

Comment on Data Collection  
Submitted to  
The Drafting Committee, Yogyakarta Principles on the Application of International Human  
Rights Law to Sexual Orientation and Gender Identity

Submitted by  
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I am pleased to submit to you this comment in response to the January 5, 2017 call for comments regarding a review of the Yogyakarta Principles on the Application of International Human Rights Law to Sexual Orientation and Gender Identity (the Principles). This recommendation calls for the addition of a Principle devoted to the obligation to based policy and human rights activities on accurate and authentic understanding of the lives of people with divers sexual orientations and gender identities.

A. Data Collection in the Current Principles.

The current principles do not include an explicit recommendation for states to collect data regarding sexual orientation and gender identity.

B. The Human Rights of Sexual and Gender Minorities are Uniquely Vulnerable Because of a Lack of Data.

1. Stereotypes of LGBT people are common.

LGBT in all parts of the world face a number of widely held beliefs that do not accurately reflect the reality of the lives of LGBT people. These beliefs are often rooted in misinformation and fear, and the often serve as the basis for policies and actions that violate the human rights of LGBT people. Some examples of such stereotypes include the following:

LGBT people are affluent. The “myth of affluence” as it has been labeled by economist M.V. Lee Badgett,<sup>1</sup> refers to the belief that LGBT people are more affluent than others, possibly driven by the assumption that LGBT people have fewer household expenses, fewer children, and higher levels of education. This perpetuates the stereotype that LGBT people are selfish and undeserving of support.

In reality, research shows that LGBT people are not more affluent than others. Census data in India shows that gender minorities experience much higher rates of poverty and illiteracy than other populations.<sup>2</sup> A global study of wage disparities show that gay men make 11 percent

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<sup>1</sup> Williams Distinguished Scholar at the Williams Institute, Professor of Economics , Director, Center for Public Policy and Administration, University of Massachusetts Amherst.

<sup>2</sup> Pankaj Masih, Gayatri Singh and Rishabh Mishra, *Ummeed Live 2012: Third Gender Leadership Development Project* (Raipur: UNDP, 2012); Peter A. Newman et al., “Determinants of Sexual Risk Behavior Among Men Who Have Sex with Men Accessing Public Sex Environments in Chennai India,” *Journal of LGBT Health Research* 4, no. 2-3 (2008): 81-87 (surveys show high rates of poverty among sexual and gender minorities in India); Rama Nagarajan, “First Count of Third Gender in Census: 4.9 lakh,”

less than non-gay men.<sup>3</sup> An international review of 52 scholarly articles reveals that LGBT workers barriers to promotion, and unequal wages, harassment, and unfair termination.<sup>4</sup> Even in rich countries, LGBT people are in poverty. Transgender people in the US were four times more likely than the national average to have a household income of less than \$10,000 per year.<sup>5</sup> Thirty-seven percent of all households where lesbian couples are raising children are in poverty. Half of all households where gay male couples are raising African American are in poverty.<sup>6</sup>

LGBT people are unfit parents. In many parts of the world, LGBT people are not able to parent their own children, and are forbidden from adopting or receiving assisted reproductive technologies, based on a belief that gay people are unfit parents. This belief is tied to assumptions that children of LGBT parents will be mistreated, will receive inadequate guidance because of the lack of a mother/father household, will themselves be ostracized, and will be exposed to inappropriate sexual conduct.

In fact, parenting by sexual and gender minorities has grown more visibly internationally over the past few decades, as has research on the lived experience of parents and children in these relationships. A recent study in the *Journal of Adolescence*, a top ranked peer-reviewed academic publication, showed no differences in outcomes between children of straight and children of lesbian parents,<sup>7</sup> consistent with the findings of over seventy-four other peer-reviewed studies.<sup>8</sup> Sociologists have said that the “scholarly consensus is clear: children of same-sex parents fare just as well as parent of opposite-sex parents.”<sup>9</sup>

Gay people are diseased. Homosexuality and gender variations were considered pathological conditions until the late 1900s, when major medical and psychological organizations began revising diagnostic classifications. Still, evidence that LGBT people have higher rates of mental illness, substance abuse, and suicide has been used by many to claim that these problems are themselves part of homosexuality and gender variation.

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*The Times of India*, May 30, 2014. The 2011 Census of the Indian population revealed that 38% of third gender respondents were working, compared with 46% of the general population. However, those who were employed appeared to have less stable employment. Only 65% of the third gender workers were employed for at least six months of the year compared with 75% of the general employed population); Randy Albelda et al., *Poverty In the Lesbian, Gay Bisexual Community* (Los Angeles: The Williams Institute, 2009), ii, <http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/poverty-in-the-lesbian-gay-and-bisexual-community/>.

<sup>3</sup> Marieka Klawitter, “Meta-Analysis of the Effects of Sexual Orientation on Earnings,” *Industrial Relations* 54, no. 1 (2014): 4-32, p. 21 (A meta-analysis of studies of wage differences in the United States, Netherlands, UK, Sweden, Greece, France, and Australia, show that gay men make 11% less than their heterosexual counterparts).

<sup>4</sup> Mustafa Bilgehan Ozturk, “Sexual orientation discrimination: Exploring the experiences of lesbian, gay and bisexual employees in Turkey,” *Human Relations* 64, no. 8 (2011): 1099-1118; Emir Ozeren, “Sexual Orientation Discrimination in the Workplace: A Systematic Review of Literature,” *Procedia-Sexual and Behavioral Sciences* 109, no. 8 (2014): 1203-1215; European Union Agency for Fundamental Rights, *EU LGBT survey European Union lesbian, gay, bisexual and transgender survey* (Belgium: European Union Agency for Fundamental Rights, 2013) (a survey of 74,000 LGBT people in Europe).

<sup>5</sup> NTDS

<sup>6</sup> M.V. Lee Badgett, Laura E. Durson, and Alyssa Schneebaum, *New Patterns of Poverty in the Lesbian, Gay, and Bisexual Community* (Los Angeles: The Williams Institute, June 2013).

<sup>7</sup> Loes van Rijn-van Gelderen, Henny M.W. Bos, and Nanette K. Gartrell “Dutch Adolescents from Lesbian-Parent Families: How Do They Compare to Peers with Heterosexual Parents and What is the Impact of Homophobic Stigmatization?” *Journal of Adolescence* 40 (2015) 65-73.

<sup>8</sup> The Public Policy Research Portal, *What Does the Scholarly Research Say About the Well-Being of Children With Gay or Lesbian Parents?* (New York: Columbia Law School, 2015)

<sup>9</sup> BRIEF OF AMICUS CURIAE AMERICAN SOCIOLOGICAL ASSOCIATION IN SUPPORT OF RESPONDENT KRISTIN M. PERRY AND RESPONDENT EDITH SCHLAIN WINDSOR, *Windsor v. US*, p. 6.

Research shows that stigma and prejudice are the primary cause of many of the health disparities faced by LGBT people. Specifically, research from all parts of the world has shown that there are four specific processes through which cause social stigma and prejudice to be manifested in the lives of LGB people as mental and physical problems: (1) chronic and acute prejudice events and conditions, (2) expectation of such events and conditions and the vigilance required by such expectation, (3) concealing or hiding of one's lesbian or gay identity, and (4) internalization of social stigma (internalized homophobia or transphobia).<sup>10 11</sup> There has been no research to show that disease and illness are part of homosexuality and gender non-conformity itself.

Other stereotypes. There are a multitude of stereotypes: In same-sex relationships, one person takes the woman's role and the other person takes the man's role. Gay men are unable to control their sexual impulses. Lesbians do not have sex. Bisexuals are prone to infidelity. All gay men have AIDS. LGBT people are all atheists. Gay men are emotionally weak. Lesbians are violent. Transgender people are unstable. LGBT people mostly live in cities. LGBT people are the product of being molested in childhood. If a lesbian has sex with the right man she will convert to heterosexuality. Bisexuals will end up as either gay or straight; they just have to make up their mind.

These stereotypes interfere with a true assessment of the lived experience of LGBT people. Empirical research and data collection can show whether these stereotypes are true and can reveal a more authentic understanding of LGBT human rights.

## 2. Currently, very few governments collect data about LGBT people.

Many countries collect data about women, children, and ethnic minorities in order to track important outcomes. This is not the case of LGBT people; only a handful of countries include questions about sexual orientation or gender identity in government surveys. Demographic and household surveys, and surveys on income and living conditions, now standard in most countries receiving overseas development assistance, do not include any questions about sexual orientation or any gender identity beyond male and female. None of the international agencies that issue guidelines on data collection -- UN Statistical Commission, UN Development Programme, the Organization for Economic Cooperation and Development and the World Bank -- have issued any guidelines relating to sexual orientation and gender identity data collection.

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<sup>10</sup> David M. Frost and Ilan H. Meyer, "Internationalized Homophobia and Relationship Quality Among Lesbians, Gay Men, and Bisexuals," *Journal of Counseling Psychology* 56, no. 1 (2009): 97-109, p. 97; Margaret Rosario, Eric W. Schrimshaw, and Joyce Hunter, "Disclosure of Sexual Orientation and Subsequent Substance Use and Abuse Among Lesbian, Gay, and Bisexual Youths: Critical Role of Disclosure Reactions," *Psychology of Addictive Behaviors* 23, no. 1 (2009): 175-185; Daniela Barbetta Ghorayeb and Paulo Dalgalarondo, "Homosexuality: Mental Health and Quality of Life in a Brazilian Socio-Cultural Context," *International Journal of Social Psychiatry* 57, no. 5 (2011): 496-500; Ilan Meyer, "Prejudice, Social Stress, and Mental Health in Lesbian, Gay and Bisexual Populations: Conceptual Issues and Research Evidence," *Psychological Bulletin* 129, no. 5 (2003): 674-697; John Pachankis, "The Psychological Implications of Concealing a Stigma: A Cognitive-Affective-Behavioral Model," *Psychological Bulletin* 133, no. 2 (2007): 328-345.

<sup>11</sup> Ilan H. Meyer, Williams Distinguished Senior Scholar for Public Policy, Williams Institute, UCLA School of Law.

Researchers in Asia,<sup>12</sup> Latin America,<sup>13</sup> and sub-Saharan African<sup>14</sup> have noted that, until the last few years, research on sexual minority populations has been scarce. Globally, until the mid-1980s, there such research focused on identifying the causes of homosexuality for the purposes of developing prevention initiatives.<sup>15</sup> A scholarly review of the research on identity formation in sexual minorities noted the historically low level of knowledge about the process of identity formation and how it varies across ethnicity, social class, or region or between Western and non-Western societies.”<sup>16</sup> Most research targeting sexual or gender minorities in these regions has been conducted in the context of HIV epidemiological or prevention research, and tends to not focus on anything beyond sexual risk involving those assigned male at birth.<sup>17</sup> There is also a general lack of research about people with intersex conditions, and almost all research is in a medical/clinical framework.<sup>18</sup>

As a result, we are unable to determine basic characteristics of LGBT people in most countries, such as life expectancy, income level, educational attainment, living conditions, typical family structure, access to public programs, health outcomes. As summarized in a joint World Bank/UNDP document:

LGBTI people have had very little data or research about their lives to draw on to inform policies, legislation, programs, and investments to advance LGBTI inclusion and respect for their rights. Today, the need for such knowledge greatly outstrips the current supply, and countries in the Global South are particularly in need of knowledge to support human rights and human development efforts for LGBTI people<sup>19</sup>

3. The lack of data impedes implementation of many of the recommendation in the Yogyakarta Principles.

While the Principles articulate rights and make recommendations about how states can fulfill these rights, there is little hope that these recommendations will be effective without data collection. For example, one recommendation under Principle 12, The Right to Work, is to “take action to eliminate and prohibit discrimination on the basis of sexual orientation and gender identity in public and private employment, including in relation to vocational training, recruitment, promotion, dismissal, conditions of employment and remuneration.” In order to

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<sup>12</sup> Arunrat Tangmunkongvorakula et al., “Sexual Identities and Lifestyles Among Non-Heterosexual Urban Chiang Mai Youth: Implications for Health,” *Culture, Health and Sexuality* 12, no. 7 (2010): 827-841.

<sup>13</sup> Jaime Barrientos and Michel Bozon, “Discrimination and Victimization against Gay Men and Lesbians in Chile: Two Patterns or Just One?” *Interdisciplinaria* 31, no. 2 (2014): 323-339.

<sup>14</sup> Joseph Larmarange et al., “Homosexuality and Bisexuality in Senegal: A Multiform Reality,” *Population* 64, no. 4 (2009): 635-66. “There is almost a total lack of research focusing on transgender populations in South Africa,” Geoffrey A. Jobson et al., “Transgender in Africa: Invisible, Inaccessible, or Ignored?” *SAHARA-J: Journal of Social Aspects of HIV/AIDS* 9, no. 3 (2012): 160-163.

<sup>15</sup> Frits van Griensven et al., “The Prevalence of Bisexual and Homosexual Orientation and Related Health Risks Among Adolescents in Northern Thailand,” *Archives of Sexual Behavior* 33, no. 2 (2004): 137-147, p. 137.

<sup>16</sup> Ritch C. Savin-Williams and Kenneth M. Cohen, “Developmental Trajectories and Milestones of Lesbian, Gay, and Bisexual Young People,” *International Review of Psychiatry* 27, no. 5 (2015): 357-366.

<sup>17</sup> *Ibid.*

<sup>18</sup> Jones, Tiffany et al., *Intersex: Stories and Statistics from Australia. Intersex: Stories and Statistics from Australia* (Cambridge, UK: Open Book Publishers, 2016).

<sup>19</sup> The World Bank, *Investing in a Research Revolution for LGBTI Inclusion* (Washington, D.C.: World Bank Group, November 2016) 4.

eliminate discrimination, the government will have to obtain data about labor market participation, wage disparities, duration of employment, and job conditions, and so on. Without some understanding of disparities governments will not be able to accurately assess the need for, or the effectiveness of, any government responses to workplace discrimination. Data problems confront similar recommendations regarding equal access to housing, social security and poverty reduction programs, safe drinking water, adequate sanitation and clothing, where little is known about sexual and gender minority populations.

Other recommendations require collecting data about the attitudes and behaviors of non-LGBT people. Several principles recommend programs to raise awareness to educate the public about violence (Principle 5), to inform the police (Principles 7, 10, and 20), judges (Principle 8), staff of detention facilities (Principle 9 and 10), the military (Principle 12), housing agencies (Principle 15), and educators (Principle 28). Again, without data, it is difficult to construct the content of such awareness programs, assess the current state of awareness and the effectiveness of awareness programs after they are implemented.

### C. States are Obligated to Collect Data.

#### 1. Informed Policymaking Requires data.

The United Nations Secretary General Ban Ki-Moon recognized the relationship between data and decision-making when he observed that “[g]ood data and statistics are indispensable for informed decision-making by all actors in society.”<sup>20</sup> Raul Grijalva, US Congressman, concurs that “[t]he current lack of sound data about sexual orientation and gender identity in many federal surveys means we are ill-prepared to meet the needs of these communities. To go uncounted is to be unseen in the eyes of policymakers, which is why we must develop a credible and confidential understanding of these vulnerable populations we currently know too little about.”<sup>21</sup>

#### 2. Data Collection is Required to Identify Some Systemic Human Rights Violations

Large data collection efforts are required in order to detect some types of human rights violations. For example, if an applicant for a government job is rejected, that person might not know whether their sexual orientation or gender identity is the reason for the denial. Yet, if we knew that the applicant labor pool included a large number of qualified LGBT people, and the government employed very few LGBT people, we might find that the government is deliberately excluding LGBT applicants. Systemic data can reveal systemic patterns of exclusion.

#### 3. Data Collection is Part of the Ongoing Obligation to Monitor Human Rights Compliance Within a State.

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

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<sup>20</sup> Ban Ki-Moon, Message on World Statistics Day, October 20, 2015.

<sup>21</sup> Chris Johnson, *Grijalva to introduce bill to enhance LGBT data collection*, Washington Blade, May 25, 2016.

reporting on a situation or event.”<sup>22</sup> The United Nations training manual on human rights monitoring reviews the use of probability samples, judgement samples, and haphazard samples.<sup>23</sup> The recently released Guide to Human Rights Measurement and Implementation suggests looking at data gathered by administrative agencies, statistical surveys, the census, perception and opinion surveys, and expert judgements.<sup>24</sup> 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....”<sup>25</sup>

#### 4. Data Collection is Necessary to Set Statistical Benchmarks of Human Rights Compliance

Multiple treaty enforcement bodies have used statistical benchmarks and indicators when monitoring human rights violations.<sup>26</sup> 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.<sup>27</sup>

#### 5. Data Collection is a Component of the International Human Rights Review System.

States parties to human rights treaties are required to submit reports to the appropriate treaty body. In addition, all UN member states undergo a universal periodic review. Data collection is required for both of these functions. UN guidelines for state reporting requirements specify that

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<sup>22</sup> 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), p. 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.

<sup>23</sup> Id. at 116.

<sup>24</sup> 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).

<sup>25</sup> 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*, p. 18, citing the comments of the representative of the Mongolian Human Rights Commission.

<sup>26</sup> 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-descendant 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).

<sup>27</sup> Chris Sidotti, *Manual on Conducting a National Inquiry into Systemic Patterns of Human Rights Violation*, (Sydney: Asia Pacific Forum, 2012).

states should provide disaggregated demographic data relevant to the implementation of treaty guidelines. This includes demographic, economic, social and cultural characteristics, as well as data relating to literacy rates, unemployment rate, voting patterns, number of reported cases of violence, and other indicators.<sup>28</sup>

#### 6. Governments are Obligated to Limit Data Collection Activities to Those That are Safe and Ethical.

Data collection and research involving LGBT people carries risks both for LGBT people who are the subjects of such efforts and for those collecting such data. The UN 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.” The international community has developed a series of standards to help evaluate and address potential risks and ethical concerns, including risks concerning privacy and confidentiality. The Nuremburg Code, and subsequently the Declaration of Helsinki, have been adopted by governments and international research institutions. They set out criteria to determine whether research can take place, what methods can be used, and how to insure continued oversight of data collection activities.

#### 3. Recommendation.

In recognition of the unique vulnerabilities of people marginalized because of sexual orientation and gender identity, this comment recommends the addition of a new principle as follows:

Everyone is entitled to the assurance that their government is evaluating, monitoring, and enforcing human rights based on an authentic understanding of their lives, rather than by stereotypes and false assumptions. States should establish mechanisms to increase the understanding of people of diverse sexual orientations and gender identity, and should include sexual orientation and gender identity in data collection efforts which seek information about demographic, household and individual characteristics of marginalized groups within society. All actors should observe ethical standards regarding research.

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<sup>28</sup> United Nations, *Compilation Of Guidelines On The Form And Content Of Reports To Be Submitted By States Parties To The International Human Rights Treaties*, HRI/GEN/2/Rev.6, 3 June 2009.