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**Call for Inputs**

**Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity**

***Topic: Freedom of religion or belief and freedom from violence and discrimination based on sexual orientation and gender identity***

**The submission is done together with Gender Dynamix (GDX) and** **African Trans Womens\* Alliance (ATWA) for the trans and gender-diverse community of Zambia.**

**Introduction**

**a. Joining organisations**

* **Gender Dynamix (GDX) -** [**https://www.genderdynamix.org.za/**](https://www.genderdynamix.org.za/)
* **African Trans Women’s\* Alliance (ATWA) – Kanyata Kakana –** **africantranswomenalliance2020@outlook.com**

**The report Supported by:**

* **Gender Dynamix (GDX)**

**b. Methodology**

* **The methodology used desktop this submission was through desktop publications for Zambian laws, previous publication and drawing from lived realities of LGBTI people in the country.**

**c. Contact details of the main coordinator of the report:**

**Dzoe Ahmad**

**Regional Coordinator**

**Gender Dynamix (GDX)**

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**Executive summary**

The Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (IE SOGI), Mr. Victor Madrigal-Borloz, will dedicate his report to the 53rd session of the United Nations Human Rights Council to an exploration of the right to freedom of religion or belief (FoRB) in relation to sexual orientation and gender identity (SOGI). Taking as points of departure international human rights law, and a rights-based approach centered on indivisibility and interdependence, the IE SOGI will explore the legal, political, and ethical dynamics between the human rights of persons with diverse sexual orientations and gender identities and the human right to freedom of religion or belief, as well as the narratives surrounding the implementation of these sets of rights.

The report will examine long-established and emerging discourses driving perceived contradictions between FoRB and freedom from violence and discrimination based on SOGI, with reference to legal concepts such as conscientious objection, reasonable accommodation for religious beliefs, and anti-discrimination law and public policies. In understanding the connections and the apparent points of tensions between the two rights systems,[[1]](#footnote-2) the IE SOGI will analyse the potential for the two to limit one another, as well as synergies between the two frameworks. The goal is to provide legal and political narratives to shift away from zero-sum analysis and to reconcile the theoretical bases for due enjoyment of human rights by all persons. The report will put forward recommendations to States and other relevant stakeholders to fully comply with their obligations under international human rights law to protect and empower LGBT+ persons to pursue happiness, exercise and enjoy all their human rights, and choose how to contribute to society on an equal footing with everyone, including through effective participation in religious, cultural, social, and public life.

**Background**

With the legal recognition of, and pledges to protect, international human rights, State and non-State actors have recognized rights of personal religious freedom as well as institutional religious autonomy. Religious and spiritual narratives have also historically been used to promote, enable, and condone institutional and personal violence and discrimination against individuals based on sexual orientation or gender identity (real or presumed); repress sexual and gender diversity; and promote cisgendered and heteronormative norms of sexual orientation and gender identity. This has resulted in a variety of discriminatory normative constructions reinforced over time. As pointed out by the mandate of the United Nations Special Rapporteur on Freedom Religion or Belief (SR FoRB), the exercise of rights in this manner is antithetical to the very basis of the human rights system.[[2]](#footnote-3) These practices cannot be justified under the rubric of FoRB, or indeed any other human right, to circumvent and defeat the rights of marginalized populations.[[3]](#footnote-4)

Furthermore, the notion that religion – and thereby freedom of religion or belief, including the right to manifest such beliefs – is fundamentally antithetical to LGBT+ and gender-diverse persons and their human rights rests on essentialist assumptions about the unified substance of religious traditions across space and time. Exploratory evidence available to the mandate suggests that many anti-LGBT+ attitudes apparent in some strands of religious belief systems today are of relatively recent origin. Even within these religious traditions, many denominations today have embraced (or re-embraced) LGBT+ identities and consider freedom from violence and discrimination based on SOGI as an essential tenant of their faith.

Thus, a potential first step towards legally strengthening the human rights of LGBT+ individuals at the intersection with religious freedom is to unpack the notion of an inherent contradiction between FoRB, and freedom from violence and discrimination based on SOGI. The IE SOGI’s thematic report aims to introduce voices from LGBT-inclusive belief systems, indigenous communities, and LGBT+ communities of faith as key stakeholders. The IE SOGI also intends to open a space within human rights discourse and practice to better recognize and protect LGBT+ persons’ access to faith and spirituality, as persons free and equal in dignity and rights, and their access to spirituality in accordance with their own right to freedom of religion or belief.

**Call for Inputs**

The Independent Expert invites all interested States, civil society organizations, faith-based institutions, faith leaders, academics, international organizations, national human rights institutions, activists, corporations, and others, to provide written input to the following questions for his thematic report.

Respondents are requested to limit their comments to a maximum of 2,500 words. Additional supporting materials, such as reports, academic studies, and other types of background materials may be annexed to the submission.

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 the Zambian context, the actual points of tension around sexual freedom and free-form gender expression are politics and religion. As a result of the political climate & Zambia being deemed a Christian nation a common culture of human rights violations and violence towards the LGBTI community is common. Transgender women who in most cases are in transition or haven’t fully transitioned bear the brunt of these human rights violations. In a social context, trans women experience anecdotally the most significant amount of violence. In terms of mutual exclusivity, most of these occurrences are not mutually exclusive as one aspect of the various contexts of violence and human rights violations have something to do with or is related to the other. One of the most common human rights violations faced by transgender women is unlawful detention based on the lack of understanding of our gender expression. Amongst the entire LGBTI community in Zambia, Trans women are unlawfully detained more than any other LGBTI CM in the spectrum.

1. 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?

Yes. A link between these different aspects can be identified based on the Zambian perception of what’s morally correct. In the Zambian context a man can only be attracted to a woman and vice versa and there’s no other perceptive understanding of gender beyond a cis-het normative. This 2 A/HRC/43/48, paras. 43-52. 3 A/HRC/43/48; par. 39. 3 automatically translates that a lot of human rights violations can mutually reinforced at the same time by these various bodies of society.

1. **Are there examples where gender and sexual diversity has been used in religious, traditional, or indigenous narratives or values in a manner which promotes the acceptance of LGBT+ individuals, or protects LGBT+ individuals from violence and discrimination? Has this informed any legal interventions or public policies?**

School of Philosophy, Religion, and History of Science, University of Leeds published the study demonstrates that participants are not just victims subjected to homophobic religious and political discourses but have agency: resisting discourses of demonization, they humanize themselves by making claims towards the universal category of love—both their own inclination to loving relationships and their share in God’s love. Hence, they claim space for themselves as full citizens of Zambia as a Christian nation. This article particularly highlights how some aspects of Pentecostalism appear to contribute to “queer empowerment” and argues that the religiosity of African LGBTIs critically interrogates Euro-American secular models of LGBTI liberation[[4]](#endnote-2). Beyond academic advocacy publications[[5]](#endnote-3), there hasn’t been litigation done in promoting the rights of the LGBTI.

1. **What are the key trends or significant instances of discriminatory or abusive practices by individual providers of goods or services in the public sphere against LGBT+ and gender-diverse persons that rely on religious narratives?**

When it comes to transgender women the most common thing is detentions, arrests & mob violence. Most trans women are clickable as queer and because of the perception of what a man should be both socially and biologically, trans women bear the brunt of a significant amount of discrimination and stigma.

1. **Has the State adopted, in public policy, legislation or jurisprudence, norms purportedly based on protecting freedom of religion or belief that promote, enable and/or condone violence and discrimination against individuals based on sexual orientation or gender identity? If so, please give examples, with commentary as needed to explain context, scope, and application**.

Zambia is still stuck with an archaic law that criminalizes homosexuality and what is broadly termed as “related unnatural acts.” The law has been in existence since 1911 when the country was still under colonial rule and persons accused of homosexuality can serve a life sentence in prison.[[6]](#endnote-4) Further that the state has not signed some treaties that emphasize upholding Human Rights for citizens broadly mentioning the LGBTI community. There is however a general outcry in the current government that speaks to the human rights protection of citizens as a whole

1. **Has there been any legal challenge to these policies/provisions under any domestic, regional, or international human rights provisions? If so, state the outcome and rationale of the case. If not, provide your opinions as to why such a challenge has not yet been brought**.

N/A

1. **Are there any examples of State restrictions based on preventing violence and/or discrimination against LGBT+ 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).**

N/A

1. 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?

In most cases, armed forces believe that it is right to discriminate and in some cases be violent & aggressive towards transgender. This comes from the perception of believing that they are the law, and we are against it for the most part.

1. Has the scope and application of conscientious objection been sufficiently defined, limited, and/or regulated 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?

No it has not.

1. Where State legislation or policy requires the reasonable accommodation of religious beliefs, practices, and/or institutions, are there instances where such laws or policies limit freedom from violence and discrimination against LGBT+ and gender-diverse persons? These may include but are not limited to exemptions from non-discrimination legislation, and/or accommodations within the workplace, educational institutions, healthcare-settings, the justice system, etc. Are there reports of violence, spiritual abuse, and/or other forms of discrimination against LGBT+ and gender-diverse persons because of these practices?
2. Good Practices:
	1. Provide any examples of good practice – at the international, national or local level – where State and non-State actors (including faith leaders, groups and organisations, international organisations, civil society organisations, and the UN human rights system) have taken effective measures to protect and promote freedom of religion or belief of LGBT+ and gender-diverse persons, and made efforts to prevent, mitigate and respond to any violence and/or discrimination justified in the name of religion.
	2. Provide any examples of measures by State or non-State actors to ensure effective participation of people with diverse gender identities and sexual orientations in religious, cultural, social, and public life. Please provide relevant examples where LGBT+ people have asserted their individual or collective rights to access (or establish) religious or spiritual frameworks and institutions.

Responses to the questions above can be submitted in **English, French or Spanish**, and **in Word format**.

**If you wish your submissions to be kept confidential, you are kindly required to make an explicit request in your submission. Otherwise, information may be published online,[[7]](#footnote-5) and may be referenced in the report.**

The Independent Expert would be particularly grateful to receive the information requested at your earliest convenience, and preferably by **15 January 2023**. Kindly note that, given the planning process for the drafting of the report, the Independent Expert may not be able to take inputs received after the deadline into consideration. Responses may be addressed to the Independent Expert at the Office of the UN High Commissioner for Human Rights and should be submitted by email (hrc-ie-sogi@un.org), with the heading “Submission to the report on FoRB and SOGI.”

For any further question or clarification, please do not hesitate to contact the Independent Expert through the Office of the United Nations High Commissioner for Human Rights at hrc-ie-sogi@un.org.

1. Freedom from violence and discrimination based on SOGI is used in this document as a set of conditions derived from various cross-cutting human rights values and obligations, including freedom from torture and other cruel, inhuman, or degrading treatment, right to privacy, right to freedom of expression, right to health, and human dignity. [↑](#footnote-ref-2)
2. A/HRC/43/48, paras. 43-52. [↑](#footnote-ref-3)
3. A/HRC/43/48; par. 39. [↑](#footnote-ref-4)
4. <https://eprints.whiterose.ac.uk/85530/3/vanklinken1.pdf> [↑](#endnote-ref-2)
5. <https://www.researchgate.net/publication/283187353_Queer_Love_in_a_Christian_Nation_Zambian_Gay_Men_Negotiating_Sexual_and_Religious_Identities> [↑](#endnote-ref-3)
6. <https://www.dandc.eu/en/article/fashion-event-steers-uproar-zambia-religious-moralists-criticise-promotion-homosexuality-and> [↑](#endnote-ref-4)
7. Submissions may be published on the Web page of the respective thematic report, at: <https://www.ohchr.org/en/special-procedures/ie-sexual-orientation-and-gender-identity/annual-thematic-reports>. [↑](#footnote-ref-5)