

Sexual Orientation, Gender Identity & Freedom of Religion

1 • Sexual diversity and religious freedom can coexist

This report examines the spaces where freedom of thought, conscience and religion or belief (FoRB) and protection from violence and discrimination based on sexual orientation and gender identity intersect. It explores fundamental conceptions about the human bonds with the sacred and mundane, the interaction between these powerful motors of the human experience, and the framework created in international human rights law for their recognition and development.

Article 18 of the ICCPR protects everyone's freedom to manifest their religion or belief in worship, observance, practice and teaching. Indeed, FoRB in international human rights law is distinct from religion: it protects a person's freedom to possess and express their beliefs, religious or not, individually or in community with others: to shape their lives in conformity with their own convictions.

As an unfixed paradigm, religion does not have essential inbuilt positions or prejudices, and it would

make no sense to characterize it as inherently or predominantly pro- or anti-LGBT. And yet religion and the human rights of LGBT persons are often placed in antagonistic positions in social and political discourse, feeding the contention that there is an inherent conflict between FoRB and the human rights of LGBT individuals. The resulting sense of conflict undermines the ideal of peaceful human coexistence.

The mandate is concerned that these and other exclusionary views can have severe and negative consequences for the personhood, dignity, and spirituality of LGBT persons, who are often marginalized, stigmatized and excluded from religious communities simply because of who they are. The Special Rapporteur on FoRB, in noting this reality, asserted that States have a duty to create "an enabling environment" where dissenters, dissidents, progressive reformers and activists are protected against violence and harmful practices from the larger religious community, so that they can assert their agency and participate in religious discourse on an equal footing.



International human rights law has created a coherent system under which FoRB and freedom from violence and discrimination based on sexual orientation and gender identity are fully compatible.

What constitutes actions contrary to the human rights of LGBT persons is not religion, it is the way some religious narratives are deliberately used to justify violence and discrimination.

2 • Violence and discrimination in the name of religion or belief

Both State and non-State actors perpetrate violence against persons based on their actual or perceived sexual orientation or gender identity invoking religion or belief. In the countries with laws licensing punishment of consensual same-sex activity with death, the relevant authorities base this denial of rights and personhood on the State's interpretation of religious law, culture and values. State-sponsored violence grounded in interpretations of religion or belief also takes less explicit forms such as the denial of reproductive rights, State-coerced practices of conversion, and forced gender reassignment surgeries.

Religion should not be used as an excuse for autocratic practices and denial of basic rights. The State is obliged to prohibit the advocacy of hatred against LGBT people and, at the same time, it ought to be cautious against limits on speech that risk censorship, undue restrictions on religious freedom and weaponization against minority religious communities.

Some of the most pernicious “religiously justified” violence based on SOGI is carried out by non-State actors. This includes bias-motivated attacks and other hate crimes by mobs, vigilante groups, individuals, family members, religious leaders and organizations who allege that their religious beliefs permit and even require violence against LGBT persons.

The Human Rights Committee has established that no manifestation of religion or belief ought to propagate war, or incite national, religious, or racial hatred, discrimination, or violence. Many submissions received by the mandate raise concerns about religious leaders fueling disinformation, hate speech, and/or intolerance against LGBT persons, such as scape-



goating them for controversies, posing them as a threat to the traditional family, and interpreting religious doctrines to place homosexuality and gender nonconformity within a discourse of immorality and sin. LGBT persons can be especially vulnerable to hate speech, because the constant exposure to it can lead to exile, emotional distress, and suicidality.

An unprecedented pushback by alliances of conservative political ideologies and religious fundamentalisms is advocating for the criminalization of homosexuality and the denial of gender recognition in numerous States. **The ascendancy of coordinated action seeking regression of human rights recognition for LGBT persons is placing gender equality rights at risk.**

3 • Indirect Discrimination in the name of religion

Thirty-three States now recognize same-sex marriage and/or same-sex civil unions. Many have done so with the stated aim of bringing their laws and policies in line with their human rights obligations. **By contrast, in States that have moved to proscribe same-sex marriage, it is the influence of religious narratives in politics that has remained the authoritative feature, rather than the adherence to human rights norms in law.**

Similarly, calls for religious-based exemptions from laws guaranteeing equality for LGBT persons have increased, with some individuals, organizations and corporations seeking to exempt themselves from complying with regulations. Examples include government-funded foster care and adoption agencies rejecting prospective families based on sexual orientation, civil servants refusing to solemnize same-sex marriages, and faith-based schools punishing LGBT professionals and students for not sharing the school's religious norms and values.

Religious exemptions are often used as protection for healthcare providers' "conscientious objections" to provide services that go against their convictions, including abortion services, and hormonal and other

similar treatments. United Nations treaty monitoring bodies and numerous Special Procedures have emphasized that States cannot permit conscience-based refusals of healthcare to infringe on the rights of patients, including the right to reproductive healthcare. Where States choose to enable conscience-based refusals, international law obliges them to ensure an adequate number and dispersion of willing providers; limit conscientious objection claims to individuals (as opposed to institutions); establish effective referral systems for willing providers; and prohibit refusals in emergency circumstances.

Providers of goods and services have also made use of exemptions from non-discrimination laws to exclude customers who are LGBT based on their religious beliefs. These claims often involve, but are not limited to, objections to serving LGBT couples who are seeking to celebrate relationships (for example, refusing to bake cakes, host receptions or print invitations for same-sex partnership ceremonies) or to carry out political and social activism (for example, refusals to print materials for Pride Parades). States are obliged under international human rights law to ensure that LGBT consumers are not discriminated against.



4. Access to spirituality for LGBT persons

Embracing spirituality and faith is a path that must be available to all, including all persons with diverse sexual orientations and gender identities.

Human beings often long for a sense of purpose in their lives. For a very large proportion of humanity, spirituality is a fundamental part of this quest. The principle of FoRB is a shield put in place to protect it, as well as protecting the right not to be part of a particular belief.

For many individuals, their religion is part of the foundation of their sense of self, the source of truth. Although they may disagree with certain tenets of their religious teaching, or with the ways in which religious

authorities interpret these, it is an important part of their identity and social fabric. To leave, and sometimes be forced to leave because of exclusionary practices or teachings can have significant implications for identity and spiritual wellbeing. In many cases, the painful departure from their religious or spiritual community has a life-long impact on their mental wellbeing.

The prerogative one has to seek spiritual fulfillment certainly does not extend to coercing a religious community to accept religious claims in conflict with those to which the community feels bound. However, there are examples of religious traditions from many different belief systems that are LGBT-inclusive and affirming – some of them follow structures of strict hierarchy and others have fluid and non-hierarchical rules.

Paying attention to their voices and practices can help shift the essentialist narrative that suggests that exercising freedom of religion or belief can be incompatible with the equal enjoyment of human rights by LGBT persons. It can open a new normative space wherein both human rights frameworks can contribute to strengthening each other.

As noted by the former Special Rapporteur on FoRB, “[a] multitude of voices exists within religious groups and institutions, including faith-based actors who campaign for the rights of women, girls and SOGI minorities and work to promote gender equality within their faith.”

