



July 30, 2020

Via Electronic Submission to [commission@state.gov](mailto:commission@state.gov)

Professor Mary Ann Glendon  
Commission on Unalienable Rights  
c/o Duncan H. Walker  
U.S. Department of State  
2201 C St., NW  
Washington, DC 20520

**Re: Comment Concerning Report of the Commission on Unalienable Rights**

Dear Chair Glendon and Members of the Commission:

Lambda Legal Defense and Education Fund, Inc. (“Lambda Legal”) appreciates the opportunity provided by the Department of State and the Commission on Unalienable Rights to offer this comment explaining why we believe the Commission’s report should be withdrawn.<sup>1</sup> In brief, the report ignores and undermines treaties and other instruments of international law which are binding on the United States, as well as the legal, scientific and social developments of the past seventy years within the United States, which may not be disregarded when fashioning this country’s foreign policy. Moreover, were the report finalized, its approach would increase global persecution of lesbian, gay, bisexual or transgender (“LGBT”) people, among countless others. It represents the opposite of true human rights analysis and must be set aside.

The Commission is not unique in proposing to return legal and policy standards to before the modern civil rights era. But reframing and limiting our human rights understanding to the specific concepts in the 1948 Universal Declaration of Human Rights would mean limiting us to notions common in the days of a racially segregated American South, before we had any meaningful federal protections against race, sex, disability or other invidious discrimination, when we lacked accurate information and control over our sexual and reproductive lives, and when people were classified nationwide as criminals and/or as mentally ill by virtue of having an LGBT identity. Doing so also would mean ignoring the nine core international treaties and related agreements that followed the 1948 Declaration, including those the United States has formally embraced. Proposals along these lines are rarely framed as human rights advancements, and it should be self-evident that doing so is neither legitimate nor plausible. But going further still, as the Commission’s report does, to urge retrenching of our human rights standards in Eighteenth Century notions of Natural Law and property rights, while also perhaps not novel, deserves both rebuke and a hat tip to Orwell.

Lambda Legal urges immediate withdrawal of this report not only because it mistakenly proposes to classify human rights for LGBT people, reproductive freedom, and racial justice as

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<sup>1</sup> Draft Report of the Commission on Unalienable Rights (July 16, 2020), <https://www.state.gov/draft-report-of-the-commission-on-unalienable-rights/>.

merely “controversies” that are subordinate to religious and property rights. Even more fundamentally, these misguided proposals flow from the report’s misguided starting premise — that recognizing the same essential rights for previously disempowered groups wrongfully dilutes the rights of those who long have enjoyed these rights, often together with disproportionate social, political and economic power. Instead of celebrating progress toward vindication of the rights of more and more human beings, the report attempts to legitimize governments’ prioritizing of majoritarian will, dominant culture, and other national interests over international human rights standards. In so doing, the report rejects the essence of the universal human rights project. It thus undermines both the work of the State Department’s Bureau of Democracy, Human Rights and Labor (“DRL”) and United States credibility as a voice for human rights.

Lambda Legal is particularly knowledgeable and concerned about the likely consequences of this report for LGBT people because we are the oldest and largest legal organization in the United States dedicated to achieving full recognition of the civil rights of LGBT people and everyone living with HIV (together, “LGBT/H”) through impact litigation, policy advocacy,<sup>2</sup> and public education. Throughout our nearly fifty-year history, we have advocated for humane and legally sound treatment of LGBT/H people both throughout the United States and when seeking refuge from persecution in other countries, all in keeping with our nation’s laws and policies.<sup>3</sup> Our advocacy has included establishing numerous relevant precedents under U.S. law, including that practices employed in order to try to change a person’s sexual orientation can be recognized as

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<sup>2</sup> As in this comment, Lambda Legal recently has opposed numerous other of this administration’s proposed policy changes because they are inconsistent with governing law and invite significant harm to LGBT/H people, many of which similarly propose improperly to elevate the religious interests of some over the equality rights of LGBT/H people and others. *See, e.g.*, Lambda Legal Comments re U.S. Department of Health and Human Services’ Proposed Rule, “Uniform Administrative Requirements for HHS Awards” (Dec. 19, 2019) (the “grants rule”), available at [https://www.lambdalegal.org/sites/default/files/legal-docs/downloads/20191220\\_hhs-comment-on-proposed-rule-re-rin-0991-ac16.pdf](https://www.lambdalegal.org/sites/default/files/legal-docs/downloads/20191220_hhs-comment-on-proposed-rule-re-rin-0991-ac16.pdf); Lambda Legal Comments re the U.S. Department of Labor Office of Federal Contract Compliance Program’s Proposed Rule, “Implementing Legal Requirements Regarding the Equal Opportunity Clause’s Religious Exemption” (Sept. 16, 2019) (“faith-based organizations rule”), available at <https://www.regulations.gov/document?D=OFCCP-2019-0003-107397>; Lambda Legal Comments re the U.S. Department of Health and Human Services’ Proposed Rule, “Protecting Statutory Conscience Rights in Health Care” (Mar. 27, 2018) (the “denial of care rule”), available at <https://www.regulations.gov/document?D=HHS-OCR-2018-0002-72186>. Lambda Legal also has challenged multiple of these recent rule changes when they have been given effect. *See, e.g.*, *Whitman-Walker Clinic, Inc., et al. v. U.S. Dep’t of Health and Human Svcs.*, Case 1:20-cv-01630-JEB (D.D.C., filed June 22, 2020) (challenging the 1557 rule), more case information is available at <https://www.lambdalegal.org/in-court/cases/whitman-walker-clinic-v-hhs>; *Family Equality, et al. v. Azar, et al.*, Case 1:20-cv-02403-MKV (S.D.N.Y., filed Apr. 1, 2020) (challenging the grants rule), more case information is available at <https://www.lambdalegal.org/in-court/cases/family-equality-v-azar>; *City and County of San Francisco v. Azar*, 411 F.Supp.3d 1001 (N.D. CA 2019) (enjoining the denial of care rule), more case information is available at <https://www.lambdalegal.org/in-court/cases/county-of-santa-clara-v-hhs>.

<sup>3</sup> *See generally* the materials available at [www.LambdaLegal.org](http://www.LambdaLegal.org), and specifically the materials at <https://www.lambdalegal.org/issues/immigration>.

torture regardless of the subjective intent of those engaging in those practices,<sup>4</sup> that individuals perceived as male who have a female gender identity can be recognized as members of a particular social group for purposes of asylum,<sup>5</sup> and that persons facing persecution because of their same-sex sexual orientation may not be denied asylum based on others' perception that they could avoid persecution by concealing that identity.<sup>6</sup>

### **The Report Mistakenly Elevates Religious Rights Over the Rights to Equality, Self-Determination, and Appropriate Healthcare of LGBT/H People, Women and Others.**

In many countries around the world, as in the United States, discrimination, ostracism and sometimes violent abuse of LGBT/H people too often is explained as justified by religious beliefs.<sup>7</sup> However, invocation of religious beliefs to justify conduct harmful to others is no more acceptable today than it has been throughout American history and law.<sup>8</sup>

The Commission's effort to re-write human rights law in a way that elevates religious interests mistakenly ignores that human rights treaty bodies and experts consistently stress the limits of the right to freedom of thought, conscience, and religion.<sup>9</sup> As one example, the UN Special Rapporteur on freedom of religion or belief has catalogued with concern many ways in which institutions, including within the United States, seek religion-based exemptions from

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<sup>4</sup> *Pitcherskaia v. I.N.S.*, 118 F.3d 641 (9th Cir. 1997).

<sup>5</sup> *Hernandez-Montiel v. I.N.S.*, 225 F.3d 1084 (9th Cir. 2000).

<sup>6</sup> *Soto Vega v. Gonzales*, 183 Fed. Appx. 627 (9th Cir. 2006).

<sup>7</sup> For a cataloguing of many recent examples, see Brief of Amici Curiae Lambda Legal et al., *Masterpiece Cakeshop Ltd. v. Colorado Civil Rights Comm'n*, No. 16-111, at 11-14, 17-18, 26, 30 (filed Oct. 30, 2017), <https://www.lambdalegal.org/in-court/cases/masterpiece-cakes-v-co-civil-rights-commission>. And see generally the materials available at <https://www.lambdalegal.org/issues/religious-exemptions>.

<sup>8</sup> See, e.g., *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, n.5, 88 S. Ct. 964, 19 L.Ed.2d 1263 (1968) (rejecting religious defense of race discrimination by restaurant owners as “patently frivolous”), as cited in *Masterpiece Cakeshop Ltd. v. Colorado Civil Rights Comm'n*, 584 U.S. \_\_\_, 138 S. Ct 1719, 1727 (2018) (observing that, while “religious and philosophical objections [to same-sex couples marrying] are protected, it is a general rule that such objections do not allow business owners and other actors in the economy and in society to deny protected persons equal access to goods and services under a neutral and generally applicable public accommodations law.”). See also *Cantwell v. Connecticut*, 310 U.S. 296, 303-04 (1940) (“the [First] Amendment embraces two concepts—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society.”).

<sup>9</sup> See, e.g., Human Rights Committee, *General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18)*, para. 8, U.N.Doc. CCPR/C/21/Rev.1/Add.4 (1993) (“Article 18.3 permits restrictions on the freedom to manifest religion or belief if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others .... In interpreting the scope of permissible limitation clauses, State parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26.”).

nondiscrimination laws and policies that protect LGBT/H people and promise gender equality.<sup>10</sup> These include defiance of nondiscrimination laws as well as interference with those wishing to provide abortion care, contraceptives, gender-affirming care, or other important medical and mental health services. As the Special Rapporteur's report explains, the recognized human right of religious freedom does not justify such conduct.<sup>11</sup>

Moreover, the right also does not justify gender discrimination or conduct that interferes with the rights of others to access quality sexual and reproductive health care, or that stigmatizes or facilitates discrimination against people seeking access to these services.<sup>12</sup> Indeed, human rights treaty monitoring bodies have made clear that human rights require governments to ensure that individuals are able to access lawful reproductive health services without interference, delay, or stigma, including those caused by refusals of care based on conscience or religious belief.<sup>13</sup>

Accordingly, it is improper for our State Department to work to elevate religious interests over the equality, safety, health and self-determination interests of LGBT/H people, women and others, just as it is improper for the Commission to have ignored the international human rights consensus that has developed, and the commitments our nation has made, since 1948.

### **Creating Any Hierarchy of Rights Misconstrues Universal Human Rights.**

Lambda Legal has joined the detailed analysis presented in the comment letter filed by Human Rights First in partnership with more than 220 civil and human rights organizations, scholars, former senior government officials, faith-based leaders and organizations, and others committed to recognition and protection of human rights.<sup>14</sup> Lambda Legal also endorses the analyses

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<sup>10</sup> Human Rights Council, *Freedom of religion or belief- Report of the Special Rapporteur on freedom of religion or belief*, paras. 44-45, U.N. Doc. A/HRC/43/48 (2020), [https://www.ohchr.org/Documents/Issues/Religion/A\\_HRC\\_43\\_48\\_AdvanceUneditedVersion.docx](https://www.ohchr.org/Documents/Issues/Religion/A_HRC_43_48_AdvanceUneditedVersion.docx).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* See also, e.g., Human Rights Committee, *General Comment No. 22* (1993), *supra* note 9, para. 8; Human Rights Committee, *Gen. Comment No. 36 on the Right to Life*, para. 8, U.N. Doc. CCPR/C/GC/36 (2018); Committee on Economic, Social and Cultural Rights (CESCR Committee), *General Comment No. 22: (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, para. 14, 43, U.N. Doc. E/C.12/GC/22 (2016); Committee on the Elimination of Discrimination Against Women (CEDAW Committee), *General Recommendation No. 24: Article 12 of the Convention (women and health)*, (20th Sess., 1999), para. 11, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008); Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (Special Rapporteur on Health), *Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, para. 24, 65(m), U.N. Doc. A/66/254 (2011).

<sup>13</sup> CESCR Committee, *Gen. Comment No. 22*, *supra* note 12, para. 11- 21, 43; Human Rights Committee, *Gen. Comment No. 36*, *supra* note 12, para. 8; CEDAW Committee, *Gen. Recommendation No. 24*, *supra* note 12, para. 11, 13; Special Rapporteur on Health, *2011 Interim Report*, *supra* note 12, para. 22, 24.

<sup>14</sup> The letter is available at <https://www.humanrightsfirst.org/sites/default/files/CUR%20Report%20Comment%20NGO%20Letter%20Final%202020.07.30.pdf>.

submitted by Human Rights Watch,<sup>15</sup> Equity Forward<sup>16</sup> and the Center for Reproductive Rights.<sup>17</sup> Accordingly, this comment repeats the substance of those comments only by emphasizing two points:

1. The report is mistaken in attempting to characterize human rights in a manner that undermines the unequivocal consensus of UN human rights treaty bodies and independent experts that LGBT are human rights.<sup>18</sup>
2. The Commission is misguided in developing and promoting a nationalistic, majoritarian justification for prioritizing certain rights over others, which invites other governments, including authoritarian governments, to ignore international human rights standards and instead to follow this administration's example, which has been to facilitate discrimination and other denials of the rights of LGBT/H people, women and others.<sup>19</sup>

### **Excluding LGBTQ People from Full Human Rights Protection Is Mistaken and Harmful.**

Among the reasons Lambda Legal submits this separate comment is our deep knowledge and concern about the persecution LGBT/H people face in many countries around the globe, and the immediate, intensive increase in the threats they will face were our government — and our State Department in particular — to finalize and act upon this misguided reframing of human rights policy and practice.

We have this knowledge because, in addition to impact litigation and policy advocacy, Lambda Legal also operates a legal help desk, through which we respond directly to the thousands of members of the communities we serve who contact us annually seeking legal information and assistance regarding abuse related to sexual orientation, gender identity or HIV status. Our staff retains records of these requests, which are kept in a searchable electronic database currently spanning from 2013 to the present. Between 2013 and 2020 (our current data set), we received 452 inquiries concerning persecution based on LGBT/H status in other countries resulting in a need for asylum. These inquiries have been consistent over these years, ranging from 40 to 70 per year in no particular pattern. Ten percent of these inquiries have come from individuals still located in other countries, and ninety percent have come from foreign nationals located within the United States at the time of the inquiry. Regardless of where the person was physically located when making their inquiry, these inquiries have come from nationals of fifty-nine

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<sup>15</sup> The comment letter is available at [https://www.hrw.org/sites/default/files/media\\_2020/07/HRW%20Comment%20to%20Commission%20on%20Unalienable%20Rights.pdf](https://www.hrw.org/sites/default/files/media_2020/07/HRW%20Comment%20to%20Commission%20on%20Unalienable%20Rights.pdf).

<sup>16</sup> The comment letter is available at [https://equityfwd.org/sites/default/files/equity\\_forward\\_public\\_comment\\_on\\_cur\\_report\\_7.29.20\\_0.pdf](https://equityfwd.org/sites/default/files/equity_forward_public_comment_on_cur_report_7.29.20_0.pdf).

<sup>17</sup> The Center's comment letter is available at <https://www.state.gov/draft-report-of-the-commission-on-unalienable-rights-public-comment/>.

<sup>18</sup> Report of the Special Rapporteur on freedom of religion or belief to the Human Rights Council, 43d Session (Feb. 27, 2020) (A/HRC/42/48), [https://www.ohchr.org/Documents/Issues/Religion/A\\_HRC\\_43\\_48\\_AdvanceUneditedVerison.docx](https://www.ohchr.org/Documents/Issues/Religion/A_HRC_43_48_AdvanceUneditedVerison.docx).

<sup>19</sup> See, for example, the references cited *supra* in footnote 2.

countries, representing every continent except Antarctica: sixteen African countries; seventeen Asian countries; five European countries; thirteen countries in North America (delineated as including Central America); six South American countries; and two countries in Oceania. In descending order, the most numerous inquiries have come from Mexico, Russia, Nigeria, Jamaica, Honduras, El Salvador, Uganda, Turkey, Venezuela, and Saudi Arabia.

Typical requests for help include the inquiry from F.W., who came to the United States in August 2017 from Kenya and identifies as a gay man.<sup>20</sup> When F.W. contacted us, he was sheltering in a church due to his lack of any other peer or community support. He explained to us that it is illegal to be gay in Kenya.<sup>21</sup> When he was in Kenya, members of the Mungai tribe threatened him with death daily. Prior to coming to the United States, he had been imprisoned three times for being gay.

A.N., from Pakistan, provides another typical example. When A.N. contacted us, she was a student in Oregon and legally present in the United States on a student visa. She explained to us that she is a trans-feminine Muslim who was identified as male at birth, and who had begun her gender transition. The medical treatment had resulted in the intended physical changes to her body, however, she feared returning to Pakistan because of the extreme hostility she expected she would encounter due to those changes.

It is well known, and certainly within the Department, that LGBT people globally face horrifying, pervasive persecution, often explained as religiously or culturally required. What is difficult to reconcile now is this Commission, under State Department auspices, proposing to reduce rights protections for this vulnerable population and to augment the grounds on which much of the abuse is premised. Indeed, there is a bizarre disconnect between this proposal and the Department's own recent reports<sup>22</sup> confirming the conditions confronting LGBT/H people. Consider just the countries about which Lambda Legal received the most requests for help:

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<sup>20</sup> Initials are used to protect the identities of persons who have sought legal help from Lambda Legal and who both are entitled to that confidentiality and need it due to fear of persecution.

<sup>21</sup> Indeed, Kenyan law does criminalize same-sex sexual conduct, as the State Department's 2019 Human Rights Report discusses. See Department of State, *2019 Country Reports on Human Rights Practices: Kenya*, pp. 1, 45 (March 11, 2020) (reporting that "Significant human rights issues include ... the existence and use of laws criminalizing consensual same-sex sexual conduct between adults," and that, since activists have launched legal challenges to those laws, "police more frequently used public-order laws (for example, disturbing the peace) than same-sex legislation to arrest LGBTI individuals. NGOs reported police frequently harassed, intimidated, or physically abused LGBTI individuals in custody."), <https://www.state.gov/wp-content/uploads/2020/03/KENYA-2019-HUMAN-RIGHTS-REPORT.pdf>.

<sup>22</sup> Department of State, *2019 Country Reports on Human Rights Practices* (March 11, 2020), <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/>.

Mexico,<sup>23</sup> Russia,<sup>24</sup> Nigeria,<sup>25</sup> Jamaica,<sup>26</sup> Honduras,<sup>27</sup> El Salvador,<sup>28</sup> Uganda,<sup>29</sup> Turkey,<sup>30</sup> Venezuela,<sup>31</sup> and Saudi Arabia.<sup>32</sup>

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<sup>23</sup> Department of State, *2019 Country Reports on Human Rights Practices: Mexico*, p. 27 (March 11, 2020) (citing research that “six of every 10 members of the LGBTI community reported experiencing discrimination in the past year, and more than half suffered hate speech and physical aggression”; and “in the first eight months of the year, there were 16 hate crime homicides in Veracruz, committed against nine transgender women and seven gay men.”), <https://www.state.gov/wp-content/uploads/2020/02/MEXICO-2019-HUMAN-RIGHTS-REPORT.pdf>.

<sup>24</sup> Department of State, *2019 Country Reports on Human Rights Practices: Russia*, pp. 1, 2, 63-64 (March 11, 2020) (reporting “Significant human rights issues included: extrajudicial killings, including of lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons in Chechnya by local government authorities” and more generally “crimes involving violence or threats of violence against ... LGBTI persons”; “government agents attacked, harassed, and threatened LGBTI activists.”; “Openly gay men were particular targets of societal violence, and police often failed to respond adequately to such incidents.” “In April 2018 the Russian LGBT Network released a report that documented 104 incidents of physical violence, including 11 killings, towards LGBTI persons in 2016-17.”), <https://www.state.gov/wp-content/uploads/2020/03/RUSSIA-2019-HUMAN-RIGHTS-REPORT.pdf>.

<sup>25</sup> Department of State, *2019 Country Reports on Human Rights Practices: Nigeria*, p.1 (March 11, 2020) (reporting “substantial interference with the rights of peaceful assembly and freedom of association in particular for lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons ...; crimes involving violence targeting LGBTI persons; criminalization of same-sex sexual conduct between adults), <https://www.state.gov/wp-content/uploads/2020/02/NIGERIA-2019-HUMAN-RIGHTS-REPORT.pdf>.

<sup>26</sup> Department of State, *2019 Country Reports on Human Rights Practices: Jamaica*, p. 8 (March 11, 2020) (reporting that the government generally protected Jamaicans freedoms of peaceful assembly and association, however, “[a]buses of these freedoms often involved the lesbian, gay, bisexual, transgender, and intersex (LGBTI) community”; also, “The law criminalizes consensual same-sex sexual relations and anal sex between men. Physical intimacy between men, in public or private, is punishable by two years in prison, and anal sex between men is punishable by up to 10 years with hard labor.”), <https://www.state.gov/wp-content/uploads/2020/02/JAMAICA-2019-HUMAN-RIGHTS-REPORT.pdf>.

<sup>27</sup> Department of State, *2019 Country Reports on Human Rights Practices: Honduras*, pp. 1, 19 (March 11, 2020) (including among significant human rights issues: unlawful or arbitrary killings, including extrajudicial killings; torture; harsh and life-threatening prison conditions; arbitrary arrest or detention;...; and threats and violence against ... lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons.” “social discrimination against LGBTI persons persisted, as did physical violence.”; cites “an increase in the number of killings of LGBTI persons during the year. Impunity for such crimes was a problem.”), <https://www.state.gov/wp-content/uploads/2020/02/HONDURAS-2019-HUMAN-RIGHTS-REPORT.pdf>.

<sup>28</sup> Department of State, *2019 Country Reports on Human Rights Practices: El Salvador*, pp. 1, 22-23 (March 11, 2020) (including among “Significant human rights issues ... security force violence against lesbian, gay, bisexual, transgender, and intersex (LGBTI) individuals”; reporting that “Persons from the LGBTI community stated that the PNC and the Attorney General’s Office harassed transgender and gay individuals when they reported cases of violence against LGBTI persons, including by conducting unnecessary and invasive strip searches.”; and illustrating the current situation with details of four gruesome murders of transgender women), <https://www.state.gov/wp-content/uploads/2020/02/EL-SALVADOR-2019-HUMAN-RIGHTS-REPORT.pdf>.

As the Department’s reports show, the persecution LGBT/H people experience comes in many forms. Some is official government policy. Some is inflicted primarily by private actors with government support or at least acquiescence. Some reflects pervasive social norms and is

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<sup>29</sup> Department of State, *2019 Country Reports on Human Rights Practices: Uganda*, pp. 1, 31 (March 11, 2020) (including among “Significant human rights issues ... crimes involving violence or threats of violence targeting lesbian, gay, bisexual, transgender, or intersex persons (LGBTI); and the existence of laws criminalizing consensual same-sex sexual conduct between adults.” “The government was reluctant to investigate, prosecute, or punish officials who committed human rights abuses, ... impunity was a problem.” “LGBTI persons faced discrimination, legal restrictions, harassment, violence, and intimidation. Authorities perpetrated violence against LGBTI individuals ...” “the UPF subjected 16 homosexual and transgender people to forced medical examinations in an effort to “gather evidence” to support criminal charges against them for having participated in activities ‘against the order of nature.’” ; reporting government arrest of “33 transgender persons who were attending a training on sustainable development goals,” who were detained, charged with holding an illegal assembly, and later put on trial), <https://www.state.gov/wp-content/uploads/2020/02/UGANDA-2019-HUMAN-RIGHTS-REPORT.pdf>.

<sup>30</sup> Department of State, *2019 Country Reports on Human Rights Practices: Turkey*, pp. 1-2, 63 (March 11, 2020) (“Significant human rights issues included ... violence against women and lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons ... The government took limited steps to investigate, prosecute, and punish ... officials accused of human rights abuses; impunity remained a problem” “provisions of law concerning “offenses against public morality,” “protection of the family,” and “unnatural sexual behavior” sometimes served as a basis for abuse by police and discrimination by employers.” “During the year LGBTI individuals experienced discrimination, intimidation, and violent crimes. ... police and prosecutors frequently failed to pursue cases of violence against transgender persons”), <https://www.state.gov/wp-content/uploads/2020/03/TURKEY-2019-HUMAN-RIGHTS-REPORT.pdf>.

<sup>31</sup> Department of State, *2019 Country Reports on Human Rights Practices: Venezuela*, p. 32 (March 11, 2020) (“Credible NGOs reported incidents of bias-motivated violence against lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons. Reported incidents were most prevalent against transgender individuals. Leading advocates noted that law enforcement authorities often did not properly investigate to determine whether crimes were bias motivated. Local police and private security forces allegedly prevented LGBTI persons from entering malls, public parks, and recreational areas.” Government systematic refusal of identity documents to transgender and intersex persons left them especially vulnerable economically, and likely “to become victims of human trafficking or prostitution.”), <https://www.state.gov/wp-content/uploads/2020/03/VENEZUELA-2019-HUMAN-RIGHTS-REPORT.pdf>.

<sup>32</sup> Department of State, *2019 Country Reports on Human Rights Practices: Saudi Arabia*, pp. 2, 49-50 (March 11, 2020) (“Significant human rights issues included ... criminalization of consensual same-sex sexual activity”; “Under sharia as interpreted in the country, consensual same-sex sexual conduct is punishable by death or flogging, depending on the perceived seriousness of the case. It is illegal for men ‘to behave like women’ or to wear women’s clothes, and vice versa. Due to social conventions and potential persecution, lesbian, gay, bisexual, transgender, and intersex (LGBTI) organizations did not operate openly, nor were there LGBTI rights advocacy events of any kind. There were reports of official and societal discrimination, physical violence, and harassment based on sexual orientation or gender identity in employment, housing, access to education, and health care. Stigma or intimidation acted to limit reports of incidents of abuse.”), <https://www.state.gov/wp-content/uploads/2020/03/SAUDI-ARABIA-2019-HUMAN-RIGHTS-REPORT.pdf>.



inflicted by a mix of private and governmental action. Many LGBT/H people experience horrifying abuse, if not death. Many live in terror of having their identity discovered, or even just suspected, and thus have no meaningful opportunity to find love, to build a family when and how they wish, to express their true gender honestly and freely, and to live the fullness of human experience in safety and good health. Under any reasonable framing of human rights, to accept, let alone exacerbate, this reality is wrong.

Given the extensive information about anti-LGBT/H persecution that the State Department collects, digests and reports annually, as exemplified by the reports referenced here, it is difficult to imagine that its leadership is unaware of the likely consequences for this population, among many others, of the Commission's proposed new human rights framework. Because the draft report both betrays our nation's commitment to human rights and invites other countries to do the same in the name of religion, majoritarian will or unspecified national interests, Lambda Legal urges the Department in the strongest possible terms to set it aside.

Thank you for the opportunity to submit this comment. Please do not hesitate to contact the undersigned at [jpizer@lambdalegal.org](mailto:jpizer@lambdalegal.org) or (213) 590-5903 with any questions or for further information.

Respectfully submitted,

**LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.**

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