401 Richmond Street West, Suite 360 

Toronto, ON M5V 3A8

Tel: 416-583-1557

info@rainbowrailroad.org

www.rainbowrailroad.org

**January 15, 2023**

**To: the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity**

**Re: Submission for input to the thematic report on freedom of religion or belief (FoRB) and sexual orientation and gender identity**

**Inputs on Questions**

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?**

**Sexual orientation, gender identity or gender expression change efforts (SOGIECE)**

SOGIECE has been used to refer to efforts to change a person’s sexual orientation, gender identity or gender expression.[[1]](#footnote-1) As discussed below, conversion “therapy” is being inflicted on LGBTQI+ people throughout the world, with a growing number of countries banning the practice, but still a minority, amid a host of other UN member states whose decision makers are resistant to limiting the actions and conduct of religious groups which carry them out. Regarding religious pressures to change dress and appearance to conform to traditional gender roles, LGBTQI+ people are particularly vulnerable to being caught in ethno-religious and nationalist discourses which embolden families and community members to target them to enforce outward conformity.

**Conversion “therapy”**

So-called conversion “therapy” is a practice which some consider related to the right to manifest one’s freedom of religion, such as freedom of speech for religious leaders who oppose LGBTQI+ rights, freedom to exercise religious beliefs for religious counselors who mistakenly believe that this practice is beneficial, and the rights of parents to determine medical treatment for their children. However, conversion “therapy” also violates the right of LGBTQI+ people to be free from violence, as it has been determined by medical and human rights experts to be a form of cruel, inhuman, or degrading treatment and torture, which lacks medical or scientific validity.[[2]](#footnote-2)

Rainbow Railroad has received 172 requests for help from LGBTQI+ people who have suffered conversion therapy, with requests coming from nationals of Russia (20 people), Lebanon (13 people), Egypt (12 people), Jordan (9 people), Iran (9 people), Uganda (8 people), Indonesia (7 people), Turkey (6 people), Syria (5 people) and Saudi Arabia (5 people). Out of these requests, 73 came from Cis-Male individuals, 25 were Transgender Female, 16 were Cis-Female, 11 were Transgender Male, 13 were Gender Non-Conforming, 5 were Genderfluid, 3 were Intersex, and 2 were Agender. In terms of their sexual orientation, 80 were Gay, 21 were Lesbian, 18 were Bisexual, 18 were Queer, 4 were Heterosexual, 4 were Pansexual and 2 were Asexual.

Further details regarding state policies related to conversion therapy can be found below in our answer to question #3.

**Religious Gender Expression Change Efforts through Gendered Dress and Appearance**

The relationship between the right to religious expression through gendered dress and appearance, and rights to privacy, gender equality, minority rights, freedom of speech and limits of state regulation has been much discussed in the human rights discourse.[[3]](#footnote-3) Bans prohibiting women from wearing religious face coverings have been upheld by the European Court of Human Rights on the basis that these bans are permissible restrictions on the exercise of rights due to public order, preventing extremism and fostering gender equality,[[4]](#footnote-4) though the UN Human Rights Committee has disagreed that these restrictions are reasonable.[[5]](#footnote-5)

Our case studies below illustrate that these questions represent a point of tension between allegedly protecting religious values of modesty and religious conceptions of appropriate gender roles and protecting the right of LGBTQI+ people to live freely in their gender identity and expression.

*Kuwait*

In 2007, the Kuwaiti National Assembly adopted an amendment to Article 198 of the penal code which criminalized “imitating the opposite sex” under penalty of imprisonment, a change which was framed in religious terms as those whose dress or appearance is gender-nonconforming are seen as “sinners who reject God’s creation”.[[6]](#footnote-6)

In 2020, a 22 year old lesbian woman from Kuwait reached out to Rainbow Railroad after experiencing physical violence due to her appearance and her atheist beliefs:

*“I have always been sure about my sexuality and like many others I live in a constant fear of my family finding out about or even my beliefs since I’m not Muslim. If my family knew, I am positive I would be dead and beaten up. I was physically abused multiple times over wearing hijab, which I can’t take off otherwise I would be killed, I was beaten up for cutting my hair short.”*

The case points to an important insight. Beyond the basic challenges that gendered clothing mandates (or restrictions) pose to basic freedom of expression for all persons, in cases where an individual’s gender expression differs from the social expectations assigned to their biological sex–including for non-binary, transgender, and other persons with diverse gender identity and expression–such laws are likely to be experienced as fundamental violations of several key human rights. Depending on the case, these include key rights elaborated in the Yogyakarta Principles, such as: the right to participate in public life (principle 25), the right to bodily and mental integrity (principle 32), the right to freedom from criminalization and sanction on the basis of SOGIESC (principle 33), and the right to practice, protect, preserve and revive cultural diversity (principle 38).

*Kenya*

Kenya is a culturally and religiously diverse country with contentious discussions about gendered clothing and appearance related to religion. In 2019, Kenya’s Supreme Court overturned a 2016 appeals court ruling which allowed a Christian school to ban students from wearing hijab on the justification that it was preventing discord.[[7]](#footnote-7) The Kenyan high court has upheld laws criminalizing same sex intimacy, stating that the colonial-era laws did not violate the petitioner’s rights.[[8]](#footnote-8) Since LGBTQI+ people are not protected by the legal framework, they are vulnerable to being targeted for not conforming to religious gendered roles, including appearance.

In 2022, a 19 year old Kenyan lesbian woman reported to Rainbow Railroad that part of her family and community persecution included wearing religious clothing in order to “correct” her sexual orientation:

*My dad found out I am an ex-Muslim lesbian, he beat me up the whole night. He was always violent, but this time he was worse, while my mom was threatening to kill me. She cut my hand with a knife but she was pointing the knife at my throat. My hand was cut because I protected my throat with my hand. Now I have to go to an Islamic boarding school and it's not your typical boarding school. It's a school for those who have 'lost their way', they beat you up, they make you memorize the Quran, they make you clean in the scorching sun while wearing huge burqas, they make you fast the whole week except Fridays and the weekends.*

This case points to a broader phenomenon. In religious contexts where diverse SOGIESC expression is unprotected or proscribed in law, religious conversion can trigger hybrid forms of religious/gendered persecution against individuals who disavow the majority religion or the traditional religious affiliation of their family. In these contexts, perpetrators might confound ‘unacceptable’ religious conversion with perceived gender or sexual ‘deviance,’ resulting in a twofold logic of persecution that aims to ‘correct’ the religious expression of converts as a means to bring about gender conformity, or vice versa.

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?**

Rainbow Railroad has positive examples of mutually reinforcing rights to freedom of religion and freedom from violence and discrimination against LGBTQI+ people, notably through partnerships with inclusive faith communities who are committed to supporting Rainbow Railroad’s mission of getting LGBTQI+ people at risk to safety. For example, the Metropolitan Community Church of Toronto (MCCT), which is a LGBTQI+ church and human rights church, is a regional sponsor agreement holder for private sponsorship of refugees to Canada, which partners with Rainbow Railroad as a constituent group. MCCT and Rainbow Railroad are part of the Rainbow Refugee Assistance Partnership, which resettled more than 80 LGBTQI+ refugees between 2011 and 2019. Other inclusive churches, such as The Unitarians, Christian Mission Alliance, and The United Church of Canada, also serve as national faith sponsorship agreement holders and resettle LGBTQI+ refugees to Canada.

When possible, Rainbow Railroad also collaborates with inclusive faith communities in other countries. In a country in the Caribbean that criminalizes same sex intimacy, there is a pastor who runs a shelter with the support of Rainbow Railroad and a U.S.-based church, keeping people safe while they work with Rainbow Railroad caseworkers to gather documents and prepare for relocation to a safer country.

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. 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.**

Our analysis below focused on country examples related to conversion therapy as a practice where state policy, motivated by religion, enables and condones violence against LGBTQI+ people. These include both countries in which Rainbow Railroad has an operational presence through partner organizations and countries from which Rainbow Railroad receives requests for help.

*Indonesia*

In 2020, Indonesian lawmakers tabled and then later halted the so-called "Family Resilience" bill. LGBTQI+ persons would have been forced to undergo "rehabilitation" (an umbrella term likely to include exorcisms and other conversion therapies) to purge what bill advocates say is a sexual deviancy. That same year, a 23 year old HIV+ man living in Jakarta told Rainbow Railroad that he was taken to a Christian “cure” camp wherein he suffered emotional and physical abuse including forced sex and exorcisms,

*“My name is [redacted], I am 23 years old and I am from Jakarta, Indonesia. I am a member of LGBTQ+ community in Indonesia and also HIV positive (...) I came from a Christian Pentecostal family in Indonesia and my family is one of the active members and a very religious one. At one point they took me to LGBT Christian camp in Indonesia which is very similar to LGBT cure camp. It was a very horrible moment for me because they pushed me to make love with women, pray 24 hours and they pray for me as if they are exorcists who try to push Satan away from my body (...) I was also being abused every night by my parents, since they pray to me every night just like I have a demon inside me.”*

*Nigeria*

In Nigerian society, religious leaders, both Muslim and Christian, play a role in perpetuating stigmatization of same-sex relations openly condemning ‘homosexuality’.[[9]](#footnote-9) Religious correctional facilities subject LGBTQI+ people to exorcisms and forms of conversion therapy.[[10]](#footnote-10) The Nigerian Penal Code discriminates against ‘cross-dressing’ men (or women) and transgender people.[[11]](#footnote-11) The Nigerian Constitution prohibits discrimination on the grounds of being “a member of a particular community, ethnic group, place of origin, sex, religion or political opinion,” but the meaning of “sex” has not been interpreted to include trans or other genders.

In 2020, a 29 year old Nigerian woman residing in Lagos reached out to Rainbow Railroad with concern,

*“I'm a femme and a lesbian. I'm in a relationship of 2 years with a stud (...) Last year in April, 2019, my girlfriend came out to her mom about her sexuality. The mom then took her to a white garment church, where some life [threatening] things were done to her, all in the name of chasing away the spirit of lesbianism (...) We're not living peacefully, as we're scared of our lives.”*

Noteworthy here is that specifically religious forms of harm might not only affect those who are deeply embedded in a religious community or tradition. Even for individuals who might otherwise live outside of quotidian religious scrutiny–for instance, because their families are otherwise non-practising, irreligious, or minimally involved in religious institutions–real or imputed diverse SOGIESC can trigger a uniquely religious form of interference by families and community leaders. For many, religion is activated as a perceived ‘cure’--and as a source of harm–specifically when their gender or sexuality becomes problematized by their community or family. Even in contexts with some degree of non-discrimination protections for people with diverse SOGIESC, the broad political influence of religious authorities can contribute to invisibilizing these community-level harms by local religious leaders and institutions.

*Ethiopia*

Ethiopia criminalizes same-sex sexual activity between men and between women under the Criminal Code 2004.[[12]](#footnote-12) One of the modalities of violence and ostracism is through religious-based conversion therapy. In 2019, Ethiopian church leaders met in Addis Ababa to form an association to promote religious-based conversion therapy within the country.[[13]](#footnote-13)

In 2021 an 18 year old Ethiopian man reached out to Rainbow Railroad expressing,

*“I have been beaten up and some people are saying we will kill [you] (...) Some people are saying they are gonna tie me up in chains and take me to the holy water because they think I'm gay because of the devil in me (....) I don’t want to die”.*

Even when conversion “therapy” may be carried out by non-state actors, the state has the duty to ensure that the rights of all people in its jurisdiction are protected, respected and fulfilled. When LGBTQI+ people do not have equal rights under the law, non-state actors, including family and community members, are emboldened to perpetrate harm in an atmosphere of impunity. These homophobic and transphobic attitudes are often intrinsically linked with ethno-religious and nationalist narratives which incite violence and discrimination towards LGBTQI+ people. We reiterate the 2020 call of the Independent Expert for a global ban on conversion “therapy”, including by clearly defining the prohibited practices, prohibiting such interventions in all settings and creating reparations mechanisms for victims.[[14]](#footnote-14)

**ANNEX: Rainbow Railroad Data on Religious Persecution**

Rainbow Railroad has received 257 requests for help, via webform or partner organization referral, related to religious persecution, comprising a total of 355 affected individuals including partners and dependents. The greatest number of requests related to religious persecution were received in 2020, when 207 requests for help were submitted, mainly from LGBTQI+ people from Iran, Pakistan and Lebanon. The countries whose nationals submitted the most requests from all years related to religious persecution were: Afghanistan (33 people), Iran (21 people), Syria (20 people), Pakistan (19 people), Iraq (18 people), Lebanon (16 people), Morocco (15 people), Egypt (14 people), Palestine (11 people) and Jordan (11 people).

LGBTQI+ people who experience religious persecution are at a high risk of suffering from different forms of violence and discrimination, and experiencing social, economic and health consequences as a result of these violations. 75% (193 cases) of Rainbow Railroad cases reporting religious persecution also experienced social rejection by their families and 47% (122 cases) of cases of religious persecution also reported violence committed against them by family members. 41% (106 cases) of cases of religious persecution also experienced physical violence and attacks from community members, while 40% (103 cases) of cases reporting religious persecution also reported that they were in hiding due to a credible threat to their safety. Other serious threats connected with religious persecution included: sexual violence (18%, 46 cases), public outing and humiliation (15%, 38 cases), marriage under duress (14%, 35 cases), ethnic persecution (11%, 27 cases), conversion therapy (10%, 26 cases), police brutality (8%, 20 cases) and stoning or whipping (6%, 16 cases).

Out of Rainbow Railroad’s cases of religious persecution, 55% (90 cases) reported unmet basic needs, 50% (82 cases) reported a risk of suicide, 18% (30 cases) experienced being unhoused and 18% (29 cases) faced a lack of income due to COVID-19.

While FoRB is often perceived as a liberty that requires balancing with FoE on the basis of SOGIESC, Rainbow Railroad’s case data suggests a more nuanced picture. For many at-risk LGBTQI+ persons, particularly religious minorities, persecution for real or imputed diverse SOGIESC is often exacerbated in contexts in which communities are already at heightened risk of discrimination or other forms of harm for their minority religious expression, including conversion to another religion, disavowal of the majority religion, or atheism. For example, a cisgender bisexual man living in Syria told Rainbow Railroad he faced threats and suffered beatings from community members due to his atheist beliefs, for being a member of the Druze ethno-religious community and for being bisexual. A gay man in Tajikistan suffered homophobic discrimination and rejection by his family throughout his life due to his sexual orientation; when he converted from Islam to Christianity, he also began to suffer additional persecution on the basis of religion, including a mob throwing stones at him.

Moreover, our analysis suggests that even where non-state actors are primarily responsible for perpetrating religious forms of harm on persons with diverse SOGIESC, the background permissiveness and silence of the state–whether through the absence of effective protection, through laws that invisibilize religious harm against LGBTQI+ persons, or through the wide influence of religious leaders on political discourse–facilitates the religious persecution of persons with diverse SOGIESC.

1. ILGA World, CURBING DECEPTION: A world survey on legal regulation of so-called “conversion therapies”, 2020, https://ilga.org/Conversion-therapy-global-research-ILGA-World. [↑](#footnote-ref-1)
2. Independent Forensic Expert Group, Statement on Conversion Therapy, https://www.ohchr.org/sites/default/files/Documents/Issues/SexualOrientation/IESOGI/CSOsAJ/IFEG\_Statement\_on\_C.T.\_for\_publication.pdf. [↑](#footnote-ref-2)
3. Leane, G. “Rights of Ethnic Minorities in Liberal Democracies: Has France Gone Too Far in Banning Muslim Women from Wearing the Burka?” Human Rights Quarterly 33 (2011) 1032–1061. [↑](#footnote-ref-3)
4. Sahin v. Turkey, App. No. 44774/98 (Eur. Ct. H.R. June, 29 2004; SAS v. France, 2014-III Eur. Ct. H.R. 341; Dakir v. Belgium, App. No. 4619/12 (Eur. Ct. H.R. July 11, 2017); Belcacemi and Oussar v. Belgium, App. No. 37798/13 (Eur. Ct. H.R. July 11, 2017). [↑](#footnote-ref-4)
5. "CCPR/C/123/D/2747/2016; Human Rights Committee Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2747/2016,. 7 December 2018. [↑](#footnote-ref-5)
6. “They Hunt Us Down for Fun” Discrimination and Police Violence Against Transgender Women in Kuwait, Human Rights Watch, January 2012. [↑](#footnote-ref-6)
7. https://www.aljazeera.com/news/2019/1/24/kenya-court-overturns-ruling-on-wearing-hijab-in-schools [↑](#footnote-ref-7)
8. https://www.npr.org/2019/05/24/726541735/kenyas-judges-uphold-laws-that-criminalize-gay-sex [↑](#footnote-ref-8)
9. Country policy and information note: sexual orientation and gender identity or expression, Nigeria, February 2022, https://www.gov.uk/government/publications/nigeria-country-policy-and-information-notes/country-policy-and-information-note-sexual-orientation-and-gender-identity-or-expression-nigeria-february-2022-accessible-version [↑](#footnote-ref-9)
10. Gender conversion 'therapy' made me suicidal. I fear for other young Nigerians, The Guardian, Dec 2020, https://www.theguardian.com/global-development/2020/dec/28/gender-conversion-therapy-made-me-suicidal-i-fear-for-other-young-nigerians; The Nature, Extent and Impact of Conversion Practices in Nigeria, The Initiative for Equal Rights, Outright International, https://outrightinternational.org/sites/default/files/2022-09/The\_Nature\_Extent\_and\_Impacts\_of\_Conversion\_Practices\_in\_Nigeria\_Web.pdf [↑](#footnote-ref-10)
11. See section 405(3)(e) of the Nigerian Penal Code. ‘The Penal Code (Northern States) Federal Provisions Act (“Penal Code”) was first enacted in 1960. It is now contained in Chapter P3 of the Laws of the Federation of Nigeria 2004. The Penal Code originally applied to Nigeria’s northern region…Today, it applies as both federal and state law in the states that succeeded to the Northern Region [↑](#footnote-ref-11)
12. Criminal Code 2004, Article 629 Homosexual and other Indecent Acts

“Article 629. Homosexual and other Indecent Acts. Whoever performs with another person of the same sex a homosexual act, or any other indecent act, is punishable with simple imprisonment.” [↑](#footnote-ref-12)
13. https://gayexpress.co.nz/2019/09/religious-leaders-plan-to-ramp-up-conversion-therapy-in-ethiopia/ [↑](#footnote-ref-13)
14. https://www.ohchr.org/en/calls-for-input/report-conversion-therapy [↑](#footnote-ref-14)