Brussels, 13 January 2023

Submission to the report on FoRB and SOGI

By Centre d’Action Laïque, Belgium

The Centre d’Action Laïque promotes secularism as a universal principle guaranteeing individual freedoms and peaceful coexistence of philosophical opinions and religious convictions. Secularism is based on the principle of impartiality of public authorities with regard to religion or belief, and guarantees to all the exercise of rights and freedoms irrespective of origin, convictions, beliefs or any other difference. This principle of democracy is essential to peaceful coexistence, and must be held as a central human value for the world. Secularism is inherent to all freedoms for oneself and others. It guarantees a common framework allowing everyone to exercise free thinking and to make choices in full autonomy.

Freedom of religion or belief (FoRB) is defined in international law as the right to freedom of thought, conscience and religion. It is mainly an individual right, which may be limited to protect the rights of others.

One of our main concerns is that freedom of religion or belief may be invoked to discriminate against LGBT+ people. Traditionalist or fundamentalist trends within religions tend to claim a right to discriminate against LGBT+ people on the grounds of their religious beliefs. This is clearly not acceptable. While freedom of religion or belief is a fundamental human right, its manifestation must not lead to discrimination or violate the human rights and freedoms of others. State can – and in our opinion should – make sure that such discrimination is prohibited.

Under international human rights law States are allowed to restrict freedom to manifest religion or belief in order to prevent discrimination against LGBT+ people. The requirement to provide goods and services to the public in a non-discriminatory way does not interfere with the right to manifest one’s religion, or can be justified by the goal of combating discrimination

In Eweida and Others v. UK, the European Court of Human Rights considered that employer’s policy which required the applicants to provide relevant services to same-sex couples and LGBT+ individuals, and did not allow them to refuse provision on grounds of religion or belief, pursued the legitimate aim to provide its services without discrimination. The ECtHR considered that the right not to be discriminated against on the ground of sexual orientation is protected under the Convention and that a difference in treatment on this ground requires particularly serious reasons by way of justification. It held that the employers’ anti-discrimination policy did not constitute a violation of the applicants’ right to freedom of thought, conscience and religion under Article 9, or of Article 14 (non-discrimination) in conjunction with Article 9.

Traditional, but also mainstream interpretation of religious dogmas often contain intolerance towards sexual orientation and gender identity minorities.

The internal right to freedom of thought, conscience and religion (forum internum) is absolute. Moreover, liberal, democratic States can not and should not interfere in the definition of religious dogmas or opinions. However, the State has a duty to guarantee the fundamental rights of every person.

We fully support the recommendations by SR on FoRB, Ahmed Shaheed, in his report on “Gender-based violence and discrimination in the name of religion or belief”. States shall

“Combat all forms of violence and coercion perpetrated against women, girls and LGBT+ persons justified with reference to religious practice or belief”, “Repeal discriminatory laws, including those enacted with reference to religious considerations, that criminalize adultery, that criminalize persons on the basis of their actual or perceived sexual orientation or gender identity or expression,…”

The Special Rapporteur also called on States to “publicly condemn expressions of hostility against, and the perpetuation of harmful gender stereotypes of, women, girls, LGBT+ persons and human rights defenders promoting gender equality, including by religious figures or when “justified” with reference to religious belief, and instead express active support for gender equality”.

We especially welcomed the recommendation to faith leaders to “publicly oppose expressions of hostility against, and negative stereotypes of, women, girls, LGBT+ persons and human rights defenders promoting gender equality, including by faith leaders, and express solidarity with and support for women, girls and LGBT+ persons”.