The impact of fundamentalism and extremism on the cultural rights of LBTI individuals: Joint submission to the Special Rapporteur in the field of cultural rights

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This submission to the Special Rapporteur in the field of cultural rights highlights some of the many ways in which fundamentalism and extremism have infringed on lesbian, bisexual, trans and intersex (LBTI) communities’ cultural rights globally. We discuss how, while LBTI individuals can occupy culturally significant roles, they also face stigmatization for not conforming to certain cultural norms around gender or sexual orientation. Next, we provide recent examples of how LBTI communities’ freedom of expression have been curtailed, with obvious implications for the enjoyment of cultural rights. We also document recent examples of LBTI persons’ experiences of extrajudicial violence and discrimination in accessing education.

While this submission does not represent an exhaustive or comprehensive overview of fundamentalist-related cultural rights violations faced by LBTI persons,¹ it does demonstrate that LBTI persons are frequently targeted by fundamentalist groups, with grave consequences for these communities’ cultural rights.

¹ We sent a call for input to a large LGBTI mailing list and worked with data provided by organisations that responded to write this submission. Organisations that provided input were also asked to review a final draft, and organisations that were unable to submit data within our timelines were encouraged to prepare their own submissions. In light of this methodology, certain significant rights violations are likely to have been under-profiled. For example, we received relatively little information about intersex persons’ cultural rights violations and acknowledge that this report does not represent the range of cultural rights violations faced by intersex persons globally.
LBTI communities’ contributions to and exclusions from cultural life

LBTI persons are both holders and innovators of culture. Traditional cultures can be sites of both inclusion and exclusion for those who transgress gender norms, with the result that trans and/or gender diverse individuals may occupy culturally significant roles in some contexts, be at greater risk of isolation and violence in others, and have both realities co-exist in yet others.

Trans and gender-variant persons occupy culturally significant roles in a variety of societies from India to the Americas. For example, in a religious festival in Myanmar for spirit mediums (Nat Pwe), trans women and cisgender men take the form of female spirits (nats). Local activists report that the festival has become a de facto pride event where trans women are celebrated for their ability to connect to the spirits.\(^2\) In this instance, the traditional event is owned by the local queer community and given positive meaning.

In contrast, rigid gender roles and cultural ceremonies associated with them can serve to alienate, marginalize or even kill trans, gender diverse and intersex persons. For example, in the John Taolo Gaetsewe district of South Africa, 88 of 90 midwives surveyed were reported to commit intersex-specific infanticide in light of beliefs that intersex children are born to cursed families.\(^3\) However, for trans persons, the ceremonies, which instil behaviours, language and rituals associated with the sex they were assigned at birth cause humiliation, abuse and conflict with their gender identities.\(^4\) Those who refuse to participate are sometimes deemed to cause shame to their families, denied rights to inheritance, and thrown out of home, while those who participate willingly are often subjected to sexual and physical violence, harassment and ostracisation.\(^5\)

In Uganda, one report documents 42 cases of children killed in cleansing rituals because they were intersex and believed to be a curse. In another case, an intersex child and their mother were forced out of the family home because the child was believed to be a bad omen and bring bad luck to the family. The mother was also attacked by relatives for giving birth to an intersex child.\(^6\)

Fundamentalist-related freedom of expression violations

Some of the most frequent human rights violations committed against LGBTI persons concern freedom of expression. For example, legislation in at least 17 countries around the world explicitly prohibits the “promotion” of sexual orientation, with the effect that LGBT

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\(^4\) See, for example, “Torment for trans women ‘sent to mountain’ to learn to be men” in Mail & Guardian, 11 January 2017, [https://mg.co.za/article/2017-01-10-transwomen-sent-to-the-mountain-to-learn-to-be-men](https://mg.co.za/article/2017-01-10-transwomen-sent-to-the-mountain-to-learn-to-be-men) (accessed on 12 May 2017)

\(^5\) See upcoming report by Leigh Ann Van Der Merwe on cultural circumcision amongst trans women: [http://transfeminists.org/](http://transfeminists.org/)

communities are effectively restrained from expressing and communicating about cultural events or of their very existence.\(^7\) In some cases, such laws have emboldened fundamentalist groups to commit violence against participants of LGBTI events.\(^8\)

Below, we document several country-based examples of how fundamentalism has infringed on the freedom of expression of LBT communities.

In several Malaysian states, Islamic religious departments tasked with enforcing state sharia enactments have shut down beauty pageants and fashion shows which are organized by, or involve the participation of, trans women. For example, in Kedah in 2012, religious officials shut down an event at a private golf resort that combined a beauty pageant with HIV prevention workshops, and arrested eight participants. Officials in Johor raided a disco in 2009, arresting 76 trans women. In 2016, officers from the Federal Territories Islamic Department (Jawi) raided a private fundraising dinner for trans women. The raid was allegedly conducted on the grounds that there would be a beauty pageant at the event, which would have been in violation of a 1996 fatwa forbidding Muslim women to participate in beauty contests. This application of the 1996 fatwa is ironic in this instance, given that the Jawi and other Malaysian religious authorities do not include trans women in the category of “women”. The premise of the raid, therefore, was baseless.\(^9\)

In Indonesia, pressure from extremists forced the cancellation and curtailment of LGBT events, including pride events, and the Yogyakarta Transgender Day of Remembrance in 2014.\(^10\)

Police in Uganda have shut down several cultural events organized for or with the participation of LGBTI people, including queer women. In August 2016, police raided a club where a pride event was taking place. They arrested more than 16 people, including several women activists, and detained hundreds more for over 90 minutes, beating, humiliating, and taking pictures of these LGBTI Ugandans, which they threatened to publish. Witnesses reported that the police assaulted and, in some cases, groped and fondled many

\(^7\) These countries include Algeria, Egypt, Iraq, Iran, Jordan, Kuwait, Lebanon, Libya, Lithuania, Morocco, Nigeria, Qatar, Saudi Arabia, Somalia, Syria, Tunisia and the Russian Federation. See http://ilga.org/downloads/02_ILGA_State_Sponsored_Homophobia_2016_ENG_WEB_150516.pdf, p. 40-41. While such legislation generally targets sexual orientation and not gender identity, in practice, these two categories are often conflated, with the result that trans and gender variant persons are also much affected by such laws.

\(^8\) For example, the Russian LGBTI human rights defenders claimed that after the adoption of the law banning so-called “propaganda of non-traditional sexual relations among minors” “virtually any peaceful LGBT rights public action is accompanied by acts of violence committed by opponents without any proper response of police to committed crimes. The attackers justify their crimes. They say that the victim was gay, or the attack was caused by the protection of morals, children and the struggle against the violation of law on “propaganda”. See: LGBT Organization “Coming Out”, Transgender Legal Defense Project and the Russian LGBT Network, \textit{Implementation of the International Covenant on Civil and Political Rights in the Russian Federation: Sexual Orientation and Gender Identity Issues: Alternative report to the UN Human Rights Committee} (2014), p. 4. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fICC%2fRUS%2fH17137&Lang=en.


participants, in particular trans women and men.\textsuperscript{11}

\textbf{Kenya’s} Film Classification Board has taken a hardline stance against LGBT-themed creative work. In 2014, it banned the award-winning film “Stories of Our Lives”, written by a female screenwriter and featuring several stories of queer women. It attempted to censor the YouTube video “Same Love” (a Kenyan version of the popular Macklemore and Ryan Lewis song) in 2016, because the video is based around love stories featuring a female same-sex couple and a male same-sex couple.\textsuperscript{12}

In \textbf{Ukraine}, religious groups frequently used media publications to oppose local LGBT cultural events. In particular, the Ukrainian Orthodox and Greek Catholic churches demanded the ban of the Equality Festival’s events planned in Lviv on 19-20 March 2016, including “LGBT Quest.”\textsuperscript{13} When the matter reached court, the police and the Mayor’s office referenced letters written by the church as justification for banning the Festival. The Equality Festival in Kyiv, organized in May 2016, also faced strong opposition. For example, the Ukrainian Orthodox Church called on the government not to support LGBT community public events in Kyiv.\textsuperscript{14}

In \textbf{Russia}, attacks against LGBT groups and cultural events were frequently supported and even organized by groups and public officials associated with the Russian Orthodox Church. For example, Vitaly Milonov, who until recently was a Deputy in the Legislative Assembly of Saint Petersburg, and one of the authors of the infamous “anti-propaganda” law, has strong connections with the church and participates in public sacred processions wearing clerical vestments. Milonov and his supporters repeatedly disrupt public and cultural LGBTI events, including Side by Side, an LGBT Film Festival, and the Saint Petersburg Queer Festival. For instance, on 17 February 2016, Side by Side screened \textit{Facing Mirrors}, a film about an Iranian trans man. Milonov and 10 other people blocked the entrance of the venue in St Petersburg and insulted attendees. Nearby police did not intervene. Most of the people who tried to attend the screening never managed to enter the building.\textsuperscript{15} Milonov has not only never been made accountable for these actions, despite applications to law enforcement authorities by LGBT rights defenders, but has also become a Deputy in the State Duma of the Russian Federation.\textsuperscript{16}

\textsuperscript{11}See, for example, https://www.hrw.org/news/2016/08/05/uganda-police-attack-lgbt-pride-event (accessed May 18, 2017)


\textsuperscript{13}See, for example, http://www.the-star.co.ke/news/2016/02/23/films-board-bans-art-attacks-same-love-remix-for-being-immoral_c1300271 (accessed May 18, 2017);


\textsuperscript{15}See for example: \textit{Выход, Доклад по итогам мониторинга дискриминации и насилия по признакам сексуальной ориентации и гендерной идентичности в 2016 году} (Saint-Petersburg, 2017), http://comingoutspb.com/upload/iblock/3ce/3ce91780df7409ea76850b0430096fa5.pdf, p.44

\textsuperscript{16}The State Duma is the lower house of the Federal Assembly, the parliament of the Russian Federation. For more specific cases see, eg: Coalition of civil society organisations, \textit{List of issues related to the discrimination and violence against women who use drugs, sex workers, lesbian and bisexual women and transgender people in Russia},CEDAW 62\textsuperscript{nd} session (2015), p. 7; Union of Independent LGBT Activists of Russia, \textit{Written submission related to discrimination and violence against lesbian, bisexual and transgender women in Russia}, CEDAW 62\textsuperscript{nd} session (2015), pp. 3-4; Coming Out LGBT Initiative Group, \textit{Report On Incidents of Discrimination and Violence on Grounds of
Extrajudicial violence and persecution of LBT individuals

In many regions around the world, cases of violence, including, in the worst case scenario, brutal attacks and killings, against LBT persons and defenders by members of fundamentalist groups and organisations have been documented. Today, 72 States in the world still criminalise same-sex sexual acts between consenting adults, and it is worth noting that in 45 of these States the law is applied to women as well.  

In Bangladesh, two LGBT activists, Mahbub Rabbi Tonoy (a member of a theatre group and who assisted in the publication of Bangladesh’s first queer magazine, Roopban) and Xulhaz Mannan (founder and editor of Roopban), were brutally murdered in Dhaka in April 2016 by attackers associated with Al-Qaeda. The government was slow to condemn their murders and the Prime Minister even suggested that those challenging norms of religion and sexuality should consider leaving the country.

Although the murders were of cis gay men, the entire LGBT community in Bangladesh has felt the effects of these fundamentalist-driven hate crimes, condoned by the government. Prior to April 2016, Bangladesh had a relatively open community of LGBT activists. After the murders, most activists left the country or are now in hiding. Local LGBT activists report being openly threatened by terrorists, harassed and denied protection by law enforcement officials and socially ostracized. Many LGBT activists were identified by name and photo on extremist websites. They have been forced to relocate residence several times, quit university studies and change employment. More than two dozen LGBT activists and human rights defenders, including women, left the country. Those who remain are isolated, frightened and often suffer serious depression.

In some cases, codes based on religious rules or their interpretation criminalise not only same-sex relations, but also appearance or clothing that does not fit traditional norms. In Iran, the Islamic Penal Code punishes teenage girls and women who fail to cover their heads and wear loose-fitting outfits in public spaces, with a cash fine or imprisonment. While discriminatory toward all girls and women, this provision has had a particularly severe impact on some lesbian and trans individuals who do not conform to stereotypical models of femininity, and wish, for


example, to cut their hair short, discard compulsory headscarves, and wear items of clothing stereotypically associated with men. This places them at constant risk of criminalization and penalization. They may be sentenced to cash fines and imprisonment. They may also be accused of “cross-dressing” and sentenced to flogging under provisions in the Islamic Penal Code that prohibit conduct deemed “religiously forbidden” (haram) or otherwise “offensive to public morals.”

Religious leaders are able to promote hatred and violence against LBT persons, and such acts usually remain unpunished. In Kyrgyzstan in January 2014, the Spiritual Office of Muslims of Kyrgyzstan (DUMK) published on its website a fatwa signed by the Mufti of Kyrgyzstan. The fatwa includes a citation translated as “when you see a homosexual, kill him.” As fatwas are religious decrees, the citation can be interpreted as a direct call to murder gay men in Kyrgyzstan, and has caused the country’s entire LGBTI community to worry for their physical safety and security. After the publication of the fatwa, five civil society organizations approached the Kyrgyz State Committee on National Security and the Prosecutor General’s office requesting a legal examination of the fatwa. This resulted in representatives of one of the organizations, Labrys (a LGBTIQA organization), being called into the National Security Committee for a “verbal explanation” of the request. The Committee and the Prosecutor General’s office did not act on the request.

Fundamentalist groups can also block the adoption of progressive legislation aimed at protecting women and LGBTI persons from violence. In Ukraine, the All-Ukrainian Council of Churches took an active position against the ratification by Ukraine of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). As a result, the Convention has so far not been ratified by Parliament. According to reports, the main obstacle to ratification was the disagreement between the Council of Churches and civil society over the exclusion of references to sexual orientation, gender identity, gender sensitivity and other gender-related terms in the Convention’s text.

Restrictions to education on the basis of SOGI

Fundamentalist movements have also been successful in violating a number of LBTTI individuals’ right to education across a range of contexts and regions.

In the United States, a growing wave of transphobic policies and beliefs have further inhibited trans youth’s access to education free from discrimination. Notably, the Trump Administration rescinded the Title IX guidance released by the Departments of Justice and

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20 Iranian Lesbian and Transgender Network (6Rang), Submission to the UN Committee on the Rights of Persons with Disabilities (2016), p.2
Education in May 2016, which clarified for school districts nation-wide that trans students were protected under federal civil rights law.\textsuperscript{23}

In Australia, Safe Schools, a voluntary program intended to assist school-age children to better understand sexuality and gender issues, was systematically attacked by conservative Members of Parliament, the media, and Christian organizations. As a direct result, in 2016, the Australian government pared back the program, including restricting it to secondary schools and limiting the use of certain materials.\textsuperscript{24}

In Russia, a group led by Timur Isaev (Bulatov), claiming to be a “defender of traditional values” and a Muslim with close connections to Orthodox Christian homophobic groups such as "People’s Council", organized a harassment campaign against teachers who were LGBT and/or human rights defenders. Through social media, websites and discussion boards, the group collected information about these teachers' private lives and civic positions and then forwarded these to school administrations and educational authorities, demanding that teachers who “promote perversion” be banned. Bulatov claimed in 2014 that he had caused 29 LGBT teachers across Russia to be fired from their jobs. Human Rights Watch documented seven cases where LGBT people or their supporters were threatened with dismissal or forced to leave their teaching jobs at universities, schools, and educational centres for children. While Bulatov’s harassment campaign targeted all LGBT teachers, it had a particularly strong impact on lesbian, bisexual women and trans individuals, since it is traditionally women who are the majority of teachers in Russia, especially in general schools.\textsuperscript{25}

In Belize, a Health and Family Life Manual acknowledging the rights of LGBT persons was withdrawn by the Ministry of Education following pressure from the Belize Prayer Network, a right-wing evangelical network with connections to American evangelical groups.\textsuperscript{26} This same network has claimed responsibility for introducing anti-LGBT content in a subsequent handbook developed in conjunction with UNESCO for the Ministry of Education, though this has not been independently verified.\textsuperscript{27}

\textsuperscript{25} Coalition of civil society organisations, List of issues related to the discrimination and violence against women who use drugs, sex workers, lesbian and bisexual women and transgender people in Russia, CEDAW 62\textsuperscript{nd} session (2015), p. 8; Union if Independent LGBT Activists of Russia, Written submission related to discrimination and violence against lesbian, bisexual and transgender women in Russia, CEDAW 62\textsuperscript{nd} session (2015), pp. 6-7; Human Rights Watch, License to Harm – Violence and Harassment against LGBT People and Activists in Russia, https://www.hrw.org/reports/2014/12/15/license-harm-0.

In 2014, as a result of Bulatov’s attack against a lesbian music teacher she was fired from her position, and all the attempts to seek justice in court remained unsuccessful. Surprisingly, one of the lawyers representing the school, was a lawyer of Vitaly Milonov, one of the authors of the infamous “anti-propaganda” law and now the Deputy at the Russian State Duma, who has strong connections with the Russian Orthodox Church (see p.4 of this submission).

\textsuperscript{26} See http://edition.channel5belize.com/archives/75834 (accessed May 14 2017)
\textsuperscript{27} See http://belizeprayernetwork.com/2017/01/pro-family-curriculum-4893/ (accessed May 15 2017)
In Indonesia, an Islamic boarding school, Al-Fatah Pesantren, run by and for waria (trans women) was founded in 2008, making it the only such Islamic school and safe haven for waria in the world.28 In February 2016, the militant group, Islamic Jihad Front (ISF) ordered the closure of the school. Police failed to respond to requests to protect it and, in March 2016, local authorities forced the school to close - thereby denying waria a safe space to learn about and connect with their religion, and denying them access to a safe learning environment.29