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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development****Freedom of religion or belief, and freedom from violence and
discrimination based on sexual orientation and gender identity****Report of the Independent Expert on protection against violence and
discrimination based on sexual orientation and gender identity*, *****Summary*

The present report is submitted to the Human Rights Council pursuant to Council resolutions 32/2, 41/18 and 50/10. The Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz, examines the intersection between freedom of thought, conscience and religion or belief and protection from violence and discrimination based on sexual orientation and gender identity. Annex 1 describes activities that took place since June 2022.

* The present report was submitted after the deadline to allow consideration of diverse inputs.

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I. Introduction

1. For the last 75 years, universal, indivisible, and interdependent rights have given meaning to the framework built over the Universal Declaration for Human Rights. Freedom of thought, conscience and religion or belief (FoRB) is a fundamental part of that structure, as are the rights to non-discrimination and equality before the law, the absolute prohibition of torture and other cruel, inhuman, or degrading treatment or punishment, the right to privacy, the right to freedom of expression, the right to health, and all other rights on the basis of which lesbian, gay, bisexual, trans and other gender diverse (LGBT) persons have a right to a life free from violence and discrimination.¹

2. This report focuses on the spaces where freedom of thought, conscience and religion or belief and protection from violence and discrimination based on sexual orientation and gender identity intersect. It therefore relates to human feelings of love, intimacy, and meaning; spiritual ecstasy and physical pleasure; inner peace and worldly belonging. In other words, it seeks to explore fundamental conceptions about our human bonds with the sacred and the mundane, the interaction between these powerful motors of the human experience, and the framework created in international human rights law for their recognition and development.

3. The Independent Expert is committed to respect for freedom of religion and belief. Tellingly, the resolution that created the mandate recognizes the importance of respecting religious value systems. During country visits the Independent Expert has deeply valued his engagements with religious authorities: in Georgia, the Patriarchate of the Georgian Orthodox Church, the Mufti of all Muslims, and the Chair of the Jewish Council; in Mozambique, the Mufti of Nampula; in Tunis, the Catholic Archbishop, and the Chief Rabbi; and faith-based leaders in Ukraine, the United States, and the United Kingdom. The dialogue activities of the Independent Expert include engagements with persons of faith, and this is a topic that is present in analysis of allegations in specific cases. These experiences are part of the knowledge stock used for this report.

4. The report preparation also included: a literature review, with special attention to the archive of the United Nations Special Rapporteur on FoRB;² a call for inputs that generated 26 State submissions and 99 submissions by non-State actors, including academia, civil society, and faith-based organizations; an expert meeting held at the Independent Expert's academic home, the Human Rights Program of the Harvard University Law School in Cambridge, Massachusetts on 9 and 10 March 2023; and a public consultation in Geneva, Switzerland on 21 March 2023. The Independent Expert is indebted to all stakeholders for their contributions to the report.

5. Within a human-rights framework, the term "religion" does not describe a homogeneous, static entity. Religious norm, tradition, and community are not part of a single institution, and religion describes a multitude of dynamic, contested, and evolving beliefs and values that inspire hope, guide action, imbue identity and help people make meaning of their life experiences.³

6. As an unfixed paradigm, religion does not have essential inbuilt positions, and it would make no sense to position it as inherently or predominantly pro- or anti-LGBT. And yet religion and the human rights of LGBT persons are often placed in antagonistic positions in social and political discourse, feeding the contention that there is an inherent conflict between FoRB and the human rights of LGBT individuals, a fabricated narrative that

¹ A/HRC/35/36, paras. 20–33.

² Special Rapporteur's Compilation of Articles on Freedom of religion or belief and Sexuality, 2017, <https://www.ohchr.org/sites/default/files/Documents/Issues/Religion/ArticlesCompilationForbAndSexuality.pdf>.

³ *Women, Religion and Peacebuilding: Illuminating the Unseen*, Susan Hayward and Katherine Marshall (eds.), USIP, 2015.

undermines the ideal of peaceful human coexistence: as put in one submission, “[a]t times, freedom of religion or belief also has been misused as a sword rather than a shield, privileging the individual conscience and beliefs of some at the expense of the rights of others.”⁴

7. Indeed, FoRB in international human rights law is distinct from *religion*: it protects a person’s freedom to possess and express beliefs, religious or not, individually or in community with others: to shape their lives in conformity with their own convictions.⁵ Religious freedom is an expansive idea, “encompassing both freedom of religion and freedom from religion”;⁶ and “perceived as a general right which also protects an individual’s right to form a whole range of non-institutional and dissenting views.”⁷

8. The report concludes that FoRB and freedom from violence and discrimination based on sexual orientation and gender identity are fully compatible under international human rights law. It further demonstrates that it is the way some religious narratives are used to justify violence and discrimination that constitutes actions contrary to the human rights of LGBT persons; and gathers and systematizes a significant range of good and best practices that show how FoRB is part of the framework that enables the enjoyment of the human rights of LGBT persons.

II. Legal framework

A. Freedom from violence and discrimination based on sexual orientation and gender identity

9. That all persons should live free from violence and discrimination based on their sexual orientation and/or gender identity is not an idea from a particular part of the world: it is an international standard.⁸ The State obligation to adopt measures to eradicate such violence and discrimination continues nevertheless to face opposition. Governments, religious institutions, and other actors attempt to justify this opposition in global, regional, and national fora on the grounds that diversity in sexual orientation or gender identity contravenes certain religious tenets or sociocultural beliefs.⁹ One of the following three arguments is usually deployed:

(a) LGBT persons do not exist within the jurisdiction of a State,¹⁰ or within certain religious and belief communities;¹¹

(b) sexual orientation and gender identity only exist subjectively in the conscience of individuals and are not protected under international human rights law;¹² in case of any clash with a manifestation of religion or belief, it is the latter that must be protected.¹³ This is particularly the case when interests promote “a ‘rebalancing’ of human rights in accordance with ‘traditional values,’ where religious and belief freedom is repositioned as the unalienable right to which other human rights should be ceded”.¹⁴ The defunct United States Commission on Unalienable Rights, and the Geneva Consensus,¹⁵ are two outcomes of this

⁴ Human Rights Watch, submission, p. 2.

⁵ A/71/269, para. 11.

⁶ Catholics for Choice, submission, p. 3.

⁷ Humanists International, submission, p. 3.

⁸ A/HRC/35/36, paras. 20–33.

⁹ A/HRC/43/48.

¹⁰ A/HRC/38/43, paras. 62–65.

¹¹ Coalition for Child Protection (Macedonia), submission, p. 3.

¹² Center for Family and Human Rights, submission; Heritage Foundation, submission.

¹³ C-Fam, submission, p. 2.

¹⁴ Humanists International, submission, p. 2.

¹⁵ 2020 Geneva Consensus Declaration on Promoting Women's Health and Strengthening the Family.

type of thinking. A corollary of this line of argumentation alleges that LGBT persons are seeking new or special rights;¹⁶

(c) State’s human rights obligations must be calibrated against the dominant religious and belief or cultural orthodoxies in national contexts and the right to be free from discrimination and violence based on sexual orientation and gender identity conflicts with national religious and belief sensibilities. Notions of “traditional values,”¹⁷ “public morals” and “national values” are commonly used in discourses that are hostile to the human rights of women, LGBT persons and religious and belief minorities, and often rely implicitly or explicitly on religious and belief norms and values, also linked with patriotism and patriarchal gender and family norms.¹⁸

10. The mandate has reviewed the robust evidentiary and theoretical bases that lead to the conclusion that these positions are not supported by international human rights law.¹⁹ Nevertheless, the norms of interdependence and indivisibility of human rights invite careful analysis of any perceived conflicts between rights with a view to doing justice to all claims involved, and the analysis in this report seeks to further examine some of those arguments.

B. Right to freedom of religion or belief, sexual orientation, and gender identity

11. Human rights are subject to an interpretation preventing “the destruction of any of the rights and freedoms” protected in the respective legal instruments.²⁰ Article 18 of the ICCPR protects everyone’s freedom to “have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.” The mandate of the United Nations Special Rapporteur on freedom of religion or belief has long described this right as being two-fold;²¹ a first part covering the right to hold or change one’s thoughts, religion or belief,²² a right that is absolute and cannot be restricted by States under any circumstances. The second part, the right to manifest one’s religion or belief through actions, can and should be limited by States in certain circumstances, namely when prescribed by law and “necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”²³

12. Limitations on FoRB must be proportionate to a legitimate aim,²⁴ “strictly interpreted,”²⁵ and not imposed for discriminatory purposes or applied in a discriminatory manner;²⁶ and the Special Rapporteur on FoRB concluded that “religious beliefs” cannot be “invoked as a legitimate ‘justification’ for violence or discrimination on the basis of sexual orientation or gender identity.”²⁷ The European Union guidelines on the promotion and protection of freedom of religion or belief similarly rejected all FoRB-based justifications of violence and discrimination, and further recognized that: “States have a duty to protect all

¹⁶ Family Watch International, submission, p. 4; Heritage Foundation, submission, p. 1.

¹⁷ A/HRC/41/45/Add.1, para. 32.

¹⁸ Coming Out, submission, p. 3.

¹⁹ A/76/152, para. 77.

²⁰ A/HRC/43/48, para. 60. Article 30 of the Universal Declaration of Human Rights; Article 5 of the ICCPR.

²¹ A/HRC/43/48, para. 59.

²² CCPR/C/GC/34, para. 9.

²³ CCPR/C/21/Rev.1/Add.4, para. 8.

²⁴ Human Rights Committee, *Yaker v. France*, 2018, para. 8.8.

²⁵ CCPR/C/21/Rev.1/Add.4, para. 8.

²⁶ Human Rights Committee, *Hebbadj v. France*, 2022, para. 7.5; *Yaker v. France*, para. 8.5.

²⁷ A/HRC/43/48, para. 69.

persons within their jurisdiction from direct and indirect discrimination on grounds of religion or belief,” including “on the basis of their sexual orientation or gender identity”.²⁸

C. Institutional autonomy and freedom from discrimination

13. FoRB includes the right to organize and maintain the internal affairs of religious and belief community life without State intervention.²⁹ States cannot seek to control religious and belief life, and the autonomy to determine the rules for appointing leaders or for governing monastic life, for example, grants religious and belief communities self-understanding of their norms and traditions.³⁰

14. The European Court of Human Rights has noted that the right to freedom of religion and the principle of autonomy entail that the “State is prohibited from obliging a religious community from admitting new members or excluding existing ones,”³¹ a principle that has also been reaffirmed in domestic jurisdictions. For example, the United States Supreme Court has established that there are some areas of religious practice that are squarely within the discretion of a religious faith and not subject to State control.³² As is widely known, the principle of autonomy can result in women, LGBT persons and members of religious and belief minorities being excluded from aspects of confessional life, or employment in some limited cases such as the case of religious schools.

15. Exclusionary views can have severe and negative consequences for the personhood, dignity, and spirituality of LGBT persons, who are often marginalized, stigmatized and excluded from religious and belief communities simply because of who they are.³³ The Special Rapporteur on FoRB, in noting this reality, asserted that States have a duty to create “an enabling environment” where dissenters, dissidents, progressive reformers and activists are protected against violence and harmful practices from the larger religious community, so that they can assert their agency and participate in religious discourse on an equal footing.³⁴

III. Violence and discrimination in the name of religion or belief

16. State and non-State actors perpetrate violence against persons based on their actual or perceived sexual orientation or gender identity invoking religion or belief. On 17 May 2013, a small group of members of the LGBT community and their allies, who were commemorating the International Day against Homophobia, Transphobia and Biphobia in Tbilisi, Georgia, was attacked by a crowd of thousands. The police failed to control the situation and the small group that had sought refuge in a building surrounded by the crowd was subjected to terror and assault, suffering physical and psychological harm. Clerics from the Orthodox Church and members of extremist groups were involved in inciting the violence. This case, corroborated by the

²⁸ EU Guidelines (24 June 2013), e.g. at paras. 26, 28, 30, 35, 36:

https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/137585.pdf. The European Parliament reaffirmed those standards in its Resolution of 15 January 2019 on the EU Guidelines and the mandate of the EU Special Envoy on the promotion of FoRB outside the EU (2018/2155(INI)): https://www.europarl.europa.eu/doceo/document/TA-8-20190013_EN.html.

²⁹ A/69/261, para. 41.

³⁰ Human Rights Committee, *Malakhovsky and Pikul v. Belarus*, 2005.

³¹ European Court of Human Rights, *Sindicatul ‘Păstorul cel Bun’ v. Romania*, 2013, para. 137; *Svyato-Mykhaylovska Parafiya v. Ukraine*, 2007, para. 146; *Miroļubovs and Others v. Latvia*, 2009, para. 80(d).

³² Supreme Court of the United States, *Masterpiece Cakeshop, LTD. et al. v. Colorado Civil Rights Commission et al.*, 2018, at 10. Cited in Human Rights Watch, submission, p. 4.

³³ A/HRC/43/48/Add.2, para. 52.

³⁴ A/HRC/43/48, para. 74.

Independent Expert during his country visit to Georgia,³⁵ is an example of how discrimination and violence perpetrated by religious and belief leaders and State agents may be (and often are) intimately intertwined and feed one another.

A. Violence

17. In countries with laws licensing punishment of consensual same-sex activity with death, the relevant authorities often base this denial of rights and personhood on the State's interpretation of religious law, culture and values.³⁶ Most recently, Uganda's Speaker of Parliament officially claimed that their "anti-homosexuality" law, which includes the death penalty for so-called "serial homosexuality,"³⁷ aims to "protect our [Christian] church culture; the legal, religious and traditional family values of Ugandans."³⁸

18. State-sponsored violence grounded in interpretations of religion or belief also takes less explicit forms such as the denial of reproductive rights,³⁹ State-coerced practices of conversion,⁴⁰ and forced gender reassignment surgeries.⁴¹ Laws which punish homosexuality and gender non-conformity also invariably generate violence elsewhere in the State's infrastructure: for example in detention settings⁴² and in healthcare settings.⁴³ It is reported that members of the armed forces in Iraq engage in violence against LGBT people with impunity; government officials consider these actions to be efforts by the abusers to protect religious or moral traditions.⁴⁴

19. Some of the most pernicious "religiously justified" violence based on SOGI is carried out by non-State actors. This includes bias-motivated attacks and other hate crimes by mobs, vigilante groups, individuals, family members, religious and belief leaders and organizations who allege that their religious beliefs permit and even require violence against LGBT persons. Cases of so-called "corrective" rape of lesbian, bisexual and queer women and girls facilitated by religious and belief leaders and adherents have been widely reported, including in Ghana,⁴⁵ Jamaica,⁴⁶ and Spain.⁴⁷ The forced heterosexual marriages of lesbian, bisexual and queer women emanating from

³⁵ A/HRC/41/45/Add.1, para. 57.

³⁶ Iran, Saudi Arabia, Somalia, states in Northern Nigeria, Afghanistan, Brunei, Mauritania, Pakistan, Yemen, Qatar, United Arab Emirates. United States Commission on International Religious Freedom, "Shari'a and LGBTI Persons", 2021: <https://www.uscirf.gov/sites/default/files/2021-03/2021%20Factsheet%20-%20Sharia%20and%20LGBTI.pdf>; A/HRC/35/23, para. 45; A/71/372, para. 101–102.

³⁷ "Uganda: UN experts condemn egregious anti-LGBT legislation", OHCHR, 29 March 2023: <https://www.ohchr.org/en/press-releases/2023/03/uganda-un-experts-condemn-egregious-anti-lgbt-legislation>.

³⁸ "Uganda parliament passes bill criminalizing identifying as LGBTQ, imposes death penalty for some offenses", CNN, 22 March 2023: <https://www.cnn.com/2023/03/21/africa/uganda-lgbtq-law-passes-intl/index.html>.

³⁹ OL IDN 2/2022.

⁴⁰ A/HRC/44/53, para 25

⁴¹ A/HRC/57/50, para. 29.

⁴² A/HRC/40/60, para 54.

⁴³ A/HRC/50/27, paras. 10, 29.

⁴⁴ Human Rights Watch, 'Everyone Wants Me Dead', 23 March 2022: https://www.hrw.org/report/2022/03/23/everyone-wants-me-dead/killings-abductions-torture-and-sexual-violence-against#_ftn1.

⁴⁵ Human Rights Watch, 'No Choice but to Deny Who I Am', 8 January 2018: <https://www.hrw.org/report/2018/01/08/no-choice-deny-who-i-am/violence-and-discrimination-against-lgbt-people-ghana#13932d>.

⁴⁶ Inter-American Commission on Human Rights, *Violence Against LGBTI Persons in Americas*, para. 173: https://www.oas.org/en/iachr/reports/pdfs/violence_lgbtipersons.pdf.

⁴⁷ NET (Spain), submission, pp. 4–5.

community beliefs that heterosexual marriage is a religious or spiritual directive is another chilling example.⁴⁸ In particular, the mandate’s research into so-called “conversion therapy” – which sometimes reaches the level of torture – revealed that the main promoters and perpetrators are often religious or belief leaders and institutions, with the support of, or instigation by, family members.⁴⁹

20. Submissions highlighted that State-sanctioned violence and discrimination against LGBT people normalizes non-State human rights abuses.⁵⁰ Abusers routinely target persons who openly dissent from dominant religious teachings by advancing interpretations that do not center heteronormativity.

21. When perpetrators are non-State actors, States must still act with due diligence to prevent violence against LGBT people, fully investigate it when it occurs, prosecute and punish the perpetrators, and repair the damage inflicted on the victims.⁵¹ In its General Comment on the right to life, the United Nations Human Rights Committee made this duty explicit, outlining that States must take “special measures of protection towards persons whose lives have been placed at particular risk because pre-existing patterns of violence, including [...] lesbian, gay, bisexual, transgender and intersex (LGBTI) persons.”⁵²

B. Hate speech and incitement

22. Freedom of opinion and expression is enshrined in Article 19 of the ICCPR. Like Article 18, it also stipulates that the right may be subject to certain restrictions, when provided by law and necessary for respect of the rights and reputation of others, or of public health or morals. These provisions are given context by Article 20 of the Covenant, which prohibits “racial or religious hatred that constitutes incitement to discrimination, hostility or violence.” The Human Rights Committee has established that no manifestation of religion or belief ought to propagate war, or incite national, religious, or racial hatred, discrimination, or violence.⁵³

23. Many submissions raised concerns about religious or belief leaders actively fueling disinformation and/or intolerance against LGBT persons. A common tactic is to scapegoat LGBT people for controversies, exacerbating historical and structural patterns of exclusion. In the height of the COVID-19 pandemic, for example, the mandate documented religious authorities attributing the virus to retribution from God for same-sex activity in 12 States.⁵⁴

24. Others posit LGBT persons as a threat to “the traditional family”⁵⁵ or “the nation.”⁵⁶ During his visit to Ukraine, the Independent Expert learned that religious leaders had demanded a ban on “homosexual propaganda” under the banner of “protecting the traditional

⁴⁸ Joint submission by NGOs Coalition for UPR-Thailand, 25 April 2021, pp. 4-5, 7: <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=8848&file=CoverPage>. Human Rights Watch, *This Is Why We Became Activists*, 14 February 2023: <https://www.hrw.org/report/2023/02/14/why-we-became-activists/violence-against-lesbian-bisexual-and-queer-women-and-non#ftn5>.

⁴⁹ A/HRC/44/53, paras. 25–33. Outright International, submission, p. 6. Promsex, submission, p. 5.

⁵⁰ Campaña Nacional por un Estado laico, submission, p. 3.

⁵¹ A/HRC/29/23, para. 11.

⁵² CCPR/C/GC/36, para. 23.

⁵³ CCPR/C/21/Rev.1/Add.4, para.7.

⁵⁴ OHCHR, “Covid-19 and the Human Rights of LGBTI People”, 17 April 2020, <https://www.ohchr.org/sites/default/files/Documents/Issues/LGBT/LGBTIpeople.pdf>. AL TUR 10/2020.

⁵⁵ A/HRC/47/27, p. 5.

⁵⁶ “The Position of the Polish Bishops’ Conference regarding LGBT+”, Konferencja Episkopatu Polski, 28 August 2020: <https://episkopat.pl/the-position-of-the-polish-bishops-conference-regarding-lgbt/>.

family.”⁵⁷ A related theory is that gender –that men’s and women’s roles, behaviors, forms of expression, and attributes are constructed according to the social meanings given to biological sex characteristics⁵⁸ – is a dangerous “ideology.”⁵⁹ In Peru, self-declared evangelical candidates for congress who are also pastors of churches have denied the very existence of intersex persons, often citing the Bible as a legislative source, and supported practices of conversion as part of their electoral platform.⁶⁰

25. Other submissions expressed concern about interpretations of religious doctrines that place homosexuality and gender nonconformity within a discourse of immorality and sin, describing the power that such discourse can have on the social acceptance of LGBT people, particularly when propagated by religious and belief leaders. Denunciations of LGBT people needing to be “cured” or punished leads to significant harm, exile from communities, emotional distress and suicidality, or cruel, inhuman, or degrading treatment or punishment.⁶¹

26. The extent to which religion can be invoked for autocratic practices and denial of basic rights and civil liberties is also evident in some of the state legislatures seeking to enshrine anti-trans exclusion and eliminate comprehensive sex education in the United States. At the end of his visit to that country, the Independent Expert conveyed concerns about the misuse of religious narratives and the deliberate exploitation of earnestly religious persons for political purposes.⁶²

27. Under certain circumstances, the State is obliged to prohibit the advocacy of hatred against LGBT people where it constitutes incitement to discrimination or violence.⁶³ Some LGBT advocates have called for legislative bans on such acts, including when articulated in religious contexts. Others caution against limits on speech that risk censorship, and undue restrictions on freedom of religion or belief that could disproportionately impact minorities. The mandate shares these concerns: there is a need to protect vulnerable groups against hate speech and to be cautious of overly broad legislation that risks pitting “various groups – including the very marginalized groups that it purports to benefit – against each other in a free-speech race to the bottom.”⁶⁴

28. The United Nations Rabat Plan of Action is a tool of particular importance in this context. It articulates a test for defining restrictions on freedom of expression, incitement to hatred, and for the application of article 20 of the ICCPR. It outlines a six-part threshold test: (1) the social and political context, (2) status of the speaker, (3) intent to incite the audience against a target group, (4) content and form of the speech, (5) extent of its dissemination, and (6) likelihood of harm, including imminence.⁶⁵

C. Actions seeking regression of human rights of LGBT persons

29. The concept of a “natural” order as the guiding principle of human and social existence is also present in conservative doctrine. This conceptual foundation, propagated through some dominant religious narratives, can restrict the full enjoyment of rights by LGBT

⁵⁷ A/HRC/44/53/Add.1.

⁵⁸ A/HRC/47/27, para 13.

⁵⁹ Mary Anne Case, “Trans Formations in the Vatican’s War on ‘Gender Ideology’”, 2019: https://chicagounbound.uchicago.edu/journal_articles/9669.

⁶⁰ Promsex, submission, p. 3.

⁶¹ A/HRC/44/53.

⁶² Country Visit to the United States of America, Preliminary Observations, 29 August 2022, para. 28: <https://www.ohchr.org/sites/default/files/documents/issues/sexualorientation/iesogi/2022-08-30/IE-SOGI-EOM-US.docx>.

⁶³ CCPR/C/GC/34, paras. 48 and 49.

⁶⁴ “Hate-speech laws are no friend of minorities”, Spiked, 2 June 2020: <https://www.spiked-online.com/2020/06/02/hate-speech-laws-are-no-friend-of-minorities/>.

⁶⁵ Jeroen Temperman, *Religious Speech, Hatred and LGBT Rights: An International Human Rights Analysis*, 2021: <https://doi.org/10.1163/9789004458864>.

persons. For example, the All-Ukrainian Council of Churches and Religious Organizations successfully opposed attempts to include sexual orientation and gender identity as protected characteristics in anti-discrimination legislation; to ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence; and to adopt a resolution cancelling the legislative ban on the adoption of children by HIV-positive and transgender persons.⁶⁶

30. An unprecedented pushback by alliances of conservative political ideologies and religious fundamentalisms is advocating for the criminalization of homosexuality and the denial of gender recognition in numerous States.⁶⁷ These alliances rarely present themselves as religious fundamentalist,⁶⁸ but rather as human rights groups working to protect the family and religious freedom. Striking cases can be seen in recent legislative projects in Uganda and Ghana, where a bill was tabled by a Coalition of MPs with the support of the National Coalition for Proper Human Sexual Rights and Family Values, a tripartite movement that is said to include all Christian Councils, all Muslim Councils and all Traditional Leaders in the country. The Coalition of Muslim Organizations, Ghana (COMOG), has openly backed the bill.

D. Direct State discrimination allegedly grounded in religion and/or belief

1. Criminalization of same-sex intimacy and gender diversity

31. In total, 67 State Members of the United Nations criminalize consensual same-sex sexual acts between adults.⁶⁹ The historical causes of this criminalization can be traced to two sources. The first is dogmatic interpretations of scripture. In 2019, for example, several Special Procedures expressed their concern to Brunei Darussalam for the imposition of stoning to death, whipping and amputation in connection with consensual same-sex relations and adultery in the Syariah Penal Code Order.⁷⁰ A feature of this legislation is that the application of its penalties vary depending on if the offender is Muslim or not. In its response, the State emphasized the preservation of its “own cultural and religious values.”⁷¹

32. Regional or provincial parliaments also appeal to religion: the mandate has noted that regional laws in the Aceh province of Indonesia, for example, have created offenses denominated as Islamic criminal law, additional to the national criminal law, against same-sex acts and certain forms of gender expression, with penalties that include fines, caning and imprisonment for 100 months.⁷²

33. The other historical source is a legislative exercise carried out by the British Empire.⁷³ Half of the countries that maintain criminalization are former British colonies,⁷⁴ and many among them invoke national religious values to justify the retention of these laws. This was, for example, the case of Jamaica during the 2011 Universal Periodic Review;⁷⁵ in other cases,

⁶⁶ A/HRC/44/53/Add.1, para. 11.

⁶⁷ AWID, *Rights at Risk: Time for Action – Observatory on the Universality of Rights Trends Report, 2021*, 2021: <https://www.awid.org/ours-2021>.

⁶⁸ A/HRC/34/56, paras. 24, 29.

⁶⁹ A/HRC/43/48, para. 52.

⁷⁰ AL BRN 1/2019.

⁷¹ Note no. 33/2018: <https://spcommreports.ohchr.org>.

⁷² IDN 1/2018. ASEAN SOGIE Caucus, submission p. 2.

⁷³ Human Rights Watch, *This Alien Legacy: The Origins of ‘Sodomy’ Laws in British Colonialism*, p. 5: <https://www.hrw.org/report/2008/12/17/alien-legacy/origins-sodomy-laws-british-colonialism>.

⁷⁴ “Criminalising Homosexuality and Understanding the Right to Manifest Religion”, Human Dignity Trust, 11 November 2015: <https://www.humandignitytrust.org/wp-content/uploads/resources/9.-Criminalisation-Freedom-of-Religion.pdf>.

⁷⁵ Report of the Working Group on the Universal Periodic Review: Jamaica, A/HRC/16/14, 4 January 2011, para. 32.

colonial-era legislation has morphed into norms invoking religion. One example is Malaysia, where section 377A has also been adopted in the Syariah Criminal Offences Act of 1977.⁷⁶

2. Other forms of oppression

34. In many countries, there is a tendency to tie national and cultural values to religious values and make them indistinguishable. This not only undermines the promotion of FoRB for all by suggesting a monolithic national religious tradition (and thus marginalizing minority religions), but it also often means that those human rights standards and values that stray from this one interpretation of religion, such as LGBT equality or recognition are undermined. The way this framework is sometimes manifested is through discourse about protecting religious values that allegedly underpin the identity and meaning of the society and the State. This narrative is used to undermine the rights and equality of LGBT people in a variety of ways.

35. For example, in 2021, Kenya banned the film *I Am Samuel*, which depicted romantic love between men. The government labeled it “an affront to our culture and identity” and “demeaning of Christianity.”⁷⁷ In 2017, the Egyptian Musicians Syndicate banned the band Mashrou’ Leila from performing in Egypt when some audience members flew a rainbow flag at one of its concerts in Cairo. Those audience members were arrested, and some have been handed harsh prison sentences; the incident also started a clampdown on the LGBT community.⁷⁸ Incidentally the same band was also prevented from playing in the city of Byblos, after being accused of blasphemy.⁷⁹

36. The Russian 2013 law banning “propaganda of non-traditional sexual relations” to minors is an example of censorship legislation that limits freedom of expression about LGBT topics, and is reliant upon protection of religiously derived “traditional values.”⁸⁰ In 2022, a St. Petersburg court found a photographer guilty after a showing a video that depicted two men kissing in front of a church,⁸¹ and in November 2022, the lower house of parliament unanimously voted to extend the law to apply to adults. The head of Russia’s Orthodox Church backed the new legislation, and has portrayed Russia’s war in Ukraine as a battle between those who support pro-Western gay pride events, and those who reject them.⁸²

37. In 2020, Hungary passed a law that effectively banned adoption by same-sex couples, applying a strict Christian conservative viewpoint to the legal definition of a family. The amendment altered the constitutional definition of families to exclude transgender and other LGBT individuals, defining the basis of the family as “marriage and the parent-child relationship,” and declaring that “the mother is a woman, and the father is a man.” The amendment also states that, “Hungary protects the right of children to self-identity according

⁷⁶ ASEAN SOGIE Caucus and Justice for Sisters, joint submission, p. 8.

⁷⁷ “‘Ban on gay film is uncalled for’, says the Atheists in Kenya Society”, Humanists International, 24 September 2021: <https://humanists.international/2021/09/ban-on-gay-film-is-uncalled-for-says-the-atheists-in-kenya-society>. “Kenya Censors Another Gay-Themed Film”, Human Rights Watch, 27 September 2021: <https://www.hrw.org/news/2021/09/27/kenya-censors-another-gay-themed-film>.

⁷⁸ “Seven arrested in Egypt after raising rainbow flag at concert”, BBC, 26 September 2017, <https://www.bbc.com/news/world-middle-east-41398193>.

⁷⁹ “Lebanese pop band faces death threats over ‘blasphemous’ song”, NBC News, 25 July 2019: <https://www.nbcnews.com/feature/nbc-out/lebanese-pop-band-faces-death-threats-over-blasphemous-song-n1034161>. “Mashrou’ Leila blasphemy row: Byblos show cancelled over ‘bloodshed’ fears”, Middle East Eye, 30 July 2019: <https://www.middleeasteye.net/news/mashrou-leilas-byblos-festival-show-cancelled-over-bloodshed-fears>.

⁸⁰ *Rights at Risk: Observatory on the Universality of Rights Trends Report 2017*, AWID, pp. 52–55, <https://cne.news/artikel/777-traditional-values-for-russian-church-more-important-than-gospel-norwegian-expert-says>.

⁸¹ Coming Out, submission p. 3.

⁸² “Russia to ban sharing LGBT ‘propaganda’ with adults as well as children”, BBC, 27 October 2022: <https://www.bbc.com/news/world-europe-63410127>.

to their sex at birth and provides an upbringing in accordance with the values based on Hungary's constitutional identity and Christian culture."⁸³

38. The vast majority of trans and gender-diverse persons in the world do not have access to legal gender recognition from their State, in some bases with a base on religious arguments. In Kenya, the High Court rejected an applicant's request for an identity card or passport recognizing their intersex identity, stating that "Kenyan society is predominantly a traditional African society in terms of social, moral and religious values;"⁸⁴ in Egypt, religious edicts limit gender-affirming care for transgender people,⁸⁵ and in Pakistan in May of 2023 the Federal Shariah Court declared several sections of the seminal Transgender Persons (Protection of Rights) Act 2018 as "unIslamic" and therefore void.

E. Indirect discrimination

1. Inequality in family formation law and policy

39. A human-rights-based approach directly challenges family conceptions that are exclusionary of LGBT persons. UN and regional treaty bodies have consistently stressed the need to interpret human rights norms in ways that recognize the present-day diversity of family forms.⁸⁶ The Inter-American Court of Human Rights held that denying a mother custody of her children on grounds of her sexual orientation was in violation of the right to protection of the family, among others.⁸⁷

40. Thirty-three States now recognize same-sex marriage and/or same-sex civil unions.⁸⁸ Many have done so with the stated aim of bringing their laws and policies into line with their human rights obligations. South Africa, for example, legalized same-sex marriage in 2006 after its Constitutional Court held that denying the right to marry on grounds of sexual orientation violated the rights to equal protection, non-discrimination and respect for human dignity.⁸⁹ Colombia's 2016 reform followed a decision by the Constitutional Court affirming that, "Every person has the dignity, freedom and autonomy to constitute a family [...] in accordance with their sexual orientation, receiving equal treatment and protection under the Constitution and the law".⁹⁰ This trend mirrors the evolution over the last twenty years in the guidance offered by international and regional human rights bodies on ensuring equality and non-discrimination in marriage.⁹¹

⁸³ "Hungary amends constitution to redefine family, limits gay adoption", Reuters, 15 December 2020: <https://www.reuters.com/article/hungary-lgbt-idUKKBN28P1N8>. "Rights groups condemn Hungarian ban on same-sex adoptions", AP News, 16 December 2020: <https://apnews.com/article/relationships-budapest-viktor-orban-couples-adoption-4e9eca5bc90c7810a26e08c9178bae90>.

⁸⁴ High Court of Kenya, *Richard Muasya v. the Hon. Attorney General*, para. 148.

⁸⁵ "A discriminatory system killed a transgender man in Egypt", Open Global Rights, 10 November 2021: <https://www.openglobalrights.org/a-discriminatory-system-killed-a-transgender-man-in-egypt/>.

⁸⁶ Magdalena Sepúlveda Carmona, *A contemporary view of 'family' in international human rights law and implications for the Sustainable Development Goals* (UN Women, 2017): <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2017/Discussion-paper-A-contemporary-view-of-family-in-international-human-rights-law-en.pdf>.

⁸⁷ Inter-American Court of Human Rights, *Atala Riffo and daughters v. Chile*, 24 February 2012: https://corteidh.or.cr/docs/casos/articulos/seriec_239_esp.pdf.

⁸⁸ "Marriage Equality: Global Comparisons", Council on Foreign Relations, 22 December 2022: <https://www.cfr.org/backgrounder/marriage-equality-global-comparisons>.

⁸⁹ Constitutional Court of South Africa, *Minister of Home Affairs and another v. Fourie and another, and Lesbian and Gay Equality Project and eighteen others v. Minister of Home Affairs and others*, CCT 60/04 and 10/05, 1 December 2005, para. 114: <https://www.saflii.org/za/cases/ZACC/2005/19.html>.

⁹⁰ Constitutional Court of Colombia, SU214/16, V 9.1, 28 April 2006: <https://www.corteconstitucional.gov.co/relatoria/2016/SU214-16.htm>.

⁹¹ Inter-American Court of Human Rights, Advisory Opinion OC-24/17 requested by the Republic of

41. By contrast, some States have moved to proscribe same-sex marriage. Rather than the adherence to human rights norms in law, it is the influence of religious narratives in politics that has remained the authoritative feature in these countries.⁹² The Guatemalan Congress, for example, approved in 2018 the Life and Family Protection Bill, which was drafted and lobbied for by politicians who self-identified as evangelical;⁹³ in Nigeria, the national legislature passed the Same-Sex Marriage Prohibition Act of 2014, which criminalizes same-sex marriages and was reportedly supported by most Nigerians on the basis of “moral and religious reasons,”⁹⁴ and in several countries religious organizations have reportedly formed powerful lobbies in government to push against the rights of LGBT persons, including same-sex marriage.⁹⁵

42. Noting that opposition to same-sex marriage is at times based on religious convictions, the Inter-American Court of Human Rights has argued that such convictions cannot be used as an interpretative guide when determining the rights of human beings: “[I]n democratic societies there must exist a peaceful coexistence between the secular and the religious spheres, implying therefore that the role of the States [...] is to recognize the sphere inhabited by each of them, and never force one into the sphere of the other.”⁹⁶

2. Religious exemptions

43. As States have advanced their recognition of the rights of LGBT people to be free from violence and discrimination, calls for “religious-based exemptions” from laws guaranteeing equality for LGBT persons have increased.⁹⁷ Some individuals, organizations and even corporations have sought to exempt themselves from complying with regulations that prohibit discrimination by arguing that their religious freedom would be unduly burdened if required to perform certain activities that do not align with their beliefs.

44. Several submissions outlined situations where States enable religious exemptions for persons or organizations who execute government or public functions such as child welfare, marriage, or schooling. In some States, including the United States⁹⁸ and Australia,⁹⁹ government-funded foster care and adoption agencies can reject prospective families based on sexual orientation, gender identity and faith. In other States, civil servants can refuse to solemnize same-sex marriages if they assert that they cannot be involved in the act of marrying the couple without contravening their religious beliefs,¹⁰⁰ and faith-based schools can legally favor students and professionals who share the school’s religious norms and

Costa Rica, 24 November 2017, para. 229 (8):

https://www.corteidh.or.cr/docs/opiniones/seriea_24_eng.pdf. Malcolm Langford, “Revisiting *Joslin v. New Zealand*: Same Sex Marriage in Polarized Times”, in E. Brems and E. Desmet, *Integrating Human Rights in Practice: Rewriting Human Rights Decisions* (Edward Elgar, 2017).

⁹² Javier Corrales, *LGBT Rights and Representation in Latin America and the Caribbean: The Influence of Structure, Movements, Institutions, and Culture*, pp. 23–24: https://globalstudies.unc.edu/wp-content/uploads/sites/224/2015/04/LGBT_Report_LatAm_v8-copy.pdf.

⁹³ “Guatemala: 3 Killings of LGBT People in a Week”, Human Rights Watch, 22 June 2021: <https://www.hrw.org/news/2021/06/22/guatemala-3-killings-lgbt-people-week>.

⁹⁴ Human Rights Watch, ‘*Tell Me Where I Can Be Safe*’, 20 October 2016, p. 17: <https://www.hrw.org/report/2016/10/20/tell-me-where-i-can-be-safe/impact-nigerias-same-sex-marriage-prohibition-act>.

⁹⁵ Damaris Seleina Parsitau, “Law, Religion, and the Politicization of Sexual Citizenship in Kenya,” *Journal of Law and Religion*, 36:1, April 2021.

⁹⁶ Inter-American Court of Human Rights, Advisory Opinion OC-24/17, Gender Identity, and Equality and Non-Discrimination of Same Sex Couples, requested by the Republic of Costa Rica, 24 November 2017, para. 228: https://www.corteidh.or.cr/docs/opiniones/seriea_24_eng.pdf.

⁹⁷ Humanists International, submission, p. 5.

⁹⁸ Adrienne M. Spoto, “Fostering Discrimination: Religious Exemption Laws in Child Welfare and the LGBTQ Community”, *New York University Law Review*, 96:1, April 2021: <https://www.nyulawreview.org/wp-content/uploads/2021/04/N.Y.U.-L.-Rev.-96-1-April-Spoto.pdf>.

⁹⁹ Equality Australia, submission, p. 5.

¹⁰⁰ Guide on ECHR Article 9, para. 85: https://www.echr.coe.int/documents/guide_art_9_eng.pdf.

values in admissions and employment, a distinction that can be particularly impactful for LGBT students and staff alike. The mandate has learned of several cases in Australia where religious schools have fired teachers because their sexual orientation was seen to contradict the school's religious norms and values.¹⁰¹ Some States justify their acquiescence of such dismissals on the grounds that religious institutions should have autonomy in their internal administration, admissions policies, and curricula.¹⁰² This claim, however, can hinder the successful implementation of plans and programs intended to promote diversity-oriented education, comprehensive sexuality education, and gender equality.¹⁰³ This has been recognized by the Inter-American Court of Human Rights, which recently found that in a case involving the withdrawal of a teacher's certification in religious education when it became publicly known that she was cohabiting with her lesbian partner, Chile had violated the teacher's right to equality and non-discrimination, right to privacy, and her right to work.¹⁰⁴

45. Providers of goods and services to the public have also gained exemptions from non-discrimination laws to exclude customers who are LGBT based on their religious beliefs. These claims often involve, but are not limited to, objections to serving LGBT couples who are seeking to celebrate relationships (for example, refusing to bake cakes, host receptions or print invitations for same-sex partnership ceremonies) or to carry out political and social activism (for example, refusals to print materials for Pride Parades).

46. States owe obligations under international human rights law to ensure that LGBT consumers are not discriminated against, regardless of whether its agent is a State or a non-State actor.¹⁰⁵ As the Special Rapporteur on freedom of religion or belief outlined, "it is not permissible for individuals or groups to invoke 'religious liberty' to perpetuate discrimination against [...] lesbian, gay, bisexual, trans and intersex persons, when it comes to the provision of goods or services in the public sphere."¹⁰⁶

3. Conscientious objection

47. Religious exemptions are often referred to as protections for healthcare providers' "conscientious objections" to provide services that go against their convictions, including abortion services, and hormonal and other similar treatments. In the United States, more than one in eight LGBT people live in states where doctors can legally refuse to care for them on conscience- or religion-based grounds,¹⁰⁷ and in Mexico, the State of Nuevo Leon enables healthcare workers to "conscientiously object."¹⁰⁸ Research suggests that these types of healthcare policies disproportionately impact LGBT persons of color: a recent survey found that 23% of LGBT persons of color reported experiencing some form of care refusal by a doctor or other healthcare provider (as opposed to 15% of all LGBT persons surveyed), and

¹⁰¹ Equality Australia, submission, p. 3.

¹⁰² Callaghan & van Leent, "Homophobia in Catholic schools: An exploration of teachers' rights and experiences in Canada and Australia," *Journal of Catholic Education*, 22(3), 2019: <https://digitalcommons.lmu.edu/ce/vol22/iss3/3/>.

¹⁰³ Evident, submission, p. 4. "Comunicado de FAERA Proyectos de modificación de la ley de ESP", FAERA, 5 September 2018: <https://obispadodezaratecampana.org/?p=15212>.

¹⁰⁴ *Sandra Pavez v. Chile*, 2022 : https://www.corteidh.or.cr/docs/casos/articulos/seriec_449_esp.pdf. Ligia Castaldi, "Inter-American Court issues first religious freedom decision, breaking with the ECHR on questions of religious autonomy", European Centre for Law and Justice, 2022: <https://eclj.org/religious-autonomy/un/inter-american-court-issues-first-religious-freedom-decision-breaking-with-the-echr-on-questions-of-religious-autonomy>. Guide on Article 9 ECHR, para. 85: https://www.echr.coe.int/documents/guide_art_9_eng.pdf.

¹⁰⁵ CCPR/C/21/Rev.1/Add.10.

¹⁰⁶ A/HRC/ 37/49, para. 39–40.

¹⁰⁷ Movement Advancement Project; McLemore et al., submission p. 3; and Human Rights Watch, submission, p. 2.

¹⁰⁸ Institute of Legal Investigations of the Autonomous University of Mexico (UNAM), submission p. 6.

46% of trans or non-binary respondents of color experienced at least one kind of care refusal by a healthcare provider (as opposed to 32% overall).¹⁰⁹

48. Some proponents of these policies argue that there exists a human right for healthcare professionals to conscientiously object to “prescribing cross-sex hormones”.¹¹⁰ Moreover, these groups have successfully expanded the concept of so-called “conscientious objection” beyond individual healthcare workers to enable institutions like hospitals or even for-profit companies to invoke this claim in countries such as Chile and the United States.¹¹¹ These efforts pose a threat to LGBT persons in substantially restricting the spaces in which they can access necessary services.

49. United Nations human rights bodies have recognized conscientious objection in the limited context of military service;¹¹² and the Human Rights Committee has advised States to remove all barriers to effective access by women and girls to safe legal abortion caused as a result of conscientious objections by individual medical providers.¹¹³ Regarding the provision of healthcare, United Nations treaty monitoring bodies and numerous Special Procedures have emphasized that States cannot permit conscience-based refusals of healthcare to infringe on the rights of patients,¹¹⁴ including the right to reproductive healthcare.¹¹⁵ Where States choose to enable conscience-based refusals, international law obliges States to ensure an adequate number and dispersion of willing providers;¹¹⁶ limit conscientious objection claims to individuals (as opposed to institutions);¹¹⁷ establish effective referral systems for willing providers;¹¹⁸ prohibit refusals in emergency circumstances;¹¹⁹ and establish systems to monitor compliance with all of these requirements.¹²⁰

IV. Access to spirituality for LGBT persons

50. For the last six years the Independent Expert has received testimony from LGBT persons on an almost daily basis. Frequently, they have referred to the moment (or succession of moments) when they realized that, should they pursue happiness by embracing their sexual orientation or gender identity, the religion in which they were born would consider them as sinful, or evil; as inherently immoral, or not worthy of transcendence. Often, another realization followed immediately: that they would be rejected by their family, their community, their region, or their country. These moments often led to a life-long struggle

¹⁰⁹ Center for American Progress, “Advancing Health Care Nondiscrimination Protections for LGBTQI+ Communities,” 8 September 2022: <https://americanprogress.org/article/advancing-health-care-nondiscrimination-for-lgtbtqi+-communities/>.

¹¹⁰ “Freedom of Conscience: Protecting our moral compass,” Alliance Defending Freedom International, 2020: https://www.academia.edu/45550585/Freedom_of_Conscience_Protecting_our_moral_compass.

¹¹¹ *Rights at Risk: The Observatory on the Universality of Rights Trends Report 2021*, Observatory on the Universality of Rights, p. 64.

¹¹² CCPR/C/21/Rev.1/Add.4, para. 11.

¹¹³ CCPR/C/GC/36, para. 8.

¹¹⁴ A/HRC/14/20/ Add.3, para. 55.

¹¹⁵ CCPR/C/GC/36, para. 8.

¹¹⁶ ESCR Comm., General Comment No. 22, E/C.12/GC/22, paras. 14, 43.

¹¹⁷ CCPR/C/GC/36, para. 8. The World Health Organization has recommended banning institutional claims of conscience: <https://bioedge.org/bioethics-d75/conscientious-objection/conscientious-objection-is-indefensible-says-who/>.

¹¹⁸ E/C.12/GC/22, para. 22.

¹¹⁹ Ibid.

¹²⁰ CCPR/C/GC/36, para. 8. ESCR Comm., *Concluding Observations: Spain*, E/C.12/ESP/CO/6 (2018), paras. 43–44.

between various forms of identity (religious, sexual, and gender) that are equally important in a person's life.¹²¹

51. Indeed, "individual conscience does not extend to coercing a religious community to accept religious claims in conflict with those to which the community feels bound,"¹²² and while persons have a right to exit the community, this remedy does not always address the complex relationship between a believer and their religion. For many individuals, their religion is part of the foundation of their sense of self, the source of truth. Although they may disagree with certain tenets of their religious teaching, or with the ways in which religious authorities interpret these, it is an important part of their identity and social fabric. To leave, and sometimes *be forced to leave* because of exclusionary practices or teachings can have significant implications for identity and spiritual wellbeing. In many cases, the painful departure from their religious or spiritual community has life-long impact on the mental wellbeing; in others, the option is not just to leave: it can be the taking of one's life.

52. The "option to leave" response to discrimination within religious institutions can also fail to appreciate that many individuals are born into a religion, and membership of their religious community can feel immutable. It is part of their familial and social upbringing before they have emotional and financial independence and remains so when others depend on them. Leaving a faith community in many cases is impractical or impossible; and where a person has little or no social, economic, or personal independence from a religious group, or where they risk custody of their children, the right of exit is downright illusory.

53. The mandate is concerned about alienation from organized religion and its impacts on the ability of the individual to seek happiness through spirituality.¹²³ A submission noted, in this respect, that "[i]n cases where claims based on religious beliefs are being used as a justification for discrimination, decision-makers should consider how rights of LGBTQ+ people to their own freedom of thought, conscience and religion might impact the outcome";¹²⁴ a concern that the mandate sees as intimately connected with environments that enable practices of conversion.

54. The following section provides examples of religious traditions from different religious and belief systems – some of which follow structures of strict hierarchy and others as fluid and non-hierarchical rules – that are LGBT-inclusive and -affirming.¹²⁵ These traditions and the communities that represent them also constitute stakeholders within discussions on freedom of religion or belief and freedom from violence and discrimination based on SOGI. Paying attention to their voices and practices can help shift the essentialist narrative that suggests the exercising of freedom of religion or belief can be incompatible with the equal enjoyment of human rights by LGBT persons and opens a new normative space wherein both human rights frameworks can contribute to strengthening each other. As noted by the Special Rapporteur on FoRB, "[a] multitude of voices exists within religious groups and institutions, including faith-based actors who campaign for the rights of women, girls and SOGI minorities and work to promote gender equality within their faith."¹²⁶

A. Inclusive and/or supportive approaches

55. The extent to which same-sex intimacy is condemned by different religious traditions is a matter for theological debate; for example, some scholars question the interpretation of passages in the Hebrew Bible and Quran used to condemn modern LGBT sexualities and

¹²¹ GIN-SSOGIE, submission, p. 5.

¹²² Cole Durham, "The Right to Autonomy in Religious Affairs: A Comparative View", in *Church Autonomy: A Comparative Survey*, 2001: <https://classic.iclrs.org/content/blurb/files/Chapter%2033.%20Durham.pdf>.

¹²³ A/74/181, para. 28.

¹²⁴ Equality Australia, submission, p. 6.

¹²⁵ A/HRC/43/48, para. 55.

¹²⁶ A/HRC/42/48; para. 39.

identities,¹²⁷ and it has been argued that the apparent monolithic religious censure of LGBT persons is a recent phenomenon, informed in part by “homocolonialism” and as a response to the perceived threats surrounding heterosexual family structures dominant in most faiths.¹²⁸

56. Persons who support gender and sexual equality as a matter of law and as religious practice are found in every religion. Authorities, theologians, and laypeople of several religious denominations embrace LGBT identities and consider LGBT equality as integral to their belief. The mandate is familiar with different contexts in which Buddhist communities have historically respected same-sex couples;¹²⁹ Hinduism does not condemn same-sex sexuality if it does not affect heterosexual marriage, and *hijra* persons have important spiritual roles in the tradition.¹³⁰ The Primates of the global Anglican Communion have “condemned homophobic prejudice and violence and resolved to work together to offer pastoral care and loving service irrespective of sexual orientation [and] reaffirmed their rejection of criminal sanctions against same-sex attracted people.”¹³¹ The National Church of Iceland authorizes same-sex marriages, as do the Episcopal Churches of the United States and of Scotland.¹³²

57. In some cases, religious authorities have delineated areas in which religious thinking and freedom from violence and discrimination based on sexual orientation concur. Recently, the Catholic Pope criticized criminalization of same-sex relations as “unjust” and against God’s teachings.¹³³ Three of the four major Jewish denominations openly support decriminalization,¹³⁴ and even within the Orthodox Jewish tradition, 104 leaders released in 2010 a joint statement asserting that harassment of LGBT persons is against the deepest values of Judaism.¹³⁵ One State submission underlined the good practice of guidance for religious schools, issued by Anglican, Jewish, and Methodist hierarchies to address bullying against LGBT pupils,¹³⁶ and, in South Africa, Imam Muhsin Hendricks is gay and part of *Masjidul Ghuraah*, an LGBT-inclusive mosque in Cape Town.¹³⁷

58. Even when the hierarchy of a religious community does not explicitly embrace diversity, religious institutions, schools, councils, NGOs, movements and networks that are formally or informally dissident may seek reform or be *de facto* inclusive. Submissions

¹²⁷ Momin Rahman, *Homosexualities, Muslim Cultures and Modernity* (2014), pp. 72–8. Louis Crompton, *Homosexuality and Civilization* (2003), pp. 111–204.

¹²⁸ Momin Rahman, “Towards a Dialogue between Muslims and LGBTI people: pathways and pitfalls”, p. 43: <https://www.ohchr.org/sites/default/files/Documents/Issues/Religion/ArticlesCompilationForbAndSexuality.pdf>.

¹²⁹ Michael Vermeulen, “The rise of Rainbow Dharma: Buddhism on sexual diversity and same-sex marriage”: <https://www.ohchr.org/sites/default/files/Documents/Issues/Religion/ArticlesCompilationForbAndSexuality.pdf>.

¹³⁰ Ruth Vanita, “Hinduism”, in *Homosexuality and Religion* (Jeffrey S. Sike, ed.), 2006, pp. 125–128.

¹³¹ Primates 2016, *Walking Together in the Service of God in the World*, 15 January 2016: <https://web.archive.org/web/20160203212507/http://www.primates2016.org/articles/2016/01/15/communique-primates/>.

¹³² Citizen Outreach Coalition, submission, p. 10.

¹³³ “The AP Interview: Pope says homosexuality not a crime”, AP News, 25 January 2023: <https://apnews.com/article/pope-francis-gay-rights-ap-interview-1359756ae22f27f87c1d4d6b9c8ce212>.

¹³⁴ “Criminalising Homosexuality and Understanding the Right to Manifest Religion”, Human Dignity Trust, 11 November 2015, p. 29: <https://www.humandignitytrust.org/wp-content/uploads/resources/9.-Criminalisation-Freedom-of-Religion.pdf>.

¹³⁵ *Ibid.*, p. 30.

¹³⁶ United Kingdom, submission, p. 2.

¹³⁷ “‘I’m hoping there will be more queer imams’”, *The Guardian*, 19 October 2022: <https://www.theguardian.com/global-development/2022/oct/19/im-hoping-there-will-be-more-queer-imams>.

mentioned, for example, Catholic church branches¹³⁸ and gay prayer groups¹³⁹ in Mexico, the United States,¹⁴⁰ and Germany.¹⁴¹ The Fellowship of Christian Councils in Southern Africa focusses on the inclusion of diverse sexual orientations and the protection of LGBT individuals from violence and discrimination in churches and the wider society; and the Cosmopolitan Affirming Community in Kenya welcomes LGBT persons of faith to explore and experience their faith in an affirming environment.¹⁴² The Coalition of Religions, Beliefs and Spiritualities in Dialogue with Civil Society is composed of more than 25 civil society organizations, interfaith dialogue spaces, faith-based organizations and other movements whose objective is to support LGBTIQ issues, sexual and reproductive rights and feminist agendas. In December 2020, more than 350 religious and belief leaders from 10 religions signed the Global Interfaith Commission on LGBT+ Lives' Declaration proclaiming the sanctity of life and dignity of all people regardless of a person's sexual orientation or gender identity;¹⁴³ and in 2022 over 150 religious and belief leaders from 30 countries and a range of faiths agreed on six safeguarding principles to protect LGBT people from harm: empowerment, prevention, proportionality, protection, partnership, and accountability.¹⁴⁴ Progressive Islamic organizations such as the Al-Fatiha Foundation similarly argue that laws criminalizing homosexuality are incompatible with the values of peace and tolerance adopted by the Prophet Muhammad.¹⁴⁵ Other examples are Muslims for Progressive Values, the Global Interfaith Network, and the Islamic community center for transgender people, *Al Fatah*, in Indonesia.

59. Other organized belief systems protected under FoRB, while not religious in nature are compatible with the equality of all persons regardless of SOGI. Humanism, for example, recognizes that sex is an evolved trait, with no intrinsic meaning. It does not require rigidly defined sex or gender roles:

“Humanists see sex as a means of positive personal expression, pleasure, intimacy and/or bonding, and communication, as well as sometimes for reproduction. The principles of humanism assert that all people—the LGBTQ community, and women and men equally—should be able to enjoyably explore their sexuality, and that this is a part of every person's full humanity.”¹⁴⁶

60. In Juchitán, Mexico, *muxes* embody a hybrid third gender which is neither man nor woman, and are traditionally considered a blessing from the Gods in the Zapotec vision of the universe (*cosmovisión*).¹⁴⁷ The *māhū* in Native Hawaiian and Tahitian communities embrace both the feminine and masculine and are keepers of traditional practices such as hula and chant.¹⁴⁸ In South Asia, *Khawaja Siras* are a gender-variant community considered to have a feminine soul, who occupied the roles of spiritual advisors, military commanders and were members of royal courts in pre-colonial Mughal periods of rule in India.¹⁴⁹ Two-spirit or *berdache* persons are a blend of male and female spirits believed by several First Nations

¹³⁸ Comisión Nacional de los Derechos Humanos de México, submission, p. 1.

¹³⁹ AsilegalMx, submission p. 2.

¹⁴⁰ Catholics for Choice, submission, p. 1.

¹⁴¹ Honduras (NHRI), submission, p. 16; referring to the #OutInChurch initiative.

¹⁴² Outright International, submission, p. 8.

¹⁴³ A/76/152, par. 24.

¹⁴⁴ Globalinterfaith.lgbt (landing page).

¹⁴⁵ “Criminalising Homosexuality and Understanding the Right to Manifest Religion”, Human Dignity Trust, 11 November 2015, p. 29: <https://www.humandignitytrust.org/wp-content/uploads/resources/9.-Criminalisation-Freedom-of-Religion.pdf>.

¹⁴⁶ Abby Hafer, “Humanism, Sex, and Sexuality”, in *The Oxford Handbook of Humanism*, 2019, pp. 564–598: <https://doi.org/10.1093/oxfordhb/9780190921538.013.34>.

¹⁴⁷ Alfredo Mirandé, *Behind the Mask: Gender Hybridity in a Zapotec Community* (2017), p.15; AsilegalMx, submission p. 3.

¹⁴⁸ Eleisha Lauria, “Gender Fluidity in Hawaiian Culture”, *The Gay & Lesbian Review*, 2022: <https://glreview.org/article/gender-fluidity-in-hawaiian-culture/>.

¹⁴⁹ Shroff, ‘Operationalizing the “New” Pakistani transgender citizen Legal gendered grammars and trans frames of feeling’, in A. Roy (ed.), *Gender, Sexuality, Decolonization* (2021) p. 265.

communities in Canada to have access to a distinct realm of spirituality as healers, shamans, and ceremonial leaders.¹⁵⁰

61. Western LGBT categorizations cannot fully capture the diversity of indigenous sexualities and genders because sexual diversity has “historically been the norm, not the exception, among Indigenous peoples.”¹⁵¹ Indigenous scholarship from the Americas, South Asia and the Pacific regions records various gender-fluid identities, many of which carry deep spiritual significance and important roles in their respective communities, thereby defying modern understandings of gender binaries and heteronormative sexualities. In Ghana, for example, in celebrating the *akom-kpele* deity of Nungua, persons manifest same-sex relations.¹⁵²

62. The Special Rapporteur on FoRB report notes how indigenous sexualities were often considered immoral, perverse, and unnatural by the colonizers, and the process of sexual assimilation, criminalization and pathologization has had a profound impact on the traditional status and roles of indigenous LGBT persons in the post-colonial period.¹⁵³ Colonization exacerbated indigenous peoples’ vulnerability to violence and discrimination and created obstacles to their full and equal participation in indigenous and wider society, spiritually or otherwise. For example, the Criminal Tribes Act (CTA) 1871 codified binary gender norms in British India by outlawing homosexuality and criminalizing cross-dressing. The severe marginalization of, and violence against, *Khawaja Siras* in Pakistan today has been linked to the lingering impact of this colonial-era legislation.¹⁵⁴ In Hawaii, *Māhū* is considered a derogatory term against LGBT persons and its negative connotations coincide with the loss of *Māhū*’s spiritual status during colonization in Hawaiian society.¹⁵⁵

B. Dialogue and mutual respect: a powerful way forward

63. Several submissions recognized the potential of spaces of encounter between “persons or leaders of faith” and “LGBTIQ+ persons or leaders”, as a means of limiting discriminatory practices among these two identifiable groups. A precision, however, is necessary: these are not communities and populations that are mutually exclusive; to the contrary, these are human groups that overlap. All believers, including religion and belief leaders, have a sexual orientation and a gender identity, and all LGBT persons have beliefs: a significant proportion among them will have religious convictions, and there are many LGBT faith and belief leaders.

64. An organization versed in the design and execution of the Colombian Peace Agreements, and which developed a project to nurture dialogue between persons of faith and LGBTI persons with significant impact in the creation of trust and awareness, suggested that a possible methodology

implies the mobilization of personal transformations (one by one) in which persons can identify if their positioning leads to the oppression of another. This will only occur in spaces of dialogue, observing others that are as much a person as one is, and through

¹⁵⁰ OCAM-D, submission, p. 2.

¹⁵¹ Manuela L. Picq and Josi Tikuna, “Indigenous Sexualities: Resisting Conquest and Translation, E-International Relations”, 20 August 2019, p. 1: <https://www.e-ir.info/2019/08/20/indigenous-sexualities-resisting-conquest-and-translation/>.

¹⁵² LGBT+ Rights in Ghana, submission p. 3.

¹⁵³ A/77/514, p. 16.

¹⁵⁴ S. Samel, “Transgender in India and Criminal Tribes Act (CTA)”, in Gupta and Khobragade (eds.), *Third Gender: Stain and Pain, India* (Vishwabharati Research Centre, 2018), pp. 187–188; J. Hinchy, “Troubling bodies: ‘eunuchs,’ masculinity and impotence in colonial North India”, *South Asian History and Culture*, 4:2 (2013), pp. 196–212.

¹⁵⁵ Aleardo Zanghellini, “Sodomy Laws and Gender Variance in Tahiti and Hawai‘i”, 2:2 *Laws* 2013, p. 51 (arguing that sodomy laws, in conjunction with social processes such as urbanisation and Christianisation, are partially to blame for the diminished social status of *māhū*).

observing their face, their body, and their voice beyond the sector to which they belong.¹⁵⁶

Another submission alluded to a similar idea:

deep differences, held by people with equal claims to dignity, persist, and the ultimate question of justice is not which group will prevail, but how the dignity and rights of everyone can be optimized. Stable peace must be anchored in pluralism in which the fears of all are minimized by maximizing protections for all.¹⁵⁷

65. Examples of good practices abound. The Utah Compromise, for example, is seen as a valuable roadmap that reconciles different beliefs under a strong ethos of rights for all, its limitations in relation to public accommodations notwithstanding. National commissions for the prevention of discrimination organize meetings with church leaders to discuss common objectives, including non-discrimination based on sexual orientation in Mexico¹⁵⁸ and in Argentina.¹⁵⁹ The National Council of Churches in India has been intimately involved in organizing around the issue of decriminalization, taking a faith-based stance that rejects prejudice and discrimination against sexual minorities.¹⁶⁰ In Canada, Scotland, England, and Wales, churches and other religious organizations played an important role in decriminalization debates and the positive role that churches can play in taking moral understanding forward.

66. In 2017 and 2020, the HIV Legal Network hosted two conferences examining the role (past, present, and future) of the church in decriminalizing same-sex intimacy across the Commonwealth, with a particular focus on States in the Caribbean. These conferences brought much-needed nuance to the oft-reductive debates around religion and LGBT rights and unpacked the history of religious-based opposition to same-sex intimacy drawing from examples in Northern Ireland, South Africa, and Belize.¹⁶¹

67. These examples show that FoRB also has the potential to reinforce rather than simply erode LGBT rights. Indeed, adherents of these denominations and belief systems can claim that anti-LGBT manifestations of religion (such as criminalization and discrimination) not only impinge upon the right of LGBT people to be free from violence and discrimination based on SOGI, but also violate the denominations' own rights of freedom of religion, especially when their religion or belief depends in part on the ability of LGBT people to live free from violence and discrimination and access spirituality on equal terms with everyone else.¹⁶² Highlighting this common ground can help to dismantle the "claim to monopoly of victimhood in the matter of freedom of religion [and belief]"¹⁶³ that proponents of anti-LGBT beliefs currently seem to possess in international human rights law discourse.

V. Conclusions

68. Embracing spirituality and faith is a path that must be available to all, including all persons with diverse sexual orientations and gender identities. Human beings often long for a sense of purpose in their lives. For a very large proportion of humanity, spirituality is a fundamental part of this quest, and FoRB is a shield put in place to protect it, as well as protecting the right not to be part of a particular belief.

¹⁵⁶ Colombia Diversa, submission, p. 3.

¹⁵⁷ Durham et al., submission p. 2.

¹⁵⁸ National Human Rights Commission of Mexico, submission, p. 4.

¹⁵⁹ Argentina (NHRI), submission, p. 2.

¹⁶⁰ HIV Legal Network, submission, p. 4.

¹⁶¹ Michael Kirby AC CMG, "Foreword," in *Intimate Conviction (Volume 1)*, Canadian HIV/AIDS Legal Network, 2019, pp. 35–36.

¹⁶² Dag Øistein Endsjø, "The other way around? How freedom of religion may protect LGBT rights", 24:10, *International Journal of Human Rights*, 2020.

¹⁶³ *Ibid*, p. 7.

69. At the same time, in all latitudes there are dark corners where LGBT people are regarded as sinners and second-class citizens who should be scorned and abused. Laws enacted with the aim of mandating standards of conduct purportedly demanded by interpretations of religious dogma effectively deny lesbian, gay, bisexual, and trans and other gender diverse persons the right to equality and, often, equal recognition under the law.

70. The limits established in the very design of FoRB – including the fundamental rights and freedoms of LGBT persons – are the key to full compatibility of FoRB and all actions that are necessary to combat violence and discrimination against them, alongside the strong and clear framework for hate speech that has been crafted within the United Nations under the Rabat Plan of Action. Respect for the right of all human persons to thought, conscience and religion or belief is a must; at the same time, all stakeholders have a responsibility to ascertain when these noble freedoms have historically been – and continue to be – instrumentalized to nurture, perpetuate or exacerbate violence and discrimination against lesbian, gay, bisexual, and trans and gender diverse persons.

VI. Recommendations

71. The Independent Expert recommends that States:

(a) carry out necessary analysis and reform to ensure that legislation and public policy complies with human rights standards, including the principle of non-discrimination;

(b) ensure that any law or public policy relating to the frameworks of religious exemptions or conscientious objection is compatible with international human rights standards and does not negate the access of LGBT and other gender diverse persons to fundamental rights, services and goods, including health, education, employment, housing and political participation;

(c) ensure the bodily autonomy and sexual and reproductive health and rights of LGBT and gender diverse persons, as well as comprehensive sexuality and gender education in line with international standards;

(d) working in collaboration with feminist and LGBT-led and LGBT-serving civil society, including religious groups who work on an inclusive basis, apply principles of inclusion and intersectionality, and challenge essentialist conceptions around sexual and gender identities under both the FoRB and SOGI frameworks;

(e) dismantle laws and policies that criminalize same-sex intimacy or gender identity and repeal laws criminalizing offenses such as blasphemy;

(f) create a safe environment in which all persons who manifest their religion or belief, including LGBT and other gender diverse persons, are free from fear of violence and discrimination and are aware of the distinction between protected speech and hate speech;

(g) refrain from justifying with religious narratives any act of violence and discrimination based on sexual orientation and gender identity; prevent and investigate such acts, and ensure the accountability of perpetrators and the provision of effective remedies for damages. In particular, do so by

(i) enacting preventive legislation and public policy, including educational programs that promote non-discrimination against LGBT and other gender diverse persons, and ensuring that these are developed with the participation of LGBT-led and LGBT-serving organizations,

- (ii) supporting initiatives of dialogue between leaders and other persons of an ample spectrum of faith and opinion, including persons who are LGBT or otherwise gender diverse and persons who are not;
- (h) encourage religious institutions to consider inclusive approaches that facilitate the participation and recognition of LGBT and other gender diverse persons;
- (i) engage with faith-based leaders on avenues in which their religious institutions can use their moral standing to prevent and combat violence and discrimination against LGBT and other gender diverse persons;
- (j) encourage religious institutions to consider the ways in which representatives will be held responsible in cases in which they promote discrimination against LGBT and other gender diverse persons; and
- (k) condemn incitement to violence and discrimination against LGBT and other gender diverse persons, and those who defend their rights, by religious leaders and adherents.

72. The Independent Expert recommends that faith-based leaders, including persons who are LGBT or otherwise gender diverse and persons who are not:

- (a) recognize that sexual orientation and gender identity are diverse around the world and that gender manifests differently in many cultural and social structures and practices, including that many cultures recognize more genders than the male-female binary;
- (b) condemn incitement to violence and discrimination against LGBT and other gender diverse persons and those who defend their rights, including narratives portraying LGBT and other gender diverse persons as seeking to recruit others into particular sexual orientations and gender identities, or having contaminating effects among children or others; and
- (c) examine the historical role of religious institutions in the perpetration of human rights violations; consider their role in the provision of remedies to injured parties and other measures of redress, including non-repetition, by examining institutional norms, practices and frameworks that may have the effect of creating physical or psychological damage on LGBT and other gender diverse persons; and consider the possible institutional involvement in the perpetuation of laws criminalizing same-sex intimacy and gender identity, in practices of conversion, and in seeking to unduly prevent legal recognition of gender identity based on self-identification.

Annex

Activities 2022–2023

1. Violence and discrimination based on sexual orientation and gender identity are never justified and must be prevented, investigated, prosecuted and, if relevant, punished and be at the base of measures of reparation.
2. Since his last report to the Human Rights Council in 2022, the Independent Expert made efforts to expand the range of his in-person activities while maintaining his virtual presence, which was spurred by the COVID-19 pandemic. Although the public health crisis continued until May 2023, many activities could be gradually retaken during the period, observing safety protocols. Nonetheless, several events and activities were still organized under hybrid formats, allowing for the engagement of a wider range of stakeholders.
3. The Independent Expert organized a series of events to increase the visibility of all areas of his work. Some of the events addressed topics in focus during the year, namely the mandate's Report on Health and its Report on Armed Conflict, while many others continued threads of work initiated previously, such as the issue of LGBT persons on the move, the incidence of hate crimes, practices of "conversion therapy", and social inclusion. These events brought together thousands of participants from all regions of the world, virtually or in-person. As a development of his 2022 General Assembly Report, in March of 2023, the Independent Expert was invited to brief members of the UN Security Council during an Arria formula meeting on the human rights of #LGBTI persons in the context of armed conflict.
4. In June and October 2022, the Independent Expert participated in hybrid interactive dialogues with the Human Rights Council and the General Assembly. Throughout the year, he also maintained virtual contact with representatives of United Nations entities, international organizations, civil society organizations and business leaders. At the regional level, activities were carried out with the OAS, its LGBTI Core Group, and the IACHR. He was also able to attend conferences in different conferences around the globe, such as Sydney World Pride (Australia), the Caribbean LGBTI Data Roundtables (Barbados), and the ILGA Asia Conference (Vietnam). Dozens of bilateral exchanges with representatives of Member States were also held.
5. The gradual return of in-person activities allowed for the Independent Expert to resume the work programme contingent on travels. During the period, he undertook country visits to the United States of America, the Kingdom of Cambodia and the United Kingdom of Great Britain and Northern Ireland. He also undertook promotional and advisory visits to countries including Peru, Thailand and Saint Lucia.
6. In 2022 and 2023, the Independent Expert has attended official hearings with public agents from multiple States' legislative and executive branches to advise on legislation and policy in topics related to sexual orientation and gender identity. The Independent Expert has issued specific advice on pending legislation to the United Kingdom (specifically to the Scottish Parliament), the Republic of Korea (Seoul Metropolitan Council), the European Union (in the figure of the European Parliament), as well as the governments of Indonesia and Uganda. The Independent Expert had previously been consulted and given advice on other pieces of legislation that came into force during the period, such as the new provisions on legal gender recognition adopted in Finland and Spain.
7. In the period of activities, at the invitation of Member States, government representatives, academia, and CSOs, the Independent Expert participated in scores of panels and presentations during which he engaged with hundreds of stakeholders from all corners of the world.
8. During the reporting period, the Independent Expert gave more than 40 in-depth interviews for television, radio, and print media. He also issued essays, video messages, and

op-eds, and developed an active social media presence. Available data shows that the mandate has built an audience across all regions of the world.

9. In this period, the Independent Expert also issued 23 individual or joint official press releases and media statements, including on comprehensive sexual education and reproductive health, the situation of forcibly displaced LGBT persons, and one thematic statement about the compounded effect of racialization in the lives of LGBTI persons of color, on the occasion of the 2023 International Day against Homophobia, Transphobia and Biphobia (IDAHOBIT), which was joined by a group of over 60 United Nations and regional independent experts, as well as by the IACHR.

10. The Independent Expert sent 37 communications in which allegations of human rights violations in relation to sexual orientation and gender identity were raised, along with other Special Procedures and/or by which he sought to provide technical advice on legislation and policies.
