

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the human rights of internally displaced persons; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE:  
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Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the human rights of internally displaced persons; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 34/18, 34/5, 32/11, 32/2 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged arbitrary arrests, detention and ill-treatment of twelve *waria*, or transgender women, in Aceh province.**

The twelve transgender human rights defenders are members of Putroe Sejati Aceh, which is an organisation operating in Aceh to promote and protect the human rights of lesbian, gay, bisexual, transgender (LGBT) people across the province, focusing on the rights, security, and wellbeing of *waria*, or transgender women. Human rights defenders from Putroe Sejati Aceh advocate for LGBTI peoples' rights to employment, to live free from violence, to access health care services and facilities, and to access public services such as state issued identity documents, which accurately reflect their gender identity and expression.

In this context, reference is made to the joint allegation letter ([IDN 2/2016](#)) sent to your Excellency's Government on 19 April 2016 regarding the situation of lesbian, gay, bisexual and transgender (LGBT) people and human rights defenders in the Aceh province. In this letter serious concerns were 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 lesbian, gay, bisexual and transgender (LGBT) people and individuals and groups who defend their rights. In particular, concern was expressed at the creation of new offenses that are absent in the

national criminal code, such as enforcing strict dress codes and imposing criminal sanctions on same-sex acts, and the expression of gender identity. We regret the absence of response to date to the concerns expressed in the joint allegation letter IDN 2/2016.

According to the information received:

On 27 January 2018, at approximately 9:00 p.m., North Aceh police and local Sharia police (*Wilayatul Hisbah*) raided five hair salons that employed *waria* and arrested twelve of them. All those arrested are members of the Putroe Sejati Aceh's organization and some are human rights defenders. No formal arrest warrants were issued and statements made by North Aceh police Chief and police officers during and after the raids lead to believe that the arrests were made solely on the basis of their actual or perceived gender identity or gender expression and their legitimate and peaceful activities in defense of the rights of transgender people in Aceh province.

The police then forced the transgender women to take off their feminine clothing, stripped them to the waist and cut their hair in public while shouting at them about their gender expression being contrary to the values of Indonesia. Cell phone photo and video footages showing the individuals half-naked and being humiliated then circulated on social media and were reproduced in media outlets.

The transgender women were then placed in police trucks and taken to North Aceh Police Station where they were forced to perform degrading physical activities to "coach" them to behave like "real men", including being made to speak in a masculine voice and roll on the floor and do "exercises". At the police station, the women detained were slapped on the face or hit several times, especially when they stopped or refused to roll on the floor and perform other degrading activities demanded of them. The twelve *waria* were not allowed to put their feminine clothes back on and were forced to wear men's clothing as a further form of humiliation.

The families of the 12 transgender women were not allowed to meet them from the time of the arrest until the following evening. All except one were released without charge in the evening on 28 January 2018 and the last was released on 30 January.

Some sources report that North Aceh police Chief Ahmad Untung Surianata said that the operation had been carried out following complains about the "negative influence" the transgender community could have on the population. A phone recording posted on social media shows police Chief explain: "Our ulama disagree with this disease. [This disease] is spreading." He has also reportedly

said that he would take action not only against the transgender women but also any visitors to their salons.

In the following days, Indonesia's Police Chief, General Muhammad Tito Karnavian, ordered an investigation into the police raids and North Aceh police Chief's handling of the case.

Since then, more than a dozen transgender women and LGBT defenders have temporarily relocated after having been detained and abused, or in fear that they might be. This climate of fear is further aggravated by hate messages circulating on social media and anti-LGBT rallies calling on the police to chase LGBT people out of the region.

While we do not wish to prejudge the accuracy of the information made available to us, we express our serious concern over these allegations of **arbitrary arrests, detention, torture and ill-treatment** of the twelve transgender women, based on their actual or perceived gender identity or gender expression, as well as on their legitimate and peaceful activities in defense of the rights of transgender people in Aceh province. Serious concern is also expressed with regard to the humiliating and degrading circumstances that surrounded their arrest and detention and the ill-treatments the twelve transgender women were subjected to. An equal matter of serious concern is the publication of the cellphone video footages on social media, and of photos of the transgender women in media outlets which violates their rights to privacy and dignity.

Harassments, arbitrary arrests and detentions, and public humiliations appear to be used to intimidate the LGBT community in the country and restrict the activities of individuals working to defend the rights of this community. Moreover, we are very concerned at the fact that the current legal framework in Aceh province violates the human rights of LGBT people and severely restricts the legitimate work of human rights defenders, in particular those working for the human rights of LGBT people, and contributes to a hostile environment for them, in which they are prone to be victims of acts of intimidation and violence, and to arbitrary arrests and detentions (see [IDN 2/2016](#)). We are alarmed by escalating threats, harassment, and attacks against the LGBT community and against defenders who advocate for the rights of LGBT people in Indonesia. For instance, last year more than 300 LGBT people were apprehended in police raids across Indonesia, and last May the first sentence of public canning as punishment for homosexuality based on the criminal by-law in Aceh province was carried out.

The above mentioned allegations appear to be in contravention of the rights of every individual to freedom from torture and cruel, inhuman or degrading treatment or punishment, liberty and security of person, physical integrity, privacy, conscience, freedom of expression, fair trial, and non-discrimination, as laid down, inter alia, in

articles 5, 7, 9, 10 and 12 of the Universal Declaration of Human Rights (UDHR), articles 2, 7, 9, 10, 14, 17, 18, 19 and 26 of the International Covenant on Civil and Political Rights (ICCPR), to which the State is party since 23 February 2006 and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which the State is party since 28 October 1998. These rights are of universal nature and apply to everyone, irrespective of their sexual orientation or gender identity.

Sexual orientation and gender identity are prohibited grounds of discrimination under international law. 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).

In a joint statement on free expression and association, UN and regional human rights experts stated that they “categorically reject arguments that such restrictions to the rights of LGBTI people are necessary to protect public morals, health or the well-being of vulnerable people.”<sup>1</sup>

On the basis of international human rights norms and standards and the work of the United Nations human rights treaty bodies and special procedures, the United Nations High Commissioner for Human Rights has emphasized that States have an obligation to, *inter alia*, prohibit discrimination on the basis of sexual orientation and gender identity; protect individuals from violence, torture and discrimination on the basis of their sexual orientation and gender identity; provide redress to victims; and, provide training to law enforcement personnel and judges in gender-sensitive approaches to addressing violations related to sexual orientation and gender identity. In addition, the High Commissioner for Human Rights has recommended that States ensure that anti-discrimination legislation includes sexual orientation and gender identity among prohibited grounds (A/HRC/29/23, para. 78 and 79).

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<sup>1</sup> Joint statement by UN Special Rapporteurs on freedom of opinion and expression, freedom of peaceful assembly and of association, right to health, and human rights defenders African Commission on Human and Peoples’ Rights, Special Rapporteur on Human Rights Defenders in Africa, Inter-American Commission on Human Rights and OSCE Representative on Freedom of the Media, “*Free expression and association key to eliminating Homophobia and Transphobia*” (May 2014), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14602&LangID=E>

Regarding allegations indicating torture and inhuman and degrading treatment, we would like to bring to the attention of your Excellency's Government the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment which is codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which the Republic of Indonesia ratified on 28 October 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).

We would like 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, we would like to refer to articles 1 and 2 of the Declaration which 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.

We would also like to refer your Excellency's Government to the 1998 Guiding Principles on Internal Displacement, which establishes that all authorities shall respect their obligations under international law, including human rights and humanitarian law, to prevent and avoid conditions that might lead to displacement of persons. We moreover stress that according to the Guiding Principles, every human being shall have the right to be protected against being arbitrarily displaced from his or her home including due to gross human rights violations, discrimination and fear of persecution (Principle 6). This therefore strongly relates to the allegations above that persons have been forced to flee due to human rights violations or fear of violations and discriminations on the grounds of their sexual orientation and gender identity. We would like to particularly draw your attention to Principle 9, which highlights that States are under a particular obligation to protect against the displacement of minorities.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

As 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 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 legal grounds for the arrest and detention of the individuals mentioned above and explain how these measures are compatible with Indonesia's international human rights obligations.
3. Please provide the details, and where available the results, of any investigation carried out in relation to the allegations of arbitrary arrests, detention, torture and ill-treatment of individuals on the basis of their actual or perceived gender identity as well as on their legitimate and peaceful activities in defense of the human rights of transgender people in Aceh province.
4. Please explain measures taken to investigate the publication of the cellphone video footages on social media and of photos of the individuals in media outlets, which violates their right to privacy and dignity. If no inquiries have taken place, or if they have been inconclusive, please explain why.
5. Please provide detailed information on measures taken to protect the human rights of LGBT people throughout the country, including in Aceh province, including their right to liberty and security, to be free from torture and ill-treatment, to privacy, to be protected against arbitrary displacement and to non-discrimination.
6. Please indicate what measures are being taken to ensure that human rights defenders, particularly members of Putroe Sehati Aceh and other defenders working for the human rights of LGBT people are able to carry out their legitimate work without fear of threats or acts of intimidation and harassment of any sort.
7. 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.

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 responsible of 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.

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