Input for report on FoRB and Sogi

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Based on 40 years of experience with the LBT movement in Indonesia; book on the topic forthcoming

1. What are the actual or perceived points of tension (if any) between the right to manifest one’s freedom of religion or belief, and freedom from violence and discrimination based on sexual orientation and gender identity? Are there any areas in which they are mutually exclusive?

Answer:

Islam is the major religion in Indonesia. Though the country has a history of gender diversity the growing religious fundamentalism has erased those memories. Homosexuality is presented as against religion, citing dubious hadith and the story of the prophet Luth. Christianity is also mainly conservative in Indonesia. Homosexuality is also seen as against the state philosophy, the Pancasila, the preamble to the Constitution. Yet the Constitution itself supports human rights (weakened by a clause on religious exceptionalism) and the Pancasila calls not only for religious observance, but also for social justice. A process of cri8minalisatiojn of homosexuality is underway. End 2015 a state-sponsored campaign of homophobia was rolled out, the effects of which are still felt. Recently the revised Criminal Code was adopted which effectively criminalised homosexuality, as all forms of extramarital sex are prohibited. As there is no equal marriage law, homosexual conduct is also prohibited.

Reports by LGBT organisations indicate LGBT people experience high levels of violence, both by their families and in public. Trans people can not worship in their preferred clothes. Conversion therapy is widespread.

1. Are there any ways in which the right to freedom of religion or belief, and freedom from violence and discrimination based on sexual orientation and gender identity are mutually reinforcing?

Answer

The Yogyakarta Principles deal with this convergence and spell out the rights LGBT people should enjoy. Unfortunately the country does not abide by these principles though they were drawn up in one of their major cities. The principles have been used widely by LGBT organisations, since their inception till most organisations had to suspend their activities dues to the homophobic campaign mentioned above.

1. Are there examples where gender and sexual diversity has been used in religious, traditional, or indigenous narratives or values in a manner which promotes the acceptance of LGBT+ individuals, or protects LGBT+ individuals from violence and discrimination? Has this informed any legal interventions or public policies?

Answer

There are many instances of particular ethnic communities which knew transgender healers, accepted same-sex marriages or knew other forms of gender diversity (in my book I devote two whole chapter to this). The most well know example is that of the Bugis in Sulawesi who know a five gender system. However, islamisation, colonialism and post colonial heteronormative practices have almost wiped out the formerly highly revered bissu, transgender priests. There are few of them left and they are mainly used in touristic events

1. What are the key trends or significant instances of discriminatory or abusive practices by individual providers of goods or services in the public sphere against LGBT+ and gender-diverse persons that rely on religious narratives?

Answer. Religious institutions, particularly Muslim one but also some Christina institutes provide conversion therapies which can lead to major traumas. Even psychiatric wards of some hospitals engage in these practices

 Universities and schools actively try to evict any people they accuse of being ‘LGBT’. Applicants for (foreign or domestic) scholarships are asked whether they approve of LGBT. If they say yes they don’t get their scholarship. The same goes for applicants of positions in the military or civil service.

Family violence is rampant and particularly women are often victims of forced marriages.

1. Has the State adopted, in public policy, legislation or jurisprudence, norms purportedly based on protecting freedom of religion or belief that promote, enable and/or condone violence and discrimination against individuals based on sexual orientation or gender identity? If so, please give examples, with commentary as needed to explain context, scope, and application.
2. Has there been any legal challenge to these policies/provisions under any domestic, regional, or international human rights provisions? If so, state the outcome and rationale of the case. If not, provide your opinions as to why such a challenge has not yet been brought.

Answer yes there are three major cases.

The first is the promulgations of discriminatory regional regulations, some of which, such as in Aceh, contain homophobic, discriminatory clauses. For details see our report for Outright:

[https://www.outrightinternational.org/sites/default/files/CreepingCriminalisation-eng.pdf](https://webmail.uva.nl/owa/redir.aspx?C=hH_E8c7xGP6t3ApLDEskkET_XotjPtnh5OwKyjXdcKy5kC98bWDUCA..&URL=https%3a%2f%2fwww.outrightinternational.org%2fsites%2fdefault%2ffiles%2fCreepingCriminalisation-eng.pdf)
second the 2008 Anti-Pornography law defines homosexuality as a deviant practice. Members of the community are encouraged to report any homosexual activity that they know of

Third the already mentioned Criminal Code, accepted in December 2022. The code contains a dubious clause that states that customary law will be accepted. This may mean that the discriminatory regional regulations, which actually violate the Constitution, will be accepted. It is too early to know how the government will interpret this clause. Human rights organisations are worried.

1. Are there any examples of State restrictions based on preventing violence and/or discrimination against LGBT+ persons that prohibit or limit practices undertaken in the name of the religion or spirituality, such as public accommodation non-discrimination protections? If so, have they been legally challenged on the basis of freedom of religion or belief? If yes, explain the outcome and rationale of the case(s).

Answer To my knowledge the state has never protected the LGBT community. To the contrary, several ministries participate in the conversion practices mentioned above.

1. What role (if any) has the concept of conscientious objection played in limiting the full enjoyment of the right to freedom from violence and discrimination on the basis of sexual orientation and gender identity?

Answer to my knowledge there has been no such discussion

1. Has the scope and application of conscientious objection been sufficiently defined, limited, and/or regulated so as to strike a fair balance between manifestation of one’s freedom of religion or belief, and freedom from violence and discrimination based on SOGI? Where the doctrine is invoked to permit the withholding of goods or services to members of the LGBT+ community (such as in the context of sexual and reproductive healthcare, provision of marriage licences, access to consumer goods, etc.), do State laws provide alternative access to goods or services?

Answer see above

1. Where State legislation or policy requires the reasonable accommodation of religious beliefs, practices, and/or institutions, are there instances where such laws or policies limit freedom from violence and discrimination against LGBT+ and gender-diverse persons? These may include but are not limited to exemptions from non-discrimination legislation, and/or accommodations within the workplace, educational institutions, healthcare-settings, the justice system, etc. Are there reports of violence, spiritual abuse, and/or other forms of discrimination against LGBT+ and gender-diverse persons because of these practices?

Answer yes there are many such reports on discrimination in the work place and of violence experienced by LGBT people

1. Good Practices:
	1. Provide any examples of good practice – at the international, national or local level – where State and non-State actors (including faith leaders, groups and organisations, international organisations, civil society organisations, and the UN human rights system) have taken effective measures to protect and promote freedom of religion or belief of LGBT+ and gender-diverse persons, and made efforts to prevent, mitigate and respond to any violence and/or discrimination justified in the name of religion.

Answer: The Yogyakarta Principles, mentioned above, though they had little impact on state actors;

There are also some progressive young religious leaders, for instance the Gusdurian group within the major Islamic mass organisation NU, who fully support LGBT rights and stress that Islam and homosexuality are compatible. There are also some courageous Muslim scholars with the same vieuw such as Professor Musdah Mulia, but their impact on mainstream believers has been very limited.

* 1. Provide any examples of measures by State or non-State actors to ensure effective participation of people with diverse gender identities and sexual orientations in religious, cultural, social, and public life. Please provide relevant examples where LGBT+ people have asserted their individual or collective rights to access (or establish) religious or spiritual frameworks and institutions.

Answer

There are a few examples of non-state actors

The Gusdurian group, mentioned above, particularly Aan Anshori

Major women’s organisations, such as Komnas Perempuan, APIK and others have supported LGBT rights. Some universities such as the UGM in Yogya and the UI in Jakarta have programme in which SOGI issues are discussed in a supportive way.