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US Response to Forming a National Human Rights Institution

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By foregoing a National Human Rights Institution, the United States is foregoing an opportunity to identify discrimination against LGBT people



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Earlier this month, the United States responded to a call from 23 other countries¹ that it establish a national human rights institution (NHRI). Under international law, such an agency would have the powers to investigate all types of human rights violations, including discrimination against LGBT people in the workplace, schools, public benefits programs, healthcare systems, and at the hands of police. The US said that it has “no plans to do so,”² which, in diplomatic-speak, means no.

Internationally, an NHRI is considered a central part of a modern democracy. Ninety-six countries have such an agency, as recognized by international accreditation bodies. In the US, federal civil rights agencies have very limited jurisdiction, and most do not operate in a politically independent fashion. They do not meet the well-established criteria for NHRIs.

What is most important, from a research perspective, is the ability of an NHRI to collect data and engage in a broad range of research activities which could reveal systemic and structural disparities faced by LGBT people. Recent advances in research methods provide the government with the ability to identify disparities faced by LGBT people, and recent research findings indicate they exist. An NHRI in the US would have broad authority to conduct this research.

This commentary begins with a general review of the features of an NHRI and a discussion of the evolving obligations of countries to establish an NHRI under international human rights standards. Following that, the discussion focuses on specific functions of an NHRI related to research and data collection, and how those functions could be applied to stigma, discrimination and disparities faced by LGBT people.

¹ This call was made as part of the universal periodic review of the US, a process in which the United Nations Human Rights Council reviewed the human rights record of the United States, as explained in more detail below.

² On September 1, 2015, the US quietly posted the response on the website of its mission to the United Nations in Geneva, Switzerland. See *Addendum of the United States of America to the Report of the Working Group on its Universal Periodic Review*, released September 1, 2015, on the website of the United States mission to the United Nations, Geneva, retrieved from <https://geneva.usmission.gov/2015/09/01/addendum-of-the-united-states-of-america-to-the-report-of-the-working-group-on-its-universal-periodic-review/>.

1. National Human Rights Institutions

While international human rights instruments spell out, substantively, the rights held by individuals, the Principles Relating to the Status of National Institutions, 1991, (Paris Principles)³ spell out how those rights are to be implemented by governments. The Paris Principles seek to address the dual reality that states are called upon to establish state entities to implement human rights, while at the same time, state entities themselves may be the perpetrators of human rights violations. Thus, independence – authoritative and financial – is an essential characteristic of an NHRI. The Principles list six minimum criteria that an NHRI must meet in order to be considered competent to promote human rights:⁴

- a mandate which is “as broad as possible”, based on universal human rights standards and including the dual responsibility to both promote and protect human rights, covering all human rights;
- independence from government, meaning primarily that executive agencies, or agencies created by executive instruments, would not comply;
- an independent mandate guaranteed by the constitution or legislation;
- adequate powers of investigation;
- representation of key groups (government departments, the judiciary, civil society) in its governance; and
- adequate human and financial resources.

The Principles leave up to states the specific structural and procedural form of the institution, as long as the institution complies with these six principles. The Principles are broadly recognized as the test of legitimacy and credibility for national institutions implementing human rights.⁵ Currently, 96 countries have NHRIs.⁶ Six models of NHRIs exist across all regions of the world today, namely: human rights commissions, human rights ombudsman institutions, hybrid institutions, consultative and advisory bodies, institutes and centers and multiple institutions.⁷

2. The Obligation of governments to establish an NHRI

Human rights standards are not simply aspirational. They are actionable as well. The tripartite formula of respect, protect and fulfill acknowledges that human rights obligations carry with them a requirement that states make affirmative efforts to implement such standards. The Paris

³ The Principles Relating to the Status of National Institutions (the Paris Principles) were adopted by General Assembly Resolution No. 48/134, December 20, 1993. These standards provide guidance for the establishment, competence, responsibilities, composition and guarantees for independence, pluralism, methods of operation, and quasi-judicial activities of NHRIs.

⁴ International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), *Roles and Types of NHRIs*, retrieved from <http://nhri.ohchr.org/EN/AboutUs/Pages/RolesTypesNHRIs.aspx>.

⁵ United Nations Office of the High Commissioner, *United Nations, National Human Rights Institution, History, Principles, Roles and Responsibilities*, HR/P/PT/4/Rev.1, 2. (Geneva, United Nations, 2010).

⁶ International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, ICC Sub-Committee on Accreditation (SCA), retrieved from <http://nhri.ohchr.org/EN/AboutUs/ICCACCreditation/Pages/default.aspx>. Seventy-one NHRIs have received complete accreditation at the “A” level and 25 have accreditation and the “B” level. NHRIs at the “C” level are considered non-accredited.

⁷ Id.

Principles set out the necessary characteristics that government agencies must have in order to be considered legitimate mechanisms for implementing human rights.

Soon after the creation of the Paris Principles, the nations of the world began not only to recognize the Principles as the test of legitimacy for human rights institutions, but also to incorporate them into already existing human rights standards. The 1993 Vienna Declaration and Programme of Action, adopted by the 171 countries at the World Conference on Human Rights, formally recognized NHRIs as actors in the implementation of human rights, and each UN member state was encouraged to create such an institution.⁸ The World Conference also sought to formalize and consolidate the network of NHRIs, eventually establishing the International Coordinating Committee of NHRIs (ICC) with the aim of accrediting NHRIs based on their compliance with the Paris Principles.⁹

NHRIs have also been incorporated into the obligations of the major human rights treaties. Treaties drafted after the creation of the Paris Principles identify NHRIs as an implementation mechanism in the language of the treaty itself: Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT),¹⁰ the International Convention on the Protection of the Rights of All Migrant Workers and members of their Families (CMW),¹¹ and the International Convention on the Rights of People with Disability (ICRPD).¹² Treaties drafted prior to the creation of the Paris Principles have been interpreted, by their respective treaty enforcement bodies, to affirm or even require the establishment of national human rights institution, including the International Covenant on Civil and Political Rights (ICCPR),¹³ Convention on the Rights of the Child (CRC),¹⁴ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),¹⁵ Convention on Economic, Social and Cultural Rights (CESR),¹⁶ and Convention on the Elimination of All Form of Racial Discrimination (CERD).¹⁷

The United States has signed three of these treaties (CRPD, CEDAW, ESC) and has ratified four (ICCPR, CERD, CAT, and CRC (protocols only)). The respective treaty enforcement bodies

⁸ The World Conference on Human Rights reaffirms the important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information, and education in human rights. The World Conference on Human Rights encourages the establishment and strengthening of national institutions, having regard to the 'Principles relating to the status of national institutions' and recognizing that it is the right of each State to choose the framework which is best suited to its particular needs at the national level. Vienna Declaration and Programme of Action; A/CONF.157/23, Part I, para. 36 Part 1, para. 36.

⁹ United Nations Office for the High Commissioner for Human Rights, *OHCHR and NHRIs*, retrieved from <http://www.ohchr.org/EN/Countries/NHRI/Pages/NHRIMain.aspx>.

¹⁰ Optional Protocol to the Convention Against Torture and Cruel, Inhuman or Degrading Treatment of Punishment, Article 18.

¹¹ Convention on the Protection of the Rights of All Migrant Workers and members of their Families, Article 74.

¹² International Convention on the Rights of People with Disabilities, Article 33.

¹³ Human Rights Committee, Paper on the relationship of the Human Rights Committee with National Human Rights Institutions, adopted by the Committee at its 106th Session (15 October – 2 November 2012), November 13, 2012, CCPR/C/106/3.

¹⁴ Committee on the Rights of the Child, General comment No. 2, (2002), National institutions for the promotion and protection of human rights.

¹⁵ Statement by the Committee on the Elimination of Discrimination against Women on its relationship with national human rights institutions, (2008).

¹⁶ Committee on Economic, Social and Cultural Rights, General Comment No. 10, (1998). The role of national human rights institutions in the protection of economic, social and cultural rights.

¹⁷ Committee on the Elimination of Racial Discrimination, General Comment No. 17. (1993), The establishment of national institutions to facilitate the implementation of the Convention.

have recommended that the United States establish an NHRI in order to maintain compliance with CERD,¹⁸ the ICCPR,¹⁹ and with the two Optional Protocols of the Convention of the Rights of the Child, the committee made similar recommendations to the United States to establish an NHRI.²⁰

The United States' obligation to establish an NHRI has been reiterated by other countries during the most recent periodic review of the United States. The universal periodic review (UPR) is the central mechanism used by the international system to assess compliance with universal human rights and the relevant treaties to which each country has. In anticipation of that review, the Williams Institute submitted a stakeholder statement to the US Department of State²¹ and the UN High Commissioner for Human Rights.²² The statements included a summary of the research on discrimination against LGBT people, as well as a recommendation that, in order to be in compliant with international norms, the United States empower "a national human rights body, with authority contemplated by the Paris Principles, which can investigate, adjudicate, and formulate responses to human rights concerns triggered by stereotypes and unfair treatment based on one or multiple stigmatized identities."²³

As part of the review, other UN member states have the opportunity to issue recommendations to the state under review. During the review in May, 2015, twenty-three countries urged the United States to establish such a national human rights institution.²⁴ This, the obligation to establish an NHRI arises from treaty obligations as well as the growing understanding amongst nations of the necessity of NHRIs for those nations who accept human rights obligations.

Regardless of the fact that international law, twenty-three countries, as well as multiple UN bodies have called upon the United States to establish an NHRI, it has not. Indeed, on September 1, 2015, the United States re-clarified its position when it said, in response to recommendations calling for an NHRI, that "there are no current plans" to establish such an institution.²⁵

¹⁸ See 2008 CERD Observations, *supra* note 25, 12. *Concluding Observations of the Committee on the Elimination of Racial Discrimination*, 12, U.N. Doc. CERD/C/USA/CO/6.

¹⁹ Human Rights Committee, *Concluding Observations on the fourth periodic report of the United States of America*, April 23, 2014, CCPR/C/USA/CO/14, 2.

²⁰ Committee on the Rights of the Child, *Concluding Observations: United States*, 13, U.N. Doc. CRC/C/OPSC/USA/CO/1. (June 25, 2008).

²¹ Andrew Park and Adam Romero, *Statement of the Williams Institute to the UPR Sub-group on Civil Rights and Racial and Ethnic Discrimination Issues, Civil Society Consultation*, July 8, 2014. U.S. Department of State, George Marshall Auditorium, retrieved from <http://williamsinstitute.law.ucla.edu/wp-content/uploads/wi-UPR-statement-jul-2014.pdf>

²² *Id.*

²³ *Id.*

²⁴ Senegal, Congo, Tunisia, Paraguay, Venezuela, Republic of Korea, Sudan, Nepal, India, Panama, Ukraine, Democratic Republic of the Congo, Indonesia, Kenya, Kazakhstan, Gabon, Morocco, Hungary, Nepal, Philippines, Chile, Poland, Sierra Leone. UN Human Rights Council, *Draft Report of the Working Group on the Universal Periodic Review of the United States*, May 21 2015, A/HRC/WG.6/22/L.10.

²⁵ *Addendum of the United States of America to the Report of the Working Group on its Universal Periodic Review*, released September 1, 2015, on the website of the United States mission to the United Nations, Geneva, retrieved from <https://geneva.usmission.gov/2015/09/01/addendum-of-the-united-states-of-america-to-the-report-of-the-working-group-on-its-universal-periodic-review/>.

Although several federal agencies have limited authority to respond to human rights violations in particular areas such as employment²⁶ and housing,²⁷ there is no federal or state entity with broad authority to monitor the universal human rights of LGBT people. The US Commission on Civil Rights, the agency which most closely resembles an NHRI, lacks jurisdiction, independence, and funding. Aside from lacking the prerequisites for accreditation as an NHRI, major civil society organizations conclude, based on the record of accomplishments of the Commission, that it has become “moribund.” Members of the Commission have called for reforms, though none have taken place.²⁸

3. Monitoring functions

Under the Paris Principles, NHRIs can have a variety of functions, from complaint adjudication to public education to policy analysis, depending on how the state empowers and structures the institution. However, monitoring is always a core aspect of an NHRI’s mandate, without which many of its other functions would not be possible.²⁹

Human rights monitoring, according to the Office of the UN High Commission for Human Rights, “refers to the activity of observing, collecting, cataloguing and analyzing data and reporting on a situation or event.”³⁰ Accordingly, it can take many forms. Aside from engaging in documentation and investigation in response to specific complaints, many NHRIs “systematically assess the human rights situation in the country either generally or with regard to particularly important issues.”³¹

In recent years, human rights enforcement mechanisms have used surveys and statistical information to monitor human rights violations. For example, surveys can play an important element of a monitoring function. The United Nations training manual on human rights monitoring reviews the use of probability samples, judgement samples, and haphazard samples.³² The recently released Guide to Human Rights Measurement and Implementation suggests looking at data gathered by administrative agencies, statistical surveys, the census, perception

²⁶ The US Equal Opportunity Commission investigates workplace discrimination complaints against private employers and it adjudicates appeals from administrative decisions on complaints filed against federal agencies by civilian employees in the executive branch. The Office of Federal Contract Compliance, US Department of Labor, investigates complaints against federal contractors claiming violations of discrimination standards set out by executive order.

²⁷ The Department of Housing and Urban Development investigates and adjudicates fair housing complaints.

²⁸ Critics also say that the leadership has been captured by partisan disputes between the President and Congress, and the restrictive budget has strangled its ability to act. Commission as The Leadership Conference Education Fund, *Restoring the Conscience of a Nation: A Report on the U.S. Commission on Civil Rights* 6. (2009). Members of the Commission have called for reforms, though none have taken place. Theodore M. Hesburgh, *The Commission on Civil Rights—And Human Rights*, 34 Rev. of Pol. 291, 303-04. (1972). Mary Frances Berry, *And Justice For All: The United States Commission on Civil Rights and the Continuing Struggle for Freedom in America* 175, 338. (2009).

²⁹ United Nations Office of the High Commissioner for Human Rights, *Human Rights Indicators: A Guide to Measurement and Implementation*, HR/Pub/12/5, Geneva: United Nations, (2012).

³⁰ United Nations Office of the High Commissioner, *United Nations, National Human Rights Institution, History, Principles, Roles and Responsibilities*, HR/P/PT/4/Rev.1. (Geneva: United Nations, 2010).113. A similar definition can be found in the Training Manual on Human Rights Monitoring and Economic, Social and Cultural Rights: Handbook for National Human Rights Institutions, United Nations publication, Sales No. E.04XIV.8.

³¹ Id.

³² Id. at 116.

and opinion surveys, and expert judgements.³³ Multiple treaty enforcement bodies have used statistical benchmarks and indicators when looking at human rights violations.³⁴ The Asian Pacific Forum of National Human Rights Institutions has standardized a model for conducting national inquiries into systemic patterns of discrimination, pioneered initially by the Human Rights Commission of Australia, which includes gathering data on patterns of disparities from private and public experts who have studied the relevant fields.³⁵

4. Lost opportunities for monitoring LGBT human rights in the United States.

The lack of an NHRI in the United States, without its independent monitoring and research functions, impedes the ability to advance the human rights of all people in the US. However, it is particularly detrimental to the LGBT population. As one official of an NHRI stated, “[c]ollecting data on human rights violations occurring to LGBT people is of particular importance for [analyzing] ... measures taken by the state, [and] adopting policies in compliance with human rights principles....”³⁶

The United States has made repeated commitments to the international community to include LGBT issues in the scope of its human rights obligations. For example, on December 6, 2011, the 60th anniversary of the Universal Declaration of Human Rights, Secretary of State Hillary Clinton addressed the UN Human Rights Council and its guests to say that “in the past 60 years, we have come to recognize that members of these [LGBT] groups are entitled to the full measure of dignity and rights... The Obama Administration defends the human rights of LGBT people as part of our comprehensive human rights policy...”³⁷

Additionally, the United States has pledged its commitments to the human rights of LGBT people as part of the UPR process. As an outcome of the review in 2010, the United States accepted three recommendations issued to it during that review:

³³ See United Nations Office of the High Commissioner for Human Rights, *Human Rights Indicators*.

³⁴ Id. at 26. For instance, the Committee against Torture recommended that Honduras should develop disaggregated indicators to monitor and document incidents of inter-prisoner violence with a view to revealing root causes and designing appropriate prevention strategies (CAT/C/HND/CO/1, para. 17). The Committee on the Elimination of Discrimination against Women commended the Lao People’s Democratic Republic for increasing considerably the proportion of women in its National Assembly, from 9.4 per cent in the third legislature (1992–1997) to 22.9 per cent in the fifth (2002–2007) (A/60/38, para. 85). The Committee on Economic, Social and Cultural Rights urged the United Kingdom to fulfil its commitment to reduce health inequalities by 10 percent by 2010, measured by infant mortality and life expectancy at birth (E/C.12/GBR/CO/5, para. 32). The Human Rights Committee recommended that the Czech Republic should adopt indicators and benchmarks to determine whether anti-discrimination goals have been reached (CCPR/C/CZE/CO/2, para. 16). Brazil has committed to creating a national system of human rights indicators under the UPR (A/HRC/8/27, para. 85). In its national report, Brazil assessed racial inequalities between white and Afro-descendent people using disaggregated socioeconomic statistics and pointed out the high rate of homicide in the country, particularly among children (A/HRC/WG.6/1/BRA/1, paras. 26 and 81). The compilation of United Nations information referred to the Special Rapporteur on extrajudicial, summary or arbitrary executions, who had noted that homicide was the leading cause of death for persons aged 15 to 44 (A/HRC/WG.6/1/BRA/2, para. 10), and in the summary of stakeholders’ information Amnesty International noted that figures released by the prison system showed that inmate deaths as a result of homicide were six times higher than the rate observed among the general population in Brazil (A/HRC/WG.6/1/BRA/3, para. 28).

³⁵ Chris Sidotti, *Manual on Conducting a National Inquiry into Systemic Patterns of Human Rights Violation*, (Sydney: Asia Pacific Forum, 2012).

³⁶ Briefing Document, Workshop on the Role of National Human Rights Institution in Promoting and Protecting the Rights of LGBTI people in Asia and the Pacific, 24-25 February 2015, Bangkok, at 18, citing the comments of the representative of the Mongolian Human Rights Commission.

³⁷ Hillary Clinton, *Remarks in Recognition of International Human Rights Day*, December 6, 2011, retrieved from <http://www.state.gov/secretary/20092013clinton/rm/2011/12/178368.htm>.

- Recommendation 86. Undertake awareness-raising campaigns for combating stereotypes and violence against gays, lesbians, bisexuals and transsexuals, and ensure access to public services paying attention to the special vulnerability of sexual workers to violence and human rights abuses.
- Recommendation 112. Take measures to comprehensively address discrimination against individuals on the basis of their sexual orientation or gender identity.
- Recommendation 116. Continue its intense efforts to undertake all necessary measures to ensure fair and equal treatment of all persons, without regard to sex, race, religion, colour, creed, sexual orientation, gender identity or disability, and encourage further steps in this regard.

It follows that as the United States recognizes the applicability of human rights to LGBT people; it also accepts the obligation to implement these standards in a manner consistent with human rights norms, including monitoring potential human rights violations.

Statistical data has long been used in the United States to identify inequality in the workplace,³⁸ housing,³⁹ and other areas of concern. Until the past few years, very little was known about the experience of LGBT people in the US. However, with the advent of new research techniques, and initial efforts to gather data about this population, we are beginning to acquire a basic understanding of LGBT people and the challenges they face in the United States. According to the most recent conservative estimates, there are at least 9.5 million LGBT individuals living in all parts of the United States, including 690,000 same-sex couples and at least 700,000 transgender individuals.⁴⁰ The population is remarkably diverse and bears little resemblance to the stereotype of predominantly white, childless, and financially secure. The experiences of LGBT people are shaped by multiple factors which factor into human rights concerns, such as race, ethnicity, socioeconomic status, geographical location, primary language, education, disability religion, family composition and age.⁴¹

Analysis of existing data about LGBT people has revealed numerous areas of potential systemic human rights violations that warrant further inquiry through similar data gathering methods. The Institute of Medicine has identified, as part of a first-ever compilation of information on the health of LGBT people, a series of areas where further research is needed to identify disparities

³⁸ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 509 (1989) (“Moreover, evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government's determination that broader remedial relief is justified.”); *Bazemore v. Friday*, 478 U.S. 385, 387 (1986) (per curiam) (finding the court of appeals erred by disregarding petitioners’ statistical analyses); *Furnco Constr. Corp. v. Waters*, 438 U.S. 567, 580 (1978) (ruling that on remand the court must consider statistical evidence showing racial disparities); *United States v. City of New York*, 637 F. Supp. 2d 77, 86 (E.D.N.Y. 2009) (a court may find a prima facie case of discrimination based on statistical evidence of disparate impact).

³⁹ Margery Turner, et al., US. Department of Housing and Urban Development, Office of Policy Development and Research, *Housing Discrimination Against Racial and Ethnic Minorities 2012* (Washington, D.C., June 2013)

⁴⁰ Gary J. Gates. *LGBT Demographics: Comparisons Among Population-based Surveys*. (Los Angeles: The Williams Institute, 2014), retrieved from <http://williamsinstitute.law.ucla.edu/wp-content/uploads/lgbt-demogs-sep-2014.pdf>; Gary J. Gates. *How many people are lesbian, gay, bisexual, and transgender?* (Los Angeles, The Williams Institute, 2011), retrieved from <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-How-Many-People-LGBT-Apr-2011.pdf>

⁴¹ Gary J. Gates and Frank Newport. *Special Report: 3.4% of U.S. Adults Identify as LGBT*. Gallup. (2012), retrieved from <http://www.gallup.com/poll/158066/special-report-adults-identify-lgbt.aspx>. Institute of Medicine. *The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding*. (2011), retrieved from <http://www.iom.edu/Reports/2011/The-Health-of-Lesbian-Gay-Bisexual-and-Transgender-People.aspx>.

in health and access to healthcare.⁴² Government social service agencies have considered the same issue with regard to inequalities faced by LGBT youth in the delivery of services and have developed a detailed research agenda.⁴³

Recent studies in many areas of human rights point to the need to further human rights monitoring. Studies tell us students face not only anti-LGBT violence and harassment in school but also poorer educational outcomes because of this ill-treatment. Surveys show that LGBT students miss more school than non-LGBT students because of safety concerns,⁴⁴ and ultimately LGBT people are less likely to have completed a college degree by age 25 than non-LGBT people.⁴⁵

One in five LGBT workers report being treated unfairly by an employer as a result of their sexual orientation or gender identity.⁴⁶ This number rises to nine out of ten for transgender workers.⁴⁷ One study on workplace discrimination used a testing method common to civil rights enforcement bodies. Researchers are to send out pairs of resumes in response to vacancy announcements posted by employers seeking job applicants. The pairs are similar in all respects, except that one resume includes some indication that the applicant is LGB. The researchers then measure the response by employers to the resumes. In a review of nine such controlled experiments, eight of the studies revealed discriminatory bias.⁴⁸

Systemic data about intimate partner violence reveals a potential structural aspect to this otherwise isolated and hidden dynamic. In nearly one-third of LGBTQ-specific intimate partner cases reported to the police, the survivor was arrested instead of the abusive partner. Thirty-one percent of survivors of intimate partner violence have also experienced verbal abuse from the police, and over time the trend seems to be getting worse.⁴⁹ Transgender women and people of

⁴² IOM (Institute of Medicine). (2011). *The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding*. Washington, DC: The National Academies Press. At 11, 89, 293; See also Andrew Burwick, Gary Gates, Scott Baumgartner, and Daniel Friend, *Human Services for Low Income and At-Risk LGBT Populations: An Assessment of the Knowledge Base and Research Needs*, OPRE Report Number 2014-79 (Washington, DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services, 2014), Karen I. Fredriksen-Goldsen, Hyun-Jun Kim, Charles A. Emler, Anna Muraco, Elena A. Eroshea, Charles P. Hoy-Ellis, Jayn Goldsen and Heidi Petry, *The Aging and Health Report: Disparities and Resilience Among Lesbians, Gay, Bisexual, and Transgender Older Adults* (Seattle: Institute for Multigenerational Health, 2011).

⁴³ Andrew Burwick, Gary Gates, Scott Baumgartner, and Daniel Friend, *Human Services for Low Income and At-Risk LGBT Populations: An Assessment of the Knowledge Base and Research Needs*, OPRE Report Number 2014-79 (Washington, DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services, 2014)

⁴⁴ Joseph G. Kosciw, Emily A. Greytak, Mark J. Bartkiewicz, Madeln J. Boesen, Neal A. Palmer, *The 2011 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in Our Nation's Schools* (New York: GLSEN, 2012).

⁴⁵ Amira Hasenbush, Andrew Flores, Angeliki Kastanis, Brad Sears and Gary Gates, *The LGBT Divide, A Data Portrait of LGBT People in the Midwestern, Mountain & Southern States*. (Los Angeles: The Williams Institute, 2014) 2.

⁴⁶ Andrew Burwick, Gary Gates, Scott Baumgartner, and Daniel Friend, *Human Services for Low Income and At-Risk LGBT Populations: An Assessment of the Knowledge Base and Research Needs*. OPRE Report Number 2014-79 (Washington, DC: Office of Planning, Research and Evaluation, Administration for Children and Families. U.S. Department of Health and Human Services, 2014).32.

⁴⁷ Burwick. *Human Services for Low Income and At-Risk LGBT Populations*. 32.

⁴⁸ *Ibid.* at 727.

⁴⁹ National Coalition of Anti-Violence Programs (NCAVP) *Lesbian, Gay, Bisexual, Queer and HIV-Affected Intimate Partner Violence in 2012*. (2013 Release Edition).

color remain the most highly victimized by LGBT hate-violence. However, only a small proportion seek police assistance because they have themselves experienced police hostility.⁵⁰

Patterns of discrimination continue through adulthood and into retirement. One survey of LGBT elders revealed a lack of access to services compared to the non-LGBT population in the United States.⁵¹

The use of quantitative data in the implementation of human rights for LGBT people must be done with care. The United Nations handbook on human rights monitoring stresses that “considerable caution must be exercised before engaging in such type of monitoring and professional advice may be required in their design, conduct and analysis.” Social science standards, communities of practice, and best practice guidelines on gathering data about sexual orientation⁵² and gender identity⁵³ are developing multiple methodologies for addressing these concerns.

Ultimately, human rights themselves reflect duties borne by the state toward each individual. Such determinations are not always amenable to systemic data gathering. However, as Thomas Hammarberg, the former Council of Europe Commissioner for Human Rights stated,

*Human rights can never be fully measured in statistics; the qualitative aspects are too essential. The conclusion, however, is not that the human rights community should avoid using quantitative facts, but rather learn how to use them. The challenge is to develop a know-how on how to plan such fact-finding, to assemble the data, to organize them meaningfully and to present and disseminate them properly – in order that high standards of relevance and reliability be met.*⁵⁴

In order to fulfill, respect and protect the human rights of LGBT people in America, the US government should establish an NHRI in compliance with the Paris Principles. This NHRI should engage in monitoring efforts to identify and respond to potential human rights violations against LGBT people. In the interim, the US government should engage in human rights monitoring by augmenting current data collection programs, as appropriate, to include LGBT people, as well as establishing new data collection programs to monitor potential human rights violations.

⁵⁰ Transgender, Queer and HIV-Affected Communities in 2013. (2014 Release Edition)

⁵¹ Karen I. Fredriksen-Goldsen, Hyun-Jun Kim, Charles A. Emlet, Anna Muraco, Elena A. Eroshea, Charles P. Hoy-Ellis, Jayn Goldsen and Heidi Petry, *The Aging and Health Report: Disparities and Resilience Among Lesbians, Gay, Bisexual, and Transgender Older Adults*. (Seattle: Institute for Multigenerational Health, 2011).

⁵² Sexual Minority Assessment Research Team. *Best Practices for Asking Questions about Sexual Orientation on Surveys*. (Los Angeles: The Williams Institute, 2009), retrieved from <http://williamsinstitute.law.ucla.edu/wp-content/uploads/SMART-FINAL-Nov-2009.pdf>.

⁵³ Gender Identity in U.S. Surveillance (GenIUSS). *Best Practices for Asking Questions to Identify Transgender and Other Gender Minority Respondents on Population-Based Surveys*. (Los Angeles, The Williams Institute, 2014), retrieved from <http://williamsinstitute.law.ucla.edu/wp-content/uploads/geniuss-report-sep-2014.pdf>.

⁵⁴ Council of Europe Commissioner for Human Rights (2006 -2012) in his address at the Montreux Conference on “Statistics, Development and Human Rights”, September 2000.