

**Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 25/2, 24/6, 25/18, and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **situation of lesbian, gay, bisexual and transgender (LGBT) people and human rights defenders from Indonesia's Aceh province who reportedly suffer from harassment, arbitrary detention and risk of torture and ill-treatment due to the enforcement of Islamic criminal by-laws**. In addition, in the past months, some national government agencies have adopted explicitly anti- LGBT public positions and policies or positions that can foster increased discrimination and violence, and negatively affecting, among others, children.

According to the information received:

The Aceh Province in Indonesia has long enjoyed relative autonomy from the central Government being a Special Administrative Region. In particular, after the peace agreement in 2005, the province gained added autonomy. On 27 September 2014, the Aceh provincial parliament approved the Principles of the Islamic Bylaw and the Islamic criminal law (Qanun Jinayah). These laws created new offenses that are absent in the national criminal code, for instance enforcing strict dress codes and imposing criminal sanctions on same-sex acts, and the expression of gender identity. These legal provisions establish caning as punishment for some of the mentioned practices.

These laws came into force in September 2015 and are mainly enforced by municipal Sharia police, called Wilayatul Hisbah (WH) and by neighbours and community members that are legally empowered to act against possible offenders. It is reported that these by-laws are applicable not only to the predominant Muslim population in Aceh, but also to everyone living, residing or visiting the province, regardless of their religion or belief.

Reports received indicate that LGBT people are suffering from harassment, threats, arrests and/or entrapment by WH officers. In this context, several cases of entrapment of transgender women have been reported. In some instances, transgender people are forced to move from their homes due to the repetitive threats of violence against them and their families; or they remain confined to their homes for almost the entire day and only go out for a few hours, in fear that they will be caught by the WH or community members.

LGBT people from Aceh province face particular barriers in realising their right to health and, consequently, experience a higher burden of disease. This is partly due to the fact that they have to struggle to access basic health services, including HIV testing and counselling. There are reports of LGBT people being harassed by health care personnel while being tested for HIV. Since the enforcement of Qanun Jinayah in September 2015, police control in the Aceh Province has been intensified and many of their practices reportedly interfere with the enjoyment of the right to health. For instance, reports indicate the use of prophylactics by the police as evidence to enforce the new by-law, which could jeopardize the effective implementation of existing HIV prevention programs. As a result, LGBT people are reportedly afraid of buying and carrying prophylactics due to the constant fear of getting caught and/or being harassed, gravely jeopardizing their right to health and their ability to protect themselves and others from HIV transmission.

LGBT human rights defenders in Aceh province have allegedly lived in a context of intense social prejudice, discrimination and violence for years. Documenting and reporting on the situation of LGBT people is very challenging and it carries significant risks, in particular in cases of arbitrary detention. This situation has been aggravated since the enforcement of the new law. Their human rights work has become more challenging and risky, since LGBT people are increasingly afraid to contact and report to these organizations for fear that information provided could be intercepted by the authorities. In this context, several human rights defenders have been harassed and live in constant fear and distrust from both the WH and community members who also enforce the by-laws. For example, one transgender activist was reportedly followed in the streets at least five times, preventing him to physically go to the NGO's office for two months. Moreover, an NGO leader was allegedly harassed and forcibly held twice by WH officers. It is reported that many NGOs have reduced their support for LGBT-oriented activities.

In addition, some governmental agencies have allegedly adopted explicitly anti-LGBT public positions and policies over the past months, which have contributed to an environment of increasing stigma and hostility towards LGBT people living in Indonesia. On 1 February 2016, the Head of the Indonesian Child Protection Commission (KPAI) publically labelled information about sexual orientation and gender identity of LGBT people as so-called “propaganda”. Moreover, the KPAI supported a National Broadcasting Commission (KPI) statement issued on 12 February 2016 that announced the banning of television and radio broadcasts of material concerning LGBT persons because, in their view, it violates the Code of Conduct of Broadcasters and Broadcast Program Standards (2012), and it would “encourage” children to learn about “inappropriate” behaviour.

Additionally, the Indonesian Psychiatry Association (IPA) has publically stated in several media outlets that LGBT people have “psychiatric problems”.

Serious concerns are expressed at the enactment and enforcement of the new criminal by-law in the Aceh Province (Qanun Jinayah) given its alleged detrimental impact on the enjoyment of the basic human rights of LGBT people and individuals and groups who defend their rights. In this sense, concern is expressed at allegations of increased harassment, discrimination, arbitrary detention, violence, and risk of torture and ill-treatment of LGBT people in this part of the country, including by the establishment of caning as punishment for some of the new offences.

Moreover, we are concerned at the alleged barriers faced by LGBT people in the Aceh Province to fully enjoy their right to health, including barriers to access health services, and the use of prophylactics as evidence in criminal proceedings.

In addition, concern is expressed at anti-LGBT public positions and policies reportedly adopted by several government agencies at the national level, including the censorship of information about sexual orientation and gender identity which can foster increased discrimination and violence, and which represents restrictions on the right to freedom of expression, which includes the right to seek, receive and impart information and ideas of all kinds.

In particular, we are concerned about the impact that censorship and restriction of information about sexual orientation and gender identity and expression, and discriminatory statements by public authorities can have can, in particular over the environment in schools as they can contribute to the perpetuation of stigma, discrimination and violence based on actual or perceived sexual orientation and gender identity and expression.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and any comments you may have on the above-mentioned allegations.
2. Please provide information on the measures taken by the central government to ensure that Aceh's municipal Islamic criminal by-laws are compatible with international human rights norms and standards.
3. Please provide detailed information on measures taken to ensure that LGBT people are able to exercise their rights, in particular the right to be free from torture and ill-treatment, the right to health, the right to fair legal treatment, the right to freedom of expression, and the right to promote and protect human rights.
4. Please provide information on measures taken to ensure that people in Aceh are not subject to arrest or detention on the basis of their actual or perceived sexual orientation, gender identity or expression.
5. Please provide information on the measures taken to address the alleged hostility and harassment, especially exercised by the municipal Sharia police (WH), against LGBT people and defenders of their rights in the Aceh Province.
6. Please provide further information regarding the anti-LGBT public positions and policies reportedly adopted by national governmental agencies, and the measures taken by the Government to address this. In particular, please provide information on how such policies, including policies of censorship of expression, are compatible with the permissible restrictions under international human rights norms, such as article 19 (3) of the ICCPR.
7. Please kindly indicate what measures have been taken to ensure that LGBT human rights defenders in Indonesia, including in the Aceh Province, are able to carry out their legitimate work in a safe environment without fear of criminalization, threats or acts of intimidation of any kind.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

David Kaye  
Special Rapporteur on the promotion and protection of the right to freedom of opinion  
and expression

Dainius Pūras  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable  
standard of physical and mental health

Michel Forst  
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Special Rapporteur on torture and other cruel, inhuman or degrading treatment or  
punishment

## **Annex**

### **Reference to international human rights law**

Without implying any conclusion on the information reported, we would like to remind your Excellency's Government that the core international human rights treaties recognize the right of all people not to be discriminated, including lesbian, gay, bisexual and transgender (LGBT) persons.

For instance, the Universal Declaration on Human Rights states that "all human beings are born free and equal in dignity and rights" (Art.1). Moreover, several human rights treaty bodies, including the Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination Against Women, have reaffirmed the importance of this right and the corresponding obligation of States to protect everyone from discrimination, including on the grounds of sexual orientation or gender identity. In this sense the International Covenant on Civil and Political Rights (ICCPR), which was accessed by Indonesia on 23 February 2006, underlines that the State shall respect and ensure the rights of all individuals, without any distinction of any kind, including on the basis of sex (art.2), provides equal civil and political rights for all men and women (art.3), the right to recognition for everyone before the law (art.16), the right to one's privacy (art.17), the right to freedom of expression (art.19) as well as the right to equality before the law and the equal protection of the law, without any discrimination and that, in this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground, including sex (art.16).

The criminalization of sexual relations between consenting adults, and of transgender expression has been condemned as violating international human rights norms enshrined in treaties to which Indonesia is party, including the ICCPR, CAT, ICESCR, CEDAW and CRC, and human rights treaty bodies and the High Commissioner for Human Rights have repeatedly called for such discriminatory laws to be repealed (A/HRC/29/23, A/HRC/19/41). The Human Rights Committee and the Working Group on Arbitrary Detention have clarified multiple times that detention on discriminatory grounds, including on the basis of sexual orientation and gender identity, is per se arbitrary, and violates the ICCPR, to which Indonesia is a State party (CCPR/C/GC/35, A/HRC/22/44).

Regarding allegations indicating increased risk of torture and ill-treatment of LGBT people, we would like to bring to the attention of your Excellency's Government the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), which was ratified by Indonesia on 28 Oct 1998. In this connection, the Committee against Torture has emphasized that States have an obligation under the treaty to protect all persons from torture and ill-treatment, including on the grounds of sexual orientation and gender identity (CAT/C/GC/2). Lesbian, gay, bisexual, transgender and intersex persons are disproportionately subjected to practices that amount to torture and ill-treatment for not conforming to socially constructed gender expectations (A/HRC/22/53). In addition, the report of the former Special Rapporteur on torture on

his mission to Indonesia, expressed concern about penalties provided for by Sharia law, such as public flogging, incorporated into the 2005 Aceh Criminal Code (A/HRC/7/3/Add.7).

We would also like to remind your Excellency's Government of its obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR), which was accessed by Indonesia on 23 February 2006. It enshrines the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (Art.12). All parties undertake to take steps with a view to achieving progressively the full realization of the rights recognized in the Covenant by all appropriate means, including particularly the adoption of legislative measures (art. 2.1). Moreover, the Covenant stresses that freedom from discrimination is a critical element of the other rights in the treaty (art.2.2), which the Committee on Economic, Social and Cultural Rights has emphasized is an immediate obligation of State parties.

We would also like to refer your Excellency's Government to General Comment 22 of the Committee on Economic, Social and Cultural Rights, which recognizes that the right to sexual and reproductive health is an integral part of Article 12 of the ICESCR (para.1) and is indivisible and interdependent with other human rights (para.10). Moreover, it stresses that Article 2.2 of the ICESCR encompass equal access to the same range, quality and standard of sexual and reproductive health facilities, information, good and services (para.22). This also includes that LGBT people are fully respected for their sexual orientation and gender identity. Furthermore it states that the criminalisation of sex between consenting adults of the same gender or expression of one's gender identity and regulations treating LGBT persons as mental or psychiatric patients are clear human rights violations. Moreover, States parties have the obligation to combat homophobia and transphobia, since they lead to discrimination (para.23). The right to sexual and reproductive health requires tailored attention to particular groups, but it also involves legal and substantive equality (para.24), in order to avoid intersectional discrimination (para.30). Laws, policies and programmes, as well as their implementation, are vital to prevent and eliminate discrimination, stigmatization, harassment and negative stereotyping (para.31). Regarding information accessibility, the State should ensure the right of everyone to seek, receive and disseminate information and ideas concerning sexual and reproductive health issues, including adolescents and youth; and must refrain from censoring, withholding, misrepresenting or criminalizing information on sexual and reproductive health, since these restrictions can incentivize stigma and discrimination (para.18).

Furthermore, the Committee on Economic, Social and Cultural Rights in the concluding observations on the initial report of Indonesia (E/C.12/IDN/CO/1) expressed concern regarding laws and by-laws that are enforced in provinces, districts and autonomous regions, which discriminate against women and marginalized individuals and groups such as sex workers, and lesbian, gay, bisexual and transgender persons (para. 6).

We also wish to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals,

Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, articles 1 and 2 of the Declaration state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Furthermore, we would like to bring to the attention of your Excellency's Government such provisions of the Declaration as article 6 (b) and (c) stating the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights; article 8, reiterating the right to effective and non-discriminatory access to participation in public affairs; and article 12, reiterating that the State must take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

We consider it pertinent to refer your Excellency's Government to the UN Convention on the Rights of the Child (CRC), which Indonesia ratified on 5 September 1990, sets forth that the best interest of the child should be a primary consideration (Art. 3.1). Moreover, States parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence (Art.19). In this connection, we would like to refer to General Comment 15 of the Committee on the Rights of the Child on article 24 of the CRC, where it is underlined that, in order to fully realize the right to health for all children, States have an obligation to ensure that children's health is not undermined as a result of discrimination, which a significant factor is contributing to vulnerability. These grounds include sexual orientation, gender identity and health status (para 8).

In this connection, we would like to also mention the General Recommendation n°28 from the CEDAW Committee (CEDAW/C/GC/28) which in its paragraph 18 underlines the question of intersectionality of different forms of discrimination against women including when it is based on sexual orientation and gender identity. The Committee emphasizes the need for State parties to legally recognise and adopt policies to eliminate occurrences of intersectional discrimination.

We would like to recall the resolutions 17/19 and 27/32 of the Human Rights Council, expressing grave concern for acts of violence and discrimination committed against individuals because of their sexual orientation and gender identity, and recommendations of UN human rights treaty bodies and special procedures mandate holders that States inter alia prohibit discrimination on the basis of sexual orientation and gender identity.

In this connection, States should address discrimination against children and young persons who identify or are perceived as LGBT, as well as establish national standards on non-discrimination in education; developing anti-bullying programmes. In

this connection, the High Commissioner recommends that States address violence by supporting public education campaigns to counter homophobic and transphobic approaches, and by addressing negative, stereotypical portrayals of LGBT persons in the media. (A/HRC/29/23)

Finally, we would like to refer to the Yogyakarta Principles, adopted in November 2006, which provides a set of non-legally binding principles on the application of international human rights law in relation to sexual orientation and gender identity. The Principles recognize the full enjoyment of all human rights to every human being of any / irrespective of sexual orientation and gender identity, in a non-discriminatory manner. For this, States should amend and provide the appropriate legislation, including criminal law (Principles 1 and 2).