

Cultural life and SOGI

Policy position

United Nations Special Rapporteur in the Field of Cultural Rights and the United Nations Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity

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The UN Special Rapporteur in the field of cultural rights and the United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity call on all UN Member States and other stakeholders to take measures to ensure that persons of diverse sexual orientations and gender identities can fully and freely participate in cultural life and be represented in it free from discrimination and violence.

All persons have the right to participate in cultural life. This means they must be able to access, take part in, and contribute to cultural life in all its facets, to freely express their own world views, values, and ways of life, as well as see diversity represented adequately in public spaces, the media and in cultural institutions, such as museums, educational and sports structures. Fundamentalist and extremist ideologies and the actions they incite when they are not challenged, threaten the expressions of diversity and may give rise to violations of -among others- LGBT persons' internationally guaranteed human rights. These breaches can impact a broad range of human rights, ranging from rights to equality, life, liberty, bodily integrity and humane treatment and freedom from torture, to the right to take part in cultural life, scientific and artistic freedoms, prohibition of modern slavery and socio-economic rights.

LGBT persons must enjoy their cultural rights without discrimination

Persons of diverse sexual orientations, gender identities and gender expressions are part of all sectors and aspects of society, and their contribution to the world's cultural life have been fundamental throughout history, throughout which they have taken part in and contributed to the rich cultural life of their communities, countries, and the world.

Nevertheless, due to discriminatory laws and societal norms, assumptions and stereotypes, these contributions to cultural life have often been made at a great personal price for their authors, and sometimes also for those who support the furtherance of their rights. On many occasions, the authors had to remain in secrecy and anonymity, and were therefore deprived of their right to benefit from the moral and material benefits of their creativity.

While in certain social narratives the arts have historically been a safe haven for LGBT persons, this is only true of a reduced number of contexts, and often only for the most successful of cultural creators. In most parts of this world, discrimination and violence against

LGBT persons occurs throughout cultural spaces and in all forms of cultural expression. Directors have their films banned for featuring LGBT stories,¹ actors are denied access to roles because of their identity,² singers face hostility simply for being supportive of LGBT inclusion.³ People who challenge cultural norms or attitudes about sexuality and reproduction, or narrow conceptions of “family” or “tradition”, they and their work are often subjected to various forms of regulation or accusations of being enemies of culture, religion or national or ethnic groups.⁴

Further, the criminalization of sexual orientation in many countries renders invisible the cultural and artistic expressions of a whole group of people, thereby suppressing their contribution to cultural life, in all its diversity and richness, and targeting those involved in or defending such contribution.⁵ Even in settings where there are no legal restrictions on sexual orientation and gender identity, authorities, educational and cultural institutions and communities have banned books featuring LGBT themes, limited cultural performances, and prohibited teaching about respect for diverse sexual orientations and gender identities.

Some view the cultural and artistic expression of LGBT persons as inappropriate or immoral and believe that they promote ideas and behaviours that are contrary to traditional values and norms, or even blasphemous or sacrilegious. Legislation in a number of countries explicitly prohibits the so-called “promotion” of diversity in sexual orientation. Recent social and legal discussions target drag queens and crossdressers under the assumptions that their very appearance in public settings is a risk for children. This appears to derive from a desire to “punish” and repress expressions that expand conventional gender norms and has no justification under international human rights law. Another common method of repression is the banning, cancelling or establishment of barriers of pride marches and parades as well as LGBT arts festivals. As highlighted by the Special Rapporteur and the Independent Expert, the use of public spaces plays a crucial role in the fight for dignity and equality, as well as in increasing the visibility of the rights of individuals who face discrimination and violence due to their sexual orientation or gender identity.⁶

Under international human rights law, just like in any field, expression in art and culture is subject only to limitations that are provided by law and necessary for respect of the rights or reputations of others, for the protection of national security, public order, or public health and morals under strict tests of necessity and proportionality.⁷ Any limitation to cultural rights must be interpreted in the most restrictive manner. In addition, no one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope.⁸

Debates on the inclusion of LGBT experiences of art and culture reflect broader cultural, social, and political tensions around issues of sexuality and gender identity, and the extent to which these should be protected and celebrated under the law. Efforts to control and suppress open discussions around these themes and the expression of cultural diversity can be

¹ In 2017, Wanuri Kahiu faced a [government ban on her film "Rafiki"](#) which portrayed a lesbian love story. Kahiu successfully challenged the ban in court and the film went on to receive critical acclaim and international attention.

² Laverne Cox: The actress and transgender activist has spoken openly about [the challenges she has faced in Hollywood](#), including being turned down for roles because of her gender identity.

³ In 2017, a Brazilian singer and drag queen, Pablo Vittar, [faced backlash](#) from conservative politicians and religious groups after releasing a music video that featured LGBTQ+ themes and imagery. Mista Majah P, a Jamaican reggae artist, [has faced death threats](#) for speaking out in support of LGBTQ+ rights.

⁴ A/HRC/43/50, par. 52.

⁵ Idem, par. 55.

⁶ Idem, par. 46.

⁷ See A/HRC/23/34, paras. 25-39 for the specific application of limitations to artistic freedoms.

⁸ UNESCO Universal Declaration on Cultural Diversity, art. 4.

witnessed across fundamentalist and extremist circles around the globe. Such circles attempt at redesigning culture based on monolithic world views, focused on “purity” and enmity toward “the other”, policing “honour” and “modesty”, claiming cultural and moral superiority, imposing a claimed “true religion” or “authentic culture” along with dress and behaviour codes often alien to the lived cultures of local populations, stifling freedom of artistic expression and curtailing scientific freedom. Their cultural engineering often limits the enjoyment of women’s human rights and restrict the sexual and reproductive rights of all. Fundamentalist and extremist groups often seek to quash the expression of cultural opposition to their own agenda, using blasphemy laws and gender discriminatory family laws to silence cultural expression antithetical to their interpretations of religion or moral. They also resort to campaigns of harassment, education policies and programs that do not conform to human rights standards, human rights abuses, and outright violence to instigate fear and shame to anyone expressing diversity, including members of minority groups, foreigners and lesbian, gay, bisexual, and transgender persons as they seek to enjoy their equal cultural rights.⁹ Fear and shame paralyze, and societies without diversity are condemned to atrophy.

LGBTs contribution to diversity must be recognized as part of the cultural heritage of humankind

From the Babaylan spiritual protectors with both feminine and masculine spirits in one person in the Filipino indigenous community to the Ogbanje individuals in Nigeria, diversity in sexual orientations and gender identities has existed everywhere throughout recorded history. Individuals embodying gender-variant roles and identities have been cherished and respected in many societies, both for ceremonial and advisory roles, such as Two-Spirits in North America, the Bonjus in Europe, the Muxes in Mexico, the Hijras in India and Bangladesh, the Takatāpuis in Aotearoa/New Zealand, and the Sistergirls of the First Nation Cultures in Australia. Hence, LGBT persons are not only part of modern Western culture, and the celebration of LGBT diversity is part of the cultural richness in all recorded history.

This statement of diversity is also accompanied by findings of a multiplicity of Special Procedures in relation to spirituality. Indigenous scholarship from the Americas, South Asia and the Pacific regions records various gender-fluid identities that carry spiritual significance in their respective communities: the māhū in Native Hawaiian and Tahitian communities embrace both the feminine and masculine and are keepers of traditional practices such as hula and chant. Hijras and Khawaja Siras are a gender-variant community, who occupied the roles of spiritual advisors, military commanders, and members of royal courts in pre-colonial Mughal rule in pre-independent India. Two-spirit or berdache persons are a blend of male and female spirits believed by several Indigenous communities in Canada to have access to a distinct realm of spirituality as healers, shamans, and ceremonial leaders. The Special Rapporteur on Freedom of Religion or Belief has noted that processes of sexual assimilation, criminalization and pathologization have had a profound impact on the traditional status and roles of Indigenous persons in the postcolonial period.

In some places, colonial powers imposed very strict gender notions and roles, that might have been unknown to local realities. In some cases, as a response, anti-colonial discourse has been instrumentalized to justify the exclusion of certain groups from the enjoyment of their human rights, anti-rights actors using “culture” as a “trope for cultural relativism in human rights debates.” Those fighting against colonialisms “were fighting for more freedom, not less; for

⁹ A/HRC/29/23 and A/HRC/19/41

more rights, not less; for the right to be considered equally human and entitled to equal rights, not inherently different and entitled to different rights”.¹⁰ The “misuse” of colonial history to “justify contemporary human rights abuses” is an insult to the memory of those who found against it, serving only to discount their achievements.¹¹

What international law requires is that LGBT persons are not only recognized in limited functions and specific roles in society, as they have long been through history; but rather, as full subjects of their lives, capable and enabled to express their dignity and to share their ambitions and creativity in all areas of society. We claim these rights just as we claim them for everyone else; be they women, children, persons with disabilities and others. In that context, we are heartened by the steady growth of memorials¹², libraries¹³ and museums¹⁴ that make visible and commemorate the experience of persons of diverse SOGI, as well as those places where the diversity of LGBT cultural expressions is celebrated. We welcome “genuine attempts to link the past - history, past cultural expressions, established ideas, classical art - with the current debates, present big questions and dilemmas.”¹⁵

We affirm together that the human rights standards and norms exist at the international level to guide the discussions relating to cultural rights and cultural diversity. Many debates that are happening at local and national levels do not appear to be fully informed about this guidance. In particular, we encourage all States to sign and ratify the International Covenant on Economic, Social and Cultural rights and its Optional Protocol in order to secure the enjoyment of cultural rights for all persons and allow individuals to present complaints regarding their cultural rights at the international level.

The Special Rapporteur and Independent Expert remind States and other stakeholders that LGBT persons must enjoy their cultural rights without discrimination. All persons must be able to freely express their own world views, values, and ways of life, and take part in shaping the contours of cultural life.

¹⁰ A/73/227, Universality, cultural diversity, and cultural rights, 2018, paragraph 49.

¹¹ Idem, paras. 49-50.

¹² For example, the [Memorial por la Diversidad de Chile](#)

¹³ For example, the [Transgender Archives at the University of Victoria, Canada](#)

¹⁴ For example, the [Schwules Museum in Berlin, Germany](#)

¹⁵ From the [press release](#) and [statement](#) at the end of the SR on cultural rights (Alexandra Xanthaki) visit to Germany