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## LEVERAGING REGIONAL HUMAN RIGHTS MECHANISMS AGAINST UNIVERSAL HUMAN RIGHTS: THE OIC INDEPENDENT PERMANENT HUMAN RIGHTS COMMISSION STUDY ON SEXUAL ORIENTATION

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### ABSTRACT

*This article critically assesses a recent study on sexual orientation and gender identity (SOGI) prepared by the Organization for Islamic Cooperation's (OIC) Independent Permanent Human Rights Commission (IPHRC). The first two parts review the establishment of the IPHRC and the norms governing regional human rights mechanisms (RHRMs). Following this, the article demonstrates that the methodology and conclusions evidenced in the IPHRC's SOGI study diametrically oppose substantive international human rights law, and furthermore undermine the intended purpose of RHRMs within the human rights system. The article concludes by recommending that*

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*human rights advocates and others clearly and publicly call out these incompatibilities, set baselines for necessary corrections, and work to develop meaningful, binding standards for RHRMs. Among other things, these standards should ensure that similar bodies orient their activities to promoting and protecting international human rights rather than undermining them.*

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## INTRODUCTION

A variety of present day institutions and mechanisms help inform the development of international human rights norms. Likely familiar to most are the human rights institutions based out of the United Nations (UN) that include, for example, the UN Human Rights Council (UNHRC).<sup>1</sup> Alongside these international mainstays, the past seventy years has seen the proliferation of hundreds of perhaps less familiar national and sub-national human rights institutions (NHRIs) across the globe.<sup>2</sup> In addition, regional human rights mechanisms (RHRMs) such as the European Court of Human Rights have similarly taken root.<sup>3</sup> In certain cases, these mechanisms have helped to further build out an interconnected web of human rights norm development and implementation.<sup>4</sup> However, it remains unclear whether in undertaking their activities all these national and regional institutions equally share the underlying common objective of strengthening respect for international human rights norms.

In raising this possibility, the following article presents a case study that critically assesses a recent report on sexual orientation and gender identity (SOGI) prepared by the Organisation for Islamic Cooperation's (OIC)<sup>5</sup> Independent Permanent Human

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1. *Welcome to the Human Rights Council*, U.N. HUM. RTS. COUNCIL, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx> [<https://perma.cc/C8XH-GPFD>].

2. The Canadian Human Rights Commission (CHRC) was established in 1977 with the signing of the Canadian Human Rights Act. *Milestones*, CANADIAN HUM. RTS. COMM'N, <http://www.chrc-ccdp.gc.ca/eng/milestones-timeline> [<https://perma.cc/7S8A-FPPS>]. The *Commission des droits de la personne et des droits de la jeunesse* ("Human Rights and Youth Rights Commission") was created by Quebec's Charter of Human Rights and Freedoms in 1976. *The Commission: Origin and Mission*, COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE, <http://www.cdpdj.qc.ca/en/commission/Pages/default.aspx> [<https://perma.cc/95XD-LPQD>].

3. Article 19 of the European Convention on Human Rights, which became effective in 1953, established "the Court." COUNCIL OF EUROPE, EUROPEAN CONVENTION ON HUM. RTS. Art. 19 (2010) ("To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as 'the Court'. It shall function on a permanent basis.").

4. *See, e.g., infra* note 23 and accompanying text.

5. The OIC, a collective of 57 states, describes itself as the "second largest inter-governmental organization after the United Nations." *What is OIC*, ISLAMIC REPORTING

Rights Commission (IPHRC).<sup>6</sup> After briefly discussing the IPHRC's establishment, the article outlines the norms governing regional human rights mechanisms. It then proceeds to demonstrate that the methodology and conclusions evidenced in the IPHRC's SOGI study diametrically oppose substantive international human rights law. As an outgrowth of this, the study itself undermines the intended purpose of RHRMs within the human rights system. Consequently, the article concludes that human rights advocates, concerned states, and others should clearly and publicly call out this incompatibility, set baselines for necessary corrections, and work to develop meaningful, binding standards for RHRMs.<sup>7</sup> Among other things, these standards should ensure that RHRMs orient their activities to furthering the overarching objective of promoting and protecting international human rights rather than undermining it.

### I. THE OIC'S INDEPENDENT PERMANENT HUMAN RIGHTS COMMISSION (IPHRC)

Established in 2011, the IPHRC embodies the OIC's most significant and tangible engagement to date with the development and implementation of human rights norms.<sup>8</sup> The formal origins of the OIC's human rights commission trace back over a decade. Several

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INITIATIVE, <https://islamicreporting.org/what-is-oic/> [<https://perma.cc/VZ7H-XDNT>]. As the self-proclaimed "collective voice of the Muslim world," the OIC's *raison d'être* is "safeguarding and protecting the interests of the Muslim world." *See id.* While the OIC may be one of the most vocal and prominent voices of the Muslim world, its claim to represent the "collective voice" of the Muslim world is contested. *See* Robert C. Blitt, *The Organization of Islamic Cooperation's (OIC) Response to Sexual Orientation and Gender Identity Rights: A Challenge to Equality and Nondiscrimination Under International Law*, 28 U. IOWA TRANSNAT'L L. & CONTEMP. PROBS. J. (forthcoming Jan. 2019).

6. Organisation of Islamic Cooperation-Indep. Permanent Hum. Rts. Comm'n [OIC-IPHRC], *OIC-IPHRC Study on Sexual Orientation and Gender Identity in the Light of Islamic Interpretations and International Human Rights Framework*, at 1 (May 2017) [hereinafter *OIC-IPHRC Study*], <https://www.oic-iphrc.org/en/data/docs/studies/46303.pdf> [<https://perma.cc/ECW9-RED2>].

7. This is not a radical proposal. *See, e.g.*, Christof Heyns & Magnus Killander, *Toward Minimum Standards for Regional Human Rights Systems*, in *LOOKING TO THE FUTURE: ESSAYS ON INTERNATIONAL LAW IN HONOR OF W. MICHAEL REISMAN*, 544-45 (Mahnoush H. Arsanjani et al. eds., 2011).

8. *See About the Independent Permanent Human Rights Commission*, ORGANISATION OF ISLAMIC COOPERATION-INDEP. PERMANENT HUM. RTS. COMM'N (2018) [hereinafter *About IPHRC*], <https://www.oic-oci.org/home/?lan=en> [<https://perma.cc/EC5H-3AYZ>].

notable milestones help mark its evolution from idea to reality. In 2005, the OIC's first Ten Year Program called on member states to "consider the possibility of establishing an independent permanent body to promote human rights in the Member States, in accordance with the provisions of the [OIC's 1990] Cairo Declaration on Human Rights in Islam" (CDHRI).<sup>9</sup> Three years later, the revised OIC Charter of 2008 solidified this intention by recognizing a new official OIC organ—the Independent Permanent Human Rights Commission (IPHRC).<sup>10</sup> The Charter also authorized the IPHRC's mandate to "promote the civil, political, social and economic rights enshrined in the organisation's covenants and declarations [presumably including the much-criticized CDHRI]<sup>11</sup> and in universally agreed human rights instruments, in conformity with Islamic values."<sup>12</sup>

Three years after its initial endorsement, the 38th session of the OIC's Council of Foreign Ministers (CFM) officially gave life to the new human rights commission.<sup>13</sup> Acting under Resolution 2/38-LEG, the CFM adopted the IPHRC's statute and authorized the Commission to commence its operations.<sup>14</sup> According to then Secretary General Ekmeleddin Ihsanoglu, the new body would serve to "boost OIC's credibility in the eyes of the outside world, helping to increase the confidence of the OIC."<sup>15</sup> In his view, the event was nothing short of momentous:

It is only appropriate that a year marked by popular uprising in different parts of the Muslim world against injustice, corruption

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9. Ten Year Programme of Action to Meet the Challenges Facing the Muslim Ummah in the 21st Century: Third Extraordinary Session of the Islamic Summit Conference, ORGANIZATION OF THE ISLAMIC CONFERENCE Part 1, VIII.2. (Dec. 7-8, 2005), <http://www1.oic-oci.org/ex-summit/english/10-years-plan.htm> [<https://perma.cc/J8KC-3AKK>]; Organization of the Islamic Conference, *Cairo Declaration on Human Rights in Islam*, Res. 49/19-P, annex, (Aug. 5, 1990) [hereinafter CDHRI].

10. Organisation of the Islamic Cooperation [OIC] Charter art. 5, ¶ 6.

11. For a longer consideration of the Cairo Declaration's deficiencies, see Ann Elizabeth Mayer, *Universal Versus Islamic Human Rights: A Clash of Cultures or a Clash with a Construct?* 15 MICH. J. INT'L L. 307, 327-29 (1994).

12. OIC Charter, *supra* note 10, art. 15.

13. *See About IPHRC*, *supra* note 8.

14. Council of Foreign Ministers Res. 2/38-LEG, annex OIC/IPCHHR/2010/STATUTE, On the Establishment of the OIC Independent Permanent Human Rights Commission, art. 2 (June 28-30, 2011).

15. Marie Juul Petersen, *Islamic or Universal Human Rights? The OIC's Independent Permanent Human Rights Commission*, 3 DIIS REP. 1, 10 (2012).

and abuse of power should conclude with the landmark establishment of a Human Rights Commission duly equipped with a progressive vision and mandate.<sup>16</sup>

By requiring the IPHRC to promote the rights enshrined in the Cairo Declaration,<sup>17</sup> however, the OIC effectively blanketed its new Commission in the CDHRI's relativistic shadow. This move also signaled the OIC's desire to use the IPHRC to further shape the Cairo Declaration's aspirations into legally binding norms.<sup>18</sup> In addition, the OIC took measures to ensure the IPHRC would promote the organization's priorities. From the IPHRC's outset, men have dominated its membership, despite the IPHRC statute specifically encouraging the nomination of women.<sup>19</sup> Commissioners elected to date also demonstrate an inconsistent—and in some cases non-existent—level of human rights expertise.<sup>20</sup> Finally, the IPHRC statute's unusual requirement that the OIC Secretary General manage the task of hiring IPHRC *staff*<sup>21</sup> further underscores the IPHRC's dearth of functional independence.<sup>22</sup>

Despite these foundational shortcomings, several scholars initially praised the commission's establishment, and expressed hope that it could operate as an independent and effective human rights mechanism.<sup>23</sup> However, more than five years into the IPHRC's

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16. Organization of Islamic Cooperation, *The OIC Human Rights Commission ... Landmark Achievement and New Challenges*, 19 OIC J. 1 (2011).

17. Council of Foreign Ministers Res. 2/38-LEG, *supra* note 14, preamble (recalling the CDHRI and providing the IPHRC "shall promote the ... rights enshrined in the Organisation's covenants and declarations and in universally agreed human rights instruments, in conformity with Islamic values").

18. See Robert C. Blitt, *Equality and Nondiscrimination Through the Eyes of an International Religious Organization: The Organization of Islamic Cooperation's (OIC) Response to Women's Rights*, 34 WIS. INT'L L.J. 755, 777-79 (2017).

19. See Council of Foreign Ministers Res. 2/38-LEG, *supra* note 14, arts. 3, 6. The IPHRC website provides a listing of current commissioners and biographies. See *Commission Members*, ORGANISATION OF ISLAMIC COOPERATION-INDEP. PERMANENT HUM. RTS. COMM'N (2018) [hereinafter *Commission Members*], <https://www.oic-iphrc.org/en/iphrc-commissioners> [<https://perma.cc/YKD6-52DQ>].

20. See, e.g., *Commission Members*, *supra* note 19.

21. Council of Foreign Ministers Res. 2/38-LEG, *supra* note 14, art. 23.

22. For a lengthier exploration of the IPHRC's functional and institutional limitations, See Blitt, *supra* note 18, at 784-86.

23. See, e.g., Turan Kayaog'lu, *A Rights Agenda for the Muslim World? The Organization of Islamic Cooperation's Evolving Human Rights Framework*, 6 BROOKINGS DOHA CTR. 3, 3 (2013); see also Petersen, *supra* note 15, at 30 ("[T]he IPHRC should probably not be seen as

mandate, this optimism is misplaced. The IPHRC has embraced its primary function as a validator for the OIC's relativist and revisionist perspective on human rights.<sup>24</sup> As the following analysis evidences, the IPHRC's asserted position on SOGI presents a frontal challenge to the promise of universal human rights,<sup>25</sup> mirroring and reinforcing OIC opposition to SOGI recognition.<sup>26</sup> Equally concerning, the dissemination of this position is antithetical to the intended purpose of regional human rights mechanisms. Rather than contribute to the protection and promotion of the universal human rights system, the IPHRC appears singularly focused on deflecting potential international criticism of OIC members by furnishing the organization with dubious human rights analysis driven by a disregard for international human rights norms.

## II. INTERNATIONAL NORMS APPLICABLE TO REGIONAL HUMAN RIGHTS MECHANISMS

The international community has long recognized that national human rights institutions (NHRIs) are positioned to play a "significant role ... at the national level ... in promoting and protecting human rights and fundamental freedoms."<sup>27</sup> The desire to enlist nation-states in the enterprise of promoting and protecting these norms can be traced at least as far back as the establishment of the UN.<sup>28</sup> In June 1946, the UN Economic and Social Council (ECOSOC) adopted Resolution 9(II), which conveyed a sweeping mandate to the organization's nascent Commission on Human Rights.<sup>29</sup> Notably, this resolution also invited UN member states "to consider the desirability of establishing information groups or local human rights committees within their respective countries to collaborate with them in furthering the work of the Commission on

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a step towards introducing an alternative human rights system, establishing parallel structures to the UN human rights system, but rather as an attempt to work within the existing system.").

24. *See supra* text accompanying notes 10-13.

25. *See infra* Part III.

26. *See infra* note 39 and accompanying text.

27. G.A. Res. 48/134, at 2 (Mar. 4, 1994).

28. *See, e.g.*, Economic and Social Council Res. 1946/9, at 520 (June 21, 1946).

29. The Commission on Human Rights could report on "any ... matter concerning human rights." *Id.*



Human Rights.”<sup>30</sup> Thus, from the outset of the modern human rights era, the UN considered NHRIs integral to the effective promotion of international human rights, and moreover, a vital partner in achieving the objective of “implementation ... of an international bill of rights.”<sup>31</sup>

This recognition did not occur in a vacuum; individual states as well as the UN gradually came to recognize an equally significant role for regional and subregional human rights arrangements in achieving the same overarching objective.<sup>32</sup> Since then, the number of regional mechanisms has steadily proliferated to cover large parts of the globe, though to varying degrees.<sup>33</sup> States participating in the landmark 1993 World Conference on Human Rights acknowledged in the Vienna Declaration and Programme of Action (VDPA) that “[r]egional arrangements play a fundamental role in promoting and protecting human rights” and “should reinforce universal human rights standards, as contained in international human rights instruments.”<sup>34</sup> The VDPA further recommended that additional

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30. *Id.* at 521. The resolution also called on the Secretary-General to compile information on a variety of human rights-related issues, including: “all declarations and bills on human rights now in force in the various countries” as well as “plans and declarations on human rights by specialized agencies and non-governmental national and international organizations.” *Id.*

31. *Id.* at 521-22. As Jean Bernard Marie later explained, the basis for this provision stemmed from “the conviction that United Nations efforts to promote and protect human rights would be less than successful without the establishment of effective communications between national and international levels.” U.N. Div. of Hum. Rts., Seminar on National and Local Institutions for the Promotion and Protection of Human Rights, ¶ 148, U.N. Doc. ST/HR/SER.A/2 (Sept. 18-29, 1978).

32. Although initially, the idea of regional human rights systems gave rise to concerns they might “detract from the universality of human rights”, the emergence of the European and Inter-American regional systems gradually changed this view. George William Mugwanya, *Realizing Universal Human Rights Norms Through Regional Human Rights Mechanisms: Reinvigorating the African System*, 10 *IND. INT’L & COMP. L. REV.* 35, 40 n.11 (1999).

33. *Study of the Directorate-General for External Policies of the Union on the Role of Regional Human Rights Mechanisms*, at 5 (Nov. 2010), [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/410206/EXPO-DROI\\_ET\(2010\)410206\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/410206/EXPO-DROI_ET(2010)410206_EN.pdf) [<https://perma.cc/ZUQ7-4M9C>] (“Currently five regional human rights mechanisms can be distinguished varying significantly from a very advanced human rights protection system, over an emerging one that is still in its fledgling stages, to a region where no human rights mechanism could be established.”).

34. World Conference on Human Rights, *Vienna Declaration and Programme of Action*, § I ¶ 37, U.N. Doc. A/CONF.157/23 (June 25, 1993) [hereinafter VDPA].

resources be provided to strengthen or establish such regional arrangements.<sup>35</sup>

Since the World Conference, the UN has consistently reaffirmed this message of promotion, protection, and reinforcement across all human rights mechanisms.<sup>36</sup> Most recently, the UN Human Rights Council tasked the UN Office of the High Commissioner for Human Rights (OHCHR) with preparing a report detailing the “progress made in the establishment of regional and subregional arrangements for the promotion and protection of human rights,” including their achievements “in all regions of the world,” and identifying “ways to increase the role that regional arrangements play in promoting and protecting human rights and [reinforcing] universal human rights standards, including as contained in international human rights instruments.”<sup>37</sup>

To illustrate the extent to which the IPHRC has untethered itself from fulfilling the role intended for RHRMs, the following section offers a critical analysis of its recently published “Study on Sexual Orientation and Gender Identity in the Light of Islamic Interpretations and International Human Rights Framework.”<sup>38</sup> This analysis will demonstrate not only the IPHRC’s failure to promote and protect human rights, but also its active effort to undermine international human rights standards.

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35. *Id.* at § II ¶ 76.

36. Human Rights Council Res. 6/20, U.N. Doc. A/HRC/RES/6/20, at 41 (Apr. 14, 2008). *See also* Commission on Human Rights Res. 1993/51, U.N. Doc. E/CN.4/RES/1993/51, at 1 (Sept. 9, 1993) (“Reaffirming that regional arrangements for the promotion and protection of human rights may make a major contribution to the effective enjoyment of human rights and fundamental freedoms .... Bearing in mind that regional instruments should complement the universally accepted human rights standards.”); Off. of the High Commissioner for Hum. Rts., Concept Note on Enhancing Cooperation Between United Nations and Regional Mechanisms for the Promotion and Protection of Human Rights, at 1 (Oct. 8-9, 2014), [https://www.ohchr.org/\\_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Countries/Cooperation/ConceptNoteWorkshopOctober2014.doc&action=default&DefaultItemOpen=1](https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Countries/Cooperation/ConceptNoteWorkshopOctober2014.doc&action=default&DefaultItemOpen=1) [<https://perma.cc/B8FF-MVYY>].

37. G.A. Dec. 32/115, U.N. Doc. A/HRC/DEC/32/115, ¶ 1 (July 15, 2016).

38. *See OIC-IPHRC Study*, *supra* note 6.

### III. IPHRC STUDY ON SOGI IN LIGHT OF ISLAMIC INTERPRETATIONS AND INTERNATIONAL HUMAN RIGHTS: UNDERCUTTING THE RHRM SYSTEM AND UNIVERSAL HUMAN RIGHTS

As part of the OIC's opposition to extending human rights protections on the basis of sexual orientation and gender identity (SOGI),<sup>39</sup> the organization issued a resolution in 2016 instructing the IPHRC to examine the issue "in the light of Islamic and human rights framework and present its recommendations to the CFM [OIC Council of Foreign Ministers]."<sup>40</sup> The IPHRC released its final study, "Sexual Orientation and Gender Identity in the Light of Islamic Interpretations and International Human Rights Framework," in May 2017.<sup>41</sup>

Despite its sweeping title, the ten page document (containing thirty-four footnotes) departed from the narrower assumption that "the institution of marriage is under assault by those who are attempting to radically redefine it to include the '*union of any two persons*' i.e. '*same-sex unions*.'"<sup>42</sup> By framing its report this way, the IPHRC effectively sidestepped any real engagement with the fundamental underlying legal issues relating to the denial of non-discrimination and equality in the context of SOGI.<sup>43</sup> Instead, it directed its focus primarily to the narrow question of same sex marriage and the perceived "disastrous consequences of this suicidal social experiment" that threatens to inevitably render traditional family values "extinct."<sup>44</sup> To further set the stage, the report observed:

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39. OIC opposition to recognizing SOGI has manifested across a range of issues including health, extrajudicial killings, and freedom of assembly. It has also consistently rejected UN Human Rights Council efforts to call attention to the problem of violence and discrimination committed against individuals based on their perceived sexual orientation or gender identity. See, e.g., Human Rights Council Res. 32/2, U.N. Doc. A/HRC/RES/32/2, at 2 (July 15, 2016); Human Rights Council Res. 27/32, U.N. Doc. A/HRC/RES/27/32, at 2 (Oct. 2, 2014); Human Rights Council Res. 17/19, U.N. Doc. A/HRC/RES/17/19 (July 14, 2011).

40. Council of Foreign Ministers Res. 4/43-C, OIC/CFM-43/2016/CS/RES/FINAL, ¶ 8 (Oct. 18-19, 2016).

41. See *OIC-IPHRC Study*, *supra* note 6.

42. See *id.* at 1.

43. For a lengthier consideration of this issue, see Blitt, *supra* note 5.

44. See *OIC-IPHRC Study*, *supra* note 6, at 1. For more on the OIC's advocacy of traditional family values, see Blitt, *supra* note 5, and Blitt, *supra* note 18, at 809-818.

If the tendency to redefine the concept of traditional (heterosexual) marriage is not resisted and fallacies of ‘*sexual orientation*’ are not exposed, there is a real danger that other groups, citing genetic predisposition claims, would also be encouraged to demand legalizing incest, bestiality and other such deviant sexual behaviors ... as a matter of ‘human right’.<sup>45</sup>

The IPHRC report begins by making several sweeping assertions. First, it assembles a brief mishmash of quotations to argue that “Judaism, Christianity, and Islam view homosexuality as sinful and detestable.”<sup>46</sup> But drawing such a facile assertion ignores the very real interpretive nuance and complexity surrounding religious sources and practice. For example, within Judaism alone, the Reform movement “has a long and proud history of working for the full inclusion of LGBTQ (Lesbian, Gay, Bisexual, Transgender, Queer, and Questioning) people in Jewish life and for their full civil rights.”<sup>47</sup> Similarly, the Conservative/Masorti movement’s Rabbinical Assembly has resolved that despite a “wide spectrum of views” surrounding sexual identity in Jewish law, it stood “united in our opposition to discrimination against anyone based on sexual identity and in our commitment to make our synagogues and our community more welcoming and safe places for all.”<sup>48</sup> Orthodox streams of Judaism such as Chabad assert that Jewish law prohibits homosexuality but simultaneously prohibits homophobia,<sup>49</sup> while

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45. *OIC-IPHRC Study*, *supra* note 6, at 1. The IPHRC previously affirmed its view of SOGI as “deviant” following the OIC’s First Session of the Ministerial Conference on Marriage and Family Institution and Preservation of its Values in early 2017. See Press Release, OIC-IPHRC, OIC-IPHRC Delegation Participated in the First Session of the OIC Ministerial Conference on Marriage and Family Affairs and Urged the Muslim World to Devise a Coordinated Strategy to Counter the Deviant Notion of (SOGI) at All Levels (Feb. 9, 2017), [https://www.oic-iphrc.org/en/press\\_details.php?id=MDYzX0AjIUA=](https://www.oic-iphrc.org/en/press_details.php?id=MDYzX0AjIUA=). [<https://perma.cc/2TRG-LX8G>].

46. *OIC-IPHRC Study*, *supra* note 6, at 2.

47. Rabbi Victor Appell, *How Does Reform Judaism Welcome the LGBTQ Community?* REFORMJUDAISM.ORG (2018), <https://reformjudaism.org/practice/ask-rabbi/how-does-reform-judaism-welcome-lgbtq-community> [<https://perma.cc/C9TQ-W8DV>].

48. The Rabbinical Assembly, Resolution in Support of Equal Rights and Inclusion for Gay, Lesbian, Bisexual, and Transgender (GLBT) Persons (Apr. 6, 2011), <https://www.rabbinicalassembly.org/story/resolution-support-equal-rights-and-inclusion-gay-lesbian-bisexual-and-transgender-glbt> [<https://perma.cc/DW3B-MEFT>].

49. Bronya Shaffer, *Do Homosexuals Fit into the Jewish Community?*, CHABAD.ORG, [https://www.chabad.org/library/article\\_cdo/aid/663504/jewish/Do-Homosexuals-Fit-into-the-](https://www.chabad.org/library/article_cdo/aid/663504/jewish/Do-Homosexuals-Fit-into-the-)

other Orthodox Jewish movements are engaging with SOGI activists on “tolerance and inclusivity surrounding LGBTQ issues within the religious community.”<sup>50</sup> Finally, at the other end of this spectrum, certain prominent voices within the Orthodox community continue to contend that homosexuality represents “a cult of abomination. It is clear that it is abomination. The Torah punishes it with death. There is no such thing as having understanding or tolerance for this.”<sup>51</sup>

A similar spectrum of interpretive nuance is evident across the various Christian faiths.<sup>52</sup> Moreover, the recent rise in gay-friendly Muslim prayer spaces testifies to a parallel diversity of views within Islam that stands at odds with the IPHRC’s monolithic departure point. For example, the El-Tawhid Juma Circle/ETJC (Toronto Unity Mosque) defines itself as “a gender-equal, LGBTQI2S affirming, mosque, that is welcoming of everyone regardless of sexual orientation, gender, sexual identity, or faith background.”<sup>53</sup> Its model as a place “of ritual and spiritual healing for everyone” has “inspired, resourced and/ or helped establish 9 similar communities in North America.”<sup>54</sup> In the United States, Imam Daayiee Abdullah,

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Jewish-Community.htm [https://perma.cc/4PRG-6PGL].

50. Rachel Delia Benaim, *A Small Yet Monumental Summit on LGBT Issues Occurred at a Religious Kibbutz This Week*, TABLET (Dec. 2, 2016), <https://www.tabletmag.com/scroll/219151/a-small-yet-monumental-summit-on-lgbt-issues-occurred-at-a-religious-kibbutz-this-week> [https://perma.cc/7LTW-MRLH].

51. JTA, *Activists Drape Gay Pride Flag at Jerusalem Chief Rabbi’s Office After Calling Homosexuality an ‘Abomination,’* HAARETZ (Nov 21, 2016), <https://www.haaretz.com/israel-news/activists-drape-gay-pride-flag-at-chief-rabbi-s-office-for-abomination-remark-1.5464234> [https://perma.cc/L33D-6FLH].

52. *Faith Positions*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/resources/faith-positions> [https://perma.cc/49D3-L9JF] (providing overviews of a variety of religious positions “on the issues that affect LGBTQ people in America”).

53. *El-Tawhid Juma Circle: Embracing an Inclusive & Compassionate Islam*, JUMA CIRCLE, <http://www.jumacircle.com> [https://perma.cc/4R35-5EE8]. See also Samra Habib, *Queer and Going to the Mosque: I’ve Never Felt More Muslim than I Do Now*, THE GUARDIAN (June 3, 2016), <https://www.theguardian.com/lifeandstyle/2016/jun/03/unity-mosque-queer-muslim-islam-samra-habib> [https://perma.cc/M734-TYLE] (describing attending the Unity mosque for the first time: “I felt like being myself wasn’t just accepted, it was encouraged. In a way, I’ve never felt more Muslim than I do now”).

54. *El-Tawhid Juma Circle: Embracing an Inclusive & Compassionate Islam*, *supra* note 53. See e.g., *Halifax’s First Gay-Friendly Mosque Opening This Summer*, CBC NEWS (July 25, 2014), <https://www.cbc.ca/news/canada/nova-scotia/halifax-s-first-gay-friendly-mosque-opening-this-summer-1.2718376> [https://perma.cc/33Z7-SKE7] (reporting on the opening of a Unity Mosque in Halifax, Nova Scotia).

likened to “the Harvey Milk of gay Muslim leaders in America” established the Light of Reform mosque in 2011.<sup>55</sup> The first openly gay imam in the Americas, Abdullah reasons his approach is

not something that’s new. It’s just like reform and revival within Islam, about every 100, 150 years there have been these discussions and there have been people who have opposed the status quo on these issues.... So it’s not something that I’m just coming up with as a modern Islamic scholar, but something that has been in existence since time immortal.<sup>56</sup>

In Africa, Imam Muhsin Hendricks believes the Muslim “call to prayer should welcome all Muslims, including gay Muslims.”<sup>57</sup> His mosque in Cape Town is committed to “establish[ing] a movement that can respond to patriarchy and Islamic extremism.”<sup>58</sup> The Open Mosque, also in Cape Town, shares a similar—if less progressive—emphasis on reconciling Islam with contemporary values. Its founder, Taj Hargey, reasons that “the Qur’an says quite clearly that homosexuality is a sin, but it does not say that you should punish people. It is for God to make that judgment.”<sup>59</sup> Hargey would not preside over a same sex marriage but accepts civil partnerships: “It’s just that marriage to me is defined by the Qur’an as a man and a woman.”<sup>60</sup>

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55. Emily Wax, *Imam Daayiee Abdullah Welcomes Gay Muslims to Worship, Marry*, WASH. POST (Apr. 17, 2013), [https://www.washingtonpost.com/lifestyle/style/imam-daayiee-abdullah-welcomes-gay-muslims-to-worship-marry/2013/04/17/3ebcab3a-a5db-11e2-b029-8fb7e977ef71\\_story.html?utm\\_term=.0816bcf784d3](https://www.washingtonpost.com/lifestyle/style/imam-daayiee-abdullah-welcomes-gay-muslims-to-worship-marry/2013/04/17/3ebcab3a-a5db-11e2-b029-8fb7e977ef71_story.html?utm_term=.0816bcf784d3) [<https://perma.cc/AV6B-NMG7>].

56. Azmat Khan & Amina Waheed, *Meet America’s First Openly Gay Imam*, ALJAZEERA AM. (Dec. 20, 2013), <http://america.aljazeera.com/watch/shows/america-tonight/america-tonight-blog/2013/12/20/meet-america-s-firstopenlygayimam.html> [<https://perma.cc/RCA5-MPYL>]; see also Leila Fadel, *A Mosque For LGBTQ Muslims*, NPR (Apr. 15, 2018), <https://www.npr.org/2018/04/15/602605271/a-mosque-for-lgbtq-muslims> [<https://perma.cc/4SJ7-7Q2L>] (reporting on Masjid Al-Rabia, an LGBTQ-friendly mosque in Chicago).

57. Lynsey Chutel, *A Gay Mosque in Cape Town Sounds the Call to Prayer for Everyone*, QUARTZ AFR. (Nov. 2, 2016), <https://qz.com/824711/a-gay-mosque-in-cape-town-sounds-the-call-to-pray-for-everyone/> [<https://perma.cc/T229-LP3H>].

58. *Id.*

59. Gavin Haynes, *Meet the British Muslim Who’s Founded a Controversial Gay-Friendly Mosque*, VICE (Jan. 15 2015), [https://www.vice.com/en\\_uk/article/vdpap8/open-mosque-taj-hargey-south-africa-934](https://www.vice.com/en_uk/article/vdpap8/open-mosque-taj-hargey-south-africa-934) [<https://perma.cc/6ZEE-QL9U>].

60. *Id.*

The founder of the first inclusive gay-friendly Muslim prayer space in Europe reasons “Islam is not a totalitarian fascist identity. You should not use Islam to justify your prejudices and try to control the sexuality and gender of individuals.”<sup>61</sup> A similar motivation underpins the more recently opened Ibn Rushd-Goethe Mosque in Berlin. Its cofounders intended the prayer space “to send a signal against Islamic terror and the misuse of our religion”<sup>62</sup> and “to offer a place to worship to all people that do not feel at home in the existing mosques, to women that seek equal rights ... to homosexuals and primarily to all separate [Muslim] denominations.”<sup>63</sup>

Efforts parallel to those noted above have taken root or are underway elsewhere, including in Australia,<sup>64</sup> Norway,<sup>65</sup> the United Kingdom,<sup>66</sup> and Pakistan.<sup>67</sup> These approaches, however, are not without their detractors. For example, some Muslims protested the opening of Cape Town’s Open Mosque, and the president of South Africa’s Muslim Judicial Council (MJC) told Muslims “to absolutely refrain from attending the so-called ‘Open Mosque’ based on their

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61. Robin Banerji, *Gay-Friendly ‘Mosque’ Opens in Paris*, BBC NEWS (Nov. 30, 2012), <https://www.bbc.com/news/world-europe-20547335> [<https://perma.cc/LE6W-G8AQ>].

62. *LGBT-Friendly, Non-Sectarian ‘Liberal’ Mosque Opens in Berlin*, ALBAWABA (June 18, 2017), <https://www.albawaba.com/editorchoice/lgbt-friendly-non-sectarian-‘liberal’-mosque-opens-berlin-987146> [<https://perma.cc/2WK5-SFBH>].

63. Pritha Paul, *Ibn-Rushd-Goethe-Mosque Facts: First LGBT ‘Liberal’ Mosque of Germany Opens Inside Protestant Church*, IBT (June 18, 2017), <https://www.ibtimes.com/ibn-rushd-goethe-mosque-facts-first-lgbt-liberal-mosque-germany-opens-inside-2553832> [<https://perma.cc/86KD-HSMJ>].

64. See Alina Polianskaya, *Gay Imam Plans to Open Australia’s First LGBT-Friendly Mosque*, THE INDEP. (Jan. 10, 2018), <https://www.independent.co.uk/news/world/australasia/gay-imam-muslim-lgbt-friendly-mosque-australia-melbourne-nur-warsame-a8151206.html> [<https://perma.cc/FYP8-TCD5>].

65. Nandini Krishnamoorthy, *Norway to Get Feminist and Gay-Friendly Mosque Allowing Female Imams, Breaking Islamic Norms*, IBT (June 23, 2017), <https://www.ibtimes.co.uk/norway-get-feminist-gay-friendly-mosque-allowing-female-imams-1627396> [<https://perma.cc/C6XM-BV45>].

66. Rahila Bano, *Alternative Mosques for All Genders and Sexualities*, BBC NEWS (June 14, 2013), <https://www.bbc.co.uk/news/uk-england-22889727> [<https://perma.cc/YUA5-XUKF>] (describing the Inclusive Mosque Initiative (IMI) as an effort to “open alternative mosques in the UK that would allow men and women to pray side-by-side and welcome gay people”).

67. Bethan McKernan, *Pakistani Activists Plan to Build Trans-friendly Mosque in Islamabad*, THE INDEP. (Nov. 23, 2016), <https://www.independent.co.uk/news/world/asia/pakistan-transgender-mosque-first-of-its-kind-islamabad-a7433501.html> [<https://perma.cc/W3YX-N4TM>] (reporting the Shemale Association For Fundamental Rights is “drawing up plans to build a new mosque in a suburb of the city [Islamabad] which will welcome people regardless of their gender identity or sexual orientation”).

interpretation of aspects of Islam that clearly contradict Qur'anic and Prophetic directives as well as centuries of Islamic scholarship."<sup>68</sup> In a more extreme example, *Dar al-Ifta*, an institution tasked with issuing fatwas and affiliated with Egypt's Ministry of Justice,<sup>69</sup> denounced the Ibn Rushd-Goethe Mosque as extremist and violative of Islamic law.<sup>70</sup> Together with this, Berlin's State Office of Criminal Investigations concluded that death threats targeting one of the mosque's cofounders necessitated German police provide "round-the-clock protection."<sup>71</sup>

The IPHRC's sweeping assertion that the primary monotheistic faiths consider homosexuality sinful and detestable likewise disregards global efforts by various Jewish, Christian, and Muslim organizations to welcome LGBTQ co-religionists, embrace their equality and value as human beings, and advocate for a progressive and inclusive religious vision. For example, Muslims for Progressive Values, a United States-based NGO with consultative status at the UN, endorses "the human and civil rights of lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI) individuals" and is "committed to ending discrimination based on sexual orientation and gender identity."<sup>72</sup> Similarly, the Alliance of Inclusive Muslims (AIM), a "collective of progressive Muslims across all nationality, race and sectarian affiliation," seeks "to challenge theological justifications for hate and supremacism" with what it describes as "progressive values ... inherent in Islam."<sup>73</sup> Among its priorities,

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68. Francesca Villette & Aziz Hartley, *Stay Away from Open Mosque—MJC*, IOL (Sept. 19, 2014), <https://www.iol.co.za/capetimes/news/stay-away-from-open-mosque-mjc-1753254> [<https://perma.cc/H4JY-Y7NF>].

69. See *Foundation of Dar Al-Ifta Al-Missriyyah*, DAR AL-IFTA AL-MISSRIYYAH, <http://www.dar-alifta.org/Foreign/Module.aspx?Name=aboutdar> [<https://perma.cc/D4A8-AQAQ>].

70. See Melissa Eddy, *By Taking a Bullet, a Muslim Woman Finds Her Calling*, N.Y. TIMES (June 22, 2018), <https://www.nytimes.com/2018/06/22/world/europe/germany-muslims-seyran-ates.html> [<https://perma.cc/B44Q-NKBE>]; Egyptian House of Ifta, *Concerning the Initiative of the "Liberal Mosque"*, FACEBOOK (June 19, 2007), <https://www.facebook.com/EgyptDarAlIfta/photos/a.327368203959635.90996.200895559940234/1752753501421091/?type=3&theater> [<https://perma.cc/MQP6-S4DM>] (disseminating Dar al-Ifta al-Missriyyah's view of the Ibn Rushd-Goethe Mosque).

71. Josh Lowe, *'You Will Die!' Feminist Muslim Gets 24 Hour Police Protection After Founding Liberal Mosque in Germany*, NEWSWEEK (July 5, 2017), <https://www.newsweek.com/germany-liberal-mosque-631934> [<https://perma.cc/R9UZ-ARJ7>].

72. *MPV Principles*, MUSLIMS FOR PROGRESSIVE VALUES (2017), <http://www.mpvusa.org/mpv-principles/> [<https://perma.cc/U78K-KTW8>].

73. *Alliance of Inclusive Muslims*, MUSLIMS FOR PROGRESSIVE VALUES, <http://www.>



AIM advocates for human rights and dignity, including “the recognition of each individual’s equal worth in society and equal protection under the law.”<sup>74</sup>

Ignoring this type of activism, which can build inroads into the larger faith community and drive a path towards greater recognition of the need for inclusion and support,<sup>75</sup> paints a distortive picture of religious views in theory and practice. As Scott Siraj al-Haqq Kugle observes, these Muslim activists are distilling “the ideals of Islam ... from the traditional forms of the religion and rework[ing] [them] into a new form that accepts more social pluralism and individual rights, including diversity in sexual orientation and gender identity.”<sup>76</sup>

Second, the IPHRC report claims “[t]here is a consensus among Islamic scholars that human beings are naturally heterosexual.”<sup>77</sup> Yet the authors provide no citation or reference to scholars consulted to validate this finding.<sup>78</sup> More directly, this asserted consensus is at odds with the growing body of scholarship that testifies to an alternative approach to Islamic sources. For Kecia Ali, the

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mpvusa.org/alliance-of-inclusive-muslims/ [https://perma.cc/QQF3-UX6V].

74. *See id.* These organizations are part of a larger network of related groups supporting LGBTI communities and issues globally, as well as in OIC member states. *See also* SCOTT SIRAJ AL-HAQQ KUGLE, *LIVING OUT ISLAM: VOICES OF GAY, LESBIAN, AND TRANSGENDER MUSLIMS* (2013) (documenting numerous support groups and other organizations working within Muslim LGBT circles); Munir Shaikh, *Contemporary Developments Within Muslim Societies and Communities Regarding LGBT Identity and Rights*, in *INTERSECTIONS INTERNATIONAL: MUSLIM LGBT INCLUSION PROJECT FINAL REPORT* (summarizing numerous LGBT rights organizations in Muslim-majority nations and elsewhere); Brian Whitaker, *Everything You Need to Know About Being Gay in Muslim Countries*, *THE GUARDIAN* (June 21, 2016), <https://www.theguardian.com/world/2016/jun/21/gay-lgbt-muslim-countries-middle-east> [https://perma.cc/QH5F-N38Z] (noting activist gay rights groups in various OIC states, as well as “a handful of gay-friendly mosques and a few openly gay imams” based outside of OIC states).

75. Several prominent Jewish LGBTI organizations have opted to close because of the success of their own advocacy efforts. For example, Nehirim (Lights), an organization that provided “programming and support for the Jewish LGBTQ community” elected to shut down in 2015. *See* Rachel Delia Benaim, *Jewish LGBT Group Nehirim Will Shut Down*, *TABLET* (May 20, 2015), <https://www.tabletmag.com/scroll/191074/jewish-lgbt-group-nehirim-will-shut-down> [https://perma.cc/2CGP-J3Q8]. According to Nehirim’s founder, the “pressing need for a place for LGBT Jews to build spiritual community ... is no longer present outside the Orthodox community.... [T]his is what nonprofits should do: when their core mission is accomplished, they should transition or close.” *Id.*

76. SIRAJ AL-HAQQ KUGLE, *supra* note 74, at 221.

77. *OIC-IPHRC Study*, *supra* note 6, at 3.

78. *See id.*

emergence of this approach has been slow in coming because progressive voices “have been reluctant to enter into serious conversations about Islamic law, which is generally seen as the realm of more conservative scholars. Partially as a result of this hesitancy, discussions of Islamic law today tend to reflect on different degrees of conservatism and fundamentalism.”<sup>79</sup> Even with this hesitancy, a lineage of progressive Muslim scholars who are steeped in Islamic sources have already validated the possibility of faithfully interpreting these sources to comport with international human rights norms. For example, Dr. Khaled Abou El Fadl has concluded that “the commitment to human rights does not signify a lack of commitment to God, or a lack of willingness to obey God. Rather, human rights become a necessary part of celebrating human diversity, honoring the vicegerents of God, achieving mercy, and pursuing the ultimate goal of justice.”<sup>80</sup> Ebrahim Moosa has put this challenge more bluntly: “The success of a modern Islamic human rights theory depends on the extent to which modern Islamic thought would be open to a revisionist or reconstructionist approach in philosophy and ethical orientation.”<sup>81</sup> Producing this “credible version of human rights in dialogue with both the tradition and the present,” demands

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79. Kecia Ali, *Progressive Muslims and Islamic Jurisprudence: The Necessity for Critical Engagement with Marriage and Divorce*, in *PROGRESSIVE MUSLIMS: ON JUSTICE, GENDER AND PLURALISM* 163, 163 (Omid Safi ed., 2003). Writing on family law issues, Ali concludes “a thorough exploration and analysis of traditional jurisprudence [reveals] the extent to which its rules are seriously flawed; they cannot be Divine.... This system is the result of an interpretation, indeed of numerous acts of interpretation, by particular men living and thinking at a specific time. Their jurisprudence is shaped ... by the assumptions and constraints of the time in which it was formulated.” *Id.* at 183.

80. Khaled Abou El-Fadl, *Islam and the Challenge of Democratic Commitment*, 27 *FORDHAM INT’L L.J.* 4, 52 (2003). El-Fadl elaborates:

[I]t is not the pre-modern juristic tradition that poses the greatest barrier to the development of individual rights in Islam. Rather, the most serious obstacle comes from modern Muslims themselves. Especially in the last half of the past century, a considerable number of Muslims have made the unfounded assumption that Islamic law is concerned primarily with duties, and not rights, and that the Islamic conception of rights is collectivist, not individualistic. Both assumptions, however, are not based on anything other than cultural assumptions about the non-Western “other.” It is as if the various interpreters decided on what they believe is the Judeo-Christian, or perhaps Western, conception of rights, and then assumed that Islam must necessarily be different.

*Id.* at 52-53 (footnotes omitted).

81. Ebrahim Moosa, *The Dilemma of Islamic Rights Schemes*, 15 *J.L. & RELIGION* 185, 187 (2000-2001).

Muslim jurists and scholars “acknowledge that quantum shifts have occurred” in a range of categories, including “human society and our inherited conceptions of ‘self’ and ‘other.’”<sup>82</sup> In Moosa’s words, facilitating this dialogue will require nothing less than “a fundamental rethinking.”<sup>83</sup>

This fundamental rethinking is already occurring despite the IPHRC’s insistence that a consensus against homosexuality exists. For example, self-described “progressive Muslim” scholars, such as Omid Safi, assert a “determination to hold Muslim societies accountable for justice and pluralism” by “exposing the violations of human rights ... and the right to dissent in Muslim countries ... [and] embracing and implementing a different vision of Islam than that offered by Wahhabi and neo-Wahhabi groups.”<sup>84</sup> As explained by Adis Duderija, this approach seeks “to weave the ethos and the culture of human rights discourse into the social and cultural fabric of Muslim-majority societies in order for those rights to be more effectively realized in the political and legal realms of these societies.”<sup>85</sup>

In a similar vein, Scott Siraj al-Haqq Kugle calls for a revived “Islamic humanism” to “encourage reform of Islamic law as a framework for ethical living in creative engagement with modern conditions.”<sup>86</sup> In Kugle’s assessment, an “honest and subtle examination” of Islamic religious beliefs on sexuality and its diversity “reveals more ambiguities than the defenders of ‘orthodoxy’ care to admit.”<sup>87</sup> Correcting this lacuna demands “a deep reform of Islamic belief and

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82. *Id.* at 215.

83. *Id.*

84. Omid Safi, *Introduction: The Times They Are A-Changin’—A Muslim Quest for Justice, Gender Equality, and Pluralism*, in PROGRESSIVE MUSLIMS: ON JUSTICE, GENDER AND PLURALISM, *supra* note 79, at 1, 2. Safi’s volume also contains a bibliography of “alternative” reading suggestions for developing a “deeper, more challenging, and nuanced understanding of Islam.” Omid Safi, *Further Reading*, in PROGRESSIVE MUSLIMS: ON JUSTICE, GENDER AND PLURALISM, *supra* note 79, at 333, 333.

85. Adis Duderija, *Progressive Islam: Reawakening Authenticity*, 33 TIKKUN 66, 69 (2018); *see also* ADIS DUDERIJA, *THE IMPERATIVES OF PROGRESSIVE ISLAM* (1st ed., 2017).

86. SCOTT SIRAJ AL-HAQQ KUGLE, *HOMOSEXUALITY IN ISLAM: CRITICAL REFLECTION ON GAY, LESBIAN, AND TRANSGENDER MUSLIMS* 271 (2010).

87. Scott Siraj al-Haqq Kugle, *Sexuality, Diversity, and Ethics in the Agenda of Progressive Muslims*, in PROGRESSIVE MUSLIMS: ON JUSTICE, GENDER AND PLURALISM, *supra* note 79, at 190, 194. According to Kugle, given “the Qur’an’s vivid portrayal of diversity at so many levels of the natural and human world, it would be logical to assume that this diversity of creation plays out on the level of sexuality as well.” *Id.* at 196.

action”<sup>88</sup> that can be derived from a “sexually-sensitive” interpretation of the Koran able to account for the reality of sexuality and sexual orientation among Muslims:

[This] interpretation would be explicitly non-patriarchal. It would not presume patriarchal values of male supremacy; it would not assume that all readers of Qur’an are (or should be) heterosexual in orientation. It would avoid imposing ideas of human nature that are obsolete (such as medieval Muslim assumptions...). In this sense, sexuality-sensitive interpretation of the Qur’an would complement and support gender-sensitive interpretation of the scripture ... as well as race-sensitive and class-sensitive interpretations.<sup>89</sup>

Applying this type of interpretive approach to Islamic sources generates outcomes that challenge the IPHRC’s alleged consensus and may even serve to validate the recognition of same-sex marriage under Islamic law. To this point, a recent study by Junaid Jahangir and Hussein Abdullatif argues that the predominant Muslim “position on same-sex unions is not based on express texts but derived on the basis of analogy and alleged consensus, both of which are contested branches of Islamic knowledge.”<sup>90</sup> Jahangir and Abdullatif posit that these same sources “can be marshaled to affirm gender and sexual diversity.”<sup>91</sup>

Finally, the introduction to the IPHRC’s report also makes the unsubstantiated claim that “instances of people being punished for homosexual transgressions ... [in Muslim society] are exceedingly rare.”<sup>92</sup> However, this too is not borne out by reality. For example, in 2015, multiple UNHRC mandate holders communicated an urgent appeal to the government of Egypt concerning its alleged arbitrary “arrest, detention, torture, and public stigmatization of 26 men who are being tried on charges related to their alleged sexual

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88. SIRAJ AL-HAQQ KUGLE, *supra* note 86, at 232.

89. *Id.* at 41.

90. Junaid Jahangir & Hussein Abdullatif, *Same-Sex Unions in Islam*, THEOLOGY & SEXUALITY 1, 2 (2018).

91. *Id.*

92. OIC-IPHRC Study, *supra* note 6, at 3.

orientation.”<sup>93</sup> Among other things, the UN mandate holders sought information related to:

- “allegations indicating that the 26 men were subjected to forensic anal examinations upon the request of the prosecutor, and ... [how such treatment] complies with Egypt’s obligations under international human rights law and standards;”<sup>94</sup> and
- “the measures taken by the authorities to protect lesbian, gay, bisexual and transgender persons in Egypt from arbitrary arrest and detention, violence and discrimination on the grounds of their sexual orientation and/or gender identity.”<sup>95</sup>

Following the state’s blanket denial, the Special Rapporteur on Torture criticized the Egyptian government’s failure to address the “larger question of whether persons in Egypt are treated in humiliating manner when detained and investigated about their real or alleged homosexuality.”<sup>96</sup> In a report to the Human Rights Council, the Rapporteur concluded that Egypt had violated its Convention Against Torture obligations “by failing to protect the physical and psychological integrity” of the men arrested and tried for their alleged sexual orientation.<sup>97</sup>

Similar mass arrest and trial incidents have occurred in other OIC states, including Bangladesh<sup>98</sup> and Nigeria.<sup>99</sup> More generally,

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93. Mandates of Mads Andenas (Chair-Rapporteur of the Working Group on Arbitrary Detention), Dainius Puras (Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health), Gabriela Knaul (Special Rapporteur on the Independence of Judges and Lawyers), & Juan E. Méndez (Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) to the Office of the High Commissioner for Human Rights, at 1, U.N. Doc. UA 1/2015 (Jan. 8, 2015).

94. *See id.* at 5.

95. *See id.* at 6.

96. Hum. Rts. Council, Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment—Addendum—Observations on Communications Transmitted to Governments and Replies Received, U.N. Doc. A/HRC/31/57/Add.1, at 25 (Feb. 24, 2016) [hereinafter U.N. Doc. A/HRC/31/57/Add.1].

97. *Id.*

98. *See* Associated Press, *Bangladesh Arrests 27 Men on Suspicion of Being Gay*, CHI. TRIB. (May 19, 2017), <http://www.chicagotribune.com/news/nationworld/ct-bangladesh-gay-arrests-20170519-story.html> [<https://perma.cc/MU3U-BUNP>] (reporting Bangladeshi authorities executed a mass arrest of 27 men on suspicion of being gay but planned “to charge them with drug offenses and not homosexuality because they were detained before they engaged

OIC member-states predominate the list of countries where homosexuality may be punishable by death,<sup>100</sup> and many other OIC states still criminalize homosexuality.<sup>101</sup> Thus, even if not actively enforced, the specter of severe punishment still looms over the LGBT communities in these countries.<sup>102</sup> Indeed, even where homosexuality is not per se illegal, “gay men and women are nonetheless persecuted, arrested, and in some cases murdered.”<sup>103</sup>

The IPHRC’s sweeping oversimplifications regarding religious doctrine and state practice is followed by a four-paragraph section entitled “Homosexuality according to scientific research.”<sup>104</sup> It would be an impressive feat for a study to consolidate and summarize all the available scientific research addressing sexual orientation *in four paragraphs*. But contrary to the section’s bold title, the IPHRC study does not attempt such a task. The section provides no direct citations to scientific research relating to sexual orientation. Instead, it relies on four footnotes—including one to TIME magazine, one to lifesitenews.com (a website that believes “respect for life and family are endangered by an international conflict ... caused by secularists attempting to eliminate Christian morality and natural law principles”, and that “homosexuality and all other moral, life and family issues are all interconnected in an international conflict

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in sex”).

99. See *Nigeria Islamic Court Tries Gay Suspects in Bauchi*, BBC NEWS (Jan. 15, 2014), <https://www.bbc.com/news/world-africa-25749308> [<https://perma.cc/XD3Q-D9BE>] (“An Islamic court in Nigeria’s northern state of Bauchi has put on trial 11 Muslim men accused of being homosexuals in violation of their religion.”).

100. See Max Bearak & Darla Cameron, *Here Are the 10 Countries Where Homosexuality May Be Punished by Death*, WASH. POST (June 16, 2016), [https://www.washingtonpost.com/news/worldviews/wp/2016/06/13/here-are-the-10-countries-where-homosexuality-may-be-punished-by-death-2/?utm\\_term=.f02247584906](https://www.washingtonpost.com/news/worldviews/wp/2016/06/13/here-are-the-10-countries-where-homosexuality-may-be-punished-by-death-2/?utm_term=.f02247584906) [<https://perma.cc/AJ6U-8UC6>].

101. For example, Morocco’s bid to host the World Cup in 2026 reportedly failed to divulge its anti-homosexuality legislation. See Rob Harris, *Morocco’s 2026 World Cup Bid Masks Homosexuality Ban*, GLOBE & MAIL (Apr. 16, 2018), <https://www.theglobeandmail.com/sports/soccer/article-south-africa-backs-morocco-for-2026-world-cup/> [<https://perma.cc/KU49-LB36>].

102. See Juliane von Mittelstaedt & Daniel Steinvorth, *The Gay Sons of Allah: Wave of Homophobia Sweeps the Muslim World*, SPIEGEL ONLINE (Sep. 17, 2009), <http://www.spiegel.de/international/world/the-gay-sons-of-allah-wave-of-homophobia-sweeps-the-muslim-world-a-647913-druck.html> [<https://perma.cc/E74N-PH4T>].

103. *Id.*

104. See *OIC-IPHRC Study*, *supra* note 6, at 4.

affecting all nations”),<sup>105</sup> and another citation to a study on schizophrenia.<sup>106</sup>

In place of a measured consideration of relevant scientific research, this section of the report proceeds by taking note of the American Psychological Association’s (APA) 1973 decision to remove homosexuality from its Diagnostic and Statistical Manual of Mental Disorders (DSM),<sup>107</sup> and then approvingly citing to conversion therapy advocate Nicholas A. Cummings.<sup>108</sup> The IPHRC invokes Cummings for the proposition that the APA “has been taken over by ‘ultraliberals’ beholden to the ‘gay rights movement’ who refuse to allow an open debate on reparative therapy for homosexuality.”<sup>109</sup> Here, the IPHRC concludes that the “role of biological factors in the development of human sexual orientation remains a widely debated controversial topic.”<sup>110</sup>

Endorsing conversion therapy and boosting Cummings in a section focused on scientific research seem questionable choices for a human rights commission. The validity of conversion therapy has come under increasing legal scrutiny for the harm it may inflict.<sup>111</sup> For example, following visits to Malaysia in 2015 and Indonesia in 2017, the UN Special Rapporteur on the right to health condemned such treatment as “unacceptable from a human rights perspective,”

105. *About*, LIFESITE, <https://www.lifesitenews.com/about> [<https://perma.cc/Z93A-3ERM>].

106. See *OIC-IPHRC Study*, *supra* note 6, at 4 nn.9-12. In one of these footnotes, the IPHRC misidentifies the American Psychological Association (APA) as the “American Psychiatrist Association.” See *id.* at 4.

107. The APA’s DSM previously classified homosexuality as a “sociopathic personality disorder.” *Being Gay Is Just as Healthy as Being Straight*, AM. PSYCHOL. ASS’N (May 28, 2003), <http://www.apa.org/research/action/gay.aspx>. [<https://perma.cc/GR9B-4FE3>].

108. Cummings was President of the APA from 1979 to 1980 and “sponsored the resolution by which the APA issued its official position that homosexuality is not a mental disorder.” Certification of Nicholas A. Cummings, Ph.D., Sc.D ¶ 16, *Ferguson v. JONAH*, No. L-5473-12 (N.J. Super. Ct. Law Div. May 3, 2013). Cummings’s own position on conversion therapy is arguably more nuanced, claiming that it might lead to successful outcomes only where an individual is “highly motivated and ... clinically assessed as having a high probability of success.” *Id.* ¶ 24. Cummings’s defense of its use in certain informed circumstances driven by “patient self-determination” flows from his understanding that not “all homosexuality is ‘hard-wired.’” *Id.* ¶¶ 17, 26.

109. *OIC-IPHRC Study*, *supra* note 6, at 4.

110. *Id.*

111. Joseph Frankel, *More and More States Are Outlawing Gay-Conversion Therapy*, THE ATLANTIC (July 10, 2017), <https://www.theatlantic.com/health/archive/2017/07/states-outlawing-conversion-therapy/533121/> [<https://perma.cc/F7AH-WNBQ>].

“unscientific,” and responsible for serious negative impacts on the mental health and well-being.<sup>112</sup>

Furthermore, Cummings’ own sworn affidavit submitted in defense of Jews Offering New Alternative for Healing (JONAH), a now-defunct U.S.-based conversion therapy group, failed to prevent a court from awarding summary judgment against the organization for misrepresenting homosexuality “as being a mental illness, disease [or] disorder.”<sup>113</sup> Indeed, the court outright rejected the admissibility of testimony from no fewer than five of JONAH’s expert witnesses on similar grounds: “Each of JONAH’s experts proffers the opinion that homosexuality either is a disorder or is not a normal variation of human sexuality. Because the generally accepted scientific theory is that homosexuality is not a mental disorder and not abnormal, these opinions are inadmissible.”<sup>114</sup>

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112. Press Release, UN Office of the High Commissioner for Human Rights, Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Dainius Pūras (Apr. 3, 2017), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21472&LangID=E> [<https://perma.cc/958J-A7Q5>]; see also Hum. Rts. Council, Rep. of the Special Rapporteur on The Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, U.N. Doc. A/HRC/29/33, at 15 (Apr. 2, 2015).

113. Order Granting Pls’ Mot. for Partial Summ. J. ¶ 1, *Ferguson v. JONAH*, No. L-5473-12 (N.J. Super. Ct. Law Div. Feb. 10, 2015). According to the court: “there is no general consensus as to the causes of homosexuality. A finding as to the causes, however, is not necessary to take judicial notice of fact that homosexuality is not a mental disorder. Thus, any representations made to the contrary would qualify as a misrepresentations under the CFA [New Jersey Consumer Fraud Act].” Statement of Reasons at 6, *Ferguson v. JONAH*, No. L-5473-12 (N.J. Super. Ct. Law Div. Feb. 10, 2015). In an earlier opinion, the court observed that “the theory that homosexuality is a disorder is not novel but—like the notion that the earth is flat and the sun revolves around it—instead is outdated and refuted.” *Ferguson v. JONAH*, No. HUD-L-5472-12, at 25 (N.J. Super. Ct. Law Div. Feb. 5, 2015).

114. *Ferguson v. JONAH*, No. HUD-L-5472-12, at 26 (N.J. Super. Ct. Law Div. Feb. 5, 2015). Ultimately, after a jury returned a unanimous verdict finding JONAH engaged in unconscionable commercial practices, the court ordered the organization permanently shuttered and further permanently enjoined the defendants “from engaging ... in any therapy, counseling, treatment or activity that has the goal of changing, affecting or influencing sexual orientation ... whether referred to as ‘conversion therapy,’ ... or any other equivalent term ... or advertising, or promoting [such] Therapy.” Order Granting Permanent Injunctive Relief and Awarding Attorneys’ Fees, *Ferguson v. JONAH*, No. HUD-L-5472-12, at 3 (N.J. Super. Ct. Law Div. Dec. 18, 2015). For additional background on the case, see Zoë Schlanger, *JONAH, The Largest Jewish Gay Conversion Therapy Organization, Takes Its Last Breath*, NEWSWEEK (Dec. 18, 2015), <http://www.newsweek.com/life-and-death-jewish-exgay-therapy-organization-406898> [<https://perma.cc/R5B3-HMTK>] (describing some of the techniques used by JONAH therapists); *Judge Orders New Jersey “Gay Conversion” Nonprofit to Close*, CBS NEWS (Dec. 18, 2015), <https://www.cbsnews.com/news/judge-orders-new-jersey-gay-conversion->



To further substantiate its claim that a greater “open debate” is required concerning the mutability of sexual orientation and the validity of conversion therapy, the IPHRC report points to a 2012 *Time* magazine article that discusses an academic study on the potential connection between epigenetics and sexual orientation.<sup>115</sup> From this second-hand extrapolation proffered in isolation from a larger and more complex body of scholarly research,<sup>116</sup> the IPHRC implies scientific research is sufficient to show that homosexuality is not hereditary, but rather originates with changes to epigenetic marks that are presumably impacted by changeable environmental factors.<sup>117</sup> In other words, if environmental factors influence sexual orientation, surely homosexuality is not immutable or rooted in biological factors, and therefore is not justifiably subject to human rights protection.<sup>118</sup>

The reality, however, is far less clear cut. Sexual orientation still appears tied to biology, and in any case, dismissing a biological link does not operate to similarly dismiss the overarching necessity of respecting international equality and non-discrimination principles, including on the basis of SOGI. A cursory review of the scientific literature confirms as much. For example, two recent studies offered the following conclusions: First,

[n]o causal theory of sexual orientation has yet gained widespread support. The most scientifically plausible causal hypotheses are difficult to test. However, there is considerably more evidence supporting nonsocial causes of sexual orientation [i.e. genetics] than social [or environmental] causes [such as early

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therapy-nonprofit-to-close/ [https://perma.cc/EW48-SRFZ] (outlining the court’s final disposition of the case).

115. *OIC-IPHRC Study*, *supra* note 6, at 4. The *Time* magazine article discusses the findings presented in W.R. Rice et al., *Homosexuality as a Consequence of Epigenetically Canalized Sexual Development*, 87 Q. REV. BIOLOGY 343 (2012); *see also* Laura Blue, *New Insight into the (Epi)Genetic Roots of Homosexuality*, TIME (Dec. 13, 2012), <http://healthland.time.com/2012/12/13/new-insight-into-the-epigenetic-roots-of-homosexuality> [https://perma.cc/FEW2-TCX9].

116. For example, a Google Scholar search of articles from 2013 to the present that include the keywords “sexual orientation” and “epigenetic” returns well over 1,000 results, [https://scholar.google.com/scholar?q=%2B%22sexual+orientation%22+%2Bepigenetic&hl=en&as\\_sdt=1%2C41&as\\_vis=1&as\\_ylo=2013&as\\_yhi=](https://scholar.google.com/scholar?q=%2B%22sexual+orientation%22+%2Bepigenetic&hl=en&as_sdt=1%2C41&as_vis=1&as_ylo=2013&as_yhi=) [https://perma.cc/SB2S-NEW6].

117. *OIC-IPHRC Study*, *supra* note 6, at 4.

118. *Id.*

sexual experiences and cultural acceptance of non-heterosexuality].<sup>119</sup>

Second, “sexual orientation is largely influenced by biological factors (hormonal, genetic, epigenetic) acting mostly during the early stages of ontogeny and probably interacting with later social interactions.”<sup>120</sup>

This section of the IPHRC’s study concludes with the sole direct reference to scientific research; however, it concerns the unrelated subject of schizophrenia, rather than sexual orientation.<sup>121</sup> Again ignoring the preponderance of scientific evidence that rejects the assertion homosexuality is a “mental condition,” the report attempts to draw an analogy between homosexuality and schizophrenia, a “complex, debilitating psychiatric disorder.”<sup>122</sup> The IPHRC describes schizophrenia as a “mental condition” with “known genetic predispositions.”<sup>123</sup> Further, it asserts that despite the disease’s “genetic predisposition,” society does not accept the “behavioral anomalies” that flow from the disease.<sup>124</sup> Instead, those suffering from the illness “are provided medical treatment either voluntarily or at times even forced to receive treatment.”<sup>125</sup> The implication is clear: like schizophrenia, homosexuality ought to be regarded as a mental disease. Those “suffering” must be treated—whether voluntarily or involuntarily—in the name of protecting society from homosexuality’s “behavioral anomalies.”<sup>126</sup> This inference brings the IPHRC to its main point, that ultimately, science does not matter: “Muslims, based on their overt religious beliefs and traditions, are duty bound to protect and promote the social institution of marriage and

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119. J. Michael Bailey et al., *Sexual Orientation, Controversy, and Science*, 17 *PSYCHOL. SCI. PUB. INT.* 45, 46 (2016).

120. Jacques Balthazart & Lucas Court, *Human Sexual Orientation: The Importance of Evidentiary Convergence*, 46 *ARCHIVES SEXUAL BEHAV.* 1595, 1598 (2017).

121. See *OIC-IPHRC Study*, *supra* note 6, at 4. But the IPHRC provides an incomplete reference to the study, as it appears to refer to Andrea Vreczkei & Karoly Mirnics, *Genetic Predisposition to Schizophrenia: What Did We Learn and What Does the Future Hold?* 13 *NEUROPSYCHOPHARMACOLOGIA HUNGARICA* 205 (2011).

122. Vreczkei & Mirnics, *supra* note 121, at 205.

123. *OIC-IPHRC Study*, *supra* note 6, at 4.

124. *Id.*

125. *Id.*

126. *Id.*

family.”<sup>127</sup> And while “they have no specific animus against the homosexual individuals,” their “detestable sexual behavior” runs contrary to Islam and thus cannot be tolerated.<sup>128</sup>

The IPHRC’s study next turns to identifying reasons for protecting the OIC’s vision of “traditional” family. This section argues that permitting same sex marriage would undermine the fundamental purpose of marriage as a “social institution” and cheapen “the purpose of marriage from procreation to mere adult sexual gratification.”<sup>129</sup> In the IPHRC’s view, “the growing trend of confusing the definition of family with new and controversial notions of LGBT families”<sup>130</sup> is at odds with the Koran’s “good society,” which can “only be achieved through the marriage between man and woman as husband and wife.”<sup>131</sup> However, this narrow vision of family stands in opposition to recent findings presented by the UN’s Office of the High Commissioner for Human Rights (OHCHR). In a report addressing government efforts to protect the family, the OHCHR determined that states must “recognize the diverse and changing forms of the family institution.”<sup>132</sup> The report concluded that any protection measures intended for the family “should be guided by basic human rights principles, including equality and non-discrimination, and by respect for the rights of individual family members, notably those who might find themselves in a situation of vulnerability.”<sup>133</sup>

Despite this OHCHR guidance reiterating the critical importance of upholding equality and nondiscrimination for all individuals, the

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127. *Id.*

128. *Id.*

129. *Id.* at 5.

130. Press Release, OIC-IPHRC, OIC Independent Permanent Human Rights Commission (IPHRC) Concludes Its 7th Regular Session in Jeddah Held from 19-23 April 2015 (Apr. 23, 2015), [https://www.oic-iphrc.org/en/data/docs/session\\_reports/7th/Final%20Press%20release%20for%20the%207th%20iphrc%20session%20-%20EV.pdf](https://www.oic-iphrc.org/en/data/docs/session_reports/7th/Final%20Press%20release%20for%20the%207th%20iphrc%20session%20-%20EV.pdf) [<https://perma.cc/W5AJ-EHMD>].

131. Press Release, OIC-IPHRC, IPHRC Reaffirmed the Importance of Family as the Natural and Fundamental Unit of Society that is Entitled to Protection by State and Society, During Its Thematic Debate on “Protection of Family Values” on 21st April 2015 (Apr. 23, 2015), [https://www.oic-iphrc.org/en/press\\_details.php?id=MDI2X0AjIUA=](https://www.oic-iphrc.org/en/press_details.php?id=MDI2X0AjIUA=) [<https://perma.cc/2KHC-ZMUD>].

132. Rep. of the UN High Commissioner for Hum. Rts. Council on the Protection of the Family: Contribution of the Family to the Realization of the Right to an Adequate Standard of Living for its Members, Particularly through its Role in Poverty Eradication and Achieving Sustainable Development, ¶ 76, U.N. Doc. A/HRC/31/37 (Jan. 29, 2016).

133. *Id.* ¶ 50.

IPHRC study purports to highlight homosexuality’s “negative impact on society”<sup>134</sup> as a means of further justifying its religion-based defense of traditional marriage. To do so, the IPHRC cites to defunct anti-gay marriage organizations,<sup>135</sup> endorses statements from leaders of recognized hate groups,<sup>136</sup> makes unsubstantiated claims, and again distorts scientific evidence. These latter two flaws are particularly egregious and merit greater exposition.

In the first instance, the IPHRC study claims—without substantiation—that “[w]hen rights for same-sex couples are expanded and enforced, freedom of expression, thought, conscience, religion and belief are threatened as citizens are coerced to accept and act against their conscience and belief.”<sup>137</sup> The report offers no concrete examples to back up this claim nor does it recognize or engage in any type of rights-balancing analysis that likely would be required under such a scenario.

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134. *OIC-IPHRC Study*, *supra* note 6, at 6.

135. The *IPHRC Study* cites twice to the Marriage Law Foundation, a U.S. based anti-gay marriage NGO. *See OIC-IPHRC Study*, *supra* note 6, at 5. The Marriage Law Foundation appears to have ceased activity, and its website has been deactivated since at least January 2016. *See, e.g.*, <https://web.archive.org/web/20151012213650/http://www.marriagelawfoundation.org/> [<https://perma.cc/W6J7-LKVF>]. The web domain [www.marriagelawfoundation.org](http://www.marriagelawfoundation.org) now peddles feather flags and retractable banners. *Id.*

136. The IPHRC endorses an assertion by Lou Sheldon, founder of the Traditional Values Coalition (TVC), that “[o]ur little children are being targeted by the homosexuals and liberals ... [t]o be brainwashed to think that homosexuality is the moral equivalent of heterosexuality.” *OIC-IPHRC Study*, *supra* note 6, at 6. The Southern Poverty Law Center has long listed the TVC as an extremist hate group. *See Evelyn Schlatter, 18 Anti-Gay Groups and Their Propaganda*, S. POVERTY L. CTR. (Nov. 4, 2010), <https://www.splcenter.org/fighting-hate/intelligence-report/2010/18-anti-gay-groups-and-their-propaganda> [<https://perma.cc/ZUU8-KR28>]; *Traditional Values Coalition*, S. POVERTY L. CTR., <https://www.splcenter.org/fighting-hate/extremist-files/group/traditional-values-coalition> [<https://perma.cc/UAD3-CU62>]. One might wonder whether the IPHRC would be so quick to endorse Sheldon’s other views. Elsewhere, he has claimed “[a] dangerous Marxist/Leftist/Homosexual/Islamic coalition has formed—and we’d better be willing to fight it with everything in our power.” Paul Brennan, *Rev. Lou Makes the Top 10*, OC WEEKLY (July 14, 2006), <http://www.ocweekly.com/news/rev-lou-makes-the-top-10-6461581> [<https://perma.cc/N4DS-XMR5>]. Sheldon’s TVC also established “The Task Force to Stop Shariah Law in America,” which seeks to “ban Radical Islam’s Shariah Law in every state in America.” Evelyn Schlatter, *Traditional Values Coalition Jumps on Anti-Shariah Bandwagon*, S. POVERTY L. CTR. (Apr. 5, 2011), <https://www.splcenter.org/hatewatch/2011/04/05/traditional-values-coalition-jumps-anti-shariah-bandwagon> [<https://perma.cc/U9JN-JB24>]. Among other things, Sheldon has claimed that Islam is “subverting” the U.S. Constitution and will place American families “under Shariah Law.” *Id.*

137. *OIC-IPHRC Study*, *supra* note 6, at 6.

As another example, the IPHRC asserts—again without substantiation—numerous “well-documented” and “negative outcomes associated with the homosexual lifestyle,” including a higher “involvement with pedophilia.”<sup>138</sup> This contention appears to trace back to a long-discredited social science study published by Paul Cameron, a psychologist once described as “the most dangerous antigay voice in the United States.”<sup>139</sup> Cameron’s primary conclusion alleged “those who are bi- to homosexual are proportionately much more apt to molest youth.”<sup>140</sup> However, scholars refuted the veracity of this conclusion by questioning Cameron’s methodologies as well as his findings. Among others, Professor Gregory Herek found Cameron’s study made “puzzling” assumptions that suggested “inattention by the author to the literature he himself claimed to have reviewed.”<sup>141</sup> Herek also found that Cameron failed to explain the derivation of statistical data produced, and manipulated data “to increase further his estimate of the risk posed to children by homosexual/bisexual men.”<sup>142</sup> Beyond questionable methodologies and misrepresented data,<sup>143</sup> numerous subsequent studies also directly contradicted Cameron’s findings. One such study, conducted by Toronto’s Clarke Institute of Psychiatry and based on phallometric testing, concluded:

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138. *Id.* at 7.

139. See Gregory M. Herek, *Myths About Sexual Orientation: A Lawyer’s Guide to Social Science Research*, 1 LAW & SEXUALITY 133, 156 n.116 (1991) (quoting David Walter, *Paul Cameron*, THE ADVOCATE, Oct. 29, 1985, at 28).

140. Paul Cameron, *Homosexual Molestation of Children / Sexual Interaction of Teacher and Pupil*, 57 PSYCHOLOGICAL REP. 1227, 1231 (1985).

141. See Herek, *supra* note 139, at 155 n.112.

142. See *id.* Herek also takes Cameron to task for his selective use of sources: “He described no systematic method for reviewing the literature, and appears not to have reviewed the voluminous literature on the sexual development of children and adolescents. His final choice of sources appears to have slanted his findings.” *Id.*

143. Cameron’s misrepresentations of scholarship elsewhere prompted Nicholas Groth, the director of Connecticut’s Sex Offender Program, to file a complaint with Nebraska’s Board of Examiners of Psychologists (where Cameron held a license). Groth’s complaint notes Cameron “misrepresents my findings and distorts them to advance his homophobic views. I make a very clear distinction in my writing between pedophilia and homosexuality, noting that adult males who sexually victimize young boys are either pedophilic or heterosexual, and that in my research I have not found homosexual men turning away from adult partners to children ... [Cameron] disgraces his profession.” Letter from Nicholas Groth, Ph.D., to Nebraska Board of Examiners of Psychologist (Aug. 21, 1984) (on file with the University of North Texas Library Special Collections).

[T]he erotic attractiveness of male children (or pubescents) for androphiles [gay men] is not greater than the erotic attractiveness of female children (or pubescents) to gynephiles [heterosexual men]. Thus there must be another reason for [Cameron's] finding ... those who blame androphiles for the relatively larger incidence of sexual offenses against male children, compared the incidence of sexual offenses against female children must come up with a reasonable explanation of why these offenses are not actually perpetuated by pedophiles.<sup>144</sup>

Another study that reviewed 269 cases of child abuse by an adult found “there were only two children (0.7%) where the offender was identifiable as potentially homosexual or lesbian.”<sup>145</sup> The authors concluded “no evidence is available from this data that children are at greater risk to be molested by identifiable homosexuals than by other adults. There is no support for the claim to this effect by groups advocating legislation limiting rights of homosexuals.”<sup>146</sup> As Herek has summarized, current “empirical research does *not* show that gay or bisexual men are any more likely than heterosexual men to molest children.”<sup>147</sup> Rather, “[o]ne individual has claimed to have data that prove homosexuals to be child molesters at a higher rate than heterosexuals. That person is Paul Cameron.”<sup>148</sup>

From this, readers of the IPHRC report are left to wonder: Did the IPHRC simply forgo an authoritative citation to validate its claim concerning pedophilia because contemporary research rejects such a claim? Or did the omission stem from wanting to perpetuate the misinformation while avoiding the obvious *faux pas* of directly endorsing a discredited study by an author who has been expelled from the American Psychological Association, denounced by the American Sociological Association (ASA) for “consistently misinterpret[ing] and misrepresent[ing] sociological research on sexuality,

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144. Kurt Freund et al., *Heterosexuality, Homosexuality, and Erotic Age Preference*, 26 J. SEX RES. 107, 115-16 (1989).

145. Carole Jenny et al., *Are Children at Risk for Sexual Abuse by Homosexuals?*, 94 PEDIATRICS 41, 44 (1994).

146. *Id.*

147. Gregory M. Herek, *Facts About Homosexuality and Child Molestation*, UC DAVIS.EDU, [http://psc.dss.ucdavis.edu/faculty\\_sites/rainbow/html/facts\\_molestation.html#cameron](http://psc.dss.ucdavis.edu/faculty_sites/rainbow/html/facts_molestation.html#cameron) [<https://perma.cc/GR8A-J3H3>].

148. *Id.*

homosexuality, and lesbianism,”<sup>149</sup> and identified by the Southern Poverty Legal Center (SPLC) as an “infamous anti-gay propagandist whose one-man statistical chop shop, the Family Research Institute, churns out hate literature masquerading as legitimate science”?<sup>150</sup>

In addition to not backing up its assertions, the IPHRC report also distorts scientific evidence for its own ends. For example, the report misleadingly cites a 2001 article published by Judith Stacey and Timothy J. Biblarz to validate its claims that “children reared by same-sex couples fare worse ... than those reared by heterosexual, married couples” and are “at increased risk for mental health problems, including major depression, anxiety and conduct disorders.”<sup>151</sup> In actuality, Stacey and Biblarz *confirm* that the existing academic research “almost uniformly” finds “no notable differences between children reared by heterosexual parents and those reared by lesbian and gay parents, and ... finds lesbian and gay parents to be as competent and effective as heterosexual parents.”<sup>152</sup>

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149. Resolution Adopted by the American Sociological Association (Aug. 1985) (on file with the University of North Texas Library Special Collections). The ASA resolution charged its “Committee on the Status of Homosexuals in Sociology with the task of critically evaluating and publicly responding to the work of Dr. Paul Cameron.” *Id.*; see also Judith Stacey & Timothy J. Biblarz, *(How) Does the Sexual Orientation of Parents Matter?*, 66 AM. SOC. REV., 159, 161 (2001).

150. Paul Cameron, S. POVERTY L. CTR., <https://www.splcenter.org/fighting-hate/extremist-files/individual/paul-cameron> [<https://perma.cc/8XUV-AEZN>]. In 2005, the Boston Globe reported that Cameron’s

Family Research Institute ... [is] part of a rapidly growing trend in which small think tanks, researchers, and publicists who are open about their personal beliefs are providing what they portray as medical information on some of the most controversial issues of the day. Created as counterpoints to large, well-established medical organizations whose work is subject to rigorous review and who assert no political agenda, the[se] tiny think tanks with names often mimicking those of established medical authorities have sought to dispute the notion of a medical consensus on social issues such as gay rights, the right to die, abortion, and birth control.

Michael Kranish, *Beliefs Drive Research Agenda of New Think Tanks Study on Gay Adoption Disputed by Specialists*, BOSTON GLOBE, July 31, 2005, at A1.

151. OIC-IPHRC Study, *supra* note 6, at 7.

152. Stacey & Biblarz, *supra* note 149, at 160. This conclusion is affirmed elsewhere. See, e.g., CWLA’s *Position on Same-Sex Parenting*, CWLA (2016), <https://www.cwla.org/position-statement-on-parenting-of-children-by-lesbian-gay-and-bisexual-adults/> [<https://perma.cc/7FMZ-FVL4>] (“The Child Welfare League of America (CWLA) affirms that lesbian, gay, and bisexual parents are as well suited to raise children as their heterosexual counterparts.”); *Council Policy Manual: Sexual Orientation, Parents, & Children*, AM. PSYCHOL. ASS’N (July

Further, Stacey and Biblarz find the outlier research arguing that “gay parents subject children to disproportionate risks”<sup>153</sup> unconvincing and fueled by authors such as Cameron who “subscribe to the view that homosexuality represents either a sin or a mental illness.”<sup>154</sup> The authors conclude that this agenda-driven research “offer[s] only limited, and often implicit, theoretical explanations for the disadvantages of same-sex parenting,” and that “[t]he deeply rooted hetero-normative convictions about what constitutes healthy and moral gender identity, sexual orientation, and family composition held by contributors to this [outlier] literature hinders their ability to conduct or interpret research with reason, nuance, or care.”<sup>155</sup>

Even with this section’s notable flaws, the IPHRC’s arguments surrounding SOGI still fail to move beyond marriage to address the larger human rights implications that flow from denying equality and non-discrimination in contexts such as freedom of assembly, the right to health, and freedom from torture and other inhuman treatment.<sup>156</sup> When the study does turn to directly deal with international human rights norms, the IPHRC simply parrots familiar OIC positions instead of providing independent, objective or reasoned justifications for its position in the context of international human rights.<sup>157</sup>

The IPHRC’s first recycled OIC argument claims that recognition of equality and nondiscrimination on the basis of SOGI would misinterpret the Universal Declaration on Human Rights (UDHR) and international treaties “to include notions that were never articulated or agreed.”<sup>158</sup> In making this assertion, the IPHRC fails

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28 & 30, 2004), <http://www.apa.org/about/policy/parenting.aspx> [<https://perma.cc/7XBF-M6JE>] (“Overall, results of research suggest that the development, adjustment, and well-being of children with lesbian and gay parents do not differ markedly from that of children with heterosexual parents,” and resolving “that the APA opposes any discrimination based on sexual orientation in matters of adoption, child custody and visitation, foster care, and reproductive health services.”).

153. Stacey & Biblarz, *supra* note 149, at 161.

154. *Id.*

155. *Id.* at 162.

156. *OIC-IPHRC Study*, *supra* note 6, at 7.

157. *Id.* For a less condensed treatment of the OIC’s approach to SOGI rights within the international area, see Blitt, *supra* note 5.

158. *OIC-IPHRC Study*, *supra* note 6, at 7. The OIC has raised this argument at the UN when confronted directly and indirectly by the issue of SOGI. See Explanation of Vote by



to engage with the UDHR's foundational language that "[a]ll human beings are born free and equal in dignity and rights."<sup>159</sup> It similarly fails to account for the standing practice of framing treaty-based human rights protections to include "other status-[es],"<sup>160</sup> a purposeful legal formulation intended to ensure that enumerated protected classes would be taken as "open-ended and illustrative,"<sup>161</sup> rather than narrow and restricted.<sup>162</sup> In addition, the IPHRC fails to explain away the hypocrisy overhanging its rejection of SOGI protection on the basis that "[t]here is even no agreement on the term of 'sexual rights' least to mention sexual orientation or preferences, which are far more vague concepts."<sup>163</sup> This claim is particularly misguided given the OIC's continued assertion of a

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Pakistan, on Behalf of the OIC Member States, on Resolution Entitled "Human Rights, Sexual Orientation and Gender Identity", [sic] during the 17th Session of Human Rights Council, Geneva, 16/17 June 2011; see also Mariam Saeed (First Secretary, Pakistan), *Comments on Behalf of the OIC during the Interactive Dialogue with the Special Rapporteur on Sale of Children and Special Rapporteur on Torture*, 31st Session of the Human Rights Council (Mar. 8, 2016); Hum. Rts. Council, *Statement by Pakistan on Behalf of the OIC in the Interactive Dialogue with the Special Rapporteur on Freedom of Expression and the Special Rapporteur on Peaceful Assembly and Association*, 26th Session of the Human Rights Council (June 10, 2014).

159. G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 1 (Dec. 10, 1948).

160. U.N. High Commissioner for Hum. Rts., *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law*, at 40, U.N. Doc. HR/PUB/12/06 (2012) [hereinafter *Born Free and Equal*]. There is a deeper irony here, given that the OIC has used a similar purposive interpretation in its own documents. For example, the organization has claimed that usage of the term "Everyone" in the CDHRI meant human rights protections applied to individuals with disabilities, despite the document making no express reference to the disabled or their status as a protected class. See Tehmina Janjua (Permanent Representative of Pakistan), *Statement on Behalf of the OIC Member States, Interactive Dialogue with Special Rapporteur on the Rights of Persons with Disabilities*, 31st Session of the Human Rights Council (Mar. 4, 2016). Like the UDHR, the CDHRI contains a nondiscrimination provision that similarly extends protection to unenumerated classes based on "other considerations". CDHRI, *supra* note 9, at art. 1.

161. *Born Free and Equal*, *supra* note 160, at 40.

162. More generally to this point, the law of treaties supports the view that where "a treaty is open to two interpretations one of which does and the other does not enable the treaty to have appropriate effects, good faith and the objects and purposes of the treaty demand that the former interpretation should be adopted." *Report of the International Law Commission to the General Assembly*, 21 U.N. GAOR Supp. No. 9, at 219, U.N. Doc. A/CN.4/191 (1966), reprinted in [1966] 2 Y.B. Int'l L. Comm'n 169, U.N. Doc. A/6309/Rev.1. In the view of the International Law Commission, when properly limited and applied, this approach "does not call for an 'extensive' or 'liberal' interpretation in the sense of an interpretation going beyond what is expressed or necessarily to be implied in the terms of the treaty." *Id.*

163. *OIC-IPHRC Study*, *supra* note 6, at 7.

vague and undefined international norm prohibiting defamation of religion,<sup>164</sup> which the IPHRC has readily endorsed.<sup>165</sup>

Second, the IPHRC adopts the OIC's misleading interpretation of the VDPA,<sup>166</sup> despite that document representing "the culmination of a long process of review and debate over the current status of human rights machinery in the world."<sup>167</sup> Mirroring the OIC, the IPHRC suggests that the VDPA prioritizes "respecting diversity, national and regional particularities and various historical, cultural and religious backgrounds" over individual human rights.<sup>168</sup> However, while the VDPA calls for bearing in mind the significance of religious and other particularities, it does so only in the context of prioritizing "the *duty* of States, regardless of their political, economic and cultural systems, to *promote and protect all human rights and fundamental freedoms*."<sup>169</sup> In other words, while bearing in

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164. See, e.g., Council on Foreign Ministers Res. 33/44-POL, on Combating Defamation of Religions, at 86-88 (July 10-11, 2017); Council on Foreign Ministers Res. No. 32/44-POL, on Combating Islamophobia and Eliminating Hatred and Prejudice Against Islam, at 80-82 (July 10-11, 2017). Recall also that this ongoing assertion neglects the reality that international human rights law is intended to protect individual rights rather than rights ascribed to a particular religion.

165. See, e.g., Press Release, OIC-IPHRC, IPHRC Strongly Condemns the Recent Publication of Blasphemous Caricatures of Prophet Mohammad (PBUH) by the French Magazine Charlie Hebdo (Jan. 18, 2015), [https://www.oic-iphrc.org/en/press\\_details.php?id=MDIzX0AjIUA=](https://www.oic-iphrc.org/en/press_details.php?id=MDIzX0AjIUA=) [<https://perma.cc/4KU5-7EH9>]; OIC-IPHRC, Rep. of the 8th Regular Session of the OIC Independent Permanent Human Rights Commission: Countering Islamophobia: An Unfinished Business, at 49, 55, 57, 62-63, Doc. Annex-J (2015).

166. The OIC's distorted understanding is premised on the regional Bangkok Declaration issued in the lead up to the World Conference. See 21st Islamic Conference of Foreign Ministers, *Coordination Among Member States in the Field of Human Rights*, OIC Res. No. 41/21-P (Apr. 25-29, 1993). For a more recent reiteration of this interpretation, see Permanent Rep. of Pakistan to the U.N., Letter dated Feb. 14, 2012 from the Permanent Rep. of Pakistan to the United Nations and other international organizations addressed to H.E. Ms. Laura Dupuy Lasserre, President of the Human Rights Council, Doc. Pol/So/2012 (Feb. 14, 2012) (positing that "while considering the issue of human rights, national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind. From this perspective, the issue of sexual orientation is unacceptable to the OIC"). For a detailed analysis of the OIC's framing of the VDPA, see Blitt, *supra* note 5.

167. *World Conference on Human Rights, 14-25 June 1993, Vienna, Austria*, U.N. HUM. RTS. OFF. OF THE HIGH COMMISSIONER, (June 14-25, 1993), <http://www.ohchr.org/EN/AboutUs/Pages/ViennaWC.aspx> [<https://perma.cc/ATR5-DHLX>].

168. *OIC-IPHRC Study*, *supra* note 6, at 8.

169. VDPA, *supra* note 34, ¶ (I)(5) (emphasis added). The IPHRC has eagerly adopted the OIC's disjointed interpretation, discarding the Vienna Declaration's recognition that states have a duty to protect all human rights regardless of state particularities. See Press Release, OIC-IPHRC, IPHRC Reaffirmed the Importance of Family as the Natural and Fundamental

mind various particularities, the VDPA maintains that states have a duty not merely to “consider” human rights, but actually to “promote and protect” them, rather than restrict or impinge them.<sup>170</sup>

The IPHRC’s framing of the VDPA is particularly egregious considering how forcefully the international human rights community has refuted such misappropriations. Writing in the late 1980s, scholar Abdullah An-Na’im concluded “no cultural relativist argument may be allowed to justify derogation from the basic obligation to uphold and protect the full human rights of religious minorities, within the Islamic or any other cultural context.”<sup>171</sup> Surely, the same underlying principles would hold true in the context of SOGI. Indeed, confronted by a similar OIC assertion during a UN interactive dialogue on SOGI, Hila Jilani, the Pakistani human rights activist and former Special Representative of the UN Secretary General on Human Rights Defenders, responded:

[I]t is ... rather difficult and not convincing when [states invoke] culture and tradition ... as a shield for the failure to fulfill the obligation to protect from human rights violations.... There are no notions of responsibility that allow governments and duty-bearers to ... hold out that responsibility and hold out that protection selectively.<sup>172</sup>

Third, the IPHRC also borrows the OIC’s claim that human rights law “already provides enough clarity to combat violence and discrimination against any person or group on any ground.”<sup>173</sup> As such, express recognition of SOGI is unnecessary. This position turns nondiscrimination law on its head by validating the OIC’s argument

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Unit of Society That is Entitled to Protection by State and Society, During Its Thematic Debate on “Protection of Family Values” on April 21st 2015, (Apr. 23, 2015), [https://www.oic-iphrc.org/en/press\\_details.php?id=MDI2X0AjIUA=\[https://perma.cc/2KHC-ZMUD\]](https://www.oic-iphrc.org/en/press_details.php?id=MDI2X0AjIUA=[https://perma.cc/2KHC-ZMUD]). According to the IPHRC, the VDPA “amply highlights the principle of due recognition and respect for cultural and religious diversity in the field and application of human rights.” *Id.*

170. VDPA, *supra* note 34, ¶¶ 34-38.

171. Abdullah A. An-Na’im, *Religious Minorities Under Islamic Law and the Limits of Cultural Relativism*, 9 HUMAN RIGHTS QUARTERLY 1, 18 (1987).

172. *Panel Discussion Sexual Orientation and Gender Identity, 22nd Meeting*, U. N. WEB TV (Mar. 7, 2012), <http://webtv.un.org/search/panel-discussion-sexual-orientation-and-gender-identity-22nd-meeting/5294863512001/?term=sexual%20orientation&lan=English&sort=date&page=2> [https://perma.cc/W76L-745L].

173. *OIC-IPHRC Study*, *supra* note 6, at 8.

that specific “focus on certain persons on the grounds of their sexual interests and behaviours” would undercut efforts to combat the overall scourge of intolerance and discrimination.<sup>174</sup> In the words of one OIC representative, states “should refrain from attempting to give priority to the rights of certain individuals, as doing so could result in positive discrimination at the expense of the rights of others, in contravention of the principles of non-discrimination and equality.”<sup>175</sup> Of course, actual implementation of such an approach would suggest state *inaction* is an appropriate response to confronting specific human rights violations impacting recognized vulnerable individuals. But more immediately, the IPHRC’s assertion that current IHRL standards sufficiently protect LGBTI individuals directly contradicts findings reached by the international human rights regime. For example, the OHCHR recently reported that “the overall picture remains one of continuing, pervasive, violent abuse, harassment and discrimination affecting LGBT and intersex persons in all regions ... current arrangements to protect the human rights of LGBT and intersex persons are inadequate.”<sup>176</sup>

Overhanging all of this, the IPHRC claim that IHRL coverage is sufficient to protect “any ... group on any ground”<sup>177</sup> smacks of artifice given the OIC’s demand for explicit international protection against defamation of Islam.<sup>178</sup> Setting aside the intellectual leap required to justify the use of IHRL to protect religion rather than individuals, the OIC’s entire campaign to prohibit defamation is premised on a claim of inadequate existing protection and a desire to prioritize protection for a specific religion.<sup>179</sup> The organization has

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174. U.N. GAOR, 65th Sess., 71st plen. mtg., at 16, U.N. Doc. A/65/PV.71 (Dec. 21, 2010) (Statement by Mr. Noziri (Tajikistan), on behalf of the OIC).

175. U.N. GAOR, 71st Sess., summary rec. of the 52nd meeting, ¶ 48, U.N. Doc. A/C.3/71/SR.52 (Jan. 12, 2017).

176. Hum. Rts. Council, Rep. on Discrimination and Violence Against Individuals Based on Their Sexual Orientation and Gender Identity, ¶ 76, U.N. Doc. A/HRC/29/23 (May 4, 2015).

177. *OIC-IPHRC Study*, *supra* note 6, at 8.

178. See Robert C. Blitt, *Should New Bills of Rights Address Emerging International Human Rights Norms? The Challenge of “Defamation of Religion,”* 9 NW. J. INT’L HUM. RTS. 1, 13-14 (2010) (noting that the OIC representative opposed changing the originally proposed “defamation of Islam” resolution to “defamation of religions” because it “would defeat the purpose of the text, which was to bring a problem relating specifically to that religion to the attention of the international community”).

179. The OIC’s 2008 Charter establishes “combat[ing] defamation of Islam” as one of the organization’s primary objectives, and as a precondition for obtaining OIC observer status,

steadily pursued this campaign even though it would necessarily result in the same “positive discrimination at the expense of the rights of others”<sup>180</sup> the OIC rejects in the context of SOGI.

Finally, the IPHRC echoes the OIC’s advocacy of state sovereignty as a bar to SOGI recognition, demanding that the “international community must accord respect for the sovereign right of each country as well as its national laws.”<sup>181</sup> This stance rejects long-established understandings that a state cannot evade international responsibility for human rights violations “by claiming that such matters are essentially within its domestic jurisdiction.”<sup>182</sup> As W. Michael Reisman concluded in 1990, “no serious scholar still supports the contention that internal human rights are ‘essentially within the domestic jurisdiction of any state’ and hence insulated from international law.”<sup>183</sup> Indeed, staking out such a position seems particularly outdated in the age of Universal Periodic Review.

Rather than embrace contemporary practice, the IPHRC’s assertion conjures up the Bangkok Declaration, which emphasized “the principles of respect for national sovereignty ... non-interference in the internal affairs of States, and the non-use of human rights as an instrument of political pressure.”<sup>184</sup> Despite the 1993 VDPA ultimately rejecting this proposition, the OIC faithfully continues to adhere to it, for example, by urging all states to reject “the universality of human rights as a pretext to interfere in the internal

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interested states are required to provide a commitment to prohibit the defamation of Islam. See Robert C. Blitt, *Defamation of Religion: Rumors of Its Death Are Greatly Exaggerated*, 62 CASE W. RES. L. REV. 347, 354 (2011).

180. U.N. Doc. A/C.3/71/SR.52, *supra* note 175, ¶ 48.

181. *OIC-IPHRC Study*, *supra* note 6, at 8.

182. Inst. of Int’l Law, Res. on the Protection of Human Rights and the Principle of Non-intervention in Internal Affairs of States, art. 2, (1989), [http://www.idi-iil.org/app/uploads/2017/06/1989\\_comp\\_03\\_en.pdf](http://www.idi-iil.org/app/uploads/2017/06/1989_comp_03_en.pdf) [<https://perma.cc/7Z2Q-7HFB>].

183. W. Michael Reisman, *Sovereignty and Human Rights in Contemporary International Law*, 84 AM. J. INT’L L. 866, 869 (1990). For a view of how this debate has played out at the UN, see Press Release, Security Council, Speakers in Security Council Urge Balance between UN Role in State Sovereignty, Human Rights Protection, But Differ over Interpretation of Charter Principles, U.N. Press Release SC/12241 (Feb. 15, 2016), and Press Release, Human Rights Commission, National Sovereignty Not a Shield for Human Rights Violations, European Union Tells Human Rights Commission, U.N. Press Release HR/CN/741 (Apr. 18, 1996).

184. World Conference on Human Rights, *Rep. of the Regional Meeting for Asia of the World Conference on Human Rights*, art. 5, U.N. Doc. A/CONF.157/PC/59 (Apr. 7, 1993).

affairs of other states and to impinge on their sovereignty.”<sup>185</sup> Such a position might be understandable when emanating from states wanting to minimize external scrutiny of their own human rights practices. However, coming from a RHRM like the IPHRC, the invocation of sovereignty and noninterference as a trump card is especially misplaced. In the first instance, it brings into question the legitimacy of the IPHRC’s own scrutiny of the human rights practices of non-OIC states who have not consented to IPHRC’s asserted review of their national laws or practices.<sup>186</sup> But no less boldly, prioritizing non-interference serves to undermine the very objective of RHRMs—namely promoting and protecting universal human rights.

The IPHRC study’s “careful deliberation”<sup>187</sup> on various aspects of the SOGI debate reaches its conclusion after only eight pages: “such concepts are not recognized under any universal human rights instrument and run counter to the values and teachings of many cultures, religions and beliefs including Islam.”<sup>188</sup> The IPHRC then proffers several recommendations to the OIC, including:

- Expressing “strong opposition and rejection” of SOGI as a “legally flawed and deeply divisive notion at all fora,” and continuing to “support the well-crafted UN resolution on Protection of Family” at the UN;<sup>189</sup>
- “Oppos[ing] the legality of the controversial mandate of the Independent Expert on [SOGI,] ... maintaining the [OIC’s]

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185. *See, e.g.*, Council of Foreign Ministers Res.1/43-LEG, Follow Up and Coordination of Action in the Field of Human Rights, art. 5 (Oct. 18-19, 2016).

186. For example, consider IPHRC engagement on human rights questions relating to the Central Arab Republic, Kashmir, Myanmar, Jerusalem, migration to Europe, and freedom of expression in France. *See, e.g.*, Press Release, OIC-IPHRC, OIC-IPHRC Urged the Myanmar Government to Take Firm Steps to Immediately End the Violence Against its Rohingya Population; Bring the Perpetrators of Violence to Justice; Revise and Replace All Discriminatory Policies and Practices Against Them; and Ensure a Sustainable and Voluntary Return of Rohingya Refugees in Safety, Security, Dignity and With Ensured Livelihood to Their Homeland in Rakhine State, (Jan. 5, 2018), [https://www.oic-iphrc.org/en/press\\_details.php?id=MDgzX0AjIUA=](https://www.oic-iphrc.org/en/press_details.php?id=MDgzX0AjIUA=) [<https://perma.cc/CW38-GNZN>]. *See generally* Press Releases, Independent Permanent Human Rights Commission (IPHRC) of The Organisation of Islamic Cooperation (OIC), <https://www.oic-iphrc.org/en/press-releases> [<https://perma.cc/6834-S2E8>].

187. *OIC-IPHRC Study*, *supra* note 6, at 9.

188. *Id.*

189. *Id.*

stance of non-cooperation[,] [and] reject[ing] his forthcoming report”;<sup>190</sup>

- Producing articles in international journals “refuting the legality of SOGI [rights] both from the Islamic and international human rights law perspective”;<sup>191</sup>
- Preparing a “comprehensive OIC Declaration” on SOGI “which can serve as the standard OIC position on the subject”;<sup>192</sup> and
- Urging OIC states to reconsider cooperation “with UN mandates and Agencies, who promote / seek to establish controversial and unagreed upon so called [SOGI] human rights that may compromise or undermine [Islamic] religious or cultural norms,”<sup>193</sup> including ending the funding of UN Agencies “promoting views and positions against the religious and ethical beliefs of our pristine religion.”<sup>194</sup>

Most of these recommendations endorse established OIC and IPHRC positions. But some of them are clearly intended to escalate opposition to SOGI rights within the international arena. For example, in the name of protecting “traditional” family, the IPHRC has consistently opposed UN efforts to boost programs providing comprehensive, non-discriminatory, evidence-based, and scientifically accurate sexual and reproductive health (SRH) information.<sup>195</sup> The IPHRC has attacked such efforts as “disturbing and morally unacceptable ... as well as potentially harmful to the very institution of family ... [and] undermining the spirit of the universally accepted human rights values, norms and instruments.”<sup>196</sup> Previously, the IPHRC “called on all stakeholders, including UN mechanisms, NGOs and national human rights institutions to put the family at the core of their agendas as well as avoid the misconceptions and controversies, which contradict the universal family

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190. *Id.* at 10.

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.*

195. For a lengthier analysis, see Blitt, *supra* note 5.

196. Press Release, OIC-IPHRC, IPHRC Reaffirmed the Importance of Family as the Natural and Fundamental Unit of Society That is Entitled to Protection by State and Society, During its Thematic Debate on “Protection of Family Values,” (Apr. 23, 2015), [https://www.oic-iphrc.org/en/press\\_details.php?id=MDI2X0AjIUA=\[https://perma.cc/6VV7-89B3\]](https://www.oic-iphrc.org/en/press_details.php?id=MDI2X0AjIUA=[https://perma.cc/6VV7-89B3]).

values.”<sup>197</sup> However, the IPHRC’s current recommendation for OIC member states to reconsider cooperation with and withdraw funding from such UN agencies represents a clear escalation.

A second such escalation stands out, in part because it is directed at “Muslim minority societies,”<sup>198</sup> rather than the OIC or its individual member states. Specifically, the IPHRC urges Muslim communities “especially in the West,” to “invoke protection to practice their religious beliefs ... that grants the right to manifest one’s religion in accordance with his/her beliefs.”<sup>199</sup> This appeal appears to advise—if not outright encourage—individual Muslims to invoke freedom of religion to challenge equality and nondiscrimination protections extended on the basis of SOGI. The mere fact that IPHRC would suggest such action again underscores its hypocrisy regarding its insistence that sovereignty and non-interference be respected concerning the internal affairs of OIC member states.<sup>200</sup> At the same time, further undercutting the IPHRC’s faulty premise concerning consensus in Islam, the proposal seems unlikely to trigger the desired effect. According to the Pew Research Center, “[t]oday, about half of U.S. Muslims say homosexuality should be accepted by society (52%), while 33% say homosexuality should be discouraged. By comparison, in 2011, 39% of Muslims said homosexuality should be accepted; in 2007, just 27% held this view.”<sup>201</sup>

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197. *Id.*

198. See *OIC-IPHRC Study*, *supra* note 6, at 10.

199. *Id.*

200. See, e.g., OIC Res. No. 41/21-P, *supra* note 166, ¶ 2 (emphasizing “the principles of respect for national sovereignty and territorial integrity as well as non-interference in the internal affairs of states, and the non-use of human rights as an instrument of political or economic pressure”). More recently, Pakistan, on behalf of OIC states, sought an amendment to draft resolution A/HRC/32/L.2/Rev.1—“Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity.” See U.N. GAOR, 32nd Sess., 41st mtg. of the Hum. Rts. Council, Vote on Draft Resolution—A/HR/32/L.2/Rev.1—Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity, U.N. Doc A/HRC/32/L.79 (June 29, 2016) (underlining that any state obligation to protect against violence or discrimination based on SOGI “should be implemented while ensuring respect for the sovereign right of each country as well as its national laws, development priorities, the various religious and ethical values and cultural backgrounds of its people”).

201. PEW RES. CTR, U.S. MUSLIMS CONCERNED ABOUT THEIR PLACE IN SOCIETY, BUT CONTINUE TO BELIEVE IN THE AMERICAN DREAM 91 (2017), <http://assets.pewresearch.org/wp-content/uploads/sites/11/2017/07/09105631/U.S.-MUSLIMS-FULL-REPORT-with-population-update-v2.pdf> [<https://perma.cc/H7ZX-4MKF>]. This data places Muslims behind all other Non-Christian faiths in the U.S., but ahead of Mormons, Jehovah’s Witnesses, and evangelical Protestants. *U.S. Public Becoming Less Religious: Support for Same-Sex Marriage*, PEW RES.



Following the attack on the Pulse nightclub in Orlando, FL, where self-described Islamic soldier Omar Mateen murdered 49 people and wounded 58 others, “some of the largest U.S. Islamic organizations, accustomed over the 14 years since 9/11 to quickly cobbling together news conferences and messaging against terrorism, decided to loudly, even eloquently, stand up in support of lesbian, gay, bisexual and transgender people.”<sup>202</sup> Among other efforts, approximately 70 LGBT and Muslim groups released a “Unity Statement” expressing “solidarity, grief and outrage at the horrific attack.”<sup>203</sup>

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CTR. (Oct. 29, 2015), [http://www.pewforum.org/2015/11/03/u-s-public-becoming-less-religious/pf-2015-11-03\\_rls\\_ii-66/](http://www.pewforum.org/2015/11/03/u-s-public-becoming-less-religious/pf-2015-11-03_rls_ii-66/) [<https://perma.cc/TLK7-NBBD>]. It also stands in sharp contrast to a separate Pew report highlighting the views of Muslims living in predominantly Muslim states. In this context, “Muslims overwhelmingly say that homosexual behavior is morally wrong, including three-quarters or more in 33 of the 36 countries where the question was asked.” PEW RES. CTR., *THE WORLD’S MUSLIMS: RELIGION, POLITICS AND SOCIETY* 81 (Apr. 30, 2013), <http://www.pewforum.org/files/2013/04/worlds-muslims-religion-politics-society-full-report.pdf> [<https://perma.cc/G7FL-AUNN>]. Most of the countries surveyed in this report are OIC member states. *See id.* at 13.

202. Jaweed Kaleem, *How the Orlando Attack Could Mark a Shift for Gay Muslims*, L.A. TIMES (June 14, 2016), <http://www.latimes.com/nation/la-na-gay-muslim-20160614-20160612-snap-story.html> [<https://perma.cc/QW24-VCFW>].

203. Unity Statement from American Civil Liberties Union LGBT Project et al., *Muslim-LGBTQ Unity Statement in Response to Divisive Rhetoric After Orlando Shooting* 1, 1 (June 21, 2016), <https://www.muslimadvocates.org/files/Unity-Statement-on-Orlando-2.pdf> [<https://perma.cc/XW8G-Z8GP>]; *see also* Antonia Blumberg, *Outpouring of LGBT, Muslim Groups Sign Statement Against Bigotry*, HUFF. POST. (June 22, 2016), [https://www.huffingtonpost.com/entry/outpouring-of-lgbt-muslim-groups-sign-statement-against-bigotry\\_us\\_576aeb49e4b0c0252e7827f9](https://www.huffingtonpost.com/entry/outpouring-of-lgbt-muslim-groups-sign-statement-against-bigotry_us_576aeb49e4b0c0252e7827f9) [<https://perma.cc/7PUC-2FM9>]. In the UK, several reports of “self-styled Muslim patrol[s]” claiming to enforce sharia law, including by subjecting individuals “to homophobic abuse,” led to convictions of three individuals for harassment, intimidation and assault. Sam Jones, *Muslim Vigilantes Jailed For ‘Sharia Law’ Attacks in London*, THE GUARDIAN (Dec. 6, 2013), <https://www.theguardian.com/uk-news/2013/dec/06/muslim-vigilantes-jailed-sharia-law-attacks-london> [<https://perma.cc/2VHQ-VUX7>]; *Muslim patrol ‘Gang: Police Arrest Three More After Homophobic Video*, THE GUARDIAN (Jan. 24, 2013), <https://www.theguardian.com/uk/2013/jan/24/muslim-patrol-gang-arrests-homophobic-video> [<https://perma.cc/P2FF-HUFN>]. Some of these incidents occurred outside the East London Mosque, which was quick to condemn them as “utterly unacceptable and clearly designed to stoke tensions and sow discord.... The East London Mosque is committed to building co-operation and harmony between all communities in this borough ... and our Imams will be speaking out against such actions.” *Unwelcome ‘patrols,’ EAST LONDON MOSQUE & LONDON MUSLIM CENTRE* (Jan. 17, 2013), <http://archive.eastlondonmosque.org.uk/news/390> [<https://perma.cc/TE6V-PBXV>]. In a similar incident in Germany, a group of individuals wearing “bright orange jackets with the words ‘Sharia police’ ... told passers-by not to frequent discos, casinos or bars.” *German Court Lets Off ‘Sharia Police’ Patrol in Wuppertal*, BBC NEWS (Dec. 10, 2015), <http://www.bbc.com/news/world-europe-35059488> [<https://perma.cc/M9L9-AEB2>]. A German court found these individuals had “not violated laws on uniforms and public gatherings.” *Id.* Nevertheless, the Central Council of Muslims in Germany condemned their action, stating

More concerning still is the fact that these recommendations are emanating from the IPHRC acting as a RHRM. By declaring SOGI recognition illegal, urging non-cooperation and *a priori* rejection of HRC-authorized reporting on the topic, and encouraging member states to withhold funding for UN bodies that seek to protect international human rights norms, including in the areas of sexual and reproductive health, the IPHRC has confirmed that its interest lies in dismantling rather than promoting and protecting international human rights norms.<sup>204</sup>

### CONCLUSION

Overall, the IPHRC's "comprehensive study"<sup>205</sup> on sexual orientation is a bizarre amalgam of hyperbolic, doom-laden, and bigoted claims singularly preoccupied with combatting same-sex marriage. In its effort to reject this pre-determined threat, the IPHRC has cast aside any concern for reflecting on or engaging with either actual scientific evidence or the substance of international human rights law.<sup>206</sup> Based on this effort, the report lays bare the IPHRC's failings as a legitimately independent human rights body committed to serving the intended purpose of a regional human rights mechanism. Rather than operate as "a platform for human rights protection," the IPHRC has confirmed its predisposition to act on behalf of OIC member states as a "shield against global scrutiny."<sup>207</sup>

Precisely because of these grave shortcomings, the IPHRC report is likely to serve its intended purpose: adding fuel to the OIC's campaign to deny equality and nondiscrimination based on SOGI. Indeed, taken at its worst, the IPHRC's report can be viewed as condoning and even encouraging continued criminalization of SOGI

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it was "harmful to Muslims." *Id.*

204. See generally *OIC-IPHRC Study*, *supra* note 6.

205. Both the OIC and IPHRC have described the study as "comprehensive." See Council of Foreign Ministers Res. No. 1/44-IPHRC, On Matters Pertaining to the Work of the OIC Independent Permanent Human Rights Commission, Doc. OIC/CFM-44/2017/IPHRC/RES/FINAL, ¶ 7 (July 11, 2017); Press Release, OIC-IPHRC, OIC Independent Permanent Human Rights Commission Concludes its 11th Regular Session Held in Jeddah from 07-11 May 2017 (May 11, 2017), [https://www.oic-iphrc.org/en/data/docs/session\\_reports/11th/Concluding%2011\\_EV.pdf](https://www.oic-iphrc.org/en/data/docs/session_reports/11th/Concluding%2011_EV.pdf) [<https://perma.cc/3UU4-QT8P>].

206. See *supra* notes 104-28 and accompanying text.

207. Heyns & Killander, *supra* note 7, at 528-29.

and impunity with respect to attacks targeting the LGBTI community. This much is evident, given that, among other things, the reports brands homosexuality as deviant, perverted, and detestable, links it to pedophilia, and at least impliedly validates coercive treatment of homosexuality as a mental illness.<sup>208</sup>

Confronted with this reality, the international community should reject the frontal challenge the IPHRC poses to international human rights standards. Concerned states and activists should contest recognition of and engagement with the IPHRC at the UN and on the bilateral level. Cooperation with the IPHRC should cease until it adopts and endorses (rather than builds conflict with) existing IHRL norms, including standing and future UN treaty body general comments. In tandem with this, greater effort should be made to identify and adopt clear standards for determining whether self-styled RHRMs merit recognition and incorporation into the larger and ongoing project of securing the promotion and protection of universal human rights. As a start, the Paris Principles already provide guidelines for informing the competences, composition, and methods of operation for independent and effective NHRIs,<sup>209</sup> and many of these best practices can readily be adapted to measure the fitness of purported RHRMs.

In addition to these measures, elements of the international human rights regime, including the OHCHR, the Human Rights Council, special rapporteurs, and treaty-body institutions, should take concrete steps to respond to and refute the IPHRC's flawed analysis and misconstruction of international human rights law. As part of this effort, these institutions, together with human rights advocates more generally, should engage with and mainstream the voices of Muslim jurists, scholars, activists, and LGBTI Muslims that promote progressive and alternative interpretations of sharia at the United Nations and in other relevant fora. This small step can serve as a means of signaling that the OIC/IPHRC view is not accepted as either the exclusive or authoritative interpretation of sharia law or Islam.

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208. *See supra* Part III.

209. *See* G.A. Res. 48/134, *supra* note 27, at 3.