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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, Victor
Madrigal-Borloz*, ****

Summary

In the present report, submitted pursuant to Human Rights 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. Activities undertaken by the Independent Expert since June 2022 are included in the annex.

* The present report was submitted after the deadline so as to include the most recent information.

** The annex to the present document is circulated in the language of submission only.



I. Introduction

1. For the past 75 years, the notion of universal, indivisible and interdependent rights has given meaning to the framework built around the Universal Declaration of Human Rights. Freedom of thought, conscience and religion or belief 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 and trans and other gender-diverse (LGBT) persons are able to live a life free from violence and discrimination.¹

2. The present report focuses on the intersections between freedom of thought, conscience and religion or belief and protection from violence and discrimination based on sexual orientation and gender identity. It therefore relates to human feelings of love, intimacy and meaning, spiritual ecstasy and physical pleasure, and inner peace and worldly belonging. It is aimed at exploring fundamental conceptions about human bonds with the sacred and the mundane, the interactions between those powerful motors of the human experience and the framework created in international human rights law for their recognition and development.

3. The Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity is committed to respect for freedom of religion and belief. Tellingly, in the resolution that created the mandate, the importance of respecting religious value systems is recognized. During his country visits, the Independent Expert attached great value to his engagements with religious authorities, including: the Patriarch of the Georgian Orthodox Church, the Mufti of all Muslims and the Chair of the Jewish Council, in Georgia; the Mufti of Nampula, in Mozambique; the Archbishop of Tunis and the Chief Rabbi, in Tunisia; and faith-based leaders in Ukraine, the United Kingdom of Great Britain and Northern Ireland and the United States of America. The Independent Expert's activities include engagements with persons of faith, and this is a topic that is present in analysis of allegations in specific cases. Those experiences are part of the stock of knowledge used for the present report.

4. The preparation of the report also included a literature review, with special attention paid to the *Special Rapporteur's Compilation of Articles on Freedom of Religion or Belief*;² a call for input that generated 26 State submissions and 99 submissions by non-State actors, including representatives of academia, civil society and faith-based organizations;³ an expert meeting held at the Human Rights Program of Harvard Law School, in Cambridge, Massachusetts, on 9 and 10 March 2023; and a public consultation in Geneva, on 21 March 2023. The Independent Expert is indebted to all the stakeholders who contributed to the report.

5. Within a human rights framework, the term "religion" does not describe a homogeneous, static entity. Religious norms, traditions and communities 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, confer identity and help people to make meaning of their life experiences.⁴

6. As an unfixed paradigm, religion does not have essential, inbuilt tenets, and it would make no sense to position it as inherently or predominantly pro- or anti-LGBT persons. However, religion and the human rights of LGBT persons are often positioned against each other in social and political discourse, fuelling the contention that there is an inherent conflict between freedom of religion or belief and the human rights of LGBT individuals. That fabricated narrative undermines the ideal of peaceful human coexistence. As noted in one submission, "at times, the freedom of religion and belief also has been misused as a sword

¹ A/HRC/35/36, paras. 20–33.

² See

<https://www.ohchr.org/sites/default/files/Documents/Issues/Religion/ArticlesCompilationForbAndSexuality.pdf>.

³ Available from <https://www.ohchr.org/en/calls-for-input/2023/call-input-thematic-report-freedom-religion-or-belief-forb-and-sexual>.

⁴ See Susan Hayward and Katherine Marshall, eds., *Women, Religion and Peacebuilding: Illuminating the Unseen* (Washington, D.C., United States Institute of Peace Press, 2015).

rather than a shield, privileging the individual conscience and beliefs of some at the expense of the rights of others”.⁵

7. Indeed, in international human rights law, freedom of religion or belief is distinct from religion: it protects individuals’ freedom to possess and express beliefs, whether religious or not, and whether individually or in community with others, and to shape their lives in conformity with their own convictions.⁶ Religious freedom is an expansive idea, “encompassing both freedom of religion and freedom from religion”,⁷ and is “perceived as a general right which protects a whole range of non-institutional and dissenting views”.⁸

8. In the present report, the Independent Expert concludes that freedom of religion or belief and freedom from violence and discrimination based on sexual orientation and gender identity are fully compatible under international human rights law. Furthermore, the Independent Expert demonstrates that the way in which some religious narratives are used to justify violence and discrimination is contrary to the human rights of LGBT persons. In addition, the Independent Expert gathers and systematizes a wide range of good and best practices showing that freedom of religion or belief 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.⁹ Nevertheless, the State obligation to adopt measures to eradicate such violence and discrimination continues to face opposition. Governments, religious institutions and other actors attempt to justify that opposition in global, regional and national forums on the ground that diversity in sexual orientation or gender identity contravenes certain religious tenets or sociocultural beliefs.¹⁰ One of the following three arguments is usually deployed:

(a) LGBT persons do not exist within the jurisdiction of a certain State¹¹ or within certain religious or belief communities;¹²

(b) Sexual orientation and gender identity exist only subjectively, in the conscience of individuals, and are not protected under international human rights law;¹³ in case of any clash with a manifestation of religion or belief, it is the latter that must be protected.¹⁴ In particular, certain interests promote “a ‘rebalancing’ of human rights in accordance with ‘traditional values’”, where freedom of religion or belief is repositioned as “an unalienable right to which other human rights should be ceded”.¹⁵ The now defunct United States Commission on Unalienable Rights and the Geneva Consensus Declaration on Promoting Women’s Health and Strengthening the Family are two outcomes of that type of thinking. A corollary of that line of argumentation is that LGBT persons are seeking new or special rights;¹⁶

⁵ Submission from Human Rights Watch.

⁶ [A/71/269](#), para. 11.

⁷ Submission from Catholics for Choice.

⁸ Submission from Humanists International.

⁹ [A/HRC/35/36](#), paras. 20–33.

¹⁰ See [A/HRC/43/48](#).

¹¹ [A/HRC/38/43](#), paras. 62–65.

¹² Submission from the Coalition for Child Protection.

¹³ Submissions from the Center for Family and Human Rights and Heritage Foundation.

¹⁴ Submission from the Center for Family and Human Rights.

¹⁵ Submission from Humanists International.

¹⁶ Joint submission from Family Watch International and the United Nations Family Rights Caucus; and submission from the Heritage Foundation.

(c) The State's human rights obligations must be calibrated against the dominant religious or belief or cultural orthodoxies in national contexts, and the right to be free from discrimination and violence based on sexual orientation and gender identity is in conflict with national religious or 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 or belief minorities and are often reliant, implicitly or explicitly, on religious or belief norms and values and are linked with patriotism and patriarchal gender and family norms.¹⁸

10. The Independent Expert has reviewed the robust evidentiary and theoretical bases for those positions, concluding that they are not supported by international human rights law.¹⁹ Nevertheless, given the interdependence and indivisibility of human rights, a careful analysis of any perceived conflicts among rights is called for to do justice to all the claims involved, and the analysis in the present report is aimed at further examining 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 that precludes the destruction of any of the rights and freedoms protected in relevant legal instruments.²⁰ Article 18 of the International Covenant on Civil and Political Rights protects the freedom of all persons "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 Special Rapporteur on freedom of religion or belief has long described that right as being twofold:²¹ a first part covers the right to hold or change one's thoughts, religion or belief,²² which is absolute and cannot be restricted by States under any circumstances; and a second part, the right to manifest one's religion or belief through actions, which 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 freedom of religion or belief must be proportionate to a legitimate aim,²⁴ "strictly interpreted"²⁵ and not imposed for discriminatory purposes or applied in a discriminatory manner.²⁶ The Special Rapporteur on freedom of religion or belief has 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 reject all freedom of religion or belief-based justifications for violence and discrimination and, moreover, recognize that "States have a duty to protect all 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

¹⁷ [A/HRC/41/45/Add.1](#), para. 32.

¹⁸ Submission from Coming Out.

¹⁹ [A/76/152](#), para. 79.

²⁰ Universal Declaration of Human Rights, art. 30; and International Covenant on Civil and Political Rights, art. 5 ([A/HRC/43/48](#), para. 60).

²¹ [A/HRC/43/48](#), para. 59.

²² Human Rights Committee, general comment No. 34 (2011), para. 9.

²³ Human Rights Committee, general comment No. 22 (1993), para. 8.

²⁴ Human Rights Committee, *Yaker v. France* ([CCPR/C/123/D/2747/2016](#)), para. 8.8.

²⁵ Human Rights Committee, general comment No. 22 (1993), para. 8.

²⁶ Human Rights Committee, *Hebbadj v. France* ([CCPR/C/123/D/2807/2016](#)), para. 7.5; and *Yaker v. France*, para. 8.4.

²⁷ [A/HRC/43/48](#), para. 69.

²⁸ "EU Guidelines on the Promotion and Protection of Freedom of Religion or Belief" (24 June 2013), paras. 35 and 36. The European Parliament reaffirmed those standards in its resolution of 15 January 2019 on the European Union guidelines and the mandate of the European Union Special Envoy on the promotion of freedom of religion or belief outside the European Union.

C. Institutional autonomy and freedom from discrimination

13. Freedom of religion or belief includes the right to organize and maintain the internal affairs of religious or belief community life without State intervention.²⁹ States cannot seek to control religious or belief community life, and the autonomy to determine the rules for appointing leaders or for governing monastic life, for example, grants religious or belief communities self-understanding of their own 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 to admit new members or to exclude existing ones”,³¹ which is 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 are not subject to State control.³² As is widely known, the principle of autonomy can result in women, LGBT persons and members of religious or belief minorities being excluded from aspects of confessional life or, in some limited cases, employment, as in 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 or belief communities simply because of who they are.³³ The Special Rapporteur on freedom of religion or belief, in noting that 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 on the part of the wider religious community, such 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 International Day against Homophobia, Transphobia and Biphobia in Tbilisi was attacked by a crowd of thousands. The police failed to control the situation, and the group, which had sought refuge in a building later surrounded by the crowd, was terrorized and assaulted, suffering physical and psychological harm. Clerics from the Georgian Orthodox Church and members of extremist groups were involved in inciting the violence. That case, which was verified by the Independent Expert during his visit to Georgia,³⁵ is an example of how discrimination and violence perpetrated by religious or belief leaders and State agents may be, and often are, intimately intertwined and mutually reinforcing.

A. Violence

17. In countries that have laws establishing the punishment of death for consensual same-sex sexual activity, the relevant authorities often base that denial of rights and personhood

²⁹ A/69/261, para. 41.

³⁰ See Human Rights Committee, *Malakhovsky and Pikul v. Belarus* (CCPR/C/84/D/1207/2003).

³¹ European Court of Human Rights, *Sindicatul “Păstorul cel Bun” v. Romania*, Application No. 2330/09, Judgment, 9 July 2013, para. 137. See also *Svyato-Mykhaylivska Parafiya v. Ukraine*, Application No. 77703/01, Judgment, 14 June 2007, para. 146; and *Miroļubovs and others v. Latvia*, Application No. 798/05, Judgment, 15 September 2009, para. 80 (d).

³² *Masterpiece Cakeshop, Ltd., et al. v. Colorado Civil Rights Commission et al.*, No. 16-111, Opinion, 4 June 2018, p. 10.

³³ A/HRC/43/48/Add.2, para. 52.

³⁴ A/HRC/43/48, para. 74.

³⁵ A/HRC/41/45/Add.1, para. 57.

on the State's interpretation of religious law, culture and values.³⁶ Recently, a Ugandan politician officially claimed that the country's "anti-homosexuality" law, which provides for the death penalty for "serial homosexuality",³⁷ was aimed at protecting the country's "church culture" and 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 denial of reproductive rights,³⁹ State-coerced practices of conversion⁴⁰ and forced gender reassignment surgeries.⁴¹ In addition, laws that punish homosexuality and gender non-conformity invariably generate violence elsewhere in the State's infrastructure, such as in detention⁴² and health-care settings.⁴³ It is reported that members of the armed forces in Iraq engage in violence against LGBT people with impunity and that government officials consider such actions to constitute efforts on the part of the abusers to protect religious or moral traditions.⁴⁴

19. Some of the most pernicious "religiously justified" violence based on sexual orientation and gender identity is carried out by non-State actors. Examples include bias-motivated attacks and other hate crimes carried out by mobs, vigilante groups, individuals, family members and religious or belief leaders and organizations that allege that their religious beliefs permit or even require violence against LGBT persons. Cases of the "corrective" rape of lesbian, bisexual and queer women and girls facilitated by religious or belief leaders and adherents have been widely reported, including in Ghana,⁴⁵ Jamaica⁴⁶ and Spain.⁴⁷ The practice of forced heterosexual marriages for lesbian, bisexual and queer women emanating from community beliefs that heterosexual marriage is a religious or spiritual directive is another chilling example.⁴⁸ The Independent Expert's research into "conversion therapy", which sometimes reaches the level of torture, revealed that the main promoters and perpetrators are often religious or belief leaders and institutions, who act with the support or at the instigation of family members.⁴⁹

20. In the submissions, it is highlighted that State-sanctioned violence and discrimination against LGBT people normalizes non-State human rights abuses.⁵⁰ Abusers routinely target

³⁶ Such countries include Afghanistan, Brunei Darussalam, Iran (the Islamic Republic of), Saudi Arabia, Somalia, Mauritania, Pakistan, Qatar, United Arab Emirates and Yemen, as well as some states in northern Nigeria (see <https://www.uscifr.gov/sites/default/files/2021-03/2021%20Factsheet%20-%20Sharia%20and%20LGBTI.pdf>; A/HRC/35/23, para. 45; and A/71/372, paras. 101 and 102).

³⁷ See <https://www.ohchr.org/en/press-releases/2023/03/uganda-un-experts-condemn-egregious-anti-lgbt-legislation>.

³⁸ Larry Madowo and Catherine Nicholls, "Uganda parliament passes bill criminalizing identifying as LGBTQ, imposes death penalty for some offenses", CNN, 22 March 2023.

³⁹ See communication IDN 2/2022, available from <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?Id=27706>.

⁴⁰ A/HRC/44/53, para. 25.

⁴¹ A/HRC/50/27, para. 29.

⁴² A/HRC/40/60, para. 54.

⁴³ A/HRC/50/27, paras. 10 and 29.

⁴⁴ See Human Rights Watch, "Everyone Wants Me Dead": Killings, Abductions, Torture, and Sexual Violence against LGBT People by Armed Groups in Iraq (2022).

⁴⁵ Human Rights Watch, "No Choice but to Deny Who I Am": Violence and Discrimination against LGBT People in Ghana (2018).

⁴⁶ Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas* (2015), para. 173.

⁴⁷ Submission from No Es Terapia (NET).

⁴⁸ Joint submission from a coalition of non-governmental organizations in connection with the review of Thailand as part of the universal periodic review, 25 April 2021, available from <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=8848&file=CoverPage>. See also Human Rights Watch, "This Is Why We Became Activists": Violence against Lesbian, Bisexual and Queer Women and Non-Binary People (2023).

⁴⁹ A/HRC/44/53, paras. 25–34; and submissions from Outright International and the Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos.

⁵⁰ Submission from Campaña Nacional por un Estado Laico.

persons who openly dissent from dominant religious teachings by advancing interpretations that do not centre heteronormativity.

21. In addition, States must act with due diligence to prevent violence against LGBT people perpetrated by non-State actors, fully investigate such violence when it occurs, prosecute and punish the perpetrators and repair the damage inflicted on the victims.⁵¹ In its general comment No. 36 (2018) on the right to life, the Human Rights Committee made that duty explicit, noting that States must take “special measures of protection towards persons ... whose lives have been placed at particular risk because of ... pre-existing patterns of violence”, including towards lesbian, gay, bisexual, trans and intersex (LGBTI) persons.⁵²

B. Hate speech and incitement

22. Freedom of opinion and expression is enshrined in article 19 of the International Covenant on Civil and Political Rights, which, like article 18, stipulates that the right that it enshrines may be subject to certain restrictions, such as are provided by law and necessary, inter alia, for respect of the rights and reputation of others and for the protection of public health or morals. Those 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 established that no manifestation of religion or belief ought to amount to propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.⁵³

23. In many submissions, concern was expressed that religious or belief leaders actively fuel disinformation and/or intolerance against LGBT persons. A common tactic is to scapegoat LGBT people, thereby exacerbating historical and structural patterns of exclusion. At the height of the coronavirus disease (COVID-19) pandemic, for example, the Independent Expert documented 12 States in which religious authorities had attributed the virus to retribution from God for same-sex sexual activity.⁵⁴

24. Others posit that LGBT persons represent a threat to “traditional values”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 family”.⁵⁷ A related theory is that gender – the idea that men’s and women’s roles, behaviours, 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 pastors of churches have denied the very existence of intersex persons, often citing the Bible as a source of law, and have supported practices of conversion as part of their electoral platform.⁶⁰

25. In other submissions, concern was expressed about interpretations of religious doctrine that situate homosexuality and gender non-conformity within a discourse of immorality and sin, and descriptions were given of the effect that such discourse can have on the social acceptance of LGBT people, in particular when it is propagated by religious or belief leaders. Claims that LGBT people need to be “cured” or punished lead to significant

⁵¹ A/HRC/29/23, para. 11.

⁵² General comment No. 36 (2018), para. 23.

⁵³ General comment No. 22 (1993), para. 7.

⁵⁴ See OHCHR, “COVID-19 and the human rights of LGBTI people”, 17 April 2020; and communication TUR 10/2020, available from <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25412>.

⁵⁵ A/HRC/47/27, para. 7.

⁵⁶ Polish Bishops’ Conference, “The position of the Polish Bishops’ Conference regarding LGBT+”, 28 August 2020.

⁵⁷ A/HRC/44/53/Add.1, para. 12.

⁵⁸ A/HRC/47/27, para. 13.

⁵⁹ Mary Anne Case, “Trans formations in the Vatican’s war on ‘gender ideology’”, *Signs: Journal of Women in Culture and Society*, vol. 44, No. 3 (spring 2019).

⁶⁰ Submission from the Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos.

harm, exile from communities, emotional distress and suicidality, and cruel, inhuman or degrading treatment or punishment.⁶¹

26. The extent to which religion can be invoked to support autocratic practices and the denial of basic rights and civil liberties is also evident in the attempts of some state legislatures in the United States to enshrine anti-trans exclusion and eliminate comprehensive sex education. At the conclusion 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 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 incitement, including in religious contexts. Others caution against the imposition of limits on freedom of speech that could amount to censorship and of undue restrictions on freedom of religion or belief that could have a disproportionate impact on minorities. The Independent Expert shares those concerns: there is a need to protect vulnerable groups against hate speech and to be cautious about overly broad legislation that risks pitting “various groups – including the very marginalised groups that it purports to benefit – against each other in a free-speech race to the bottom”.⁶⁴

28. The Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence is a particularly important tool in that context. It outlines a six-part threshold test for defining restrictions on freedom of expression and incitement to hatred and for the application of article 20 of the International Covenant on Civil and Political Rights. It covers: (a) the social and political context; (b) the status of the speaker; (c) intent to incite the audience against a target group; (d) the content and form of the speech; (e) the extent of its dissemination; and (f) the likelihood of harm, including imminence.⁶⁵

C. Actions aimed at undermining the 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, which is propagated through some dominant religious narratives, can restrict the full enjoyment of rights by LGBT 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 abolishing the legislative ban on the adoption of children by persons living with HIV and transgender persons.⁶⁶

30. In an unprecedented pushback, alliances of conservative political ideologies and religious fundamentalisms are advocating the criminalization of homosexuality and the denial of gender recognition in numerous States.⁶⁷ Those alliances tend to present themselves not as religiously fundamentalist⁶⁸ but as human rights groups working to protect the family and religious freedom. Striking examples can be found in recent legislative projects in Ghana and Uganda. In Ghana, a bill was tabled by a coalition of Members of Parliament with the

⁶¹ See [A/HRC/44/53](#).

⁶² See <https://www.ohchr.org/sites/default/files/documents/issues/sexualorientation/iesogi/2022-08-30/IE-SOGI-EOM-US.docx>.

⁶³ See Human Rights Committee, general comment No. 34 (2011).

⁶⁴ Jacob Mchangama and Nadine Strossen, “Hate-speech laws are no friend of minorities”, *Spiked*, 2 June 2020.

⁶⁵ See Jeroen Temperman, *Religious Speech, Hatred and LGBT Rights: An International Human Rights Analysis* (Leiden, Kingdom of the Netherlands, Brill, 2021).

⁶⁶ [A/HRC/44/53/Add.1](#), para. 11.

⁶⁷ See Naureen Shameem and others, *Rights at Risk: Time for Action – Observatory on the Universality of Rights Trends Report 2021* (Toronto, Canada, Association for Women’s Rights in Development, 2021).

⁶⁸ See [A/HRC/34/56](#).

support of the National Coalition for Proper Human Sexual Rights and Family Values, a tripartite movement said to include all Christian councils, Muslim councils and traditional leaders in the country. The Coalition of Muslim Organizations of Ghana has publicly 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 States Members of the United Nations criminalize consensual same-sex sexual acts between adults.⁶⁹ The historical causes of such criminalization are twofold. Dogmatic interpretations of scripture are the first. In 2019, for example, several special procedures wrote to the Government of Brunei Darussalam to express concern about the inclusion of stoning to death, whipping and amputation as penalties for adultery and consensual same-sex sexual relations in the Syariah Penal Code.⁷⁰ One feature of the Code is that the application of its penalties varies depending on whether or not the offender is Muslim. 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 Independent Expert has noted that, in Aceh Province, Indonesia, regional laws referred to as Islamic criminal by-laws have been passed to establish offences, additional to those established under national criminal law; they cover same-sex acts and certain forms of gender expression, with penalties that include fines, caning and imprisonment for 100 months.⁷²

33. The second historical cause is a legislative exercise carried out by the British Empire.⁷³ Approximately half of the countries that maintain criminalization are former British colonies,⁷⁴ and many of them invoke national religious values to justify the retention of such laws. Jamaica, for example, invoked such values during the 2011 review of the country as part of the universal periodic review.⁷⁵ In other cases, colonial-era legislation has morphed into norms invoking religion. One example is section 377A of the Penal Code of Malaysia.⁷⁶

2. Other forms of oppression

34. In many countries, there is a tendency to tie national and cultural values to religious values and to make them indistinguishable from each other. This not only undermines the promotion of freedom of religion or belief for all by suggesting the existence of a monolithic national religious tradition and thus marginalizing minority religions but also often means that human rights standards and values that stray from that one interpretation of religion, such as LGBT equality or recognition, are similarly undermined. That framework can sometimes be discerned in discourse on protecting the religious values that allegedly underpin the identity and meaning of society and the State. That 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 depicts romantic love between men. The Government labelled it an affront to the country’s culture and identity

⁶⁹ See A/HRC/43/48 and https://features.hrw.org/features/features/lgbt_laws/.

⁷⁰ See communication BRN 1/2019, available from <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24522>.

⁷¹ See <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=34613>.

⁷² See communication IDN 1/2018, available from <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23635>; and submission from Southeast Asia Sexual Orientation, Gender Identity and Expression (ASEAN SOGIE) Caucus.

⁷³ See Human Rights Watch, *This Alien Legacy: The Origins of “Sodomy” Laws in British Colonialism* (2008).

⁷⁴ Human Dignity Trust, “Criminalising homosexuality and understanding the right to manifest religion” (November 2015).

⁷⁵ A/HRC/16/14, para. 32.

⁷⁶ Joint submission from the ASEAN SOGIE Caucus and Justice for Sisters.

and demeaning to Christianity.⁷⁷ In 2017, the Egyptian Musicians Syndicate banned the band Mashrou' Leila from performing in Egypt after some audience members flew a rainbow flag at one of its concerts in Cairo. The audience members in question were arrested, and some were given harsh prison sentences. The incident led to a clampdown on the LGBT community.⁷⁸ The same band was prevented from playing in the city of Byblos, Lebanon, after being accused of blasphemy.⁷⁹

36. The law adopted in the Russian Federation in 2013 to ban “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 on religiously derived “traditional values”.⁸⁰ In 2022, a Saint Petersburg court convicted a photographer who had shown a video of two men kissing in front of a church⁸¹ and, in November 2022, the lower house of the parliament of the Russian Federation unanimously voted to extend the application of the law to include adults. The head of the Russian Orthodox Church backed the new legislation and has portrayed the country'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 conservative Christian viewpoint to the legal definition of the family. The amendment altered the constitutional definition of the family to exclude LGBT individuals, defining the basis of the family as “marriage and the parent-child relation” and declaring that “the mother is a woman” and “the father is a man”. The amendment states that Hungary protects the right of children to self-identity according to their sex at birth and provides an upbringing in accordance with values based on its constitutional identity and Christian culture.⁸³

38. The vast majority of trans and gender-diverse persons in the world are not able to have their gender legally recognized by their State, in some cases on the basis of religious arguments. The High Court of Kenya rejected an applicant's request for an identity document 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, gender-affirming care for transgender people is limited by religious edicts.⁸⁵ In Pakistan, the Federal Shariat Court declared in May 2023 that several sections of the Transgender Persons (Protection of Rights) Act, 2018, were “un-Islamic” and therefore void.

E. Indirect discrimination

1. Inequality in family formation law and policy

39. A human rights-based approach represents a direct challenge to conceptions of the family that are exclusionary of LGBT persons. United Nations and regional treaty bodies

⁷⁷ See Humanists International, “‘Ban on gay film is uncalled for’, says the Atheists in Kenya Society”, 24 September 2021; and Neela Ghoshal, “Kenya censors another gay-themed film”, Human Rights Watch, 27 September 2021.

⁷⁸ BBC, “Seven arrested in Egypt after raising rainbow flag at concert”, 26 September 2017.

⁷⁹ Tim Fitzsimons, “Lebanese pop band faces death threats over ‘blasphemous’ song”, NBC News, 25 July 2019; and Kareem Chehayeb, “Mashrou' Leila blasphemy row: Byblos show cancelled over ‘bloodshed’ fears”, Middle East Eye, 30 July 2019.

⁸⁰ Naureen Shameem, *Rights at Risk: Observatory on the Universality of Rights Trends Report 2017*, (Association for Women's Rights in Development, 2017), pp. 52–55; and Christian Network Europe, “Traditional values for Russian Church more important than Gospel, Norwegian expert says”, 3 March 2022.

⁸¹ Submission from Coming Out.

⁸² BBC, “Russia to ban sharing LGBT ‘propaganda’ with adults as well as children”, 27 October 2022.

⁸³ Marton Dunai and Anita Komuves (Reuters), “Hungary amends constitution to redefine family, limits gay adoption”, 15 December 2020; and Associated Press, “Rights groups condemn Hungarian ban on same-sex adoptions”, 16 December 2020.

⁸⁴ High Court of Kenya, *Richard Muasya v. Hon. Attorney General and others*, Petition No. 705 of 2007, Judgment, 2 December 2010, para. 148.

⁸⁵ Nora Noralla, “A discriminatory system killed a transgender man in Egypt”, Open Global Rights, 10 November 2021.

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 the basis of her sexual orientation was a violation of the right to protection of the family, among other rights.⁸⁷

40. There are now 33 States that 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 denial of the right to marry on the basis of sexual orientation violated the rights to equal protection, non-discrimination and respect for human dignity.⁸⁹ In Colombia, the reform carried out in 2016 followed the adoption of a decision by the Constitutional Court affirming that all persons have 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 That trend mirrors the evolution over the past 20 years of the guidance offered by international and regional human rights bodies on ensuring equality and non-discrimination in marriage.⁹¹

41. By contrast, some States have moved to proscribe same-sex marriage. Rather than adherence to human rights norms in law, it is the influence of religious narratives in politics that has remained the main feature in those countries.⁹² For example, the Congress of Guatemala approved the life and family protection bill,⁹³ which was drafted and lobbied for by politicians who self-identified as evangelical. In Nigeria, the national legislature passed the Same-Sex Marriage Prohibition Act, 2013, which criminalizes same-sex marriages and was reportedly supported by most Nigerians for “moral and religious reasons”.⁹⁴ In several countries, religious organizations have reportedly formed powerful groups to lobby the Government to push back against the rights of LGBT persons, including with regard to 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: “In 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 strengthened their recognition of the rights of LGBT people to be free from violence and discrimination, calls for “religious exemptions” from laws guaranteeing

⁸⁶ Magdalena Sepúlveda Carmona, “A contemporary view of ‘family’ in international human rights law and implications for the Sustainable Development Goals (SDGs)”, Discussion Papers, No. 21 (UN-Women, 2017).

⁸⁷ *Atala Riffo and daughters v. Chile*, Judgment, 24 February 2012.

⁸⁸ Council on Foreign Relations, “Marriage equality: global comparisons”, 22 December 2022.

⁸⁹ Constitutional Court of South Africa, *Minister of Home Affairs and Another v. Fourie and Another*, Case No. CCT 60/04, and *Lesbian and Gay Equality Project and Eighteen Others v. Minister of Home Affairs and Others*, Case No. CCT 10/05, Judgment, 1 December 2005, para. 114.

⁹⁰ Constitutional Court of Colombia, Judgment SU214/16, 28 April 2006.

⁹¹ Inter-American Court of Human Rights, Advisory Opinion OC-24/17, 24 November 2017, para. 229 (8). See also Malcolm Langford, “Same-sex marriage in polarized times: revisiting *Joslin v. New Zealand* (HRC)”, in *Integrated Human Rights in Practice: Rewriting Human Rights Decisions*, Eva Brems and Ellen Desmet, eds. (Cheltenham, United Kingdom of Great Britain and Northern Ireland, Edward Elgar, 2017).

⁹² Javier Corrales, “LGBT rights and representation in Latin America and the Caribbean: the influence of structure, movements, institutions, and culture” (University of North Carolina at Chapel Hill, 2015), pp. 23 and 24.

⁹³ Human Rights Watch, “Guatemala: 3 killings of LGBT people in a week”, 22 June 2021.

⁹⁴ Human Rights Watch, “‘Tell me where I can be safe’: the impact of Nigeria’s Same-Sex Marriage (Prohibition) Act”, 20 October 2016.

⁹⁵ Damaris Seleina Parsitau, “Law, religion, and the politicization of sexual citizenship in Kenya”, *Journal of Law and Religion*, vol. 36, No. 1 (April 2021).

⁹⁶ Advisory opinion OC-24/17, 24 November 2017, para. 223.

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 they were required to perform certain activities that do not align with their beliefs.

44. In several submissions, situations were outlined in which States enable religious exemptions for persons or organizations who perform government or public functions such as ensuring child welfare, solemnizing marriages or educating children. In some States, including Australia⁹⁸ and the United States,⁹⁹ government-funded foster care and adoption agencies can reject prospective families on the basis of sexual orientation, gender identity or 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, and faith-based schools can legally favour students and professionals who share the school's religious norms and values in admissions and employment, which can be particularly impactful for both LGBT students and LGBT staff. The Independent Expert has learned of several cases in Australia in which religious schools have fired teachers because their sexual orientation was seen to contradict the school's religious norms and values.¹⁰⁰ Some States justify such dismissals on the basis that religious institutions should have autonomy in their internal administration, admissions policies and curricula.¹⁰¹ That claim can, however, hinder the successful implementation of plans and programmes intended to promote diversity-oriented education, comprehensive sexuality education and gender equality.¹⁰² This has been recognized by the Inter-American Court of Human Rights, which, in a recent case involving the withdrawal of a teacher's certification to teach religious education when it became publicly known that she was cohabiting with her same-sex partner, found that Chile had violated the teacher's rights to equality and non-discrimination, privacy and work.¹⁰³

45. Providers of goods and services to the public have also gained exemptions from non-discrimination laws to exclude LGBT customers on the basis of religious beliefs. Such claims often involve, but are not limited to, objections to serving LGBT persons 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, refusing to print materials for pride parades).

46. States are obligated under international human rights law to ensure that LGBT consumers are not discriminated against, regardless of whether the discrimination is on the part of a State or a non-State actor.¹⁰⁴ As noted by the Special Rapporteur on freedom of religion or belief, "it is not permissible for individuals or groups to invoke 'religious liberty' to perpetuate discrimination against ... lesbian, gay, bisexual, transgender and intersex persons, when it comes to the provision of goods or services in the public sphere".¹⁰⁵

3. Conscientious objection

47. Religious exemptions are often referred to as protections for the "conscientious objections" of health-care providers to the administration of services that go against their

⁹⁷ Submission from Humanists International.

⁹⁸ Submission from Equality Australia.

⁹⁹ Adrienne M. Spoto, "Fostering discrimination: religious exemption laws in child welfare and the LGBTQ community", *New York University Law Review*, vol. 96, No. 1 (April 2021).

¹⁰⁰ Ibid.

¹⁰¹ Tonya D. Callaghan and Lisa van Leent, "Homophobia in Catholic schools: an exploration of teachers' rights and experiences in Canada and Australia," *Journal of Catholic Education*, vol. 22, No. 3 (2019).

¹⁰² See submission from Evident; and <http://curas.com.ar/Documentos/Faera.htm>.

¹⁰³ *Pavez Pavez v. Chile*, Judgment, 4 February 2022. See also 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, July 2022; and European Court of Human Rights, *Guide on Article 9 of the European Convention on Human Rights: Freedom of Thought, Conscience and Religion* (Council of Europe, 2022), para. 85.

¹⁰⁴ Human Rights Committee, general comment No. 28 (2000), para. 4.

¹⁰⁵ A/HRC/37/49, para. 40.

convictions, including abortion services and hormonal and similar treatment. In the United States, more than one in eight LGBT people live in a state in which doctors can legally refuse to care for them on conscience- or religion-based grounds.¹⁰⁶ In Mexico, the State of Nuevo León allows health-care workers to conscientiously object.¹⁰⁷ Research suggests that such health-care policies disproportionately impact LGBT persons of colour. A recent survey found that 23 per cent of LGBQ persons of colour reported having experienced some form of care refusal by a doctor or other health-care provider (as opposed to 15 per cent of all LGBQ respondents), and 46 per cent of trans or non-binary respondents of colour had experienced at least one kind of care refusal by a health-care provider (as opposed to 32 per cent of all trans or non-binary respondents).¹⁰⁸

48. Some proponents of such policies argue that there exists a human right for health-care professionals to conscientiously object to prescribing cross-sex hormones.¹⁰⁹ Moreover, in countries such as Chile and the United States, the groups in question have successfully expanded the application of the concept of “conscientious objection” beyond individual health-care workers to include hospitals or even for-profit companies.¹¹⁰ Those efforts pose a threat to LGBT persons in that they substantially restrict 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.¹¹¹ 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.¹¹² Regarding the provision of health care, United Nations treaty monitoring bodies and numerous special procedures have emphasized that States cannot allow conscience-based refusals of health care to violate the rights of patients,¹¹³ including the right to reproductive health care.¹¹⁴ Where States choose to enable conscience-based refusals, international law obliges them to ensure an adequate number and distribution of willing providers,¹¹⁵ to limit conscientious objection claims to individuals as opposed to institutions,¹¹⁶ to establish effective referral systems for willing providers,¹¹⁷ to prohibit refusals in emergency circumstances¹¹⁸ and to establish systems to monitor compliance with all those requirements.¹¹⁹

IV. Access to spirituality for LGBT persons

50. Over the past 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, they would be considered by adherents of the religion into which they were born to be sinful or evil, inherently immoral or not worthy of transcendence.

¹⁰⁶ See <https://www.lgbtmap.org/news/release-2020-covid-impact-lgbtq-households> and joint submission from Quinnehtukut McLemore and Lauren McNamara; and submission from Human Rights Watch.

¹⁰⁷ Submission from Institute of Legal Research of the Autonomous University of Mexico.

¹⁰⁸ Center for American Progress, “Advancing health care nondiscrimination protections for LGBTQI+ communities”, 8 September 2022.

¹⁰⁹ See Adina Portaru and Robert Clarke, *Freedom of Conscience: Protecting Our Moral Compass* (Alliance Defending Freedom International, 2020).

¹¹⁰ Shameem and others, *Rights at Risk: Time for Action – Observatory on the Universality of Rights Trends Report 2021*, pp. 63–65.

¹¹¹ Human Rights Committee, general comment No. 22 (1993), para. 11.

¹¹² Human Rights Committee, general comment No. 36 (2018), para. 8.

¹¹³ [A/HRC/14/20/Add.3](#), para. 55.

¹¹⁴ Human Rights Committee, general comment No. 36 (2018), para. 8.

¹¹⁵ Committee on Economic, Social and Cultural Rights, general comment No. 22 (2016), paras. 14 and 43.

¹¹⁶ See Human Rights Committee, general comment No. 36 (2018). The World Health Organization has recommended banning institutional claims of conscience. See Michael Cook, “Conscientious objection is ‘indefensible’, says WHO”, BioEdge, 29 March 2022.

¹¹⁷ Committee on Economic, Social and Cultural Rights, general comment No. 22 (2016), para. 43.

¹¹⁸ Ibid.

¹¹⁹ See Human Rights Committee, general comment No. 36 (2018); and [E/C.12/ESP/CO/6](#).

Often, another realization immediately followed: that they would be rejected by their family, their community, their region or their country. Those moments often led to a lifelong struggle among various forms of identity (religious, sexual and gender) that are equally important in a person's life.¹²⁰

51. Indeed, "the rights to individual conscience do not extend to coercing a religious community to accept religious claims in conflict with those to which the community feels bound",¹²¹ and while persons have a right to exit the community, that remedy does not fully address the complex relationship between believers and their religion. For many individuals, their religion is part of the foundation of their sense of self and is the source of truth. Although they may disagree with certain tenets of religious teaching, or with the ways in which religious authorities interpret those tenets, their religion is an important part of their identity and the social fabric. To leave or to be forced to leave because of exclusionary practices or teachings can have significant implications for identity and spiritual well-being. In many cases, a painful departure from a religious or spiritual community has a lifelong impact on a person's mental well-being. In others, the option is not merely to leave but to take one's life.

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

53. The Independent Expert is concerned about alienation from organized religion and its impacts on the ability of the individual to seek happiness through spirituality.¹²² In this respect, it was noted in one submission that, "in 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".¹²³ The Independent Expert sees that concern as intimately connected with environments that enable practices of conversion.

54. The following section provides examples of traditions in different religious or belief systems – some of which have structures of strict hierarchy, and some of which follow fluid and non-hierarchical rules – that are LGBT-inclusive and LGBT-affirming.¹²⁴ Those traditions and the communities that represent them also act as stakeholders in discussions on freedom of religion or belief and freedom from violence and discrimination based on sexual orientation and gender identity. Paying attention to their voices and practices can help to shift the essentialist narrative that suggests that the exercise of freedom of religion or belief might be incompatible with the equal enjoyment of human rights by LGBT persons and opens a new normative space in which the two human rights frameworks can strengthen each other. As noted by the Special Rapporteur on freedom of religion or belief, "a multitude of voices exist within religious groups and institutions, including faith-based actors who campaign for the rights of women, girls and LGBT persons and work to promote gender equality within their faith".¹²⁵

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

¹²⁰ See submission from the Global Interfaith Network for People of All Sexes, Sexual Orientations, Gender Identities and Expressions.

¹²¹ W. Cole Durham, Jr., "The right to autonomy in religious affairs: a comparative view", in *Church Autonomy: A Comparative Survey*, Gerhard Robbers, ed. (Frankfurt, Peter Lang, 2001).

¹²² [A/74/181](#), para. 28.

¹²³ Submission from Equality Australia.

¹²⁴ [A/HRC/43/48](#), para. 55.

¹²⁵ *Ibid.*, para. 38.

passages of the Hebrew Bible and the Qur'an used to condemn modern LGBT sexualities and identities,¹²⁶ and it has been argued that the apparently monolithic religious censure of LGBT persons is a recent phenomenon, informed in part by "homocolonialism" as a response to perceived threats to the heterosexual family structures dominant in most faiths.¹²⁷

56. Persons who support gender and sexual equality as a matter of law and religious practice are found in every religion. Authorities, theologians and laypersons of several religious denominations embrace LGBT identities and consider LGBT equality as integral to their beliefs. The Independent Expert is familiar with different historical contexts in which Buddhist communities have respected same-sex couples.¹²⁸ Hinduism does not condemn same-sex sexuality if it does not affect heterosexual marriage, and *hijra* persons have important spiritual roles in the tradition.¹²⁹ The Primates of the 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".¹³⁰ The National Church of Iceland authorizes same-sex marriages,¹³¹ as do the Episcopal Churches of the United States and of Scotland.

57. In some cases, religious authorities have identified areas of commonality between religious thinking and freedom from violence and discrimination based on sexual orientation. Recently, the Pope criticized the criminalization of same-sex relations as "unjust" and against God's teachings.¹³² Three of the four main Jewish denominations openly support decriminalization.¹³³ Even within the Orthodox Jewish tradition, harassment of LGBT persons was deemed to be against the deepest values of Judaism in a joint statement released by 104 leaders in 2010.¹³⁴ In one State submission, the guidance issued for religious schools by Anglican, Jewish and Methodist hierarchies on addressing bullying against LGBT pupils was underlined as a good practice.¹³⁵ Imam Muhsin Hendricks, who is gay, leads the Masjidul Ghurbaah, an LGBT-inclusive mosque in Cape Town, South Africa.¹³⁶

58. Even when the hierarchy of a religious community does not explicitly embrace diversity, religious institutions, schools, councils, non-governmental organizations, movements and networks that are formally or informally dissident may seek reform or operate as inclusive de facto. In the submissions, reference was made to, for example, gay-friendly Catholic churches¹³⁷ and gay prayer groups¹³⁸ in Germany,¹³⁹ Mexico and the United States.¹⁴⁰ The Fellowship of Christian Councils in Southern Africa focuses on the inclusion of diverse sexual orientations and the protection of LGBT individuals from violence and discrimination in churches and wider society, and the Cosmopolitan Affirming Community in Kenya provides an affirming environment in which LGBT persons of faith

¹²⁶ Momin Rahman, *Homosexualities, Muslim Cultures and Modernity* (London, Palgrave Macmillan, 2014), pp. 72–78; and Louis Crompton, *Homosexuality and Civilization* (Cambridge, Massachusetts, Belknap Press, 2003), pp. 111–204.

¹²⁷ Momin Rahman, "Towards a dialogue between Muslims and LGBTI people: pathways and pitfalls", in *Special Rapporteur's Compilation of Articles*, p. 43.

¹²⁸ Michael Vermeulen, "The rise of Rainbow Dharma: Buddhism on sexual diversity and same-sex marriage", in *Special Rapporteur's Compilation of Articles*.

¹²⁹ Ruth Vanita, "Hinduism", in *Homosexuality and Religion: An Encyclopedia*, Jeffrey S. Siker, ed. (Westport, Connecticut, Greenwood Press, 2007).

¹³⁰ "Walking together in the service of God in the world", communiqué, 15 January 2016, available from <https://www.anglicannews.org/features/2016/01/communique-from-the-primates-meeting-2016.aspx>.

¹³¹ Submission from Citizen Outreach Coalition.

¹³² Nicole Winfield (Associated Press), "The AP interview: Pope says homosexuality not a crime", 25 January 2023.

¹³³ Human Dignity Trust, "Criminalising homosexuality", para. 85.

¹³⁴ *Ibid.*, para. 86.

¹³⁵ Submission from the United Kingdom.

¹³⁶ Jamie Fullerton, "'I'm hoping there will be more queer imams'", *The Guardian*, 19 October 2022.

¹³⁷ Submission from National Human Rights Commission (Mexico).

¹³⁸ Submission from Asistencia Legal por los Derechos Humanos.

¹³⁹ Submission from Office of the National Commissioner for Human Rights (Honduras).

¹⁴⁰ Submission from Catholics for Choice.

can explore and experience their faith.¹⁴¹ 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 LGBT issues, sexual and reproductive rights and feminist agendas. In December 2020, more than 350 religious or belief leaders from 10 religions signed the Declaration of the Global Interfaith Commission on LGBT+ Lives, proclaiming the sanctity of the life and dignity of all people, regardless of their sexual orientation or gender identity.¹⁴² In 2022, over 150 religious or 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.¹⁴³ 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.¹⁴⁴ Other examples are Muslims for Progressive Values, the Global Interfaith Network and Al-Fatah, an Islamic community centre for transgender people in Indonesia.

59. There are other organized belief systems protected on the basis of freedom of religion or belief that, while not religious in nature, are compatible with the equality of all persons regardless of their sexual orientation and gender identity. Humanists, for example, recognize that sex is an evolved trait, with no intrinsic meaning. There is no requirement for 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.¹⁴⁵

60. In Juchitán, Mexico, *muxes* embody a hybrid third gender that is neither man nor woman and are traditionally considered a blessing from the gods in the Zapotec vision of the universe (*cosmovisión*).¹⁴⁶ In Native Hawaiian and Tahitian communities, *māhū* persons embrace both the feminine and masculine and are keepers of traditional practices such as hula and chant.¹⁴⁷ In South Asia, *khawaja siras* are a gender-variant community considered to have a feminine soul; they occupied the roles of spiritual advisers and military commanders and were members of royal courts in precolonial, Mughal periods of rule in India.¹⁴⁸ Two-spirit or *berdache* persons are a blend of male and female spirits believed by several First Nations communities in Canada to have access to a distinct realm of spirituality as healers, shamans and ceremonial leaders.¹⁴⁹

61. Western LGBT categorizations cannot fully capture the diversity of Indigenous sexualities and genders because sexual diversity has “historically been the norm, not the

¹⁴¹ Submission from Outright International.

¹⁴² A/76/152, para. 24.

¹⁴³ Global Interfaith Commission on LGBT+ Lives, Principles to Safeguard LGBT+ Lives, 22 March 2022.

¹⁴⁴ Human Dignity Trust, “Criminalising homosexuality”, para. 84.

¹⁴⁵ Abby Hafer, “Humanism, sex, and sexuality”, in *The Oxford Handbook of Humanism*, Anthony B. Pinn, ed. (Oxford, Oxford University Press, 2019), abstract, available from <https://academic.oup.com/book/36311/chapter-abstract/318641962>.

¹⁴⁶ Alfredo Mirandé, *Behind the Mask: Gender Hybridity in a Zapotec Community* (Tucson, University of Arizona Press, 2017), p. 15; and submission from Asistencia Legal por los Derechos Humanos.

¹⁴⁷ Eleisha Lauria, “Gender fluidity in Hawaiian culture”, *The Gay and Lesbian Review*, vol. 24, No. 1 (January–February 2017).

¹⁴⁸ Sara Shroff, “Operationalizing the ‘new’ Pakistani transgender citizen: legal gendered grammars and trans frames of feeling”, in *Gender, Sexuality, Decolonization: South Asia in the World Perspective*, Ahonaa Roy, ed. (Abingdon, United Kingdom, Routledge, 2021), p. 265.

¹⁴⁹ Submission from the Organisation pour le Civisme, l’Auto-Moralisation et le Développement (OCAM-D).

exception”, among Indigenous Peoples.¹⁵⁰ Indigenous scholars from the Americas, South Asia and the Pacific regions have recorded various gender-fluid identities, many of which carry deep spiritual significance and play 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.¹⁵¹

62. Indigenous sexualities were often considered immoral, perverse and unnatural by 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 postcolonial period.¹⁵² Colonization exacerbated Indigenous Peoples’ vulnerability to violence and discrimination and created obstacles to their full and equal participation in Indigenous and wider society, whether spiritually or otherwise. For example, the Criminal Tribes Act, 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 contemporary Pakistan has been linked to the lingering impact of that colonial-era legislation.¹⁵³ In Hawaii, United States, the word “*māhū*” is considered derogatory towards LGBT persons, and its acquisition of negative connotations coincides with the loss of the spiritual status of *māhū* persons during colonization in Hawaiian society.¹⁵⁴

B. Dialogue and mutual respect: a powerful way forward

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

64. According to an organization that participated in the design and implementation of the Colombian peace agreements and developed a project to nurture dialogue between persons of faith and LGBTI persons with a significant impact on the creation of trust and awareness, 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 observing their face, their body and their voice beyond the sector to which they belong.¹⁵⁵ A similar idea was alluded to in another submission: “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.”¹⁵⁶

¹⁵⁰ Manuela L. Picq and Josi Tikuna, “Indigenous sexualities: resisting conquest and translation”, in *Sexual and Translation in World Politics*, Caroline Cottet and Manuela L. Picq, eds. (Bristol, E-International Relations, 2019), p. 57.

¹⁵¹ Submission from LGBT+ Rights Ghana.

¹⁵² A/77/514, para. 55.

¹⁵³ Swapna Samel, “Transgender in India and Criminal Tribes Act (CTA)”, in *The Third Gender: Stain and Pain*, Ashish Kumar Gupta and Grishma Khobragade, eds. (Latur, India, Vishwabharati Research Centre, 2018), pp. 187 and 188; and Jessica Hinchy, “Troubling bodies: ‘eunuchs’, masculinity and impotence in colonial North India”, *South Asian History and Culture*, vol. 4, No. 2 (2013).

¹⁵⁴ Aleardo Zanghellini, “Sodomy laws and gender variance in Tahiti and Hawai’i”, *Laws*, vol. 2, No. 2 (June 2013) (in which it is argued that sodomy laws, in conjunction with social processes such as urbanization and Christianization, are partially to blame for the diminished social status of *māhū* persons).

¹⁵⁵ Submission from Colombia Diversa.

¹⁵⁶ Submission from Durham and others.

65. Examples of good practices abound. The Utah Compromise, for instance, is seen as a valuable road map 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 the elimination of discrimination based on sexual orientation in Argentina¹⁵⁷ and Mexico.¹⁵⁸ 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.¹⁵⁹ In Canada and the United Kingdom, churches and other religious organizations have played an important role in debates on decriminalization and the positive role that churches can play in advancing moral understanding.

66. In 2017 and 2020, the Canadian HIV/AIDS Legal Network hosted two conferences examining the past, present and future role of the churches in decriminalizing same-sex intimacy across the Commonwealth, with a particular focus on States in the Caribbean. Those conferences brought much-needed nuance to the often reductive debates around religion and LGBT rights and unpacked the history of religion-based opposition to same-sex intimacy, drawing on examples from Belize and South Africa, as well as Northern Ireland.¹⁶⁰

67. Those examples show that freedom of religion or belief has the potential to reinforce rather than to erode LGBT rights. Indeed, adherents of certain denominations and belief systems claim that anti-LGBT manifestations of religion (such as criminalization and discrimination) not only impinge upon the right of LGBT persons to be free from violence and discrimination based on sexual orientation and gender identity but also violate the right of persons within those denominations and belief systems themselves to freedom of religion, in particular when their exercise of that right depends in part on the ability of LGBT people to live free from violence and discrimination and to access spirituality on equal terms with others.¹⁶¹ Highlighting that common ground can help to dismantle the “claim to monopoly of victimhood in the matter of freedom of religion” or belief¹⁶² 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 that quest, and freedom of religion or belief is a shield put in place to protect it, as well as to protect the right not to be part of a particular belief.**

69. **At the same time, throughout the world, 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 demanded by interpretations of religious dogma effectively deny LGBT persons the right to equality and, often, equal recognition before the law.**

70. **The limits established in the very design of freedom of religion or belief, including the need to respect the fundamental rights and freedoms of LGBT persons, are key to the full compatibility of that freedom with all actions to combat violence and discrimination against such persons, as is the strong and clear framework against 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**

¹⁵⁷ Submission from the Office of the Ombudsperson of the Nation (Argentina).

¹⁵⁸ Submission from the National Human Rights Commission (Mexico).

¹⁵⁹ Submission from Canadian HIV/AIDS Legal Network.

¹⁶⁰ See *Intimate Conviction: Examining the Church and Anti-Sodomy Laws across the Commonwealth* (Canadian HIV/AIDS Legal Network, 2018).

¹⁶¹ Dag Øistein Endsjø, “The other way around? How freedom of religion may protect LGBT rights”, *International Journal of Human Rights*, vol. 24, No. 10 (2020).

¹⁶² *Ibid.*, p. 1687.

is a must; at the same time, all stakeholders have a responsibility to ascertain when those noble freedoms have historically been – and continue to be – instrumentalized to nurture, perpetuate or exacerbate violence and discrimination against LGBT persons.

VI. Recommendations

71. The Independent Expert recommends that States:

(a) Carry out the analysis and reforms necessary to ensure that legislation and public policy comply 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 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 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 of sexual and gender identities under both the freedom of religion or belief and sexual orientation and gender identity frameworks;

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

(f) Create a safe environment in which all persons who manifest their religion or belief, including LGBT persons, can live without 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, States should do so by:

(i) Enacting preventive legislation and public policies, including educational programmes that promote non-discrimination against LGBT persons, and ensuring that they are developed with the participation of LGBT-led and LGBT-serving organizations;

(ii) Supporting initiatives of dialogue between leaders and other persons, including LGBT persons, of an ample spectrum of faith and opinion;

(h) Encourage religious institutions to consider inclusive approaches that facilitate the participation and recognition of LGBT persons;

(i) Engage with faith-based leaders on avenues through which their religious institutions can use their moral standing to prevent and combat violence and discrimination against LGBT 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 persons;

(k) Condemn incitement to violence and discrimination against LGBT persons and those who defend their rights by religious leaders and adherents.

72. The Independent Expert recommends that faith-based leaders, including LGBT persons:

(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 persons and those who defend their rights, including narratives portraying LGBT persons as seeking to recruit others into particular sexual orientations and gender identities or as having contaminating effects on children or others;

(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 persons and consider the possibility of institutional involvement in perpetuating 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 undertaken by the Independent Expert during the period 2022–2023

1. Violence and discrimination based on sexual orientation and gender identity are never justified and must be prevented, investigated, prosecuted and, if appropriate, punished, and victims must receive reparations.
2. Since his previous report to the Human Rights Council, in 2022, the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity has made efforts to expand the range of his in-person activities while maintaining his online presence, the development of which was spurred by the coronavirus disease (COVID-19) pandemic. Although the public health crisis was ongoing at the end of the reporting period, in May 2023, many activities could be gradually resumed during the period in question, provided that safety protocols were observed. Nonetheless, several events were held and activities carried out in 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 those events addressed focus topics for the year, namely his reports on health and on armed conflict,¹ while many others continued work initiated previously, such as work on the issues of lesbian, gay, bisexual and trans and other gender-diverse (LGBT) persons on the move, hate crimes, practices of “conversion therapy” and social inclusion. Those events brought together thousands of participants from all regions of the world, online or in person. In March 2023, following his 2022 report to the General Assembly, the Independent Expert was invited to give a briefing to members of the Security Council during an Arria-formula meeting on the human rights of lesbian, gay, bisexual, transgender and intersex (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 online 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 Organization of American States, its LGBTI Core Group and the Inter-American Commission on Human Rights. He was able to attend conferences around the globe, such as Sydney WorldPride (Australia), a round table to drive analytical, transformative action for LGBTIQI+ people in the Caribbean (Barbados) and the International Lesbian and Gay Association Asia Conference (Viet Nam). Dozens of bilateral exchanges with representatives of Member States were held.
5. The gradual resumption of in-person activities allowed the Independent Expert to resume those aspects of his work programme that were contingent on travel. During the period in question, he undertook country visits to Cambodia, the United Kingdom of Great Britain and Northern Ireland and the United States of America. He also undertook promotional and advisory visits to countries including Peru, Saint Lucia and Thailand.
6. The Independent Expert has attended official hearings with public agents from the legislative and executive branches of multiple States to advise on legislation and policy on topics relating to sexual orientation and gender identity. The Independent Expert has issued specific advice on pending legislation to bodies in the United Kingdom (specifically, the Scottish Parliament) and the Republic of Korea (specifically, Seoul Metropolitan Council) and to the European Parliament and 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 new provisions on legal gender recognition in Finland and Spain.

¹ [A/HRC/50/27](#) and [A/77/235](#).

7. At the invitation of Member States, government representatives, academia and civil society organizations, 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. The Independent Expert gave more than 40 in-depth interviews for television, radio and print media. He also published essays, video messages and op-eds and developed an active social media presence. The available data show that the Independent Expert has built an audience in all regions of the world.

9. The Independent Expert issued 23 individual or joint official press releases and media statements, including on the topics of comprehensive sexual education and reproductive health, the situation of forcibly displaced LGBT persons and the compounding effects of racialization on the lives of LGBTI persons of colour. Jointly with a group of over 60 United Nations and regional independent experts and the Inter-American Commission on Human Rights, he made a statement on the occasion of the 2023 International Day against Homophobia, Transphobia and Biphobia.

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