

**Enhancing Protection of Sexual & Gender Minority
Beneficiaries and Staff
in Organizational Codes of Conduct:**

Model Code & Analyses

Based on the Code of Conduct of
The United Nations High Commissioner for Refugees (UNHCR)



ORAM

Organization for Refuge,
Asylum & Migration

www.oramrefugee.org

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A fillable and downloadable model code of conduct for refugee agencies is available online at <http://oramrefugee.org/sgm-respectful-model-code>.

About ORAM

ORAM—Organization for Refuge, Asylum & Migration is a nonprofit organization that enables the international community to work with and protect exceptionally vulnerable refugees and asylum seekers. ORAM delivers cutting-edge research, tools, publications, training and empirically based assessment programs to refugee professionals, institutions and governments around the world.

Committed to maintaining the integrity of the international refugee system, ORAM expands and strengthens the skills of refugee professionals to accurately assess refugee claims while ensuring that each refugee is treated properly and fairly. Trusted by governments, international institutions and other nonprofit organizations, ORAM works at all levels to narrow the assessment and protection gaps that endanger exceptionally vulnerable refugees, including sexual and gender minorities (SGMs).

Since its founding in 2008, ORAM has trained thousands of adjudicators and protection professionals around the world, and directly assisted hundreds of individual refugees. ORAM's training of refugee professionals in fifteen countries has impacted thousands of refugees and asylum applicants.

To learn more about ORAM's training, research, publications and other resources for refugee professionals, visit www.oramrefugee.org or email info@oraminternational.org.

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Introduction

This model code of conduct provides a behavioural rulebook and an ethical compass¹ for modern aid organizations, with focus on the particular needs and sensitivities of sexual and gender minorities (“SGMs”). In the international refugee protection arena, where humanitarian values are paramount, adoption of the code is an expression of an organization’s commitment to those values. It must present a compassionate approach to working with marginalized groups, including persons whose gender, sex, sexual orientation, gender identity or gender expression differ from those of the majority of the surrounding society.²

This publication examines the treatment of SGMs in the most-utilized code of conduct in the field of international refugee protection: that of the Office of the United Nations High Commissioner for Refugees (UNHCR).³ We aim to identify gaps in the UNHCR Code’s coverage of SGM refugees and staff, and propose specific amendments to narrow these gaps. In several instances, the suggested amendments address gaps related to other grounds of prohibited discrimination. However, the suggested amendments are not exhaustive in this regard.

While the following statement of rules of conduct and behavioral objectives will set out the basic requirements for those working with SGM populations, we strongly encourage organizations to make full use of the accompanying analyses, commentaries and suggested language presented in this publication. This ancillary material can be an important teaching tool, helping staff to attain a deeper understanding of the subtleties and complexities that underlie the policies and to acquire practical skills in applying the rules.⁴ These materials draw on ORAM’s extensive practical experience working with SGM populations within the refugee context; they are informed in part by ORAM’s more formal studies and surveys, specifically addressed to the needs of SGM refugees.

An online version of the UNHCR Code of Conduct as amended is available on the ORAM website at <http://oramrefugee.org/sgm-respectful-model-code>. Refugee and other humanitarian organizations may adopt this online version in its entirety, or may select those portions pertinent to them.

1. JOHN D. SULLIVAN, INT’L FIN. CORP., *THE MORAL COMPASS OF COMPANIES: BUSINESS ETHICS AND CORPORATE GOVERNANCE AS ANTI-CORRUPTION TOOLS* (2009).

2. See ORAM - ORGANIZATION FOR REFUGEE, ASYLUM AND MIGRATION, *SEXUAL ORIENTATION, GENDER IDENTITY AND GENDER EXPRESSION: ESSENTIAL TERMINOLOGY FOR THE HUMANITARIAN SECTOR* [hereinafter referred to as ORAM’S SOGI TERMINOLOGY GUIDE], p. 20 (2016).

3. UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR), *CODE OF CONDUCT AND EXPLANATORY NOTES INCLUDING THE SECRETARY-GENERAL’S BULLETIN ON SPECIAL MEASURES FOR PROTECTION FROM SEXUAL EXPLOITATION AND SEXUAL ABUSE, ST/SGB/2003/13* (Jun. 2004), available at: <http://www.unhcr.org/422dbc89a.html> [hereinafter referred to as UNHCR CODE OF CONDUCT AND EXPLANATORY NOTES].

4. ORAM offers consulting services for development of sexual orientation and gender identity (SOGI)-sensitive codes of conduct. Interested agencies may write us at training@oraminternational.org.

Codes of Conduct in International Organizations

Codes of conduct are particularly beneficial to international organizations because they help to establish a uniform pattern of conduct among staff that may be drawn from diverse social backgrounds, religions, cultures, and belief systems. The more diverse the organization's human resource pool, the more essential the code.

Codes of conduct play an even more significant role in international organizations that work extensively with diverse populations. In such work, a well-designed code of conduct is an essential roadmap for effective, uniform engagement with beneficiaries.

Codes of conduct are severely tested where they challenge employees' values – whether personal, cultural or religious. When an employee feels alienated from, or at odds with the employer's values, dissonance forms, eroding morale and weakening staff cohesion. This is particularly true in humanitarian work, where personal values are a primary motivator for working in the field.

In the international context, codes of conduct form an essential bridge across diverse legal systems, providing organizations with a uniform set of rules to guide behaviour.

Because of their precarious social and legal position, SGMs are particularly dependent on the protection that codes of conduct provide.

UNHCR as an International Leader in SGM Refugee Protection

UNHCR (or “the Agency”) is unique among international organizations and among United Nations (UN) agencies. It is at once the custodian of the 1951 Refugee Convention,⁵ the pronounced guardian of international refugee law,⁶ and arguably the single most important stakeholder in refugee status determination (RSD) worldwide.⁷ The Agency maintains thousands of staff in over 120 countries.⁸ UNHCR dominates and guides the field of international refugee protection. Its documents and tools serve as a model for governments and non-governmental organizations (NGOs).

The UNHCR Code of Conduct is applied at hundreds of partner agencies,⁹ and has been adopted by hundreds more agencies which either aspire to partner with UNHCR or have simply incorporated its Code of Conduct for lack of a readily-available alternative. UNHCR and its Code of Conduct are particularly important to the protection of SGM communities worldwide, as the institution is the only UN agency charged with active protection of SGM individuals.

5. Convention Relating to the Status of Refugees, U.N. General Assembly (G.A.), Treaty Series, vol. 189, p. 137 (Jul. 28, 1951).

6. Statute of the Office of the UNHCR, U.N. G.A. Res. 428 (V), U.N. Doc. A/RES/428(V) (Dec. 14, 1950).

7. UNHCR, Refugee Status Determination, <http://www.unhcr.org/refugee-status-determination.html> (last accessed July 20, 2016).

8. Over 9,300 staff members assist and protect some 55 million refugees, internally displaced persons and returnees. See UNHCR, Figures at a Glance, Staff figures, available at <http://www.unhcr.org/figures-at-a-glance.html> (last accessed July 12, 2016); UNHCR, About Us: Where we work, available at <http://www.unhcr.org/where-we-work.html> (last accessed July 11, 2016); and UNHCR, WORLD AT WAR UNHCR GLOBAL TRENDS FORCED DISPLACEMENT IN 2014, available at <http://www.unhcr.org/556725e69.pdf>.

9. UNHCR CODE OF CONDUCT AND EXPLANATORY NOTES, *supra* note 3.

Codes of Conduct on Gender, Sex, Sexual Orientation & Gender Identity

Codes of conduct play a particularly central role in ensuring protection of SGMs. In virtually every culture around the world, values and beliefs surrounding gender,¹⁰ sex,¹¹ sexual orientation¹² and gender identity¹³ (“SOGI”) are deeply held.¹⁴ In many environments, challenges to these values are viewed with great offence and may be perceived as an attack on the local culture and religion.¹⁵ This may be particularly true when such challenges are perceived to emanate from foreign sources. International “gay rights” advocacy in particular is often dismissed as irrelevant or antagonistic. On occasion, it can instigate nationalistic violence.¹⁶

Nonconforming SOGI, as conflated with “homosexuality”, is one of the most culturally and religiously contentious phenomena worldwide. In North America, Western Europe, Australia, New Zealand and much of Latin America, same-sex relationships are accepted by the public at rates ranging from just over 50% to 88%.¹⁷ In contrast, in the countries where virtually all of the world’s refugees reside,¹⁸ and the vast bulk of international refugee protection work is carried out, opposition to “homosexuality” runs at well over 95% of the population.¹⁹ SGMs are subject to outright legal discrimination, criminalization, deeply pervasive social marginalization, violence and other human rights abuses.²⁰

10. Defined as “The social, cultural and psychological qualities that are associated with being a man or a woman. This can encompass personal identity and expression as well as societal, structural and cultural norms” in ORAM’s SOGI TERMINOLOGY GUIDE, *supra* note 2, p. 15.

11. Defined as “A legal, anatomical and/or biological distinction, typically of being male or female, and sometimes of being intersex or another status” in ORAM’s SOGI TERMINOLOGY GUIDE, *supra* note 2, p. 19.

12. Defined as “A person’s sexual and/or romantic attraction to persons of a different sex or gender, the same sex or gender, more than one sex or gender, or to no persons of any sex or gender. Typical examples of sexual orientations include heterosexual/straight, lesbian, gay, bisexual and asexual” in ORAM’s SOGI TERMINOLOGY GUIDE, *supra* note 2, p. 20.

13. Defined as “A person’s deeply felt internal and individual experience of gender (e.g. of being a man, a woman, in-between, neither or something else), which may or may not correspond to societal expectations based on their sex assigned at birth” in ORAM’s SOGI TERMINOLOGY GUIDE, *supra* note 2, p. 15.

14. PENELOPE ECKERT & SALLY MCCONNELL-GINET, LANGUAGE AND GENDER, p. 15-16 (Cambridge University Press 2003).

15. Tim Walker, How Uganda Was Seduced by Anti-Gay Conservative Evangelicals, INDEPENDENT (London), (Mar. 14, 2014), available at <http://www.independent.co.uk/news/world/africa/how-uganda-was-seduced-by-anti-gay-conservative-evangelicals-9193593.html> (last accessed Jul. 11, 2016).

16. Thomas Spijkerboer, Key Note Speech at the Nordic Asylum Seminar, University of Uppsala: European Sexual Nationalism: Refugee Law After the Gender & Sexuality Critiques (May 8, 2015).

17. PEW RESEARCH CENTER, THE GLOBAL DIVIDE ON HOMOSEXUALITY, (JUN. 4, 2013, updated MAY 27, 2014), AVAILABLE AT <http://www.pewglobal.org/2013/06/04/the-global-divide-on-homosexuality/> [hereinafter referred to as THE GLOBAL DIVIDE OF HOMOSEXUALITY]. THIS SURVEY DID NOT POLL THE PUBLIC IN NEW ZEALAND. NEW ZEALAND IS ONE OF THE COUNTRIES RECOGNIZING SAME-SEX MARRIAGE, see: PEW RESEARCH CENTER, A GLOBAL SNAPSHOT OF SAME-SEX MARRIAGE, (JUN. 3, 2013), AVAILABLE AT: <http://www.pewresearch.org/fact-tank/2013/06/04/global-snapshot-sex-marriage/> (LAST ACCESSED JUL. 11, 2016).

18. UNHCR, UNHCR Statistics: The World in Numbers, available at http://popstats.unhcr.org/en/overview#_ga=1.209165074.105296016.1429619373 (last accessed July 11, 2016).

19. THE GLOBAL DIVIDE OF HOMOSEXUALITY, *supra* note 17.

20. The countries with the highest refugee populations, and therefore significant operations by refugee organizations, are Turkey, Pakistan, Lebanon, Iran, Ethiopia, Jordan, Kenya and Uganda. While Turkish law does not explicitly discriminate against SGMs, legal references to “offenses against public morality”, “protection of the family”, and “unnatural sexual behavior” have provided a basis for abuse by police and discrimination, alongside general intolerance for sexual minorities (BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, US STATE DEPARTMENT, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2014, (2015), available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport> and ORAM – ORGANIZATION FOR REFUGEE,

In the challenging social contexts of these humanitarian relief efforts, codes of conduct can help to effectively mediate between broadly protective organizational policies on one hand, and deeply held personal, cultural or religious values and laws antithetical to SGM persons on the other. One way in which this works is by creating a clear demarcation between professional conduct and personal belief systems. The rules established by codes of conduct allow those working within and on behalf of refugee populations to remain effective professionals within the strict operational requirements of the organization, with the understanding that the sanctity of their private beliefs and values are respected outside the workplace, even if antithetical.

Effective codes draw a roadmap connecting contrasting values and laws, and permit refugee professionals to maintain their loyalty to the organization and its beneficiaries while holding on to their own deeply held personal values. Of equal importance, codes must point to procedures and mechanisms for their sensitive and harmonious implementation. Particularly in culturally sensitive fields such as SOGI, a code which is implemented in an insensitive, contentious or coercive manner will at best be ignored. At worst, it will engender discontent and intra-organizational strife. We strongly encourage agencies implementing SGM-respectful codes and policies to avail themselves of ORAM's SOGI training tools, available at <http://oramrefugee.org/training-guide-interview-tools/>.

ASYLUM & MIGRATION, UNSAFE HAVEN: THE SECURITY CHALLENGES FACING LESBIAN, GAY, BISEXUAL AND TRANSGENDER ASYLUM SEEKERS AND REFUGEES IN TURKEY (UPDATED EDITION), (Jun. 2011), available at <http://www.refworld.org/docid/524c114f4.html>. In Pakistan, consensual same-sex sexual conduct is a criminal offence, albeit rarely prosecuted (BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, US STATE DEPARTMENT, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2014, (2015), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/>). In Lebanon, the law prohibits “unnatural sexual intercourse,” an offence punishable by up to one year in prison (BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, US STATE DEPARTMENT, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2014, (2015), available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/>). Authorities have conducted raids to arrest persons allegedly involved in same-sex conduct, some of whom have been subjected to torture (HUMAN RIGHTS WATCH, WORLD REPORT 2016 – LEBANON, (Jan. 27, 2016), available at <http://www.refworld.org/docid/56bd9932c.html>). In Iran, the law criminalizes consensual same-sex relationships, with penalties ranging from flogging to the death penalty (AMNESTY INTERNATIONAL, AMNESTY INTERNATIONAL REPORT 2014/15 - THE STATE OF THE WORLD'S HUMAN RIGHTS – IRAN, (Feb. 25, 2015)). In Ethiopia, consensual same-sex sexual conduct is illegal and punishable with three to 15 years' imprisonment (AMNESTY INTERNATIONAL, MAKING LOVE A CRIME: CRIMINALIZATION OF SAME-SEX CONDUCT IN SUB-SAHARAN AFRICA, (Jun. 25, 2013), AFR 01/001/2013, p. 80 et seq, available at <http://www.refworld.org/docid/51d2a0144.html>). In Jordan, consensual same-sex sexual activity is not accepted by society, though it is not prohibited by law (FREEDOM HOUSE, FREEDOM IN THE WORLD 2015 – JORDAN, Apr. 7, 2015, available at: <http://www.refworld.org/docid/55278ae611.html> (accessed Jul. 4 2016)). Most SGM individuals conceal their sexual identity and fear disclosure (BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, US STATE DEPARTMENT, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2014 (2015), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/> (accessed Jul. 3 2016)). In Kenya, the law criminalizes homosexual activity, and public order laws are selectively enforced to arrest SGM individuals (HUMAN RIGHTS WATCH, WORLD REPORT 2016 - KENYA, (Jan. 27, 2016), available at <http://www.refworld.org/docid/56bd993415.html>). SGM individuals face widespread violence and discrimination from both state actors and from society at large (BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, US STATE DEPARTMENT, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2014, (2015), available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/>). In Uganda consensual same-sex sexual conduct is illegal according to a law that provides for a penalty up to life imprisonment (BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, US STATE DEPARTMENT, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2014 (2015), available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/>). SGMs face discrimination, legal restrictions and societal harassment as well as violence, intimidation, and threats (AMNESTY INTERNATIONAL, THE STATE OF THE WORLD'S HUMAN RIGHTS 2015/2016, p. 377). Public surveys conducted in some these countries have demonstrated a broad belief that “homosexuality” should not be accepted, at a rate of 78% in Turkey, 87% in Pakistan, 80% in Lebanon, 97% in Jordan, 90% in Kenya and 96% in Uganda (THE GLOBAL DIVIDE OF HOMOSEXUALITY, *supra* note 17).

How to Use this Guide

This guide is provided in two modes. This printed pamphlet provides a full reproduction of the original 2004 UNHCR Code of Conduct in black print. ORAM-originated text appears in blue print throughout. Suggested amendments appear in **bold blue** print, while analyses and commentaries appear in text boxes. Suggested deletions appear in ~~striketrough~~ text. Additionally, an online version at <http://oramrefugee.org/sgm-respectful-model-code/> provides a fillable and downloadable model code of conduct for humanitarian agencies fashioned after ORAM's suggested amendments to the UNHCR Code of Conduct, as provided and analyzed in this guide.

Designing and Implementing an SGM-Respectful Code of Conduct in 10 Steps

The following steps are recommended for international humanitarian agencies which seek to ensure fair and respectful treatment of their sexually and gender-diverse staff, contractors, and beneficiaries:

1. Examine the proposed amendments in this publication against your agency's existing code of conduct to ensure your code effectively protects staff and beneficiaries in matters of sex, gender, and sexual orientation and gender identity (SOGI).
2. Ensure that your code commands respect for the personal, cultural and religious tenets of all staff and beneficiaries.
3. Refrain from using language that appears coercive or intolerant of *any* perspective.
4. Chart out procedures for sensitive and effective implementation of the agency's code of conduct.
5. Provide a meaningful mechanism and setting in which staff and contractors may discuss and harmonize their personal, cultural and religious beliefs with the code of conduct.
6. Provide frequent standalone and combined trainings on the code of conduct to all agency staff and contractors.
7. Wherever legally possible, create a work environment in which all persons can share their SOGI honestly without fear of marginalization or retribution.
8. Regularly expose staff and contractors to openly SGM persons who are willing to share their identities and lived experiences inside and outside the organization.
9. Imbue trainings with role-play and sample cases with live examples of appropriate treatment of SGM individuals under the code of conduct.
10. Where practicable, adopt the model ORAM-amended UNHCR code, provided online at <http://oramrefugee.org/sgm-respectful-model-code/>.



CODE OF CONDUCT

**Including the Secretary-General's
bulletin on special measures for
protection from sexual exploitation and
sexual abuse (ST/SGB/2003/13)²¹**

June 2004

21. UNHCR CODE OF CONDUCT AND EXPLANATORY NOTES, *supra* note 3.

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Contact Information

22. Original page numbers and footnotes have been omitted to prevent confusion. UNHCR contact information has been omitted as well.

INTRODUCTION

UNHCR's capacity to ensure the protection of and assistance to refugees and other persons of concern depends on the ability of its staff to uphold and promote the highest standards of ethical and professional conduct. We, the staff members of UNHCR, are personally and collectively responsible for maintaining these standards. Managers have a particular responsibility to uphold these standards, to set a good example, and to create a working environment that supports and empowers staff.

It is recognized that UNHCR's work often puts its staff in positions of power in relation to its beneficiaries. Staff have an obligation not to abuse this power.

This Code of Conduct is intended to serve as an illustrative guide for staff to make ethical decisions in their professional lives, and at times in their private lives. It is a moral code that does not have the force of law. It is designed to assist staff to better understand the obligations placed upon their conduct by the Charter of the United Nations and the Staff Regulations and Rules, which remain the only legal instruments that determine acceptable conduct in UNHCR. Signing the Code does not take away any acquired rights of UNHCR Staff.

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 outlined in the Secretary-General's bulletin ST/SGB/2003/13. For example, children are defined as those under the age of 18 years. Guidance on appropriate interpretation can be found in the Notes to the Code of Conduct.

The Code applies to all UNHCR staff members who are all requested to sign it. Persons holding a UNHCR consultant contract, UNVs and interns will also receive the Code and be requested to confirm that they uphold its standards as far as applicable to their status. Governmental and non-governmental organizations and companies which, through their employees, work for UNHCR, will be requested to make the principles contained in the Code known to those persons in an appropriate manner.

All UNHCR staff are responsible for encouraging, advocating and promoting the dissemination of the Code of Conduct. They also have a role in implementing, monitoring and enforcing its standards. Staff are also urged to encourage partners to adhere to these standards and to join UNHCR staff in upholding them.

CORE VALUES AND GUIDING PRINCIPLES

UNHCR staff are committed to the following fundamental values and principles:

*As staff working within the UN system, we will ensure that our conduct is consistent with and reflects the values enshrined in the Charter of the United Nations: respect for fundamental human rights, social justice and human dignity, and respect for the equal rights of ~~men and women~~ **all individuals**. We will assist UNHCR to actively promote adherence to the principles of international refugee law, international human rights law and international humanitarian law. We will be guided by the core values of the UN system, including professionalism, integrity and respect for diversity, and will maintain an international perspective at all times.*

As UNHCR staff, our primary commitment is to ensure the protection of and assistance to refugees and other persons of concern, in accordance with the mandate of the Office. We are committed to supporting the fullest possible participation of refugees and other persons of concern – as individuals, families and communities – in decisions that affect their lives.

We will respect the dignity and worth of every individual, will promote and practice understanding, respect, compassion and tolerance, and will demonstrate discretion and maintain confidentiality as required. We will aim to build constructive and respectful working relations with our humanitarian partners, will continuously seek to improve our performance, and will foster a climate that encourages learning, supports positive change, and applies the lessons learned from our experience.

We will show respect for all persons equally without distinction whatsoever of race, **sex**, gender, religion, colour, national or ethnic origin, language, marital **or relationship** status, sexual orientation, **gender identity**, age, socio-economic status, disability, political conviction, or any other distinguishing feature. We will strive to remove all barriers to equality.

We will respect the cultures, customs and traditions of all peoples, and will strive to avoid behaving in ways that are not acceptable in a particular cultural context. However, when the tradition or practice is considered by the relevant organ of the UN to be directly contrary to an international human rights instrument or standard, we will be guided by the applicable human rights instrument or standard.

Commentary on Core Values and Guiding Principles

UNHCR has explicitly extended the ambit of its Code of Conduct to gender and sexual orientation. While the Agency's protection practices encompass sexual orientation and gender identity,²³ as well as relationship status,²⁴ the Code requires amendment to reflect these current policies. In addition, the Code requires amendment to reflect the distinction between "sex" and "gender", and protect against discrimination on either ground. The suggested amendments to the Code ensure the inclusion of both terms to make clear they are distinct from one another.

Article 1 of the Universal Declaration of Human Rights stipulates that 'all human beings are born free and equal in dignity and rights', while Article 2 states that 'everyone is entitled to all the rights and freedoms set forth in this Declaration.'²⁵ The Yogyakarta Principles set out the protection framework related to SOGI.²⁶ Principle 23 outlines the right to seek and enjoy asylum from persecution related to SOGI.

Despite the unconditional imperative of international human right law, we must recognize that nonconforming SOGI remains offensive and anathema to substantial segments of societies around the globe. Many societies punish nonconformity in these areas judicially or by means of extra-judicial violence. Amidst this complex reality, the Code of Conduct makes clear that those who fall under its ambit are required to adhere to the dictates of international human rights law, no matter their personal sentiments.

It is important to note that the Code's Core Values and Guiding Principles address potential tensions between humanitarian standards and local cultural traditions and social practices. They do not pertain to conflicts between international human rights law and local jurisprudence. Agency staff's obligation to comply with local laws is addressed separately in Principle 8 of the UNHCR Code of Conduct,²⁷ and will be addressed below.

23. UNCHR, GUIDELINES ON INTERNATIONAL PROTECTION NO. 9: CLAIMS TO REFUGEE STATUS BASED ON SEXUAL ORIENTATION AND/OR GENDER IDENTITY WITHIN THE CONTEXT OF ARTICLE 1A(2) OF THE 1951 CONVENTION AND/OR ITS 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES, HCR/GIP/12/09, (Oct. 23, 2012), available at www.unhcr.org/509136ca9.pdf; UNCHR, UNHCR AGE, GENDER AND DIVERSITY: ACCOUNTABILITY REPORT 2015, p. 26-28 (Jun. 2016), available at <http://www.refworld.org/docid/576a31804.html>; and United Nations News Service, UN refugee agency seeks to protect displaced gays, lesbians as they face prejudice, violence, (Dec. 24, 2015), available at <http://www.refworld.org/docid/568d248c40d.html>.

24. UNCHR, ENSURING GENDER SENSITIVITY IN THE CONTEXT OF REFUGEE STATUS DETERMINATION AND RESETTLEMENT. MODULE 3: ENSURING GENDER SENSITIVITY IN THE CONTEXT OF RESETTLEMENT (RESOURCE PACKAGE), (Oct. 2005), Appendix - Training materials, p. 128, available at <http://www.refworld.org/docid/43e73bef4.html>, and UNCHR, UNHCR RESETTLEMENT HANDBOOK 2011, (Jul. 2011), pp. 185-186, 207, 279 and 337, available at <http://www.refworld.org/docid/4ecb973c2.html>.

25. Universal Declaration of Human Rights, U.N. G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

26. INTERNATIONAL COMMISSION OF JURISTS AND INTERNATIONAL SERVICE FOR HUMAN RIGHTS, YOGYAKARTA PRINCIPLES (Mar. 2007).

27. UNHCR CODE OF CONDUCT AND EXPLANATORY NOTES, *supra* note 3.

COMMITMENT TO THE UNHCR CODE OF CONDUCT

As a staff member of UNHCR, I commit myself to:

1. Treat all refugees and other persons of concern fairly, and with respect and dignity.

I will always seek to understand the difficult experiences that refugees and other persons of concern to UNHCR have faced and survived, as well as the disadvantaged position in which they – particularly on the basis of **race, religion, nationality, political opinion, sex**, gender, age, or disability, **sexual orientation or gender identity** – may find themselves in relation to those who hold power or influence over aspects of their lives.

I will always seek to care for and protect the rights of children, and act in a manner that ensures that their best interests shall be the paramount consideration.

If my job involves direct work with refugees or other persons of concern, I will meet with them regularly, in order to fully understand their experiences and needs, and to explain the role of UNHCR and the scope of its work. **I will ensure that all these individuals know I am there to protect them.**

I will keep myself informed about UNHCR's policies, objectives and activities and about refugee concerns, and will do my utmost to support the Office's protection and assistance work.

2. Uphold the integrity of UNHCR, by ensuring that my personal and professional conduct is, and is seen to be, of the highest standard.

I will demonstrate integrity, truthfulness, dedication and honesty in my actions. I will be patient, respectful, **accepting** and courteous to all persons with whom I deal in an official capacity, including refugees and other persons of concern, representatives of operational and implementing partners, governments and donors.

I will observe local laws, will meet all my private legal and financial obligations, and will not seek to take personal advantage of any privileges or immunities that have been conferred on me in the interest of the UN. I will do my utmost to ensure that the conduct of members of my household does not reflect unfavorably on the integrity of UNHCR.

3. Perform my official duties and conduct my private affairs in a manner that avoids conflicts of interest, thereby preserving and enhancing public confidence in UNHCR.

My actions will be free of any consideration of personal gain. I will resist any undue political pressure in decision making. I will neither seek nor accept instructions regarding performance of my duties from any government, my national authorities, or from an authority external to the UN.

In accordance with Staff Regulations and Rules, I will not accept any honor, decoration, favor gift, remuneration, from any government; nor will I accept these from any other source

Bold blue print indicates suggested amendments to original UNHCR text

external to the UN without prior authorization. I will not engage in any outside occupation or employment without prior authorization. I will not accept supplementary payments or subsidies from a government or any other source, or participate in certain political activities such as standing for or holding public office.

I will avoid assisting private persons or companies in their undertakings with UNHCR where this might lead to actual or perceived preferential treatment. I will never participate in activities related to procurement of goods or services, or in human resource activities, where a conflict of interests may arise.

4. Contribute to building a harmonious workplace based on team spirit, mutual respect and understanding.

I will show respect to all colleagues, regardless of status or position, **and regardless of race, religion, nationality, political opinion, sex, gender, sexual orientation, gender identity, age or disability**, and will allow all colleagues the opportunity to have their views heard, and to contribute from their knowledge and experience to team efforts. I will communicate openly and share relevant information (subject to confidentiality) with other colleagues, and will endeavour to respond in a timely manner to queries. **I will not allow my personal beliefs and values, which may be at odds with UNHCR policies, to interfere with my work or work relationships. I understand that in order to properly perform my work, the values and rules of conduct of the UNHCR must take precedence over my personal beliefs, values, and feelings.**

I will respect my colleagues' privacy, and avoid misinformation. I will seek to resolve differences and solve problems when they arise. I will contribute to building constructive dialogue, guided by mutual respect and an open, positive approach, between management and staff representatives.

As a manager/supervisor I will be open to the views of all team members, **and will treat sensitively and with respect all beliefs and opinions**. I will provide timely feedback on the performance of each team member through guidance, motivation and full recognition of their merits.

5. Promote the safety, health and welfare of all UNHCR staff as a necessary condition for effective and consistent performance.

I will remain aware of and comply with all instructions designed to protect my health, welfare and safety. I will always consider the safety of staff in operational decisions. If I have doubts regarding an instruction that I consider threatening to my safety or the safety of other persons, I will bring this immediately to the attention of my supervisor.

As a manager/supervisor, I will endeavour to ensure that the health and well-being of staff and their families are not subjected to undue risk. I will promote a healthy work-life balance for staff, and will respect staff entitlements.

6. Safeguard and make responsible use of the information and resources to which I have access by reason of my employment with UNHCR.

I will exercise due care in all matters of official business, and not divulge any confidential information about refugees, colleagues and other work-related matters in accordance with the Staff Regulations and Rules and current guidelines. **I will clearly express to refugees my commitment to protecting confidentiality.**

I will protect, manage and utilize UNHCR human, financial and material resources efficiently and effectively, bearing in mind that these resources have been placed at UNHCR's disposal for the benefit of refugees and other persons of concern.

7. Prevent, oppose and combat all exploitation and abuse of refugees and other persons of concern.

I undertake not to abuse the power and influence that I have by virtue of my position over the lives and well-being of refugees and other persons of concern.

I will never request any service or favour from refugees or other persons of concern in return for protection or assistance. I will never engage in any exploitative relationships – sexual, emotional, financial or employment-related – with refugees or other persons of concern.

Should I find myself in such a relationship with a beneficiary that I consider non-exploitative and consensual, I will report this to my supervisor for appropriate guidance in the knowledge that this matter will be treated with due discretion. I understand that both my supervisor and I have available to us normal consultative and recourse mechanisms on these issues.

I will act responsibly when hiring or otherwise engaging refugees or other persons of concern for private services. I will report in writing on the nature and conditions of this employment to my supervisor.

8. Refrain from any involvement in criminal or unethical activities, activities that contravene human rights, or activities that compromise the image and interests of UNHCR.

I will neither support nor take part in any form of illegal, exploitative or abusive activities, including, for example, child labour, and trafficking of human beings and commodities.

As UNHCR is committed to the highest standards of protection and care for children, I am aware that I am expected not to engage in sexual activities with any person under the age of 18 years. (Further guidance is given in the Notes to this Code of Conduct).

9. Refrain from any form of harassment, discrimination, physical or verbal abuse, intimidation or favouritism in the workplace.

I will not engage in or tolerate any form of harassment in the workplace, including sexual harassment and abuse of power.

As a manager/supervisor, I will not solicit favours, loans or gifts from staff, nor will I accept unsolicited ones that are of more than token value.

I recognize that there is an inherent conflict of interest and potential abuse of power in having sexual relations with staff under my supervision. Should I find myself in such a relationship, I will resolve this conflict of interest without delay.

NOTES ON THE CODE

Why a Code of Conduct?

In 1954 the United Nations International Civil Service Advisory Board established Standards of Conduct in the International Civil Service which were intended to contribute to improved understanding of the status and obligations of international civil servants. In 2001, the International Civil Service Commission adopted, revised and updated Standards of Conduct for the International Civil Service which were welcomed by the General Assembly in its Resolution 56/244. While this is a document applicable to UNHCR staff, it has been recognized that some aspects of UNHCR's work require the highlighting of additional types of behaviour.

In addition, the Office of the Inspector General has in its regular inspections of UNHCR activities identified the need for a UNHCR-specific code of conduct to address some of the most frequently identified issues about which UNHCR staff should concern themselves. Parallel processes such as the development of a policy on harassment; greater attention to the importance of a work/life balance; the concern for the health, welfare and safety of staff; and the increasing desire for more consistent and effective performance management in UNHCR have suggested that a UNHCR-specific code would contribute to a positive organizational culture in the Office. Periodic incidents which have come to light through media or evaluation reports have confirmed that a Code of Conduct could add value and provide guidance to staff in addition to that set out in the Staff Rules and Regulations and in the Standards of Conduct. An administrative instruction promulgated by the Secretary-General concerning protection from sexual exploitation and abuse further enhances the standard of conduct for UN personnel. Work on the UNHCR Code began in 2000 and was accelerated in mid-2002 after a highly publicized incident relating to the alleged sexual misconduct of humanitarian staff and the subsequent recommendations of the Inter-Agency Standing Committee (IASC) which urged all humanitarian agencies to develop agency-specific codes of conduct. Some may still ask: Why have a new set of standards if we already have Staff Regulations and Rules? The Code is not meant to replace these. It reinforces them by offering more detailed guidance and advice on how to handle financial, physical and emotional relationships, not only between ourselves and the people we serve, but also among ourselves. At this juncture it is to be recalled that the Staff Regulations and Rules and other administrative issuances remain the only legally binding instruments that determines acceptable or nonacceptable conduct.

This Code explains the key values and standards of behaviour that we are expected to observe under the United Nations Charter and the Staff Regulations and Rules. The Code's Core Values and Guiding Principles are meant to help UNHCR staff deal with ethical and moral dilemmas linked to their professional lives, and also, at times to their private lives. It advises on issues, such as how to build a harmonious workplace environment, and on staff welfare, health and safety. Accordingly, the Code of Conduct is designed to foster an organizational culture to which UNHCR staff can be proud to belong, and to help staff understand the kinds of behaviour that are considered abusive or exploitative, no matter whether this behaviour stems from conscious misconduct or ignorance. It essentially spells out what is and what is not acceptable for any person working for UNHCR.

There are moments when being in control of scarce humanitarian resources vests us with enormous power. Needless to say, the behaviour and professionalism of most UNHCR staff is exemplary, but staff do recognize that the abuse of power is possible. Such abuse hurts not

Bold blue print indicates suggested amendments to original UNHCR text

only the people we serve, but also damages UNHCR's image, our reputation and ultimately the morale of our staff.

To whom does the Code apply?

The Code is for all UNHCR staff, and its guiding principles should also be adhered to by persons holding a UNHCR consultant or independent contractor contract, UNVs, interns and other individuals working for UNHCR. The Code is an attempt to clarify what types of behaviour are appropriate, particularly in situations where difficult choices need to be made. It should be useful to all whose conduct matters to the people we serve, and to those in the outside world who care about the quality of our work. Managers at all levels have a particular responsibility for making sure that those who answer to them are familiar with the Code, and for helping to promote the honouring of its provisions. Managers, who are expected to set an example, are also responsible for communicating the Code's principles to those with whom we work, no matter how tenuous or short-term their relationship with UNHCR may be. Managers must further make sure that the people we serve - the beneficiaries - know about our Code of Conduct, and that they have the opportunity to report breaches of the Code without fear of reprisal.

UNHCR recognizes that the majority of staff are dedicated and loyal, and act in ways totally consistent with the values and principles described in the Code. Therefore, the introduction of the Code should not be taken as a sign of mistrust or criticism of existing staff.

Is the Code legally binding and do we have to sign it?

The Code does not have the force of law. It is simply a guide to the kind of professional and personal behaviour which is expected of all staff. However, 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.

The High Commissioner wants every UNHCR staff member to read and sign the Code, and this has become a condition of recruitment as of 15 October 2002. Signature of the Code is not a legal commitment. It simply confirms the fact that we have read and understood that we are expected to live up to the standards of behaviour described in the text. The signature is without prejudice to our rights as a staff member.

Those staff already employed by UNHCR at the time of the Code's introduction who did not wish to sign were asked to give the reason for this in writing. It should be pointed out that UNHCR has to monitor implementation. By providing a written explanation, staff have an opportunity to highlight their concerns.

Why the Notes on the Code?

The Code is written in a declarative manner and does not always provide sufficient elaboration. These explanatory notes are intended to walk the reader step-by-step through the various provisions of the Code in order to help UNHCR staff understand the Code's purpose and make it easier for them to adhere to it in everyday situations. UNHCR has also developed a "Facilitator's Guide" which should be used to facilitate group sessions in the workplace, in order to give staff an opportunity to better understand the provisions of the Code and clarify, amongst themselves, its implications for personal behaviour.

Managers have a special responsibility to disseminate information. This is strongly emphasized and guidance is available through the UNHCR Code of Conduct "Guidelines for Managers".

PRINCIPLE 1

Treat all refugees and other persons of concern fairly, and with respect and dignity

1. Treating beneficiaries with “respect and dignity” is our basic obligation. Behaviour or comments by any UNHCR staff member that degrade a beneficiary or beneficiaries are totally unacceptable, no matter whether the beneficiaries are present or not.
2. Fair treatment of beneficiaries requires staff members to avoid taking sides or to be seen as favouring any one individual or group. Staff members should not be identified with any causes other than that which UNHCR represents. This is important for all staff irrespective of status or position.
3. By definition, UNHCR’s beneficiaries lack the protection they previously enjoyed in their country, community and family. In many situations, children, **people with disabilities, the elderly, SGMs** and certain groups of women are especially at risk. **SGMs and survivors of sexual and gender-based violence (SGBV) often face new harms as refugees at the hands of their families and community, as well as host populations.** By understanding the specific situations **and vulnerabilities** of ~~women, men, girls and boys~~ **these individuals** in a **given** beneficiary community, we can better **support and** protect them. UNHCR already has well-developed guidelines on the appropriate treatment of refugee children and refugee women. Staff should make themselves familiar with these guidelines and at all times recognize the special needs of each of these groups and act in their best interests.
4. It is vital that staff see the people we serve as human beings rather than “individual cases”, “populations”, or “caseloads”. Impersonal, bureaucratic terms breed a bureaucratic approach. As humanitarian staff we need to empathize with the people we serve and understand their situation. Direct conversations with people, individually or in a small group, can help us “put a human face” on complex problems. **This requires special effort of staff who are unfamiliar or uncomfortable with a particular population.**
5. Staff should make every effort to communicate directly with beneficiaries even when our work does not normally involve direct contact with them. Staff who are directly responsible for protection and assistance to beneficiaries - including senior managers - are expected to visit places where they live and talk to them on a regular basis. Staff should balance the demands of office work and official meetings with the need to take time to keep in contact with the people we serve.
6. UNHCR work can be very stressful, especially when resources are scarce. Beneficiaries’ demands in these situations can give us a sense of discomfort. Staff should listen to their concerns and try and involve them in finding a solution. In doing so, we should be wary of individuals or groups who may seek to exploit or control resources to the detriment of the beneficiaries or particular groups of beneficiaries. Special care should be taken in sectors where staff control decisions relating to refugee status determination, resettlement and the provision of assistance.

7. Less-experienced staff in UNHCR often find themselves in frontline field locations, frequently without the benefit of team support close by. These colleagues are viewed by beneficiaries and by the public as the representatives of UNHCR. The vulnerability of such staff to stress and insecurity, which aggravates the lack of experience, can place such staff in difficult positions. Supervisors should be aware of these pressures and more experienced staff should provide adequate guidance and support. UNHCR staff should be well-informed about the policy priorities of UNHCR and the guidelines associated with these policies. Supervisors are responsible for giving guidance in this regard and, more generally, for coaching and guiding less-experienced staff in performing their functions.

Commentary to Principle 1

International human rights instruments mandate that SGM refugees be accorded the same respect and dignity as all other refugees. These individuals are often poorly understood, disrespected and mistreated by humanitarian agencies. They are sometimes marginalized and ostracized by refugee agency staff and contractors. At some agencies, staff are highly uncomfortable with these refugees, and a handful avoid serving SGM individuals altogether. For their part, SGM refugees sometimes fear they will be denied services or protection because of their SOGI.

Many SGM refugees recount that some refugee professionals have handled them dismissively. Others report that professionals do not display compassion for their plight, question them insensitively, use insulting terminology when referring to them, and reduce the sum of their humanity to sexual behavior. Professionals working with refugees – and interpreters in particular – are often unaware that they are using disrespectful or insulting SOGI-related terminology. Others know this is the case, but are not familiar with neutral or positive alternative terms. ORAM has developed a five-language guide to SOGI-related terminology for the humanitarian sector (available at www.oramrefugee.org/wp-content/uploads/2016/04/Glossary-PDF.pdf).²⁸ All agencies are urged to acquire and develop this and similar tools. More importantly, agencies must train their staff, contractors and partner agencies in this area.

Even when refugee professionals refrain from using derogatory terms in communicating with SGM individuals or referring to SOGI matters, their discomfort or disapproval can be betrayed by their body language, facial expressions and tone of voice. Such non-verbal communications can be powerful perpetrators of taboo and animus.

To address the mutual discomfort in these interactions, training for refugee professionals featuring openly SGM trainers is encouraged to raise the issues, build trust, and foster greater understanding and empathy. To ameliorate language-based barriers, training should offer specific solutions and alternatives to derisive or insensitive terminology in various dialects and languages. ORAM has developed a training methodology proven highly effective in meeting these goals.

The current UNHCR Code of Conduct recognizes that refugees generally lack the protections they enjoyed in their countries of origin. It omits to acknowledge that certain refugees – in particular SGMs and women who have violated social rules – can be targeted for violence by

28. ORAM’S SOGI TERMINOLOGY GUIDE, *supra* note 2.

their own families, refugee communities, and locals alike. SGMs typically come from countries in which they lacked legal protections and faced intense social marginalization; but, in flight, they face new and added dangers and survival challenges. Paragraph 3 above contains proposed revisions to reflect this reality.

Most SGM refugees report that even respectful refugee professionals maintain an exaggerated distance and do not engage them in comfortable conversation or humanizing contact. Home visits with SGM individuals are particularly rare, and very few SGM refugees report having been visited at home by any refugee professional or a senior manager. Avoidance has a compounding effect on SGM refugee feelings of alienation, since these professionals may be unaware or unsympathetic to the immense challenges facing SGM refugees. Refugee professionals should be encouraged to form substantial links with local SGM refugee communities and to conduct home visits to SGM individuals. Wherever possible, openly SGM staff should be recruited in order to open corridors of trust with SGM refugees.

Due to the special challenges faced by children and women, refugee and humanitarian agencies have developed guidelines setting out appropriate treatment of these populations. ORAM urges the development and adoption of similar specialized guidelines that will adequately protect SGM refugees.

PRINCIPLE 2

Uphold the integrity of UNHCR by ensuring that my personal and professional conduct is, and is seen to be, of the highest standard

1. To a large extent, the integrity of UNHCR depends on the integrity of its staff members. By integrity, we mean the overall personal and professional behaviour of our staff. This includes honesty, truthfulness and loyalty to the Office.

2. UNHCR staff should avoid criticizing our partner agencies and other UN organizations in public. In case of any problems with our partners, we should endeavour to seek resolution directly and if the issue persists, refer the matter to HQ. The ultimate victims of public disputes between humanitarian agencies are often the beneficiaries.

3. The privileges and immunities that we enjoy as staff members of the UN are conferred upon us solely in the interest of the Organization. They do not exempt us from observing local laws or provide an excuse for ignoring private legal or financial obligations. Honouring our private obligations is a matter of integrity and honesty. Failure to do so may be treated as a disciplinary matter under the Staff Regulations and Rules. For example, diplomatic immunity that comes with our position as UN officials is not a reason for ignoring our personal legal obligations such as respect for local traffic regulations, alimony payments and repayment of debts.

4. Even though nobody should be telling adults how to manage their private lives, including personal relationships, we should not forget that whatever we do outside our homes may become the object of public scrutiny. In general, staff should not implicate UNHCR in any way by frequenting locations or undertaking activities that verge on illegality. Staff are expected to show respect for the local practices and customs of the host government. Additional caution is required while serving in small duty stations where anonymity of a UN official in practice does not exist. **At the same time, UNHCR is aware that the laws or customs of some host states may punish certain characteristics or personal activities related to SOGI, which are protected under universal human rights principles. For example, UN personnel policy recognizes same-sex marriage even where the host state may criminalize same-sex conduct. In such instances, the Agency will counsel, protect and assist affected staff to the greatest extent possible.**

5. In principle, UNHCR has no right to interfere with the private lives of staff members. However, in many parts of the world our family members enjoy privileges and immunities and are regarded by the public as “unofficial ambassadors”. This is why we should do our utmost to ensure that members of our household know the importance of maintaining high standards of personal conduct.

Commentary to Principle 2

Principle 2 embodies the tension between universal human rights principles and organizational values on one hand, and local laws, taboos and customs regarding SGMs on the other. While the Principle sidesteps explicit discussion of same-sex relations and gender nonconformity, these clearly fall within its ambit.

Virtually all countries where refugee organizations conduct field operations either criminalize same-sex conduct, harbour severe social restrictions and punishments for SGMs, or both.²⁹ In a handful of states, espousing LGBTI rights (sometimes termed “propaganda”) is also punishable.³⁰ In these locations, organizational values and international human rights principles as they are understood in the West are pitted against local laws and practices. Principle 2 requires compliance with, adherence to, or observation of local laws and customs while simultaneously recognizing staff’s right to live their private lives as they see fit. The implication is a “balancing act,” wherein one’s personal needs and rights are carefully weighed against the local environment, the organization and its demands. For example, the UN now recognizes the same-sex marriages of many of its staff,³¹ yet those same staff are obligated by the Code to observe local laws and customs which likely prohibit same-sex relations and do not permit same-sex marriage.

Section 4 clearly recognizes that staff may have same-sex partners in the privacy of their homes. At the same, it urges “discreet” behaviour while outside. Similarly, this section admonishes staff to avoid activities that “verge on illegality.” Thus, this section in its current incarnation

29. See *supra* note 20.

30. In 2013 the Russian Federation passed a law banning “propaganda of non-traditional sexual relations among minors”. The law is used by authorities as a tool to prevent pro-LGBTI events, and in some cases to launch proceedings against SGM individuals. See AMNESTY INTERNATIONAL, VIOLATION OF THE RIGHT TO FREEDOM OF EXPRESSION, ASSOCIATION AND ASSEMBLY IN RUSSIA, (2014), p. 9, available at <https://www.amnesty.org/en/documents/eur46/048/2014/en/>. In Uganda, the Anti-Homosexuality Act criminalized the “promotion of homosexuality”. The law also banned “aiding and abetting homosexuality” and keeping any home, room, or place “for the purposes of homosexuality”. It was overturned by the Ugandan Constitutional Court in August 2014 on procedural grounds. The possibility of re-introducing a similar bill has been widely debated since the ruling. See ORAM - ORGANIZATION FOR REFUGEE, ASYLUM & MIGRATION, COUNTRY OF ORIGIN REPORT: SEXUAL AND GENDER MINORITIES - UGANDA, (Oct. 2014), p. 22, available at <http://oramrefugee.org/publications/> and Neela Ghoshal & Maria Burnett, Is It Now Legal to Be Gay in Uganda?, FOREIGN POLICY, (Aug. 6, 2014), available at <http://foreignpolicy.com/2014/08/06/is-it-now-legal-to-be-gay-in-uganda/>. In Nigeria, a 2014 law provides for 10-year imprisonment sentences amongst others for Nigerians belonging to a LGBTI organization or supporting same-sex marriage. See ERASING 76 CRIMES, Anti-LGBTI laws: Nigeria, available at <http://76crimes.com/anti-lgbt-laws-nigeria/>.

31. In 2014, the United Nations Secretary-General (U.N. S.G.) announced that the UN will honour same-sex marriages performed in any country where they are legally recognized. Previously, same-sex marriages were recognized by the UN only if recognized by the staff member’s country of nationality. See U.N. S.G., U.N. SG’s Bulletin, ST/SGB/2004/13/Rev.1 (Jun. 26, 2014), available at <http://static1.squarespace.com/static/5367af22e4b0915380a1eb0a/t/53d2b5b4e4b0dc5a206525b2/1406318004538/signed+st+sgb+on+personal+status.pdf>; U.N. News Centre, UN Widens Its Same-Sex Marriage Policy to Include All Legally-Married Staff, (Jul. 8, 2014), available at <http://www.un.org/apps/news/story.asp?NewsID=48222#.VqDo65p95dg>. This policy change does not necessarily apply to staff members of agencies that are not part of the UN Secretariat within the meaning of Article 97 of the Charter of the United Nations (such as the United Nations Children’s Fund (UNICEF) and the United Nations Educational, Scientific and Cultural Organization (UNESCO)). There is some indication that the same policy will be applied in these agencies as well.

attempts to balance a complex mix of staff’s universal rights, personal values, local laws and customs and the Agency’s public image. For example, in a most conservative reading, Section 4 as currently written could be interpreted to prohibit same-sex couples from “appearing” like a couple in public, attending same-sex commitment ceremonies, or even frequenting establishments which cater to SGM clientele. While the restrictions under Section 4 can be necessary to securing safety in a given location, staff must also be counseled appropriately, and assured that the Agency will protect them if they are targeted. The proposed amendment to Section 4 adds these assurances explicitly.

There is precedent for UN agencies applying universal rules that differ from local ones. For example, UN rules generally prohibit sexual activity with persons under the age of 18, even if local law would allow that same activity.³² However, in such instances, the organizational rule is more restrictive than the local one, and does not leave room for contravention of local laws. In contrast, in the case of same-sex or gender nonconforming activity, the staff member may be in direct contravention of a local law. The Agency’s assistance in counseling and protection are essential in such instances to prevent harm to staff.

It is important to note that only high-level UN officials enjoy absolute immunity from local laws. Other staff – whether local or international – are protected only in connection with acts and behaviour occurring during the course of their work (i.e., “functional immunity”), and not in private matters.³³ Local staff who are paid at an hourly rate have no immunity whatsoever.³⁴ Similarly, international staff of UNHCR partner agencies are not entitled to immunity for private matters, and local staff of these agencies enjoy no immunity whatsoever.³⁵

The above-proposed amendment accommodates the UN’s recognition of same-sex marriage and universal rights surrounding SOGI. It also adds that the Agency will protect staff adversely affected by local laws to the greatest extent possible. Against a backdrop of taboo and silence in matters of SOGI, this acknowledgement is particularly helpful in reassuring staff who will otherwise not be certain that UNHCR will come to their aid if they are targeted.

32. U.N. S.G., STAFF RULES AND STAFF REGULATIONS OF THE UNITED NATIONS, U.N. Doc. ST/SGB/2014/1, (Apr. 16, 2015), available at ch. 1, r. 1.2.

33. U.N. General Assembly (G.A.), Convention on the Privileges and Immunities of the United Nations, (Feb. 3, 1946), Sect 18 and 19; and THE OFFICE OF HUMAN RESOURCES DEPARTMENT OF MANAGEMENT, UNITED NATIONS, THE ESSENTIAL GUIDEBOOK FOR SENIOR LEADERS OF THE UNITED NATIONS SECRETARIAT, (Jan. 2014), available at https://hr.un.org/sites/hr.un.org/files/4.5.7.1_Essential%20Guide%20-%20Senior%20Leaders_final_0.pdf. See also UNITED NATIONS SECRETARIAT, Administrative Instruction, (Dec. 10, 1982), ST/AI/299.

34. Id.

35. UNCHR, PARTNERSHIP: AN OPERATIONS MANAGEMENT HANDBOOK FOR UNHCR’S PARTNERS, (Feb. 2003), C-42, available at <http://reliefweb.int/report/world/partnership-operations-management-handbook-unhcrs-partners>

PRINCIPLE 3

Perform my official duties and conduct my private affairs in a manner that avoids conflicts of interest, thereby preserving and enhancing public confidence in UNHCR

1. The use of one's office or position in UNHCR for personal gain is unacceptable and unprofessional. Conducting private business from a UNHCR office, or using UNHCR facilities for private business, also constitutes unacceptable behaviour.
2. At the time of joining UNHCR, we all specifically pledge not to seek or accept instructions in regard to the performance of our duties from any government or other authority external to the UN. This does not, of course, affect contacts of staff at the appropriate level with government officials which help good relations with Member States, and which contribute to trust and confidence in UNHCR and promote its interests.
3. Staff must avoid accepting any honour, decoration, favour, gift or remuneration from any government. When this is unavoidable, however, we must be extremely careful not to accept gifts of value which might constitute a real or apparent attempt to influence our decisions or actions.
4. The primary professional obligation of a staff member is to devote our energies and capacity fully to the work of UNHCR. In addition, outside activities have to be compatible with the staff member's status as an international civil servant. Therefore prior authorization must be sought before engaging in any outside activity in order to ensure that there is no conflict of interest.
5. In general, UNHCR staff must not accept payments or other subsidies from a government or any other source. If there is any doubt, it is the responsibility of staff members to seek advice from the Human Resources Service.
6. While UNHCR staff retain the right to vote, we may not run for or hold local or national political office. UNHCR staff must exercise discretion in their support for a political party or campaign. We should never accept or solicit funds for political purposes, write articles or make campaign-related public statements. Staff may, however, participate in local community or civic activities, provided that this is consistent with our solemn declaration made when entering the services of the UN.
7. Staff who manage decisions related to refugee status determination, resettlement, assistance and procurement may be subject to pressures or offers which involve dishonest practices. Those of us in such situations must be particularly careful to act, and be seen to act, with the utmost transparency and integrity. In case of any doubt, we should consult our supervisor to seek guidance.

PRINCIPLE 4

Contribute to building a harmonious workplace based on team spirit, mutual respect and understanding

1. All managers and staff are responsible for building a teamwork **and for creating a positive, open and supportive work** environment. Politeness, respect, tolerance, and moderation should be the norm. Good performance is not only about how quickly and efficiently we perform our tasks but also about how well we interact with others. Insulting conduct is inexcusable even if the colleague who behaves in that manner is otherwise considered by many to be an efficient worker. In light of the diverse backgrounds, cultures, **personal lives and identities** and experiences of UNHCR staff, we should take extra care to respect our colleagues. Lack of communication, personality differences, and lack of empathy, i.e. the inability or unwillingness to see other colleagues' points of view can have a serious negative impact on the work environment. Team spirit means transparency in decision-making and is fostered by staff taking a positive and optimistic approach to their work.
2. An adversarial office environment not only stifles ideas, initiative, and creativity; it also harms UNHCR. It often leads to absenteeism, low productivity, and low morale. There must be trust and open dialogue between management and other staff. Elected staff representatives in their statutory role should be protected against discriminatory or prejudicial treatment.
3. There is often a fine line between poor managerial practices and the issues of conduct covered by this Code. Accordingly, managers not only have a particular responsibility for, but can also have significant influence in fostering a harmonious workplace. **They should be attentive to undercurrents of discrimination, and watchful over those who are likely to be marginalized by other staff.** Managers should be open to all views, including those of their junior staff, particularly when those views are opposed to their own, **and even when those views are contrary to those of the Agency.** Managers are expected to set a good example.

Commentary to Principle 4

Building a strong cohesive team requires politeness, respect, tolerance, and moderation as well as openness and mutual support. This is particularly true for marginalized SGMs, who most often feel they must hide their identities from their colleagues.

Field staff of refugee assistance agencies – including IGOs, NGOs and government agencies – report that issues of SOGI are often mired in taboo, shame and derision at their organizations, and are rarely discussed openly, let alone positively or supportively.³⁶ This is the case even at agencies that have SOGI-protective policies and employ significant numbers of SGMs in managerial or directorial positions. Staff at these agencies sometimes ridicule or are derisive of SGMs in the presence of colleagues. Many SGM staff who would otherwise self-identify

36. See, e.g., ORAM - ORGANIZATION FOR REFUGEE, ASYLUM AND MIGRATION, OPENING DOORS: A GLOBAL SURVEY OF NGO ATTITUDES TOWARDS LGBTI REFUGEES AND ASYLUM SEEKERS, (2012), available at <https://data.unhcr.org/syrianrefugees/download.php?id=8515>. This topic is further explored in ORAM - ORGANIZATION FOR REFUGEE, ASYLUM AND MIGRATION, NAVIGATING THE CULTURE DIVIDE: A GUIDE TO TRAINING ON CULTURALLY SENSITIVE TOPICS THE CASE OF REFUGEES, SEXUAL ORIENTATION, GENDER IDENTITY & GENDER EXPRESSION, (2016), available at <http://oramrefugee.org/training-guide-interview-tools/>.

fear they will be stigmatized or passed up for advancement. In the international humanitarian context, all SGM staff are justifiably concerned that if their SOGI is known or openly discussed, the ability to do their work will be impeded or obstructed altogether. This is particularly true in countries that criminalize same-sex relations or gender nonconformity, or that are highly intolerant of SGMs. In these places, the very deployment of a self-identified SGM individual presents immense challenges to both the agency and the individual, which must be successfully worked-through with mutual understanding, support, and cooperation.

For these and a myriad of other reasons, few refugee professionals openly self-identify at work as SGMs. This self-concealment perpetuates an erroneous belief that SGM people are absent from a given organization and from the sector as a whole.

To counteract this phenomenon and foster open exchanges and demystification, staff trainings and awareness-raising sessions should encompass discussions of SGM issues whenever these may be relevant. To the greatest extent possible, openly SGM persons should be hired, and managers should actively protect the few openly SGM staff they employ.

Moreover, managers at refugee agencies should foster an environment allowing relaxation of the taboo surrounding SOGI issues. Staff must be assisted to interact comfortably with SGM individuals. Only by feeling comfortable with and acting respectfully toward their SGM peers will staff be able to create comfort zones for SGM refugees. Only when this comfort permeates an agency in its entirety will that agency be truly SGM-safe.

In a challenging and sometimes dangerous international context, the changes described above are incremental, uneven and sometimes uneasy. Even as they implement and enforce “zero tolerance” policies, agencies must bear in mind that many of their most loyal and competent staff are likely to be deeply uncomfortable with SGM individuals. This is particularly true given the social attitudes which permeate most refugee environments. Great care must be taken to receive and treat all views with absolute respect. Only when staff feel wholly respected will they willingly and actively embrace change.

PRINCIPLE 5

Promote the safety, health and welfare of all UNHCR staff as a necessary condition for effective and consistent performance

1. UNHCR as an institution is responsible for the safety and welfare of its staff. Staff should strictly observe safety and security instructions and demonstrate responsible behaviour that minimizes risks for themselves and others.

2. Staff should follow instructions relating to security and safety issued internally by UNHCR as well as those issued by the United Nations Designated Official for security matters. If staff members have doubts as to whether an instruction threatens their own safety or that of others they should first consult their supervisor. Staff members have, in exceptional circumstances, the right to refrain from executing instructions in the following situations:

a) Where the instruction is in breach of existing UNHCR and UN security policies and regulations;

b) Where the staff member has reasonable grounds to believe that carrying out specific instructions will expose him/her or others to unnecessary risks.

Where there is such a difference in views, staff are advised to put their concern in writing and if they wish, to consult the higher level supervisor. A supervisor who gives instructions that involve a potential for high risk to safety and security, should be held liable and accountable.

3. A reasonable work/life balance is essential to maintain productivity at work. This includes using various entitlements designed to allow staff to rest and recuperate. Managers are expected to encourage staff to use such entitlements. Staff should avoid the abusive use of alcohol and drugs. A reduced level of physical and mental fitness can also have implications on the safety of staff. Similarly, any harassment or discrimination experienced at the workplace are likely to have a negative impact on staff productivity and well-being.

Commentary to Principle 5

Discrimination based on SOGI is a persistent challenge at many international refugee agencies, and is even more pronounced at local partner organizations. At international agencies, good practices and openness around SOGI issues often lag far behind stated policies, and discrimination, often unstated, continues at varying levels. Agencies must also contend with domestic or local laws and societal rules that prevent express equal treatment of SGM persons.

Most international refugee agencies have adopted policies prohibiting discrimination based on sexual orientation, and many are now extending these protections to gender identity. The UN and most of its agencies are now committed to recognizing the same-sex unions of employees who are legally able to marry their same-sex life partners.³⁷ However, this benefit is generally limited to international staff, who have access to jurisdictions where same-sex marriage is legally recognized.

37. See *supra* note 31.

Domestic and partner agency staff are subject to discriminatory laws and powerful social mores in dozens of countries. Moreover, formidable legal and societal barriers prevent the vast majority of SGM individuals from self-disclosing at the locations around the world with the most acute refugee crises.

While agencies cannot negate these barriers, they must ameliorate their staff's exposure to harm, disrespect, and outright discrimination in the work context. For example, agencies can adopt "member of household" or "domestic partner" policies which extend basic leave benefits to care for or grieve a same-sex loved one or to care for a child in a non-traditional relationship. Even where such policies are not proscribed by law, managers should exercise leniency and approve leave with or without pay for care of an unmarried loved one. These policies will benefit not only same-sex couples; they will also relieve difficulties experienced by heterosexual couples who are unwilling or unable to marry. These include different-faith couples in jurisdictions which prohibit or punish mixed marriage.

Managers should also provide special support to staff who are likely to encounter housing discrimination due to their nonconforming gender expression or same-sex partnerships. Lastly, agencies should provide their SGM staff with crucial validation, which may be lacking in the context of an unsupportive family and community.

In the workplace, managers should ensure that SGM staff and contractors are not excluded in any way. They should likewise ensure safe avenues for reporting and dealing sensitively with homophobic or other inappropriate behaviours toward SGM individuals. Given the prevalence of workplace homophobia in field offices, it is also necessary to implement a non-retaliation policy for those who report offending behaviour. In addition, SGM staff and contractors should be accommodated with gender-neutral dress codes and water, sanitation and hygiene (WASH) facilities which accommodate transgender individuals.

PRINCIPLE 6

Safeguard and make responsible use of the information and resources to which I have access by reason of my employment with UNHCR

1. Disclosure of sensitive or confidential information without authorization may seriously jeopardize the efficiency and credibility of UNHCR and its staff, and endanger beneficiaries. This includes, but is not restricted to, contacts with the media. It is understood that these provisions do not affect established procedures governing the exchange of information between UNHCR, on the one hand, and government representatives, national authorities, NGOs, donors etc. on the other.

2. We are all responsible for the resources entrusted to us by UNHCR and we must be able to account for every penny spent on UNHCR's behalf and every decision we take, be this in human resources or in financial matters. Being careless with human, financial and material resources is incompatible with honesty and professional integrity. Staff should be careful not to allow private interests to impact on their work duties. UNHCR recognizes that certain activities of a personal nature can only reasonably be undertaken in working hours. Many staff also face the reality of official tasks impacting on "after-hours" personal time. What is important here is that staff maintain a reasonable balance and that supervisors give reasonable guidance, at all times keeping the requirements of the Office and the staff members' right to a work/life balance in mind. Within this context, staff should not, for example: misuse office assets; use an official vehicle for private purposes without authorization; perform excessive and unreasonable private business during working time; use office equipment for private purposes; and have staff or official contractors provide unremunerated private services.

Commentary to Principle 6

Unauthorized disclosure of a refugee's or colleague's SOGI can have dangerous consequences. A refugee whose SGM identity has been divulged to other refugees may face serious harm, ranging from discrimination to lethal violence. For these reasons, special and nuanced training discussions should be devoted to confidentiality surrounding SOGI, in both protection and human resources contexts. A thorough understanding of the primacy of confidentiality is essential at agencies which are in the process of relaxing SOGI-related taboos. In all contexts, an appreciation of the need for confidentiality and the consequences of its breach should be instilled through case examples and other modes of sensitization and training.

PRINCIPLE 7

Prevent, oppose and combat all exploitation and abuse of refugees and other persons of concern

1. Having at our disposal scarce humanitarian resources puts us in a position of power vis-à-vis the people whose survival may depend on our assistance. That power must never be abused. Requesting favours or accepting bribes or offers of favours in exchange for protection or aid is totally unacceptable.
2. Unequal power relationships generally exist between UNHCR staff and beneficiaries. We therefore have to keep in mind that sexual, emotional, financial or employment relationships between staff and beneficiaries, even if we ourselves see them as consensual and non-exploitative, could be perceived by others in the humanitarian community and the public as an abuse of power and trust, or as a conflict of interest. According to a Secretary-General's Bulletin from 2003, sexual relationships with beneficiaries undermine the credibility and integrity of the work of the UN and are strongly discouraged. Where there is any doubt, it is in the interests of staff to discuss these relationships with the supervisor. Where supervisors are consulted, it is expected that they will respect confidentiality and treat sensitive matters with discretion. Staff and supervisors can also avail themselves of the normal consultative options such as the Staff Welfare Section, Staff Council and Staff Associations. In case of disagreement staff may resort to recourse options such as the Mediator.
3. Staff who hire beneficiaries for private services, such as housekeeping, must be aware that they may be seen as abusing their economic power or favouring certain individuals. In some places where we work, the economic gap between us and the people we serve is so huge that any association with us could be seen as a privilege and a position of advantage. On the other hand, working as a private employee for a staff member is sometimes the only possible source of income for a refugee and his/her family. This means that we must do all we can to avoid that this is perceived as an abuse of our power and/or as favouring those whom we employ. One rule of thumb would be to ensure that conditions of employment are no worse than locally accepted norms whether governed by local law or not. Reporting to, or discussing the existence of such an employment relationship with our supervisor is a step intended to establish clarity in what could otherwise become an ethically ambiguous situation.
4. Sexual exploitation and sexual abuse violate universally recognized international legal norms and standards and as such have always been unacceptable behaviour and prohibited conduct for UNHCR staff. Specific standards that reiterate these existing general obligations under the rules and obligations have been promulgated. Degrading or exploitative behaviour such as exchange of money, employment, goods or services for sex or sexual favours, or other forms of humiliation are prohibited to UNHCR staff or any other UN Personnel. This includes any exchange of assistance that is due to beneficiaries of assistance. Knowledge of any such behaviour should be reported to management.

Commentary to Principle 7

Isolated and helpless, most SGM refugees must conceal their SOGI from other refugees and from authorities. As law enforcement authorities in transit and host countries are often hostile to them, SGM refugees cannot seek protection and take pains to avoid police. Furthermore, powerful taboos prevent any discussion of SGM topics in most refugee settings. This is particularly true in closed environments including camps, urban refugee reception centres and locked facilities. The result is absolute silence in most field settings around SGM topics and activities. This silence allows sexual exploitation and abuse of SGM persons to occur in complete secrecy.

Exacerbating these vulnerability factors, an extreme power imbalance characterizes relationships between international staff and refugees. In this scenario, the staff member is likely to be one of the only persons whom the refugee can trust. Furthermore, the staff member may be immune from criminal prosecution and has the means and ability to depart if the relations are discovered, while the refugee must stay behind and face dire consequences.

These realities prevent most exploitation of SGM refugees by service providers from ever coming to light, rendering these refugees intensely vulnerable.

To address these issues, refugee agencies should inculcate awareness of these vulnerabilities to managers, who must be trained to identify and protect the vulnerable SGM refugees in their midst. They must further establish mechanisms by which SGM refugees and staff alike can safely report abuses without fear of retribution or vengeance. Investigations of alleged abuses must be conducted in confidentiality to protect staff and refugees alike, as in most settings mere rumors of SGM status can be deleterious or dangerous to the persons implicated.

PRINCIPLE 8

Refrain from any involvement in criminal or unethical activities, activities that contravene human rights, or activities that compromise the image and interests of UNHCR

1. No staff member of integrity will engage or support any illegal, exploitative, abusive or unethical activities that violate human dignity or contravene UN resolutions or international human rights standards. It does not matter whether such activities are carried out within UNHCR premises or using UNHCR assets, or whether this appears to be common practice within the community where we work or tolerated by the local police or judicial system.

2. Sexual exploitation and abuse, constitute acts of serious misconduct and are therefore grounds for disciplinary measures, including summary dismissal. Any concerns or suspicions regarding sexual exploitation or sexual abuse by a fellow worker, regardless whether in the same agency or not and whether or not within the UN system, must be reported through the established mechanisms. Also please refer to IOM-65/FOM-65/2003, “The role and function of the Inspector General’s Office” which defines the reporting lines and procedures for such concerns if they are related to UNHCR personnel.

3. Our private lives should remain private. UNHCR has no business regulating our private conduct, unless it is illegal under local law or has negative impact on our work or the people whom we serve. **Moreover, UNHCR respects universal principles of human rights applicable to private conduct. Employees should not be targeted (and their career prospects should not be limited) for private conduct which is protected by these principles.**

4. According to paragraph 3.2.(b) of the Secretary- General’s Bulletin ST/SGB/2003/13 of 9 October 2003, sexual activity with children (persons under 18) is prohibited regardless of the age of majority or age of consent locally. Mistaken belief in the age of a child is not a defence. However, according to paragraph 4.4 of the Bulletin, this does not apply where a staff member is legally married to someone who is under the age of 18 but over the age of majority or consent in their country of citizenship.

5. According to paragraph 3(c) of the same Bulletin, the exchange of money, employment, goods or services for sex or sexual favours or other forms of humiliating, degrading or exploitative behaviour, is prohibited. This includes prostitution.

Commentary to Principle 8

Like Principle 2, Principle 8 embodies the tension between universal human rights principles and organizational values on one hand, and local laws, customs and perceptions on the other. Specifically, Principle 8 instructs staff bound by the Code of Conduct to adhere to local laws and to refrain from behaviour that compromises the image of the Agency. As noted above, many of the countries in which refugee agencies maintain significant field operations are highly inhospitable toward SGMs. These countries either criminalize consensual same-sex relations, are overwhelmingly unaccepting of SGMs on a societal level, or both.³⁸

38. See *supra* note 20.

Section 1 of this Principle appears to prohibit only activities that “violate human dignity or contravene UN resolutions or international human rights standards.” The United Nations has recognized that private consensual same-sex behaviour is protected by universal human rights standards.³⁹ Thus, consensual same-sex conduct does not contravene Section 1 of this Principle. Nonconforming gender identity and expression similarly do not contravene Principle 8.⁴⁰

Section 3, which relates to staff conduct in private, appears to have inadvertently omitted the qualification that criminal actions must violate universal human rights standards. The proposed added text corrects this omission.

The admonition to refrain from conduct which compromises the image of the Agency (see title above) or which “has negative impact on [the Agency’s] work or the people [it] serve[s]” appears inapposite to SOGI, as the UN has openly embraced protection of SGM individuals. Thus, even in the face of local social disapproval, acceptance and protection of SGM individuals is consistent with the Agency’s image.

39. U.N. Human Rights Council (HRC) Resolutions A/HRC/27/L.27/Rev.1 (Sep. 24, 2014) and A/HRC/RES/17/19 (Jun. 17, 2011); and U.N. General Assembly (G.A.) Resolutions A/RES/67/168 (Dec. 20, 2012), A/RES/65/208 (Dec. 21, 2010), A/RES/63/182 (Dec. 18, 2008), A/RES/61/173 (Dec. 19, 2006), A/RES/59/197 (Dec. 20, 2004) and A/RES/57/214 (Feb. 25, 2003).

40. U.N. Human Rights Council (HRC) Resolutions A/HRC/27/L.27/Rev.1 (Sep. 24, 2014) and A/HRC/RES/17/19 (Jun. 17, 2011); U.N. General Assembly (G.A.) Resolutions A/RES/67/168 (Dec. 20, 2012) and A/RES/63/182 (Dec. 18, 2008).

PRINCIPLE 9

Refrain from any form of harassment, discrimination, physical or verbal abuse, intimidation or favouritism in the workplace

1. Discrimination and harassment have a negative effect on the workplace environment, the career and well-being of staff. Discrimination, harassment, or bullying (mobbing) on the grounds of race, **sex**, gender, religion, colour, national or ethnic origin, language, marital **or relationship** status, sexual orientation, **gender identity, gender expression**, age, socio-economic status, disability, political conviction, hierarchy within UNHCR or any other distinguishing feature, must not be tolerated. Harassment can take many forms. It can be physical, verbal, visual or written (including electronic media such as e-mails). It can also be one incident or a series of incidents and can occur at work or during non-working hours. Harassment typically involves a person in a position of power or authority as the initiator, but it should be recognized that staff in subordinate or equal positions may also be initiators. Staff, either singly or as a group, may be victims of or perpetrators of harassment.

2. UN staff are obliged to create and maintain an environment that prevents sexual exploitation and sexual abuse. Managers, at all levels, have a particular responsibility to support and develop systems that maintain this environment. Moreover, they have a special obligation in the workplace to uphold the highest standards of conduct, free of intimidation and personal favouritism because of their authority, and its inherent danger of abuse. The traditional respect of hierarchical structure within UNHCR creates a greater risk that this authority might be abused consciously or unconsciously. The solicitation or acceptance of favours, loans, or gifts of substantial value by managers from colleagues with whom they work would be improper.

3. A consensual sexual and/or romantic relationship with a work colleague may not cause harm to either party and may not have detrimental professional consequences. However, staff in supervisory or positions of authority should be aware of the difficulties that may arise and the possible negative perception of other staff when they enter into such a relationship with subordinates. Difficulties may arise in relation to: maintaining proper boundaries between professional and personal life, exhibiting bias in performance assessments, compromising on correct professional decisions or negatively impacting team relationships in the working environment. It may be particularly difficult to convince other staff that their colleague has not been favoured because of the relationship. This applies not only to direct supervisor-staff member relationships, but also to relationships for example between the head of a field office and all staff serving in that office.

4. For these reasons, staff who find themselves in, or entering into, such a relationship have to resolve this conflict without delay. This means that they either must not pursue the relationship or else inform their supervisor of the situation. The supervisor will then advise the staff member whether or not she/he should seek a new assignment or a transfer with a view to removing the power or hierarchical relationship between the two staff members concerned. Staff and supervisors can also avail themselves of the normal consultative options such as the Staff Welfare Section, Staff Council and Staff Associations.

Commentary to Principle 9

The proposed amendment to paragraph 1 above extends the prohibition against workplace discrimination and harassment to gender identity and gender expression. These additions recognize that much SOGI-based discrimination and harassment in fact results from reactions to nonconforming gender expression – i.e., failure to behave within locally defined gender norms.

While open harassment of SGM individuals is relatively uncommon in the professional refugee sector, it still occurs – particularly among remote field staff. Moreover, discrimination against SGM individuals is ubiquitous, and is found even at agencies with SGM persons in high or leading positions.

In some instances, such discrimination reflects the practical reality that openly self-identifying as SGM would in fact impede the staff member’s success when working with those who are uncomfortable with SGM individuals. Refugee agencies are thus less likely to place such openly SGM staff in positions which require extensive social contact or personal exposure. Less commonly, agency officials themselves harbor prejudices against or discomfort with SGM individuals, instead favoring their heteronormative counterparts. Many times, such discrimination is reflexive or unconscious.

UNHCR’s Policy on Discrimination, Harassment, Sexual Harassment and Abuse of Authority,⁴¹ updated in 2014, addresses most of the above concerns, but requires revision to address discrimination and harassment based on gender identity and gender expression.

To emphasize the importance of the agency’s anti-harassment and non-discrimination policies, reference to these policies should be posted prominently at key agency sites. Such notices should name all groups protected, including SGMs, and those of diverse gender expression. To ensure compliance and improvement, regular evaluation should be implemented. Evaluation may be accomplished through a wide variety of methods (e.g., anonymous questionnaires, focus groups, selected indicators, etc.), but should always include in-depth interviews with individuals who self-identify as SGMs. Given the high prevalence of SGM persons in the humanitarian sector, the absence of openly SGM individuals may in fact demonstrate the existence of discrimination. This is particularly true in any sizable operation located where consensual same-sex relations and gender nonconformity are not criminalized or socially prohibited.

Because SOGI-based discrimination and harassment are rooted in deeply held personal and societal beliefs, tensions and conflicts must be handled with high sensitivity. Agencies should require all staff to undergo in-depth SOGI sensitization training which includes clarification of their personal beliefs, values, attitudes and reactions. Training also hones one’s ability to interact comfortably with SGM individuals. This learning must go well beyond standard training on discrimination and harassment; it must help staff overcome their own barriers in these areas in a non-coercive supportive learning environment. It is crucial that this training

41. UNCHR, POLICY ON DISCRIMINATION, HARASSMENT, SEXUAL HARASSMENT AND ABUSE OF AUTHORITY, (Sept. 2014), available at [http://www.un.org/womenwatch/osagi/UN_system_policies/\(UNHCR\)policy_on_harassment.pdf](http://www.un.org/womenwatch/osagi/UN_system_policies/(UNHCR)policy_on_harassment.pdf).

occurs in an atmosphere where all views and beliefs are heard, respected and accepted, including those of staff who do not personally espouse SGM-positive values.⁴²

Paragraph 4 above requires staff to report their intimate relations with colleagues. This can be problematic even when the relationship is culturally acceptable and appropriate. The requirement is particularly difficult to enforce when the relationship is between members of the same sex, as most SGM staff are careful to conceal their SOGI from colleagues, particularly in the field. To begin allowing for transparency in this area, managers must create an SGM-safe workspace in which SGM individuals are secure.

42. ORAM has developed a training guide to assist refugee professionals working with SGM populations. See *supra* note 36.

SECRETARY-GENERAL'S BULLETIN
Special measures for protection from sexual exploitation and sexual abuse
SGB/2003/13
9 October 2003

The Secretary-General, for the purpose of preventing and addressing cases of sexual exploitation and sexual abuse, and taking into consideration General Assembly resolution 57/306 of 15 April 2003, "Investigation into sexual exploitation of refugees by aid workers in West Africa", promulgates the following in consultation with Executive Heads of separately administered organs and programmes of the United Nations:

Section 1: Definitions

For the purposes of the present bulletin, the term "sexual exploitation" means any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another. Similarly, the term "sexual abuse" means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.

Section 2: Scope of application

2.1 The present bulletin shall apply to all staff of the United Nations, including staff of separately administered organs and programmes of the United Nations.

2.2 United Nations forces conducting operations under United Nations command and control are prohibited from committing acts of sexual exploitation and sexual abuse, and have a particular duty of care towards women and children, pursuant to section 7 of Secretary General's bulletin ST/SGB/1999/13, entitled "Observance by United Nations forces of international humanitarian law".

2.3 Secretary-General's bulletin ST/SGB/253, entitled "Promotion of equal treatment of men and women in the Secretariat and prevention of sexual harassment", and the related administrative instruction set forth policies and procedures for handling cases of sexual harassment in the Secretariat of the United Nations. Separately administered organs and programmes of the United Nations have promulgated similar policies and procedures.

Section 3: Prohibition of sexual exploitation and sexual abuse

3.1 Sexual exploitation and sexual abuse violate universally recognized international legal norms and standards and have always been unacceptable behaviour and prohibited conduct for United Nations staff. Such conduct is prohibited by the United Nations Staff Regulations and Rules.

3.2 In order to further protect the most vulnerable populations, especially women, and children **and sexual and gender minorities**, the following specific standards which reiterate existing general obligations under the United Nations Staff Regulations and Rules, are promulgated:

(a) Sexual exploitation and sexual abuse constitute acts of serious misconduct and are therefore grounds for disciplinary measures, including summary dismissal;

Bold blue print indicates suggested amendments to original UNHCR text

(b) Sexual activity with children (persons under the age of 18) is prohibited regardless of the age of majority or age of consent locally. Mistaken belief in the age of a child is not a defence;

(c) Exchange of money, employment, goods or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour, is prohibited. This includes any exchange of assistance that is due to beneficiaries of assistance;

(d) Sexual relationships between United Nations staff and beneficiaries of assistance, since they are based on inherently unequal power dynamics, undermine the credibility and integrity of the work of the United Nations and are strongly discouraged;

(e) Where a United Nations staff member develops concerns or suspicions regarding sexual exploitation or sexual abuse by a fellow worker, whether in the same agency or not and whether or not within the United Nations system, he or she must report such concerns via established reporting mechanisms;

(f) United Nations staff are obliged to create and maintain an environment that prevents sexual exploitation and sexual abuse. Managers at all levels have a particular responsibility to support and develop systems that maintain this environment, **with special vigilance toward vulnerable individuals, including those enumerated in the Code of Conduct.**

3.3 The standards set out above are not intended to be an exhaustive list. Other types of sexually exploitive or sexually abusive behaviour may be grounds for administrative action or disciplinary measures, including summary dismissal, pursuant to the United Nations Staff Regulations and Rules.

Section 4: Duties of Heads of Departments, Offices and Missions

4.1 The Head of Department, Office or Mission, as appropriate, shall be responsible for creating and maintaining an environment that prevents sexual exploitation and sexual abuse, and shall take appropriate measures for this purpose. In particular, the Head of Department, Office or Mission shall inform his or her staff of the contents of the present bulletin and ascertain that each staff member receives a copy.

4.2 The Head of Department, Office or Mission shall be responsible for taking appropriate action in cases where there is reason to believe that any of the standards listed in section 3.2 above have been violated or any behaviour referred to in section 3.3 above has occurred. This action shall be taken in accordance with established rules and procedures for dealing with cases of staff misconduct.

4.3 The Head of Department, Office or Mission shall appoint an official, at a sufficiently high level, to serve as a focal point for receiving reports on cases of sexual exploitation and sexual abuse. With respect to Missions, the staff of the Mission and the local population shall be properly informed of the existence and role of the focal point and of how to contact him or her. All reports of sexual exploitation and sexual abuse shall be handled in a confidential manner in order to protect the rights of all involved. However, such reports may be used, where necessary, for action taken pursuant to section 4.2 above.

4.4 The Head of Department, Office or Mission shall not apply the standard prescribed in

section 3.2 (b), where a staff member is legally married to someone under the age of 18 but over the age of majority or consent in their country of citizenship.

4.5 The Head of Department, Office or Mission may use his or her discretion in applying the standard prescribed in section 3.2 (d), where beneficiaries of assistance are over the age of 18 and the circumstances of the case justify an exception.

4.6 The Head of Department, Office or Mission shall promptly inform the Department of Management of its investigations into cases of sexual exploitation and sexual abuse, and the actions it has taken as a result of such investigations.

Section 5: Referral to national authorities

If, after proper investigation, there is evidence to support allegations of sexual exploitation or sexual abuse, these cases may, upon consultation with the Office of Legal Affairs, be referred to national authorities for criminal prosecution.

Section 6: Cooperative arrangements with non-United Nations entities or individuals

6.1 When entering into cooperative arrangements with non-United Nations entities or individuals, relevant United Nations officials shall inform those entities or individuals of the standards of conduct listed in section 3, and shall receive a written undertaking from those entities or individuals that they accept these standards.

6.2 The failure of those entities or individuals to take preventive measures against sexual exploitation or sexual abuse, to investigate allegations thereof, or to take corrective action when sexual exploitation or sexual abuse has occurred, shall constitute grounds for termination of any cooperative arrangement with the United Nations.

Section 7: Entry into force

The present bulletin shall enter into force on 15 October 2003.

(Signed) Kofi A. Annan
Secretary-General

Commentary on the Secretary General's Special Bulletin

SGMs ubiquitously suffer extremely high rates of sexual exploitation and abuse. The primary reason for this is the prevailing taboo and secrecy they must maintain about their SGM status in order to protect themselves. These individuals often live in social isolation in SGM-hostile environments, which characterize most refugee camps and settings.⁴³ Few, if any, SGM individuals will risk exposing their own SGM status, even to report sexual exploitation and abuse. Keenly aware of this vulnerability, sexual predators are likely to target SGM individuals – particularly those who are young, emotionally fragile, destitute or weak. The proposed

43. See UNHCR, UNHCR AGE, GENDER AND DIVERSITY: ACCOUNTABILITY REPORT 2015, p. 26-28 (Jun. 2016), available at <http://www.refworld.org/docid/576a31804.html>.

amendment to Section 3.2 (f) makes clear that particular vigilance must be exerted to protect this population.

To send out a clear message that exploitation of SGM persons will not be tolerated, refugee agencies, camp managers and related service providers should take clear action indicating a proactive stance to protect SGM individuals. Specifically, outreach materials should explicitly enumerate same-sex and gender nonconformity-based abuse among transgressions prohibited by relevant policies. To encourage reporting of abuses, victims must be assured of absolute confidentiality throughout the investigation process and after its completion.

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