



INTERNATIONAL GAY AND LESBIAN  
HUMAN RIGHTS COMMISSION  
HUMAN RIGHTS FOR EVERYONE. EVERYWHERE.

## REPORT

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# Human Rights Abuses against sexual minorities in Indonesia<sup>1</sup>

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*Neither the existence of national laws nor the prevalence of custom can ever justify the abuse, attacks, torture and indeed killings that gay, lesbian, bisexual and transgender people are subjected to. States have a legal duty to investigate and prosecute all instances of violence and abuse with respect to every single person under their jurisdiction. Excluding LGBT (lesbian, gay, bisexual, transgender) individuals from these protections clearly violates international human rights law as well as the common standards of humanity that define us all.<sup>2</sup>*

UN High Commissioner for Human Rights, Ms. Louise Arbour,  
International Conference on LGBT Human Rights, Montreal, July 26, 2006

## Introduction

*The International Gay and Lesbian Human Rights Commission (IGLHRC), in conjunction with the Indonesian non-government organizations *Arus Pelangi*<sup>3</sup>, *GAYa NUSANTARA*<sup>4</sup>, *Srikandi Sejati Foundation*<sup>5</sup> and *The Asian Pacific Network of Sex Workers*<sup>6</sup> welcomes the progress made by the Indonesian government toward protecting its citizens' rights during 2006.<sup>7</sup> However, we also recognize that this work is not yet finished and that there is an*

ongoing need to be vigilant where the human rights of the lesbian, gay, bisexual and transgender (LGBT) community are concerned. To this end, this report documents human rights abuses against LGBT people in Indonesia that fall into the categories of freedom of expression, association and assembly; freedom of expression and gender identity; and sexual abuse and torture. We conclude this document with a series of recommendations for the 2007 Universal Periodic Review of the UN Human Rights Council.

## Human Rights Abuses against LGBT People

LGBT—lesbian, gay, bisexual, and transgender—is an expression used predominantly in the West to refer to people with non-conforming sexuality or gender. LGBT people are often targeted for human rights abuses on the basis of their sexual orientation, gender identity and gender expression. Many governments compound these abuses by refusing to provide necessary protections.

Here sexual orientation refers to “each person’s capacity for profound emotional, affectional, and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.”<sup>8</sup> Gender identity refers to “each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical,

surgical or other means).”<sup>9</sup> Unlike sexual orientation and gender identity, gender expression is eminently social in nature. It refers to a person’s “manner of dressing, mannerisms, speech, [and] appearance,” and other social aspects not covered by the term gender identity, which in many places are regulated by law, including by criminal law.<sup>10</sup>

### Freedom of Expression: A Right Denied

The experience of Lenny Sugiharto, director of the **Srikandi Sejati Foundation** (an organization for transgender people in Indonesia) is typical of the way in which individuals whose gender expression deviates from the norm encounter human rights abuses related to freedom of expression.

*I had finished my HIV/AIDS outreach work and took a taxi from the Srikandi Sejati Foundation office in Grogol, Jakarta to the Jatinegara area. The taxi stopped in front of a small rice stall and I got out to have dinner. As soon as I got out of the taxi I was detained by police from South Jakarta who were looking to arrest sex workers in the area. They detained me on the charge that I was a waria (transgender) even though I rightly protested that being transgender is not against the law. They arrested me even though I showed them a document from the head office of the Jakarta police confirming that I was an NGO worker. While they were arresting me they pulled my jilbab (headscarf) off. In the station I was verbally abused and denied any outside contact. They took my mobile phone from me. All my requests—to go to the toilet, to rest, to eat or drink, were denied. Four hours later and after they had extorted 20.000 (\$2 US) rupiah from me, they gave me what I asked for. I was then handed over to the social services. Thankfully I knew the people at the social services and they released me.*

-Email communication from GAYa NUSANTARA, August 9, 2007.

In the 1994 case of *Nicholas Toonen v Australia*, the *UN Human Rights Committee*, which monitors compliance with, and adjudicates violations under the *ICCPR* held that “sodomy laws” punishing consensual, adult homosexual conduct violate article 17 of the *ICCPR*, which protects the right to privacy. It also held that they violate *ICCPR* protections against discrimination. Indonesia is a signatory of the *ICCPR*. In light of the ruling in *Toonen v Australia*, any law criminalizing sodomy in Indonesia violates Article 17 of the *ICCPR* and is discriminatory.



## Anti-Prostitution Laws Deny Freedom of Expression, Association and Assembly

When individuals in Indonesia express and communicate their gender in ways that deviate from cultural norms, they face an increased risk of police harassment. Feminine-looking men or transgender-identifying men—men whose appearance does not conform to typical perceptions of masculinity—are frequent targets of discrimination. Police regularly harass *waria* (male to female transgender people) as well as people presumed to engage in same-sex relations. According to a member of the Indonesian LGBT group *Arus Pelangi*, the Indonesian police regularly interpret laws concerning prostitution as applying to homosexuality and transgenderism, something that “is not challenged or corrected by the government.”<sup>11</sup>

Arbitrary harassment, summary arrest and detention of *waria* and gay men by the police are commonplace occurrences. In Indonesia, gay men and *waria* in particular, tend to assemble in public areas such as parks and roadsides. Often arrests occur in such places on the pretext of being violations of the Public Disturbance Law. As *Arus Pelangi* staff member Widodo Budi Darmo attests, “Many LGBT people are arrested and detained, often without charges or clear reason, only to be released after a few days.”<sup>12</sup>

These illegal acts clearly contravene the rights enshrined in the *International Covenant on Civil*

*and Political Rights (ICCPR)*.<sup>13</sup> Similarly, they contravene the *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity*.<sup>14</sup> Furthermore, anti-prostitution laws discriminate against sex workers of all genders and sexual orientations as their work demands that they congregate in public places. (See Appendix A for a list of laws that either specifically or implicitly contravene Articles 21/1 and 22/1 of the *ICCPR*).

## Civil Administration Law Denies Freedom of Expression and Gender Identity Recognition

### Equal Rights Denied: Transgender People Refused ID

The experience of Ines Angela, an *Arus Pelangi* staff member, is typical of the way in which individuals whose gender expression deviates from the norm encounter discrimination, especially when trying to procure government ID.

I recently tried to get registered as a citizen of Jakarta. I had already submitted all the necessary papers. But when it came to the ID picture the civil servants refused to accept mine because I look ‘feminine’ as I have long flowing hair. They told me to come back with a different picture. I protested because to look ‘feminine’ is very arbitrary, and as far as I know there are no regulations about how someone should look in an ID picture; except that one’s ears should be uncovered and no smiling is allowed. And I said to them what about all those women with headscarves on?

-E-mail communication from *Arus Pelangi*, April 28, 2007.

*Waria* are not equally protected under the *RUU Adminduk (Indonesian Civil Administration Law)* as there is no provision in the *RUU Adminduk* that enables *waria* to legally change their gender.<sup>15</sup> As a consequence, transgender people are regularly unable to acquire basic legal documentation on equal terms with other citizens. In fact, research by *Forum*

*Komunikasi Waria (FKW - Transsexuals Communication Forum Jakarta)* shows that almost 70% of *waria* living in Jakarta do not possess any legal citizenship documents, including identification cards.<sup>16</sup> Without these documents, transgender people are forced to confront a range of obstacles to functioning on a day-to-day basis in Indonesian society—



obstacles that are not faced by most other citizens.

Given the prevailing legal structure of Indonesia, waria confront discrimination in other ways, too. For instance, the Department of Social Affairs classifies waria as mentally handicapped under the federal 'cacat law' (*Mentally Disabled Law*). This effectively denies waria the right to work, or reduces them to working in low-paid jobs in the hidden economy. As one waria notes,

*Because I'm a waria they consider me ... not capable of being a teacher. ... I'm not comfortable wearing male clothes and can't wear them. Because of the prejudice against me I can't be a teacher and use the skills I have gained to improve myself and my country.*<sup>17</sup>

Thus not only does the Indonesian government's ongoing refusal to recognize the gender identity of transgender people compromise their freedom of expression, their right to a private life, and their freedom of belief, thought and conscience, it also violates their right to fulfilling employment and their right to non-discrimination.<sup>18</sup>

## Further human rights abuses against LGBT people in Indonesia: Sexual Abuse and Torture in Detention/Police Custody

Violations of the right to freedom of expression, assembly and association are often perpetrated simultaneously with other human rights abuses including summary execution, torture, rape, extortion and stigmatisation. As a journalist who focuses on LGBT human rights issues notes:

*Often gays, once taken into jail, are submitted to sexual abuse far beyond that of other prisoners because of their sexual orientation. These cases are also very hard to prove, especially as many of the victims are very traumatized and remain silent out of fear of returning to jail and being subjected to abuse, rape, and beatings again.*<sup>19</sup>

These actions violate LGBT people's right to equal protection under the law, and also

their rights to liberty and security of the person, freedom from arbitrary arrest and detention and torture, cruel, inhuman or degrading treatment or punishment as outlined in the ICCPR.<sup>20</sup> Likewise, they contravene many of the rights explicated in the *Yogyakarta Principles*, including the right to security of the person, the right to privacy, the right to treatment with humanity while in detention, and the right to freedom of torture and cruel, inhuman or degrading treatment or punishment.<sup>21</sup>

### Abuse in Police Custody

The experience of Adang, who was legally arrested, is typical of what awaits gay men in the hands of prison authorities.

*Adang was one of many arrested in a protest against the opening of an environmentally poisonous dumpsite in Bojong, Bogor, West Java. Adang was suffering from a mild form of tuberculosis at the time of his arrest. He informed authorities of this, but received no medical attention. He was further criminalized in jail, forced to kiss, masturbate for, and perform fellatio on the guards at the prison and other inmates were encouraged to take advantage of him sexually because he was a gay man, 'so he must love it.' His condition worsened while in jail, he was beaten and still received no medical attention. Upon his release, after seven months in jail, he received medical attention but died three weeks later due to complications connected to his injuries and tuberculosis.*

- Ireland, D., *Indonesia: Gays Fight Sharia Laws*, October 18, 2006,



## Recommendations

IGLHRC, Arus Pelangi, The Asian Pacific Network of Sex Workers, GAYa NUSANTARA, and the Srikandi Sejati Foundation call on the government of Indonesia to:

- Uphold the rights to freedom of assembly, association and expression as enshrined within the *ICCPR* by ending arbitrary removal of LGBT people and sex workers from public spaces.
- Refrain from using anti-prostitution laws to harass or prosecute LGBT people. This should include (see Appendix for full legal text):
  - ♣ *Regional Regulation of Indramayu District (West Java) No.4/2001: First Amendment to the Regional Regulation No.7/1999 re. Prostitution, Article 6.*
  - ♣ *Regional Regulation of the City of Tangerang (West Java); No.8/2005: re. Prohibition of Prostitution. Article 4, paragraph (1).*
  - ♣ *Regional Regulation of the District of Padang Pariaman (West Sumatra) No.2/2004 re. Prevention, Handling and Eradication of Sinful Acts (maksiat). Chapter II: Immoral Acts Article 5, Paragraph (1).*
  - ♣ *Draft Local Regulation of the City of Mataram, Nusa Tenggara Barat (Lombok) re. Prevention of Sinful Acts (maksiat). Chapter III: Prevention of Sinful Acts First Part: Article 4, Paragraph (1); Article 6, Paragraph (1).*
- Repeal *Regional Regulation of the City of Palembang (South Sumatra); No.2/2004: re. Eradication of Prostitution* which criminalizes same-sex relationships.
- Repeal the relevant portions of the “*cacat law*” (*Mentally Disabled Law*) to give transgender people the right to employment.
- Amend the *RUU Adminduk (Indonesian Civil Administration Law)* to enable transgender people to receive identity cards that reflect their gender identity.
- Implement the *Yogyakarta Principles* as guidelines for protecting the sexual rights of all Indonesian citizens.
- Continue to educate and train police and prison officials about international human rights standards, particularly addressing issues of sexuality, sexual orientation and gender identity.
- Issue clear regulations specifying police and prison officials’ duties to protect prisoners from abuse on the basis of their sexual orientation or consensual sexual conduct, specifying appropriate disciplinary actions for prison officials and inmates who engage in, encourage, or condone maltreatment of, or discrimination against, LGBT prisoners.
- Ratify the *First Optional Protocol* to the *International Covenant on Civil and Political Rights* to afford Indonesian citizens the opportunity to have their cases evaluated against the *ICCPR*. Monitor Indonesia’s compliance with the *ICCPR* in annual reports.
- Ratify the *Optional Protocol* to the *Convention Against Torture* to develop a national preventative mechanism against torture.



## Appendix A

Laws that either specifically or implicitly contravene articles 21/1 and 22/1 of the *ICCPR* are as follows:

- *Regional Regulation of Indramayu District (West Java) No.4/2001: First Amendment to the Regional Regulation No.7/1999 re. Prostitution.*  
Article 6 - any person who exhibits a behaviour that raises the suspicion of being a prostitute is forbidden to be on the street, public squares, pension houses, hotels, boarding houses, private houses, rented houses, movie houses, food/drinking stalls, quiet street corners or underpasses, either by sauntering or riding on a vehicle.
- *Regional Regulation of the City of Tangerang (West Java); No.8/2005: re. Prohibition of Prostitution.*  
Article 4, paragraph (1) - any person who exhibits a behaviour that raises the suspicion of being a prostitute is forbidden to be on the street, public squares, pension houses, hotels, boarding houses, private houses, rented houses, movie houses, food/drinking stalls, quiet street corners, underpasses or in other places within the region.
- *Regional Regulation of the City of Palembang (South Sumatra); No.2/2004: re. Eradication of Prostitution.*  
Articles 8, Paragraph (1) - included in the definition of the act of prostitution are:
  - a. Homosexual sex
  - b. Lesbianism
  - c. Sodomy<sup>22</sup>
  - d. Sexual abuse
  - e. Other pornographic acts  
Article 9 - it is forbidden for any person or group to form and/or to organize a gathering that intends to engage in immoral acts and that is incompatible with the local culture.
- *Regional Regulation of the District of Padang Pariaman (West Sumatra) No.2/2004 re. Prevention, Handling and Eradication of Sinful Acts (maksiat).*  
Chapter II: Immoral Acts  
  
Article 5, Paragraph (1) - any person is forbidden to be in public places if he/she has the intention to prostitute him/herself either for his/her own gratification or for remuneration.
- *Draft Local Regulation of the City of Mataram, Nusa Tenggara Barat (Lombok Island) re. Prevention of Sinful Acts (maksiat) Chapter III: Prevention of Sinful Acts.*  
Article 4, Paragraph (1)  
All citizens and/or law enforcers are obliged to prevent any act that generates (sexual) urges either by certain movements or displaying sensitive body parts.  
  
Article 6, Paragraph (1)  
Any person who exhibits a behavior that leads to the assumption of being a prostitute is forbidden to be, to walk or to drive in a private vehicle or on public transportation—on the street, near pension houses, restaurants, and other public places.



## ENDNOTES

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<sup>1</sup> Presentation by the United Nations High Commissioner for Human Rights, Louise Arbour, <http://www.whrnet.org/docs/issue-arbour-0608.html>

<sup>2</sup> Presentation by the United Nations High Commissioner for Human Rights, Louise Arbour, <http://www.whrnet.org/docs/issue-arbour-0608.html>

<sup>3</sup> *Arus Pelangi* website, [http://asia.geocities.com/arus\\_pelangi/index.htm](http://asia.geocities.com/arus_pelangi/index.htm)

<sup>4</sup> *GAYa NUSANTARA* website, <http://www.gayanusantara.org/>

<sup>5</sup> *Srikandi Sejati Foundation* website, <http://geocities.com/srikandiwebsite/yss.html>

<sup>6</sup> The Asian Pacific Network of Sex Workers, <http://www.apnsw.org>

<sup>7</sup> The Indonesian Constitutional Court decriminalized the act of insulting the president or the vice-president. *IOM Indonesia Newsletter*, Vol. 1/ Issue VII, October 2006. The *Indonesian National Police (INP)* introduced community-policing models, consolidating the groundwork instituted in 2003 by the *International Organization for Migration*, which was funded by the Royal Netherlands Embassy, in conjunction with the *INP* to train police officers in human rights. *Amnesty International* website, AI Index: ASA 21/024/2006 (Public) News Service No: 318, 8 December, 2006,

<http://web.amnesty.org/library/Index/ENGASA210242006?open&of=ENG-IDN>.

<sup>8</sup> *Yogyakarta Principles, Preamble*, [www.yogyakartaprinciples.org](http://www.yogyakartaprinciples.org).

<sup>9</sup> *Ibid.*

<sup>10</sup> Mauro Cabral and IGLHRC, *Gender Expression and Human Rights*, IGLHRC, April 2007.

<sup>11</sup> IGLHRC telephone interview with King Oey of *Arus Pelangi*, New York City/Jakarta-Indonesia, March 29, 2007.

<sup>12</sup> Ireland, D., *Indonesia: Gays Fight Sharia Laws*, October 18, 2006,

[http://direland.typepad.com/direland/2006/10/indonesia\\_gays\\_.html](http://direland.typepad.com/direland/2006/10/indonesia_gays_.html)

<sup>13</sup> For instance, Article 21/1 of the *ICCPR* states that: "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others." Furthermore, Article 22/1 of the *ICCPR* states that: "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests." <http://www.ohchr.org/english/law/ccpr.htm>.

<sup>14</sup> Principle 20 of the *Yogyakarta Principles* states that, "Everyone has the right to freedom of peaceful assembly and association, including for the purposes of peaceful demonstrations, regardless of sexual orientation or gender identity. Persons may form and have recognised, without discrimination, associations based on sexual orientation or gender identity, and associations that distribute information to or about, facilitate communication among, or advocate for the rights of, persons of diverse sexual orientations and gender identities, <http://www.yogyakartaprinciples.org/index.php?item=1>.

<sup>15</sup> Article 2 of the *RUU Adminduk* grants Indonesian citizens the right to: obtain equal treatment in the extension of registration and documentation services; access public documents; confidentiality of private information; legally guaranteed ownership of documents; information concerning themselves or their family members resulting from citizen registration and documentation; and reimbursement for any financial damage or damage to reputation incurred through the misuse of personal data by the Office of the Registrar.

<sup>16</sup> Tirawan, R., *Is there room for minorities in the RUU Adminduk?* *Arus Pelangi*, Jakarta, 2006,



<sup>17</sup> Email communication from *GAYa NUSANTARA*, April 21, 2007.

<sup>18</sup> Principle 19 of the *Yogyakarta Principles* states that: “Everyone has the right to freedom of opinion and expression, regardless of sexual orientation or gender identity. This includes the expression of identity or personhood through speech, deportment, dress, bodily characteristics, choice of name, or any other means, as well as the freedom to seek, receive and impart information and ideas of all kinds, including with regard to human rights, sexual orientation and gender identity, through any medium and regardless of frontiers.”

See: <http://www.yogyakartaprinciples.org/index.php?item=1>.

<sup>19</sup> Ireland, op. cit.

<sup>20</sup> <http://www.ohchr.org/english/law/ccpr.htm>

<sup>21</sup> *Yogyakarta Principles*, <http://www.yogyakartaprinciples.org/index.php?item=1>

<sup>22</sup> *Nicholas Toonen v Australia*, *UN Human Rights Committee*, 50<sup>th</sup> Session, Case No. 488/ 1992, U.N. Doc. CCPR/c/50/D/488/1992, para. 8.6,

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.50.D.488.1992.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.50.D.488.1992.En?Opendocument)

