

Submission to the UN Independent Expert on Protection
Against Violence and Discrimination Based on Sexual
Orientation and Gender Identity

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Call for input to a thematic report: Gender, sexual orientation and gender identity

Religious freedom and policies on sex, gender, sexual orientation, and gender identity

- It is a reason for concern that the UN Independent Expert on SOGI has expressed that “gender diversity is illegitimately repressed, generally under the umbrella of culture, religion, and tradition, resulting in a variety of normative constructions, the existence and enforcement of which have, over time, reinforced the preconceptions and stereotypes at their origin. Salient among these normative constructions are the interpretation of religious texts, through which certain forms of gender identity have been qualified as sinful; the adoption of laws, through which they have been typified as criminal; and their incorporation into medical classifications as pathologies”. He also pointed out that some “anti-rights speech” deserves scrutiny against the parameters of hate speech.
- This approach implies that the contents of religious doctrines can be exposed to the scrutiny of governments and courts, in violation of the minimum guarantees of the right to religious freedom, freedom of thought, religion, association, worship and other related rights. In this scenario, adherents to a particular faith can be coerced to embrace a mindset or a set of beliefs that are not in accordance with their religious beliefs, under penalty of sanctions, violating Article 18 of the ICCPR. It also means that religious teaching and the right to receive an education that is consistent with one’s faith can be banned or sanctioned or regulated by agents external to the religious institution or practice. Religious teachings, which respond to the spiritual dimension of human beings and do not seek to be imposed, can be censored just because they do not conform or are consistent with a series of ideologies that have won terrain in public space.
- Regarding prohibited grounds of discrimination, international covenants on human rights list race, color, sex, language, religion, political or other opinion, national or social origin, economic position, birth, or any other condition. Any form of discrimination is prohibited as it involves treatment that violates the dignity of the human person.
- The right to religious freedom is a right included in various international declarations, covenants, and agreements such as the Universal Declaration of Human Rights, Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, among others.
- Article 18 of the ICCPR safeguards religious freedom against the imposition of anti-religious policies: “1. everyone shall have the right to freedom of thought, conscience, and religion. This right shall include 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.”

- These provisions ban intolerance, discrimination and religiously motivated violence and are complemented by subsection 2 of Article 18 of the ICCPR which specifies that, “No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.” The prohibition is reinforced by Article 20(2) of the ICCPR: “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” It is also reinforced by Article 26: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”
- CCPR General Comment No. 22, made by the UNHRC, states that the right to freedom of thought, conscience and religion “is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others.” It also observes that “the freedom to manifest religion or belief in worship, observance, practice, and teaching include a broad range of acts and includes every aspect of life.” In other words, the right to religious freedom is a multidimensional right and encompasses other fundamental human rights protected under international law.
- The public policies implemented by the UN members states should consider that the concept of worship extends to various practices like the use of a particular language customarily spoken by a group, the practice and teaching of religion or belief, including acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests, and teachers, the freedom to establish seminaries or religious schools, and the freedom to prepare and distribute religious texts or publications, among others.
- According to CCPR General Comment No. 22, Article 18 also bars coercion that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert. Policies or practices having the same intention or effect, such as, for example, those restricting access to education, medical care, employment, or the rights guaranteed by article 25 and other provisions of the Covenant, are similarly inconsistent with article 18.2. The same protection is enjoyed by holders of non-religious beliefs.
- Although there are situations of discrimination against the LGBTQ+ community by religious groups, exercising the right to express faith-based points of view cannot automatically be considered as “violence” and “discrimination” against them. We believe that in a plural and democratic environment, all voices must have a space even when we do not agree with what is transmitted. It is worth considering that while religious institutions

should not have legal authority over the State, this does not mean that those institutions are not allowed to express their opinions on public affairs that affect society, especially if we consider the important contributions of religious groups to society.

- The religious belief system, and its importance in shaping the personal identity cannot be subordinated to outside patterns of thinking that rather seek to impose sanctions on those who do not accept said pattern. This is the situation of most people who respect the dignity of LGBTQ + people, they are being forced or pressured by some SOGI policies to support aspects of their social or political aspirations that contradict their religious beliefs. Without a correct balance of rights, SOGI policies can end up restricting the right to religious freedom, in both its personal and collective dimension and in the private and public sphere.

- In the same sense that religious notions or conceptions cannot be imposed on society, nor can notions related to gender identity or of any other type be imposed by force. People whose beliefs are not compatible with these conceptions cannot be marginalized for it either. Starting to penalize the freedom of expression of confessional actors can lead to self-censorship and growing mistrust in a situation of legal uncertainty due to the lack of protection of the most basic rights which on the contrary look for imposing a single criterion as the only valid even in the private or intimate life; nothing more harmful to a truly democratic state. Therefore, failure to recognize the value of the religious discourse in the public sphere would mean deny any basic element of the culture of tolerance and respect, instead, it would mean place religious leaders and believers in a situation of vulnerability only because their faith is considered a disadvantage or an obstacle to actively participate in the social life, making them potential victims of the cancellation culture.

- Under the understanding that the political processes of each country are complex and often context-dependent, we recommend that the actions of the independent expert are not intended to impose a single political line across all UN member states, ignoring or disregarding the needs of each population. Initiatives taken by States in connection with the right to freedom of religion, belief, or conscience (including the right to conscientious objection) cannot be considered harmful by default for the enjoyment of human rights (including sexual and reproductive rights) of LGBTQ+ persons. On the contrary, public policies must have a comprehensive vision of reality and not disregard any relevant group in society. As well as women, children, the disabled or indigenous communities, religious groups must also be included.

- Any set of state mechanisms must be shaped by principles requiring a human rights approach. Public policies must be design abiding the principles of indivisibility, universality, and the interdependence of human rights. Hence, public policies aiming to protect sex, gender, sexual orientation, and gender identity; or any other issue for that matter, should not restrict any other human right in the process.

- Pointing out that religion, religious groups, and political and religious leaders worldwide who speak out publicly criticizing or disagreeing with gender and related concepts as an obstacle to LGBT groups or other groups encourages polarization and division rather than promoting dialogue and tolerance and incite reprisals against people who exercise free

expression, speech, and religious liberty rights. Respect for the sector of the population related to LGBTQ+ groups can be achieved without suppressing the voice of religious groups, who in some cases inspire more trust than governments themselves. It is of utmost importance to maintain openness towards various types of thinking, allowing each person to consciously embrace or withdraw from them without this being a consequence of a State or international imposition.