

The Heritage Foundation’s Response to “Call for input to a thematic report: freedom of religion or belief (FoRB) and sexual orientation and gender identity (SOGI)” from UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

In the call for input to this upcoming thematic report exploring the right to freedom of religion or belief (FoRB) in relation to sexual orientation and gender identity (SOGI), the Independent Expert stated his intention to “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.”

As the Independent Expert certainly agrees, individuals are all equally entitled to human rights. Such rights are due to all human beings by virtue of our human dignity. In other words, individuals with “diverse sexual orientations and gender identities” are deserving of the same rights—no more and no less—than anyone else.

The right to freedom of religion is foundational to the entire system of human rights.ⁱ The Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) explicitly protect the freedom to manifest one’s religious beliefs in private and in public, as well as individually or in community. Furthermore, international law emphasizes the importance of conscience; in fact, freedom of conscience is considered a non-derogable right that governments cannot limit even during times of emergency. Regardless of prevailing sentiment among secular elites, the 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 human life from conception.

This forthcoming report by the Independent Expert appears to build upon the 2020 report on religious freedom and gender equality by Mr. Ahmed Shaheed, the Special Rapporteur on the freedom of religion or belief.ⁱⁱ The Independent Expert ought to take care to avoid the critical errors of that report, namely equating FoRB – a human right enshrined in international law – with policies or preferences based on SOGI, and further suggesting that in conflicts between them, the freedom of religion or belief should give way to the demands of sexual autonomy and subjective identities.ⁱⁱⁱ

It is imperative that the Independent Expert’s report not consider sincere religious believers as perpetrators of discrimination simply for acting on the tenets of their faith. While no person should be discriminated against simply because he or she identifies as gay or transgender, support for traditional marriage and biological sex is not discrimination.

Furthermore, UN human rights mechanisms ought neither create nor promote new rights without authorization from UN member states. Doing so results in the politicization of human rights. This is especially true when proposed new rights undermine fundamental human

rights—such as life, freedom of religion, and conscience—that are enshrined in the UN’s foundational documents and codified in international treaties. Individuals who are victims of abuses against their fundamental human rights can and should be defended and protected using existing human rights laws and norms, regardless of their race, nationality, gender, sexual orientation, or any other distinguishing characteristic.^{iv}

ⁱ Daniel Philpot, “Religious Freedom in International Human Rights Law,” Heritage Foundation Report, September 1, 2020, <https://www.heritage.org/religious-liberty/report/religious-freedom-international-human-rights-law>.

ⁱⁱ United Nations Office of the High Commissioner for Human Rights, “Report on freedom of religion or belief and gender equality,” Report of the Special Rapporteur on freedom of religion or belief. A/HRC/43/48, 2020.

ⁱⁱⁱ Grace Melton, “The Threat to Life and Liberty from the United Nations’ Abuse of Human Rights,” *The Public Discourse*, October 5, 2020, <https://www.thepublicdiscourse.com/2020/10/71919/> (accessed January 14, 2023).

^{iv} Emilie Kao and Grace Melton, “The U.S. Must Protect Human Rights of All Individuals Based on Human Dignity—Not Membership in Identity Groups,” Heritage Foundation Report, May 24, 2018, <https://www.heritage.org/global-politics/report/the-us-must-protect-human-rights-all-individuals-based-human-dignity-not>.