



Partnering with Rainbow Railroad:

Three recommendations for U.S. Policy-makers

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Acronyms

HRD:	Human Rights Defender
IDP:	Internally Displaced Person
LGBTQI+:	Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Plus
OHCHR:	Office of the United Nations High Commissioner for Human Rights
SOGIESC:	Sexual Orientation, Gender Identity and Expression and Sex Characteristics
UNHCR:	United Nations High Commissioner for Refugees
USRAP:	United States Refugee Admissions Program
P1:	Priority 1 Refugee Referral
P2:	Priority 2 Refugee Referral



Overview

In 2019, 79.5 million people were forcibly displaced worldwide due to “persecution, conflict, violence, human rights violations or events seriously disturbing public order.”¹ Of these, over 50 percent were internally displaced persons (IDPs).² According to UNHCR, Iraq, South Sudan and Syria have some of the largest numbers of IDPs.³ These countries are also home to some of the harshest laws and practices criminalizing homosexuality, where persecution on the basis of sexual orientation, gender identity and expression and sex characteristics (SOGIESC) is overt and widespread.

At the same time, persecution related to SOGIESC is pervasive globally. Nearly 70 countries have laws on their books that criminalize same-sex behaviour, and no less than 58 criminalize gender diversity.⁴ These laws—which are often a legacy of colonization—are powerful tools of repression and extortion. **As a consequence, LGBTQI+ people are routinely arrested and denied basic human rights, and are often brutally attacked, tortured or even murdered.**

The COVID-19 pandemic has only exacerbated this situation. Global efforts to contain the novel coronavirus through lockdowns and border closures have compounded the impact on those fleeing persecution and seeking refuge. The pandemic continues to disproportionately affect LGBTQI+ individuals around the world.⁵ As commonly occurs during times of crisis, Rainbow Railroad has witnessed a spike in state-sponsored violence and persecution, and in hostility from local communities who blame the novel coronavirus on LGBTQI+ people.⁶



Particularly concerning are instances of police abuse and brutality enacted under the guise of enforcing COVID-19 quarantine measures. Though the overwhelming majority of forcibly displaced persons are IDPs, they are not entitled to the same international protections as those who seek refuge across international borders.

Rainbow Railroad was founded in 2006 to address the global refugee crisis. In the spirit of the Underground Railroad, Rainbow Railroad’s mission is to help persecuted LGBTQI+ individuals as they seek a safe haven from state-enabled harassment and violence. At a time when there are more displaced people than ever before, LGBTQI+ people are uniquely vulnerable due to systemic, state-enabled homophobia and transphobia. These factors lead to either displacement in their own country or prevent them from escaping harm. **As a result of Rainbow Railroad’s action,** more LGBTQI+ individuals have been able to access lives free from persecution.

Providing emergency travel to LGBTQI+ people facing imminent danger is our core method of work. This involves three key steps:

- 1. Verification:** We verify each case, learn about the circumstances of the individual facing persecution and begin determining how we can help.
- 2. Research and Support:** We research possible routes to safety and connect with local contacts who provide logistical support. This includes providing support to the individual in-country (e.g., safe houses).
- 3. Travel:** We provide travel to a safer country where the person’s basic rights and freedoms will be upheld. Upon arrival, we provide limited, short-term support to help people settle in.

On top of emergency travel, Rainbow Railroad provides safety to LGBTQI+ people around the world in five additional ways:

- 1. Lifesaving support to individuals in imminent danger**, which includes accommodations, medical care, access to essential medicines and relocation to another region of the country.
- 2. Direct support of LGBTQI+ partner organizations**, including capacity building and livelihood support to human rights defenders (HRDs), organizations and collectives in countries where people are displaced.
- 3. Emergency responses to anti-LGBTQI+ crackdowns**, including monitoring and responding to mass detentions and/or arrests of LGBTQI+ persons.
- 4. Providing essential information to LGBTQI+ people at risk**, including non-monetary resources and counsel to LGBTQI+ people facing violence and persecution.
- 5. Arranging private sponsorship of refugees** and pursuing other complementary pathways to safety.

Since our founding, we've helped over 1,600 LGBTQI+ individuals find safety through emergency relocation and other forms of assistance. Our organization has received international media attention, including a feature on CBS' [60 Minutes](#).⁷ And the need for our expertise and assistance is increasing: in 2020, over 3,000 people reached out to us for help.



Kimahli Powell, Rainbow Railroad Executive Director on CBS' 60 Minutes

Our Priority Recommendations

As a part of Rainbow Railroad's mission, we seek to change policy and laws to be more inclusive and protective of the rights of LGBTQI+ refugees and asylum seekers by presenting our voices to the United States government, Congress and through collaborations with like-minded advocacy organizations like the [Council for Global Equality](#).

Rainbow Railroad calls on the Biden-Harris Administration and the U.S. Congress to address the global refugee crisis (one that disproportionately affects LGBTQI+ persons) comprehensively, using relevant laws, policies and legislation. Our recommendations are:

- 1. Increase refugee admissions to the U.S. for LGBTQI+ populations given their unique vulnerabilities**
- 2. Grant LGBTQI+ refugee organizations like Rainbow Railroad official recognized referral status**
- 3. Protect the right of asylum by ensuring that harmful and discriminatory detention policies are reversed and that detention is safe for LGBTQI+ migrants.**

Recommendation 1: Increase refugee admissions to the U.S. for LGBTQI+ populations given their unique vulnerabilities

The right of asylum is conferred by the 1951 United Nations Convention Relating to the Status of Refugees. The U.S. is not a signatory to the Convention, but has ratified the 1967 United Nations Protocol Relating to the Status of Refugees, which holds the country to the same obligations regarding the status and treatment of refugees. For an asylum application on the basis of LGBTQI+ status to be successful, an applicant must prove that sexual orientation or gender identity are the basis for membership in a “particular social group” (i.e., a protected class), and that there is past persecution or a well-founded fear of future persecution on the basis of that membership (e.g., being LGBTQI+). The Trump-Pence Administration severely limited the ability of members of the LGBTQI+ community—an especially vulnerable group in many parts of the world—from qualifying for asylum as members of a “particular social group.” The Trump-Pence Administration also instituted Migrant Protection Protocols, preventing individuals from entering the U.S. while awaiting their asylum hearing (a practice that President Joe Biden began [winding down](#)⁹ upon entering office).

In February 2021, President Biden released the [Memorandum on Advancing the Human Rights of Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Persons Around the World](#),⁹ directing American agencies operating abroad “to ensure that United States diplomacy and foreign assistance promote and protect the human rights of LGBTQI+ persons.” It called for agencies to combat the criminalization of LGBTQI+ identity or conduct, protect LGBTQI+ refugees and asylum seekers, address human rights abuses affecting LGBTQI+ people and work with like-minded nations and international organizations to combat discrimination.

The specific commitments with regard to LGBTQI+ refugees and asylum seekers in the memorandum are as follows:

Sec. 2. Protecting Vulnerable LGBTQI+ Refugees and Asylum Seekers. *LGBTQI+ persons who seek refuge from violence and persecution face daunting challenges. In order to improve protection for LGBTQI+ refugees and asylum seekers at all stages of displacement, the Departments of State and Homeland Security shall enhance their ongoing efforts to ensure that LGBTQI+ refugees and asylum seekers have equal access to protection and assistance, particularly in countries of first asylum. In addition, the Departments of State, Justice, and Homeland Security shall ensure appropriate training is in place so that relevant Federal Government personnel and key partners can effectively identify and respond to the particular needs of LGBTQI+ refugees and asylum seekers, including by providing to them adequate assistance and ensuring that the Federal Government takes all appropriate steps, such as potential increased use of Embassy Priority-1 referrals, to identify and expedite resettlement of highly vulnerable persons with urgent protection needs.*

In February 2021, the Biden-Harris Administration issued a report to Congress that it was taking “[emergency](#)” action to quadruple the refugee restrictions for the 2021 fiscal year to 62,500, up from former president Donald Trump’s record-low level of 15,000.¹⁰ President Biden has also said he will remove the [discriminatory eligibility criteria](#) that Trump created last year,¹¹ which effectively excluded most refugees from Muslim-majority and African countries—even those the U.S. government had already screened and approved for resettlement. In April 2021, the Biden-Harris Administration indicated that it might backtrack on this pledge and remain at the Trump-era 15,000 refugee cap. Advocates, including [Rainbow Railroad](#), immediately protested, prompting a pause on that action and a promise from the administration to stay aligned with President Biden’s initial commitment.¹²

The Biden-Harris Administration has pledged to ultimately raise the admitted refugee level of the U.S. to 125,000 individuals. However, it will be critical to continue to advocate for LGBTQI+ populations and ensure that they make up a significant proportion of this commitment, given their global persecution levels. It’s also vital that the U.S. moves quickly to reach this admission goal.

We are calling on the Biden-Harris Administration to work with us and other refugee advocacy organizations to identify LGBTQI+ refugees within the UNHCR system for resettlement in the U.S.

Recommendation 2: Grant LGBTQI+ refugee organizations like Rainbow Railroad official recognized referral status

Additionally, in February 2021, President Biden issued an [Executive Order on Rebuilding and Enhancing Programs to Resettle Refugees and Planning for the Impact of Climate Change on Migration](#), calling on federal agencies to expand the United States Refugee Admissions Program (USRAP). There are two specific sections that speak to our goal of being an official referring partner for resettlement:¹³

Sec. 1. (g) My Administration shall seek opportunities to enhance access to the refugee program for people who are more vulnerable to persecution, including women, children, and other individuals who are at risk of persecution related to their gender, gender expression, or sexual orientation.

Sec. 4. (a) Consistent with the policy set forth in section 1 of this order and to facilitate this order's effective and expeditious implementation: The Secretary of State, in consultation with the Secretary of Homeland Security, shall consider ways to expand mechanisms under which non-governmental organizations with direct access to and knowledge of refugees abroad in camps or other settings could identify and directly refer to USRAP particularly vulnerable individuals who have a strong possibility of qualifying for admission to the United States as refugees.

Building on the momentum and directives of this executive order, Rainbow Railroad believes that comprehensive and flexible approaches can provide key avenues for LGBTQI+ migrants. Rainbow Railroad calls on the U.S. government to leverage both Priority 1 (P-1) and Priority 2 (P-2) mechanisms to ensure this population is prioritized through processing, in addition to considering a private sponsorship model for LGBTQI+ refugees.

i) Priority Referrals for LGBTQI+ Migrants

President Biden has pledged to ensure LGBTQI+ refugees and asylum seekers have access to necessary services and protections. He has also promised that federal agencies will be trained to identify and respond to the particular needs of LGBTQI+ refugees and asylum seekers, including expediting services for LGBTQI+ people who may be targeted by violence or are under threat in their home countries.

The Priority 1 (P-1) Individual Selection mechanism is for individuals from any country that has been officially recognized by the UNHCR or the U.S. government as a refugee and for whom resettlement is considered the best option. Biden's memorandum opens up the option for federal agencies like the Department of State and Homeland Security to consider using P-1 referrals for LGBTQI+ migrants.

Embassy P-1 referrals are critical to providing avenues for migrants who are not able to safely flee their home country for a neighbouring one and claim asylum. These referrals allow for a petition to go to the U.S. Embassy in their country of persecution instead of to an immigration checkpoint across the border. Often, LGBTQI+ people lack the resources and documentation to move internationally, preventing their safe passage into another country. Additionally, LGBTQI+ human rights defenders are high-profile targets for governments, extrajudicial forces and local aggressors because of their work, and they are often not able to obtain freedom of movement to travel across borders safely.

The Priority 2 (P-2) Group Selection is for populations who have been identified by the U.S. Department of State, in conjunction with other national and international groups, as being in need of resettlement. They are often of a specific persecuted ethnic, religious or national identity. Given the persistent threats to the LGBTQI+ population globally, we are calling for an accelerated LGBTQI+ protection mechanism through P-2.



We urge the Biden-Harris Administration to leverage both P-1 and P-2 mechanisms to protect and expedite LGBTQI+ refugee resettlement. The Department of State should take the following actions to protect LGBTQI+ refugees:

- Direct U.S. embassies to provide P-1 referrals for LGBTQI+ people who need protection but who are unable to leave their country of origin, meaning they are outside of the UNHCR's jurisdiction.
- Allow Rainbow Railroad and other appropriate non-governmental organizations to support and refer such LGBTQI+ cases for P-1 visas in cases where the person cannot leave their country of origin and provide training for assessing LGBTQI+ refugee claims, including assessing credibility.
- Designate LGBTQI+ refugees who are facing or fleeing persecution as a result of their sexual orientation or gender identity as a group eligible for P-2 processing. Given our close ties with in-country organizations and ability to cross-reference cases across borders for emergency referrals, this will allow Rainbow Railroad to help facilitate any governmental verification and adjudication process.
- Allocate additional funding to the U.S. Bureau of Population, Refugees, and Migration (PRM) to provide training for consulate staff, caseworkers and translators on non-discrimination and assessing the credibility of LGBTQI+ refugee cases.

ii) Referrals for an LGBTQI+ Sponsorship Model

The [Executive Order on Rebuilding and Enhancing Programs to Resettle Refugees and Planning for the Impact of Climate Change on Migration](#) also calls on the United States to build a private sponsorship program:

Sec. 1. (i) To meet the challenges of restoring and expanding USRAP, the United States must innovate, including by effectively employing technology and capitalizing on community and private sponsorship of refugees, while continuing to partner with resettlement agencies for reception and placement.

Private sponsorship—an “alternative” or “complementary” pathway to traditional government-led refugee resettlement—can offer communities, organizations, companies and philanthropists the opportunity to support the resettlement of additional refugees to the U.S.¹⁴ We stand alongside our partners in America, such as the [International Refugee Assistance Project](#) (IRAP), in applauding this initiative and calling for the establishment of a private sponsorship mechanism in the U.S. to increase pathways to safety **specifically for LGBTQI+ migrants fleeing harm.**

Rainbow Railroad also operates in Canada, which pioneered private sponsorship just over 40 years ago.¹⁵ The Government of Canada's Private Sponsorship of Refugees Program allows groups of citizens to privately sponsor a refugee for resettlement in the country. Rainbow Railroad has also advocated—and led—efforts alongside civil society for a private sponsorship model specific for LGBTQI+ refugees.¹⁶ A U.S. private sponsorship model could be created under the existing authorities of the Department of State, which has historic precedent for this mechanism, and would help ensure a greater proportion of LGBTQI+ refugees are included within asylum processing with Rainbow Railroad's support.

Rainbow Railroad calls for a pilot project to expand sponsorship for LGBTQI+ refugees into the United States.

Recommendation 3: Protect the right of asylum by ensuring that harmful and discriminatory detention policies are reversed, and that detention is safe for LGBTQI+ migrants

President Biden has committed to eliminating prolonged detention and reinvesting in a case management program.

Rainbow Railroad strongly calls for the State, Justice and Homeland Security departments to implement training of federal personnel to ensure fair and non-discriminatory treatment of LGBTQI+ migrants.

LGBTQI+ immigrants [face higher rates of sexual violence](#) than other immigrants being detained,¹⁷ and **we urge President Biden to invest in proven alternatives to detention and non-profit case management programs—alternatives he committed to pursuing during his campaign.** These changes will support migrants as they navigate their legal obligations, and are the best way to ensure that migrants attend required immigration appointments. These programs also enable migrants to live in dignity and safety while awaiting their court hearings by facilitating social services, school enrollment and health care access, among other things. These programs are [demonstrably less expensive](#) than what is currently in place, and are highly effective compared to detaining vulnerable families.¹⁸

President Biden should direct all relevant agencies to ensure the immigration and asylum systems do not discriminate against LGBTQI+ asylum seekers. This includes not only rescinding the Trump-Pence Administration's attacks, but also requiring:

1. mandatory training on LGBTQI+ cultural competence for all officials involved in the process, including diplomatic officials, asylum offices, judges and DHS/CBP officers;
2. and collection of sexual orientation and gender identity data on LGBTQI+ refugees and asylum seekers, including claim outcomes, which should be compiled and shared publicly with advocacy organizations.

It is critical that LGBTQI+ people do not face harm while in detention, especially because we know they are particularly vulnerable to harassment and violence in their day-to-day lives. The Biden-Harris Administration must ensure non-discrimination in the delivery of services to LGBTQI+ persons and specialized protection if held in detention, prioritizing detention centres that implement humane standards of care. Agencies must ensure custody determinations for transgender people are not limited to sex assigned at birth and must **end the use of force and solitary confinement in immigration detention as a so-called protective mechanism.**



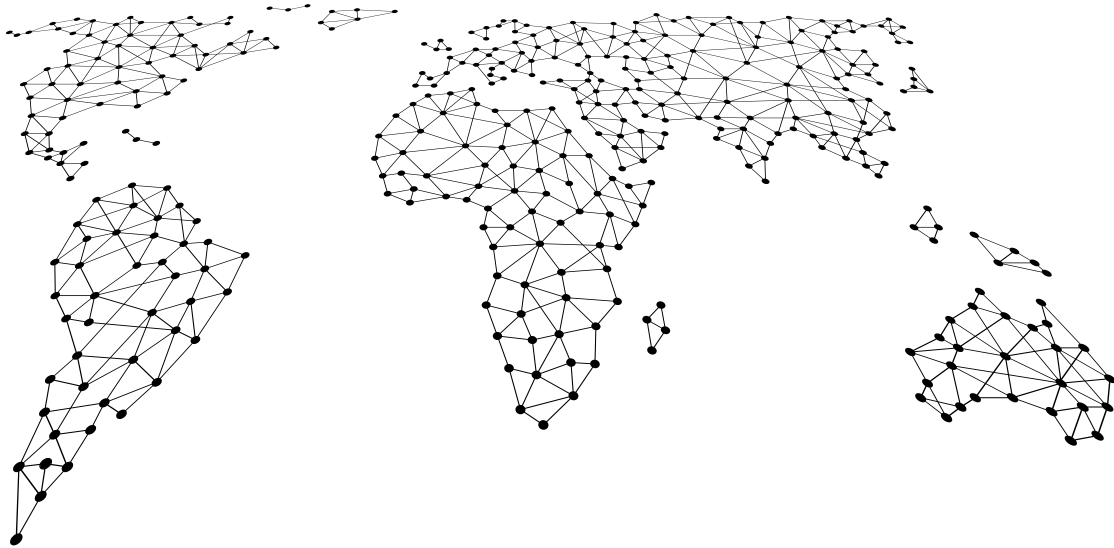
The case for partnership with Rainbow Railroad

Partnering with organizations that have specific knowledge and experience working on LGBTQI+ human rights issues is a key aspect of making policies effective and operational. Rainbow Railroad seeks to bring advocates together globally to advance this important agenda.

Rainbow Railroad is a member of nearly every major international LGBTQI+ network, including board membership at ILGA and membership at the Commonwealth Equality Network, the Equal Rights Coalition, the Dignity Network and the Council for Global Equality.

Since 2018, we have been seeking to advance refugee issues within the Equal Rights Coalition.¹⁹ Rainbow Railroad has also been providing consulting advice to the UNHCR Roundtable on Refugee Issues process, which will culminate in a June 2021 multilateral forum. Our organization is also a leading partner for the 2021 Refugee, Borders and Immigration Summit at WorldPride.²⁰

Rainbow Railroad aims to host a convening of like-minded partners, including advocates, academics, researchers and governments, to collaborate on strategy, share lessons learned and advance in-country and multilateral policy objectives. We call on the Biden-Harris Administration to partner with Rainbow Railroad to host this event.



Rainbow Railroad has demonstrated it has the capacity to identify and assist HRDs in conflict; in fact, the organization has become a global leader in the LGBTQI+ movement. Moreover, Rainbow Railroad has direct experience facilitating the escape of LGBTQI+ persons and HRDs.

Given the unique vulnerabilities of LGBTQI+ IDPs and Rainbow Railroad's capacity to relocate LGBTQI+ persons facing imminent danger, we believe we are equipped to handle a referring partnership that incorporates lessons learned from previous interventions. We understand that we would:

- 1) have to agree to specific vulnerability criteria established through this agreement;**
- 2) have rigorous screening protocols in place;**
- 3) agree to confidentiality when it comes to specific missions;**
- 4) and partner with U.S.-based organizations to provide resettlement support.**

Rainbow Railroad currently fields 3,000 to 4,000 requests for help each year, and already has a robust case management, triage and verification process in place. Our work is rooted in community collaboration on the ground: Over the years, we have formed partnerships and provided funding support to dozens of LGBTQI+ organizations. In recent years, a number of crackdowns targeting LGBTQI+ people and HRDs have occurred in Azerbaijan, Brunei, Egypt, Hungary, Tanzania and Uganda, among other countries. Rainbow Railroad has responded by providing emergency assistance and helping to relocate persons at risk, as well as support for civil society groups on the front lines.

The following case studies illustrate some of the recent violations experienced by LGBTQI+ people and those who defend them. They also demonstrate Rainbow Railroad's ability to simultaneously help individuals find safety and foster partnerships with local organizations advancing protections and advocacy on the ground.

i) **Uganda**²¹

The COVID-19 pandemic has exacerbated the global refugee crisis, with a disproportionate effect on LGBTQI+ individuals around the world. The subsequent lockdowns and border closures over the past year have compounded the impact on those fleeing persecution and seeking refuge. As commonly occurs during times of crisis, Rainbow Railroad has witnessed a spike in state-sponsored violence and persecution, and in hostility from local communities who blame the novel coronavirus on LGBTQI+ people. Particularly concerning are instances of police abuse and brutality enacted under the guise of enforcing COVID-19 quarantine measures.

We saw this in Uganda, where 20 people were arrested at an LGBTQI+ shelter near Kampala. Rainbow Railroad stood in solidarity with Sexual Minorities Uganda (SMUG), our partners on the ground who worked tirelessly to free these individuals. Our combined efforts contributed to the legal victory that saw all 20 victims released, after which Rainbow Railroad provided emergency support so they could safely shelter in place. Throughout this ordeal, Rainbow Railroad raised international awareness of the injustice inflicted upon these people, ensuring that the spotlight was rightly placed on those scapegoating the LGBTQI+ community during the pandemic. We continue to monitor multiple troubling situations around the world with our partners, and won't hesitate to intervene again.

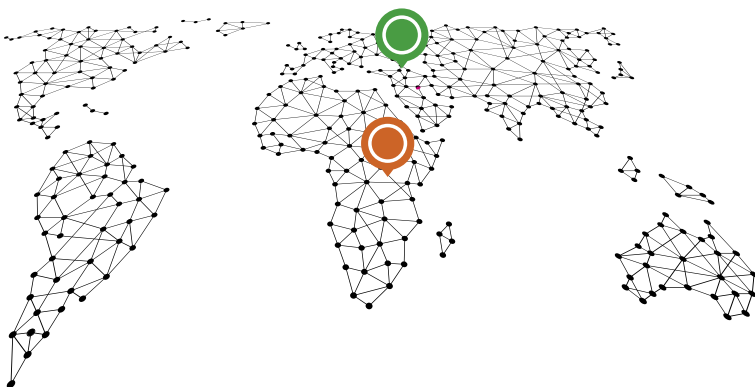
ii) **Chechnya**²²

Since 2017, Rainbow Railroad has worked closely with the Russian LGBT Network to respond to the anti-LGBTQI+ crackdown in Chechnya. Our staff visited Moscow shortly after initial reports began to emerge about the targeting of LGBTQI+ individuals. We supported local partners to identify those affected, and co-funded a network of safe houses dedicated to those fleeing the region.

While the true scale of these abuses and subsequent crackdowns remains unknown, it is estimated that hundreds of people were detained throughout the country and tortured for periods ranging from several hours to several weeks. Many were raped, beaten and waterboarded, among other serious abuses; some were killed, while others have disappeared. Still more were returned to their families and “outed.” There are a number of accounts that describe police or state actors instructing families to “deal with” the situation, implying that individuals should be subjected to so-called honour killings in order to maintain the “respect” of both the family and the republic.

Despite the issue being raised by numerous countries individually and collectively, along with regional and international bodies (such as the UN and other special mandate holders), the head of the Chechen Republic, Ramzan Kadyrov, has consistently denied these events occurred, and has even rejected the existence of LGBTQI+ persons in Chechnya. Those responsible have yet to be held accountable for the abuses committed against LGBTQI+ individuals over the past few years, and impunity prevails.

To date, in partnership with numerous governments, Rainbow Railroad has relocated or resettled more than 70 LGBTQI+ individuals and HRDs from Chechnya and the Caucasus who were affected by the crackdowns.



iii) Egypt²³

According to public opinion surveys, 95 percent of Egyptians do not accept LGBTQI+ identities and do not believe society should progress with acceptance of LGBTQI+ rights. The Egyptian penal code is used to target LGBTQI+ people, with frequent arrests for “immoral” or “indecent” behaviour. The Egyptian police can be extremely violent, and work with state actors to seek out SOGIESC activists and allies.

In 2017, the famous Lebanese band Mashrou' Leila performed for 30,000 people in Cairo, the capital of Egypt. The lead singer of the band, Hamed Sinno, is an openly gay cisgender man. In an act of solidarity and pride, a group of young LGBTQI+ persons held up a rainbow flag at the concert while Sinno sang. A widespread state-led anti-LGBTQI+ crackdown immediately followed. Conservative media outlets and religious leadership condemned the activists, and 60 individuals were arrested in the immediate aftermath. (Many more would be identified and arrested in the following weeks and months.)

The state has been accused of countless human rights abuses against those arrested, which include police performing anal examinations—a violation of the United Nations Convention against Torture, the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights. Persecution based on SOGIESC has not significantly changed or improved since the crackdown, and individuals are still being targeted, imprisoned, tortured and abused at state and community levels. Rainbow Railroad continues to receive regular requests for help from individuals in the region, but limited options exist for persons to be evacuated due to the complexity of relocating IDPs in the Middle East. **To date, over 20 LGBTQI+ people and HRDs from Egypt have been relocated by Rainbow Railroad.**

iv) Jamaica²⁴

Thirteen countries in the Caribbean still criminalize same-sex intimacy, resulting in a culture of oppression in the region which often leads to the violent persecution of LGBTQI+ persons. While HRDs on the ground are bravely working in these conditions, in countries such as [Jamaica](#), LGBTQI+ people face omnipresent threats.²⁵

Reports from those experiencing persecution in Jamaica are staggering. Rainbow Railroad caseworkers frequently help individuals who have been brutally attacked, sexually harassed, assaulted, burned with acid or fire, received death threats or had gang violence occur in their neighbourhoods. Although victims sometimes report these crimes to police, they rarely result in protection from or charges against perpetrators.

Rainbow Railroad works with a robust network of partners and activists on the ground in Jamaica. These essential partnerships assist us in identifying vulnerable persons, verifying their files, finding evidence for their claim and supporting the creation of a plan for their escape.



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