# Input to the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (IE SOGI) Mr. Victor Madrigal-Borloz report on colonialism and sexual orientation and gender identity from the IPPF Center of Excellence on Sexual and Gender Diversity

We greatly appreciate the opportunity to give written inputs to the Report on colonialism and sexual orientation and gender identity, to be presented to the 78th session of General Assembly in October 2023.

This input is written on behalf of the IPPF (International Planned Parenthood Federation) Center of Excellence on Sexual and Gender Diversity. The Center is coordinated by IPPF Norway, and steered by representatives from all regional offices. The main regional focus of this report is South Asia, though additional general comments will be given from the Arab World Region, East and South East Asia and Oceania Region and European Region.

The input as a whole is based on contributions from IPPF Regional Offices in Arab World, South Asia East and South East Asia and Oceania, and Europe.

## Objective of input from the IPPF Center of Excellence on Sexual and Gender Diversity

IPPF is a global healthcare provider and a leading advocate of sexual and reproductive health and rights (SRHR) for all. Our work is wide-ranging, including comprehensive sexuality education, provision of contraceptive, safe abortion, and maternal care and responding to humanitarian crises. We pride ourselves on being local through our members and global through our network. At the heart of our mission is the provision of – and advocacy in support of – integrated healthcare to anyone who needs it regardless of race, gender, sex, income, and crucially no matter how remote. IPPF works in over 145 countries delivering sexual and reproductive healthcare through our IPPF Member Associations (MA).

The IPPF Center of Excellence on Sexual and Gender Diversity (SGD Center) was initially started in 2017, and aims to institutionalize SOGIESC (sexual orientation, gender identity and expression, sex characteristics)/SGD within the wider IPPF structures and strengthen MA capacity to enable programmatic and policy changes at national/regional/global level regarding SOGIESC/SGD. The Regional Office representatives and Member Associations participating in the work of the center are particularly strong on SOGIESC work, and collaborates closely with SOGIESC organizations, both locally and regionally.

Through this input, the Center wishes to highlight some topics particularly visible for IPPF as a rights based service provider.

## General comments: Arab World Region

There is evidence to suggest that pre-colonial Arab societies had a more fluid approach to gender and sexuality, with multiple gender identities and expressions, and a tolerance of same-sex desire and relationships. Colonial laws and policies imposed by European powers during the 19th and 20th centuries criminalized same-sex acts, cross-dressing, and other forms of gender expression. These laws and policies were often justified as part of a broader effort to "civilize" and "modernize" Arab societies.

During colonial times, laws and policies regulating sexual orientation and gender identity were introduced and enforced by colonial powers, with the aim of suppressing local cultural practices and promoting European norms. For example, the French colonial administration in Algeria criminalized same-sex acts and cross-dressing, while the British in Egypt enforced laws against "unnatural offenses." These laws and policies were often administered through the colonial legal system and reinforced by local authorities.

Many colonial-era laws regulating sexual orientation and gender identity are still in place in some Arab countries today and are often enforced through legal and social discrimination against SOGIESC individuals. These laws are sometimes justified by conservative interpretations of religious or cultural norms and have been criticized by human rights groups as a violation of international human rights standards.

The process of decolonization in the Arab world has had mixed impacts on the protection against violence and discrimination based on sexual orientation and gender identity. Some countries have taken steps to repeal colonial-era laws and promote greater tolerance and inclusion of SOGIESC individuals, while others have reinforced discriminatory policies and practices. The legacy of colonialism can also be seen in ongoing forms of discrimination against other marginalized groups, such as women, ethnic and religious minorities, and people with disabilities.

The repeal of colonial-era laws regulating sexual orientation and gender identity has been a gradual and uneven process in the Arab world, with some countries still enforcing such laws today. The rationales for repeal have varied, but often reflect a growing awareness of international human rights standards and the need to promote greater inclusion and tolerance of SOGIESC individuals.

The legal and social regulation of gender and sexuality during colonial times was often used to reinforce and maintain colonial power, by imposing European norms and suppressing local cultural practices. This has had lasting impacts on the way gender and sexuality are understood and regulated in many Arab societies today and has contributed to ongoing discrimination against diverse SOGIESC individuals and other marginalized groups.

The ongoing impact of colonial-era laws regulating sexual orientation and gender identity on the enjoyment of human rights by persons with diverse SOGIESC has been significant, with many individuals facing legal and social discrimination, violence, and harassment. The imposition of colonial laws on sex and gender has also shaped social and moral ideas about sexual orientation and gender diversity, often reinforcing negative stereotypes and promoting stigma and shame.

There is a clear relationship between colonial laws and policies that created unequal treatment and power relations affecting SOGIESC persons, and intersecting forms of discrimination, exclusion, racism, xenophobia, and related intolerance, patriarchy, and other forms of discrimination and oppression. These laws and policies have impacted persons with multiple and intersecting identities such as SOGIESC persons with disabilities, older persons of diverse SOGIESC, children of diverse SOGIESC, persons of diverse SOGIESC and African descent, and others, often exacerbating existing forms of marginalization and exclusion.

Some countries in the Arab world have taken steps to recognize and provide reparations and redress for the legacy of colonialism, including the recognition of past injustices and the provision of legal remedies and psycho-social support. However, there has been limited attention given to the specific experiences of persons with diverse SOGIESC.

## General comments: East and South East Asia and Oceania

The region of East Asia, Southeast Asia and the Pacific is known to have a rich history of gender diversity and gender pluralism[[1]](#footnote-1) rooted deep in the cultural and traditional rituals and practice up until the early modern times (Peletz, 2006). This fluidity is also reflected in their language (e.g. use of gender-neutral pronoun ‘dia’ in the Malay language), traditional folklore (like the *Nusantara* folklore ‘*Srikandi’* now known as a transgender legend[[2]](#footnote-2)), and cultural ritualistic practice[[3]](#footnote-3). The era of conquest and colonisation however, brought about institutionalised religions and a capitalist interpretation of modernity to the region, wiping out ‘paganistic’ rituals and enforcing a patriarchal and puritanical standard of sexual morality resulting in the transgender and gender fluid identities who previously were considered sacred and respected in the society, to be delegitimised and in some cases, removed completely[[4]](#footnote-4).

Fast forward to present day, this standard of sexual morality has become state-sanctioned; where the criminalisation of gender fluid identities and same-sex relations are not only carried forward from the days of colonisation but also evolving to create even more oppressive circumstances for the gender diverse in a region that was previously fluid, open, and diverse. 8 out of 15 countries in the region still criminalise same sex relations in the region, four of which criminalises transgender identities.[[5]](#footnote-5) These laws are remnants of the era of colonisation; with the infamous legacy of the British colonial Section 377 penal code buggery law and Shariah law prohibiting same-sex relations in Indonesia (particularly in the Acheh) as examples of the impacts of colonisation that is felt until present day. It is also worth noting that this colonial standard of sexual morality has been rebranded as an ‘Asian’ or traditional value in the society, erasing and rewriting the history of gender pluralism and colonisation in the region. [[6]](#footnote-6)

## General comments: Europe

Though Europe stands in a particular position when it comes to the discussion on colonialism and sexual orientation and gender identity, it is important to note that the colonial argument is still being used in parts of Central and Eastern Europe as an argument against SOGIESC.

In the EU there are few polices linking decolonisation and SGD. Namely, while the European Union stands strongly behind SOGI(ESC) rights it is rare that this is linked to reparatory measures and justice following colonialism.

Certainly, there are significant differences and more complex realties in the broader Europe and Central Asia context.  It is worth nothing that recently there were some debates about some specific colonial practices, e.g., the Austro-Hungarian and Ottoman colonialism. Also, we should consider that the countries in this region are post socialist (Soviet), postcolonial, and war/postwar societies.

One can notice the demand for autonomous development of the SOGIESC movements in Eastern Europe and Eurasia. For example, the book [Decolonizing Queer Experience LGBT+ Narratives from Eastern Europe and Eurasia](https://urldefense.proofpoint.com/v2/url?u=https-3A__rowman.com_ISBN_9781793630315_Decolonizing-2DQueer-2DExperience-2DLGBT-2DNarratives-2Dfrom-2DEastern-2DEurope-2Dand-2DEurasia&d=DwMF_w&c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_CdpgnVfiiMM&r=S9RI-vQ26GPq0uKgYtbzXCBAMoraalv2Iswnbsluw0k&m=eFfOMFo-hIs_F_9qErhyIGRLySaHQiuOjozm4F4a1Ww&s=9ELaLoUWsM0TfJm8_gfpDQ-vLOFLKfaf3lVpve7IGzY&e=) is highlighting the tendency of ‘refusing domination from local heteronormative expectations and from global LGBT+ movements that create and suggest limitations on possible LGBT+ futures.’

At the same time, it very important to recognize that he rightwing anti-gender movement in Central and Eastern Europe is using twisted manipulative strategies and frames the SOGIESC inclusion as ‘colonialism’ by the liberal West.[[7]](#footnote-7) The European Parliament states: ‘ Narratives frame gender egalitarianism as 20th century totalitarianism which is deadly and creates social upheaval. In the ‘colonisation’ narrative the Russian government is identified as the guarantor of traditional values and decency (Moss, in Kuhar & Paternotte 2017). Russia’s Ministry of Culture announced in 2014 that Russia is not ‘gayropa’ but a protector of religious, cultural and historical traditions and values, unlike the morally corrupt establishment in Europe (Stoeckl & Medvedeva 2018). This ‘colonisation’ narrative not only draws on a dichotomy of Europe (the West) versus Russia (the East) but also exploits a general mistrust of the ‘establishment’, and perceived arrogance by Western liberal elites (Korolczuk & Graff 2018).’[[8]](#footnote-8)

## Focus region: South Asia

South Asia, before the advent of colonial rule, showcased a broad spectrum of gender and sexuality interpretations, with communities such as the Hijra community that were widely recognized and accepted. However, during colonial rule, primarily by the British, new socio-legal norms were introduced. These included laws like Section 377 of the Indian Penal Code, which criminalized certain sexual acts deemed non-normative. The shift in societal norms was a result of these new regulations, creating a more heteronormative social order that differed from the pre-existing indigenous practices.

Despite decolonization, colonial-era laws persist and continue to affect the human rights of individuals with diverse SOGIESC in South Asia. For example, while India repealed Section 377 in 2018, countries like Bangladesh and Sri Lanka continue to enforce it. Persons with diverse SOGIESC persons face legal and social discrimination, resulting in widespread stigma, higher mental health issues, and decreased activism due to fear and danger associated with advocating for SOGIESC rights.

In terms of intersectional identities, while laws like the Rights of Persons with Disabilities Act in India and Bangladesh's Persons with Disabilities Rights and Protection Act, 2013 exist, they fail to address the specific experiences of persons with disabilities and diverse SOGIESC. There is also a lack of comprehensive legal frameworks addressing the rights and needs of older persons and children with diverse SOGIESC.

Some efforts have been made to redress the colonial legacy and historical injustices against marginalized communities, including LGBT individuals. India has made strides, including the landmark repeal of Section 377 and the Transgender Persons (Protection of Rights) Act, 2019. Bangladesh also recognizes the rights of transgender individuals with the Hijra Transgender Welfare Policy. However, societal attitudes and systemic discrimination against LGBT individuals persist, highlighting the need for continued advocacy, awareness, and effective legal reforms to ensure their full protection and enjoyment of human rights.

Please refer to Annex 1. Focus Region: South Asia. Report from roundtable discussion with Member Associations in India, Bangladesh and Sri Lanka.

## Annexes

**Annex 1.** Focus Region: South Asia. Report from roundtable discussion with Member Associations in India, Bangladesh and Sri Lanka.

1. Gender Pluralism, coined by Micheal Peletz, refers to the ‘pluralistic sensibilities and dispositions regarding bodily practices (adornment, attire, mannerisms) and embodied desires, as well as social roles, sexual relationships, and ways of being that bear on or are otherwise linked with local conceptions of femininity, masculinity, androgyny, etc. Particularly in gendered fields and domains, pluralism transcends and must be distinguished from dualism in that more than two principles, categories, groups, etc., are usually at stake and accorded legitimacy’ (Peletz, 2006 (310)). In other words, gender pluralism refers to gender identities and expressions that goes beyond conventional heteronormative binaries upheld in society. [↑](#footnote-ref-1)
2. [Srikandi, Sosok Transgender yang Kini jadi Simbol Perempuan Kuat (cxomedia.id)](https://www.cxomedia.id/human-stories/20220901121613-74-176099/srikandi-sosok-transgender-yang-kini-jadi-simbol-perempuan-kuat) (accessed on 17/5/23). [↑](#footnote-ref-2)
3. Peletz study revealed a wealth of evidence of gender pluralism and same sex relations which existed in the Southeast Asia region in the early modern times – before they were colonised or the

nd same-sex relations were particularly pronounced among—though not confined to—ritual specialists and at least in certain contexts were not simply accorded legitimacy but also held to be sacred. Patterns such as these attest to the climate of gender pluralism that prevailed during the first half of the early modern period. [↑](#footnote-ref-3)
4. Peletz explained that the ‘sociocultural impact of colonial rule, Western missionary activity’ and capitalist values based on ‘ideologies of high modernity’ gave way to ‘attacks on transgendered ritual activity’ and ‘cultural cleansing’, and in the case of the *Bissu* in South Sulawesi, were considered ‘remnants of feudal times’ and ‘intentionally killed’ (Peletz, 2006 (316)). [↑](#footnote-ref-4)
5. These 8 countries are Indonesia, Malaysia, Tonga, Papua New Guinea, Samoa, Kiribati, Samoa, and Solomon Islands, whereas the four countries criminalising transgender identities are Indonesia, Malaysia, Tonga and Papua New Guinea (IPPF ESEAOR, 2023). [↑](#footnote-ref-5)
6. This began in the ‘90s, where narratives of ‘Asian values’ was highlighted and defined, making ‘nonheteronormative genders and sexualities as decidedly “un-Asian,”’ in spite of the clear historical and ethnographic accounts proving otherwise. (Peletz, 2006 (324)). [↑](#footnote-ref-6)
7. European Parliament (2021), [Disinformation campaigns about LGBTI+ people in the EU and foreign influence,](https://urldefense.proofpoint.com/v2/url?u=https-3A__www.europarl.europa.eu_RegData_etudes_BRIE_2021_653644_EXPO-5FBRI-282021-29653644-5FEN.pdf&d=DwMF_w&c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_CdpgnVfiiMM&r=S9RI-vQ26GPq0uKgYtbzXCBAMoraalv2Iswnbsluw0k&m=eFfOMFo-hIs_F_9qErhyIGRLySaHQiuOjozm4F4a1Ww&s=mC6_H1E6Wi4QXx8w9oaf02CbC49hDSSUU75dIx64gJs&e=) see page 7 [↑](#footnote-ref-7)
8. Ibid. [↑](#footnote-ref-8)