



January 15, 2023

**Input to “the thematic report of the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, exploring the right to freedom of religion or belief in relation to sexual orientation and gender identity”**

The “[UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity](#)” recently issued a [call](#) for inputs “To inform the thematic report of the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (IE SOGI), exploring the right to freedom of religion or belief (FoRB) in relation to sexual orientation and gender identity (SOGI). The report will be presented at the 53rd session of the UN Human Rights Council in June 2023.”

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Religious freedom is clearly enumerated as a right in the Universal Declaration of Human Rights (UDHR). Although non-binding, the Declaration has explicitly been the basis for many subsequent human rights treaties. UN member States developed and negotiated the text and adopted the declaration in 1948 by a vote of 48-0-8. The subsequent International Covenant of Civil and Political Rights enshrined the religious freedom principles of the UDHR in a legally binding convention, which 172 countries have ratified. Even international humanitarian law, like the Geneva Conventions, includes some religious freedom protections, demonstrating a point of paramount importance: claims of the universality of human rights cannot be made with respect to “rights” that international law does not recognize, and whose justiciability or enforcement would inherently violate already recognized fundamental human rights, such as freedom of religion.

Codifying “SOGI” policy would undermine the principle enshrined in the [Vienna Declaration and Programme of Action](#) that human rights and fundamental freedoms are, inter alia, “interdependent and mutually reinforcing.” “SOGI” policy advances certain conceptions of the human person and human sexuality while rejecting others, including those that a range of religious communities hold. Thus, when “SOGI” policy is enacted, it often enables use of government coercion against dissenting religious individuals and institutions, imperiling their religious freedom. The formal inclusion of “SOGI” policy in international law should be expected to have a similar effect. Proponents have for years been attempting to achieve this objective through a range of non-binding documents and initiatives associated with international institutions, particularly the UN.<sup>1</sup>

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<sup>1</sup> **Examples include:** UN Independent Expert on sexual orientation and gender identity, first [report](#) to the UN Human Rights Council, “[Protection against violence and discrimination based on sexual orientation and gender identity](#),” in July 19, 2017; UN Independent Expert on sexual orientation and gender identity, report to the UN Human Rights Council, “[The Law of Inclusion](#),” June 3, 2021; Special Rapporteur on freedom of religion or belief, report, “[Gender-based violence and discrimination in the name of religion or belief](#),” August 24, 2020; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, report, “[Sexual and](#)

The fundamental right of religious freedom demands due respect and protection for the many religious people and institutions across a range of faith traditions, cultures, and countries who hold views of the human person, sexual morality, and marriage that are at odds with various aspects of “SOGI” policy and the ideology upon which it is based. Tenets of these faith traditions include teachings such as:

- **All people equally possess a dignity that is inexhaustible and transcendent in origin:** Human dignity is independent of any attribute that may be observed or purported about a person other than their humanity. Everyone possesses human dignity by virtue of their mere existence.
- **Females and males are immutable and femaleness and maleness are intrinsic:** No human thought, feeling, word, or action changes a person’s inherent existence as female or male.
- **The human body has and expresses intrinsic meaning:** It is neither a machine that people are free to manipulate nor an empty vessel to be filled. Therefore, the human body is to be cared for: attempting to turn females into males, or males into females, violates what is true about the human person. Pursuing this course of action with children is especially pernicious and filled with unknowns about the long-term consequences.
- **Marriage is the union of a woman and a man:** Marriage is inherently linked to bringing about the next generation. Marriage precedes government and no government can change its substance.

Despite the prevalence of these teachings in major world religions, “SOGI” policy proponents tend to characterize any refusal to affirm “SOGI” expressions or conduct as invidious “discrimination.” As a result, “SOGI” policy can be wielded broadly against religious people and institutions. For example, religious charities, including those that serve the oldest, youngest, poorest, weakest, and others who are among society’s most vulnerable, have had to end their work due to government

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[reproductive health rights: challenges and opportunities during the COVID-19 pandemic](#),” July 16, 2021; Human Rights Committee, “[Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights](#)” (*Toonen v. Australia*), December 25, 1991; Committee on the Elimination of Discrimination against Women, “[General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women](#),” December 14, 2010; Committee on the Rights of the Child, “[General comment No. 20 \(2016\) on the implementation of the rights of the child during adolescence](#),” December 6, 2016; International Panel of Experts in International Human Rights Law and on Sexual Orientation and Gender Identity, “[Yogyakarta Principles: Principles on the application of international human rights law in relation to sexual orientation and gender identity](#),” March 26, 2007 (launched at the Human Rights Council) and “[Yogyakarta Principles plus 10: Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles](#),” November 10, 2017; UN High Commissioner for Human Rights, booklet, “[Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law](#),” September 14, 2012.

action implementing these policies. Religious organizations and individuals have been forced to choose between violating their religious convictions or risking punitive fines or closure.

There is ample international law protecting all people from violence and invidious discrimination, regardless of any pattern of perceptions or actions regarding their sex or sexuality. The same international legal regime prohibits violence and invidious discrimination based on what the perpetrators perceive about those they target.

Long-established international law protecting religious freedom, and the fundamental demands of human dignity, together require proper recognition of what is at stake in attempts to enshrine “SOGI” policy in international law and norms. It must be stated emphatically that all people are worthy of full protection from violence and invidious discrimination. However, international institutions, especially the UN, must refrain from infusing “SOGI” policy into international law as a means of achieving conformity in the areas of anthropology and sexual morality.

Imposing conformity in this regard would lead to violations of the religious freedom of religious individuals and institutions that remain committed to a view of the human person and human sexuality that dissents from “SOGI” policy. Therefore, giving such policy international legal expression would empower governments to coerce many religious communities around the world to act contrary to their religious convictions. The UN Independent Expert on SOGI should view this eventuality as incompatible with the UN’s moral and legal obligations to respect and protect religious freedom.