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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***

**This submission is done together with Gender Dynamix (GDX) and God Adores You (GAY) Org, for the LGBTI community in Zimbabwe**

**Introduction**

**a. Joining organisations**

* **Gender Dynamix (GDX) -** [**https://www.genderdynamix.org.za/**](https://www.genderdynamix.org.za/)
* **God Adores You (GAY org) Zimbabwe – Pastor Pugen – godadoresyouorg@gmail.com /** **thanzpugs@gmail.com**

**The report Supported by:**

* **Gender Dynamix (GDX)**

**b. Methodology**

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

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

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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 cantered on indivisibility and interdependence of human rights, 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 the 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 recognised 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?**

The main arguments are advanced by scholars operating at the interface of religion and development. It then seeks to expand the current literature on religion and development to include more ‘uncomfortable’ subject matter, such as homosexuality and discrimination. Using the 1995 Zimbabwe Book Fair as a case study, the author argues that international religious NGOs engaged in the evangelical activity must show greater attention to the contexts in which they operate. They must take an explicit stand against homophobia and discrimination. Otherwise, their development interventions risk strengthening and legitimating cultures of exclusion in countries like Zimbabwe. Religion on its own is a way of life. People treasure and respect religion as it is viewed as absolute. Points of tension in terms of Christianity as a way of life come from the Holy book, particularly what are called ‘CLOBBER SCRIPTURES’. The scriptures like the Sodom and Gomorrah story clobber the LGBTIQA+ to worship freely as they are viewed as the worst sinners of all time. [[4]](#endnote-2)

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**?

Politicians call them the "festering finger," endangering the body of the nation; churchmen say God wants them dead; the laws criminalize same-sex intimacy. The dominant political voices in Zimbabwe have declared that they will not tolerate homosexuality. Gays and lesbians feel persecuted, and their rights are undermined. The controversy that was ignited in 1997 when the Zimbabwean government forced the closure of a fair booth by Gays and Lesbians of Zimbabwe at the Zimbabwe International Book Fair continues to echo. At issue are fundamental questions of the scope of human rights protection in Zimbabwe and other African countries (BBC News, 1998). Such issues have sparked endless debates on homosexuality in religion, politics, and other forums[[5]](#endnote-3). Having dialogues with religious leaders will help reinforce freedom of religion and freedom from violence as these institutions are also part of policymakers. The legislators and the society as a whole listen better to religious leaders and they believe the words to be gospel. Through Advocacy strategic litigation, Civil Society Organizations are committed to driving the law reform however this can be a joint effort from Policymakers.

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

Sexual diversity is still taboo in most religions.

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?**

The health sector is one of the various public or private sector institutions where several professional and administrative staff behave in an insulting or degrading manner towards trans\* individuals. The systems themselves with documents that cater to “the binary” (only allowing for male or female as a response to the question of a person’s sex) are not trans\* friendly. The individuals who manage the systems and meet the patients often lack knowledge, Understanding, and empathy in their meeting with the trans\* population. There are cases where they even call colleagues over to “come and see this individual” – treating the patient like a specimen in a jar or an animal in the zoo to be looked at, studied, and made fun of. The behavior is at odds with national health guidelines, which state that all patients have the right to be treated with dignity. It is at odds with the Nurse’s Charter and with the Hippocratic Oath taken by doctors. Health service providers who are inclined especially to Christianity believe that HIV is a curse from God and one who contracts it will be cursed and God will be teaching them a lesson because of promiscuous behaviours. Some health workers have even come to a point of teaching repentance to LGBTIQA+ persons who are HIV+.

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.**

None.

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 based on freedom of religion or belief? If yes, explain the outcome and rationale of the case(s).**

None

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?**

At this point, the laws are already discriminatory i.e. the illegality of same-sex marriages and the concept of conscientious objection is to some extent protected by the discriminatory laws.

1. **Has the scope and application of conscientious objection been sufficiently defined, limited, and/or regulated to strike a fair balance between the 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 licenses, access to consumer goods, etc.), do State laws provide alternative access to goods or services?**

See above. The laws are very much discriminatory and same-sex marriages are prohibited. Occasionally, access to some goods/ services has been restricted based on SOGI. When it comes to reproductive healthcare, for example, the law is clear that everyone is entitled to healthcare. Although there has been discrimination in the provision of healthcare services, it has not been in the context of conscientious objection. The government and council health institutions still are not sensitized therefore there is still stigma and discrimination. Whereas private institutions are costly and can’t be accessed by the public.

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?**

There is no policy or legal framework that requires reasonable accommodationCriminalizationon and other exclusionary laws create an impression that there is no reasonable accommodation. There have been reports of violence and other discriminatory practices because of the exclusion.

1. **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 organizations, international organizations, civil society organizations, 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**.

There have been various pieces of training for religious leaders on SOGIESC, some leaders have invited the LGBTI community members to come to their institutions and serve. Organizations like God Adores You in Zimbabwe have taken the stance to host bible studies and church services for the LGBTI community.

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

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://www.tandfonline.com/doi/full/10.1080/09614524.2011.582086?scroll=top&needAccess=true&role=tab>

<https://www.tandfonline.com/doi/ref/10.1080/09614524.2011.582086?scroll=top&role=tab> [↑](#endnote-ref-2)
5. <https://pubmed.ncbi.nlm.nih.gov/20455134/> [↑](#endnote-ref-3)