# Incorporating Sexual and Gender Minorities Into Refugee and Asylum Intake and Registration Systems

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## Acknowledgments

This project is the result of the collaborative work of ORAM staff and interns. The analysis was conceived and written by ORAM Executive Director Neil Grungras. ORAM Managing Director Jessica Burnstein provided essential input and editing. Fellow Chris Dominey and intern Juliette Ferron contributed useful feedback. Subhi Nahas provided the layout and design.


## 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.

Since its founding in 2008, ORAM has trained thousands of adjudicators and protection professionals, 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.oraminternational.org or email info@oraminternational.org.

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# Incorporating Sexual and Gender Minorities Into Refugee and Asylum Intake and Registration Systems

## I. Purpose of Analysis and Recommendations

This pamphlet aims to guide governments, the Office of the United Nations High Commissioner for Refugees (UNHCR) and non-governmental organizations (NGOs) in developing refugee intake and registration queries that are inclusive of sexual and gender minorities (SGMs). Increasing numbers of refugees and asylum seekers are basing their claims for protection on their sexual orientation or gender identity (SOGI). Simultaneously, more jurisdictions are granting unification rights to refugees in unmarried partnerships. The pamphlet explains how current intake and registration systems do not capture information that refugee agencies need in order to make fully informed decisions in SOGI-based cases and offers practical solutions to this information gap.

Our analysis addresses the most protrusive deficiencies by proposing specific changes to existing intake and registration systems. The recommended changes are directed at creating space for SGM refugee and asylum applicants to describe their complex identities and life circumstances. These recommendations are particularly important for refugee status determination (RSD) and asylum adjudication, but are relevant to all phases of the refugee displacement, resettlement and integration cycle.

By adopting SGM-inclusive intake methods, refugee agencies will be able to more accurately assess SOGI claims and better meet the protection needs of *bona fide* asylum seekers and refugees.

Agencies that are not able to adopt the recommended changes in the near term will find this pamphlet helpful in identifying areas in which their existing intake procedures and tools are deficient. With this knowledge, they will be able to tailor supplements to those systems, to some extent compensating for key deficiencies and eliciting the information their staff members need to make accurate decisions.

### A) The Role of Information in Refugee Adjudication and Protection

The efficacy of all refugee and asylum protection systems is predicated on the collection of complete and accurate information about applicants and their cases. Regardless of whether applicants present their protection claims and needs verbally, in writing, or in a hybrid manner, their statements are often the only information available to refugee professionals.

Refugee agencies are often required to make decisions based solely on applicants' testimony. They contend with limited time, incomplete knowledge and little objective evidence regarding applicants' claims of SOGI-based persecution and SGM protection needs. They commonly lack systematic and reliable ways to collect the information they need to make accurate and confident decisions.

### B) Deficiencies in Standard Intake and Registration Systems

It is axiomatic that all refugee applicants may be "afraid to speak freely and give a full and accurate account of their case."[1] Any steps taken to place applicants at greater ease are likely to enhance the

1. UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees 32 (1992).

accuracy of their stories and, ultimately, the strength of decisions made about their protection claims.

In the SOGI context, deficient information collection systems are a prime culprit preventing informed decisions. While these systems are designed to elicit information about characteristics, circumstances and events that give rise to persecution and to preserve family unity, they overwhelmingly omit reference to SOGI and to the relationships and life situation of most SGM refugees.

As most information systems are currently configured, hetero- and biologically normative categories form the basis for many of the queries. SGM applicants who read or hear such questions assume that the agencies charged with protecting them view variations in SOGI as unimportant at best and illegitimate or reprehensible at worst. This phenomenon is compounded by SGM applicants' feelings of shame and internalized homophobia and transphobia, making them particularly reticent to disclose their SOGI if a safe space to do so is not explicitly provided. When refugees withhold or are not asked to provide case-relevant information, overall system effectiveness is compromised.

### C) Solutions Proposed

To help overcome the gaps outlined above, agencies must implement information collection tools and methods that encourage early self-identification by SGM refugees and maximize disclosure of accurate information. Forms and other information systems that are inclusive of SGM individuals will help ensure that these applicants are more forthcoming, thereby facilitating the application and interviewing processes and enhancing overall system efficacy.

SOGI-inclusive forms improve efficiency in two principle ways: First, they allow SGM refugees to describe their gender identity, sexual orientation and relationship status more truthfully. This in turn allows agency professionals to assess claims, protection needs, and partner status more efficiently and accurately. Second, SOGI-inclusive forms signal a welcoming environment, making applicants more comfortable throughout the application process.

## II. Approach to Suggested Formulations

The recommendations in this document are made with seven overarching goals in mind, relevant to all refugee information collection methods. These methods must:

- Be clear and concise.
- Comprehensively elicit information required to assess claims and protection needs.
- Be as discreet as possible.
- Not offend or confuse applicants.
- Allow sensitive information to be kept confidential.
- Encompass *all* prospective asylum seekers, refugees and their families.
- Signal an inclusive and welcoming environment for everyone.

Effective refugee information collection systems must at the same time be straightforward, relatively brief, and sufficiently nuanced to gather information that accurately reflects the complexity of refugee identities and lived realities. Striking a balance among these exigencies is always a challenge. It is

particularly difficult in the highly sensitive area of SOGI, as many of the relevant words and constructs are taboo for many professionals and refugee agencies, and even for many refugees themselves. The best way to overcome these challenges is to ask inoffensive questions that anticipate the identities and circumstances that most often give rise to SGM protection needs, while allowing a maximum of individualized responses in a confidential setting.

This document sets out several of the most problematic areas of standardized information collection systems with regard to SGM individuals and suggests possible alternative formulations for each of these areas, analyzing their merits.

## III. Recommendations by Subject Area

SGM status manifests itself in a myriad of life areas. Migration path, biodata, important relationships and housing circumstances can all be indicative of an applicant's SOGI and important relationships. While information systems inherently touch on most of these areas in several ways, most do not employ queries that yield the needed information reliably.

Further, the applicant's specific SOGI – gay, lesbian, bisexual, transgender, intersex or other – may have a direct bearing on eligibility for refugee status, protection needs and case composition alike. For example, in a country that criminalizes same-sex relations only between men, a man who is perceived as gay may be prosecuted or even face execution for allegedly engaging in same-sex conduct, while a transgender woman may not necessarily be threatened with criminal penalties. In order to assess the fear of persecution against country of origin information, the examiner must acquire a nuanced understanding of the applicant's SOGI, relying primarily on the applicant's own testimony.

To be effective, information systems must capture these variations and nuances. The suggested formulations below encompass these factors in the major life areas in which SGM statuses may be expected to manifest themselves.

### A) General Instructions

**Common Formulation:**

| **Registration Information Sheet** |
| --- |
| Parts A to H must be completed for every adult and child Applicant, including family members and other dependents, who are accompanying a Principal Applicant. |

**Weaknesses of Common Formulation:**

These instructions encompass the applicant's family members and accompanying dependents to the exclusion of unmarried partners (who are almost never "dependents"). This phrasing thus (1) precludes reporting of same-sex partners; and (2) implies that the agency does not consider such relationships significant or relevant. Equally importantly, the instructions do not assure applicants that the information they provide will be kept confidential, and also do not assure applicants that they are in a protected, safe environment.

**Suggested Formulation:**

| **Registration Information Sheet** |
| --- |
| Parts A to H must be completed for every adult and child Applicant, including family members, other dependents and unmarried partners, who are accompanying a Principal Applicant. |
| *All information you provide will be kept strictly confidential. You can update this information at any time. This is a safe environment for everyone. If you are harassed or mistreated by anyone on or around these premises, please alert security or request to speak with a manager.* |

**Merits of Suggested Formulation:**

The suggested formulation refers explicitly to unmarried partners, allowing for reporting of those relationships, whether heterosexual or same-sex, and indicating that the agency considers those relationships meaningful and relevant. The formulation encourages applicants to be forthcoming by assuring them that all information they provide will be kept confidential. It signals to all applicants that the agency will protect them, both inside and outside the office – where SGMs are often harassed and mistreated in queues. (This formulation presupposes that security personnel have received training and do in fact protect SGMs, and that the agency is capable of extending that protection.)

### B) Applicant's Sex

**Traditional Formulation:**

| 5. Sex: ☐ Male ☐ Female |
| --- |

**Limitations of Traditional Formulation:**

The question above seeks to ascertain the applicant's biological sex. The formulation represents the traditional "gender binary" view of human physiology: *i.e.*, male or female. The formulation does not provide a space for those who seek protection because they diverge from this sex or gender binary. Specifically, the wording precludes indication that the applicant is intersex (a person born with reproductive or sexual anatomy and/or chromosomal patterns that do not fit conventional definitions of male or female) or transgender (a person whose gender identity differs from societal expectations of the sex they were assigned at birth).[2] Moreover, the formulation implicitly conveys to applicants that the agency *itself* recognizes "male" and "female" as the only legitimate possibilities.

2. All known refugee information systems either ignore the concept of gender identity altogether, erroneously utilize the terms "sex" and "gender" interchangeably, or conflate the two. Formulations that recognize the critical distinction between "sex" and "gender" are beyond the scope of this paper. These are available upon request by writing to info@oraminternational.org.

**Suggested Formulation:**

| 5. Sex: ☐ Male ☐ Female |
|---|
| ☐ Further discussion required |

**Merits of Suggested Formulation:**

The suggested formulation, variations of which are now used in several jurisdictions, adds a space for individuals who identify as other than "male" or "female" by discreetly providing an opportunity for further discussion. This option provides a measure of privacy for applicants who may self-identify as "Transgender," "Intersex" or "Other," but do not feel safe doing so on a form that people nearby may see.[3] Lastly, the suggested formulation implicitly conveys to applicants that the agency recognizes variations in sex and gender identity as real and legitimate.

At the UNHCR and in isolated national contexts where initial registration is conducted verbally, intake workers typically do not ask the applicant's sex at all. Rather, they glean the information at face value from the passport. In the alternative, where no official documentation is available, intake staff often guess about an applicant's sex based on appearance. In these situations where the applicant's gender is visibly non-conforming, an indication of "further information required" will tell follow-up interviewers that this area requires probing.

*Note: While this suggested formulation does not explicitly elicit information about gender identity, most applicants seeking protection on this basis are likely to recognize and check the third box, inviting follow-up discussion at the interview. Where the information is collected only verbally, the examiner will need to glean this information from other inquiries discussed in this pamphlet, from the applicant's gender expression or from the applicant's direct testimony.*

## C) Personal/Marital Status

**Traditional Formulation:**

| 9. Marital Status: ☐ Single ☐ Married ☐ Engaged ☐ Separated ☐ Divorced ☐ Widowed |
|---|
| 10. Spouse's Name *(if applicable)*: |

**Limitations of Traditional Formulation:**

The traditional formulation does not include an option for individuals who are in committed relationships that are not legally recognized (*e.g.*, same-sex relationships, religious unions not legitimized by the domestic government, etc.). Also, if the applicant is in a committed relationship but does not cohabitate with the partner, the relationship may not be covered in the section on household members and dependents. Moreover, the traditional formulation does not inquire about former spouses or unmarried partners, although this information may be salient to an applicant's motivations

3. It is recommended that this formulation, which directly overcomes the "male-female" gender binary, be used in written forms whenever possible and safe. Additional formulations are available upon request by writing to info@oraminternational.org.

and credibility, particularly in the SOGI context. Lastly, the question implicitly conveys to applicants that the agency *itself* does not view relationships that are not listed as legitimate.

**Suggested Formulation:**

9. Legal Marital Status: ☐ Single ☐ Married ☐ Engaged ☐ Separated ☐ Divorced ☐ Widowed

10. Spouse's Name *(if applicable)*:

Please write the names of any other current and all former spouses and the dates of the marriage:

First Name _____ Last Name _____ From _____/_____ To _____/_____
Mo. Yr. Mo. Yr.

First Name _____ Last Name _____ From _____/_____ To _____/_____
Mo. Yr. Mo. Yr.

First Name _____ Last Name _____ From _____/_____ To _____/_____
Mo. Yr. Mo. Yr.

If you are, or have been, in a life partnership or other significant committed relationship not described above, please write the person(s') name(s), sex and the dates of the relationship(s):

First Name _____ Last Name _____ Sex:[4] ☐ Male ☐ Female
From _____/_____ To _____/_____
Mo. Yr. Mo. Yr.

First Name _____ Last Name _____ Sex: ☐ Male ☐ Female
From _____/_____ To _____/_____
Mo. Yr. Mo. Yr.

First Name _____ Last Name _____ Sex: ☐ Male ☐ Female
From _____/_____ To _____/_____
Mo. Yr. Mo. Yr.

If your claim or protection needs are based in part or in whole on the person(s) listed above, or your relationship with that/these person(s), please explain briefly in the space below.

**Merits of Suggested Formulation:**

The suggested formulation provides a space to report committed relationships – whether heterosexual or same-sex – which were not or are not legally sanctioned. The formulation also requests the dates

4. It is recommended that the increasingly common formulation "☐ Male ☐ Female ☐ Other," which directly overcomes the "male-female" gender binary, be used in written forms whenever possible and safe. Additional formulations are available upon request by writing to info@oraminternational.org.

of former relationships and the sex of the partner(s). These factors are often essential to assessing SGM refugee narratives. The formulation is particularly relevant where a refugee applicant seeks to be cross-referenced or consolidated with an unmarried partner during processing, united after being granted asylum or jointly resettled in jurisdictions which award derivative status to same-sex partners. The formulation also allows the applicant to indicate protection or case composition needs based on the partner's circumstances, which may include their sex, sexual orientation or gender identity.[5] Importantly, the formulation clearly conveys to applicants that the agency *itself* recognizes and wants to know about the applicant's "non-traditional" relationships. The formulation equally benefits inquiries about non-traditional *heterosexual* relationships, including common-law marriages, and claims based on these.

### D) Family/Household/Dependents

**Current UNHCR Formulations:**

| Family/Household Composition |
|---|
| If the Applicant is applying as a dependent or family member of a Principal Applicant, and the information in Parts F to H is identical to that of the Principal Applicant, the registration number of the Principal Applicant may be provided here instead of completing Parts F to H.<br>Registration # of Principal Applicant _____ |

| Part F – Family Members and Dependents Accompanying the Applicant | | | | |
|---|---|---|---|---|
| Full Name | Individual Registration # | Relationship to Applicant | Sex (M/F)[6] | Date of Birth (dd/mm/yyyy) |
| | | | | _ _/_ _/_ _ _ _ |
| | | | | _ _/_ _/_ _ _ _ |

| Part G – Close Family Members and Dependents in Home Country | | | | |
|---|---|---|---|---|
| Full Name | Relationship to Applicant | Date of Birth (dd/mm/yyyy) | Citizenship | Occupation |
| | | _ _/_ _/_ _ _ _ | | |
| | | _ _/_ _/_ _ _ _ | | |

5. This formulation presumes that the applicant's partner(s) conform(s) to the "male-female" gender binary. Model formulations allowing more complex answers are available upon request by writing to info@oraminternational.org.
6. *Supra* note 4.

| Part H – Non-Accompanying Family Members and Dependents Living Outside Home Country | | | | | |
|---|---|---|---|---|---|
| Full Name | Relationship to Applicant | Date of Birth (dd/mm/yyyy) | Address | Status in Host Country | Citizenship |
| | | _ _/_ _/_ _ _ _ | | | |
| | | _ _/_ _/_ _ _ _ | | | |

**Merits and Limitations of UNHCR Formulations:**

In light of the critical relevance of refugees' personal circles to their credibility and protection, many agencies have begun to extend their inquiry in this area beyond the nuclear family. The above set of questions from a UNHCR registration form collects extensive information about all of the applicant's dependents, family members and cohabitants. This is a vast improvement over prior formulations, which were typically very narrow in scope. At the same time, the form is still not inclusive of unmarried partners who are not living with the principal applicant.

**Suggested Additional Question:**

| **Unmarried Partners** | | | | | | |
|---|---|---|---|---|---|---|
| Please list any past and/or current unmarried partners during the last 5 years. Include any significant relationship over 6 months. | | | | | | |
| Full Name | Relationship to Applicant | Date of Birth (dd/mm/yyyy) | Sex (M/F)[7] | Relationship Began | Relationship Ended (if relevant) | Current Location |
| | | _ _/_ _/_ _ _ _ | | ___/____ Mo. Yr. | ___/____ Mo. Yr. | |
| | | | | | | |
| If your claim or protection needs are based in part or in whole on the person(s) listed above, or your relationship with that/these person(s), please explain briefly in the space below. | | | | | | |

**Merits of Additional Question:**

The suggested additional question creates a direct opportunity for all refugee applicants to enumerate fully their significant unmarried relationships during the past five years. This question is highly informative regarding all relationships, including "non-traditional" heterosexual ones.

The formulation also allows the applicant to indicate protection or family/household composition needs based on the partner's circumstances, which may include their sex, sexual orientation or gender identity.[8]

7. *Id*.
8. This formulation presumes that the applicant's partner(s) conform(s) to the narrow "male-female" gender binary. It is recommended that the increasingly common formulation "☐ Male ☐ Female ☐ Other," which directly overcomes the "male-female" gender binary, be used in written forms whenever possible and safe. Additional formulations are available upon request by writing to info@oraminternational.org.

Importantly, the formulation clearly conveys to applicants that the agency *itself* recognizes and wants to know about the applicant's "non-traditional" relationships.

### E) Sex of Interviewer/Language(s) of Interview

**Common Formulation:**

Do you have a preference to be interviewed by a staff member and interpreter of a particular sex?
☐ Yes ☐ No

If yes, indicate which sex:[9] ☐ Male ☐ Female

In what language(s) would you prefer to be interviewed?

**Limitations of Common Formulation:**

The traditional formulation allows applicants to designate only two preferences: the sex of their interviewer and interpreter and the language of the interview. The question implicitly conveys that preferences other than these are not relevant or of interest to the agency.

**Suggested Formulation:**

Do you have a preference to be interviewed by a staff member and interpreter of a particular sex?
☐ Yes ☐ No

If yes, indicate which sex:[10] ☐ Male ☐ Female ☐ Further discussion required

In what language(s) would you prefer to be interviewed?

If you have any other preferences or concerns regarding your interviewer, interpreter or other aspects of your interview, please indicate these below. *If possible*, this office will accommodate your request.

**Merits of Suggested Formulation:**

The suggested formulation allows applicants to indicate any preferences they may have regarding the caseworker and interpreter who will conduct their interview. Self-identified SGM applicants are uniformly more forthcoming with interviewers and interpreters who are also SGM, just as women are likely to be more forthcoming regarding SGBV with female interviewers and interpreters. Today, no known refugee or asylum agency accommodates requests for SGM interviewers or interpreters, just as no agency accommodates requests for staff members of specific ethnicities or religions.

9. *Supra* note 4.
10. *Id*.

The suggested formulation provides the applicant with added opportunity to express preferences about the interviewer/interpreter and the reasons for these. Since the formulation indicates that the office may not be able to accommodate the applicant's request, it does not bind the office to any course of action. Moreover, this question creates an opportunity for staff to reassure applicants that they will be treated fairly and equally regardless of the identity of their interviewer and interpreter. Lastly, because the suggested formulation does not indicate specific characteristics, it will be unlikely to offend non-SGM applicants, who might feel uncomfortable if they believe SGM staff could be assigned to their case.

*Note: An applicant's failure to state a preference for SGM staff does not in any way negate the bona fides of a SOGI-based asylum or refugee claim. At the same time, stating a preference for SGM staff opens a discussion of the applicant's own SOGI.*

### F) Refugee Convention Basis of Claim

**Traditional Practice:**

In the RSD context, most jurisdictions do not require applicants to designate the Convention ground of their refugee claim on the registration form. This is because traditional thinking holds that applicants do not – or should not be expected to – understand the theoretical and legal underpinnings of their cases. Refugee agencies are also extremely careful to avoid questions that may steer applicants' claims in a particular direction.

**Suggested Formulation:**

I am seeking refugee status/asylum based on (*check all that apply*):

☐ Race
☐ Religion
☐ Nationality/Ethnicity
☐ Political Opinion
☐ Membership of a Particular Social Group
☐ Other Grounds
☐ I Cannot State or Do Not Know

**Merits of Suggested Formulation:**

The suggested formulation acknowledges that in the mass information age, many applicants will be able to articulate correctly the Convention basis of their claim. In fact, many applicants today are informed about the five grounds for refugee protection, the fifth of which is increasingly known in SGM communities to encompass SOGI. The two latter options "Other Grounds" and "I Cannot State or Do Not Know" provide alternatives for applicants who cannot articulate their SOGI claim or do not feel safe doing so on an application form.

This formulation provides an opportunity for SGM and other applicants with highly sensitive claims to answer truthfully yet indirectly at the initial stage, laying the foundation for in-depth and targeted questioning at the full interview.

*Note: "I Cannot State or Do Not Know" does not negate the bona fides of an applicant's refugee or asylum claim.*

## IV. Conclusion

Prevalent asylum and refugee intake and registration methods are deficient in gathering needed case information from SGM individuals. This deficiency exacerbates the already enormous challenge of assessing SOGI-based claims and SGM protection needs. Just as these systems deprive refugee agencies of the accurate and complete information they need to make fully informed decisions, they do not give applicants the space to fully describe their identities and life circumstances. By implementing the SGM-inclusive formulations in this document, refugee agencies will be able to more accurately assess SOGI claims, better protect *bona fide* asylum seekers and refugees, and recognize *bona fide* non-traditional relationships.

The formulations suggested in this document are not exhaustive, nor can they be implemented in their entirety in every refugee agency or work environment. For example, formulations that may be appropriate in writing may be inapposite to verbal inquiries. Similarly, a formulation that is clear in one language may be irrelevant, inappropriate or unavailable in another.

Nevertheless, the suggestions above provide a useful starting point for refugee institutions seeking to augment their capacity to work with SGM individuals. Agencies are advised to consult with regional experts in formulating culturally sensitive queries that most directly apply to the populations seeking their protection.

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