**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***

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**Deadline: 15 January 2023**

**Introduction**

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 organisations, faith-based institutions, faith leaders, academics, international organisations, 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?

*LGBT+ Sikh people face challenges both within their Sikh faith community and within the broader mainstream community, including the LGBT+ communities. Followers of the Sikh faith have a very visible faith identity, which includes the wearing of a dastar (known as a turban in English), wearing of bana (traditional Sikh outfit), wearing of kirpans (ceremonial daggar) and keeping long uncut hair. This visible faith identity can attract discrimination and violence from mainstream communities, particularly within the LGBT+ community. Within the Sikh faith community, although there is no religious doctrine/theology which prohibits inclusion of LGBT+ people into the faith [the Sikh faith’s core tenant is around the Oneness of Almighty and we are all part of this Oneness], centuries of societal discrimination against LGBT+ people has resulted in structural exclusion of LGBT+ people and an unwillingness to adapt to more inclusive approaches, for example by not allowing same sex religious weddings, not widening matrimonial and dating services to include same sex partners, etc. In fact, remaining silent on LGBT+ human rights issues is a direct conflict with the core Sikh beliefs. Same sex couples even in more liberal and forward-thinking Sikh Gurdwaras are required to stay silent about their same sex partnerships to be accepted as part of the congregation, otherwise they fear being ostracised for their sexual orientation.*

*Due to the ignoring of LGBT+ issues and people within the Sikh community, it provides an opportunity for abusers to take advantage of vulnerable LGBT+ people. There are any instances where victims have recounted experiencing sexual and non-sexual violence, being subjected to conversion practices, being forcible married into heterosexual marriages, subjected to homelessness, etc. These victims have pointed out that there was no safe place or person they could approach who would be able to help/support in their situation.*

*The examples above provide insight into why LGBT+ Sikh people are forced to choose between being themselves or being part of their faith community.*

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?

*Religious institutions should take responsibility for educating their congregations on LGBT+ inclusion but also by making visible efforts to welcome LGBT+ people who have traditionally been marginalised and excluded within such communities. An outward focus on re-building relationships with the wider LGBT+ community is important so the perception of faith in the LGBT+ community is less oppressive and therefore people of a visible faith identity, therefore may well be better accepted and less discriminated against within these spaces. By being more welcoming within the faith community, is a tangible way of demonstrating inclusive leadership with the faith institutions and provides a visible signal to the wider congregation that the institution is one which is welcome and inclusive of all.*

*All faith institutions should be required to implement safeguarding principles within their constitutions or operating instructions, which have a clear focus on how LGBT+ people will be protected within the institution(s) and what action will be taken against those who transgress these principles. This should be in line with how other vulnerable people, such as those with disabilities or young people will be protected. These procedures should be regularly reviewed and updated as appropriate.*

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?

*There are some faith organisations at the grassroots level who do welcome LGBT+ but these are predominantly in the Christian faith in the UK. This same inclusion is less visible in other religious communities/congregations and certainly is missing from the leadership within the Christian Faiths.*

*Some LGBT+ people of faith and their allies have come together to create interfaith organisations which provide one another with allyship and support. An example of this is the Global Interfaith Commission for LGBT+ Lives. There is a lot of learning and peer support, as well as providing a space to empower people of faith and faith leaders to take inclusive approaches back into their faith communities and congregations. However, empowering this is for individuals within faith communities who are keen to embrace and proactively include LGBT+ members of their faith community, often this enthusiasm can be damaged by lack of support from the structures within established faith institutions.*

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?

*In the UK, there is legislation (Relationship and Sex Education 2020) which requires all educational establishments (religious, non-religious, private and state school) to teach all students about the emotional, social and physical aspects of growing up, relationships, sex, human sexuality and sexual health. This is a very positive step because it legally requires all children to get the same basic education in relation to these issues. The lessons are taught right the way through the education from the age of 4 – age 18 and are all age appropriate. As a result of such education, there is a corresponding decrease in prejudice, discrimination and hatred being professed.*

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.

*The Equality Act 2000 provides protection for LGBT+ alongside heterosexual people and provides protections for all people regardless of characteristic so all people are treated equally by the State, as well as all people in the nation. The protections extend to race, sex, sexual orientation, disability, religion or belief, gender reassignment, pregnancy, marriage/civil partnership, and age. The protections also extend to those who are associated with one of the characteristics above, for example, if a parent with a gay child is discriminated against because of their child being gay, the parent(s) is still protected.*

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.

*There have been legal challenges under this legislation and as a result the protections have been broadened to provide additional security for more people. There is a growing political movement which is seeking to water down the protections for Transgender people, due to a growing political narrative against Trans people.*

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).

*There are no specific restrictions in the UK, the USA or India protecting people from Conversion Practices which are undertaken in the name of religion, spirituality, or cultural reasons. The risk of harm to LGBT+ people is extremely high. Some protections have been introduced in Canada, France, Germany and Canada. There is a variety of descriptions of harm and abuse in the various jurisdictions, therefore the protections are variable. Introducing an international standard which seeks to protect all LGBT+ people from all forms of abuse and harm would be a positive step.*

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?

*There is no universal definition of conscientious objection. This becomes problematic when different legal jurisdictions treat people in different ways. Some legal jurisdictions do not accept conscientious objections as a valid reason to object to conflict. All these various approaches result in incoherent and inconsistent responses from the authorities and LGBT+ people are potentially subjected to disproportionate harsher responses than mainstream society. This has certainly been seen in the current conflict between Russia and Ukraine where it is evident that Transgender Women have been disproportionately impacted by emergency legislation which in peace time was also quite regressive.*

1. 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?

*Some countries in Western Europe and the Americas have moved forward in striking a fair balance between freedom of belief and religion, and freedom from violence and discrimination based on SOGI. However, the definitions vary from place to place and many countries still provide no protection or have legislation in place which unfairly discriminates against LGBT+ people. International standards and definitions should be set out so a standard minimum level of protection is provided to LGBT+ people.*

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 are widespread accounts of conversion practices within many religious communities. It is important that exemptions are not provided otherwise it is legalising discrimination and abuse of conversion practices and other forms of harm.*

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 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.
* *The Global Interfaith Commission for LGBT+ Lives has brought together 300 faith leaders from across different faith traditions from across the world to stand up for LGBT+ people of faith and have made commitments to welcome LGBT+ people into their faith institutions and to keep them safe from harm and fully included in the congregation.*
* *Laws against harmful practices, such as Conversion Practices have been introduced in a range of countries. This needs to be taken forward in the majority of the rest of the world where this abuse is still taking place.*
* *Equal Marriage and Equal Rights – The USA has introduced legislation which enables Federal Protections and Rights to Marriage and all rights which are associated with this relationship akin to heterosexual marriage rights. Many countries have been progressing LGBT+ equality, particularly in Civil Marriage which therefore provides legal protections and equal access to services. These rights should be agreed at an International Level, therefore a benchmark will exist on human rights and dignity for LGBT+ people.*
* *LGBT+ Inclusion Education – It is important to have civil measures in place which provide education and raise awareness of LGBT+ issues and how people can consider LGBT+ inclusion in all walks of life.*
	1. 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.

*N/A*

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,[[4]](#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.

Annex:

[Equality Act 2010: guidance - GOV.UK (www.gov.uk)](https://www.gov.uk/guidance/equality-act-2010-guidance)

[A gay man’s struggle for acceptance in the Sikh community - BBC News](https://www.bbc.co.uk/news/av/uk-england-hampshire-50811106)

[Family tried to push Sikh gay man into heterosexual marriage - BBC News](https://www.bbc.co.uk/news/av/uk-40660346)

[Harinder Singh & Jasleen Kaur | Sikhi & Sexuality | SikhRI Articles](https://sikhri.org/articles/sikhi-sexuality)

[The-Anand-Karaj-modern-challenges-2.pdf (akaalpublishers.com)](https://akaalpublishers.com/wp-content/uploads/2020/09/The-Anand-Karaj-modern-challenges-2.pdf)

[British\_South\_Asian\_and\_Bisexual.pdf (roehampton.ac.uk)](https://pure.roehampton.ac.uk/ws/portalfiles/portal/3254305/British_South_Asian_and_Bisexual.pdf)

[Expert Advisory Group on Ending Conversion Practices Report and Recommendations (www.gov.scot)](https://www.gov.scot/binaries/content/documents/govscot/publications/independent-report/2022/10/expert-advisory-group-ending-conversion-practices-report-recommendations/documents/expert-advisory-group-ending-conversion-practices-report-recommendations/expert-advisory-group-ending-conversion-practices-report-recommendations/govscot%3Adocument/expert-advisory-group-ending-conversion-practices-report-recommendations.pdf)

[2021 Cooper Report - October 1st 2021.pdf - Google Drive](https://drive.google.com/file/d/1YckOHNJ4-pUq779huyT8cRuXt81FAVYe/view)

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. 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)