

Input to some of the questions of the thematic Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

provided by

LIRCE (Instituto para el Análisis de la Libertad y la Identidad Religiosa, Cultural y Ética – *Institute for the Analysis of Religious, Cultural and Ethical Freedom and Identity*)

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Responding to the public call for inputs made by Mr Victor Madrigal-Borloz, the directive board of LIRCE submits answers to some of the questions included in that call, with the hope that they may be of some help.

1. What are the actual or perceived points of tension (if any) between the right to manifest one's freedom of religion or belief, and freedom from violence and discrimination based on sexual orientation and gender identity? Are there any areas in which they are mutually exclusive?

In our opinion, the main points of tension occur with regard to some religious traditions (including most widespread interpretations of the big monotheistic traditions) that maintain a religious doctrine — dogmatic as well as moral — that reduces the legitimate exercise of human sexuality to woman-man relationships within a marriage (which often has to be duly recognised by the relevant religious authority or community). Such view of human sexuality usually presents itself as linked to nature and departs from the premise that sexuality is inseparable from procreation (actual or potential), with the consequence that only two sexes or genders truly exist, female and male. Any other sexual activity or practice, alone or with others, should therefore be considered unnatural and morally illegitimate.

From that perspective, the religious negative judgment regarding LGTB+ is not focused on the person per se but in the behaviour of the person. This is particularly clear in the case of the main Christian community, the Catholic Church, which considers all persons as having the same dignity as children of God, irrespective of how immoral their behaviour may be deemed, in this or in any other area of human conduct. This is what happens at least in theory. In practice, depending on the local culture and religious leadership, the negative judgment about behaviour may translate into a negative judgment about the people and their gender identity, which often entails situations of discrimination, hostility or harassment. This is particularly likely in the case of transgender persons, as they are considered to engage in an unnatural redefinition of their natural identity. Curiously, those expressions of discrimination, hostility or harassment because of the sexual orientation or gender identity of people lose sight of core values of the same religious traditions, such as compassion, charity, solidarity, or the unique spiritual value of every human being and their souls.

On the part of LGTB+ people, we can distinguish between those who have an irreligious or anti-religious slant, and those others who would like to be accepted as a normal member of their respective religious communities. The former often engage in activities and discourse that are aggressive and offensive against religion or certain religions; this definitely does not help mutual understanding between the religious and LGTB+ worlds. The latter have the logical aspiration to modify the moral doctrines and disciplinary rules of their religious communities, but they sometimes fail to realize that these changes take time, as they affect principles and practices of multiseular roots, and that this could only be achieved through a gradual process of open, honest and respectful dialogue. On the other hand, we may add that initiatives such as gay pride parades, and the atmosphere that often surrounds them (sometimes with blasphemous or anti-religious expressions), tend to generate concern in religious circles and convey to religious leaders and people the image of LGTB+ people as

promiscuous, disrespectful, irresponsible, and prone to trivialize sex and sexual relationships. In other words, they facilitate polarization and not mutual approaching of positions.

2. Are there any ways in which the right to freedom of religion or belief, and freedom from violence and discrimination based on sexual orientation and gender identity are mutually reinforcing?

Correctly understood, promoting at the same time the protection of FoRB and freedom from violence and discrimination based on SOGI should foster a culture of freedom and mutual respect, even when people hold positions that are in an apparently irreconcilable conflict. The solution, in our view, is not to affirm the predominance or ‘better value’ of one freedom over the other but rather to look honestly for ways that the freedom of each party is respected without damaging the other party’s freedom.

In other words, freedom from violence and discrimination based on SOGI will not be better achieved by saying that it is more important than FoRB but by emphasizing that both freedoms must be respected and both must accept their limitation. Religious communities may have a definite moral doctrine that condemns some sexual behaviours but they certainly cannot promote violence, discrimination, hostility or harassment against people who do not abide by those doctrines. And LGTB+ may not require states or international institutions to declare that their views on sexuality or gender identity are better than some religious views. In the long run, if duly managed, protecting both freedoms should contribute to create a culture of mutual respect instead of mutual distancing.

7. Are there any examples of State restrictions based on preventing violence and/or discrimination against LGTB+ persons that prohibit or limit practices undertaken in the name of the religion or spirituality, such as public accommodation non-discrimination protections? If so, have they been legally challenged on the basis of freedom of religion or belief? If yes, explain the outcome and rationale of the case(s).

A clear example, in our opinion, of a mistaken attempt to prevent violence or discrimination against LGTB+ persons, at the same time limiting FoRB, is the judgment of the Inter-American Court of Human Rights in the case *Sandra Pavez Pavez v. Chile*. It was an example of how to misunderstand the communities’ right to religious autonomy and, in parallel, to affirm the moral predominance of one view over the other. The crucial point for states and international institutions is not to take sides in moral disputes but to affirm every person’s right to have her/his freedom to understand life in a certain way and to conduct one’s life in accordance to it without undue interference by anyone. For more details on our views on this case, see our amicus curiae brief in:

<https://www.lirce.org/#h.f48i59s9nfw1>

8. What role (if any) has the concept of conscientious objection played in limiting the full enjoyment of the right to freedom from violence and discrimination on the basis of sexual orientation and gender identity?

We do not see conscientious objection (which is an expression of the fundamental right to freedom of conscience) as a limitation on the full enjoyment of freedom from violence and discrimination based on SOGI. We think that these are cases in which we find conflicting claims based on different fundamental freedoms. The solution is not to affirm LGTB+ rights by encroaching FoRB but to look for ways to make both claims viable. Most often, appropriate practical solutions are not difficult to find, because the tasks required from conscientious objectors in different areas are normally easy to replace by other people’s activity. The problems begin when one of the parties does not understand or respect the other party’s position or claims that its position has a moral superiority that should be supported by the state or international institutions. For instance, when a party insists that a

particular person — the conscientious objector — should be obliged to perform an activity rejected on moral or religious grounds without accepting the possibility to be substituted by anyone else.

9. Has the scope and application of conscientious objection been sufficiently defined, limited, and/or regulated so as to strike a fair balance between manifestation of one's freedom of religion or belief, and freedom from violence and discrimination based on SOGI? Where the doctrine is invoked to permit the withholding of goods or services to members of the LGBT+ community (such as in the context of sexual and reproductive healthcare, provision of marriage licences, access to consumer goods, etc.), do State laws provide alternative access to goods or services?

We can see a tendency, in certain environments, to underestimate the significance of freedom of conscience (and therefore FoRB) at the expense of LGBT+ claims, failing to understand that the conscience and beliefs of a person are part of her/his identity, just as well as gender identity. As a consequence, the scope and application of conscientious objections in this area are being gradually reduced as (implicitly) 'unimportant' in comparison with other rights; or as something that belongs to the realm of private life and does not need to be recognised in the public or social sphere. This results in an undue pressure on many people's exercise of freedom of conscience — they should refrain from holding certain moral views under the risk of losing their jobs or being harmed in their professional careers. In other words, they are actually asked to renounce, at least in public, an integral part of what they are, which is just as wrong as if LGBT+ persons would be required to renounce, at least in public, that part of what they are (sexual orientation or gender identity).