⁰ Specific examples include:

- One bisexual refugee and her child have been beaten by neighbors who disapprove of her behavior. When she and other LGBTI refugees in the settlement wait for food they are removed from the queue and when they form their own line, the servers refuse to assist them. As a result, they often miss out on food.¹⁴¹
- A gay male refugee who leads an informal support group in another settlement told Human Rights First that he is now known by the settlement's refugee leadership committee and is harassed by them so severely it is difficult to return there.¹⁴²
- In February 2012, a Kampala-based NGO visited one of the settlements and requested a UNHCR Protection Officer to meet with a group of LGBTI refugees but this request was turned down.¹⁴³ At the same time, one of the NGO staff members was threatened by a group of refugee leaders from the settlement due to his work with LGBTI refugees.¹⁴⁴
- In Kenya, a domestic LGBTI NGO told Human Rights First that it perceived health care providers in Kakuma camp to be "very homophobic" towards LGBTI persons and that the group was planning activities to try to address this.¹⁴⁵ Other LGBTI refugees have previously documented being threatened with violence in Kakuma.¹⁴⁶

UNHCR needs to strengthen its protection role for LGBTI refugees in camps and settlements, and headquarters should provide guidance to camp and settlement staff on useful protection strategies. UNHCR should train staff assigned to field locations in Kenya and Uganda on the particular protection concerns of LGBTI refugees and ensure staff are aware of the strained relationships within the refugee community and the possible impact this might have on service delivery, including food distribution.

In urban areas, LGBTI refugees struggle to access UNHCR Protection Officers. In Nairobi, UNHCR staff noted the difficulties the office faces coping with large numbers of people seeking assistance. As a result, the office holds a Protection Open Day on Thursdays, when Protection Officers are available in the reception area to meet directly with refugees without appointments. However, as discussed in Chapter 4, LGBTI refugees are often reluctant to seek assistance from places where they have to wait alongside groups of other refugees for fear that they will be identified and victimized.

Currently a Nairobi-based NGO holds a regular meeting for the LGBTI refugees it is assisting with resettlement. This NGO is willing to facilitate meetings with LGBTI refugees for UNHCR Protection Officers that would provide a quiet confidential space.

In Uganda, UNHCR's assistance to LGBTI refugees has been primarily provided by its Community Services Officer. However, recent changes in UNHCR Protection staff provide an opportunity for Protection staff to become more directly involved and a Kampala-based NGO has volunteered to facilitate regular meetings between a group of LGBTI refugees and UNHCR Protection staff. Protection staff could also follow Community Services' lead and meet at the office of a community-based organization that has good links with LGBTI refugees.

RECOMMENDATION 1.8

NGOs with expertise on the protection of human rights defenders should provide security training to urban LGBTI refugee support groups.

NGOs working to protect the safety of human rights defenders have provided training to a number of LGBTI NGOs as well as community-based organizations that include LGBTI refugees in Uganda.¹⁴⁷ This training includes measures to inform peers of one's whereabouts at all times, protection of information (such as mailing

lists, membership lists, and staff addresses), and risk-assessment tools. An NGO that works with LGBTI refugees in Nairobi has provided some security training for refugee clients and for other NGOs¹⁴⁸ and should provide further security training for LGBTI refugees and others facing high security risks. Similarly, NGOs working with human rights defenders in Uganda should build the capacity of community-based organizations to roll out security training to their members on an ongoing basis.

Providing Protection from Sexual and Gender-Based Violence

In June 2011, UNHCR updated its SGBV strategy with the release of *Action against Sexual and Gender-Based Violence: An Updated Strategy*. The updated SGBV strategy, recognizes that "frequently, violence against LGBTI people is 'sexualized': they are punished through forms of sexual violence due to their sexual or gender identities, or their assailants seek to 'cure' them of their sexual orientation or gender identity (i.e. so-called 'corrective rape')." ¹⁴⁹ While meeting with LGBTI refugees and NGOs in Kenya and Uganda, Human Rights First heard accounts of a number of men who had been raped, often repeatedly, in their countries of origin as well as in Kenya and Uganda.¹⁵⁰ These kinds of abuses have also been documented in *Gender Against Men*, a film produced by Refugee Law Project in Uganda that highlights the gaps in assistance for male SGBV survivors.¹⁵¹ NGOs working with refugees in Kenya and Uganda reported that they observed a higher number of SGBV cases reported by male refugees from the Democratic Republic of Congo (DRC) and Ethiopia than from other countries with refugee populations in Kenya and Uganda.¹⁵²

In Uganda, domestic LGBTI organizations reported to Human Rights First that they had received reports of a number of gang rapes and other sexualized attacks on gay refugee men, including cases where men had items forced into their anuses and suffered serious injuries as a result.¹⁵³ One NGO reported that its male clients who had been raped had suffered injuries including torn anuses, and some had become incontinent and impotent as a result of the rape. A staff member told Human Rights First that one man had become impotent after being repeatedly raped in his country of origin by militias and now offered himself for sex as a means of survival. The man has been provided with counseling and is suicidal as a result of his experiences.¹⁵⁴ Human Rights First learned

of another male rape survivor who, while waiting for resettlement, was again attacked and raped with a bottle and nearly died of his injuries.¹⁵⁵

Sexual violence also targets lesbian and transgender male refugees. A legal service provider reported at least five “corrective rapes” of lesbian or transgender male refugees in Uganda between June and November 2011.¹⁵⁶ In Kenya, too, there have been reports of SGBV cases against LGBTI refugees.¹⁵⁷

RECOMMENDATION 1.9

UNHCR should ensure that field staff and partners are trained to respond to SGBV against any person, including men.

UNHCR and its partners need to be trained on how to assist both male and female SGBV survivors professionally. Refugee Law Project has documented cases of male rape in Uganda including against refugees who fled the DRC as well as against internally displaced persons in the north of Uganda in its documentaries *Gender Against Men*¹⁵⁸ and *They Slept With Me*.¹⁵⁹ High levels of sexual violence in the DRC, including male rape, have been well documented, including in testimony before the U.S. Congress and in reports by the U.S. Department of State.¹⁶⁰ NGOs assisting survivors have shown the high levels of physical and psychological trauma resulting from men being raped.¹⁶¹ A number of gay male refugees in Uganda and Kenya told Human Rights First that they were involved in commercial sex work and either they or people they knew had experiences of being drugged by customers and being gang-raped.¹⁶² Access to health care for survivors is extraordinarily difficult and some survivors approach UNHCR or partners for assistance in paying for medical bills.

UNHCR in Kenya and NGOs in Uganda and Kenya told Human Rights First they regularly receive male rape victims from various countries, some of whom had been raped in their country of origin and others of whom had been raped in the country of asylum.¹⁶³ In some cases, people were seeking assistance and treatment for old wounds and others for treatment following recent attacks. Anecdotal evidence provided to Human Rights First indicates that some of those who sought assistance did not receive professional and confidential assistance from UNHCR or NGO staff members.¹⁶⁴ In some cases survivors were asked about their sexual orientation. In addition, some NGOs spoke of negative experiences in the past,

including a case where the NGO felt that UNHCR staff did not make adequate efforts to protect a male rape survivor who was subsequently raped again and nearly killed.¹⁶⁵ Refugee Law Project’s documentary also notes gaps in service provision.¹⁶⁶

UNHCR and its partners should address these gaps to ensure that all rape survivors receive a high level of professional and confidential assistance. UNHCR is currently developing a Need to Know Guidance document for staff on working with men and boys who are survivors of SGBV¹⁶⁷ and should make sure that staff in Uganda and Kenya are trained on its content.

RECOMMENDATION 1.10

UNHCR and NGOs should develop a standardized system for referring LGBTI survivors of bias-motivated and sexual and gender-based violence for appropriate services and support.

UNHCR needs to ensure there is an effective and standardized referral system for survivors of bias-motivated violence and/or SGBV. This can be accomplished through developing Standard Operating Procedures (SOPs) with partners and disseminating these among service providers, ensuring an interagency coordination mechanism is in place to facilitate regular consultations among partners, and clarifying the roles UNHCR and particular partners can be expected to perform for SGBV survivors. An SGBV network exists in Nairobi and one member of this network has trained other organizations on LGBTI refugee protection.¹⁶⁸ This network provides an excellent opportunity to work jointly and develop the SOPs suggested above.

In many settings, UNHCR and its partners have used standardized referral procedures to ensure that survivors of SGBV have access to consistently high standards of care. For example, Annex K to UNHCR’s *Operational Protection in Camps and Settlements* lists minimum standards for SGBV prevention and response programming, including referral mechanisms and victim/survivor support, coordination and reporting on SGBV cases, and training and capacity-building.¹⁶⁹

There are existing support structures available for SGBV survivors in Nairobi, Kampala, and in the camps and settlements. UNHCR should assess to what extent existing these referral mechanisms developed for SGBV survivors could also be utilized for LGBTI refugee survivors of bias-motivated violence. If UNHCR determines these

mechanisms cannot be accessible to LGBTI refugees or are not appropriate within the local context, it needs to ensure that a specific referral mechanism is developed for LGBTI refugee survivors of bias-motivated violence. This mechanism should build on the existing capacity of UNHCR, other U.N. agencies such as the United Nations Children's Fund (UNICEF) and the United Nations Population Fund (UNFPA), and NGOs to provide legal services, psychosocial services and health care. It should also include some members of the refugee community to act as focal points for survivors in need of assistance as well as build a stronger understanding of LGBTI issues and concerns within the community. In Kampala and Nairobi, there is existing capacity to conduct counseling and facilitate access to legal services for LGBTI refugees.

LGBTI refugees and NGOs reported to Human Rights First that access to health care for male LGBTI refugees who have been the victims of SGBV is a major challenge as hospitals and clinics have been known to either humiliate or deny medical treatment to LGBTI persons.¹⁷⁰ In Uganda, a domestic LGBTI organization has successfully advocated for access to six health clinics in Kampala. There is potential for a partnership to expand access to further health care institutions in the city and elsewhere in the country.¹⁷¹ Additionally, an NGO has arranged access to private care by a doctor who can conduct home visits in Kampala.¹⁷² The capacity remains limited, however, and there is still a gap in health care access for LGBTI survivors of SGBV, particularly outside of the capital.¹⁷³ LGBTI refugees based outside of Kampala reported challenges in accessing critical health care in places including Nakivale settlement. One refugee told Human Rights First of a case where a man had been raped in Nakivale and had to endure an agonizing journey of almost 150 miles to Kampala for treatment.¹⁷⁴

In Kenya, LGBTI refugees and NGOs are afraid to seek emergency health care following rape due to threats of arrest for contravening the Penal Code provisions on same sex-relations if doctors suspect the patient has previously engaged in consensual sex with other men.¹⁷⁵ UNHCR, in partnership with its SGBV networks, should strengthen the coordination and referral mechanisms for LGBTI refugee survivors of SGBV. The agency should explore opportunities to leverage the existing structures used by other refugee NGOs as well as domestic LGBTI organizations. UNHCR has recently taken on an implementing partner for its SGBV work in Kenya¹⁷⁶ and its implementing partner is now hosting the Gender-

Based Violence Information Management System (GBV-IMS), which records SGBV incidents in a secure and harmonized manner.¹⁷⁷ This should further contribute to consistency in the recording and reporting of SGBV incidents in Kenya, as well as strengthen effective referrals for survivors.

In addition, UNHCR should take the lead in engaging with Nairobi City Council's Health Department and the Kenyan Department of Refugee Affairs to ensure LGBTI survivors of bias-motivated violence or SGBV can access emergency health care assistance without stigmatization.

RECOMMENDATION 1.11

UNHCR and NGOs should document all cases of threats and violent attacks on LGBTI refugees.

NGOs and UNHCR should consistently record all reports from LGBTI refugees of threats or incidents of violence related to their sexual orientation or gender identity. This documentation is critical to inform police and prosecutors of the scope of the problem and to improve the quality of assistance provided to LGBTI refugees based on the specific patterns of violence targeting this group. NGOs should submit such reports to UNHCR to track progress with government counterparts. In Uganda, the Civil Society Coalition on Human Rights and Constitutional Law may be well positioned to take the lead on coordinating documentation.

RECOMMENDATION 1.12

UNHCR should include LGBTI refugees in initiatives aimed at addressing survival sex as a coping mechanism.

UNHCR's 2011 *Action against Sexual and Gender-based Violence: An Updated Strategy* includes addressing survival sex as a coping mechanism in situations of forced displacement as one of its six priority areas for 2011 to 2016.¹⁷⁸ The new policy recommends that local UNHCR offices develop comprehensive strategies for assisting refugees to develop livelihoods in order to support themselves and implement strategic interventions aimed at enhancing refugees' self-reliance.

A number of LGBTI refugees are involved in prostitution/survival sex work in Uganda and Kenya and this exposes them to additional risks of bias-motivated and sexual and gender-based violence¹⁷⁹ Some of these refugees have received some training from a UNHCR implementing partner on business skills and received a

small grant to enable them to start a business, but some individuals indicated that this money was insufficient for the business to be successful.¹⁸⁰ Such initiatives should be strengthened to reduce dependence on survival sex and the resulting increased exposure to risks.

RECOMMENDATION 1.13

UNHCR, NGOs, and donors should help build the capacity of LGBTI refugee community groups to develop their own sustainable sources of income.

UNHCR, NGOs, and donors should help build the capacity of LGBTI refugee self-help associations through training on issues including financial management to develop income-generating projects. LGBTI refugee groups can play a vital role in helping UNHCR and NGOs identify the most at-risk individuals as well as providing alternative income-generating activities or support beyond sex work for vulnerable LGBTI refugees. LGBTI refugee groups need support from donors to continue and expand this role. Although they have received some initial financial support, further support would enable them to expand their activities and assist more people. Human Rights

First met with a group of LGBTI refugees that had a number of feasible ideas on income-generating activities. A member of the group suggested that “when you look smart, people respect you”—reflecting his perception that having an income or resources can improve the way that others treat you.¹⁸¹

In addition, LGBTI refugees in Uganda specifically requested assistance through the provision of English language training as some saw their lack of English language skills as a major barrier to employment and income-generating opportunities. Although some English language instruction is available for refugees, LGBTI refugees generally do not access these classes as they feel threatened and mocked by others in the classes. A community-based organization with LGBTI refugee members indicated to Human Rights First that it would be able to bring together a sizeable group of LGBTI refugees for English instruction if UNHCR or another NGO could provide them with a trainer.¹⁸²

CHAPTER 2

Ensure At-Risk LGBTI Refugees Have Access to Safe Shelter

Safe shelter is a critical component of providing protection to refugees at risk. LGBTI refugees are often at risk of violence in Uganda and Kenya, as documented in Chapter 1, but frequently struggle to find a safe place to live, including as they wait to be resettled to a safe third country. In both countries, UNHCR has some existing safe shelter mechanisms for people at risk, but these are not yet being accessed by LGBTI refugees who may be victimized by other refugees if housed in large shelters. An NGO in each country is able to assist some LGBTI refugees waiting for resettlement with temporary safe shelter through a scattered housing initiative, but these NGOs do not have sufficient funds to be able to assist all those in need. These NGOs also lack the ability to assist LGBTI refugees who are not being processed for resettlement but need immediate safe shelter.

This chapter makes recommendations on how to increase the capacity for safe shelter and how to enhance access and improve safety. It concludes that a scattered site housing model, rather than the creation of a centralized “safe house,” will provide greater independence for residents as well as reduce the risks connected to a single visible facility. This model may also be suited to other groups of refugees who face high security risks.

Access to Immediate Safe Shelter for LGBTI Refugees at Risk

At present, there is no consistent way to provide safe shelter for LGBTI refugees who face security risks, especially after their existing place of residence has been discovered by their persecutor(s). Chapter 1 documented examples of violence that LGBTI refugees have been subjected to, including physical violence, abductions, rape, forced evictions, and harassment from police officers. There is currently very limited capacity in Kampala and Nairobi to provide immediate safe shelter for an LGBTI person who faces imminent security risks. In both cities, an NGO is able to assist some LGBTI refugees in finding longer term shelter, especially for those who are

waiting to be resettled. It identifies and rents premises for clients on a case-by-case basis and does not have an existing facility to place LGBTI refugees at risk on the same day they request assistance.

In Kampala, one NGO informally places LGBTI refugees requiring immediate shelter with a trusted refugee contact, and on occasion staff use personal money to assist refugees to pay for temporary accommodation. If longer term shelter is necessary and cannot be provided in the city, the NGO assists in relocating the person to another part of the country where the person’s safety can be monitored.¹⁸³

There are currently no specific protection strategies for LGBTI refugees in the camps and settlements of Kenya and Uganda. As such, Kenya and Uganda do not offer models of immediate safe shelter for LGBTI refugees at risk in camps. However, some of the existing models of safe shelter used for SGBV survivors in camps may provide useful models for LGBTI refugees at risk.

Access to Longer Term Safe Shelter for LGBTI Refugees at Risk

Refugees in urban areas such as Kampala and Nairobi usually need to arrange their own accommodation. Overall, there are few formal safe shelter mechanisms for urban refugees in Kampala, though UNHCR has access to a guest house where it can place a small number of refugees at risk on a temporary basis.¹⁸⁴ A UNHCR implementing partner operates a medical hostel in Kampala where refugees with serious medical needs can stay on a temporary basis. This hostel is also utilized by refugees from the settlements seeking medical treatment in Kampala. Nevertheless, a UNHCR staff member suggested that this hostel is not suitable for LGBTI refugees due to lack of security and potential risks posed by other refugees.¹⁸⁵

In Kampala, an NGO assists some LGBTI refugees with safe shelter, but funds are so limited they tend to be used

only for refugees who have applied for resettlement and are awaiting the completion of the resettlement process.¹⁸⁶ The organization told Human Rights First it recently had 22 LGBTI refugees needing safe shelter but was able to assist only nine people. Because there were no other safe options available, some of the 13 refugees without accommodation were so desperate they wanted to sleep in the organization's office.¹⁸⁷ In February 2012, the NGO was providing a monthly stipend and shelter for 15 LGBTI refugees but noted a "dire need" for shelter assistance and that "this need outweighs the resources available in the organization."¹⁸⁸ The NGO also runs a support group and provides counseling for the LGBTI refugees it is assisting with shelter and resettlement. They described this service as critical in mitigating the isolation that LGBTI refugees face.

Human Rights First researchers were advised of cases in Kampala in which several LGBTI refugees had individually been violently attacked and raped. They suffered from severe anal injuries that left them unable to walk properly for approximately six months. Because LGBTI people are often humiliated or denied treatment in hospitals and clinics, these men were treated by a private doctor, but they had no safe place to live while they recovered.¹⁸⁹ As a result, these injured victims of violence slept on a church floor.¹⁹⁰ This further illustrates the gaps in the existing provision of safe shelter for LGBTI refugees as well as male SGBV survivors who identify as heterosexual.

In Nairobi, an NGO provides shelter and a monthly stipend to LGBTI refugees—also primarily those who are being referred for resettlement. In February 2012, the NGO was providing monthly stipends and shelter for 13 LGBTI refugees but told Human Rights First that many more needed assistance.¹⁹¹

Nairobi offers more safe shelter options for refugees generally than in Kampala, but few of these are being currently used for LGBTI refugees. UNHCR is able to place refugees at risk in a safe house facility operated by an implementing partner.¹⁹² This facility has security guards, closed circuit television, an alarm, and panic buttons.¹⁹³ Access to the facility is strictly controlled; those arriving or leaving are subjected to searches by security staff, and residents are only allowed out of the facility for very short periods. The facility has capacity for around 50 people; half of those at the center in August 2011 during Human Rights First's visit were children.¹⁹⁴ Implementing partner staff told Human Rights First that to their knowledge no

LGBTI refugees had been placed in the facility, but they were willing to explore improving the accessibility for LGBTI refugees.¹⁹⁵

According to interviews with NGO representatives, refugees tend to stay in the center for one to two years. This raises serious concerns about the psychosocial impact of extended shelter stay and the potential fostering of dependency, particularly in cases where refugees are not involved in running the shelter. One NGO also suggested that the cases of refugees in the shelter should be adequately prioritized by those managing their resettlement applications as it had observed that the urgency of the applicants' situation was considered to be diminished once they were in safe shelter.¹⁹⁶

Another NGO runs a shelter for female refugee SGBV survivors in Nairobi. This shelter has capacity for 24 women but sometimes goes over capacity if needed. At the time of Human Rights First's visit, it was housing 29 women.¹⁹⁷ This shelter could be suitable for some lesbian women at risk but would require careful monitoring to address conflicts with other residents, as discussed further below.

There are two additional shelters in Nairobi. One is run by a church group and is able to accommodate refugee women and children but provides little security.¹⁹⁸ The other is run by a Kenyan NGO for female survivors of SGBV and has accepted female refugee SGBV survivors.¹⁹⁹ However, the two refugee shelters offer greater potential than the latter two shelters to increase the capacity to provide shelter for LGBTI refugees at risk, as they cater specifically to refugees and the managers expressed a willingness to explore the feasibility of accommodating LGBTI refugees there too.²⁰⁰

LGBTI Refugee Survival Strategies

LGBTI refugees in Kenya and Uganda often respond to security risks by frequently relocating to different parts of the city in attempts to maintain anonymity.²⁰¹ An ideal safe house is sufficiently distant from neighbors to provide privacy, which can be difficult, given the close quarters in which many people in the impoverished areas of Nairobi and Kampala live.²⁰² One group of LGBTI refugees told Human Rights First, "You can't even stay in the same place for six months. You must spend three months here, and three months there."²⁰³ This strategy comes with significant social and financial costs, particularly in Kampala where many landlords require

three months' rent up front as a deposit.²⁰⁴ As previously noted, neighbors of other refugees have written letters to landlords of LGBTI refugees exposing the person's sexual orientation or gender identity and demanding the person be evicted.²⁰⁵

Relocation from the settlements to Kampala for those facing security risks can be difficult, as permission is generally required from the camp commander in order to leave the settlement. In some cases, refugees who have been persecuted in a settlement flee to urban areas that may offer a greater ability to remain anonymous and live away from other refugees of the same nationality. One NGO told Human Rights First of a gay refugee couple who were beaten and forced to leave one of the settlements by a group of Congolese refugees.²⁰⁶ The couple fled to Kampala, but when their identities became known they were abused by other refugees as they made their way to seek assistance from an NGO in the city.²⁰⁷

In Kenya, NGO representatives told Human Rights First that LGBTI refugees also tend to live in areas away from where large refugee groups live and frequently relocate to avoid unwanted attention from neighbors.²⁰⁸ As in Uganda, LGBTI refugees in Kenya generally relocate from the camps to the city where their visibility will be reduced.²⁰⁹

Because UNHCR and NGOs often receive larger numbers of refugees with different protection needs seeking safe shelter than they have capacity to serve, staff sometimes encourage refugees to relocate or to try not to draw attention to themselves, especially when the situation is perceived as less serious.²¹⁰ While some LGBTI refugees may decide—given their limited choices—that the strategy of frequently relocating or attempting to conceal their identities can be a safer option than living consistently in one location, this strategy is not a viable or safe way to ensure protection over extended periods of time. Nor, as UNHCR has affirmed, should refugees be expected to hide their identities as a solution to ensuring protection,²¹¹ even if, in the short term, some LGBTI refugees may take a range of steps to try to protect their safety.

UNHCR and NGO staff in Kenya reiterated to Human Rights First the importance of having a clear exit strategy for each person placed in safe shelter.²¹² In many countries, including Kenya and Uganda, many refugees see resettlement as an attractive option given the challenges they face. In some cases, refugees see being

placed in safe shelter as strengthening their claim to resettlement and for this reason, and because the existing Nairobi shelter does not facilitate self-reliance, UNHCR tends to place individuals in safe shelters only when clear exit strategies exist.²¹³

Strengthening the Capacity to Provide Safe Shelter

As detailed below, UNHCR and nongovernmental organizations, with support from donor states, should develop, expand, and strengthen mechanisms and strategies for providing safe shelter for refugees who face serious risks of harm. The following mechanisms should be utilized:

- **Scattered housing:** UNHCR, NGOs, and donors should support the access of small numbers of LGBTI refugees to scattered houses in areas where their privacy and confidentiality can be protected. This should be the primary emergency safe shelter protection mechanism.
- **Access to existing local LGBTI shelter initiatives:** UNHCR and NGOs should work with domestic LGBTI organizations to develop partnerships that allow LGBTI refugees, where appropriate, to be placed at the facilities established to assist national LGBTI persons.
- **Utilize existing refugee shelters with safeguards:** UNHCR and NGOs should evaluate to what extent existing shelters for refugees can safely house LGBTI refugees. These facilities may require some modifications of structures or shelter practices as discussed below to safely house LGBTI refugees. Placement at such shelters may primarily be on a short term basis until access to safer scattered housing can be provided.

Each of these three mechanisms serves different functions. Domestic LGBTI facilities may provide greater social support for LGBTI refugees. Some existing refugee shelters provide specialized assistance for groups such as female survivors of SGBV, which may be suitable for some lesbian women. Utilizing such shelters may also be an important fall back option when access to scattered housing is not available.

RECOMMENDATION 2.1

UNHCR and NGOs, with support from donor states including the United States, should strengthen their capacity to provide access to emergency safe shelter as well as longer term safe shelter in scattered-site housing for LGBTI refugees at risk.

UNHCR and NGOs, with support from donor states, should develop, expand, and strengthen initiatives to provide safe shelter using the scattered-site housing model. NGOs that work with LGBTI refugees in Kenya and Uganda confirmed that the use of scattered-site housing was preferable to the use of a specific “LGBTI refugee safe house.” These experts were concerned that a specific safe house would become a target, putting the residents at risk of harassment and violence by other refugees or members of the public. Instead, they recommended that efforts to improve safe housing for LGBTI refugees build on approaches used by refugees in both countries through which small groups of three or four refugees find accommodation to rent on a temporary basis.²¹⁴ Such a model provides greater freedom of movement, avoids dependency common in shelters, and allows more semblance of normalcy in the lives of residents. This model was supported at a UNHCR meeting on the protection of LGBTI refugees in 2010, where experts concluded that “scattered site housing is generally a better option than safe houses, which risk becoming unsafe if identified as LGBTI accommodation.”²¹⁵

An NGO currently provides safe shelter for LGBTI refugees in each country in a scattered-site housing model.²¹⁶ Most of the refugees receiving shelter assistance from this NGO have already applied for resettlement, creating a clear exit strategy. Additional donor support is needed to expand the capacity of this program and increase the number of at-risk LGBTI refugees provided with safe shelter.

As noted previously in this chapter, this NGO’s shelter program is not well suited for emergency safe shelter because identifying suitable premises and formalizing a rental agreement with a landlord often takes time.²¹⁷ To address this gap in Uganda, including for LGBTI refugees who have not applied for resettlement, another NGO with a strong history of working with LGBTI refugees has expressed an interest in adding a shelter component to its program. This would specifically entail providing

access to safe shelter to LGBTI refugees at risk as well as SGBV survivors in need of a safe recovery place.²¹⁸

Under this proposal, the NGO would rent accommodation premises on an *ad hoc* basis and place up to four people in each house for a period of around six months.²¹⁹ The NGO would also provide some basic social support, such as money for food as well as access to the NGO’s existing services during that time. Donor support for this initiative would address a major gap in the protection of LGBTI refugees at risk in Uganda.

RECOMMENDATION 2.2

UNHCR and qualified NGO partners should develop plans to accommodate certain LGBTI refugees in existing refugee shelters and identify what additional safeguards need to be added.

UNHCR and its partners should assess the potential to make use of existing refugee shelters—particularly in Kenya, where there are a number of shelters, some of which could address the gap in providing immediate safe shelter. Given the risks that LGBTI refugees could face if their sexual orientation or gender identity should become known to others in the facility or in the neighborhood, these facilities would likely be most useful as very short term options and then only with measures in place to minimize the risks to LGBTI refugees. As detailed above, scattered housing is the preferable approach from a protection perspective. While each facility would need to be assessed by individuals with appropriate expertise, measures to promote the safety of LGBTI refugees at such shelters could include:

- Sensitized shelter management with an active presence to defuse any conflict that may emerge or victimization of persons on the basis of their sexual orientation or gender identity;
- Sensitized security guards who could intervene in cases of threats of violence against LGBTI refugees; and
- Linkages to support services from domestic LGBTI organizations, including counseling and social events.

Several facilities might present options in Nairobi, including the UNHCR implementing partner shelter, shelters for survivors of SGBV, and the International Organization for Migration transit facility.

UNHCR implementing partner shelter

This is the primary safe shelter mechanism for refugees in Nairobi and is the only existing general refugee shelter that accommodates men. Placements in the facility are determined by UNHCR's Protection Delivery Unit, Community Services, and Resettlement staff.²²⁰ This safe shelter is a former residential home. Rooms now accommodate up to four persons. The shelter is currently gender-segregated but there are plans to explore the introduction of family rooms.²²¹ LGBTI refugees could be housed at this safe shelter, but prior to any such placement, UNHCR and its implementing partner would first need to evaluate what measures and structures would need to be put in place to ensure their protection. Because gender-segregated housing may not work well for all, especially for transgender asylum seekers and refugees, it would be useful to draw on best practices outside the refugee context to improve housing conditions and safety.²²² For example, an NGO in the United States has developed detailed recommendations for providing safe shelter for transgender homeless persons, which may be applicable in a refugee context.²²³

Shelter for refugee survivors of sexual and gender-based violence

There is potential for lesbian refugees to be placed at a shelter run by a local NGO for refugee survivors of SGBV. The shelter has a no-tolerance policy for discrimination, but challenges could emerge with prejudice on the part of other shelter residents or staff. A staff member of the NGO that runs the facility told Human Rights First that a lesbian staff member had previously revealed her sexual orientation to some of the shelter residents and received a very negative reaction.²²⁴ The process would need to be managed carefully, including monitoring any negative behavior at the shelter.

International Organization for Migration (IOM) transit facility

The IOM-run transit facility in Nairobi houses refugees preparing to depart to resettlement countries including the United States, Canada, and Australia. The average stay at this facility is five days, and it is primarily a point for final medical checks as well as Cultural Orientation lessons. The facility has the capacity to house around 300 people.²²⁵ Those at the facility are from the Dadaab or Kakuma camps or from Nairobi. On occasion, UNHCR has been able to place refugees in need of safe shelter at

the IOM facility but UNHCR must pay IOM for refugees placed at this facility.²²⁶ With the additional space at the IOM facility there may be greater possibilities for providing protection to LGBTI refugees at this facility, especially as the short average duration of stay for most residents may reduce the potential that LGBTI refugees will be identified as LGBTI and consequently targeted for harassment or violence. UNHCR and IOM, in consultation with the United States, which funds the IOM facility, should assess how it could be used in the absence of other safe shelter mechanisms for LGBTI refugees who are facing risks and require safe shelter for short term stays until scattered housing options can be accessed.

RECOMMENDATION 2.3

UNHCR and NGOs should work with domestic LGBTI refugees to reach agreements on placing LGBTI refugees in existing domestic LGBTI shelter facilities, where necessary.

UNHCR and NGOs should explore the feasibility of placing LGBTI refugees in the existing shelter facilities established by domestic LGBTI organizations. In Kenya, a domestic LGBTI organization has developed a small safe shelter initiative that currently can accommodate up to 10 people on a short term basis in rented premises on the edge of Nairobi. There are plans to expand this initiative and introduce shelters in different parts of the city and possibly in other parts of the country. A representative of the organization told Human Rights First that the organization would be willing to explore the possibility of including LGBTI refugees in its program, contingent on funding and donor approval.²²⁷ As a best practice, those at the shelter are linked with daily social activities at the organization's community center. Linkage to community support can help mitigate isolation experienced by some refugees during the long process of resettlement. UNHCR's *Working with Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Forced Displacement* recommends housing in close proximity to existing local LGBTI infrastructure as a means of providing safety and support.²²⁸

In Uganda, the options are significantly more limited. One domestic LGBTI organization named a community center where those in a desperate situation could be allowed to stay, but the maximum length of stay is three weeks and the center can only accommodate up to four people.²²⁹ Another domestic LGBTI organization described limited access to accommodation but indicated that for security

reasons these accommodations are generally only available to those well-known and trusted by the organization.²³⁰ Nevertheless, in January 2012, a refugee assistance NGO was able to place a transgender refugee client with this domestic LGBTI organization.²³¹ In general, building linkages with these domestic LGBTI organizations may assist in providing access to much-needed social support for LGBTI refugees, which may help prevent isolation and reduce vulnerability.

RECOMMENDATION 2.4

UNHCR and NGOs should develop means to relocate persons facing short term security risks to other parts of the country.

Internal relocation of people at risk has been used as an additional emergency protection mechanism in both countries. This relocation may be for a short or longer term basis. In Kenya, UNHCR has been able to provide financial support to enable a refugee facing risks in one area to relocate to another city where the threat would be reduced. In Uganda, where no other option of safe shelter existed, an NGO has relocated refugees at risk to another part of the country for up to five months and rented accommodation for them. A partner organization based in the area has been able to monitor their condition and provide any additional support required. However, this particular relocation was a last resort due to the need for urgent safety measures and a lack of access to safe shelter in Kampala. Once in their new location, the refugees were not able to move around freely for fear of being observed by other refugees who pass through the area to trade and their location then passed on to potential persecutors.

CHAPTER 3

Improve Access to Timely Resettlement and Expedited Resettlement

As detailed in Chapter 1 of this report, LGBTI refugees in Uganda and Kenya often face a high risk of bias-motivated and sexual and gender-based violence without adequate police protection. Because of the criminalization of same-sex relations in both Uganda and Kenya, LGBTI refugees also face potential arrest and lengthy jail terms if they come forward as crime victims and their sexual orientation or gender identity is revealed. Likewise, LGBTI persons in both countries frequently hear reports of police harassing or attempting to extort money from LGBTI persons, as well as refugees more generally in Kenya.²³² This creates a climate in which the police are perceived as a source of persecution as opposed to protection.

As a result, refugees who are lesbian, gay, bisexual, transgender, or intersex and face security risks have limited means to protect their own safety. In order to survive, some LGBTI refugees may try to hide their sexual orientation or gender identity for fear of being attacked, marginalized from refugee community support systems, or denied services by NGOs or health institutions. Others relocate from house to house, living far from other refugees and trying to avoid neighbors' suspicions. A number of LGBTI refugees in Uganda have been physically attacked in one location, moved homes, and then continued to face threats in their new place of residence as information passed through refugee communities that exposed their sexual orientation or gender identity.²³³ LGBTI refugees should not have to resort to concealing their identities or constantly relocating in order to attempt to avoid targeted violence. These strategies are neither sustainable nor effective solutions, nor are they consistent with human rights and refugee protection standards.²³⁴ Moreover, concealing an aspect of identity may cause refugees to suffer psychological harm.²³⁵

In the absence of effective protection for LGBTI refugees in their host countries, these refugees, like other refugees

in Uganda and Kenya who face high risks, will often need to be resettled, and will sometimes require emergency resettlement. Even those LGBTI refugees in Uganda and Kenya who do not face immediate danger have little chance of integration given the extent of discrimination and criminalization of consensual same-sex relations, and may also need to be resettled. Many refugee communities in these countries are very hostile to LGBTI persons, and public sentiment outside refugee communities is also often extremely negative towards LGBTI persons. In addition to laws criminalizing same-sex behavior, public sentiment is so negative—in Uganda in particular—that LGBTI refugees who have their sexual orientation or gender identity discovered are likely to face serious safety risks.

LGBTI refugees also face significant discrimination in both countries, including when they try to access services at health care institutions. For example, a lesbian Congolese woman was twice evicted from her accommodation by her landlords in Uganda after they discovered her sexual orientation, and was fired from jobs three times after she rejected the sexual advances of her employers and revealed her sexual orientation. As a result, she was living on the streets of Kampala.²³⁶

Moreover, as discussed in Chapter 4, many NGO staff members are reluctant to provide services to LGBTI refugees—leaving LGBTI refugees with very limited means of assistance. An expert roundtable hosted by UNHCR specifically concluded that resettlement may “often be the only viable durable solution for LGBTI refugees.”²³⁷ UNHCR’s *Resettlement Handbook* concurs, stating that “resettlement may be the only viable durable solution for LGBTI refugees facing intolerance and heightened risk in countries of first asylum.”²³⁸

Yet, as detailed below, very few LGBTI refugees are identified and referred for resettlement. Access to expedited resettlement is even more difficult given the

limited number of expedited resettlement slots available globally and the lengthy resettlement processing times. There are a number of steps that can be taken by UNHCR, NGOs, and resettlement states to improve resettlement access for LGBTI refugees, as well as for other vulnerable and at-risk refugees. The United States in particular—given its leadership in resettlement and its public commitment to enhance efforts to ensure the protection of LGBTI refugees²³⁹—should take steps to improve access to resettlement, to reduce delays in resettlement and security check processing, and to create a formalized, transparent, and timely expedited resettlement program for refugees who face imminent risks of harm.

Strengthening Resettlement Processes for LGBTI Refugees in Kenya and Uganda

As of March 2012, 26 countries had programs for resettling refugees. Many of those resettlement countries set targets of less than 100 resettlement places. In 2011, the bulk of available resettlement places were provided by the United States, which set a fiscal year target of 77,000 places (though by the end of that year only 56,424 of these places had been used due to U.S. processing delays).²⁴⁰ The next largest provider was Australia with 6,000 places for UNHCR submissions.²⁴¹ The need for resettlement exceeds the number of resettlement slots provided by states. In fact, for 2012 UNHCR has estimated that there are 172,196 refugees in need of resettlement, though only roughly 80,000 slots are available for resettlement.²⁴² Moreover, some resettlement countries prioritize certain populations or place limits on the number of resettlement candidates from particular continents. As a result, there are limited numbers of resettlement places available for refugees from countries that are not specifically identified as priorities for specific resettlement states. For example, the U.S. target for resettlement numbers from Africa for fiscal year 2012 is 12,000²⁴³ but UNHCR estimates the resettlement needs for the continent to be 49,421 this year.²⁴⁴

Resettlement out of camps and urban areas in Kenya and Uganda is a lengthy process. In Kenya, one NGO estimated that the resettlement process takes between eight months and two years from the time a resettlement case is referred to the U.S. Resettlement Support Center

and the date of the refugee's actual departure²⁴⁵; others suggested it can take even longer.²⁴⁶ UNHCR resettlement processes in Kenya may be particularly slow due to the large resettlement caseload the agency manages in Kenya; Kenya hosts almost half a million refugees, primarily in the camps at Dadaab and Kakuma.²⁴⁷ UNHCR has stated that the timing of resettlement in Kenya is also affected by its strict use of management safeguards and standards in the resettlement process.²⁴⁸ An NGO working with LGBTI refugees expressed concern regarding the impact of such a lengthy process on vulnerable LGBTI refugees, reporting that LGBTI refugees awaiting resettlement risked "being outed, police harassment, gang rape and eviction." The organization reported that some of those who are unable to provide for themselves may resort to survival sex.²⁴⁹

From Uganda, resettlement to the United States generally takes between one and two years from the time these refugee cases are submitted to the United States by the UNHCR Regional Hub.²⁵⁰ This submission occurs only after the UNHCR country office has compiled the case's paperwork and submitted it to the Regional Hub, which can take a number of months.

At present, UNHCR is resettling very few refugees from Kenya and Uganda who have been identified as lesbian, gay, bisexual, transgender, or intersex. In Kenya, UNHCR staff reported that they had processed about five LGBTI cases between March and August 2011 of which three were gay men and two were intersex persons.²⁵¹ In Uganda, in August 2011 UNHCR staff were aware of only one LGBTI refugee resettled in the previous year,²⁵² and in January 2012 the resettlement team was working on two additional LGBTI cases.²⁵³ In November 2011 a representative of the UNHCR Protection unit in Kampala stated that the unit had seen "hardly any" LGBTI refugees.²⁵⁴ UNHCR resettlement staff in Kenya noted that the organization is very committed to resettling intersex children where the children may need to access some form of surgery.²⁵⁵ When such cases have been identified by UNHCR, they have been successfully submitted for resettlement to a Nordic country. UNHCR resettlement staff indicated they believe intersex persons have greater access to post-surgery medical assistance in one of the Nordic countries than in the United States.²⁵⁶

In addition to UNHCR referrals, an NGO based in Kenya had four LGBTI refugee clients resettled in 2011 after

direct referrals to embassies and two LGBTI refugees resettled in 2010.²⁵⁷ By late February 2012, a further ten LGBTI refugees had been submitted for resettlement from Kenya and were in various stages of processing.²⁵⁸ UNHCR in Kenya also noted that it had referred some LGBTI refugees to this NGO for counseling and assistance and that some of these refugees had been referred by the NGO for resettlement. Between June 2011 and February 2012, an NGO in Uganda submitted 17 LGBTI persons for resettlement.²⁵⁹ The difference between the 17 LGBTI refugees identified by NGOs for resettlement and the three identified by UNHCR in Uganda makes clear there is a substantial gap in UNHCR's ability to identify and resettle vulnerable LGBTI refugees.

RECOMMENDATION 3.1

In order to improve access to resettlement (and protection more broadly), UNHCR should strengthen its ability to identify vulnerable LGBTI refugees at the initial registration and reception stage, including by providing privacy for all interviews, hiring and training interpreters who have experience or the necessary professionalism for working with LGBTI populations, training registration staff on LGBTI-sensitive questions, designating specific focal points for LGBTI refugees to approach, and posting visible signs that the office offers a safe and accepting environment for LGBTI persons.

As discussed in Chapter 4, LGBTI refugees are often afraid to identify themselves to UNHCR or NGO staff due to the presence of refugees or interpreters from the same country of origin at UNHCR or NGO offices, or due to perceived or actual negative attitudes by UNHCR or NGO staff. In order to appropriately identify LGBTI refugees who are particularly vulnerable for resettlement, as well as for protection and assistance, UNHCR needs to strengthen its identification of LGBTI refugees at the registration and reception stage by:

- Providing privacy for all interviews;
- Hiring and training interpreters who have experience or the necessary professionalism for working with LGBTI populations;
- Training registration staff on LGBTI-sensitive questions;
- Designating specific focal points for LGBTI refugees to approach; and

- Posting visible signs that the office offers a safe and accepting environment for LGBTI persons.²⁶⁰

These measures—which are described in detail in Chapter 4—will help create a safer environment and better protect confidentiality, and increase the likelihood that LGBTI refugees can be forthcoming about their protection challenges and reasons that they fear persecution in their home country, including those related to their sexual orientation or gender identity. Vulnerable LGBTI cases should be flagged accordingly in UNHCR's database *ProGres*, and the cases forwarded to the Registration supervisor for review, expedited scheduling, and processing. Chapter 4 discusses appropriate ways to flag vulnerable LGBTI refugees in *ProGres* as well as the need for this information to remain confidential.

In Kampala, UNHCR does not conduct its own registration, and reception is conducted for UNHCR by an implementing partner. This NGO is UNHCR's only urban implementing partner in Kampala and therefore the place that most refugees approach for assistance in Kampala. With an estimated 39,000 refugees living in Kampala,²⁶¹ the NGO sometimes faces overwhelming numbers seeking assistance. LGBTI refugees told Human Rights First that they were reluctant to seek assistance at places where large numbers of refugees gather for fear of being identified and victimized. This challenge and strategies to address it are discussed further in Chapter 4. Although the NGO has designated a member of the counseling staff to assist LGBTI refugees, senior staff told Human Rights First that some staff members are uncomfortable with working with LGBTI refugees,²⁶² and although management is trying to address this, this discomfort has made some LGBTI refugees feel unwelcome.²⁶³

Given this combination of factors, the NGO's capacity to identify LGBTI refugees and respond to their particular protection needs—including for purposes of resettlement—is currently limited. UNHCR has specifically noted “very few cases” coming through reception but most coming through other channels.²⁶⁴ LGBTI refugees in Kampala are far more likely to self-identify at other local NGOs, which could refer vulnerable cases directly to UNHCR or to other NGOs handling resettlement cases.

RECOMMENDATION 3.2

UNHCR and resettlement states need to take steps to improve the pace of the resettlement process for all refugees (including LGBTI refugees), by increasing the

number of resettlement interview visits to East Africa and reducing wait times between these visits, increasing resettlement numbers from these countries, and reducing delays in processing.

The number of people being resettled out of Kenya and Uganda appears far below the need. UNHCR estimates that in 2012, 4,580 refugees in Uganda (of which 3,500 are from the Democratic Republic of Congo and 450 from Somalia) need to be resettled, and 21,677 refugees from Kenya (of which 19,000 are from Somalia and 1,750 from Ethiopia) need resettlement.²⁶⁵ However, in 2010 (the latest available figures), only 600 refugees were resettled from Uganda—which then hosted 156,850 refugees, and 3,700 refugees were resettled from Kenya,²⁶⁶ which then hosted 430,800 refugees.²⁶⁷ UNHCR resettlement submissions from both countries are among the highest in the world, with provisional UNHCR statistics for 2011 showing resettlement submissions from Kenya being the third highest (after Malaysia and Nepal) at 10,518 and submissions from Uganda the ninth highest at 1,585.²⁶⁸ However, in 2011, only 3,581 persons were actually resettled from Kenya by UNHCR²⁶⁹ (given that resettlement applications frequently take more than a year to process) and 402 persons were resettled from Uganda by UNHCR.²⁷⁰ To address these discrepancies between need and resettlement numbers, resettlement states should increase their resettlement targets from East Africa as well as conduct more frequent resettlement interview visits with fewer gaps between visits as a means of processing people more rapidly. As detailed below, the United States should also take steps to reduce delays in its resettlement processing, including delays associated with U.S. security clearance processing.

RECOMMENDATION 3.3

UNHCR should strengthen its coordination mechanisms for referring LGBTI refugees for resettlement in Kenya and Uganda by initiating more regular resettlement meetings with NGOs in order to develop shared understandings of appropriate cases for resettlement and improve the timeliness and transparency of resettlement.

A number of NGOs told Human Rights First that they had referred individuals to UNHCR or direct referral NGOs for resettlement but were concerned about the lengthy time it was taking for the person to be resettled.²⁷¹ Some NGO staff indicated that when clients would return to them

asking for updates on their resettlement application, the NGO struggled to obtain updates, including from the direct referral NGO.²⁷² Similarly, NGO staff stated a need to receive greater information on progress on applications that the NGO had designated “emergency” resettlement cases²⁷³ from either UNHCR or the direct referral NGO.²⁷⁴ Although UNHCR in Kenya holds quarterly training sessions with partners on resettlement criteria and benchmarks and provides information updates to the referring organizations, some NGOs felt that communication between all organizations involved in resettlement in Kenya and Uganda could be further strengthened. To address this:

- UNHCR should convene a monthly joint forum with NGOs in Uganda and Kenya including NGOs that refer directly to resettlement countries. This forum can help groups identify critical cases in need of resettlement; agree on specific timelines for communication of information on case status; develop a shared understanding of the types of cases that constitute “emergency” or “urgent” resettlement cases, including for particular resettlement countries²⁷⁵; and improve the efficiency of resettlement from these countries generally;
- UNHCR and NGOs, including direct referral NGOs, should each designate staff members responsible for managing a given case to ensure accurate communication on case status.

One example of useful forums is the durable solutions committees that operate in some countries where UNHCR and its partners meet regularly to assess individual cases and decide on the best course of action.²⁷⁶ Improved communication among UNHCR, direct referral NGOs, and referring NGOs will allow all refugees, including LGBTI refugees, to benefit from the different strengths UNHCR or direct referral NGOs can offer in the resettlement process. For example, the processes of direct referral NGOs may move more quickly than UNHCR’s. Some resettlement countries do not accept NGO referrals, and only accept UNHCR referrals. Improved communication will help ensure that each resettlement case will be handled by the agency (either UNHCR or a referring NGO) that is best equipped to respond most rapidly to the resettlement applicant’s needs. UNHCR in Kenya has convened a Resettlement Working Group but it appears that coordination would be further strengthened by the group meeting on a more regular basis.²⁷⁷

At present, an NGO working in Kenya and Uganda is successfully referring LGBTI resettlement cases to the U.S. and Canadian Embassies. This NGO also helps the U.S. Embassy determine the urgency of the cases it refers.²⁷⁸ However, this NGO is not currently able to refer cases directly to other countries for resettlement as many other countries only accept referrals from UNHCR. In some cases, for example, a refugee might be best served through referral to one of the Nordic countries if the refugee has particular medical needs.²⁷⁹ UNHCR initiated a Resettlement Working Group in Uganda in 2011 but by May 2012 it had not yet met in 2012. By convening this Resettlement Working Group on a regular basis, UNHCR and NGOs can strategize on which country to refer individual LGBTI refugees, especially transgender and intersex refugees with specific medical needs. This forum should still take steps to protect the confidentiality of individual cases.

In Uganda, LGBTI resettlement cases are also identified for resettlement through a refugee community-based organization that has developed a good relationship with many LGBTI refugees. Thanks to these relationships, this organization effectively identifies and refers vulnerable cases to other NGOs that can then refer these cases for resettlement.

Strengthening U.S. Resettlement of LGBTI Refugees

The United States leads the international community in the resettlement of refugees. In FY 2010, of the 72,914 refugees who were resettled by UNHCR, 54,077 were resettled to the United States.²⁸⁰ To further its operations, the U.S. State Department supports Resettlement Support Centers (RSCs) in eight regional centers—Amman, Bangkok, Damak, Havana, Istanbul, Moscow, Nairobi, and Vienna—to assist with the processing of applications to the U.S. refugee resettlement program from all over the world.

In FY 2011, the U.S. Presidential Determination set an annual admission number of 77,000 resettlement places (with an additional unallocated reserve of 3,000 places).²⁸¹ However, the United States did not meet this number, and instead resettled only 56,424 refugees in fiscal year 2011, 23 percent less than the 73,311 resettled by the United States in FY 2010.²⁸² There are a number of reasons that the United States did not meet its resettlement number for fiscal year 2011, including

lengthy processing times caused by delays in existing security checks as well as the addition of new security checks²⁸³ that have significantly slowed the pace of U.S. resettlement. The impact of these delays, and recommendations for addressing them, are discussed in greater detail later in this chapter.

The U.S. government has on numerous occasions affirmed its commitment to the rights of LGBTI people and the protection of LGBTI refugees. Most recently, on December 6, 2011, Secretary of State Hillary Clinton gave a speech on protecting the human rights of LGBTI persons, and President Barack Obama issued a White House directive calling for equal access to protection and assistance for LGBTI refugees. The directive requires the Departments of State and Homeland Security to enhance their ongoing efforts to ensure that LGBTI refugees and asylum seekers have equal access to protection and assistance, particularly in countries of first asylum, and calls upon the Departments of State, Justice, and Homeland Security to ensure appropriate training is in place so that relevant federal government personnel and key partners can effectively address the protection of LGBTI refugees and asylum seekers, provide them with adequate assistance, and ensure that the government has the ability to identify and expedite resettlement of highly vulnerable persons with urgent protection needs.²⁸⁴ The directive requires all agencies to report to the President on their progress by June 2012.

In addition, the Department of State's presentation document to Congress regarding Emergency Refugee and Migration Assistance for Fiscal Year 2013 notes a commitment for FY 2012 to "continue to work with UNHCR, U.S. embassies, Resettlement Support Centers, the Bureau of Democracy, Human Rights and Labor, and the NGO community, through training and outreach, to ensure that LGBT refugees and victims of gender-based violence are afforded access to the U.S. refugee admissions program."²⁸⁵ The Department of State also noted its objective in FY 2012 to "exert global leadership addressing the specific protection needs of LGBT populations of concern"²⁸⁶ and specifically "improve targeted protection and assistance for urban as well as lesbian, gay, bisexual, and transgender (LGBT) refugees in Uganda through dialogue and advocacy with the Government of Uganda."²⁸⁷ The document also notes its financial support for research examining the challenges facing LGBTI refugees to better inform the design of inclusive programs for the humanitarian community.²⁸⁸

Current U.S. Resettlement of LGBTI Refugees

The United States does not have a mechanism to track the numbers of LGBTI refugees it resettles. Anecdotal evidence suggests that the numbers are relatively low. In East Africa, U.S. Embassy staff told Human Rights First that the Embassy was receiving two to three LGBTI resettlement case submissions per month from Uganda from a referring NGO, but not many cases from Kenya.²⁸⁹ RSC staff in Turkey reported that around 20 LGBTI refugees were being resettled from Turkey to the United States each year, along with smaller numbers from Lebanon and one or two cases from the United Arab Emirates.²⁹⁰

The U.S. contribution to global resettlement efforts is substantial, but the process of being resettled to the United States can take eight months to two years or even longer from Kenya and Uganda.²⁹¹ One factor that impacts the timing of resettlement is whether or not the resettlement applicant requires a Security Advisory Opinion (SAO) check in addition to the other required security checks. All of these checks are discussed later in this chapter. NGOs referring LGBTI refugees for resettlement told Human Rights First that their clients regularly face harm while waiting for resettlement.²⁹² Their place of residence may be found out by persecutors, landlords may discover their sexual orientation or gender identity and evict them, or they may encounter violence due to their sexual orientation or gender identity. Some examples of the harms that refugees have faced while awaiting resettlement include:

- A gay Somali teenager was referred for resettlement to the United States in early 2010 but the processing of his application was delayed due to delays in the security check process. As a result of these delays, his medical exam expired, further delaying the progress of his resettlement applications. In April 2011, over a year after his request had been submitted to the United States, he was kidnapped and was being taken back to Somalia reportedly for an honor killing. He managed to escape and his resettlement case was then expedited. He soon departed for the United States in May 2011.²⁹³
- Two Congolese women who were already in the process of being resettled were abducted in September 2010 by a group of refugees and raped repeatedly and then dumped on the side of the

road. Because they still faced further danger, an NGO arranged an ad hoc form of safe shelter to protect them as they continued to wait for their resettlement applications to be processed and completed. One has since been resettled to Canada but, as of April 2012, the other refugee continues to wait for resettlement to the United States with no clear explanation for the reason behind the delay.

In our 2010 report *Living in Limbo: Iraqi Refugees and U.S. Resettlement*, Human Rights First described the impact of processing delays on Iraqi and other refugees, including LGBTI refugees from Iraq and Egypt.²⁹⁴ Delays in processing also reduce the capacity of NGOs to provide shelter for refugees in need. When a refugee's stay is prolonged for months or longer due to delays in resettlement processing, an NGO must use more of its limited resources to help provide safe shelter for that refugee—resources that could otherwise have been used to help additional refugees if the resettlement process had not been so lengthy.

There appear to be a number of gaps in the U.S. Resettlement Program's strategies and plans for improving resettlement for at-risk LGBTI refugees. These gaps, as detailed below, include the lack of:

- A consistent system for UNHCR or NGOs to know how best to request emergency or urgent resettlement of particular refugees from the Refugee Coordinator based on their assessment of the risk level faced;
- A simple method to monitor the expiration dates for key steps such as medical checks;
- Clear guidance for NGOs to help at-risk resettlement applicants access safe shelter in their country of first asylum, or be evacuated (if appropriate) to an Emergency Transit Facility;
- Clear communication to NGOs on inadmissibility grounds that may impact LGBTI applicants and the process for requesting a waiver, including relevant updates on legal or policy changes to admissibility requirements, such as the recent elimination of HIV-positive status as a ground of inadmissibility.

Additional gaps, relating to the ability of the United States to expedite resettlement of refugees facing imminent risks of harm, are discussed later in this chapter.

Once lesbian, gay, bisexual, transgender, or intersex refugees do make it to the United States, they encounter further challenges. The U.S. resettlement program is currently not able to ensure an LGBTI person is resettled in a welcoming location, and the U.S. government also lacks clear guidance on resettlement applications from same-sex couples.

In addition to these challenges, which are specific to LGBTI refugees, all refugees must negotiate a multi-stage resettlement process. They must complete pre-screening interviews with the RSC, clear initial security checks, including being fingerprinted, and then be interviewed by a USCIS officer to determine whether they qualify for resettlement to the United States. If they are approved, they must undergo medical examinations and then wait to be “allocated,” or assigned, to a resettlement agency in the United States. Some of these steps may be done concurrently in order to save time, and sometimes refugees can be interviewed by USCIS prior to clearing security checks. Before departure, their biometrics and biographic information are run through an additional set of security checks. If they clear those checks, and their prior medical and security clearances have not expired, a resettlement agency will then determine in which part of the country to place them, and assist them on arrival. Refugees usually receive three days of Cultural Orientation training prior to departure to prepare their expectations for life in the United States.

According to PRM, a refugee who is referred to the United States for resettlement by either UNHCR or by an NGO waits six to twelve months or longer from the time the case is initially referred to the United States until the date of departure.²⁹⁵ As outlined below, to ensure the departure of a resettlement applicant to the United States, an RSC must align at least seven validity dates and ensure the person travels before any of these expire. The challenge multiplies for families; for a family of three to travel together, for example, the RSC must align 18 validity dates (one of these dates will be the same for all).

RECOMMENDATION 3.4

The National Security Staff should, together with the Departments of State, Justice, Homeland Security, and intelligence agencies, improve the inter-agency security clearance procedure to enable security checks for refugees to be completed accurately and without unnecessary delays within a set time period. The clearance procedure should be reviewed to ensure

that checks do not include overlaps or duplications, and the necessary staffing and prioritization should be provided. Refugees should also be provided with adequate information to enable them to respond to and request reconsideration when denied in order to minimize mistaken denials based on security checks.

Security screening is an essential step in resettlement processing. However, the current practices often result in significant delays, leaving many refugees in vulnerable conditions for extended periods of time. An October 2011 fact sheet released by PRM on expedited protection and resettlement of refugees confirmed that “Two types of security checks conducted during overseas refugee processing sometimes cause delays: the security advisory opinion (SAO) and the interagency check (IAC). An individual may experience lengthy delays due to the need to run multiple security checks and some individuals may never clear the required checks.”²⁹⁶

UNHCR, in a January 2012 memorandum, registered its concern about the delays and disruptions in the U.S. security check processes—stressing that new checks had “caused significant hardships on those about to depart and created major disruptions in the U.S. [resettlement] program.”²⁹⁷ UNHCR also noted that the new checks “have had broader effects by complicating and delaying U.S. resettlement processes.”²⁹⁸

Members of the National Security Staff have indicated that they are currently trying to resolve the difficulties with the security checks and that the issue is receiving attention at the highest level.²⁹⁹ U.S. government officials, in response to an April 2012 draft of this report, indicated that some steps have been taken to improve the pace of security check processing, including additions to staffing in some of the security vetting agencies. The government said that the National Security Staff has provided specific guidance regarding the IAC check to the security vetting agencies, which has led to some positive progress; they said that they expect to increase arrival numbers in the next two months.³⁰⁰

Most refugees seeking resettlement to the United States must go through at least three security checks—in addition to fingerprint checks, USCIS interviews and other steps—prior to being approved for departure. These checks are initiated at the time of pre-screening by the RSC. The current processing times for some of these security checks can be slow, and if any potential inconsistencies or questions arise during the check

process, cases may be put on hold for a number of months. UNHCR has reported that, as of October 2011, more than 25,000 Iraqis had passed their DHS interviews but less than 500 were ready to travel due to delays in their security clearances.³⁰¹ The details of these checks have not been shared publicly but it is understood that there are several overlaps in the different agencies' checks, although the checks in their entirety are not redundant.

Refugees who believe that their applications for resettlement have been incorrectly denied, can file a Request for Review (RFR) and USCIS has made information on the process of filing an RFR available on its website.³⁰² In April 2012, U.S. officials reported that the Notices of Ineligibility for Resettlement will now specifically note when applicants have been denied resettlement for security-related reasons.³⁰³ However, additional information that might assist an applicant in understanding or addressing the alleged or potential security-related concern is not provided.

The Interagency Checks (IAC1 and IAC2)

Prior to the USCIS interview, refugee applicants are screened via the Consular Lookout and Support System (CLASS) as well as other biographic security checks. In November 2010, DHS added an additional check at that stage. This check, known as an Interagency Check (or IAC1), is performed by multiple agencies with security portfolios, which screen biographic information through different databases. The process is coordinated by DHS. Several months after the check was added, U.S. government officials learned that an Iraqi who was resettled to Kentucky had previously been admitted to the United States even though his fingerprints had been found on a roadside improvised explosive device in Iraq.³⁰⁴ The IAC check was not in place yet at the time this man had entered the country. U.S. government officials believe that the interagency checks and other measures added since then have strengthened security screening.³⁰⁵

Once all other resettlement processing is complete, refugees are submitted to a final pre-departure check known as the IAC2, which is intended to identify whether any new derogatory information has emerged since the initial checks were conducted.

In April 2012, DHS indicated that IAC1 checks were taking an average of 12 to 16 weeks to process (but

could run concurrently with other processing steps) and that expedited IAC checks were taking an average of five business days to process.³⁰⁶ The IAC2 commonly takes an average of two weeks to complete.³⁰⁷

UNHCR's January 2012 note on the impact of U.S. security processing delays on refugees confirmed that the introduction of the IACs in November 2010 resulted in all resettlement cases being put on hold globally, including those who were already scheduled to depart.³⁰⁸ The note points out that the IACs have had a more negative affect on some specific populations, including Somalis and Iraqis. As of January 2012, UNHCR reported, "there continues to be a significant number of refugees on hold for extended periods of time, thus putting them at great risk."³⁰⁹

In response to the impact of the IAC checks, UNHCR recommended the following:

- U.S. authorities should "ensure that adequate resources are in place with the relevant agencies to ensure the delays in decision making are reduced";³¹⁰
- DHS and the Department of State and other relevant agencies should "review the various existing security and other clearances required of refugees, with a view towards streamlining and avoiding duplicative procedures that may result in the expiration and recycling of clearances";³¹¹
- "[E]very effort should be made to reduce 'false positive' results in the IAC process."³¹² UNHCR has also urged that refugees only be denied resettlement on security grounds when there is clear and certain adverse information that the individual would constitute a danger to the security of a country or its community,³¹³ and
- Refugees who are denied resettlement on security grounds should be informed of the basis of the denial and allowed an opportunity to respond to that information and request reconsideration of their case as appropriate.³¹⁴

The initial rollout of the IACs created delays that were one of the primary reasons why 23,576 of the 80,000 U.S. resettlement places went unfilled in fiscal year 2011.³¹⁵ Refugees from Africa were among those affected, with 7,315 of the available 15,000 places going unfilled.³¹⁶

U.S.-based NGOs and UNHCR have expressed concerns about the timing, accuracy, and duplications in the IAC process, as well as the lack of information provided to the applicant. In many cases, IACs seem to have resulted in frequent and, seemingly, random and inaccurate “hits.” A UNHCR spokesperson in February 2012 stated in relation to U.S. security checks, “It seems that in this instance the net is so wide a huge amount of people who we don’t see as a security threat are getting caught in it.”³¹⁷ In addition, the Hebrew Immigrant Aid Society (HIAS), which assists with resettlement, including for religious minorities persecuted in the Middle East, reported that DHS has recently denied the resettlement applications for security reasons after initially approving the cases of a number of refugees who did not appear to present any security concerns, including a severely physically disabled man, a middle-aged unmarried female receptionist, and a young female hairdresser.³¹⁸ As with other “hits,” the applicants were not informed of the specific reasons why their cases had been denied and did not receive an opportunity to rebut or explain any derogatory information.

In April 2012, U.S. officials reported that the security vetting agencies were making progress in reducing false positive hits and that a number of the refugees whose resettlement applications were previously denied or on hold are now being rescreened.³¹⁹ HIAS has noted that some of the denied cases listed above have since been approved; the others have pending requests for reconsideration.³²⁰

Security Advisory Opinions (SAO)

The U.S. government requires certain groups of refugee applicants to undergo an extra security check called a Security Advisory Opinion (SAO), depending on factors such as the applicant’s nationality and age. Refugees from Somalia, Eritrea, Sudan, and a number of Middle Eastern and other countries, including Iraq, all require SAOs. In addition, certain types of CLASS hits on a person will require an SAO for individuals not normally subjected to this check. In our 2010 report *Living in Limbo*, Human Rights First reported that SAOs were taking around five months for Iraqis.³²¹ If a person has more than one identity, then an SAO needs to be run for each identity.

Furthermore, because multiple SAOs for the same person cannot yet be run concurrently (although the government says that concurrent checks will be possible in the near

future), SAOs in general can dramatically slow the process of a resettlement application. The SAO security check has a severe impact on persons with common names from countries with limited documentation of births, such as Somalia.³²² Although most cases clear within 45 to 60 days, it can take months to receive information from security agencies in some cases—especially in cases where an applicant’s name is identical to that of a different person in a government database.³²³ The process of determining that the applicant is not the person in the database can take anywhere from six months to more than a year and is “very labor-intensive.”³²⁴ A recent positive development is that in cases where an applicant requires multiple SAOs, the SAO validity period now runs from the time that the final SAO clears. This is especially important given that multiple SAOs for the same applicant cannot currently be run concurrently.

U.S. officials in Kenya told Human Rights First that it is very difficult to conduct expedited resettlement procedures for refugees requiring an SAO.³²⁵ In fact, UNHCR staff in Kenya indicated they try to avoid submitting Somali LGBTI refugee cases to the United States because of these extensive delays in the SAO process.³²⁶ However, some of the other resettlement countries do not accept Somali refugees at all, which has made UNHCR dependent on the United States for the resettlement of this refugee population. The lack of timely resettlement options for Somali refugees is particularly worrisome given the difficulties facing Somali refugees, many of whom live in difficult conditions in refugee camps in Kenya and elsewhere and have been displaced for many years already.

In December 2011, UNHCR announced its intention to increase the numbers of Congolese refugees resettled from the East Africa region.³²⁷ This decision may be the result, in part, of the delays in the SAO process for other populations. Congolese nationals are not subject to an SAO and thus, in theory, should face fewer delays in resettling to the United States. Many of the LGBTI refugees Human Rights First met in Kenya and Uganda were Congolese.

RECOMMENDATION 3.5

PRM and DHS should continue to find ways to improve the efficiency of resettlement processing by extending validity periods of certain required steps so that they

do not need to be repeated unnecessarily at a cost to the applicant and the government.

Resettlement and expedited resettlement cases are often delayed due to the “expiration” of a number of required steps in the U.S. resettlement process. In general, for a single application for U.S. resettlement, RSC staff juggle up to seven different validity dates, including for security checks, medical screening (including tuberculosis), the interview by USCIS (although re-interviews are now discretionary), and fingerprints.³²⁸ If any of these clearances expire before the refugee is ready to depart, the refugee’s departure is delayed so that the expired procedure can be redone. Meanwhile, as that step is redone, other steps may expire, ensnaring the refugee in a potentially endless cycle. If any member of a family travelling together has any step expire, it can delay the process for all and increase the likelihood of all having to repeat multiple procedures. Human Rights First heard frustration in Kenya and Uganda about the difficulty of managing the various expiration dates in the U.S. resettlement process, and the delays and inefficiencies that frequently occur due to these repeated expirations. For example, in the case cited previously of the Somali boy who was abducted in Kenya, delays in the security clearance process meant that his medical checks expired and he had to repeat them,³²⁹ which delayed his departure by a few months.

UNHCR has also expressed concern about the impact of security checks on expiration dates, noting that “juggling the various clearances and expiration dates has become exceedingly difficult for the U.S. processing agencies (Resettlement Support Centers) and many cases have to recycle through one or more clearances.”³³⁰ This can result in additional months in delays in departures. Some resettlement applicants become trapped within this cycle of expiration periods and end up having to redo medical checks a number of times.

PRM and DHS are aware of these challenges and have taken steps to address some of these. In February 2012, in a positive step, PRM announced it would extend the validity period of SAOs and CLASS checks from 12 months to 15 months³³¹ and extend the USCIS interview validity period from 15 months to 24 months for some populations, such as Iraqi refugees, cases in Yemen, and Palestinian refugee applicants in Iraq or Syria. The interview validity extension will not affect LGBTI refugees in East Africa.³³² There are other steps that can be taken

to better align the timing of these multiple steps, including allowing SAO checks on multiple identity documents to be run simultaneously.

In connection with resettlement processing in East Africa, the items with expiration dates are as follows:

- medical examinations expire after three months if there is any evidence of tuberculosis and six months if not;
- fingerprints need to be retaken after 15 months (although this may not be a problem now as they can be resubmitted electronically in some cases, such as for Iraqi refugees or in emergency cases, if the check is about to expire);³³³
- USCIS refugee interviews may need to be redone after 15 months for some individuals in East Africa, though re-interviews are now handled on a discretionary basis;³³⁴
- CLASS checks expire after 15 months;
- SAO checks expire after 15 months; and
- IAC2 checks expire after 16 weeks.

Because of the timings involved in the U.S. resettlement process, and the order in which each step takes place, applicants previously had a fairly narrow travel window in which they had to depart. In the best-case scenario, each applicant had a small travel window if:

- No derogatory information, inconsistencies, or false positive “hits” are returned during any of four security checks;
- No negative information, such as tuberculosis, is found during the medical checks; and
- There are no other delays for any other reason, such as challenges with obtaining exit permits from the host country or problems with USCIS officers obtaining visas to enter the host country to conduct interviews.
- This travel window has been increased by PRM’s decisions to increase some validity periods. In addition, as the medical checks have the shortest validity period, any measures that can be taken to extend their validity, without compromising their accuracy, would have a further positive impact.

RECOMMENDATION 3.6

USCIS should publish a Frequently Asked Questions (FAQ) sheet or make available information to all key partners addressing questions that sometimes arise in connection with applications for U.S. resettlement by LGBTI refugees. This information could address areas including admissibility of HIV-positive individuals, waivers relating to sex work, and resettlement of same-sex partners.

The U.S. Resettlement Program should publish an informational or Frequently Asked Questions (FAQ) sheet or make available information to all key partners on questions that sometimes arise in connection with U.S. resettlement applications for LGBTI refugees. This kind of information would help address gaps in the knowledge of key partners working with LGBTI refugees. For example, two NGOs involved in the referral of LGBTI refugees for resettlement were unsure of U.S. policy regarding the admissibility of HIV positive individuals or individuals who had engaged in survival sex work.³³⁵ Both categories of refugees may, in fact, be admissible. HIV was removed from the Center for Disease Control List of Communicable Diseases of Public Health Significance in 2010 and so is no longer a ground for inadmissibility.³³⁶ For those who have been involved in prostitution, a waiver of the ground for inadmissibility can be requested.³³⁷ Information about this waiver and the time period for processing the waiver request should also be included in an information sheet. PRM has previously published information for specific groups such as Iraqi nationals.³³⁸

An NGO in Kenya indicated the need for clarity regarding the application of Priority 3 resettlement processing for LGBTI refugees.³³⁹ Under Priority 3, close relatives of refugees from particular countries may qualify for entry to the United States as a family reunification measure. Some LGBTI people have fled their country with a partner or have entered into a permanent relationship in the country of first asylum. Even if the couple is unable to enter into a legally recognized marriage, every effort should be made to resettle them together. PRM should provide guidance on how same-sex couples can be resettled together.

RECOMMENDATION 3.7

PRM should include a specific code for LGBTI refugees in the Worldwide Refugee Admission Processing System (WRAPS) to help facilitate the resettlement of LGBTI refugees to locations that can address their

specific needs, and to assist in reporting to the White House regarding implementation of the December 6 memorandum.

The State Department's presentation document to Congress regarding Emergency Refugee and Migration Assistance for Fiscal Year 2013 includes an objective for FY 2012 to ensure that LGBTI refugees (and victims of gender-based violence), if approved by USCIS, "are placed with domestic agencies that are welcoming and equipped to handle the particular needs of these caseloads."³⁴⁰ However, the State Department currently has no way of tracking LGBTI refugees resettled to the United States. PRM's refugee database, known as the Worldwide Refugee Admissions Processing System (WRAPS), does not include a specific code for LGBTI refugees with particular needs. The lack of such a code makes it impossible for the relevant agencies to track and report on resettlement of LGBTI refugees, and undermines their ability to ensure assistance to LGBTI refugees who specifically request placement (after being informed of the options) in U.S. locations that can address their particular needs.

An April 2012 manual from the Organization for Refuge, Asylum and Migration provides information aimed at improving support for LGBTI refugees and asylees once in the United States. It highlights the importance of resettlement locations. The manual states that "the geographical areas best suited for LGBTI refugees are those with social infrastructures and organizations able to provide appropriate social, vocational, and educational services. Among the markers of a well-suited area are a high degree of ethnic and racial diversity and an LGBTI community that can provide support and a sense of belonging."³⁴¹ It is therefore important that LGBTI refugees are informed by RSCs that specific support services are available and that they can request placement in locations with these services if they choose.

Although the U.S. Department of Health and Human Services, Administration for Children and Families' Office of Refugee Resettlement (ORR) has awarded grants to improve the assistance available to LGBTI refugees once they are resettled in the United States, because LGBTI refugees are not being identified through WRAPS, they are not being consistently directed to ORR assistance sites. This needs to be better coordinated.

At present, if a refugee applicant volunteers information relating to sexual orientation or gender identity to a RSC

caseworker or if this information is otherwise noted in the referral process and the applicant agrees to that information being shared with resettlement agencies, this information is entered in the comments section of the Bio Tab 1 in WRAPS. However, this information is not available to resettlement agencies prior to the allocations meetings, where U.S. Resettlement Agencies determine which resettled refugees they can assist in which locations. At present, LGBTI refugees are not always resettled in cities or regions of the United States where LGBTI persons are safe and comfortable living openly.³⁴² For all the progress that has been made in the United States on LGBTI rights in recent years, Americans who are lesbian, gay, bisexual, transgender or intersex may still face prejudice and discrimination.³⁴³ For this reason a UNHCR staff member expressed reservations about submitting LGBTI cases to the United States because of the negative attitudes they may encounter in some parts of the country.³⁴⁴

On the day prior to allocations meetings, Resettlement Agencies receive non-searchable PDF documents listing the resettlement cases that need to be allocated to different resettlement locations. These documents include information on the group size, nationalities, the country they are being resettled from, their ethnicity and religion, and whether they have ties to other family members already in the United States. A comments section notes some specific medical needs, or records whether a person is pregnant or a survivor of torture. PRM should include a note on whether a person is LGBTI in that comments section and should make the PDF documents searchable, so that those Resettlement Agencies with specific programs for LGBTI refugees can identify potential cases before the allocations meetings. Of course, LGBTI refugees should be asked if they want this information to be recorded in their files and should be informed of why this information is being collected, who would have access to it, and how it would be used.

One possible approach would be for the WRAPS database to include a specific code for LGBTI refugees in the drop-down menu under Bio Tab 1 that can be utilized in the same way as the existing codes for survivors of torture or others with specific needs. This information needs to be searchable prior to allocations meetings so that specialized agencies are able to identify cases. For example, Human Rights First spoke to an U.S.-based organization that has a case management program for LGBTI refugees but struggles to identify these individuals

given the lack of flagging in the U.S. refugee program's database WRAPS.³⁴⁵ At least three U.S. organizations - the Chicago-based Heartland Alliance, New York-based Hebrew Immigrant Aid Society (HIAS), and the San Francisco-based Organization for Refuge, Asylum, and Migration (ORAM) - have specific programs to assist resettled LGBTI refugees. For example, HIAS's LGBTI resettlement program, working through Jewish Family and Children's Services of East Bay, California, and F.E.G.S. Health and Human Services System in New York, includes intensive case management services including health and mental health care by professionals who understand the unique needs of LGBTI refugees; employment placement services and training; assistance with finding comfortable and affordable housing; and connections within the LGBTI and greater communities at a level that is comfortable for each client.³⁴⁶

HIAS has received preferred communities funding through the Department of Health and Human Services, Administration for Children and Families, for its program. In June 2011, the Department of Health and Human Services, Administration for Children and Families, awarded a grant to Heartland Alliance to develop a resource center supporting the resettlement of LGBTI refugees.

WRAPS coding will also allow PRM to track U.S. resettlement of LGBTI refugees and report back to the President as required by the White House memo.

RECOMMENDATION 3.8

USCIS should continue to ensure Refugee Officers are appropriately trained to adjudicate refugee claims based on sexual orientation and gender identity and are aware that resettlement applicants may not have previously revealed their sexual orientation or gender identity during their application for refugee status. USCIS should continue to provide specific guidance to Refugee Officers on issuing waivers for LGBTI and other refugees who may have been involved in sex work to support themselves. USCIS should also allow the resettlement applicant to specifically request the gender of the interviewer.

USCIS needs to continue to ensure that its Refugee Officers are appropriately trained to adjudicate claims for refugee status based on sexual orientation and gender identity in general and within particular national contexts including Uganda and Kenya. USCIS has already taken

important steps with the development of a Training Module on LGBTI refugees and asylum seekers,³⁴⁷ which provides guidance on claims based on membership of a particular social group.

As discussed elsewhere in this report, many LGBTI refugees have a fear of identifying themselves to government officials, service providers, NGOs, or even UNHCR staff because of the various risks of violence, arrest, and marginalization that they may face. As a result, some may not have revealed their sexual orientation or gender identity prior to their refugee resettlement interview with USCIS. USCIS Refugee Officers need to be aware of this context so that they do not mistakenly conclude that an LGBTI refugee is not credible because the refugee did not previously reveal reports of persecution based on sexual orientation or gender identity. The USCIS Training Module on LGBTI refugees and asylum seekers provides useful guidance on pages 41 and 42, which advise that USCIS Refugee Officers should not assume an applicant is not credible if they reveal information regarding sexual orientation or gender identity in the USCIS interview but did not reveal this to UNHCR or the RSC.³⁴⁸

In addition, some refugees may—given their cultural backgrounds—use language that is not familiar to USCIS officers in alluding to, or explaining, matters relating to their sexual orientation or gender identity. The USCIS Training Module recognizes that LGBTI terminology may differ in different contexts or that some languages may only have “homophobic slurs” for certain sexual orientations, which the applicant may be uncomfortable using.³⁴⁹ The Officers should also be trained to be sensitive to these differences in approach, language, and use of terms. East African NGOs have indicated a willingness to assist USCIS with background information on language and practice in particular cultural contexts.

USCIS should also allow LGBTI refugees to specifically request the gender of their interviewer as this may make a big difference to how comfortable the applicant feels in self-identifying. The same may also apply to other groups of refugees, including survivors of SGBV. The USCIS Training Module states:

Some LGBTI applicants may be more comfortable discussing their experiences with Officers of a particular gender, particularly in cases involving rape, sexual abuse, or other sexual violence. To the extent that personnel resources permit, an

applicant’s request for an interviewer of a particular sex should be honored. If a pre-interview review of the file indicates that the case may involve sensitive LGBTI-related issues, you may consult with your supervisor or team leader prior to the interview to evaluate whether it would be more appropriate for an Officer of a different sex to conduct the interview.³⁵⁰

USCIS officers should start the interview with a statement confirming the confidentiality of all information and noting that an applicant is welcome to speak to the interviewer in private if necessary. The following statement, developed by Human Rights First, could be worked in alongside existing language:

The information that you provide will be kept confidential in accordance with U.S. policies and regulations. All USCIS staff members and interpreters are required to comply with these confidentiality requirements.

USCIS is aware that some individuals may be uncomfortable to share information regarding sensitive matters such as religious affiliation, past sexual abuse, or sexual orientation or gender identity, but it would be important for you to share this information with us if it relates to your application for refugee status. USCIS staff have been specifically trained to handle these and other sensitive cases in a confidential and professional manner.

If, for any reason, you would like to request an interviewer of a different gender, please let me know now. If you would like the interpreter or any other persons present to leave the room at any stage of the interview, please let me know. If you want to talk in private later, please inform a member of staff.

RECOMMENDATION 3.9

PRM should require all staff at the Resettlement Support Centers (RSCs) to be trained on a range of issues relating to LGBTI resettlement cases.

Generally, RSC staff do not currently automatically receive training on how to assist LGBTI cases, including ways that LGBTI applicants may identify themselves. RSC staff in Kenya received some training in late 2011 and the trainers noted that it was important for this training to be followed up given the concerns that RSC staff raised

regarding LGBTI persons in the training.³⁵¹ In December 2011, some international RSC staff received a one-hour training session in the United States providing some broader information on LGBTI-related topics but do not generally receive more comprehensive training, unless specifically arranged by the RSC in a particular region. In Kenya, the RSC has specifically arranged training for most of its staff by a local NGO but has not yet specifically trained its interpreters or other gatekeepers, such as security staff (see Chapter 4). The RSC should extend further sensitivity training to interpreters (as discussed below) as well as other staff on the premises that LGBTI refugees or other marginalized groups may come into contact with.

If RSC staff show prejudice towards LGBTI persons, LGBTI refugees are less likely to feel comfortable self-identifying during the resettlement process, including in USCIS interviews. This can have a negative impact on their refugee claims. It also undermines other steps PRM and USCIS are taking to enhance the U.S. ability to provide protection through resettlement to LGBTI refugees. PRM should ensure that staff at each RSC receive training on assisting LGBTI refugees. Although USCIS has developed some training resources, it may be more practical to make use of local training expertise. This training should cover topics such as appropriate interviewing skills as well as more general information such as the different ways in which gender non-conforming persons may identify themselves.

RECOMMENDATION 3.10

The Resettlement Support Centers (RSCs) should provide appropriate interpreters for LGBTI refugees when conducting pre-screening and for USCIS resettlement interviews.

In interviews with Human Rights First researchers, LGBTI refugees in Kenya and Uganda explained that they were reluctant to share sensitive information regarding their sexual orientation or gender identities in front of interpreters they did not know or trust. In Kenya and Uganda, interpreters are often sourced from the refugee community. LGBTI refugees were concerned that speaking openly in front of people from the refugee community would lead to information about their sexual orientation or gender identity being spread and expose them to violence and discrimination.

The RSCs and USCIS should ensure that they have access to a pool of interpreters who have been trained to be sensitive to LGBTI refugees, including using appropriate language and strictly conforming to principles of confidentiality. USCIS is reliant on the RSC to provide interpreters, so the RSC should invest in a trusted group of individual interpreters by training them and building their capacity to work with LGBTI refugees. This has been successful in Uganda where one NGO has trained several interpreters who now work with different NGOs to assist LGBTI refugee clients (see Chapter 4). At least one NGO in Nairobi and one in Kampala has excellent training capacity and could provide such training.

RECOMMENDATION 3.11

The Department of State should ensure capacity to conduct P1 Embassy referrals for individuals facing high risk of violence in cases where the host government may be unwilling or unable to provide protection.

The annual presidential determination memorandum allows in-country resettlement processing “in exceptional circumstances, [for] persons identified by a United States Embassy in any location.”³⁵² While this tool is rarely used, it can provide a critical path to protection for an individual who faces imminent risks of physical harm. The State Department should ensure that it utilizes this mechanism in appropriate cases in which individuals face high risks of violence in their country of origin and are not able to access state protection.

While a P2 designation could allow LGBTI refugees to approach RSCs for resettlement directly (without having to first go through the process of receiving a UNHCR referral), at present, other currently available routes for resettlement of at-risk LGBTI refugees appear better placed to present—particularly with the improvements outlined in this report—more effective, comprehensive, and safer routes for resettlement of LGBTI refugees.³⁵³

Increasing Global Capacity for Expedited Resettlement

Refugees facing acute risks in their country of first asylum—such as threats of imminent violence, *refoulement*, or long term detention on administrative grounds—may need to be resettled on an expedited basis. UNHCR has developed three categories for

resettlement submissions depending on the level of risk the applicants face:

- “Emergency” cases are those where immediate security or other life-threatening circumstances facing a refugee require resettlement within a few days or hours but a maximum of seven days;³⁵⁴
- “Urgent” cases are those where a refugee faces serious medical risks or other concerns that require expedited resettlement within six weeks; and
- “Normal” cases are those where there are no immediate social, medical, or security risks that require expedited processing and UNHCR expects decisions and departures within 12 months.³⁵⁵

The vast majority of the thousands of refugee cases resettled each year fall into the “normal” category (though they often take longer than one year to be resettled). Only around 700 resettlement places are made available globally by states for expedited resettlement each year.³⁵⁶ None of these expedited resettlement places are provided by the United States.³⁵⁷ These numbers are substantially below the level of need.

In 2010, UNHCR told Human Rights First that generally the existing 700 places are filled by the middle of each year.³⁵⁸ UNHCR has repeatedly called for the number of emergency resettlement places to be increased and for additional states to develop emergency resettlement programs.³⁵⁹ UNHCR resettlement staff in Geneva told Human Rights First in March 2012 that UNHCR has to carefully manage the use of these limited emergency resettlement cases as “scarce resources.”³⁶⁰ The staff member said, “What we regard as ‘emergency’ cases responds to the capacity that we have for ‘emergency’ resettlement and there is always more need.”³⁶¹ In other words, it seems that some cases involving refugees facing the kind of risks that would otherwise warrant expedited resettlement have not been referred for expedited resettlement, as there are simply not enough expedited resettlement places globally to assist all those with real needs.

NGOs in Uganda and Kenya recognized the need for clear expedited resettlement procedures and listed various types of cases that they had seen in which refugees could be in need of expedited resettlement, including:

- Refugees who were being followed by persecutors from their country of origin, including, for example,

agents of the Sudanese or Ethiopian government who were operating in a neighboring state;

- Female survivors of rape or other SGBV who remained in unsafe situations and were at high risk of repeated attack; and
- Women and their children who were being pursued by, and at risk of violence from, estranged husbands.

The Need for Expedited Resettlement for LGBTI Refugees

LGBTI and other refugees in Uganda and Kenya who face imminent risks of physical harm should be referred for expedited resettlement. Some refugees who face imminent security or other life-threatening circumstances—including, for example, refugees who have been directly threatened or attacked or otherwise face a high risk of further violence—need to be resettled on an emergency basis. In addition, because of the general risk of violence that LGBTI refugees in Uganda and Kenya face, the majority of LGBTI refugees being resettled from both countries should be resettled on an urgent basis, provided they have access to some form of safe shelter while they wait.

The availability of safe shelter is often a key factor in assessing whether a refugee must be resettled on an emergency or urgent basis. Where no safe shelter exists, these refugees may need to move immediately—i.e. resettled on an emergency basis—whereas resettlement on an urgent basis may be sufficient for those who are able to find safe shelter for a number of months. This kind of assessment should be made on an individual basis, as safe shelter may not ensure sufficient temporary protection in some cases.

UNHCR’s *Resettlement Handbook* recognizes not only that resettlement may be the only viable option for LGBTI refugees, but that “emergency processing or evacuation may be required as lengthy processing can exacerbate the security risks.”³⁶² An NGO staff member who works with LGBTI refugees in Uganda told Human Rights First that “for LGBTI cases, almost all have to be expedited,” explaining for example that “if someone is raped [during the resettlement] process, there is no redress. They can’t report the matters to the police and getting [medical] treatment is difficult.”³⁶³

Some examples of cases where the applicants were in need of expedited resettlement include:

- Two women who spoke out in support of LGBTI refugees in Kampala were abducted and raped for two days, reportedly by other refugees. They were then moved to another part of the country by an NGO as they faced a high risk of further attacks.³⁶⁴
- A Burundian transgender woman was repeatedly arrested in Uganda due to her sexual orientation and gender identity and then faced multiple instances of rape in prison. As she had become known by police officers, she faced a high risk of further arrest and thus further assaults in prison.³⁶⁵

Expedited resettlement procedures from Uganda and Kenya must be strengthened. The availability of safe shelter, or lack thereof, should be more closely linked to resettlement for those facing high security risks. UNHCR and its partners should also ensure that cases in need of emergency or urgent resettlement are identified early and fast-tracked through registration and refugee status determination. In some cases, early identification and referral for resettlement may help avoid the need for emergency resettlement at a later stage.

Countries with Emergency Resettlement Procedures

In 2011, at least 735 spaces were available worldwide for resettlement on an emergency basis, and some additional countries made allowances for emergency cases without specific quotas.³⁶⁶ Out of 26 resettlement states, only seven—Norway, Sweden, Canada, Finland, New Zealand, Denmark and Brazil³⁶⁷—have formal procedures for emergency resettlement. There is also potential for emergency resettlement under certain circumstances to the United States, Australia, and the Netherlands.³⁶⁸ At the December 2011 UNHCR Ministerial Meeting, Canada and Portugal made commitments to improve their capacity to resettle emergency cases. Some resettlement states combine medical and non-medical emergency resettlement quotas, and others provide separate quotas for protection and medical emergency resettlement.

However without effective expedited resettlement processes for emergency and urgent cases to the United States, the world's leading (and largest) resettlement provider, the numbers of global emergency resettlement places will remain insufficient to meet the need. To put

this into perspective, in 2011, Norway and Denmark each had 75 places for emergency resettlement in non-medical emergencies, and Finland had 100 (of which 57 were allocated to those fleeing Libya).³⁶⁹ In 2010, Sweden had 350 places for medical and non-medical emergencies. Canada allocated 100 places to emergency and urgent cases, but by the time of Human Rights First's visit to East Africa in August 2011, Canada was no longer accepting new resettlement referrals from Africa until 2012. Canada's resettlement pipeline in Africa has since reopened. Although other countries may be able to resettle emergency and urgent cases more rapidly than the United States, their limited number of places, as well as their allocation of some of these places to specific existing humanitarian crises, increases the competition for the few remaining places.

Norway, Sweden, Finland, Canada, Australia and New Zealand all have procedures in place that aim to ensure departures in or close to five working days of submission for refugees referred on an emergency basis.³⁷⁰ They are able to do this, in part, because they do not require in-person interviews by their own government officials and, other than Australia, will accept dossier submissions from UNHCR, described in detail below. Although Australia does not accept dossier submissions, it does have an alternative mechanism through its Emergency Rescue visa sub-class under the Refugee category and aims to make initial decisions on cases within 48 hours of receiving the referral from UNHCR, and then evaluate the applicant within three days.

These countries' commitments to processing within five days are important. However, in practice these systems do not always work. Although Canada's Urgent Protection Program provides for emergency resettlement, one UNHCR staff member suggested that this was difficult to access given the high threshold required for cases to be accepted into the program.³⁷¹ The processes of Australia and New Zealand are reportedly slower than five days.³⁷²

RECOMMENDATION 3.12

As recommended by UNHCR, resettlement states that already have emergency resettlement programs should increase the number of emergency resettlement slots available by at least 10 percent annually and improve the timing of these programs. Other resettlement states should also develop expedited resettlement procedures for emergency and urgent cases.

The need for emergency resettlement overwhelms the availability of annual places—and UNHCR currently has to very strictly limit the use of emergency resettlement to ensure that some of the very limited number of emergency resettlement places are available throughout the year. As a result, refugees whom UNHCR and its partners recognize as needing to be resettled on an emergency basis remain at risk of immediate or imminent serious or life-threatening harm. As noted before, particularly vulnerable refugees, including LGBTI refugees in Uganda and Kenya, often run a high risk of further violence if they are not rapidly resettled.

Not only are the number of emergency resettlement slots disproportionate to need, the pace of emergency resettlement is often too slow given the extremity of the situations refugees who are eligible for emergency resettlement are experiencing. UNHCR reported that in 2009 it took seven weeks for resettlement countries with emergency resettlement programs to make decisions on emergency cases and an additional 13 weeks between the decision and the actual departure.³⁷³ This meant that a refugee who UNHCR considered to be at such a serious risk that he or she needed to be resettled in a few days would on average be left waiting for 20 weeks—five months—to depart for a resettlement country. As described earlier in this chapter, refugees who are in need of emergency resettlement but are left stranded due to processing delays face a range of protection risks. UNHCR has noted that “in some cases refugees have been *refouled* or have died before a decision was made on their case for resettlement.”³⁷⁴

For these reasons, UNHCR has specifically requested that a) more countries should establish emergency resettlement programs and b) those with existing emergency resettlement programs should increase the number of emergency places available by 10 percent each year.³⁷⁵ In its 2009 note on expedited resettlement, UNHCR also urged the following steps to reduce the time between identification and departure:

- “Resettlement countries having emergency resettlement programs ... issue decisions and, where possible, authorize travel within five working days of receipt of the resettlement case submission;
- “Resettlement countries, IOM and UNHCR ... reduce the processing time between the approval decision by States and the departure of emergency cases, and ... establish or review procedures in countries of

operation to ensure the departure of refugees within five working days from the date of decision by the state, or otherwise within the fastest possible time frame.”³⁷⁶

The lack of sufficient emergency resettlement spaces and timely processing for those in greatest need is a serious global protection gap and one that affects refugees who face the most immediate risks of harm.³⁷⁷

RECOMMENDATION 3.13

Resettlement states should consider accepting emergency cases based on dossier submissions prepared by UNHCR to facilitate more timely resettlement in emergency cases.

UNHCR has called on resettlement states with the capacity to accept dossier submissions to establish programs or a sub-quota for such cases.³⁷⁸ Because of the additional time, costs, and logistical challenges the resettlement country faces to arrange in-person interviews, some resettlement states already provide access to emergency resettlement by accepting resettlement referrals on the basis of a dossier submission from UNHCR, without requiring the applicant (who has already been interviewed and assessed by UNHCR) to be interviewed again by the resettlement country.

In these cases, resettlement countries recognize that UNHCR has already interviewed the applicant in person, made the refugee status determination, evaluated the refugee for possible exclusion grounds, and decided that a) the individual is a “refugee,” b) the refugee is appropriate for resettlement, and c) for those being referred for emergency resettlement, the refugee is at risk of harm and needs to be resettled as soon as possible. UNHCR’s *Resettlement Handbook* specifically advises that “comprehensive, well-drafted overviews of each individual’s refugee claim are particularly crucial for refugees who will not be interviewed, but will have their files reviewed by States as dossier submissions.”³⁷⁹

UNHCR has noted the importance of dossier submissions for emergency resettlement: “The availability of evacuation mechanisms should not substitute or diminish the importance of emergency submissions by States on a dossier basis. Dossier places will always remain an extremely important component of the response to address the acute protection needs of some refugees.”³⁸⁰

Nevertheless, only eight of the 26 resettlement countries commonly accept dossier submissions—Norway, Sweden,³⁸¹ Denmark, the Netherlands, Finland, France, Ireland, and New Zealand. On some occasions, Canada also accepts dossier submissions. UNHCR staff in Uganda and Kenya and the Nairobi Regional Hub told Human Rights First that emergency resettlement is working well to Sweden, Norway, and Denmark, and that emergency submissions are usually made on a dossier basis.³⁸² Staff also suggested that there was potential for submissions from East Africa to be made to Finland and the Netherlands on a dossier basis as well. They indicated that some emergency applicants have been able to depart to Nordic countries 72 hours after the initial referral.

Dossier submissions save significant time and resources in the resettlement process. Resettlement states not currently accepting cases on a dossier basis should consider developing a dossier submission system, as recommended by UNHCR in its May 2010 note on emergency resettlement.

RECOMMENDATION 3.14

UNHCR should make Emergency Transit Facilities (ETFs) accessible for at-risk LGBTI refugees where no effective safe shelter is available in country.

UNHCR has three Emergency Transit Facilities (ETFs). These facilities, located in Romania, Slovakia, and the Philippines, are used to provide temporary safe shelter for refugees who need to be evacuated from their country of asylum prior to resettlement. ETFs are also used to process resettlement applicants in situations where some resettlement countries are unable to access the country of asylum, for example, due to the host government not issuing visas or security concerns. As of October 2011, the total capacity of the existing three ETFs was over 400.³⁸³

As discussed in Chapter 2, the provision of safe shelter is critical to the protection of LGBTI refugees at risk, including as they wait to be resettled. UNHCR should assess the potential for utilizing ETFs to provide protection for at-risk LGBTI refugees in situations where emergency resettlement—i.e. within days—is not possible and no safe in-country shelter can be provided. The use of ETFs should not replace efforts to resettle LGBTI refugees at risk on a rapid basis. However, these facilities—if they can be made appropriate for LGBTI

refugees—may provide an additional measure of safety in the event of delays in resettlement processing or a lack of alternative in-country safety mechanisms.

The suitability of ETFs for LGBTI refugees has yet to be comprehensively assessed. UNHCR should undertake such an assessment and determine what measures could be put in place to ensure the protection of LGBTI refugees. These measures should include staff training to ensure protection of refugees from ill-treatment, violence, or abuse at the hands of other refugees or staff and appropriate housing—for example for transgender refugees who may not be comfortable or safe in gender-segregated housing. The Emergency Transit Center (ETC) in Humenne, Slovakia, and the ETC in Timisoara, Romania may be more suitable for LGBTI refugees from East Africa logistically than the Emergency Transit Mechanism in the Philippines given the shorter flight from East Africa to Slovakia and Romania than Manila. These may also be suitable sites for some LGBTI refugees from East Africa given the legality of same-sex relations in Slovakia and Romania.³⁸⁴ Nevertheless, initial placement of LGBTI refugees at these facilities would need to be carefully monitored.

As noted in Chapter 2 regarding including LGBTI refugees in existing safe shelters, some key elements of providing safe shelter for LGBTI refugees at an ETF include:

- sensitized shelter management with an active presence to defuse any conflict or victimization of persons on the basis of their sexual orientation or gender identity;
- Sensitized security guards who could intervene in cases where there are threats of violence against LGBTI refugees; and
- Linkages to support services from domestic LGBTI organizations, including counseling and social events.

Some individuals may also have specific health needs, such as access to hormone treatment for transgender or intersex persons, if they were receiving hormone therapy prior to arriving at the ETF.

UNHCR has indicated that the ETFs in Slovakia and Romania offer a high level of service from implementing partners that provide psychosocial support and education,³⁸⁵ as well as a high staff to refugee ratio. Training these staff members on assisting LGBTI refugees

appropriately would be an important first step. There are also domestic LGBTI organizations in Slovakia and Romania³⁸⁶ that, although based in the capital cities far from the ETFs, may have some linkages with local groups that can provide training as well as additional support.

In addition, the fact that Africa plays host to large populations of refugees suggests that an ETF on the continent may be useful in the future to provide quick access to safe shelter for various African refugee populations during the resettlement process where necessary. Refugees have previously been evacuated to Benin and Cameroon on an *ad hoc* basis,³⁸⁷ and in 2009, UNHCR had an *ad hoc* bilateral agreement with Burkina Faso for the evacuation of a number of refugees at risk in the region.³⁸⁸ However, Burkina Faso was not a practical location as refugees in other parts of the continent had to travel to Burkina Faso via Europe due to flight paths in West Africa.³⁸⁹ The UNHCR information note on Emergency Resettlement and the Use of Temporary Evacuation Transit Facilities, issued prior to the 2010 Annual Tripartite Consultations on Resettlement, states that “UNHCR foresees the need to establish a permanent evacuation transit mechanism in East Africa to address the need for transit evacuation for refugees in the continent...”³⁹⁰ Previous discussions on an ETF located in Uganda have stalled³⁹¹ but Kenya may be an alternative given its centrality on flight paths and the presence in Nairobi of the U.S. Regional Refugee Coordinator responsible for resettlement out of Africa.

At any facility, appropriate security measures would need to be in place to provide protection for all vulnerable groups, including LGBTI refugees.

The transfer of individuals to ETFs may only take place once a resettlement country has provided an initial commitment to accept the case.³⁹² Obtaining this agreement as well as obtaining exit visas from the country of asylum for the refugees being transferred may result in some delays. A transfer to an ETF takes on average 17 to 20 days according to UNHCR, though it has previously observed emergency transfers to these facilities that took only five days.³⁹³ ETFs therefore may not be a substitute for the provision of emergency safe shelter in the country of asylum but may be a useful option when in-country shelter is not available or effective while resettlement processing takes place.

U.S. Efforts to Expedite Resettlement for LGBTI Refugees at Risk

Over the years, the United States has on a case-by-case basis resettled individual refugees facing significant risks on a faster time frame, though it has done so without a formal and transparent process.³⁹⁴ The United States, with some steps taken over the last year, now has a more transparent set of criteria for expediting the processing of resettlement for refugees at risk. However, it still does not have a formal system through an expedited resettlement *program* within the U.S. Refugee Admissions Program. This distinction means that although specific steps in the resettlement process can be expedited, there are not specific staff dedicated, on a priority basis, to expedited resettlement, and there is no consistent program that expedited resettlement applicants can follow.

Instead, under the current mechanism, expedited cases move to the front of the queue at certain points. The length of time their resettlement processing takes, assuming they clear security and medical checks, is largely dependent on how quickly pre-screening can be conducted and when they can be interviewed by USCIS Refugee Officers. USCIS has indicated that, for a case in need of expedited resettlement, it can conduct interviews within a few days.³⁹⁵ Security checks can also be processed concurrently with the USCIS interview, which can help avoid another source of delay.

In this section of the report, Human Rights First outlines the need for a formalized U.S. expedited resettlement program (within the U.S. Refugee Admissions Program), comprising of emergency resettlement and urgent resettlement, and identifies some of the specific steps that the United States should take to create an effective expedited resettlement program.

Current Expedited Resettlement Processing by the United States

In recent years, the United States has established itself as a strong leader in the protection of LGBTI persons. Secretary Clinton’s address in Geneva in December 2011 and President Obama’s memorandum issued on the same day reinforced the U.S. commitment to protecting the human rights of LGBTI persons, including LGBTI refugees. The Presidential Memorandum made specific commitments to ensuring access to expedited resettlement for LGBTI refugees:

... the Departments of State, Justice, and Homeland Security shall ensure appropriate training is in place so that relevant Federal Government personnel and key partners can effectively address the protection of LGBT refugees and asylum seekers, including by providing to them adequate assistance and ensuring that the Federal Government has the ability to identify and expedite resettlement of highly vulnerable persons with urgent protection needs.³⁹⁶

The Proposed Refugee Admissions Report to Congress for Fiscal Year 2012, prepared by the Departments of State, Homeland Security and Health and Human Services, notes that:

As is the case for most countries with large scale refugee programs, U.S. law requires completion of several processing “steps” before an applicant can be admitted as a refugee. This does not exclude the United States from participation in the resettlement of urgent cases, however. On a case-by-case basis, individual applicants in need of expedited handling are processed on an accelerated schedule. As noted earlier, the United States has contributed generously to allow UNHCR to establish and operate ETCs, where emergency cases can be moved during the processing period.³⁹⁷

On October 24, 2011, PRM issued a fact sheet that publicly outlines, for the first time, the U.S. Refugee Admissions Program’s criteria for expediting resettlement of refugees who face life-threatening protection scenarios and other risks. In addition to outlining the criteria for considering cases for expedited resettlement, the fact sheet, entitled “Expedited Protection and Resettlement of Refugees,” also outlines the steps in the resettlement process that will be expedited and the time frames in which the United States can currently move these cases. The fact sheet identifies two categories of cases that can be considered by the United States for expedited resettlement—one that involves “life-threatening protection scenarios,” and a second in which refugees have suffered or face a range of serious harms or protection risks that may not rise to the level of the first category.³⁹⁸

Specifically, the fact sheet provides that that the United States will expedite all steps in cases in which a refugee faces:

- “life-threatening protection scenarios such as imminent deportation back to the country of persecution (*refoulement*)”;
- “acute threats from host governments or non-state actors that may result in torture, severe bodily harm or death”; or
- “serious life-threatening medical conditions that require immediate treatment unavailable in the country of first asylum.”³⁹⁹

The fact sheet indicates that the United States cannot resettle these cases—involving life-threatening protection scenarios—in less than 8 to 10 weeks, stating that “rigorous security clearance procedures, the regulatory requirement for a face-to-face interview with all applicants, and enhanced protocols for detecting and treating tuberculosis overseas, all limit the number of urgent protection and/or medical cases that can be processed for resettlement in less than 8-10 weeks from referral to arrival in the United States”.⁴⁰⁰ The fact sheet also indicates that the United States is not able to consider dossier submissions due to “the regulatory requirement for a face-to-face interview with all applicants.”⁴⁰¹

In the fact sheet, PRM also advises that the United States can expedite certain, but not all, steps in the process for a second category of resettlement cases—those in which refugees:

- “have suffered physical and/or psychological harm that has caused serious debilitation of the individual’s physical and/or mental health”;
- “are at risk of arrest, detention, or *refoulement* in or by the host government in the country of processing”;
- “have suffered harassment by an individual or group that the host government in the country of processing is unable or unwilling to stop or mitigate”; or
- “have a medical condition that, in the absence of proper treatment, will become life-threatening during anticipated normal processing time frames.”⁴⁰²

PRM outlines the steps that could be expedited in resettlement processing for this second category of cases, such as:

- including the individual on an earlier circuit ride;
- providing the medical exam prior to the DHS interview; and/or
- expediting the travel packet and flight booking.

PRM estimates that expediting some of these steps could reduce the time from a resettlement referral to arrival in the United States to three to six months if no lengthy medical or security holds arise.⁴⁰³ However, the fact sheet still does not clearly set out each step in the resettlement process and identify timelines to indicate the minimum possible time each step could require in emergency cases.

While this public fact sheet is an important step towards creating a transparent expedited resettlement system, the fact sheet is only an initial step towards improving access to expedited resettlement for refugees facing imminent risks of harm—and it does not create a formal and consistent expedited resettlement system or program. A number of critical gaps remain, including:

- *Lack of expedited resettlement system for at-risk refugees who need to be resettled in less than eight weeks.* The fact sheet explains that the United States was not able—at least in October 2011—to move the cases of refugees, even those facing life-threatening situations, through the resettlement process in less than 8 to 10 weeks, far less than the maximum of seven days that UNHCR has recommended for cases in which “the immediacy of security and/or medical condition necessitates removal from the threatening conditions within a few days, if not within hours.”⁴⁰⁴ As noted above, the October 2011 fact sheet states that “rigorous security clearance procedures, the regulatory requirement for a face-to-face interview with all applicants, and enhanced protocols for detecting and treating tuberculosis overseas, all limit the number of urgent protection and/or medical cases that can be processed for resettlement in less than 8-10 weeks from referral to arrival in the United States.”⁴⁰⁵ However, as noted elsewhere in this chapter, these security checks (excluding the SAO) can be expedited in an average of five working days if the need arises.

- *Lack of indication of specific steps with timelines in the process.* The fact sheet does not provide practical guidance on key points such as contact persons for referring NGOs or UNHCR submitting expedited resettlement cases, and the procedures that the RSC, PRM and USCIS should follow to ensure their specific responsibilities within the process are expedited.
- *Lack of expedited security checks in all expedited cases.* The fact sheet indicates that security checks are generally expedited in only the most serious life-threatening cases where “all steps” in the resettlement process are expedited. This is not the case for the second category of expedited cases involving other serious harms or urgent protection risks that nonetheless merit expediting some steps in the resettlement process.
- *No timelines are provided for Resettlement Support Centers in the different regions.* NGOs have previously submitted to PRM proposed guidelines for expedited resettlement that included proposed timelines for the different steps that RSCs need to conduct. PRM also developed its own draft guidelines, but these were not finalized or issued after questions were raised about potentially different procedures and minimum time periods for specific steps in different locations.
- *The fact sheet does not adequately address how USCIS will interview applicants more rapidly.* The fact sheet prepared by PRM notes that expedited cases may be included on an earlier circuit ride than their “place in the queue normally would warrant,” but provides no information on how USCIS would interview a person rapidly in the absence of an impending circuit ride—for example, through the use of USCIS International Affairs staff based abroad.

In Kenya and Uganda, some LGBTI refugee cases are being expedited and PRM staff at the U.S. Embassy in Kenya reported that the majority of LGBTI refugees cases referred directly to the U.S. resettlement program by an NGO are “Level 2 expedite cases.”⁴⁰⁶ The NGO advises PRM on how urgent it considers the case, and as “Level 2 expedite cases,” all steps in the process are usually expedited.⁴⁰⁷

As the State Department, DHS, and the intelligence agencies move forward to implement U.S. commitments

to provide access to expedited resettlement for LGBTI refugees as outlined in the December 2011 Presidential memorandum,⁴⁰⁸ these agencies will need to take a number of steps in order to create an effective and meaningful process for expediting resettlement of LGBTI and other refugees who face life-threatening or other serious protection risks. As detailed below, these steps should include:

- Develop a formalized expedited resettlement program within the U.S. Refugee Admission Program providing emergency and urgent resettlement and staffed appropriately;
- Improve coordination of the multiple steps in the resettlement process to allow for emergency and urgent resettlement in shorter time frames;
- Consistently expedite the security checks for all expedited resettlement cases;
- Develop guidelines on expedited resettlement specific to each region, given the different contexts in which each RSC works;
- Link expedited resettlement to temporary safe shelter for applicants facing high security risks while they wait to depart; and
- Provide USCIS refugee interviews within several days to ensure timely processing in expedited cases.

RECOMMENDATION 3.15

PRM and USCIS should develop a formalized expedited resettlement program within the U.S. Refugee Admissions Program that provides emergency resettlement within as close to 14 days as possible and urgent resettlement in eight weeks. This formalized program should be specifically resourced with staff dedicated, on a priority basis, to expedited processing within USCIS (to conduct interviews), within RSCs (to conduct pre-screening interviews and expedite other steps in the process), and within PRM and DHS in Washington to provide additional support as necessary.

As noted previously, although the United States does have the ability to resettle some refugees on an expedited basis, this is currently being handled on a case-by-case basis under an informal process. The establishment of a formalized U.S. expedited resettlement program offering emergency and urgent resettlement with an established numerical case target (which should be a floor rather than

a ceiling) will significantly increase the number of emergency resettlement places available globally above the current level of around 700 places each year, and thus expand emergency protection mechanisms for refugees at risk across the world. It will also significantly increase the number of people facing high risks who can be resettled on an urgent basis.

A formalized U.S. expedited resettlement program providing emergency resettlement and urgent resettlement would contribute significantly to global efforts to protect refugees facing a high risk of danger in the country of asylum. As the largest provider of resettlement, the United States has the unique capacity to boost the global capacity for emergency and urgent resettlement significantly. Currently, U.S. expedited resettlement processes require a significant amount of effort on the part of individual PRM staff members to “push” a case through a system that is not designed for expedited resettlement. A formalized program within the broader U.S. Refugee Admissions Program, should, if effectively designed and managed, require less effort on the part of staff who will—instead of taking steps to push each individual expedited case through the broader system—have a more consistent process where the different role players in the resettlement process (PRM, USCIS, the RSC and the resettlement agencies) know what is expected of them. From a budgetary perspective, developing a formalized expedited resettlement program within the U.S. Refugee Admissions Program should primarily require re-focusing and re-prioritizing the duties of some existing staff within the RSCs, USCIS, and PRM.

Conducting security screening and medical checks on an expedited basis for emergency and urgent resettlement cases at the beginning of the resettlement process will inform PRM, DHS, and the RSC when an individual is not eligible for expedited resettlement due to holds related to security or medical grounds. This prevents applicants from being pre-screened or interviewed by USCIS unnecessarily, saving resources, and also allows PRM to work with UNHCR and local NGOs to find other measures such as local safe shelter to provide protection.

The United States currently has the ability to create a more formal, transparent, and timely expedited resettlement program. As detailed below, the United States can process some emergency cases in 14 days, provided that the applicant does not require a SAO security check, the IAC checks do not produce a hit, and

the applicant has no serious medical conditions that result in delays. The United States can also then process less urgent cases that are still at serious risk within eight weeks under the same conditions. USCIS has the capacity to provide refugee interviews within a few days in emergency cases. Also, as noted in this report, since the issuance of the PRM fact sheet in October 2011, U.S. agencies report that improvements have been initiated that should improve the timeliness of overall refugee processing, and in any event, the United States has the ability to expedite security checks for expedited cases. As these and other initiatives reduce the delays and improve the timeliness of refugee processing, many of the challenges that previously complicated efforts to create an effective and transparent expedited resettlement program should be less of an obstacle now.

If necessary in order to move forward in developing a broader expedited resettlement program, PRM and DHS should develop an expedited resettlement program or pilot program in East Africa. Canada, for example, initially developed a one-year pilot emergency resettlement project focused on three cities (Nairobi, Islamabad, and Ankara), which served as the foundation for a subsequent Urgent Protection Program.

East Africa provides an excellent opportunity for implementing an effective program, as an RSC and the PRM Refugee Coordinator are based in Kenya, and USCIS has Refugee Officers posted in Nairobi. Kenya is known to issue exit permits quickly (a factor that delays expedited resettlement elsewhere), and is conveniently located on a major international transport hub, which means that obtaining flight bookings should not be complicated. East Africa's refugee population also includes many groups that would not necessarily require an SAO. Given current time frames for SAOs, refugees from countries for which the United States requires SAOs—regardless of the dangers these refugees face—often experience substantial delays in their resettlement. As detailed below, the U.S. government says that it expects in its efforts to reduce the time SAO checks take to process, but the United States should continue to work to improve this timing further as well as provide the option to expedite SAO checks so that refugees from these countries who face imminent risks can also, when necessary, be resettled on an expedited basis.

PRM should set a specific target for emergency and urgent resettlement from East Africa as part of this

program. This number should be informed by the number of expedited cases the RSC has managed to handle in the recent past as well as what it thinks it could handle in addition. PRM has recently funded the RSC to hire an Expedite Specialist based in Nairobi⁴⁰⁹; this staff member may be well-positioned to develop a pilot project on emergency and urgent resettlement.

An expedited resettlement program within the current U.S. Refugee Admissions Program would mean that USCIS would have staff whose priority is to conduct expedited resettlement interviews. When there were no expedited interviews in the queue, those staff could assist with regular refugee resettlement interviews. By setting a monthly expedited case target for a region, PRM and DHS could plan their resources accordingly. They could then also make use of additional available places to expedite less urgent but still vulnerable and deserving cases in months where few emergency or urgent cases arise. Key to success would be improvements in the coordination of the multiple steps in the resettlement process as discussed below.

As noted earlier in this chapter, one of the major frustrations for NGOs referring emergency or urgent cases for resettlement has been obtaining information on the case's progress. However, PRM has recently issued revised guidance regarding the confidentiality of information on case status information of resettlement cases. This guidance provides information on how PRM will respond to request for information on the status of cases from applicants themselves, other USRAP partners, U.S. government law enforcement entities, members of Congress, attorneys or accredited representatives as well as other authorized third parties, including family members or the referring NGO.⁴¹⁰ The new guidance should contribute to applicants and their supporting NGOs being better informed of the progress of their applications and to plan assistance and support mechanisms, such as access to safe shelter, accordingly.

RECOMMENDATION 3.16

As detailed below, PRM and USCIS should improve coordination of the multiple steps in the resettlement process as part of an expedited resettlement program or system to allow for faster emergency and urgent resettlement.

PRM and DHS can and should improve coordination of the steps in the resettlement process as part of an

expedited resettlement program or system to provide for greater access to emergency resettlement within close to 14 days and urgent resettlement within eight weeks. With a clear step-by-step process with specific timelines within a region for expedited cases, RSCs could better manage the progress of applicants through each step and address any blockages in the process as they emerge. The following breakdown of the process (in the case of an applicant not requiring an SAO) provides an example of how it is possible to meet these time frames provided that security and medical checks do not result in cases being put on hold and that the resettlement applicant is in a location where there is an RSC and USCIS presence.

- Initial CLASS checks can currently be performed in one day and an expedited IAC1 check can currently be performed in five business days on average but sometimes less.
- If PRM and DHS permit interviews to take place prior to the IAC security check being cleared, then the RSC pre-screening (in which details of the case are elicited in preparation for the USCIS interview) and the USCIS interview can be performed in one to three days. USCIS has indicated that it generally does have the capacity to conduct expedited interviews promptly. Expedited security checks should then clear within five business days.
- Fingerprint results are usually obtained by USCIS or Embassy staff⁴¹¹ within two days, which is then usually two days after the USCIS interview.
- Medical checks, providing that a doctor is available, can be performed rapidly and results should be available within two days. If medical checks can be performed the day after the USCIS interview (if not before), then in emergency cases, it is certainly possible for security checks (currently with the exception of SAOs), RSC pre-screening, USCIS interviews, medical checks, and fingerprint checks to be complete within six working days.
- The next step in the process is obtaining “assurances” from resettlement agencies—a step in which the agencies confirm that they are able to place the refugee(s) with an affiliate agency and provide accommodation and other support. This process can be very rapid if necessary; it is possible to provide assurances in 24 hours.⁴¹² At present, PRM requires resettlement agencies to provide

assurances in one week for cases where all steps in the process are expedited.⁴¹³

- The RSC completes the final steps in the process: 1) assembly of the “travel packet,” which includes the refugee’s information and documentation for presentation to a U.S. Customs and Border Protection agent on arrival in the United States; 2) Cultural Orientation training, which usually lasts for three days in East Africa but can be waived in emergency cases and sometimes conducted after arrival; and 3) flight booking, which should not prove difficult from Kenya.
- Although a second IAC check is usually performed prior to departure this would not be necessary if the departure is within 14 days (or up to 16 weeks), as the IAC1 would still be valid.

It is therefore certainly possible for the United States to be able to develop a rapid expedited resettlement program without compromising on security or medical checks, but rather by improving coordination of the multiple steps in the process.

RECOMMENDATION 3.17

As they identify ways for improving the timing of U.S. security check processes, the National Security Staff, working with DHS, PRM, and the intelligence agencies, should ensure that security checks can be consistently expedited for both emergency cases requiring departure in approximately 14 days and urgent resettlement cases requiring departure within eight weeks.

PRM’s fact sheet issued in October 2011 indicates that although security checks are expedited in life-threatening cases where “all steps” of the resettlement process are expedited, security checks are not expedited in serious or urgent cases where only “some steps” are expedited.⁴¹⁴ The fact sheet confirms that PRM is currently able to request that both the IAC and SAO be expedited. In the fact sheet, PRM states that it requests expedited checks “judiciously so as not to significantly delay the processing of the tens of thousands of other cases that are considered each year.”⁴¹⁵ While staff have been added or redeployed to address the delays in security clearance processing, if the current security check processing system has still not been allocated sufficient staffing or capacity to conduct both normal and expedited

resettlement processing, this challenge should be addressed through further staffing increases.

As discussed in greater detail earlier in this chapter, security screening is an important part of resettlement processing. Whether the refugee is being considered for resettlement under normal or expedited processes, accurate and effective security screening is essential. Resettling a refugee expeditiously and ensuring all security checks are conducted in an accurate and effective manner are not contradictory goals. As detailed earlier in this chapter, refugees in East Africa seeking resettlement to the United States must go through a number of screenings before being approved for departure. In addition to individualized USCIS interviews and fingerprint checks, each refugee undergoes several security checks—including CLASS checks, the interagency IAC1 check, and the pre-departure IAC2 check. Some refugees must also undergo SAO checks, depending on factors such as their ages, nationalities, or whether the CLASS check produced a certain type of hit.

The National Security Staff is currently working with the various security agencies to address general delays within the security check process.⁴¹⁶ As part of this process the National Security Staff should ensure that all security checks, including the SAO, can be expedited in cases where a person requires emergency or urgent resettlement.

DHS has indicated that on average the interagency IAC1 checks take 12 to 16 weeks to finalize but, in emergency cases, they can be processed in five business days.⁴¹⁷ The IAC2 pre-departure check is generally the same as the IAC1 but can often be completed quicker than the IAC1 with an average processing time of two weeks.⁴¹⁸ Given that the U.S. government says it currently has the ability to conduct these interagency checks within a few days in emergency cases, it seems reasonable that for refugees facing imminent risk of harm, the security agencies could expedite these checks and complete them within five business days or less without compromising security or conducting a less thorough background check. DHS has also indicated that its interagency partners have not identified a particular limit on the number of expedited checks that can be performed at once, and that so far the agencies have been able to accommodate all the cases that have been deemed as warranting expedites.⁴¹⁹ However, DHS has noted that an increase in the number of expedited

security checks would eventually negatively impact the processing of security checks in “normal” resettlement cases.⁴²⁰

While these checks should be able to be conducted within a few days, as discussed earlier in this chapter, resettlement can be significantly delayed if the interagency check categorizes a refugee’s resettlement case as “not cleared.”⁴²¹ As UNHCR has stressed, these labels can result in “indefinite delays.”⁴²² PRM also noted in its October 2011 fact sheet that “an individual may experience lengthy delays due to the need to run multiple security checks and some individuals may never clear the required checks.”⁴²³ In its January 2012 memo, UNHCR expressed concern that the manner in which the checks were conducted has led to “greater uncertainty into the expedited process, both in terms of processing time and outcome, making it a less viable protection option for refugee.” UNHCR also reported that, as of October 2011, 18,000 individuals had been categorized as either “no decision” or “not cleared,” and that Iraqi resettlement had been particularly hard hit, with departures down by 48 percent from last year.

As outlined earlier in this chapter, there are steps that the United States can take to improve the pace and accuracy of these checks, including by providing adequate resources, staffing, and prioritization to ensure that when cases are categorized as “not cleared” or “no decision,” the relevant agencies have the staffing capacity to promptly review and conduct the inquiries necessary to ensure that refugees are not being mistakenly denied resettlement.

In order to create an effective system of expedited resettlement that can help protect LGBTI and other refugees facing imminent risks of harm—consistent with the administration’s commitment in the December 2011 directive—the United States will need to take steps to ensure that security checks for refugees facing imminent risks can be conducted accurately, effectively, and in an expedited manner. As detailed in Human Rights First’s December 2010 report *Living in Limbo*, an accurate, effective, and expedited process for security checks is also essential to ensure the protection of Iraqi refugees who are facing imminent risks of harm, including Iraqis who face risks because of their work with the U.S. government, U.S.-based media or NGOs, or U.S. contractors.⁴²⁴

The process of reviewing the reasons for a case being placed on hold due to security checks can be quick—depending on the nature of the problem. In cases where information is available to easily resolve the hold, the case can be cleared quickly but where more research is required to resolve a case, it can take substantially longer.

RECOMMENDATION 3.18

PRM, in coordination with the RSCs, should issue detailed guidelines on expedited resettlement in each region to provide partners with a clear understanding of the time frames possible for emergency and urgent resettlement cases within that region and to provide RSC staff with clear expectations.

PRM, in coordination with its RSC partners, should produce detailed guidelines for each of the eight regions where it operates. The guidelines should explain the time frames in which it can provide emergency and urgent resettlement. Each region has particular challenges specific to the local context. For example, in some regions, considerable delays may be caused by the host country not issuing exit permits in a timely manner. Likewise, emergency resettlement may take longer from particular refugee camps that are hard to reach and so require travel time. A clear set of guidelines that outline the steps that need to be taken within certain time frames (providing that no obstacles, such as security or medical checks, emerge) would assist partners in working with the applicant to make interim protection arrangements, particularly regarding safe shelter. This would also drastically improve the transparency of the U.S. resettlement system and build the confidence of partners that the U.S. resettlement system is responsive to refugees with urgent or emergency needs.

PRM has previously drafted expedited resettlement guidelines but has not finalized or published these. These draft guidelines provided more specific information about the processes that RSCs, PRM, and USCIS would follow in expediting cases, what documentation needed to be submitted in support of expedited resettlement requests, and time frames for response. PRM had indicated that, after discussion with the RSCs, a single set of guidelines for expedited processing was not possible due to local differences such as location of refugees and exit visa requirements.⁴²⁵ These previous draft guidelines, as well as draft guidelines submitted by a group of NGOs, can

serve as a foundation for the development of regionally specific guidelines.

RECOMMENDATION 3.19

The State Department should support programs run by NGOs that provide safe shelter to LGBTI refugees who are awaiting resettlement in countries of first asylum, as well as supporting the option of transfer of LGBTI refugees facing imminent risk to an Emergency Transit Facility (ETF), if such facility is determined to be safe and appropriate for these refugees.

When refugees are referred for resettlement to the United States they wait between six and 12 months or longer before they actually depart for the United States.⁴²⁶ During these extended times, refugees are often left in a kind of limbo—unable to make long term plans, still at risk, but still needing to continue to try to earn an income despite the knowledge that their resettlement applications may suddenly be finalized.

In addition to these challenges, LGBTI refugees in particular face a range of serious protection risks relating to housing—such as having their living locations discovered or being evicted from their homes once landlords discover their sexual orientation or gender identity, as discussed in Chapter 2. As detailed throughout this report, in Uganda and Kenya they may face the threat of arrest under laws criminalizing consensual same-sex relations, as well as police harassment and violence. These risks all become more acute if they do not have a safe place to stay. Without access to safe housing options, LGBTI refugees may resort to finding shelter in unsafe environments in which they face abuse or exploitation. They also face a heightened risk that their sexual or gender identities will be discovered—by other refugees, by abusive law enforcement officers, or by others in the broader community—putting them at greater risk of violence. Providing access to a form of safe shelter can significantly lower the risks an individual faces. The severity of these risks often increases over time and continue while they await resettlement.

PRM should help enhance the protection of LGBTI refugees by supporting access to safe shelter for those who are facing imminent risks of physical harm while waiting for their resettlement processing to be completed, or by overseeing the transfer of LGBTI refugees to an Emergency Transit Facility, as outlined in Chapter 2. This

need for protection while waiting for resettlement is particularly important in Uganda. The creation and expansion of safe shelter programs, including those utilizing a “scattered site” housing approach, will better protect LGBTI refugees from violence.

RECOMMENDATION 3.20

The RSC and USCIS Refugee Officers should conduct pre-screening and refugee interviews on an expedited basis in emergency and urgent cases in Kenya and Uganda, utilizing various strategies for ensuring that refugees in hard-to-reach locations are interviewed promptly.

Refugees in Uganda who are referred for resettlement to the United States have to wait for RSC staff and then USCIS Refugee Officers to travel to Uganda on circuit rides. At present, those who have their cases expedited are given a place on the next available circuit ride, but this may still require them to wait for a month or longer—depending on how regular circuit rides are to that location. USCIS has indicated that in emergency cases, it can fly its staff out on very short notice—within a few days if necessary—to conduct refugee interviews. For example, it can allow a Refugee Officer who is en route to another location to adjust travel plans in order to conduct an

emergency interview in Kampala or it can utilize its International Affairs staff in the region (two of whom are stationed in Nairobi and one in Johannesburg).⁴²⁷

The RSC is also able to send staff out to conduct pre-screening rapidly within a matter of a few days. USCIS and the RSC therefore have the ability to conduct pre-screening and USCIS interviews rapidly in cases where refugees face high security risks, provided that they are not prevented from traveling to the area where the refugees are located due to security concerns or travel restrictions imposed by the host government. In such cases, the USRAP should work with UNHCR to develop a consistent procedure for emergency resettlement applicants living in inaccessible or remote areas to be rapidly transferred to more accessible locations such as Nairobi or Kampala for emergency resettlement interviews, and accommodated in UNHCR’s safe housing while their resettlement processing takes place on an emergency basis. Finally, in cases where USCIS staff are unable to travel to the area where refugees are based, and there is no possibility of relocating the refugees to a more accessible location, USCIS should explore the use of videoconferencing as a last option.⁴²⁸

CHAPTER 4

Improve General Access to Protection for LGBTI Refugees

The preceding chapters outlined the range of risks facing LGBTI refugees in Uganda and Kenya, including the threats of bias-motivated violence and sexual and gender-based violence. This chapter examines some of the additional discrimination and marginalization LGBTI refugees face from staff members of NGOs and UNHCR, government institutions, and other refugees and members of the public. Many LGBTI refugees struggle to access the support services that are available to other refugees. This lack of access significantly increases the vulnerability of LGBTI refugees.

Addressing discrimination and unequal access to refugee support services requires leadership from UNHCR and a joint protection strategy with NGOs to mainstream LGBTI refugees into existing programs and make small adjustments to programs to remove obstacles to accessing services. This chapter identifies a range of barriers to LGBTI refugees accessing services and makes recommendations to address these barriers and strengthen outreach and identification of LGBTI refugees. In addition, this chapter outlines challenges LGBTI refugees face in accessing asylum on the basis of their sexual orientation and gender identity and recommends steps to address these challenges.

RECOMMENDATION 4.1

UNHCR headquarters in Geneva should provide guidance to UNHCR country offices on human rights law and standards and practical strategies for protecting and assisting LGBTI refugees in countries where same-sex relations are criminalized. This guidance should describe the role of UNHCR in overseeing access to refugee status for people persecuted on the basis of sexual orientation or gender identity, access to health care at government clinics, and the advocacy role UNHCR can and should play regarding access to services and police protection.

UNHCR's *Policy on Refugee Protection in Urban Areas* recognizes the need for the agency to increase protection space for refugees in urban areas and to advocate with host governments and municipal authorities on matters including developing an "environment which is amenable for urban refugees to establish sustainable livelihoods"⁴²⁹ and advocating with authorities to make "public services such as healthcare and education available to refugees at a limited or no cost."⁴³⁰ In countries like Kenya and Uganda that criminalize same-sex conduct, UNHCR staff need to be clear on the role they can play in conducting such advocacy with host governments.

UNHCR has already issued two sets of guidelines to assist its offices and implementing partners in protecting LGBTI refugees. For example, the *Need to Know Guidance on Working with Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Forced Displacement*⁴³¹ provides some excellent practical information on the types of approaches that should be followed to include LGBTI refugees in protection and assistance plans. The *Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*⁴³² provides specific information on conducting refugee status determination. However, neither of these documents provides specific guidance on strategies for ensuring the protection and assistance of LGBTI refugees in countries that criminalize same-sex relations.

During meetings with Human Rights First researchers, UNHCR country offices in Kenya and Uganda indirectly raised the difficulties of working in the context of criminalization of same-sex relations. It appeared that concerns about the law affected perceptions of the type of role UNHCR could play in protecting LGBTI refugees in these countries. For example, UNHCR senior staff in Kenya indicated that when training Kenyan government officials, they do not draw attention to LGBTI-specific issues but insert a passing mention where possible.⁴³³ Another staff member also suggested that it was difficult

for the UNHCR Representative to raise LGBTI-specific issues with Kenyan government counterparts because of criminalization laws.⁴³⁴ In Uganda, UNHCR staff indicated that the Representative was supportive of efforts to assist LGBTI refugees but that raising these issues with the government was difficult.⁴³⁵

One UNHCR staff member—citing significant resistance even to training on LGBTI protection issues—requested clear statements of support in communication from headquarters so that staff members in Uganda and Kenya knew they would be supported by headquarters if they encountered opposition from government counterparts because of their work with LGBTI refugees.⁴³⁶ This kind of support would be particularly helpful given reports of opposition to efforts to protect LGBTI refugees from some UNHCR staff members and from some states.

In addition, some of UNHCR's NGO partners in Kenya and Uganda praised the efforts of specific UNHCR staff members in each country to address the protection needs of LGBTI refugees, but stated their concern that these individual UNHCR staff members were likely to be marginalized within the country office by other staff members due to their efforts. For this reason, NGO staff requested that UNHCR staff receive strong institutional support from headquarters in addressing protection and assistance gaps facing LGBTI refugees.⁴³⁷

Both of these offices—as well as UNHCR offices in other countries that criminalize same-sex conduct—could benefit from clear guidance from UNHCR headquarters on the role country offices can and should play to advocate for protection of LGBTI refugees on a range of issues relating to criminalization, including protection from police harassment and extortion (which can include threats of arrest under these provisions), protection in connection with detention under these provisions, protection from violence in states that criminalize same-sex conduct, the right to health care (including for LGBTI persons who may fear being arrested if their sexual orientation or gender identity is revealed when seeking medical assistance),⁴³⁸ and as discussed later in this chapter, access to asylum.

While it may seem obvious as a legal matter, guidance should also make clear that taking steps to protect or advocate for the protection of LGBTI refugees does not constitute a violation of laws that criminalize same-sex acts. These laws, as confirmed by the Office of the High

Commissioner for Human Rights and discussed in Chapter 1 above, are moreover themselves inconsistent with international human rights law. The work of UNHCR and its partners in providing equitable protection and assistance to LGBTI refugees should in no way be seen as “promoting homosexuality”—an accusation thrown at a number of LGBTI persons in Uganda⁴³⁹ and to which local refugee NGOs are sensitive.⁴⁴⁰

The proposed Anti-Homosexuality Bill in Uganda—which has not been enacted (as of April 2012)—seeks to introduce the offense of “promoting homosexuality,” including for someone who “in anyway abets homosexuality and related practices,”⁴⁴¹ which carries a minimum sentence of five years' imprisonment. For corporations or NGOs found guilty, the proposed punishment is cancellation of their registration and seven years' imprisonment for the director. Given some of the broader language in this proposed law, some NGO and UNHCR staff may fear that assistance to LGBTI refugees might be viewed by some as “promoting homosexuality,” and therefore would be reluctant to offer assistance.

Clear written guidance from headquarters on the role UNHCR country offices are expected to play regarding LGBTI refugee protection particularly in countries where same-sex relations are criminalized would help address resistance by staff who are concerned about potentially contravening domestic legislation and would provide important support for UNHCR staff who are already making efforts to provide equitable protection and assistance to LGBTI refugees. In addition, UN Country Teams, including the Office of the High Commissioner for Human Rights and UNHCR, have a role to play in promoting measures to ensure safety for LGBTI persons, including those in their country of origin as well as refugees.

RECOMMENDATION 4.2

UNHCR in Uganda and Kenya should take the lead in developing joint protection strategies with NGOs in each country for LGBTI refugees—including components on protection from violence, access to support for survivors of violence, access to safe shelter, access to durable solutions, and measures to improve access to existing services. UNHCR should also convene meetings with partner NGOs on a regular basis to improve coordination of efforts.

This report has highlighted the violence and discrimination that LGBTI refugees face and how these leave LGBTI refugees in an acutely vulnerable position. To address this vulnerability, UNHCR should take the lead in bringing together NGOs, domestic LGBTI organizations, and UNHCR implementing partners to jointly develop a protection strategy in each country specific to LGBTI refugees as means of bringing protection and assistance to LGBTI refugees up to a similar standard to that available for other refugees. This strategy should include components on:

- protection from violence;
- access to medical, legal, and psychosocial support for survivors of violence;
- access to safe shelter for LGBTI refugees at risk;
- access to durable solutions; and
- measures to improve LGBTI refugees' access to existing services available for other refugees.⁴⁴²

In the context of domestic criminalization in both Kenya and Uganda, some NGOs told Human Rights First that it is difficult for them to play a leadership role regarding LGBTI refugees as they indicated that they feared they might risk losing their NGO registration with the government or be marginalized by other NGOs who accuse them of “promoting their own interests”—an accusation that implies that these NGOs are motivated to assist and protect LGBTI refugees because their staff members are LGBTI.⁴⁴³

While the protection of refugees is the responsibility of the state, given the current environments for LGBTI persons in Uganda and Kenya, these governments are unlikely to take the lead in providing protection for LGBTI refugees in their territories.

UNHCR, given its mandate for the protection of refugees and the human rights law requirements of nondiscrimination, should therefore take the lead in addressing gaps in the protection of groups of vulnerable refugees, including LGBTI refugees. UNHCR should also provide ongoing coordination of protection actors for this purpose. The Office of the High Commissioner for Human Rights and other UN agencies also have an important role to play in developing a coordinated human rights-centered approach to the protection of LGBTI persons.

In order to develop an LGBTI refugee protection strategy, UNHCR should bring together strategic partners,

including refugee assistance NGOs and domestic LGBTI organizations, to jointly identify protection gaps (including those listed in this report) and record the specific actions that each partner will take to address these gaps. UNHCR's guidance on *Working with Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Forced Displacement* specifically recommends “seek[ing] out and creat[ing] confidential referral systems and partnerships by mapping LGBTI needs in liaison with LGBTI-sensitive NGOs and other relevant service providers.”⁴⁴⁴

UNHCR should also take the lead in convening the groups on a regular basis to monitor implementation of this joint protection strategy. NGOs in both Kenya and Uganda strongly argued for the need for more regular meetings between UNHCR and NGOs to improve coordination generally.⁴⁴⁵ Although at present in Kenya, LGBTI refugees are generally referred for protection and psychosocial counseling to one NGO with a specialized program, the capacity of other actors, including UNHCR and NGOs, to incorporate LGBTI refugees into their programs will need to be developed in order to build more effective protection for this vulnerable population. In addition to focusing on LGBTI refugees in Nairobi and Kampala, these protection strategies need to include the camps and settlements as well as other urban areas where UNHCR or implementing partners have a presence.

RECOMMENDATION 4.3

UNHCR should promote the protection of LGBTI refugees in Kenya and Uganda in accordance with its Age, Gender and Diversity Mainstreaming commitments. UNHCR Regional Hubs and Bureaus should monitor the progress of country offices in including vulnerable groups of refugees, including LGBTI refugees, in assistance programs via the Age, Gender and Diversity Mainstreaming (AGDM) Accountability Framework.

UNHCR's guidance on *Working with Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Forced Displacement* specifically recommends that UNHCR works to “mainstream LGBTI individuals into protection programs and consultations with refugees.”⁴⁴⁶ In addition, the “Concept Matrix” document developed jointly by UNHCR and NGOs recognizes the importance of using the AGDM strategy to protect LGBTI refugees as part of the “diversity” component.⁴⁴⁷ UNHCR's AGDM strategy is aimed at ensuring “gender equality and the enjoyment

by persons of concern of their rights, regardless of their age, gender or background.”⁴⁴⁸ The strategy includes the following components:

- performing regular participatory assessments with refugees to determine their protection risks, priorities and proposed solutions;
- ensuring that the findings from the participatory exercises form the basis of protection strategies and programming for solutions;
- identifying where specific targeted actions are required to address inequalities and support the empowerment of and protection of marginalized groups;
- incorporating an age, gender and diversity analysis into activities such as policy development, manuals and guidelines as well as capacity building and training and the design and delivery of program assistance; and
- holding staff accountable via an AGDM accountability framework.⁴⁴⁹

UNHCR’s Age, Gender and Diversity policy, re-issued in 2011, makes specific recognition of sexual orientation and gender identity in its section on diversity, noting the need to include LGBTI persons in decisions that affect them.⁴⁵⁰ This means including LGBTI refugees in the AGDM participatory assessments that take place each year. In Uganda, LGBTI refugees were included in the participatory assessments for the first time in late 2011.⁴⁵¹ Although the extent of their inclusion could be significantly strengthened,⁴⁵² this marks some progress. By including LGBTI refugees in participatory assessments and using the findings of these discussions to plan more targeted interventions, and by mainstreaming the needs of LGBTI refugees into broader protection planning such as on strategies to address SGBV, promote access to safe shelter, or promote access to health care, UNHCR can significantly reduce the vulnerability of LGBTI refugees—provided there is sustained commitment from senior members of staff. UNHCR headquarters is revising its AGDM strategy and is due to issue a new five-year strategy during 2012.⁴⁵³

In addition, UNHCR should also insert LGBTI-specific material into existing AGDM and Diversity training programs. UNHCR’s AGDM Accountability Framework can be a valuable tool in monitoring the progress of country

offices in implementing an AGDM approach in their work. The Framework aims to “demonstrate organizational leadership by placing accountability with senior management in a transparent, public and personal manner.”⁴⁵⁴ In the Framework, Country Representatives and other responsible staff members are required to review with staff to what extent objectives leading towards UNHCR providing an environment that is conducive to achieving equitable outcomes for all persons of concern for UNHCR have been met. Staff members responsible for reporting have to report on items including to what extent assessments have been conducted with a diverse range of refugees and that their perspectives have been included in planning.⁴⁵⁵ As a result, the AGDM Accountability Framework is a valuable resource in holding UNHCR country offices accountable for integrating LGBTI refugees in their programs.

RECOMMENDATION 4.4

UNHCR should make assisting vulnerable groups including LGBTI refugees an explicit part of all future implementing partner agreements.

In many countries where UNHCR has a presence, the agency enters into contractual relationships with NGOs to provide specific services such as legal assistance, food distribution, and education to refugees and asylum seekers on behalf of UNHCR. These NGOs then become formal “implementing partners” of UNHCR. Serving as UNHCR implementing partner places certain obligations on an NGO regarding the way in which services are provided as well as how expenditure is reported.

UNHCR does not currently require its implementing partners in Kenya and Uganda to make particular vulnerable groups an explicit part of their work. Yet NGOs in both countries provide a range of services that are crucial for LGBTI refugees to access, such as medical assistance, legal services, education, access to shelter, and some basic financial assistance. Given the intimidation and harassment of LGBTI refugees within refugee communities in these countries, they are at times unable to access these services for fear of being identified and attacked.

At the time of Human Rights First’s visit to Kenya and Uganda, some NGOs, including implementing partners, were not including LGBTI refugees in their programs either deliberately or inadvertently. To address this gap and ensure LGBTI refugees are explicitly part of protection

planning as well as included in the work of UNHCR implementing partners, UNHCR needs to clearly include providing protection to LGBTI refugees and other vulnerable groups as part of future partner work plans as well as implementing partner agreements. UNHCR should also require reporting on protection of LGBTI refugees and other vulnerable groups from implementing partners.

RECOMMENDATION 4.5

UNHCR headquarters should conduct research or encourage research on ways to improve the protection of LGBTI refugees in camp settings.

Internationally, not enough is yet known about protection challenges for LGBTI refugees living in camps.⁴⁵⁶ UNHCR should conduct research or encourage outside researchers to examine protection conditions for LGBTI refugees in camps in different parts of the world as a means of informing further guidance for UNHCR staff and partners on ways to improve the protection of LGBTI refugees in camp settings. The research should examine access to safe shelter, access to medical assistance, and victimization of LGBTI refugees by others in the camps.

The Need to Strengthen the Identification of Vulnerable LGBTI Refugees through Outreach and at Registration

UNHCR needs to strengthen its ability to identify vulnerable LGBTI refugees who may be in need of protection, resettlement, or assistance. UNHCR and a number of NGOs that work with refugees in Kenya and Uganda reported that a low number of LGBTI refugees came forward to their offices for assistance.⁴⁵⁷ Some organizations indicated that they could not recall ever seeing any LGBTI refugees at their offices.⁴⁵⁸ By contrast, several organizations that have mechanisms in place to address the barriers and marginalization that face LGBTI refugees reported that they are able to identify LGBTI refugees who are in need of protection and other assistance. Not all LGBTI refugees will need to self-identify in order to access assistance, but given the serious protection issues that can face LGBTI refugees in both countries, it is vital that those with related protection needs or with asylum claims based on sexual orientation or gender identity are able to come forward.

OUTREACH

There are a range of barriers—including relating to confidentiality, interpreters, and staff conduct—that limit the ability of LGBTI refugees to access protection at UNHCR and NGO offices in Kenya and Uganda. In addition, Human Rights First's interviews with refugees revealed that in some cases LGBTI refugees lacked the information necessary to identify appropriate places to seek assistance. For example, in Kenya, several LGBTI refugees told Human Rights First that they did not initially know how to access assistance and that it took some of them a number of months, or years, before they found their way to a service provider that was able to assist them.⁴⁵⁹ UNHCR and NGOs should strengthen their outreach to provide better information about where LGBTI refugees can seek assistance. This improved outreach would also be a critical component of the kind of comprehensive LGBTI refugee protection strategy recommended above.

RECOMMENDATION 4.6

In order to ensure that LGBTI refugees with protection needs are identified, UNHCR and NGOs should strengthen their outreach and in particular should partner with community-based organizations that include LGBTI refugees (where these exist), make use of community-based counselors, coordinate with local LGBTI organizations, and develop information outreach materials.

Partnering with LGBTI refugee community-based groups. In Uganda, a number of refugee assistance NGOs have developed a working relationship with a group of LGBTI refugees who have started their own community-based organization.⁴⁶⁰ This organization has significant contacts and networks with other LGBTI refugees, including in the refugee settlements, and is able to identify LGBTI refugees with specific needs through these networks and refer vulnerable cases to refugee assistance NGOs that are trained to address the protection needs of LGBTI refugees. Largely thanks to the partnership with this community-based organization, one NGO has 86 current LGBTI refugee clients on its books, 18 of whom are new clients since the beginning of 2011.⁴⁶¹

Where no such community-based organization exists, UNHCR and NGO staff should request assistance from existing LGBTI refugee clients, and ask them to refer LGBTI refugees with specific vulnerabilities to their

offices. For example, Human Rights First met one gay male refugee who had at least four LGBTI friends facing the same challenges as him and in need of assistance.⁴⁶²

UNHCR and NGOs can also support the development of LGBTI refugee community-based organizations. In Uganda, one NGO supported the development of a community-based organization by providing access to a meeting venue in its offices, listening to the group's concerns, and trying to find practical ways to assist its members. Donors should also support the development of these organizations through funding and capacity building.

Community-based counselors. A number of NGOs in both countries have recruited community workers from the refugee community to disseminate information in the broader refugee community, provide rights information, alert their employers about vulnerable cases, and assist in other ways. With appropriate training, community-based counselors can play an important role in identifying vulnerable LGBTI refugees. For example, in Nairobi, Human Rights First met a gay male refugee from the Great Lakes region who had been reluctant to approach a refugee assistance NGO for fear that his sexual orientation would be exposed to the refugee community, thus jeopardizing his safety. A community-based counselor met this refugee, encouraged him to approach the NGO, and arranged for the refugee to come to the office on a day when other refugees would not be present. Not only was the refugee able to approach this NGOs to seek assistance, but he indicated that he would also refer other LGBTI refugees to the organization.⁴⁶³ Community-based counselors should be carefully selected and appropriately trained to ensure that they can conduct effective and confidential outreach to LGBTI refugees. As noted in Chapter 1, an NGO in Kenya currently working with LGBTI refugees has recently hired refugee outreach staff and will work with them to reach out and help identify LGBTI refugees in Nairobi in need of assistance.⁴⁶⁴

Partnering with domestic LGBTI organizations and other potential allies. In both Kenya and Uganda, UNHCR and refugee assistance NGOs should develop partnerships with domestic LGBTI organizations that have outreach mechanisms and contacts that could be utilized to identify vulnerable LGBTI refugees and refer them for assistance and protection. A number of domestic LGBTI organizations in Kenya and Uganda have outreach

mechanisms that could be adjusted or expanded to assist LGBTI refugees in learning where to go for specific services. These mechanisms include help line phone numbers that could help refer LGBTI refugees to assistance as well as websites where information on how to access assistance for LGBTI refugees could be displayed. Some organizations are also working to introduce toll-free help lines.⁴⁶⁵ Some domestic LGBTI NGOs also have information and education materials regarding places to access assistance.⁴⁶⁶ UNHCR and refugee assistance NGOs should encourage and support these domestic organizations to revise and expand these outreach mechanisms and materials to provide information and referrals to LGBTI refugees.

Additional potential allies may include health care providers that include men who have sex with men work within their mandate as well as religious groups⁴⁶⁷ that are either inclusive or tolerant of LGBTI persons. Both of these strategies have been used with some success in Kenya.⁴⁶⁸

These organizations should also be trained to refer LGBTI refugees directly to UNHCR or another suitable partner. Because of security concerns in both countries, some NGOs require LGBTI refugees to be referred by partners rather than on a walk-in basis to determine whether the person is really an LGBTI refugee in need rather than someone seeking to expose places that assist LGBTI persons. Because of past threats and harassment of NGO staff who assist LGBTI refugees in Uganda (see Chapter 1), this is a real concern. In Uganda, a similar arrangement is in place for some LGBTI organizations. The best solution for referrals is thus likely to be for domestic LGBTI organizations to refer LGBTI refugees directly to a specific staff member at UNHCR, and this staff member can perform the initial screening before referring the person elsewhere if necessary. UNHCR is far less likely to face reprisals from the refugee community for assisting LGBTI refugees than any individual refugee NGO is.

In Kenya, there are also LGBTI organizations with a presence in other areas where LGBTI refugees are known or thought to live. For example, there is a domestic LGBTI organization based in Lodwar that includes members from Kakuma refugee camp⁴⁶⁹ and there are at least two LGBTI organizations in Mombasa,⁴⁷⁰ where many urban refugees are thought to reside. In Uganda, LGBTI organizations also have connections with groups in other parts of the country that could be helpful to LGBTI

refugees where no other form of support exists. UNHCR and NGOs should develop partnerships with such organizations to extend outreach as well as protection to LGBTI refugees in these areas.

Developing outreach materials that include LGBTI refugees. The dissemination of information materials is a valuable way to inform LGBTI refugees where to seek assistance. UNHCR periodically develops new information outreach materials and UNHCR staff in the Uganda and Kenya country offices expressed a willingness to include subtle information aimed at LGBTI refugees in such materials, for example, alongside information relating to sexual and gender-based violence.⁴⁷¹ In addition, a refugee-assistance NGO in Uganda has developed some information materials that address health concerns for men having sex with men as well as a range of other related health issues. These materials have been translated into the primary languages refugees speak and have been shared with LGBTI refugees in the urban areas as well as during regular visits to the settlements.⁴⁷² As part of a joint protection strategy, UNHCR and NGOs should determine what type of information outreach materials to develop regarding information on where to seek assistance as well as public health information and should decide on an appropriate dissemination strategy.

Registration

In order to ensure that vulnerable refugees are provided with access to services and protection, those refugees must be identified and referred to appropriate partners for assistance. As explained by UNHCR, registration involves “the recording, verifying, and updating of information on people of concern to UNHCR so they can be protected and UNHCR can ultimately find durable solutions... The registration of people, which includes details of the reasons they have sought asylum, is essential for identifying those for whom resettlement or local integration, rather than repatriation, are the most appropriate solutions.”⁴⁷³

Identifying vulnerable cases early can prevent unnecessary hardships. For example, one LGBTI refugee told Human Rights First that he was referred to numerous NGOs by UNHCR staff for two years before being referred to an NGO that since begun to provide specific services to LGBTI refugees.⁴⁷⁴ One of the first and best opportunities to identify refugee cases with specific vulnerabilities is during the initial refugee registration process provided

that registration is conducted in a sensitive manner and that revealing information to the registration officer will not put an LGBTI refugee at risk.

UNHCR registration usually involves recording the refugee’s presence in the country and some registration processes may be more detailed than others, depending on the type of operation and the security risks. Level 1 is the most basic registration and Level 3 is the most detailed. Both Level 2 and Level 3 registration include information on special protection and assistance needs.⁴⁷⁵

In Kenya, the Department of Refugee Affairs (DRA) has recently taken over registration functions from UNHCR in the camps and Nairobi. This means that asylum seekers arriving in Kenya are first expected to register their presence with the government before reporting to UNHCR to determine whether they have valid claims to refugee status or not. Prior to conducting refugee status determination, UNHCR conducts its own registration where information from asylum seekers is uploaded onto the UNHCR *ProGres* database that is also then a source of information for referrals to the Protection Delivery Unit or Resettlement Unit. DRA registration does not include information on the cause of flight and the registration interview itself should not pose an obstacle to LGBTI refugee registering with the government as they do not need to reveal their sexual orientation or gender identity at this point.

In Uganda, registration is also conducted by the government as newly arrived asylum seekers must first register their presence in the country with the police before reporting to the Office of the Prime Minister for refugee status determination. As noted previously in Chapter 1, LGBTI persons and refugees have reported harassment, lack of protection, and extortion by police in Uganda.

There are a number of serious challenges that prevent vulnerable LGBTI refugees in Kenya and Uganda from being identified at registration. Firstly, the criminalization of same-sex relations in Kenya and Uganda means that LGBTI refugees are cautious about revealing this form of personal information to the government. UNHCR in Kenya told Human Rights First that two gay male refugees were initially reluctant to register with DRA in Nairobi as they feared being exposed. UNHCR counseled them that they did not need to reveal their sexual orientation at DRA registration and they later registered successfully with the

government before returning to UNHCR for its own registration process.⁴⁷⁶ As noted elsewhere in this report, LGBTI refugees often fear that information regarding their sexual orientation or gender identity could be exposed to other refugees or members of the public and so are often very guarded about whom to trust in self-identifying. This means that it is critical to have a private and confidential space for registration, that LGBTI refugees feel comfortable with all persons present in the room (including the registration officer and an interpreter) and that they trust that this information will be recorded in a way that does not inadvertently expose them.

In both countries, UNHCR and its implementing partners are overwhelmed and overstretched, compounding the challenges these offices face in identifying refugees who are particularly vulnerable. A UNHCR review of its Nairobi operations released in January 2011 indicated that the office received 450 to 500 people on each of the four days a week the office conducted intake.⁴⁷⁷ Refugees who face imminent protection risks wait for long periods before they are referred for assistance. In fact, in August 2011, UNHCR reported that refugees who approached UNHCR during its registration process had to wait about four months for a refugee status determination interview.⁴⁷⁸ In addition, as discussed earlier in this chapter, there are a range of barriers that make it difficult for LGBTI refugees to voluntarily reveal their identities without fear of putting their safety at risk, barriers that need to be addressed through measures including sensitivity training of UNHCR and NGO staff members.

UNHCR, its implementing partners, and states should address these challenges by taking a number of steps to ensure that vulnerable LGBTI refugees are identified during initial registration processes and fast-tracked to the refugee status determination interview—as refugee status is usually necessary for those seeking to be resettled elsewhere. As detailed earlier in the chapter, UNHCR should train all staff members including registration officers on social exclusion and assisting LGBTI persons, provide visible indications in the registration area that UNHCR does not discriminate on the basis of sexual orientation or gender identity (along with other grounds), and provide training for interpreters to equip them to interpret in an appropriate manner for LGBTI refugees. In addition to implementing these reforms (including in the registration process), those who conduct registration should implement fast-track procedures for LGBTI asylum seekers at the registration

stage, ensure all registration staff—including interpreters—are trained on the specific skills required to interview LGBTI asylum seekers and review the current physical layout of space used to conduct registration to increase confidentiality.

RECOMMENDATION 4.7

In Kenya, UNHCR should conduct additional training of all registration staff, including interpreters, and implement the measures identified in the training, so that LGBTI refugees are identified and made to feel comfortable during registration. UNHCR should also create more confidential spaces in the registration area to allow for LGBTI refugees to self-identify in privacy. UNHCR should also designate a specific member of staff with the appropriate training, skills and sensitivity with whom LGBTI refugees may feel comfortable revealing confidential information—such as their sexual orientation, gender identity, and reasons for flight.

UNHCR staff in Kenya have already received some training from a local NGO on measures for improving the registration process for LGBTI refugees. This training included guidance on LGBTI-sensitive questions. At the time of Human Rights First's visit in 2011, UNHCR registration staff told Human Rights First that these measures had not yet been implemented by UNHCR in Kenya, and at the time of writing some measures were still to be implemented.⁴⁷⁹ The lack of implementation of these measures is partly due to the need to train interpreters to be LGBTI-sensitive. For example, in the LGBTI awareness training, UNHCR staff were instructed not to ask about marital status but instead ask about family composition. However, interpreters often still translate the question as "Are you married?"⁴⁸⁰ UNHCR should monitor the implementation of training guidelines and should specifically train interpreters so as not to undo the efforts of UNHCR registration staff to ask appropriate questions.

Additional training and oversight—along with the other recommendations outlined in this report—will allow LGBTI refugees to identify themselves during registration and can avoid further traumatizing and stigmatizing vulnerable individuals by asking inappropriate questions. UNHCR headquarters is in the process of revising its registration form so that it can better reflect the needs of LGBTI refugees. The revised form, along with some other planned revisions to UNHCR's database *ProGres*, should

enhance efforts to identify and address the needs of particularly vulnerable LGBTI refugees.⁴⁸¹

UNHCR staff also told Human Rights First that the registration space in Nairobi does not provide for much confidentiality.⁴⁸² Registration staff noted that LGBTI refugees rarely self-identify unless encouraged to do so by a Registration clerk.⁴⁸³ UNHCR should review the layout of the reception area and identify ways in which safe spaces can be created there or elsewhere for confidential communication among registration staff and LGBTI and other refugees in need of additional privacy.

RECOMMENDATION 4.8

In Kenya, UNHCR should implement fast-track procedures at registration for vulnerable LGBTI and other refugees so that, when identified, these refugees can be referred without delay for refugee status determination as well as protection and assistance.

UNHCR should implement fast-track procedures for referring particularly vulnerable LGBTI refugees and other vulnerable refugees for refugee status determination interviews when they are identified at registration in Kenya. A number of UNHCR operations have Standard Operating Procedures (SOPs) in place to fast-track vulnerable applicants for refugee status determination. UNHCR does have fast-track procedures in place at its registration process in Kenya for vulnerable groups and LGBTI refugees should be listed as a vulnerable group in the fast-track SOPs. However, UNHCR staff told Human Rights First that identification at the screening stage prior to registration is difficult and instead LGBTI refugees are more readily identified at refugee status determination.⁴⁸⁴

NGOs in Nairobi reported to Human Rights First that vulnerable refugee cases, including unaccompanied minors, are not currently being fast-tracked for refugee status determination. These NGOs were concerned that the delay in obtaining a Mandate Refugee Certificate from UNHCR could prevent them from accessing other forms of assistance available for unaccompanied minors.⁴⁸⁵

UNHCR should designate an appropriate focal point at reception in Kenya that LGBTI refugees and other vulnerable refugees can be referred to who can then assist in fast-tracking their registration for referral to the refugee status determination interview.

In Kenya, refugees with specific security concerns (including LGBTI refugees) can request that their refugee status interviews and decisions be fast-tracked, but they

must approach UNHCR's Protection Delivery Unit to make the request in writing. These requests are then passed on to a UNHCR Eligibility Officer, who decides if the person's case will be fast-tracked for the final decision.⁴⁸⁶ NGO partners can also request that UNHCR fast-track status determination interviews and decisions.⁴⁸⁷ A gay male refugee from Uganda told Human Rights First that because he perceived that Ugandan state agents were trying to track him down in Kenya, he requested in writing that UNHCR fast-track his refugee status determination interview. However, he had to keep returning to the UNHCR office to find out whether his request had been granted and he had not received news for several weeks.⁴⁸⁸

In Chapter 1, Human Rights First recommended the introduction of a Specific Needs Code for LGBTI refugees who face a high risk of violence. The use of this code in *ProGres* would be valuable in identifying LGBTI refugees who need specific assistance from the Protection, Resettlement or Community Services Units.

RECOMMENDATION 4.9

Government staff conducting registration should also be trained on LGBTI-sensitive registration, and UNHCR should volunteer to facilitate and assist with that training.

In Uganda, registration is conducted by the government and in Kenya, the Department of Refugee Affairs (DRA) has recently taken over registration functions from UNHCR. As detailed above, both Kenya and Uganda have laws that criminalize same-sex relations and provide for lengthy jail sentences. Given the existence of these laws—and the public debates in Uganda surrounding potential legislation that would impose the death penalty for “aggravated homosexuality”—LGBTI refugees do not feel safe revealing their sexual orientation or gender identity to government representatives. In Uganda, UNHCR should work towards training the Office of the Prime Minister (OPM) registration staff as well as supervisors on the very specific needs of certain categories of persons such as LGBTI asylum seekers. Government offices should introduce codes that protect their confidentiality. UNHCR should request that OPM refer such persons who are identified during its registration process to UNHCR's offices. In Kenya, UNHCR should also train DRA registration officers on appropriate questions to ask in order to be inclusive of LGBTI refugees. Although the political climate for this training may be difficult at

present, this is an important step towards strengthening the long term protection environment for LGBTI refugees.

Strengthen Access to Asylum on the Grounds of Sexual Orientation or Gender Identity

RECOMMENDATION 4.10

Uganda should provide asylum to refugees who have well-founded fears of persecution based on their sexual orientation or gender identity. Kenya, when it takes over refugee status determination functions from UNHCR, should do the same.

UNHCR has recognized that persecution on the basis of sexual orientation or gender identity may be grounds for asylum.⁴⁸⁹ The agency has estimated that at least 42 states have granted asylum to individuals who were determined to have well-founded fears of persecution due to sexual orientation or gender identity.⁴⁹⁰ For example, South Africa explicitly lists sexual orientation in its definition of “social group” within its Refugees Act of 1998,⁴⁹¹ South Korea has granted asylum due to persecution on the basis of sexual orientation or gender identity,⁴⁹² and many other states have also recognized that individuals persecuted due to their sexual orientation or gender identity can be eligible for asylum.⁴⁹³ In its *Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, UNHCR explained that individuals who have well-founded fears of persecution due to their sexual orientation or gender identity are entitled to protection under the Refugee Convention, and the agency provided guidance to states in connection with these claims.⁴⁹⁴ The U.N. High Commissioner for Human Rights, in a December 2011 report, recommended that member states “ensure that no one fleeing persecution on grounds of sexual orientation or gender identity is returned to a territory where his or her life or freedom would be threatened, and that asylum laws and policies recognize that persecution on account of one’s sexual orientation or gender identity may be a valid basis for an asylum claim.”⁴⁹⁵

Kenya and Uganda are both parties to the 1951 Convention Relating to the Status of Refugees (the “Refugee Convention”), and both countries host significant numbers of refugees. Article 33 of the Refugee Convention prohibits states from expelling or returning a refugee “in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened

on account of his race, religion, nationality, membership of a particular social group or political opinion.”⁴⁹⁶ The prohibition against *refoulement* is firmly established in refugee law, other conventions, and customary international law.⁴⁹⁷

Kenya and Uganda have their own Refugee Acts, both passed in 2006, and Kenya conducts its own registration of refugees, while Uganda conducts both registration and refugee status determination. A representative of the Ugandan Office of the Prime Minister told Human Rights First that the government was not aware of applications being made for refugee status due to persecution on the basis of sexual orientation or gender identity.⁴⁹⁸ In Kenya, UNHCR still conducts refugee status determination but there are plans for the Department of Refugee Affairs to take over this function.⁴⁹⁹

While criminal laws in both Kenya and Uganda criminalize same-sex relations, these laws do not prohibit a state from providing protection to individuals who face well-founded fears of persecution due to their sexual orientation or gender identity if returned to their home countries.⁵⁰⁰ To deny protection to such refugees and return them to their countries of origin would constitute a violation of the Refugee Convention and other human rights standards.⁵⁰¹ As detailed in Chapter 1, as well as in UNHCR’s 2008 note and the OHCHR report,⁵⁰² laws that criminalize same-sex relations are inconsistent with international human rights and refugee protection standards and should be repealed. Asylum in a country that criminalizes same-sex relations would not generally constitute a durable solution for LGBTI refugees, and as the OHCHR report confirms, criminalization laws contribute to a culture of impunity regarding bias-motivated violence against LGBTI persons and a lack of police protection for LGBTI victims.⁵⁰³

Uganda should take steps to allow asylum applicants to apply for refugee status due to persecution on the basis of sexual orientation or gender identity and should ensure that applications are treated confidentially and that applicants are not victimized by the state or by non-state actors for seeking asylum on this basis. Kenya should take similar steps as it takes over refugee status determination from UNHCR. Both states should revise laws that criminalize consensual same-sex relations. Not only, as detailed in Chapter 1, do these laws undermine human rights protections and contribute to bias-motivated violence, but they also undermine asylum.

UNHCR should support both governments by providing training to government refugee status determination staff on the *Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, including training on appropriate interview questions.

RECOMMENDATION 4.11

UNHCR should take steps to strengthen access to asylum for LGBTI refugees in Uganda and—given current laws and protection challenges—to facilitate access to alternative forms of protection and durable solutions for LGBTI refugees. These steps should include the development of guidance on access to asylum in states that criminalize same-sex relations, training of government refugee status determination staff, and access to the alternative durable solution of resettlement.

While UNHCR should take steps to advocate for equitable and safe access to asylum for LGBTI refugees (including through the provision of training to government refugee status determination staff referenced directly above), as long as laws that criminalize same-sex relations exist, they create multiple impediments to protection and asylum for LGBTI refugees.⁵⁰⁴ UNHCR recognized in its 2008 note that “where an individual is seeking asylum in a country where same sex relations are criminalized, such laws can impede his or her access to asylum procedures or deter the person from presenting his or her LGBT experiences as part of the claim to refugee status.”⁵⁰⁵

NGOs who work with LGBTI refugees in Uganda and Kenya told Human Rights First that an individual who is seeking asylum due to persecution based on sexual orientation or gender identity would understandably be fearful to—and should not be expected to—voluntarily identify themselves to a state that provides criminal penalties and/or jails individuals for engaging in same-sex relations, especially where, as in Uganda, the first step in registering as a refugee involves providing initial testimony regarding one’s claim for refugee status to the police.⁵⁰⁶

In Uganda, under its Refugee Act, the Refugee Eligibility Committee that adjudicates asylum applications includes representatives of the Special Branch of the Uganda Police Force, the Internal Security Organization, and the External Security Organization as well as other government actors.⁵⁰⁷ For this reason, asylum seekers may fear that if they reveal information about persecution

on the basis of their sexual orientation or gender identity this information might be passed on to the police and security agencies, putting them at risk of prosecution.

UNHCR’s 2008 *Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity* recognizes that in situations where an asylum seeker’s access to asylum procedures is impeded due to laws that criminalize same-sex relations, “it may be necessary for UNHCR to become directly involved in the case”.⁵⁰⁸ More broadly, it has also been recommended that UNHCR develop guidance on protection in states that criminalize same-sex relations.⁵⁰⁹ However, the UNHCR Guidance note does not provide guidance on what practical steps UNHCR can take to ensure fair access to asylum for LGBTI persons in states that criminalize same-sex conduct.⁵¹⁰ UNHCR has made clear in its Resettlement Handbook and its guidance on *Working with lesbian, gay, bisexual, transgender and intersex persons in forced displacement* that LGBTI refugees at heightened risk will often require access to resettlement in a third country.⁵¹¹

UNHCR should, as it revises its guidelines relating to asylum based on sexual orientation and gender identity, and/or develops additional protection guidance, develop guidance that provides legal and best practice guidance to UNHCR offices that are struggling with the challenge of protecting LGBTI refugees in these countries. The guidance should provide advice relating to strategies for engaging states on access to asylum, strategies for assessing appropriate protection approaches for individual refugees in light of the potential protection implications of applying for asylum in such a state, and/or ensuring access to resettlement is not delayed by a pointless—or potentially harmful—attempt to seek asylum.

Address Barriers to Accessing Protection and Assistance

Internationally, stigmatized social groups often experience a range of barriers in accessing services ranging from negative looks or comments from service providers to outright refusals to provide services. LGBTI refugees and NGO staff working with LGBTI refugees in Uganda and Kenya reported to Human Rights First that these refugees had been denied access to, or suffered discrimination or harassment, when attempting to access assistance from UNHCR, NGOs, or health care institutions. For example, a group of LGBTI refugees in

Uganda told Human Rights First that when they sit in an English class with other refugees, other refugees always point and laugh at them.⁵¹² A bisexual woman living in one of Uganda's settlements told Human Rights First that she and other LGBTI refugees are sometimes not able to join the queues for food as other refugees refuse to allow them near. When the LGBTI refugees have formed their own line, those serving the food have not accepted this and so the group has gone hungry.⁵¹³ In Kenya, there have been similar experiences of poor treatment of LGBTI refugees, including when seeking access to health care.⁵¹⁴

These past negative experiences, as well as a fear of similar future interactions, have led some LGBTI refugees to be afraid or reluctant to seek assistance from UNHCR or NGOs that assist refugees. In addition, some LGBTI refugees fear approaching NGOs or UNHCR for assistance because they are concerned that their sexual orientation or gender identity will be exposed during interactions with other refugees at these offices, putting their security at risk.⁵¹⁵ As detailed in Chapter 1 of this report, some LGBTI refugees have been targeted for violence, threats, or harassment after other refugees have learned of their identities.

In order to effectively address barriers to protection and assistance, UNHCR and NGOs should take the following steps:

- implement sensitivity training for staff;
- develop flexible intake systems that allow LGBTI refugees access to services at times when other refugees may not be present;
- designate focal points for LGBTI refugees at each organization;
- provide contact information for focal point staff members to LGBTI refugee support groups;
- provide indications of which organizations are LGBTI-friendly; and
- promote awareness to refugees, staff, and interpreters of measures that require staff and interpreters to respect refugees' confidentiality.

RECOMMENDATION 4.12

Donors, including the United States, should require grantees to demonstrate how their programs will include LGBTI refugees and other vulnerable groups

and report back on the measures adopted to be inclusive.

Some donors explicitly require grantees to demonstrate how their programs will assist various vulnerable groups. Donors funding refugee programs in Kenya and Uganda should explicitly require grantees to demonstrate how the programs will be accessible to all refugees including LGBTI refugees. On a number of occasions, NGOs told Human Rights First that they do not discriminate against their refugee clients on the basis of characteristics such as race, nationality, sexual orientation, religion, color, or creed.⁵¹⁶ However, a failure to take steps to address barriers to access to services for LGBTI refugees or to encourage LGBTI refugees to seek assistance results in a denial of services to these refugees even in the absence of deliberate discrimination.

Some donors have tried to promote inclusive programs by stating their policy priorities of including vulnerable groups including LGBTI refugees. For example, the "General Guidelines for Overseas Assistance" published by the U.S. State Department, Bureau of Population, Refugees and Migration (PRM), state that PRM focuses on meeting the needs of vulnerable groups that may include "women, children, lesbian, gay, bisexual, transgender, or intersex (LGBTI) individuals, the elderly, the sick, the disabled, and other minorities."⁵¹⁷ In addition, PRM expressly states that "GBV prevention and response programs can include men and boys, youth, and LGBTI individuals,"⁵¹⁸ in addition to women and girls. This approach is commendable.

However, in 2011, PRM funded two new programs run by U.S.-based organizations for refugees in the Ugandan settlements, one promoting access to health care and the other focusing on SGBV. Both are critically important issues to LGBTI refugees yet when Human Rights First contacted one of these organizations regarding the accessibility of services to LGBTI refugees, the response indicated that access for this refugee population was not something that had been considered.⁵¹⁹ The services being provided through this project are located in an area where access to health care had been identified to Human Rights First as a problem by LGBTI refugees.⁵²⁰

To address this, PRM and other donors should specifically require inclusive services to LGBTI refugees and other vulnerable groups and require reporting on this if the program to be funded is specifically located in an area where there are known gaps in service provision to LGBTI

refugees and other vulnerable groups. Useful questions to include during monitoring visits include:

- What measures are in place to inform LGBTI refugees (and others frequently marginalized) that your organization will assist all regardless of sexual orientation, gender identity, or other grounds of discrimination?
- What measures have been taken to ensure that all staff, including reception, drivers and security, are trained to assist LGBTI refugees and other marginalized groups in a professional and confidential way?
- What measures are in place to assess whether LGBTI refugees and other marginalized groups are accessing the organization's services and to identify potential barriers to them doing so?

PRM should also prioritize funding projects that have an inclusive approach to service provision that assists all vulnerable populations.

RECOMMENDATION 4.13

UNHCR and NGOs should provide regular training to all staff members in Kenya and Uganda on social exclusion, LGBTI sensitivity, and LGBTI refugee protection. Training should be conducted by experienced trainers with relevant expertise, and there should be consequences for those who do not attend the mandatory training. An NGO in Uganda and another in Kenya have offered to provide specific on-the-job training for UNHCR staff.

In interviewing a number of organizations in Kenya and Uganda, Human Rights First observed that many NGO staff were not comfortable with the idea of working with LGBTI refugees. UNHCR staff also reported significant resistance from some UNHCR colleagues to working with LGBTI refugees, including resistance to being trained on the needs of LGBTI refugees.⁵²¹ UNHCR and NGO staff told Human Rights First that their colleagues cited “religious” or “cultural” reasons for not being willing to assist LGBTI refugees.⁵²² A senior member of UNHCR’s staff in Kenya noted “shocking reactions” from some international and national staff when discussing LGBTI persons.⁵²³ As noted previously, some organizations advised Human Rights First that they did not discriminate in their intake of refugees, but in further discussions revealed their reluctance to encourage LGBTI refugees to approach them for assistance.⁵²⁴

In addition, some NGO staff have referred LGBTI refugees to other organizations for counseling to “change their sexual orientation”—believing that this was what was best for the person.⁵²⁵ Another NGO told Human Rights First that after training, staff no longer refer LGBTI refugees for this type of counseling, “unless the person specifically requests this.”⁵²⁶

It appears that in this regard, some UNHCR and NGO staff are guided by their own personal perceptions or interpretation of national legislation and their own personal, cultural or religious perspectives regarding LGBTI persons rather than UNHCR’s Code of Conduct and international human rights law.⁵²⁷ UNHCR’s Code of Conduct specifically notes that “while acknowledging that local laws and customs may differ from one country to another, the Code of Conduct is based on international legal standards...” and requires staff to respect the dignity of every individual and not to discriminate on the basis of “race, gender, religion, color, national or ethnic origin, language, marital status, sexual orientation, age, socioeconomic status, disability, political conviction, or any other distinguishing feature.”⁵²⁸ UNHCR staff receive regular training on the provisions of the Code of Conduct and all staff are required to sign a copy.⁵²⁹ UNHCR’s guidance document *Working with lesbian, gay, bisexual, transgender and intersex persons in forced displacement* specifically recommends that UNHCR “make sure all staff and partners are aware of what is and is not appropriate behavior when working with LGBTI persons” and notes that regular sensitization training will “often be necessary.”⁵³⁰

In order to ensure that LGBTI refugees receive equitable access to protection and assistance, UNHCR and NGOs should provide all staff with regular training, especially given high staff rotation or turnover. One NGO suggested that three types of training would be valuable: one focused on social exclusion, another on LGBTI sensitivity and awareness, and a third on practical LGBTI refugee protection. Social exclusion training should address awareness of prejudice and how this affects service provision including for particular vulnerable or marginalized refugee groups such as LGBTI refugees. This sensitivity training should also be extended to security guards and drivers as they often serve as gatekeepers to assistance and their comments and actions can undermine efforts of other colleagues to improve access to protection for vulnerable or marginalized groups. For example, Human Rights First was told that the process of

building a relationship between UNHCR and one community-based organization that had a number of LGBTI refugee members was undermined when a UNHCR driver refused to enter the group's office when dropping off some materials. The group interpreted this as hostility because of prejudice against LGBTI persons.⁵³¹ An NGO provided social exclusion training to a group of UNHCR staff in Kampala in November 2011 and this served as an important first step but the NGO noted that additional time for the training would have enabled them to cover more ground and that further training was necessary.⁵³² The provision of social exclusion training is not a substitute for specific training on LGBTI sensitivity and LGBTI refugee protection.

A second useful form of training is on LGBTI sensitivity to familiarize staff members with human rights protections, key concepts, and terminology, given that prejudice and lack of knowledge around LGBTI matters in Kenya and Uganda has made it difficult for staff members to have frank and informed conversations on this topic. This training sets an important foundation for the third form of training—on specific protection measures relating to LGBTI refugees—as it provides a forum for staff to discuss their perceptions of LGBTI persons and increase their awareness before technical components on LGBTI refugee protection are introduced. For example, one NGO told Human Rights First that in some cases of past training on LGBTI refugees, participants had too much curiosity about LGBTI concepts to be able to engage in effective discussion on practical assistance for LGBTI refugees.⁵³³

The third type of training should focus on specific aspects of LGBTI refugee protection and assistance, such as LGBTI-sensitive interviewing skills and terminology as well as other components identified throughout this report related to LGBTI refugees' specific needs. An NGO in Uganda and another in Kenya indicated that they were willing to provide staff members to conduct on the job training for UNHCR staff by observing their day-to-day activities over a number of days and mentoring them to improve their work around LGBTI refugees. The provision of this training would significantly enhance the capacity of UNHCR staff and would not require additional budget.

UNHCR can also play an important role in facilitating discussions with partners or staff members who voice questions about assisting LGBTI refugees, jointly identifying best practice to address such concerns. As

recommended above, UNHCR headquarters should provide guidance explaining UNHCR's role and strategies for protecting and assisting LGBTI refugees in countries that criminalize same-sex relations such as Uganda or Kenya. This guidance should also explain the safe role staff can play in providing protection and assistance to LGBTI refugees.

UNHCR has arranged some LGBTI refugee training by a local NGO in Kenya and social exclusion training by a local NGO in Uganda. These initial efforts need to be followed with further detailed training as there have been different reactions from UNHCR staff members to training.⁵³⁴ Despite the training being mandatory for UNHCR staff in Kenya, a number of national and international UNHCR staff reportedly refused to attend.⁵³⁵ In Uganda, initial attempts by local NGOs to provide LGBTI-specific training to UNHCR were met with some resistance, though social exclusion training was subsequently rolled out in November 2011.⁵³⁶ UNHCR in Uganda has recently reached an agreement with local NGOs to conduct further forms of training⁵³⁷ and should ensure that specific training on LGBTI awareness and LGBTI refugee protection are included in its training plan.

In Kenya, two NGOs have provided training for UNHCR and other NGOs (one in partnership with a domestic LGBTI NGO).⁵³⁸ One of these NGOs provides regular training on assistance and protection of LGBTI refugees through an in-house staff member with relevant expertise. The trainers reported high levels of resistance particularly from Kenyan staff, some of whom viewed same-sex relations as a "Western imposition."⁵³⁹ There was also resistance from some staff who indicated "religious" and "cultural" reasons that they felt uncomfortable working with LGBTI persons. As a result of this resistance, the trainers tailor the training to the specific needs of the particular audience—in some cases providing a broader discussion on human rights that includes a component on LGBTI rights but in other cases providing very in-depth training on the specific protection needs of LGBTI persons.⁵⁴⁰

In Uganda, another NGO has provided a broader form of training on social exclusion that includes a focus on LGBTI persons.⁵⁴¹ This approach is intended to build empathy so that participants are able to relate their own experiences of exclusion to those of other groups, including LGBTI refugees. Staff at this NGO told Human Rights First that this training approach had been effective

with its own staff and was instrumental in addressing staff prejudices at the time the organization first began its work with LGBTI refugees.⁵⁴² Another NGO had received training from its own legal officer on LGBTI issues but this officer did not have expertise in social exclusion or LGBTI refugee protection training. Although this NGO plays a very important protection role for refugees in Uganda, two senior members of staff indirectly demonstrated their discomfort with working with LGBTI refugees in interviews with Human Rights First and unintentionally made a number of inappropriate comments regarding LGBTI persons.⁵⁴³

Some UNHCR and NGO staff in Uganda and Kenya indicated that they would be more receptive to training focused more broadly on social exclusion that included a component on LGBTI discrimination, and then having a more specific training directly on LGBTI refugees at a later stage.⁵⁴⁴ This kind of initial training could provide a foundation for further training that focused in more detail on issues relating to the protection of LGBTI refugees. Some UNHCR and NGO staff also indicated that they or colleagues would be more receptive to trainers of the same nationality who “understand our culture.”⁵⁴⁵

UNHCR should include training on LGBTI discrimination in each UNHCR office’s internal training plan to ensure that staff receive regular sensitivity training. An NGO in each country has the necessary expertise and is available and willing to provide training for UNHCR staff both social exclusion and on protection specifically for LGBTI refugees, including functions such as Registration and Refugee Status Determination.⁵⁴⁶ A specific training schedule on LGBTI refugees for each office can be worked out depending on the responses to the initial training, as some offices may need more regular training than others.

UNHCR’s Global Learning Center in Budapest, Hungary, currently has included an LGBTI component in most protection-related learning programs, although some are still in the process of being updated.⁵⁴⁷ This is another important step that UNHCR has taken to capacitate its staff to better assist LGBTI refugees. Similarly, NGOs should build LGBTI sensitivity and LGBTI refugee protection into their staff development training programs.

RECOMMENDATION 4.14

UNHCR should ensure that complaints mechanisms and accountability measures are in place for refugees

or partner organizations to report incidents of discriminatory staff conduct.

UNHCR offices are required to have complaints mechanisms in place so that refugees can report any concerns regarding the assistance they received from the office.⁵⁴⁸ UNHCR should raise awareness of its complaints mechanisms and Code of Conduct including by posting information—in languages that refugees will understand—in accessible places in its offices. LGBTI and other refugees who believe that they have been discriminated against or treated in a manner inconsistent with UNHCR’s Code of Conduct can then submit a complaint through this complaints mechanism, and NGOs can use this mechanism as well.⁵⁴⁹

UNHCR should ensure the implementation of disciplinary measures against staff members who are found to have discriminated against refugees on grounds such as sexual orientation, gender identity, or other such characteristics.⁵⁵⁰

RECOMMENDATION 4.15

UNHCR and NGOs should develop mechanisms to allow LGBTI refugees to access their offices to seek protection or assistance without fear that their sexual or gender identities will be revealed. These mechanisms should include a flexible intake system and designated focal points for LGBTI refugee protection and assistance.

UNHCR and NGOs should ensure access to their offices for LGBTI refugees through flexible intake systems that can accommodate LGBTI refugees who fear that their identities might be exposed—potentially putting them at risk of threats and violence (as detailed in Chapter 1 of this report)—while they wait for services in these offices alongside other refugees. To address this, NGOs and UNHCR should be flexible in the ways and times they receive clients so that LGBTI refugees and others who genuinely fear harm if they wait for services alongside other refugees can access these services on a different day or after hours when other refugees are not present.

During interviews in Kenya and Uganda, some LGBTI refugees told Human Rights First that they were afraid to approach UNHCR or NGO offices at times when many other refugees were present for fear that their identities would be exposed as they waited for services. In some cases, such exposure could be because of stereotyping regarding the person’s appearance or mannerisms. Also,

if a refugee's sexual orientation or gender identity has previously been exposed, it would be very difficult for that refugee to openly seek assistance at a place where other refugees are waiting for assistance for fear of running into a potential persecutor or someone who will report their presence to a persecutor.⁵⁵¹

These refugees were also concerned that a staff member might reveal confidential information relating to their sexual orientation or gender identity either deliberately or accidentally.⁵⁵² For example, Human Rights First interviewed a gay refugee from the Great Lakes region who initially refused to come to an NGO's office because he feared that other refugees waiting at the office would learn about his sexual orientation. He was later convinced by a member of the NGO's staff to visit the office on a Friday when no other refugees were present. As a result of this visit, he felt more confident that others in his peer group would be more willing to come to the office too.⁵⁵³

As an example of good practice, an NGO in Uganda has specifically redesigned its programs to address these confidentiality concerns. The organization has developed a Sexual and Gender-Based Violence and Prejudice (SGBVP) program with a dedicated office to ensure client privacy. The organization has also designated specific focal points to assist LGBTI clients. As the names of these "focal points" have become known through refugee social networks, new LGBTI refugee clients can approach the office and specifically ask to see the focal point without needing to specify their reasons for coming to the office in front of other refugees or staff at the office.⁵⁵⁴ NGOs and UNHCR could also post the names and programmatic areas of work of staff in reception areas as another way to assist LGBTI refugees (and others with specific confidentiality concerns) to access appropriate staff without having to explain their reasons in the reception area.

In meetings with Human Rights First, some NGO staff expressed willingness to meet with LGBTI refugees who were fearful of coming in on a general intake day after hours or on days when there is generally no refugee intake.⁵⁵⁵ For example, a number of NGOs receive refugee clients from Monday to Thursday but some were willing to receive LGBTI refugees or other specific needs cases on Fridays on an *ad hoc* basis. Human Rights First was present at an NGO's office when a gay male refugee came in for the first time on a Friday when few other refugees were present and he indicated that he was happy with

this arrangement and would be willing to return to the NGO on another Friday.⁵⁵⁶

The development of flexible intake systems for particularly vulnerable groups of refugee clients after hours or on days when there is not usually intake would need to be formalized with other partners and the information would need to be passed on to LGBTI refugees in various ways, including by asking existing LGBTI clients to disseminate this information carefully to their friends. LGBTI refugees should not be prohibited from coming to the offices during general intake days, but this additional more confidential option may help facilitate their access to refugee protection and assistance.

Ultimately assistance to LGBTI refugees should be mainstreamed in all organizations. At this stage however, given the range of challenges—including discrimination, criminalization, risks of violence and threats, and lack of knowledge and training, as well as the resulting fears of many LGBTI refugees to self-identify—NGOs that have yet to effectively mainstream LGBTI refugees into their programs should designate specific focal points and task these individuals to be the first point of contact for LGBTI refugees. The creation of these "focal points" at organizations will build the confidence of LGBTI refugees to come forward to seek assistance and help avoid negative encounters with staff or other refugees who may have prejudice towards LGBTI refugees. Many organizations have existing programs to address SGBV. SGBV staff may in many cases serve as effective focal points for LGBTI refugees. As part of a broader protection strategy, SGBV staff in both urban and rural contexts should be trained and willing to assist LGBTI refugees.

RECOMMENDATION 4.16

UNHCR and NGOs willing to assist LGBTI refugees should provide visible signs that their offices will not discriminate on grounds including sexual orientation and gender identity.

UNHCR and NGOs should make clear that their offices are safe spaces where LGBTI refugees can self-identify if necessary. One NGO in Kenya displays LGBTI rainbow stickers in prominent places in its offices in order to indicate that it will welcome LGBTI refugees.⁵⁵⁷ Another organization that works with LGBTI refugees displays posters that note that it assists refugees regardless of their sexual orientation or gender identity.⁵⁵⁸ UNHCR and

NGOs should display posters that indicate that their offices do not discriminate against any refugee on the basis of race, nationality, religion, sexual orientation, gender identity, and other such factors. This recommendation is supported by UNHCR's internal guidance on working with LGBTI persons.⁵⁵⁹

RECOMMENDATION 4.17

UNHCR and NGOs should provide interpreters trained to work with LGBTI refugees, and create awareness of confidentiality measures.

UNHCR and NGOs should ensure that refugees have access to interpreters who are appropriately trained to work with LGBTI refugees. In interviews with refugees in Kenya and Uganda, some refugees told Human Rights First that they were concerned that information given to UNHCR or NGO staff could be accessed or revealed to other refugees from their countries.⁵⁶⁰ These fears were mainly due to the presence of interpreters from their own countries in the particular UNHCR or NGO offices. For example, several gay men told Human Rights First that they feared revealing their sexual orientation during protection, registration, or refugee status determination interviews because an interpreter from their own country of origin was present during those interviews. Refugees also told Human Rights First that they feared that interpreters could access their files at these offices and thus learn of their sexual orientation.⁵⁶¹

These concerns can be addressed. An NGO in Uganda and an NGO in Kenya train all of their refugee staff on LGBTI awareness and provide clear indications of the

professional level of service expected from interpreters.⁵⁶² In Uganda, one interpreter at an NGO is now trusted by a number of LGBTI refugees. These and other refugees specifically request him in interviews⁵⁶³ and this interpreter now also assists with translations at a second NGO due to this trust. This interpreter was initially regarded with mistrust by LGBTI refugees as he was young and shared their nationality, so they expected him to share negative sentiments towards them. However, with training and support from the NGO, this interpreter is now trusted by LGBTI refugees and plays an important role in ensuring that these refugees have access to confidential and trusted interpretation services.

UNHCR and NGOs should follow this example and provide training for a number of carefully selected interpreters to build their capacity to assist any clients without prejudice, including LGBTI refugees. UNHCR and NGOs should also allow clients to bring their own interpreters in cases where they are not able to provide interpreters trained to work with LGBTI refugees.

UNHCR and NGOs should also post notices in their reception areas explaining confidentiality policies, noting that information will be kept confidential, and confirming that files are maintained in a secure manner. One method that UNHCR is introducing is making some information available only to certain staff on its *ProGres* database, where all information on refugees is stored, as a means of protecting sensitive information.⁵⁶⁴

Summary of Recommendations

In this report, Human Rights First has provided a comprehensive road map of practical steps that UNHCR, the U.S. government, host states, and other key actors should take to protect LGBTI refugees from violence and provide them with equal access to protection and effective durable solutions. These recommended steps—which are detailed in this report—are summarized below. This road map will be particularly useful as UNHCR, U.S. agencies, and other actors take steps to implement commitments to address the gaps in protection facing vulnerable LGBTI refugees. While this report was informed by research in East Africa, many of the recommended measures can be replicated in other places where LGBTI refugees face serious protection challenges. The measures outlined in this report will also help improve the protection environment in host states over the longer term, while addressing the dire threats to the safety of individual refugees now.

1. PROTECT REFUGEES FROM VIOLENCE AND ASSIST VICTIMS OF VIOLENCE

TO UNHCR

- Protect refugees from bias-motivated violence:
 - Raise specific cases of bias-motivated violence with governments, requesting information on progress in investigating and prosecuting these cases, and work with police leadership to enable LGBTI and other refugees to report violent incidents without fear of arrest or discrimination;
 - Revise the UNHCR Heightened Risk Identification Tool to include a specific focus on LGBTI refugees and to identify and assist those facing a high risk of violence;
 - Develop partnerships with domestic human rights and LGBTI organizations to provide access to legal services, emergency help lines, and other existing forms of support; and
 - Train UNHCR Protection Officers and UNHCR partner staff working in urban areas, camps, and settlements on the protection of LGBTI refugees, including protection from bias-motivated and sexual and gender-based violence.
- Strengthen protection of LGBTI refugees from sexual and gender-based violence (SGBV):
 - Train field staff and partners to respond to SGBV against any person, including men; and
 - Include LGBTI refugees in interventions aimed at reducing reliance of vulnerable refugees on survival sex as the only means of self-reliance.

TO UNHCR AND NGOs

- Help survivors of violence seek assistance and accountability:
 - Provide lawyers or staff members to accompany LGBTI refugees to police stations to register complaints of violence or other criminal activity;
 - Develop a standardized system with partners for referring LGBTI survivors of bias-related violence and SGBV for appropriate services and support;
 - Document all cases of bias-motivated violence; and
 - Use national human rights institutions and other national accountability mechanisms to advance accountability and improvements in government responses to bias-motivated violence.

- Conduct outreach and education to refugee communities to prevent bias-motivated violence perpetrated by refugees against LGBTI refugees and make clear the consequences to potential perpetrators; and
- Help LGBTI refugees protect and assist themselves by providing them with security training through urban LGBTI refugee community groups and by helping build the capacity of LGBTI refugee community groups to support self-reliance initiatives.

TO THE GOVERNMENTS OF UGANDA AND KENYA

- Improve the protection of all people living in Kenya and Uganda, including:
 - Investigate and prosecute attacks on all persons, including LGBTI refugees;
 - Punish police officers found guilty of extortion, bias-motivated violence, or other abuse;
 - Speak out publicly against all forms of bias-motivated violence; and
 - Repeal penal laws that criminalize same-sex relations, which contribute to discrimination and violence against LGBTI persons and are at odds with international law.

2. ENSURE AT-RISK REFUGEES HAVE ACCESS TO SAFE SHELTER

TO UNHCR AND NGOS

- Strengthen access to safe shelter for vulnerable LGBTI refugees:
 - Expand existing scattered-site housing projects in Kenya and Uganda to provide shelter to a greater number of LGBTI refugees at risk;
 - When scattered housing is not available, use alternative approaches, including existing refugee shelters (with safeguards) and domestic LGBTI shelter facilities; and
- Develop alternative protection mechanisms, including temporary relocation to other parts of the country or transfer to Emergency Transit Facilities (ETFs) abroad when safe shelter is not available.

TO DONOR STATES

- Support the expansion of scattered site housing projects; and
- Support and facilitate access to refugee shelters and the use of ETFs and other alternative protection mechanisms.

3. IMPROVE ACCESS TO TIMELY RESETTLEMENT AND EXPEDITED RESETTLEMENT

TO UNHCR

- Improve the ability to identify vulnerable LGBTI refugees through registration and reception, as detailed under recommendation 4 below;
- Continue to encourage states to improve capacity to expedite resettlement;
- Initiate regular resettlement coordination meetings with NGOs to develop shared understandings of appropriate cases for resettlement and improve timeliness and transparency of resettlement; and
- Provide safe in-country shelter (as described under recommendation 2) for LGBTI refugees at risk while awaiting expedited resettlement or, where not possible, transfer to an Emergency Transit Facility.

TO RESETTLEMENT STATES

- Increase access to expedited resettlement:

- Increase the number of resettlement places within existing emergency resettlement programs by at least 10 percent each year and improve the timing of these programs;
- Create expedited resettlement programs in states that do not have such programs yet;
- Consider accepting expedited cases based on dossier submissions prepared by UNHCR;
- Improve the pace of resettlement for all refugees (including LGBTI refugees) by increasing the number of resettlement missions to East Africa; and
- Support the use of ETFs for at-risk LGBTI refugees where no effective safe shelter is available in country while LGBTI refugees await resettlement.

TO THE UNITED STATES

To the National Security Staff

- Work with the inter-agency security screening agencies to ensure security clearance procedures are completed accurately and without unnecessary delays and that LGBTI and other refugees in need of urgent and emergency resettlement have access to expedited resettlement:
 - Provide necessary staffing and prioritization to clearance process, and eliminate any unnecessary duplications; and
 - Create a consistent process for expediting checks in all urgent and emergency expedited resettlement cases.

To the State Department's Bureau of Population, Refugees and Migration and the Department of Homeland Security

- Extend validity dates for steps in the resettlement process that expire too quickly to avoid extensive delays and unnecessarily repetition of steps at a cost to the applicant and the government;
- Ensure the provision of professional interpreters, trained on LGBTI terminology and sensitivities, during interviews by the Resettlement Support Centers and USCIS.
- Develop a formal expedited resettlement program or system within the U.S. Refugee Admissions Program that offers emergency resettlement within as close to 14 days as possible and urgent resettlement within a maximum of eight weeks or less:
 - Allocate staff to expedited processing as their priority responsibility at USCIS (to conduct interviews and expedite security screening), at the Resettlement Support Centers (to conduct pre-screening interviews and expedite other steps in the process), and at PRM and DHS in Washington to provide support as needed;
 - Expedite security checks for all refugees being resettled on an emergency or urgent basis;
 - Develop and issue detailed guidelines on expedited resettlement for Resettlement Support Centers in each region;
 - Provide USCIS refugee interviews on an expedited basis for emergency and urgent resettlement cases, and ensure that RSCs conduct pre-screening interviews rapidly in such cases;
 - Improve the coordination of the multiple steps in the resettlement process, and allow some steps in the process to take place earlier; and
 - Initiate a project or pilot project in East Africa with a specific annual target number for emergency and urgent resettlement cases.

To the State Department's Bureau of Population, Refugees and Migration

- Support safe shelter for at-risk LGBTI and other refugees who are awaiting resettlement:
 - Fund safe shelter programs for at-risk LGBTI and other refugees in countries of first asylum; and

- Support the transfer of LGBTI refugees facing imminent risk to an ETF, if it is made safe for them and provides access to necessary services and support.
- Take other steps to protect LGBTI refugees in the resettlement process:
 - Include a specific code for LGBTI refugees in the WRAPS database to help facilitate resettlement of LGBTI refugees to resettlement agencies that offer specific LGBTI refugee support services; and
 - Require all staff at the Resettlement Support Centers (RSCs) to be trained on a range of issues relating to LGBTI resettlement cases.

To the Department of Homeland Security

- Publish or make available a Frequently Asked Questions (FAQ) sheet or other information addressing admissibility of HIV-positive individuals, resettlement of same-sex partners, and waivers requests;
- Continue to train Refugee Officers to adjudicate refugee claims based on sexual orientation and gender identity in a professional manner;
 - Allow resettlement applicants to specifically request the gender of the interviewer; and
 - Provide refugees with adequate information to enable them to request reconsideration when denied in order to minimize mistaken denials based on security checks.

4. IMPROVE GENERAL ACCESS TO PROTECTION FOR LGBTI REFUGEES

TO UNHCR

- Improve general protection measures for LGBTI refugees in Kenya and Uganda:
 - Issue protection guidance on practical strategies for protecting and assisting LGBTI refugees in countries where same-sex relations are criminalized;
 - Provide on-the-job training for UNHCR staff on specific areas relating to LGBTI refugees including registration and protection;
 - Take the lead in developing, in each country, joint protection strategies with NGOs for LGBTI refugees—including components on protection from violence, support for survivors of violence, safe shelter, durable solutions, and access to existing services; and
 - Conduct or encourage research on ways to improve protection of LGBTI refugees in camp settings.
- Integrate LGBTI refugees in all areas of work of the agency and its partners in accordance with Age, Gender and Diversity Mainstreaming (AGDM) commitments:
 - Monitor the progress of country offices in including vulnerable groups of refugees, including LGBTI refugees, in assistance programs via the AGDM Accountability Framework;
 - Make assistance to vulnerable groups, including LGBTI refugees, an explicit part of all future implementing partner agreements; and
 - Ensure complaint mechanisms and accountability measures are in place for refugees or partner organizations to report incidents of discriminatory staff conduct.
- Strengthen refugee registration measures to identify LGBTI refugees in need of protection:
 - Conduct additional training of all UNHCR registration staff in Kenya, including interpreters, on LGBTI sensitivity and LGBTI-sensitive registration questions;

- Create more confidential spaces in registration areas to allow LGBTI refugees to self-identify and raise questions in privacy;
- Designate specific focal points for LGBTI refugees to approach discreetly;
- Post visible signs that the office offers a safe and non-discriminatory environment for LGBTI persons;
- Implement fast-track procedures at registration for vulnerable LGBTI and other refugees so that, when identified, they can be referred without delay for refugee status determination as well as protection and assistance; and
- Train government staff conducting registration on LGBTI-sensitivity.
- Strengthen access to asylum for LGBTI refugees in Uganda and facilitate access to alternative forms of protection and durable solutions for LGBTI refugees:
 - Develop guidance on access to asylum from states that criminalize same-sex relations;
 - Train government refugee status determination staff; and
 - To the alternative durable solution of resettlement.

TO UNHCR AND NGOS

- Train staff on social exclusion, sensitivity regarding LGBTI persons and concepts, and the protection and assistance of LGBTI refugees. Training should be conducted by experienced trainers with relevant expertise, and there should be consequences for those who do not attend the mandatory training.
- Make office environments more accessible for LGBTI refugees:
 - Develop flexible intake systems and designate focal points for LGBTI refugee protection and assistance;
 - Post visible signs that the office offers a safe and non-discriminatory environment for LGBTI persons; and
 - Make available interpreters trained to work professionally with LGBTI refugees.
- Strengthen outreach to ensure that LGBTI refugees with protection needs are identified:
 - Partner with community-based organizations that include LGBTI refugees;
 - Make use of community-based counselors;
 - Coordinate outreach with local LGBTI organizations; and
 - Develop and circulate outreach materials for LGBTI refugees to provide information on what services are available and where to seek help.

TO THE GOVERNMENTS OF KENYA AND UGANDA

- Protect from return, and provide asylum to, refugees who have well-founded fears of persecution based on their sexual orientation or gender identity.

TO DONORS

- Require grantees to demonstrate what steps will be taken to include LGBTI refugees and other vulnerable groups in programs and to report back on the success of such measures.

Endnotes

- ¹ Several recent human rights publications provide information and definitions relating to terms used in this paper, including the Yogyakarta Principles and the Appendix to the Council of Europe's report on Discrimination on Grounds of Sexual Orientation and Gender Identity in Europe. International Commission of Jurists (ICJ), *Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity*, March 2007, p. 6, available at <http://www.yogyakartaprinciples.org/> (accessed October 11, 2011). Council of Europe, *Discrimination on grounds of sexual orientation and gender identity in Europe*, September 2011, ISBN 978-92-871-7257-0, available at: <http://www.unhcr.org/refworld/docid/4eb8f53f2.html> (accessed April 10, 2012). Lesbian, gay, bisexual, transgender and intersex persons experience persecution and discrimination in different ways and may have different particular vulnerabilities. UN High Commissioner for Refugees, *Working with Lesbian, Gay, Bisexual, Transgender & Intersex Persons in Forced Displacement*, 2011, p. 5, available at: <http://www.unhcr.org/refworld/docid/4e6073972.html> (accessed January 8, 2012). Although the terms lesbian, gay, bisexual, transgender and intersex are used in this paper, Human Rights First recognizes that some view these terms as controversial and exclusive to different varieties of people who maintain intimate same-sex relations. Yet the terms do connote same-sex attractions and relationships and this report is concerned with people who face persecution because of these acts, regardless of their actual or imputed identity.
- ² Consistent with the definitions specified in the Yogyakarta Principles, for the purposes of this paper, sexual orientation "is understood to refer to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender." Gender identity "is understood to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms," International Commission of Jurists (ICJ), *Yogyakarta Principles*. See also Michael O'Flaherty and John Fisher, "Sexual Orientation, Gender Identity and International Human Rights Law: Contextualising the Yogyakarta Principles," *Human Rights Law Review*, 8:2 (2008), pp. 208-214.
- ³ Dale Buscher, "Unequal in Exile: Gender Equality, Sexual Identity and Refugee Status", *Amsterdam Law Forum*, vol. 3, no. 2, 2011, p. 6, available at http://www.womensrefugeecommission.org/resources/cat_view/68-reports/73-gender-issues (accessed February 24, 2012).
- ⁴ UN Office of the High Commissioner for Human Rights, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity* (December 2011), available at http://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.41_English.pdf (accessed January 9, 2012). Council of Europe, *Discrimination on grounds of sexual orientation*. Case of *Nicholas Toonen v. Australia*, Communication No. 488/1992, UN Doc. CCPR/C/50/D/488/1992 (1994). Committee on Economic, Social and Cultural Rights, *General Comment No. 20*, E/C.12/GC/20 (July 2, 2009). Committee on the Elimination of Discrimination against Women, *General Recommendation 28*, CEDAW/C/GC/28 (December 16, 2010).
- ⁵ UN Office of the High Commissioner for Human Rights, *Discriminatory laws and practices and acts of violence*.
- ⁶ Hillary Clinton, "Free and Equal in Dignity and Rights," address at the Palais des Nations, Geneva, Switzerland, December 6, 2011, available at <http://www.humanrights.gov/2011/12/06/remarks-in-recognition-of-international-human-rights-day/> (accessed January 9, 2012).
- ⁷ The White House, "Presidential Memorandum - International Initiatives to Advance the Human Rights of Lesbian, Gay, Bisexual, and Transgender Persons," December 6, 2011, available at <http://www.whitehouse.gov/the-press-office/2011/12/06/presidential-memorandum-international-initiatives-advance-human-rights-l> (accessed January 9, 2012).
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- ⁹ Human Rights First, *2008 Hate Crimes Survey* (2008), available at <http://www.humanrightsfirst.org/wp-content/uploads/pdf/FD-081103-hate-crime-survey-2008.pdf> (accessed February 3, 2012).
- ¹⁰ See Human Rights First, *Persistent Needs and Gaps: the Protection of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Refugees*, September 2010, available at http://www.humanrightsfirst.org/wp-content/uploads/pdf/Persistent-Needs_LGBTI_Refugees_FINAL.pdf (accessed January 9, 2012). Jesse Bernstein, "Human Rights First Welcomes Attention on LGBTI Refugees—Urges Continued Reforms to Ensure Protection", blog post, available at <http://www.humanrightsfirst.org/2010/10/13/human-rights-first-welcomes-attention-on-lgbti-refugees-urges-continued-reforms-to-ensure-protection/> (accessed January 26, 2012).
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- ¹² UN High Commissioner for Refugees, *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, 21 November 2008, available at: <http://www.unhcr.org/refworld/docid/48abd5660.html> (accessed January 3, 2012).

- ¹³ UN High Commissioner for Refugees, *The Protection of Lesbian, Gay, Bisexual, Transgender and Intersex Asylum-Seekers and Refugees*, 22 September 2010, available at: <http://www.unhcr.org/refworld/docid/4cff9a8f2.html> (accessed January 8, 2012). UN High Commissioner for Refugees, *Summary Conclusions: Asylum-Seekers and Refugees Seeking Protection on Account of their Sexual Orientation and Gender Identity*, November 2010, available at: <http://www.unhcr.org/refworld/docid/4cff99a42.html> (accessed January 3, 2012).
- ¹⁴ *UNHCR-NGO Partnership Concepts: Summaries of Projects & Goals Pertaining to Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Refugees & Asylum Seekers, 2010-2012*. Copy on file with Human Rights First.
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- ¹⁶ Human Rights First, *Persistent Needs and Gaps*.
- ¹⁷ Government of Uganda, The Penal Code Act, Chapter 120 (1950).
- ¹⁸ Human Rights First interview with LGBTI rights organization, Kampala, Uganda, August 5, 2011.
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- ²² Sexual Minorities Uganda, "Sexual Minorities Uganda (SMUG) outraged by the closure of LGBTI capacity development workshop by the State Minister of Ethics and Integrity Rev. Fr. Simon Lokodo," February 15, 2012, available at <http://www.iglhr.org/binary-data/ATTACHMENT/file/000/000/560-1.pdf> (accessed March 23, 2012). Amnesty International, "Uganda: Government raid on LGBT-rights workshop," February 2012, available at <http://www.amnesty.org/en/news/uganda-government-raid-lgbt-rights-workshop-2012-02-14> (accessed March 23, 2012).
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- ⁴¹² Human Rights First communication with Resettlement Agency Staff, New York, March 7, 2012.
- ⁴¹³ *Ibid.*
- ⁴¹⁴ Bureau for Population, Refugees and Migration, “Expedited Protection and Resettlement.”
- ⁴¹⁵ *Ibid.*, p. 2.
- ⁴¹⁶ Madhani, “Fear of al-Qaeda sabotages Iraqis’ chances.”
- ⁴¹⁷ Human Rights First email communication with DHS official based in Washington, DC, April 4, 2012.
- ⁴¹⁸ *Ibid.*
- ⁴¹⁹ *Ibid.*
- ⁴²⁰ Human Rights First email correspondence with USCIS officials based in Washington, DC, May 4, 2012.
- ⁴²¹ In email correspondence with Human Rights First, USCIS noted that the five working days processing time includes sufficient time to definitively determine whether the checks are “cleared” or “not cleared”, rather than “no decision”. Human Rights First email correspondence with USCIS officials based in Washington, DC, May 4, 2012.
- ⁴²² UN High Commissioner for Refugees, *UNHCR Note: The effects of new United States security screening measures for refugees*.
- ⁴²³ Bureau for Population, Refugees and Migration, “Expedited Protection and Resettlement.”
- ⁴²⁴ Human Rights First, *Living in Limbo*. Madhani, “Fear of al-Qaeda sabotages Iraqis’ chances
- ⁴²⁵ Bureau for Population, Refugees and Migration, “Expedited Protection and Resettlement.”
- ⁴²⁶ *Ibid.*
- ⁴²⁷ Human Rights First personal communication with DHS officials, Washington, DC, April 26, 2012.
- ⁴²⁸ Although PRM and DHS have indicated that U.S. regulations require refugee applicants to be interviewed in person, and there are serious concerns about the use of videoconferencing to conduct asylum-related interviews and hearings within the United States (in places where live interviews and hearings could and should be provided), its use in very limited circumstances in the resettlement context - where RSC staff or USCIS officers simply cannot safely reach applicants or where they cannot reach applicants quickly enough to ensure their protection - should be explored. See Human Rights First, *U.S. Detention of Asylum Seekers: Seeking Protection, Finding Prison* (2009), available at <http://www.humanrightsfirst.org/wp-content/uploads/pdf/090429-RP-hrf-asylum-detention-report.pdf> (accessed April 2, 2012). See also The Legal Assistance Foundation of Metropolitan Chicago and Chicago Appleseed Fund for Justice, “Videoconferencing in Removal Proceedings: A Case Study of the Chicago Immigration Court,” August 2, 2005, available at <http://appleseednetwork.org/Portals/0/Documents/Publications/Center%20Pubs/Chicago%20Videoconferencing%20Report.pdf> (accessed April 2, 2012).
- ⁴²⁹ UN High Commissioner for Refugees, *UNHCR Policy on Refugee Protection and Solutions in Urban Areas*.
- ⁴³⁰ *Ibid.*, p. 18.
- ⁴³¹ UN High Commissioner for Refugees, *Working with Lesbian, Gay, Bisexual, Transgender & Intersex Persons in Forced Displacement*.

- ⁴³² UN High Commissioner for Refugees, *UNHCR Guidance*.
- ⁴³³ Human Rights First interview with senior member of UNHCR staff, Nairobi, Kenya, August 5, 2011.
- ⁴³⁴ Human Rights First interview with UNHCR staff member, Nairobi, Kenya, August 4, 2011.
- ⁴³⁵ Human Rights First interview with UNHCR staff member, Kampala, Uganda, August 11, 2011.
- ⁴³⁶ Human Rights First interview with UNHCR staff member, Kampala, Uganda, August 11, 2011.
- ⁴³⁷ Human Rights First interview with refugee service provider, Kampala, Uganda, August 15, 2011.
- ⁴³⁸ In April 2010, the Special Rapporteur on the Right to Health released a report that included a focus on the right to health for LGBTI persons in countries that criminalize same-sex conduct. This report notes that “health services must be accessible for all, without discrimination, especially for the most vulnerable or marginalized sections of the population. The repeal of laws criminalizing consensual same-sex conduct between adults helps to ensure compliance with this State obligation”. UN Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, 27 April 2010, A/HRC/14/20, available at: <http://www.unhcr.org/refworld/docid/4c076fb72.html> (accessed March 29, 2012).
- ⁴³⁹ Human Rights First interview with intersex rights group, Kampala, Uganda, August 12, 2011.
- ⁴⁴⁰ Human Rights First interview with refugee social assistance NGO, Nairobi, Kenya, July 25, 2011. Human Rights First interview with refugee service provider, Kampala, Uganda, August 9 and 12, 2011.
- ⁴⁴¹ Parliament of Uganda, “Anti-Homosexuality Bill, Bill No 18, 2009,” September 25, 2009, available at <http://www.boxturtlebulletin.com/btb/wp-content/uploads/2009/10/Bill-No-18-Anti-Homosexuality-Bill-2009.pdf> (accessed March 29, 2012).
- ⁴⁴² Specific recommendations on these components are made throughout the body of this report.
- ⁴⁴³ Human Rights First interview with refugee social assistance NGO, Nairobi, Kenya, July 25, 2011. Human Rights First interview with refugee service provider, Kampala, Uganda, August 15, 2011.
- ⁴⁴⁴ UN High Commissioner for Refugees, *Working with Lesbian, Gay, Bisexual, Transgender & Intersex Persons in Forced Displacement*, p. 12.
- ⁴⁴⁵ Human Rights First interview with resettlement NGO, Nairobi, Kenya, July 26, 2011. Human Rights First phone conversation with refugee assistance NGO based in Kampala, Uganda, February 2, 2012.
- ⁴⁴⁶ UN High Commissioner for Refugees, *Working with Lesbian, Gay, Bisexual, Transgender & Intersex Persons in Forced Displacement*, p. 8.
- ⁴⁴⁷ *UNHCR-NGO Partnership Concepts*.
- ⁴⁴⁸ UN High Commissioner for Refugees, *Report on Age, Gender and Diversity Mainstreaming*, 2 June 2008, EC/59/SC/CRP.14, available at: <http://www.unhcr.org/refworld/docid/4868f3e02.html> (accessed February 7, 2012).
- ⁴⁴⁹ *Ibid.*
- ⁴⁵⁰ UN High Commissioner for Refugees, *Age, Gender and Diversity Policy*, 8 June 2011, available at: <http://www.unhcr.org/refworld/docid/4def34f6887.html> (accessed January 5, 2012).
- ⁴⁵¹ Human Rights First interview with UNHCR implementing partner, Kampala, Uganda, August 19, 2011.
- ⁴⁵² Human Rights First email correspondence with UNHCR staff member based in Kampala, Uganda, January, 20, 2012.
- ⁴⁵³ Human Rights First email correspondence with UNHCR DIP, December 15, 2011.
- ⁴⁵⁴ Dr Leslie Groves, *UNHCR Accountability Framework for Age, Gender and Diversity Mainstreaming and Targeted Actions: 2009 -2010 Global Analysis* (2010), p. 3, available at <http://www.unhcr.org/4c5193a39.pdf> (accessed February 16, 2012).
- ⁴⁵⁵ UN High Commissioner for Refugees, *UNHCR Accountability Framework for Age, Gender and Diversity Mainstreaming* (May 2007), available at: <http://www.unhcr.org/refworld/docid/47a707950.html> (accessed February 16, 2012).
- ⁴⁵⁶ UN High Commissioner for Refugees, *Summary Conclusions*.
- ⁴⁵⁷ Human Rights First interview with UNHCR staff member, Nairobi, Kenya, August 4, 2011. Human Rights First interview with UNHCR implementing partner, Nairobi, Kenya, August 3, 2011. Human Rights First interview with legal assistance NGO, Nairobi, Kenya, August 3, 2011. Human Rights First interview with social assistance NGO, Nairobi, Kenya, July 28, 2011. Human Rights First email correspondence with UNHCR staff member based in Kampala, Uganda, November 24, 2011.
- ⁴⁵⁸ Human Rights First interview with legal service provider, Nairobi, Kenya, August 3, 2011.
- ⁴⁵⁹ Human Rights First interview with a gay male refugee from Uganda, Nairobi, Kenya, July 29, 2011.
- Human Rights First interview with gay male refugee from Somalia, Nairobi, Kenya, August 5, 2011. Human Rights First interview with a gay male refugee from the Great Lakes region, Nairobi, Kenya, August 5, 2011.
- ⁴⁶⁰ Human Rights First interview with refugee legal service provider, Kampala, Uganda, August 15, 2011. Human Rights First interview with refugee community-based organization, Kampala, Uganda, August 11, 2011.

- ⁴⁶¹ Human Rights First phone interview with refugee service provider based in Kampala, Uganda, December 1, 2011.
- ⁴⁶² Human Rights First interview with a gay male refugee from the Great Lakes region, Nairobi, Kenya, August 5, 2011.
- ⁴⁶³ Human Rights First interview with a gay male refugee from the Great Lakes region, Nairobi, Kenya, August 5, 2011.
- ⁴⁶⁴ Human Rights First email correspondence with social assistance NGO based in Nairobi, Kenya, April 4, 2012.
- ⁴⁶⁵ Human Rights First interview with Kenyan LGBTI rights network, Nairobi, Kenya, August 1, 2011. Human Rights First interview with Ugandan LGBTI rights network, Kampala, Uganda, August 17, 2011.
- ⁴⁶⁶ Human Rights First interview with Kenyan LGBTI rights network, Nairobi, Kenya, August 1, 2011. Human Rights First interview with Ugandan LGBTI rights network, Kampala, Uganda, August 17, 2011. Human Rights First interview with Ugandan LGBTI NGO, Kampala, Uganda, August 17, 2011.
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- ⁴⁶⁸ Human Rights First phone interview with former staff member of NGO based in Nairobi, Kenya, January 13, 2012.
- ⁴⁶⁹ Human Rights First email correspondence with LGBTI group based in Lodwar, Kenya, November 17, 2011.
- ⁴⁷⁰ Human Rights First phone interview with LGBTI organization based in Mombasa, Kenya, August 3, 2011.
- ⁴⁷¹ Human Rights First interview with UNHCR senior staff, Nairobi, Kenya, August 5, 2011. Human Rights First interview with UNHCR staff, Kampala, Uganda, August 11, 2011.
- ⁴⁷² Human Rights First interview with refugee legal service provider, Kampala, Uganda, August 15, 2011.
- ⁴⁷³ UN High Commissioner for Refugees, "Registration: More than a Head Count", available at <http://www.unhcr.org/pages/49c3646cf5.html> (accessed February 14, 2012).
- ⁴⁷⁴ Human Rights First interview with gay male Somali refugee, Nairobi, Kenya, August 5, 2011.
- ⁴⁷⁵ UN High Commissioner for Refugees, *UNHCR Handbook for Registration*, September 2003, available at <http://www.unhcr.org/refworld/docid/3f967dc14.html> (accessed 14 February 2012).
- ⁴⁷⁶ Human Rights First interview with UNHCR staff member, Nairobi, Kenya, August 4, 2011.
- ⁴⁷⁷ UN High Commissioner for Refugees, *Navigating Nairobi*.
- ⁴⁷⁸ Human Rights First interview with UNHCR registration staff, Nairobi, Kenya, August 4, 2011.
- ⁴⁷⁹ Human Rights First interview with UNHCR registration staff, Nairobi, Kenya, August 4, 2011.
- ⁴⁸⁰ Human Rights First email correspondence with UNHCR staff member based in Nairobi, Kenya, January 25, 2012.
- ⁴⁸¹ Human Rights First personal communication with UNHCR staff based in Geneva, Switzerland, December 5, 2011.
- ⁴⁸² Human Rights First interview with UNHCR registration staff, Nairobi, Kenya, August 4, 2011.
- ⁴⁸³ Human Rights First interview with UNHCR registration staff, Nairobi, Kenya, August 4, 2011.
- ⁴⁸⁴ Human Rights First email communication with UNHCR staff based in Nairobi, Kenya, January 8, 2012.
- ⁴⁸⁵ Human Rights First interview with resettlement NGO, Nairobi, Kenya, July 26, 2011.
- ⁴⁸⁶ Human Rights First interview with UNHCR protection staff, Nairobi, Kenya, August 4, 2011.
- ⁴⁸⁷ Human Rights First interview with social assistance NGO, Nairobi, Kenya, July 25, 2011.
- ⁴⁸⁸ Human Rights First interview with gay male refugee from Uganda, Nairobi, Kenya, August 5, 2011.
- ⁴⁸⁹ UN High Commissioner for Refugees, *UNHCR Guidance Note*. UN High Commissioner for Refugees, *Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, HCR/GIP/02/01, available at: <http://www.unhcr.org/refworld/docid/3d36f1c64.html> (accessed May 3, 2012). UN High Commissioner for Refugees, *Guidelines on International Protection No. 2: "Membership of a Particular Social Group" Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, HCR/GIP/02/02, available at: <http://www.unhcr.org/refworld/docid/3d36f23f4.html> (accessed May 3, 2012). UN High Commissioner for Refugees, *Advisory Opinion by UNHCR to the Tokyo Bar Association Regarding Refugee Claims Based on Sexual Orientation*, 3 September 2004, available at: <http://www.unhcr.org/refworld/docid/4551c0d04.html> (accessed May 3, 2012).
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- ⁴⁹¹ Republic of South Africa, Refugees Act, Act 130 of 1998, available at <http://www.info.gov.za/view/DownloadFileAction?id=70666> (accessed April 3, 2012).
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- ⁴⁹³ UN Office of the High Commissioner for Human Rights, *Discriminatory laws and practices and acts of violence*, paragraph 39.

- ⁴⁹⁴ *Ibid*, paragraph 8, paragraph 41.
- ⁴⁹⁵ *Ibid*, p. 14.
- ⁴⁹⁶ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, Article 33, available at: <http://www.unhcr.org/refworld/docid/3be01b964.html> (accessed March 19, 2012).
- ⁴⁹⁷ *Ibid*. Organization of African Unity, *Convention Governing the Specific Aspects of Refugee Problems in Africa ("OAU Convention")*, 1001 U.N.T.S. 45 (1969), available at: <http://www.unhcr.org/refworld/docid/3ae6b36018.html> (accessed April 2, 2012). UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, United Nations, Treaty Series, vol. 1465 (1984) p. 85, available at: <http://www.unhcr.org/refworld/docid/3ae6b3a94.html> (accessed April 2, 2012). International Commission of Jurists (ICJ), *Sexual Orientation and Gender Identity in Human Rights Law*, p. 129. The Yogyakarta Principles confirm that “everyone has the right to seek and enjoy in other countries asylum from persecution, including persecution related to sexual orientation or gender identity”. International Commission of Jurists (ICJ), *Yogyakarta Principles*, p. 27.
- ⁴⁹⁸ Human Rights First interview with representative of the Office of the Prime Minister, Kampala, Uganda, August 16, 2011.
- ⁴⁹⁹ Human Rights First interview with representative of the Department of Refugee Affairs, Nairobi, Kenya, August 5, 2011.
- ⁵⁰⁰ Moreover, some states have recognized these asylum claims even when they had laws in place that criminalized same sex conduct. For instance, the United States Board of Immigration Appeals ruled that a gay Cuban man could not be deported to persecution in the *Matter of Toboso-Alfonso*, 20 I.& N. Dec. 819 (BIA 1990), despite laws being in place in a number of U.S. jurisdictions that criminalized same sex relations.
- ⁵⁰¹ UN Office of the High Commissioner for Human Rights, *Discriminatory laws and practices and acts of violence*, paragraph 39. UN High Commissioner for Refugees, *Summary Conclusions*, paragraph 8.
- ⁵⁰¹ Parliament of Uganda, Refugees Act (2006).
- ⁵⁰² UN High Commissioner for Refugees, *UNHCR Guidance Note*, paragraph 17.
- ⁵⁰³ UN Office of the High Commissioner for Human Rights, *Discriminatory laws and practices and acts of violence*, p. 14.
- ⁵⁰⁴ As noted throughout this report, criminalization laws impact on LGBTI persons’ access to health care and other services, police protection, as well as access to asylum.
- ⁵⁰⁵ UN High Commissioner for Refugees, *UNHCR Guidance Note*, paragraph 22.
- ⁵⁰⁶ Human Rights First email communication with refugee-assisting NGO based in Kampala, Uganda, April 3, 2012. UN High Commissioner for Refugees, *Summary Conclusions*, paragraph 12.
- ⁵⁰⁷ Parliament of Uganda, Refugees Act (2006).
- ⁵⁰⁸ UN High Commissioner for Refugees, *UNHCR Guidance Note*, paragraph 22.
- ⁵⁰⁹ UN High Commissioner for Refugees, *Summary Conclusions*, paragraph 9.
- ⁵¹⁰ The summary conclusions from the expert roundtable state that, with respect to laws that criminalize same sex conduct in an asylum seeker’s countries of origin, “it is unreasonable to demand that claimants first seek state protection when their country of origin maintains such laws.” UN High Commissioner for Refugees, *Summary Conclusions*, paragraph 12.
- ⁵¹¹ UN High Commissioner for Refugees, *UNHCR Resettlement Handbook*, p. 200. UN High Commissioner for Refugees, *Working with Lesbian, Gay, Bisexual, Transgender & Intersex Persons in Forced*
- ⁵¹² Human Rights First interview with refugee community-based organization, Kampala, Uganda, August 11, 2011.
- ⁵¹³ Human Rights First interview with bisexual refugee woman, Kampala, Uganda, August 11, 2011.
- ⁵¹⁴ Human Rights First interview with refugee assisting NGO, Nairobi, Kenya, July 27, 2011.
- ⁵¹⁵ Human Rights First interview with refugee service provider, Kampala, Uganda, August 9, 2011. Human Rights First interview with social assistance NGO, Nairobi, Kenya, July 25, 2011. Human Rights First interview with refugee community-based organization, Kampala, Uganda, August 11, 2011.
- ⁵¹⁶ Human Rights First interview with social assistance NGO, Nairobi, Kenya, August 5, 2011. Human Rights First email correspondence with U.S.-based NGO with Ugandan country operation, December 8, 2011.
- ⁵¹⁷ Bureau of Population, Refugees and Migration, “General Guidelines for Overseas Assistance,” January 19, 2012, available at <http://www.state.gov/j/prm/releases/releases/2012/183974.htm> (accessed May 7, 2012).).
- ⁵¹⁸ *Ibid*.
- ⁵¹⁹ Human Rights First email correspondence with health service provider based in the US, December 15, 2011.
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- ⁵²¹ Human Rights First interview with UNHCR staff member, Nairobi, Kenya, August 4, 2011. Human Rights First interview with UNHCR staff member, Nairobi, Kenya, August 5, 2011. Human Rights First interview with UNHCR staff member, Kampala, Uganda, August 11, 2011.

- ⁵²² Human Rights First interview with social assistance NGO, Nairobi, Kenya, July 25, 2011. Human Rights First interview with UNHCR staff, Nairobi, Kenya, August 4, 2011. Human Rights First interview with UNHCR staff, Nairobi, Kenya, August 5, 2011. Human Rights First interview with refugee assistance NGO, Kampala, Uganda, August 12, 2011. Human Rights First interview with UNHCR staff, Kampala, Uganda, August 10, 2011.
- ⁵²³ Human Rights First interview with UNHCR senior staff member, Nairobi, Kenya, August 5, 2011.
- ⁵²⁴ Human Rights First interview with refugee social assistance NGO, Nairobi, Kenya, July 28, 2011 and August 5, 2011.
- ⁵²⁵ Presentation by Kenyan NGO at UNHCR Annual Consultations side event entitled "The Role of NGOs in the Protection of Refugees Fleeing Persecution Based on Sexual Orientation or Gender Identity: Barriers, Strategies and Ways Forward", June 29, 2011. Copy of minutes on file with Human Rights First.
- ⁵²⁶ Human Rights First interview with refugee assisting NGO, Kampala, Uganda, August 19, 2011.
- ⁵²⁷ The introduction to UNHCR's Code of Conduct notes that the Charter of the United Nations and Staff Regulations and Rules remain "the only legal instruments that determine acceptable conduct in UNHCR." See UN High Commissioner for Refugees, *Code of Conduct and Explanatory Notes* (June 2004), p. 5, available at <http://www.unhcr.org/422dbc89a.html> (accessed November 16, 2011).
- ⁵²⁸ UN High Commissioner for Refugees, *Code of Conduct and Explanatory Notes*, p. 7.
- ⁵²⁹ UN High Commissioner for Refugees, *Code of Conduct and Explanatory Notes*.
- ⁵³⁰ UN High Commissioner for Refugees, *Working with Lesbian, Gay, Bisexual, Transgender & Intersex Persons in Forced Displacement*, p. 7.
- ⁵³¹ Human Rights First interview with refugee community-based organization representative, Kampala, Uganda, August 19, 2011.
- ⁵³² Human Rights First phone conversation with refugee assistance NGO based in Kampala, Uganda, February 2, 2012.
- ⁵³³ Human Rights First interview with refugee social assistance NGO, Nairobi, Kenya, July 25, 2011.
- ⁵³⁴ NGOs in both countries have training modules including components on LGBTI sensitivity available.
- ⁵³⁵ Human Rights First interview with UNHCR resettlement staff member, Nairobi, Kenya, August 5, 2011.
- ⁵³⁶ Human Rights First interview with refugee assisting NGO, Kampala, Uganda, August 19, 2011. Human Rights First email communication with UNHCR staff based in Kampala, Uganda, January 19, 2012.
- ⁵³⁷ Human Rights First phone interview with social assistance NGO based in Kampala, Uganda, April 3, 2012.
- ⁵³⁸ Human Rights First interview with refugee social assistance NGO, Nairobi, Kenya, July 25, 2011. Human Rights First interview with refugee assisting NGO, Nairobi, Kenya, August 5, 2011.
- ⁵³⁹ Human Rights First interview with refugee social assistance NGO, Nairobi, Kenya, July 25, 2011.
- ⁵⁴⁰ Human Rights First interview with refugee social assistance NGO, Nairobi, Kenya, July 25, 2011.
- ⁵⁴¹ Human Rights First interview with refugee service provider, Kampala, Uganda, August 12, 2011.
- ⁵⁴² Human Rights First interview with refugee service provider, Kampala, Uganda, August 12, 2011.
- ⁵⁴³ Human Rights First interview with refugee assisting NGO, Kampala, Uganda, August 19, 2011.
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- ⁵⁴⁵ Human Rights First interview with service provider, Nairobi, Kenya, August 3, 2011.
- ⁵⁴⁶ Human Rights First email correspondence with refugee social assistance NGO, Nairobi, Kenya, March 5, 2012. Human Rights First email correspondence with refugee service provider, Kampala, Uganda, March 5, 2012.
- ⁵⁴⁷ Human Rights First email communication with Global Learning Center staff, December 20, 2011.
- ⁵⁴⁸ See UN High Commissioner for Refugees, *Procedural Standards for Refugee Status Determination Under UNHCR's Mandate*, 20 November 2003, available at: <http://www.unhcr.org/refworld/docid/42d66dd84.html> (accessed 9 January 2012), pp. 2-22.
- ⁵⁴⁹ Explanatory notes published with UNHCR's *Code of Conduct* note that "failure to comply with the Code may amount to misconduct, if by any action or omission, the staff member has violated a Staff Regulation or Rule, taking into account all the circumstances of the case." UN High Commissioner for Refugees, *Code of Conduct and Explanatory Notes*, p. 18.
- ⁵⁵⁰ UNHCR DIP staff noted that UNHCR staff have previously been disciplined for contravening the Code of Conduct although this was not specifically regarding sexual orientation or gender identity. Human Rights First personal communication with UNHCR staff based in Geneva, Switzerland, December 5, 2011.
- ⁵⁵¹ NGOs in East Africa reported that some refugee communities are very well organized and information passes quickly through the community. Human Rights First phone interview with refugee social assistance NGO based in Nairobi, Kenya, January 31, 2012. Human Rights First interview with refugee assistance NGO based in Kampala, Uganda, February 17, 2012.
- ⁵⁵² Human Rights First interview with gay male refugee from the Great Lakes region, Nairobi, Kenya, August 5, 2011. Human Rights First interview with refugee community-based organization, Kampala, Uganda, August 11, 2011.

- ⁵⁵³ Human Rights First interview with gay male refugee from the Great Lakes region, Nairobi, Kenya, August 5, 2011.
- ⁵⁵⁴ Human Rights First interview with refugee service provider, Kampala, Uganda, August 15, 2011.
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- ⁵⁵⁶ Human Rights First interview with gay male refugee from the Great Lakes region, Nairobi, Kenya, August 5, 2011.
- ⁵⁵⁷ Human Rights First visit to social assistance NGO, Nairobi, Kenya, July 25, 2011.
- ⁵⁵⁸ Human Rights First visit to refugee service provider, Kampala, Uganda, August 9, 2011.
- ⁵⁵⁹ UN High Commissioner for Refugees, *Working with Lesbian, Gay, Bisexual, Transgender & Intersex Persons in Forced Displacement*.
- ⁵⁶⁰ Human Rights First interview with refugee community-based organization, Kampala, Uganda, August 11, 2011. Human Rights First interview with gay male refugee from the Great Lakes region, Nairobi, Kenya, August 5, 2011. Human Rights First interview with social assistance NGO, Nairobi, Kenya, July 25, 2011.
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- ⁵⁶² Human Rights First email correspondence with social assistance NGO based in Nairobi, Kenya, April 4, 2012.
- ⁵⁶³ Human Rights First interview with refugee service provider, Kampala, Uganda, August 15, 2011. Human Rights First interview with refugee community-based organization, Kampala, Uganda, August 11, 2011. Human Rights First interview with translator, Kampala, Uganda, August 16, 2011.
- ⁵⁶⁴ Human Rights First personal communication with UNHCR staff based in Geneva, Switzerland, December 5, 2011.



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