

**Mandates of 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 right to privacy; and the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity**

REFERENCE:  
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the right to privacy; and Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, pursuant to Human Rights Council resolutions 33/9, 37/2 and 32/2.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning discriminatory policy proposals and actions by local government officials in West Java province against lesbian, gay, bisexual, and trans (LGBT) people.

According to the information received:

On 9 October 2018, the Cianjur AIDS Prevention Commission sent a letter to the Deputy Regent of Cianjur listing the number of known cases of HIV infection in the regency between 2001 and 2017, and in 2018. According to information received, the letter also listed data from a non-governmental organization working on HIV outreach programs supposedly indicating the number of gay men in the regency. The letter allegedly stated that the organization would provide the names and addresses of gay individuals recorded in their database to regency officials.

On 15 October 2018, Cianjur Regency officials issued circular 400/5368/Social Welfare about the delivery of Friday Sermon (Khutbah) related to LGBT people. In the circular letter, the regent of Cianjur made reference to the report from the Cianjur AIDS Prevention Commission that reported a significant increase of LGBT individuals in the Cianjur regency. The letter further explains that to cope with this situation, Cianjur Regency officials instructed each Mosque (Jami' Masjid) to deliver the Friday Sermon about LGBT people on 19 Friday 2018 and to further disseminate it in each local village.

On 19 October 2018, Cianjur Regency officials allegedly stated that a series of decrees will be issued to mitigate the "LGBT threat". The spokesman of the regency further explained that these decrees would instruct local officials, school officials, and teachers on "socialization and coaching related to LGBT, drugs, alcohol, gambling".

While we do not wish to prejudge the accuracy of the information made available to us, we express our serious concern about these discriminatory policy and proposals by local officials against LGBT people. Given the harm that these incidents can have on the LGBT community, which can lead to serious human rights violations against the community and put their personal integrity and their life at risk, we consider these allegations of extreme gravity. We also express our concern that this attack takes place in a climate that has become increasingly unsafe and discriminatory towards LGBT persons and about the lack of anti-discrimination provision and protection against hate crimes and hate speech on the basis of sexual orientation and gender identity in the national legislation. We are also concerned by the apparent conflation between LGBT and HIV, which tends to stigmatize the LGBT population and hinder public health outreach programs and access to health care services for people living with HIV making the spread of the disease more likely. A matter of equally serious concern is the announcement of the disclosure of personal data of gay individuals recorded in the database managed by the non-governmental organization to States' officials, including their names and addresses, which would violate their right to privacy. Such violations of their right to privacy are likely to result in further discrimination and risks to their physical and mental health, as well as the ability to enjoy other human rights.

These allegations appear to be in contravention of the rights of every individual to non-discrimination, liberty and security of person, privacy, and access to health as laid down, inter alia, in Articles 2, 3, 7, 12, and 25 of the Universal Declaration of Human Rights (UDHR), Articles 2, 9, 17, 19, 20 and 26 of the International Covenant on Civil and Political Rights (ICCPR), and Articles 3 and 12 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), to which Indonesia is a party since 23 February 2006. These rights are of universal nature and apply to everyone, irrespective of their sexual orientation or gender identity. We also note that these allegations appear to be contrary to Articles 28G(1), 28H(1) and (2), and 28I(2) in particular of the Indonesian Constitution.

The Human Rights Committee found that States have a legal obligation to ensure to everyone the rights recognized by the Covenant, without discrimination on the basis of sexual orientation or gender identity (CCPR/C/GC/35, para. 3). We would like to also recall that the ICCPR provides in its Article 20(2) that States must prohibit by law and to ensure full enforcement of the law against every incident of advocacy of hatred that constitutes incitement to discrimination, hostility or violence in accordance with Article 20(2), which is further provided for by the Human Rights Committee in paragraph 8 of its General Comment No. 34.

Similarly, the ICESCR requires States to guarantee that all rights enunciated in the Covenant will be exercised without discrimination of any kind. In its General Comment No. 14, the Committee on Economic, Social and Cultural Rights provides that the right to health is closely related to, and dependent upon, the realization of other human rights including non-discrimination, privacy, and the right to information. The Committee reiterates the Covenant's prohibition of any discrimination in the realization of the right to health on the grounds of national or social origin, sexual orientation, health

status (including HIV/AIDS), and civil, political, social or other status (E/C.12/2000/4, para. 3 and 18).

In his report on his visit to Indonesia undertaken in March-April 2017 (A/HRC/38/36/Add.1), the Special Rapporteur on the right to health was apprised of the deeply entrenched discriminatory and violent attitudes towards individuals and groups based on their sexual orientation and gender identity or gender expression in the country (para. 83) and noted that many LGBT adolescents were deterred from approaching health professionals for fear of being judged according to social norms or laws that stigmatize or criminalize their sexual behaviour (para. 75). He further noted that discriminatory attitudes and increasingly restrictive laws and regulations contributed to increased stigma and harassment in health-care settings for LGBT persons seeking sexual health care and services. He also highlighted that regulations at the national and subnational levels create barriers to access these services and that confidentiality was not always guaranteed (para. 84).

In a joint statement on free expression and association, UN and regional human rights experts stated in this regard 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>

In February 2018, the UN High Commissioner for Human Rights noted that “LGBTI Indonesians already face increasing stigma, threats and intimidation. The hateful rhetoric against this community that is being cultivated seemingly for cynical political purposes will only deepen their suffering and create unnecessary divisions.”<sup>2</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 High Commissioner has emphasized that States have an obligation to, *inter alia*, prohibit discrimination and protect individuals from violence and discrimination on the basis of sexual orientation and gender identity; prohibit incitement of hatred and violence on the grounds of sexual orientation and gender identity, and holding to account those responsible for related health speech; supporting public education campaigns to counter homophobic and transphobic attitudes; and sensitizing health-care workers to the health needs of LGBT persons. 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>

<sup>2</sup> Opening remarks by UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein at a press conference during his mission to Indonesia, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22638&LangID=E>

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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on any measures taken to counter discriminatory policy proposals and actions against LGBT people by local government officials in West Java province.
3. Please provide information on the measures your Excellency's Government has taken to halt and publically condemn the homophobic and transphobic hate speech disseminated by local officials and religious leaders and provide the full details of any prosecutions which have been undertaken.
4. Please provide information on any other measures taken by the authorities to prevent further calls for, and acts of discrimination, incitement, hostility and violence against the LGBT community.
5. Please explain measures taken to guarantee the respect of the right to privacy and confidentiality of data of LGBT individuals and to ensure that such information is not used to target and discriminate against individuals on the basis of their sexual orientation and gender identity.
6. Please explain whether your Excellency's Government is envisaging to launch a public education campaign to counter hateful rhetoric against LGBT people and misrepresentation of this community leading to violence and discrimination and creating barriers to access appropriate health care information and services, including HIV/AIDS related prevention and care.
7. Please provide information on any plans to enact legislation that would include the grounds of sexual orientation and gender identity as prohibited grounds for hate speech, incitement to discrimination, and incitement to violence and hate crimes.

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 LGBT people in compliance with international instruments.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting website within 48 hours. They will

also subsequently be made available in the usual report to be presented to the Human Rights Council.

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.

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

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