

Call for Inputs

The Independent Expert invites all interested States, civil society organizations, academics, international organizations, national human rights institutions, activists, corporations, and others, to provide written inputs to the following questions for his thematic report. Inputs are welcome in relation to particular practices in States or territories, as well more general inputs concerning regions or the international community as a whole.

The following questions are meant to guide the formulation of inputs. It is only necessary to address those in relation to which evidence is available.

1. Did the imposition and/or enforcement of colonial laws or policies on sex, gender and sexuality change pre-colonial treatment of sexual orientation and gender identity? What historical or anecdotal evidence is there available about the treatment of gender and sexual diversity before past or present experiences of colonization?

The imposition started back in 1911¹ during the Dutch occupation in Indonesia before the independency. The law being used was *Wetboek van Strafrecht (WvS)* which in the future independency of Indonesia adopted as Old Penal Code. However, along the way the derives from its law was Anti-pornography and anti porno-action bill². Yet with the revision of Penal Code stated the co-habitation for those who are not married are punishable by law³.

2. What laws, policies, and practices regulated or influenced the shaping of or the socio-normative perception of sexual orientation and gender identity in colonial times? How were they introduced, promoted, administered or enforced? Examples could include prohibition of certain sexual acts, but also regulation of sexual or gender identities and expressions (such as bans on cross-dressing).

Growing the trend of homosexuality case in Java back in 1936, including the Batavia (old name of the capital city of Jakarta) was publics on West-Indie newspapers. From December 1938 to January 1939, 223 Europeans were arrested in Batavia, Bandung, Surabaya, Palembang, Medan, and Bali for homosexuality. Those arrested came from various backgrounds such as doctors, journalists, businessmen, civil servants, soldiers, police inspectors, to retired officials⁴. While nowadays it is prohibited to show the cross-dressing act in the public broadcasting programs in Indonesia⁵.

3. What colonial laws regulating sexual orientation and gender identity are still in place today? How are they enforced? How are they being interpreted by national jurisprudence and customary law? What legal, moral, or socio-cultural explanations have been provided, if any, for their continued existence?

Until the end of 2022, Indonesia still used old Penal Code which criminalised homosexuality. It was stated as acts against social and religious norms, and punishable by laws. Yet the LGBTIQ people are still afraid with the new enactment of

¹ <https://www.kai.or.id/berita/10453/pasal-anti-homoseksual-adalah-produk-hukum-belanda.html>

² <https://www.thejakartapost.com/academia/2016/10/21/double-standards-the-defining-of-homosexuality-as-pornographic-in-indonesia.html>

³ Article 412 New Penal Code.

⁴ <https://www.kai.or.id/berita/10453/pasal-anti-homoseksual-adalah-produk-hukum-belanda.html>

⁵ https://www.bbc.com/indonesia/majalah/2016/03/160301_indonesia_kpi_protes_sensor

Penal Code that will take into effect in 2025 since the launch. Both by the jurisprudence and customary laws, homosexuality acts are deviant in the society and can't be accepted, both as social and religious norms. During the pandemic era in 2020, there were at least 50 gay guys were criminalised during the gathering⁶. These people were punishable by laws in regards violated the penal code and anti-pornography law.

4. How, if at all, has the protection against violence and discrimination based on sexual orientation and gender identity been transformed and positively or negatively impacted by processes of decolonization?

The decolonisation does not affect the protection against violence and discriminations based on sexual orientation and gender identity and expression in Indonesia. Despite the criminalisation toward homosexuality acts was the legacy of colonialisation, the government still keep the articles that defend the morality, social and religious norms to be alive in the society. Which living law is included too, where the possibility of new conservatism arising can exacerbate the protection of people with diverse sexual orientation, gender identity and expression in Indonesia. We can say it is negatively impacted by the processes of decolonisation. It is shown that the moral value is becoming standard of punishment even in the military laws for those who are reported being homosexual⁷.

5. If no longer in place, when were colonial laws regulating sexual orientation and gender identity repealed? In what pretext were they abolished and what was the rational/explanation for their abolishment?

6. How has the legal and social regulation of gender, sexual orientation and gender identity been relevant for imposing and maintaining colonial power?

The conservative government and conservative society groups see the promotion and protection of the rights people with diverse sexual orientation, gender identity and expression as import culture. Despite before the western colonialisations there was already the history of a transgender priest in Sulawesi Indonesian and effeminate male dancer in Java (Lengger Lanang). The government and other conservative groups will see this an intervention from foreign entities to keep the colonialisation power through the modern ideology and philosophy. Including the funding on human rights protection, especially that promote the diversity of sexual orientation and gender identity and expression will be very challenging.

7. What is the ongoing impact of gender- and sex-regulating colonial laws on the enjoyment of human rights by LGBT persons? How did the imposition of colonial laws on sex and gender shape social and moral ideas about sexual orientation and gender diversity? It can be said as the past legacy from the colonialisation, however it remains, is rooted, and grow within the society and nowadays when the former aggressors have transformed in their countries, but Indonesia still keeps it to govern the society. The government can't accept the idea of sexual orientation and gender diversity from the colonialisation, yet the laws are used from the old colonial laws.

⁶ <https://www.liputan6.com/news/read/4346361/polisi-56-orang-diamankan-saat-penggerebekan-pesta-gay-di-kuningan-jakse>

⁷ https://www.komisiyudisial.go.id/storage/assets/uploads/files/8KHSDzYg_Majalah-KY-Juli-Des-2021-web-.pdf

And in addition, during the colonialisation it has introduced to the modern religious which only teach gender biner including the very patriarchal value in the society⁸.

8. Was there a relationship between colonial laws and policies that created unequal treatment and power relations affecting LGBT persons, paving the way to intersecting forms of discrimination, exclusion, racism, xenophobia and related intolerance, patriarchy, and other forms of discrimination and oppression? How did these laws and policies impact persons with multiple and intersecting identities such as LGBT persons with disabilities, older LGBT persons, LGBT children, LGBT persons of African descent, among others. Indeed, there is relation that affecting LGBTIQ person. One of example is the prohibition of the crossdressing in any broadcasting program on television⁹. It is shown that a male should not dress up like women neither act effeminate, which adopt from toxic masculinity behaviour.
9. Have any laws, policies, or psycho-social support or legal remedies been put in place to recognize and provide reparations and redress for the legacy of colonialism in relation to the enjoyment of human rights? Do these take into account violence and discrimination based on sexual orientation and gender identity? It has not been there yet. Only for past human rights violation, but it does not cover the psycho-social support or legal remedies been put in place to recognize and provide reparations and redress for the legacy of colonialism for those LGBTIQ person as victims as beneficiaries. The laws tend to persecute the LGBTIQ people, with many reports to be filled to the police, yet the police did not follow up, they often intimidate the victims and accused them by unnatural behaviour which are against social and religious norms. Nowadays, LGBTIQ victims are afraid to report their cases to the laws enforcers nor seeks remedies from the related government bodies.
10. How, if at all, should reparatory justice for the lasting consequences of colonialism include measures to address discrimination and violence based on gender, gender identity and sexual orientation?

In Indonesia the reparatory justice is not put in a place yet for the victims of discrimination and violence based on gender, gender identity and sexual orientation. It is still redefined among the expertise on how the mechanism can be put in place, how to operate it. The discourses are still being discussed between the experts and the government. Who will be responsible for the discrimination and violence based on gender identity and sexual orientation in Indonesia? Especially this is legacy of the Dutch colonialisation in the past. Will the current Netherlands government be able to provide political asylum or instant citizenship and or financial restitution due to the legacy of colonialism that violate the rights of LGBTIQ people in Indonesia during their occupation. Or other assistance that violation of the rights toward LGBTIQ people will not be repeat, the human rights will be upheld, etc. Because this colonial legacy, while at the moment Indonesia is sovereign country, it is very tricky if the Netherlands government intervenes the domestic affairs of Indonesian politics. Unless the reparatory justice is coming from the Netherlands directly to the LGBTIQ people from Indonesia.

⁸ <https://www.cxomedia.id/general-knowledge/20220203132648-55-173567/jejak-jejak-keberagaman-gender-dalam-sejarah-indonesia>

⁹ [https://www.kominfo.go.id/content/detail/6796/kpi-tegaskan-larang-penyiaran-berunsur-lgbt/0/sorotan_media#:~:text=JAKARTA%20-%20Komisi%20Penyiaran%20Indonesia%20\(KPI,yang%20akan%20atau%20telah%20disiarkan.](https://www.kominfo.go.id/content/detail/6796/kpi-tegaskan-larang-penyiaran-berunsur-lgbt/0/sorotan_media#:~:text=JAKARTA%20-%20Komisi%20Penyiaran%20Indonesia%20(KPI,yang%20akan%20atau%20telah%20disiarkan.)