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The Heritage Foundation submission to the “Call for inputs: Report on colonialism and sexual orientation and gender identity” issued by the UN Independent Expert on sexual orientation and gender identity (IE SOGI)

In the call for inputs to the forthcoming report about colonialism and its influence on law, policy and practices pertaining to sexual orientation and gender identity in formerly colonized countries, the IE SOGI appears to be approaching this report from the assumption that laws, policies, and practices introduced by colonial powers are, by definition, wrong. But this premise is incorrect. The mere fact that colonists introduced new beliefs and norms about sexuality in some countries is not proof that those beliefs, norms, or laws are wrong, violate human rights, or are unwelcomed by native populations living in formerly colonized countries today.

Does the Independent Expert mean to suggest that *all* pre-colonial beliefs ought to be recovered? What about the practice of Sati among Hindus in India, whereby widowed women would, by choice or by force, be burned alive on their late husband’s funeral pyre? Or the practice of female genital mutilation that pre-dated European colonization in Africa and Asia? In those examples, it was colonial laws, influenced by the Christian beliefs and culture of European colonial powers, that opposed indigenous cultural practices. Surely the Independent Expert is not advocating a return to those practices in the name of anti-colonialism.

Rather than condemn or dismiss any beliefs, laws or norms surrounding issues of sexual orientation and gender identity due to their possible association with colonialism, we should simply ask whether the resulting laws and policies are just or unjust.

There is a legitimate and just role for sovereign countries to adopt laws and policies concerning matters of sexuality and so-called “gender identity.” Many countries historically have and continue to regulate or prohibit certain sexual behaviors such as adultery, fornication, prostitution, and pedophilia—based on concerns for public morality, health, or safety. A country’s laws on these matters are bound to reflect its cultural and religious traditions, including both indigenous traditions and newer values introduced by colonial powers. The existence of such laws governing issues of sexuality does not violate human rights, and in most cases these laws reflect the democratic will of the local population.

As Professor Li-Ann Thio of the National University of Singapore has written, “Since moral judgements are impossible to evade, the moral dimension underlying law should be part of the balancing exercise, rather than arbitrarily shutting out other visions of public morality (usually the traditional ones). Ignoring religious views... will cause disquiet and damage the good the entire human rights project can do. Politicizing human rights has already elicited pushback, as

human rights standards and obligations cannot be developed by ignoring an important sector of the international community.”¹

As the Independent Expert well knows, there is no internationally recognized human right to engage in sexual relations outside of marriage. No human rights treaty—negotiated and ratified by sovereign nations—includes such “rights.” However, the fundamental rights to freedom of religion, freedom of speech, and conscience protections are firmly grounded in binding international law.

The logic of universal human rights rests on the conviction that every person has inherent human dignity regardless of any distinguishing characteristics. Efforts to create new rights based on membership in synthetic identity groups undermines the universality of human rights.² The rights of every individual should be protected. As legal scholars and human rights activists alike know, “no credible voice in the international human rights community asserts that LGBT [lesbian, gay, bisexual, and transgender] persons do not have human rights and those who imply otherwise create proverbial ‘straw men.’”³

Individuals whose fundamental human rights are abused can and should be protected using existing human rights laws and norms, regardless of race, gender, sexual orientation, or any other characteristic. And all member states ought to condemn laws and policies that violate the fundamental human rights of any individual, whether those violations take the form of extrajudicial punishments, arbitrary detention and torture, or denials of freedom of religion, belief, or speech.

The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights explicitly protect the freedom to manifest one’s religious beliefs in private and in public, as well as individually or in community. Regardless of prevailing sentiment among liberal elites, this right to manifest one’s beliefs also applies to those who profess traditional beliefs about the creation of man and woman, the definition of marriage, and the sanctity of life.

Unfortunately—and in this case under the guise of anti-colonialism—the IE SOGI and his allies in progressive countries are themselves imposing a radical sexual ideology on many in the

¹ Li-Ann Thio, “Equality and Non-Discrimination in International Human Rights Law,” Heritage Foundation Special Report No. 240, December 31, 2020, <https://www.heritage.org/civil-rights/report/equality-and-non-discrimination-international-human-rights-law>.

² Emilie Kao and Grace Melton, “The U.S. Must Protect Human Rights of All Individuals Based on Human Dignity—Not on Membership in Identity Groups,” Heritage Foundation Backgrounder No. 3321, May 24, 2018, <https://www.heritage.org/global-politics/report/the-us-must-protect-human-rights-all-individuals-based-human-dignity-not>.

³ Travis S. Weber and L. Lin, “Freedom of Conscience and New ‘LGBT Rights’ in International Human Rights Law,” *Journal of Global Justice and Public Policy*, Vol. 1 (2015–2016), https://docs.wixstatic.com/ugd/d74082_197f180fc47b4f39b1d02337a5b19010.pdf (accessed May 26, 2023).

developing world.⁴ They have consistently prioritized the creation of new “rights” based on the historically recent and tendentious categories of “sexual orientation” and “gender identity” at the expense of religious freedom and other fundamental rights. This is what Pope Francis has often referred to as “ideological colonization.” In his assessment, “gender ideology, today, is one of the most dangerous ideological colonizations.”⁵

By promoting an ideological agenda that much of the developing world—particularly believers of major religions—finds offensive, the disproportionately powerful gender ideologues are undermining the human rights system they purport to advance. The IE SOGI and his colleagues in the Office of the High Commissioner on Human Rights ought instead to focus on identifying and rectifying actual violations of the fundamental human rights enumerated in international law.

⁴ Grace Melton, “The Threat to Life and Liberty from the United Nations’ Abuse of Human Rights,” *Public Discourse*, October 5, 2020, <https://www.thepublicdiscourse.com/2020/10/71919/> (accessed May 26, 2023).

⁵ Courtney Mares, “Pope Francis: Gender ideology is ‘one of the most dangerous ideological colonizations’ today,” *Catholic News Agency*, March 11, 2023, <https://www.catholicnewsagency.com/news/253845/pope-francis-gender-ideology-is-one-of-the-most-dangerous-ideological-colonizations-today>.