



**Submission for a Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity: Freedom of religion or belief and freedom from violence and discrimination based on sexual orientation and gender identity**

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**About Humanist International** (NGO with ECOSOC Status at the UN)

*Humanists International is an international non-governmental organization (NGO) and the global representative body of the humanist movement, uniting a diverse community of non-religious organizations and individuals. Inspired by humanist values, we are optimistic for a world where everyone can have a dignified and fulfilling life. We build, support and represent the global humanist movement and work to champion human rights and secularism. We campaign on humanist issues. We defend humanists at risk of persecution and violence. We human rights priorities based on humanist values at international institutions including the United Nations. And we work to build the humanist movement around the world. Our Members and Associates include humanist, rationalist, secular, ethical culture, atheist and freethought organizations from all over the world. Our community also includes many individual supporters who share our vision and values.*

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**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?**

Human rights are universal, interdependent and mutually reinforcing. However, there is currently a well-funded global movement to undermine this fact; to argue against the universality of human rights, to instead make a hierarchy of them, relativise them and reject some of them entirely, such as rights around gender equality and non-discrimination. Those leading this backlash intentionally misrepresent and distort the right to Freedom of Religion or Belief (FoRB) in order to justify discrimination and violations of LGBT+ rights (along with many other rights).

In his seminal report on FoRB and gender, the previous UN Special Rapporteur on FoRB pointed out that officials in several countries 'justify' the prohibition of homosexuality on the grounds that it upholds the tenets of Islam or Christianity.<sup>1</sup> Such officials use purposefully narrow and conservative interpretations of religions to impose standards of conduct which result in widespread discrimination on the grounds of sexual orientation and gender identity (SOGI).<sup>2</sup>

Some, in parts of Eastern Europe and Latin America for example, present themselves as defending society against the imposition of so-called "gender ideology"- a conservative catchphrase invented by the Holy See to describe the defence of LGBT+ rights and reproductive rights.<sup>3</sup> Others have sought to promote a "rebalancing" of human rights in accordance with "traditional values" and a return to "natural rights," where "religious freedom" is repositioned as an unalienable right to which other human rights should be ceded. The US "Commission on Unalienable Rights," and the Geneva Consensus have encapsulated this project.<sup>4</sup>

This message also finds expression in discourse from states seeking to elevate contrived characterizations of 'family' and 'tradition' (often a euphemism for using "religious freedom") to undermine gender equality and the right to non-discrimination. Russia - led by the Russian Orthodox Church<sup>5</sup> - and Egypt are two big drivers of this at the UN Human Rights Council. Hegemonic interpretations of "African values" within the African Charter on Human and Peoples' Rights, are also being pushed by some states in order to exclude LGBT+ rights.<sup>6</sup>

There are a number of other states, including representatives of the Organisation of Islamic Cooperation, on record at the Human Rights Council, invoking "religious specificities" to reject equality for LGBT+ people, and universality of human rights.<sup>7</sup>

This manipulation of both religion and FoRB (often erroneously referred to as "religious freedom") by some of those at the highest level seeking to maintain power, undermine progress on human rights, and control people in terms of sex, autonomy, expression, and choice, sets the scene for a perceived conflict of rights. It suits these actors to put the two (FoRB and non-discrimination on the grounds of SOGI) in opposition and to frame the FoRB camp as having morality, family, tradition and dignity on its side; entertaining or supporting the idea that there is indeed a real tension gives power to that argument. Instead we must be clear that FoRB taken in its proper intersectional and universal sense and with the clear limits on manifestation that are entailed by it, should not be seen in opposition to the realisation of equality and non-discrimination on the grounds of SOGI.

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<sup>1</sup> "Gender-based violence and discrimination in the name of religion or belief," (A/HRC/43/48) Report of the Special Rapporteur on Freedom of Religion or Belief, §7.

<sup>2</sup> *Rights at Risk: The Observatory on the Universality of Rights Trends Report 2021*, Observatory on the Universality of Rights.

<sup>3</sup> *State-Sponsored Homophobia 2019*, ILGA, p30.

<sup>4</sup> <https://www.state.gov/wp-content/uploads/2020/07/Draft-Report-of-the-Commission-on-Unalienable-Rights.pdf>; <https://aul.org/wp-content/uploads/2021/06/geneva-consensus-declaration-english.pdf>.

<sup>5</sup> *Rights at Risk: Observatory on the Universality of Rights Trends Report 2017*, AWID, pp.52-55.

<sup>6</sup> For example, in August 2018, following a decision by the African Union Executive Council, the African Commission on Human and Peoples' Rights withdrew the Council of African Lesbians' (CAL) observer status following the AU Executive Council's comments on the need to consider "African values" in the granting of observer status. See also:

<https://humanists.international/2019/05/humanists-at-african-commission-african-values-do-not-cannot-justify-anti-lgbti-discrimination/>

<sup>7</sup>

<https://humanists.international/advocacy-statement/arguments-opposing-the-universality-human-rights-on-the-basis-religious-specificities/>;

<https://humanists.international/blog/cultural-practices-and-religious-specificities-and-the-shame-of-some-states-at-the-human-rights-council/>

## **2. 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?**

The core principle underlying the right to FoRB is the same as that underpinning the right for every person to be free from discrimination, persecution, and violence regardless of their SOGI: that is, everyone deserves equal rights and treatment, whatever they believe, however they identify, or whomever they love. The principle of dignity that motivates both rights are fuelled by the idea that humans should be able to be true to who they are and that our beliefs, attachments, and love, are central to who we are as individuals.

Under international human rights law, freedom to manifest one's religion or belief is not absolute and can be limited by restrictions that are prescribed by law and that are necessary in pursuit of one or more of the legitimate aims. These legitimate aims include the protection of public health or the rights and freedoms of others.

It is important not to allow those seeking to distort or misuse the right to FoRB to undermine the rights of others to portray LGBT+ individuals as separate and in opposition to religious or belief communities and FoRB; the two identities overlap greatly, and there are countless examples of people of faith and faith leaders also identifying themselves as LGBT+.<sup>8</sup>

Remembering the “B” (belief) aspect to FoRB here - i.e. that FoRB is not limited to traditional religions or to religions and beliefs with institutional characteristics or practices and it encompasses the right of an individual to reject any religion or belief, to identify as humanist or atheist<sup>9</sup> - can also be instructive; since it is harder for those claiming the right to FoRB as only there to protect conservative religious communities (and their anti-LGBT+ stance) when the right to FoRB is rightly seen as extremely broad and encompassing progressive and dissenting viewpoints. Once FoRB is correctly perceived as a general right which protects a whole range of non-institutional and dissenting views outside the institutionalised religious dogma of the majority (or those in power), its mutual reinforcement with other rights is more easily apparent.

In thinking about the relationship between FoRB and non-discrimination on the grounds of SOGI, it is also useful to remember the double discrimination that people can suffer on the grounds of both their SOGI and their religion or belief. A recent report by the advocacy group *American Atheists* has showed how LGBT+ people who also identify themselves as non-religious suffer more severe discrimination than non-LGBT+ atheists in the USA. It found, for example, that trans and gender nonconforming youth aged 18 to 24 were significantly more likely to encounter discrimination in education because of their non-religious beliefs than their cisgender, heterosexual peers (38.9% vs. 28.1%).<sup>10</sup>

## **3. 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?**

Whilst humanists do not fit within the “religious, traditional, or indigenous” category, they are very much a

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<sup>8</sup> For example, many of the participants at the consultations that fed into the previous Report of the Special Rapporteur on Freedom of Religion or Belief, “Gender-based violence and discrimination in the name of religion or belief,” (A/HRC/43/48), §38; GIN-SSOGIE <https://gin-ssogie.org>.

<sup>9</sup> CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion); <https://humanists.international/get-involved/resources/the-rights-of-non-religious-people/>

<sup>10</sup> <https://www.secularsurvey.org/lgbtq>. See also Beredjick, C. (2017) *Queer Disbelief: Why LGBTQ Equality Is an Atheist Issue*.

group protected by the right to FoRB.<sup>11</sup> With this in mind, we wanted to say a few words about the how humanist values “promote the acceptance of LGBT+ individuals, or protects LGBT+ individuals from violence and discrimination,” and to provide some examples of good practice from humanist communities on the national level.

A summary of the compatibility between the humanist position and believing in equality for all people regardless of SOGI, is helpfully summarized by the *Oxford Handbook of Humanism*:

“Humanists recognize that sex is an evolved trait, with no intrinsic meaning. It does not require rigidly defined sex or gender roles. [...] Humanists see sex as a means of positive personal expression, pleasure, intimacy and/or bonding, and communication, as well as sometimes for reproduction. The principles of humanism assert that all people—the LGBTQ community, and women and men equally—should be able to enjoyably explore their sexuality, and that this is a part of every person’s full humanity. [...] The unscientific concept of “natural law” opposes these ideas, is being used to make laws that hurt people, and is deeply influential in legal and political thought. Humanists, with their belief in evidence and reason, find no basis for the legal concept of ‘natural law.’”<sup>12</sup>

Humanists International, the global representative body of the humanist movement, has been passing general assembly resolutions explicitly advocating for the human rights of LGBT+ people since 1980,<sup>13</sup> and has long included advocacy for LGBT+ people’s rights within the key issues it highlights at the UN and elsewhere.<sup>14</sup>

Humanist groups working nationally have also worked to promote the acceptance of LGBT+ individuals, or protect LGBT+ individuals from violence and discrimination. Some examples: launching an awareness campaign on the SOGIE Bill and HIV/AIDS<sup>15</sup> and condemning discrimination against transgender people in the Philippines;<sup>16</sup> creating a campaign in Poland to stop hate against LGBT+ people;<sup>17</sup> challenging the censoring of LGBT+ themes in the arts in Kenya;<sup>18</sup> challenging the anti-LGBT+ bill in Ghana;<sup>19</sup> publishing a report on non-religious LGBT+ people in the USA;<sup>20</sup> building a mental health help virtual platform to help minorities and LGBT+ people;<sup>21</sup> engaging with events supporting the LGBT+ community in Singapore;<sup>22</sup> giving training sessions in Uganda in support of LGBT+ communities;<sup>23</sup> reporting to the UN on the need for better protection of LGBT+ rights Barbados;<sup>24</sup> speaking out against government persecution of the LGBT+ community in Nigeria;<sup>25</sup>

<sup>11</sup> For more on the humanism, which describes the subscription to a coherent set of beliefs and values that is protected by the right to FoRB, see <https://humanists.international/what-is-humanism/>, and on its global reach, see <https://humanists.international/about/our-members/explore-our-members/?civiwp=CiviCRM&q=civicrm/profile/map&map=1&gid=19&reset=1>

<sup>12</sup> Hafer, A. “Humanism, Sex, and Sexuality,” in (2019) Pinn, Anthony B. (ed.) *Oxford Handbook of Humanism*.

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<https://humanists.international/what-we-do/policies/?topic%5B%5D=1453&locationPassed=&ratifyingBody=&policyStatus=>

<sup>14</sup> <https://humanists.international/what-we-do/advocacy/issues/>;

[https://humanists.international/news/page/2/?topic%5B%5D=1453&date=0&post-type%5B%5D=1829](https://humanists.international/news/page/2/?topic%5B%5D=1453&date=0&post-type%5B%5D=1829;); <https://humanists.international/2016/06/humanism-is-the-ultimate-long-standing-and-unfaltering-ally-of-lgbti-people-everywhere/>

<sup>15</sup> <https://hapihumanist.org/humanism/hapi-hash-awareness-campaign-on-sogie-hiv/>

<sup>16</sup> <https://hapihumanist.org/humanism/equality/we-condemn-gender-discrimination/>

<sup>17</sup> <https://humanists.international/2021/06/homophobia-kills/>

<sup>18</sup> <https://humanists.international/2021/09/ban-on-gay-film-is-uncalled-for-says-the-atheists-in-kenya-society/>

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<https://www.pulse.com.gh/news/local/withdraw-ghanas-anti-lgbtq-bill-humanist-association-calls-on-parliament/c01mk5t#>  
<https://humanists.international/2021/09/humanists-call-on-the-government-of-ghana-to-reject-proposed-anti-lgbti-law/>

<sup>20</sup> <https://www.atheists.org/2022/08/nonreligious-lgbtq-americans/>

<sup>21</sup> <https://dearcamelia.com/en/>

<sup>22</sup> <https://humanist.org.sg/events/humanists-at-pink-dot-2022/>

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<https://humanists.international/2022/02/ugandan-humanists-conduct-successful-training-in-support-of-lgbti-communities/>

<sup>24</sup>

<https://humanists.international/2022/10/humanists-barbados-highlights-slow-progress-on-human-rights-commitments-in-un-report/>

<sup>25</sup> <https://humanists.international/2009/03/denial-of-lgbt-community-in-nigeria-is-criminal-says-yhn/>

challenging the lack of LGBT+ inclusive materials in Scottish Catholic schools;<sup>26</sup> or joining the IDAHO marches in the Philippines.<sup>27</sup> There are also a number of humanist groups focussing solely on the defence of LGBT+ rights.<sup>28</sup>

#### **4. 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?**

When focussing on country contexts where there are laws generally protecting non-discrimination in the area of goods and service provision that include the grounds of SOGI, a notable trend is the use of, or appeal to, religious exemption from those laws. In other words, individuals, institutions and businesses invoking religious beliefs, values, and conscience, in order to justify exemption from their legal responsibility not to discriminate on the grounds of SOGI.<sup>29</sup> These cases have multiplied in recent years (the increase may be partly to the increase in non-discrimination that they seek exemption from). They exist in a whole spectrum of areas impacting people's lives, including: marriage;<sup>30</sup> counselling;<sup>31</sup> health, family planning and prenatal care;<sup>32</sup> infertility treatment;<sup>33</sup> lodging;<sup>34</sup> adoption services;<sup>35</sup> access to commercial services<sup>36</sup> and employment.<sup>37</sup>

What the majority of the case law around religion exemption claims in the context of service provision to LGBT+ people demonstrates is that an evaluation of harm should be made not with regard as to whether LGBT+ people could have obtained the good or service elsewhere, but that *it is the harm to the equality and dignity of*

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<https://www.humanism.scot/2020/12/08/humanist-society-scotland-challenge-decision-by-comhairle-nan-eilean-siar-to-rect-lgbt-inclusive-education-materials/>

<sup>27</sup> <https://www.rappler.com/moveph/5549-remembering-the-departed-lgbts-in-idaho/>

<sup>28</sup> E.g. <https://thepinktriangletrust.com/>, <https://humanists.uk/community/lgbt-humanists/>, <https://www.bishopsgate.org.uk/collections/gay-and-lesbian-humanist-association>

<sup>29</sup> "Written Submission on Behalf of the International Commission of Jurists, Professor Robert Wintemute, FIDH, and ILGA-Europe in *Ladele & McFarlane v. United Kingdom*," (2011); *Drawing the Line: Tackling Tensions Between Religious Freedom and Equality*, International Network of Civil Liberties Organizations (2015); A/HRC/43/48, "Gender-based violence and discrimination in the name of religion or belief," Report of the Special Rapporteur on Freedom of Religion or Belief, §7, §43; *LGBT Policy Spotlight: nondiscrimination Laws Public Accommodations*, (2018), Movement Advancement Project.

<sup>30</sup> This includes individuals refusing to conduct civil same-sex partnership (*Ladele v. United Kingdom*, (2011); *Nichols v. Saskatchewan Human Rights Commission*, 2009, Canada; "Obergefell et al. v. Hodges, Director, Ohio Department of Health et al.," Supreme Court of The United States, October, 2014; and a case in Spain 2009 where a judge argued for his conscientious objection to performing same-sex marriages, <https://www.elmundo.es/elmundo/2009/05/29/espana/1243596506.html>;

*State-Sponsored Homophobia 2019*, International Lesbian, Gay, Bisexual, Trans and Intersex Association, p.94. Meanwhile in South Africa, a bill was passed prohibiting civil servants in South Africa from "opting out" of performing same sex marriage ceremonies based on their perception of "conscience, religion and other beliefs."

<sup>31</sup> For example individuals refusing to provide counselling services to same-sex couples (*McFarlane v. United Kingdom*, 2011; *Walden v. Centers for Disease Control and Prevention*, 2010, USA.)

<sup>32</sup> A city insurance policy not covering in vitro fertilization for a gay male couple (*Briskin v. City of New York*, 2022) or a paediatrician refusing to treat the baby of two women parents, Jami and Krista Contreras, Detroit, 2015, <https://news.bloomberglaw.com/health-law-and-business/lgbtq-couples-ivf-hopes-hinge-on-new-infertility-definition>.)

<sup>33</sup> For example, a medical professional refusing IVF treatment for same-sex couples (*Benitez v. North Coast Women's Care Medical Group*, (2008) USA.)

<sup>34</sup> For example bed and breakfast lodgings being refused to same sex couples. *Bull v. Hall*, 2013; *Eadie v. Riverbend Bed and Breakfast* (2012), Canada.

<sup>35</sup> There have been claims by faith-based adoption agencies wanting to exclude LGBT+ couples from their services ( *Fulton v. City of Philadelphia* (2021), USA; *St. Margaret's Children and Family Care Society v. Office of the Scottish Charity Regulator* (2014), Scotland).

<sup>36</sup> For example, there have been cases of bakers refusing to make customized cakes with LGBT+ themes or celebrating LGBT+ marriage (*Lee v Ashers Baking Company Ltd and others* (2018); *Masterpiece Cakeshop v. Colorado Civil Rights Commission* (2018), USA.); and a wedding photographer refusing to serve a same-sex couple (*Elane Photography v. Wilock* (2014), USA); a taxi driver refusing to drive a same-sex couple after they kissed (*McCrea and White v. Sun Taxi Association et al.* 2013, USA).

<sup>37</sup> For example, a Baptist school in Australia using religious exemption laws to fire a teacher after he came out as gay, *State-Sponsored Homophobia 2019*, ILGA, p163, <https://www.abc.net.au/news/2017-12-06/teacher-loses-job-after-telling-school-hes-gay/9231948>.

*the person being refused the service which is relevant and that the basic principle that governmental services must be provided on an impartial and non-discriminatory basis must be upheld.*<sup>38</sup>

In other words, the denial of services to someone on the grounds of objecting to their SOGI is illegitimate not just because it denies that person the specific service, but also because it denies them the dignity they deserve as equal rights bearers and people. The legitimacy of a claim of exemption for service providers on the grounds of religious belief should not revolve around the availability of alternative services, because the exemption itself undermines the very principle of equality the laws are meant to serve.<sup>39</sup>

As noted by the Saskatchewan Court of Appeal when considering draft legislation permitting marriage commissioners to refuse to perform marriages when doing so would be contrary to their religious beliefs:

“More important [ . . . ] is the affront to dignity, and the perpetuation of social and political prejudice and negative stereo-typing that such refusals would cause. Furthermore, even if the risk of actual refusal were minimal, knowing that legislation would legitimize such discrimination is itself an affront to the dignity and worth of homosexual individuals [ . . . ] (I)t is not merely or even primarily the right of same-sex couples to marry that the amendments would infringe. It is the right of this vulnerable group to be free from discrimination and prejudice in the delivery of a public service, available without discrimination to all other members of society.”<sup>40</sup>

It does not matter from where homophobic views come (or for that matter, racist or misogynist views), how forcefully they are held, or how meaningful they are to an individual, it can never legitimize discrimination against, or denial of rights to others.

**5. 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.**

In many countries there is the tendency to tie national and cultural values with religious values and make them indistinguishable. This not only undermines the promotion of FoRB for all by restricting the possibility of individuals identifying with other religions or beliefs and imposing a homogenous and static majority view, but it also often means that those human rights standards and values that stray from this one interpretation of religion, such as LGBT+ equality or recognition, are undermined or trampled upon.

The way this framework is sometimes manifested is through discourse about “protecting” those religious values that allegedly underpin the society and state’s identity and meaning. This narrative is used to undermine the rights and equality of LGBT+ people in a variety of ways.

For example, arguments citing the impermissibility to offend or demean religious values are used to undermine freedom of the expression around LGBT+ issues. In 2021 Kenya banned the film *I Am Samuel*, that depicted a romantic love between men and called it an affront to the country’s constitution. It was held to be “demeaning of Christianity” and an “affront to our culture and identity.”<sup>41</sup> In 2017, the Egyptian Musicians Syndicate banned Mashrou’ Leila from performing in Egypt when some audience members flew a rainbow flag at one of its

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<sup>38</sup> Saskatchewan Court of Appeal, In the Matter of Marriage Commissioners Appointed under the Marriage Act, 1995, 2011 SKCA 3 (11 January 2011), §94.

<sup>39</sup> *Drawing the Line: Tackling Tensions Between Religious Freedom and Equality*, International Network of Civil Liberties Organizations (2015), p14.

<sup>40</sup> Saskatchewan Court of Appeal, In the Matter of Marriage Commissioners Appointed under the Marriage Act, 1995, 2011 SKCA 3 (11 January 2011), §97 & §98.

<sup>41</sup> <https://humanists.international/2021/09/ban-on-gay-film-is-uncalled-for-says-the-atheists-in-kenya-society>, <https://www.hrw.org/news/2021/09/27/kenya-censors-another-gay-themed-film>

concerts in Cairo. The audience members were arrested and some have been handed harsh prison sentences, and the incident also started an official clampdown on the LGBT+ community in Egypt.<sup>42</sup> Incidentally the same band was also prevented from playing in the city of Byblos, after being accused of blasphemy.<sup>43</sup>

The Russian 2013 135-FZ law banning “propaganda of non-traditional sexual relations” to minors is an example of censorship legislation that limits freedom of expression about LGBT+ topics and is reliant upon protection of religiously-derived “traditional values.”<sup>44</sup> In November 2022, Russia's lower house of parliament unanimously voted to extend its law to apply to adults. The head of Russia's Orthodox Church, Patriarch Kirill, backed the new legislation. He has portrayed Russia's war in Ukraine as a battle between those who support pro-Western gay pride events, and those who reject them.<sup>45</sup>

LGBT+ rights in the context of personal relationships and the family have also been undermined by the protection of religious values discourse. For example, in 2020, Hungary passed a law that effectively banned adoption for same-sex couples, applying a strict Christian conservative viewpoint to the legal definition of a family. The amendment altered the constitutional definition of families to exclude transgender and other LGBT+ individuals, defining the basis of the family as “marriage and the parent-child relationship,” and declaring that “the mother is a woman and the father is a man.” The amendment also states that, “Hungary protects the right of children to self-identity according to their sex at birth and provides an upbringing in accordance with the values based on Hungary’s constitutional identity and Christian culture.”<sup>46</sup> Similarly In 2021 in Ghana, a bill was tabled by a Coalition of MPs with the support of the National Coalition for Proper Human Sexual Rights and Family Values, a tripartite movement that, according to one of its Executive Members, Dr Samuel Ofori Onwona, embraces all Christian Councils, all Muslim Councils and all Traditional Leaders in Ghana. The Coalition of Muslim Organisations, Ghana (COMOG), has openly backed the bill. The former president of Humanist Association of Ghana, described the bill as a “hate bill under the guise of Freedom of Religion and Belief and influenced by Far right Christian Fundamentalists from the USA.”<sup>47</sup>

An even more explicit and systemic example of religious doctrine being tied to a country’s identity and laws, and its severely negative impact for LGBT+ rights and equality, is countries without secular law but one grounded in religious doctrine. For example, countries with constitutions and criminal law systems that appeal to Shari’a as a basis for laws, where consensual same-sex relationships are criminalized. There are six countries where consensual same-sex relationships are formally punishable by death, all of which justify denial of rights and personhood on official interpretations of Shari’a.<sup>48</sup> Additionally, many countries whose governments do not profess an official version of Shari’a law nonetheless impose criminal penalties and engage in the torture and killing of LGBT+ persons on religious grounds; the torture and killing of members of the LGBTI community in Chechnya is one prominent and horrifying example.

## **8. 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?**

Currently, there is no international consensus on the right of conscientious objection beyond the military service (and only that relates to use of weapons). And whilst there *may* be some ambiguity about the

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<sup>42</sup> <https://www.bbc.com/news/world-middle-east-41398193>

<sup>43</sup> <https://www.nbcnews.com/feature/nbc-out/lebanese-pop-band-faces-death-threats-over-blasphemous-song-n1034161>; <https://www.middleeasteye.net/news/mashrou-leilas-byblos-festival-show-cancelled-over-bloodshed-fears#:~:text=Mashrou%20Leila%2C%20which%20has%20amassed,which%20were%20seen%20as%20insulting>

<sup>44</sup> *Rights at Risk: Observatory on the Universality of Rights Trends Report 2017*, AWID, pp.52-55.,

<https://cne.news/artikel/777-traditional-values-for-russian-church-more-important-than-gospel-norwegian-expert-says>

<sup>45</sup> <https://www.bbc.com/news/world-europe-63410127>

<sup>46</sup> <https://www.reuters.com/article/hungary-lgbt-idUKKBN28P1N8>;

<https://apnews.com/article/relationships-budapest-viktor-orban-couples-adoption-4e9eca5bc90c7810a26e08c9178bae90>

<sup>47</sup> <https://humanists.international/2021/09/humanists-call-on-the-government-of-ghana-to-reject-proposed-anti-lgbti-law/>

<sup>48</sup> *State-Sponsored Homophobia 2020: Global Legislation Overview Update*, ILGA, p31.

legitimacy of conscience claims in refusing to perform abortion-related activities,<sup>49</sup> there has never been any suggestion in international legal standards that the phenomenon of conscientious objection can be legitimately used to deny services to, or discriminate against, people on the grounds of SOGI. The concept is a unique one and originally created in a context where people would be severely punished for not using weapons in war. It is substantively distinct from circumstances where someone does not want to perform part of their job (and as a consequence possibly discriminate).

Of course requests for exemptions or accommodations on the grounds of religious beliefs can involve conscience in so far as freedom of conscience is part of that right, but invoking the specific term of conscientious objection to legitimize denying rights to others is erroneous and dangerous. It was never designed to deny the rights or equality of others.

The discourse is framed to seem innocuous but it misrepresents what freedom of conscience allows for and it ignores the fact that manifestation of FoRB can absolutely be limited when those manifestations result in discrimination against others or undermine the right to equality of others. Christian anti-rights groups are strong proponents of this discourse. The group, Alliance Defending Freedom (ADF) for example, has argued that there exists a human right for health care professionals to conscientiously object to “prescribing cross-sex hormones” due to their religious convictions. Ultimately, the goal of this discourse is to progressively limit the human rights of LGBT+ people (and reproductive rights). This is particularly apparent given that the narrative of conscientious objection for doctors has broadened over time to cover institutions like hospitals.<sup>50</sup> The lobbying for the individual right to freedom of conscience to be transposed to institutions constitutes another threat to equality and the human rights of LGBT+ people.<sup>51</sup> For it not only poses a threat to LGBT+ persons in creating a blanket ban on the spaces in which they can access services etc., it undermines the very human rights system equality is grounded in by making them applicable to institutions. The World Health Organisation has recommended banning institutional claims of conscience.<sup>52</sup>

#### **10. 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?**

The legal concept of reasonable accommodation, which is found in several legal systems influenced, to different extents, by the common law tradition of countries such as South Africa, New Zealand and Israel, is

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<sup>49</sup> It is also worth being clear in terms of abortion and conscientious objection: The UN Special Rapporteur on Freedom of Religion has clearly held that the right to conscience cannot be invoked by health care providers and personnel to refuse to perform abortions, or to make referrals for the health service. Human rights treaty monitoring bodies have called out states’ insufficient regulation of the use of “conscientious objection” and have directed states to guarantee patients’ access to services. Many UN treaty bodies, and UN Special Procedures, have repeatedly stated that no right to conscientious objection for health care workers exists. See: UN CEDAW Concluding Comments on Croatia (1998), A/53/38, Part I, §109 and Italy (1997), A/52/38/Rev.1, Part II, §353; UN CEDAW Concluding Comments on Poland (2007), CEDAW/C/POL/CO/6, §25; Committee on the Rights of the Child, general comment No. 15 (2013), §69; Committee on Economic, Social and Cultural Rights, general comment No. 22 (2016), §14, §43, §60; Human Rights Committee, Concluding observations on the seventh periodic report of Poland (2016), CCPR/C/POL/CO/7, §20–21, §23–24; Human Rights Committee, general comment No. 36 (2019) on the right to life, §8.

<sup>50</sup> This already exists in the USA, where the Religious Freedom Restoration Act allows for-profit companies to deny contraception coverage to employees based on a religious objection (e.g. *Burwell v. Hobby Lobby Stores* (2014), USA <https://www.oyez.org/cases/2013/13-354>). Chile also recognizes “institutional conscientious objection” (e.g. “Verónica Undurraga and Michelle Sadler, The misrepresentation of conscientious objection as a new strategy of resistance to abortion decriminalization,” *Sexual and Reproductive Health Matters*, 2017; 27(2), available at: <https://www.tandfonline.com/doi/full/10.1080/26410397.2019.1610280>).

<sup>51</sup> *Rights at Risk: The Observatory on the Universality of Rights Trends Report 2021*, Observatory on the Universality of Rights., p64; “Freedom of Conscience: Protecting our moral compass,”(2020) Alliance Defending Freedom International. The suggestion that institutions should have the right to Conscientious Objection was also made in comments by representatives of Alliance Defending Freedom during meeting by the UN NGO Committee on FORB (New York, October 2018) and during an event on secularism organized by Humanists International with Heiner Bieldfeldt (Geneva, Human Rights Council March 2016).

<sup>52</sup> <https://bioedge.org/bioethics-d75/conscientious-objection/conscientious-objection-is-indefensible-says-who/>



rooted in US law<sup>53</sup> and Canadian law - where it was first implemented, in both countries, with respect to religious belief. The USA has laws that protect reasonable accommodation on the grounds of religion (and disability) in the context of employment statutory law, Canada goes beyond this to include protected characteristics such as ethnic origin, age, and gender in areas other than employment (education, for instance).

In EU law the explicit duty of reasonable accommodation has been established with regard to persons with disabilities in the employment context only.<sup>54</sup> Such a duty has never been applied to freedom of religion or belief in the workplace.<sup>55</sup> Very few EU Member States have implemented an express general right to reasonable accommodation beyond disability.

In international human rights law and standards the concept of reasonable accommodation is only found in the Convention on the Rights of Persons with Disabilities.

In 2020, a Parliamentary Assembly of the Council of Europe (PACE) draft resolution "On the protection of freedom of religion or belief in the workplace"<sup>56</sup> which relied on the concept of reasonable accommodation was defeated after a group of NGOs, including EPF, IPPF, ILGA, and the humanists, made a submission drawing attention to the potentially negative consequences in terms of equality and non-discrimination.<sup>57</sup>

The submission highlighted a question mark over the appropriateness of the concept of reasonable accommodation being applicable to religious beliefs in the first place and the potential problems with transposing the concept - which has only been internationally only recognised in the area of disability - to FoRB.

Firstly, given the specific situation of persons with disabilities, drawing any such analogy with the manifestation of freedom of religion or belief could be perceived as problematic. Secondly, there is a substantively different focus and process between assessing and responding to *individual* accommodation needs when it comes to disability, and *group* needs - often dictated by a majority or institutionalized religious groups - when accommodation of religious beliefs or ethnic requirements is at issue. As pointed out in a report by the European Network of Legal Experts in the Non-discrimination field, "one of the key points of the reasonable accommodation duty is that it requires an analysis of an individual's situation, which suits anti-discrimination disability law very well. In contrast [...], when accommodation of religious beliefs or ethnic requirements is at issue, the focus very much shifts from the individual to the group. Such a focus causes difficulties when religious beliefs or cultural constraints go against gender equality or support differential treatment based on sexual orientation."<sup>58</sup>

However much leeway a state chooses to give on reasonable accommodation, the bottom line is that it cannot not be invoked as a basis on which to legitimize discrimination against, or refusals to provide goods or services to, people. The legal duty of accommodation is not absolute; it can be limited by the need to protect other rights, such as non-discrimination based on gender or sexual orientation. Furthermore, if accommodation is understood as a necessary remedy to the fact that some individuals, because of an inherent characteristic (for instance, disability, gender, sexual orientation, age, race, culture or language), face barriers to full participation in society on an equal footing then it must be equally applied in the case of all these inherent characteristics (currently it is only Canada who applies it in such a way), not just religion.

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<sup>53</sup> The concept was first introduced in the United States in the context of religious employment discrimination (under Title VII of the US Civil Rights Act in 1972).

<sup>54</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

<sup>55</sup> Brobosia, E. and Rorive., *Reasonable Accommodation Beyond Disability in Europe?* European Network of Legal Experts in the Non-discrimination field, European Commission (Directorate-General for justice), September 2013. European Commission, Directorate-General for Justice.

<sup>56</sup> "The protection of freedom of religion or belief in the workplace," Report, Doc. 15015, 17 December 2019,

<https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=28322&lang=en>

<sup>57</sup> <https://www.epfweb.org/node/509>

<sup>58</sup> Brobosia, E. and Rorive., *Reasonable Accommodation Beyond Disability in Europe?* European Network of Legal Experts in the Non-discrimination field, European Commission (Directorate-General for justice), September 2013. European Commission, Directorate-General for Justice, p6.