



Submission: Report on Peace, Security and SOGI

(Question 10) Provide any additional information you consider relevant to enrich the understanding of the overall relationship between SOGI, peace and security that might have gone overlooked in the previous questions.

This submission focuses on two conflict situations: **Aceh, Indonesia, and Bangsamoro, the Philippines**. Both conflict situations ran for several decades and have reached to some extent a peace agreement. Despite de-escalation of armed conflict in those two areas, the situation of insecurity continued to persist. Paradoxically, the institutionalization of peace mechanisms and frameworks aggravated the insecurity of lesbian, gay, bisexual, transgender, intersex, queer, and gender-diverse (LGBTIQ+) persons.

Aceh, Indonesia

Aceh is one of the special autonomous provinces in Indonesia. It is a province that has institutionalized the Shariah Law (Aceh Qanun No. 6 Year 2014 on Jinayat Law) back in 2014, which took into effect in October 2015. The said provincial law expounds on the concept of *Jarimah*, which are acts prohibited by Islamic Shariah and can be punishable by law. Among the act considered as *Jarimah* are *Liwath* and *Musahaqah*.¹

Liwath is defined as an act of a man inserting his penis to the anus of another man with mutual consent.² *Liwath* is punishable by a maximum of 100 lashes, or a maximum fine of 1,000 grams of pure gold, or a maximum imprisonment term of 100 months.³ Severe punishments may be provided for repeat offenses and for those who commit *liwath* with a child. Since the enforcement of the Shariah law, the following cases were prosecuted:

- The first case of public canning against gay men couple was back in 2017. Young men on their early twenties convicted with *liwath* and canned 85 times in front of a mosque witnessed by hundreds of people⁴
- Two gay men was canning in front of Baiturahman mosque in July 2018. Two of them convicted with *liwath* and canned 90 times.⁵
- The latest case of public canning was happened early year of last year amidst pandemic. The gay men were convicted with *liwath* and canned 77 times.⁶

¹ Chapter 1, Article 1, Aceh Qanun No. 6 Year 2014 on Jinayat Law.

² Chapter 1, Article 1, par. 28, Aceh Qanun No. 6 Year 2014 on Jinayat Law.

³ Chapter 4, Article 63, par. 1, Aceh Qanun No. 6 Year 2014 on Jinayat Law.

⁴ ["Gay flogging in Aceh takes place in cheers"], BBC News Indonesia, May 23, 2017, <https://www.bbc.com/indonesia/indonesia-40009560>

⁵ ["Seen by the public, gay couples in Aceh caned 87 times"], Merdeka.com, July 13, 2018, <https://www.merdeka.com/peristiwa/disaksikan-masyarakat-pasangan-gay-di-aceh-dicambuk-87-kali.html>

⁶ ["Gay couple in Aceh sentenced to 77 lashes by 3 executioners"], CNN Indonesia, January 28, 2021, <https://www.cnnindonesia.com/nasional/20210128142349-12-599530/pasangan-gay-di-aceh-dihukum-cambuk-77-kali-oleh-3-algojo>



Musahaqah an act of two women or more by rubbing body parts to gain sexual arousal (or satisfaction) with mutual consent.⁷ *Musahaqah* is punishable by a maximum of 100 lashes, or a maximum fine of 1,000 grams of pure gold, or a maximum imprisonment term of 100 months.⁸ Severe punishments may be provided for repeat offenses and for those who commit *musahaqah* with a child. Since the enforcement of the Shariah law, at least one lesbian couple was arrested.⁹

Apart from the enactment of *liwath* and *musahaqah*, the Qanun Jinayat was also used by the local government to issue local regulations to convert and rehabilitate transwomen back as a masculine, cisgender, heterosexual men and affected the community economically.¹⁰ The regulation was intended to change the SOGI of LGBT community but also limit the access to work and cut their livelihood such as the regulation of the District Government of Bireuen back in 2016 to prohibit any salon to employ transwomen.¹¹ The Government of Aceh Besar issued a regulation in 2018 where transwomen are not allowed to open the salon.¹² The Government of Aceh Utara issued a regulation where all beauty salon owned by transwomen must be closed down.¹³

The passage of Aceh's Shariah Law is closely intertwined with its history of conflict between the Gerakan Aceh Merdeka (GAM or the Free Aceh Movement) and Indonesian government. The Memorandum of Agreement signed by the leaders of GAM and the representatives of the Indonesian government in August 15, 2005, called forth the enactment of a "Law on the Governing of Aceh" which enables the province to exercise authority over civil and judicial administration, except in the fields of foreign affairs, external defence, national security, monetary and fiscal matters, justice and freedom of religion.¹⁴ In addition, the agreement recognizes the re-establishment of a "Kanun Aceh" which aims to respect the historical traditions and cultures of the people of Aceh. Resulting of the peace agreement, the Indonesian government passed the Law. No. 11/2006 on the Governing of Aceh, which authorizes the local government of the province to institutionalize Shariah Law in the form of local Qanun ("Kanun") and to incorporate it into all aspects of social life, e.g. education, arts, customary practices, among others.

⁷ Chapter 1, Article 1, par. 29, Aceh Qanun No. 6 Year 2014 on Jinayat Law.

⁸ Chapter 4, Article 64, par. 1, Aceh Qanun No. 6 Year 2014 on Jinayat Law.

⁹ "Indonesian Shariah police separate Aceh lesbian couple." BBC News, August 25, 2011, <https://www.bbc.com/news/world-asia-pacific-14667232>.

¹⁰ "Indonesia: Transgender women detained by the police." BBC News, January 29, 2018. <https://www.bbc.com/news/world-asia-42859473>.

¹¹ ["LGBT people are strictly prohibited from being salon workers in Bireuen, Aceh"]. Merdeka.com, March 19, 2016, <https://www.merdeka.com/peristiwa/kelompok-lgbt-dilarang-keras-jadi-pekerja-salon-di-bireuen-aceh.html>.

¹² ["Aceh Besar Regent will revoke LGBT salon business license." Suara.com, February 10, 2018. <https://www.suara.com/partner/content/portalsatu/2018/02/10/073852/bupati-aceh-besar-bakal-cabut-izin-usaha-salon-lgbt>.

¹³ ["Arrest of 'waria' in North Aceh caused job loss"]. BBC Indonesia, January 31, 2018. <https://www.bbc.com/indonesia/indonesia-42851456>.

¹⁴ Aspinall, Edward, 2005. The Helsinki Agreement: A more promising basis for peace in Aceh?. East-West Center Washington.



The internal armed conflict, which started back in 1976, was driven by the GAM's desire for the right to self-determination of the people of Aceh arguing that the people of Aceh were not consulted on the incorporation of Aceh into Indonesia.¹⁵ Throughout the conflict, the political objectives of GAM have been negotiated from the original claim for independence to a special autonomy status. On the other hand, political Islam has been integral in the ideology of GAM, a non-negotiable to some extent. As such, the GAM leadership pursued its desire for the revival of the 'Sultanate of Aceh', argued as a political entity that pre-existed the modern Indonesian nation-state, with a strict enforcement of the Shariah. In fact, even prior to the signing of the peace agreement with the Indonesian government, GAM leaders have long enforced their own interpretations of the Shariah in their controlled areas, e.g. requiring women to wear *jilbab* (headscarves).¹⁶

Bangsamoro, the Philippines

Southern Philippines, specifically the islands of Mindanao, Basilan, Sulu, and Tawi-tawi, have witnessed decades long armed conflict between the Philippine government and different non-state armed groups, including the Moro National Liberation Front (MNLF), the Moro Islamic Liberation Front (MILF), the Abu Sayyaf, and various ISIS-inspired armed groups. The conflict is rooted in historical distrust of, neglect for, and alienation of the Bangsamoro people from the national government; all struggles were waged under the banner of right to self-determination.

Peace negotiations took place resulting in landmark peace agreements. First is the Final Peace Agreement with the MNL, which was signed in September 1996. This agreement led to the creation of the Autonomous Region for Muslim Mindanao.¹⁷ The fractions within the MNLF, and the renewed calls for independence from the Philippines led the MILF to engage in armed conflict. Consequently, peace negotiations took place and led to the signing of landmark documents: the Bangsamoro Framework Agreement between the Philippine Government and the Moro Islamic Liberation Front, which was signed on October 15, 2012¹⁸, and Comprehensive Peace Agreement on the Bangsamoro, which was signed on March 27, 2014.¹⁹ The signing of these key agreements eventually led to the legislation of the Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM),

¹⁵ Shulze, Kirsten, 2004. The Free Aceh Movement (GAM): Anatomy of a Separatist Organization. East-West Center Washington.

¹⁶ Shulze, Kirsten, 2004. The Free Aceh Movement (GAM): Anatomy of a Separatist Organization. East-West Center Washington.

¹⁷ Final Peace Agreement with the MNLF, 1996, <https://www.officialgazette.gov.ph/1996/09/02/final-peace-agreement-with-the-mnlf-september-2-1996/>.

¹⁸ 2012 Framework Agreement on the Bangsamoro, <https://asj.upd.edu.ph/mediabox/archive/ASJ-48-1and2-2012/The%20Framework%20Agreement%20between%20the%20GPH%20and%20MILF.pdf>.

¹⁹ Comprehensive Peace Agreement on the Bangsamoro, https://peacemaker.un.org/sites/peacemaker.un.org/files/PH_140327_ComprehensiveAgreementBangsamoro.pdf.

which was approved by the Philippine legislature and signed by the Philippine President in July 2018.²⁰

The Organic Law for the BARMM established a political entity that is autonomous yet under supervision from the supervision from the Philippine government. The BARMM has executive, legislative, and judicial functions related to administration of justice, civil service, customary laws, human rights, social services, education, health, among others.²¹ The BARMM has been given judicial powers on matters related to Shariah and other Islamic or customary laws.²² While the BARMM has not legislated a Shariah Penal Code similar to countries such as Brunei Darussalam or in Aceh, Indonesia, the Organic Law recognizes the existing sources of law that can fall within the jurisdiction of the Bangsamoro justice system; these include, Al'Qur-an (the Koran), Al-Sunnah (teachings of the Prophet Mohammed), among others.²³ Despite this, the community interpretations of local customs and traditions have been used to the instigate violence against LGBTQ+ persons in the Bangsamoro.

The following are cases of violence justified on the basis of local customs and traditions:

- Six women aged 16 to 20 years old from Maguindanao Province were subjected to a forced shaving of their heads due to their sexual orientation. Prior warnings made by the community were given to the women, whom the community accused as being lesbian women. The punishment was carried out in public and reportedly with the consent of the parents.²⁴ The said incident was decried by the Commission on Human Rights of the Philippines.²⁵
- Self-identified LGBT persons who were playing a volleyball game were injured during a bomb explosion that took place in a covered court in Datu Piang, Maguindanao.²⁶ The incident took place in September 18, 2021. There were reports that the bombing was carried out by the Bangsamoro Islamic Freedom Fighters (BIFF), a splinter group from the MILF who wanted to continue the cause of separation and establishment of an independent Islamic state.²⁷ The motivation remains unclear whether the attack was deliberately made due to the victims' SOGI.

²⁰ Republic Act 11054, Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, https://lawphil.net/statutes/repacts/ra2018/ra_11054_2018.html.

²¹ Article V, Section 2, Republic Act 11054, Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, https://lawphil.net/statutes/repacts/ra2018/ra_11054_2018.html.

²² Article X, Section 1, Republic Act 11054, Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, https://lawphil.net/statutes/repacts/ra2018/ra_11054_2018.html.

²³ Article X, Section 3, Republic Act 11054, Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao, https://lawphil.net/statutes/repacts/ra2018/ra_11054_2018.html.

²⁴ "Maguindanao Community shaves women's heads to punish them for being lesbians", GMA News, June 10, 2021, <https://www.gmanetwork.com/news/topstories/regions/791070/maguindanao-community-shaves-women-s-heads-to-punish-them-for-being-lesbians/story/>.

²⁵ [Statement of the CHR Spokesperson on the alleged shaving of heads of LGBTQI community in Ampatuan, Maguindanao], June 12, 2021, <https://chr.gov.ph/statement-of-chr-spokesperson-atty-jacqueline-ann-de-guia-on-the-alleged-forced-shaving-of-heads-of-lgbtqi-community-members-in-ampatuan-maguindanao/>.

²⁶ "Explosion injures 8 in Datu Piang, Maguindanao", Rappler, September 18, 2021, <https://www.rappler.com/nation/explosion-datu-piang-maguindanao-september-18-2021/>.

²⁷ "Army, LGU execs say BIFF rebels behind Maguindanao blast", Philippine News Agency, September 20, 2021, <https://www.pna.gov.ph/articles/1154005>.



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- On September 19, 2021, a lesbian woman was shot dead in her resident by an unknown assailant. The incident happened Datu Piang, Maguindanao the day after the bomb explosion.

In response to the aforementioned incidents, the Bangsamoro Parliament passed the following resolutions:

- Resolution 176, “Resolution condemning the Public Shaming of the Six (6) Young Women whose heads were shaved in public view in the Province of Maguindanao”. This resolution was adopted in October 14, 2021. The resolution expressed condemnation of the violence but did not explicitly mention any undertaking to seek redress or to prevent recurrence of similar abuses. (See Annex A for the Full Text of the Resolution)
- Resolution 170, “Resolution condemning the violence, discrimination and murder committed against reportedly some members of the lesbian, gay, bisexual, transgender and queer (LGBTQ++) community in the Municipality of Datu Piang, Maguindanao last September 18 and 19, 2021. The resolution expressed condemnation of the said incidents and called on the Bangsamoro government (specifically the Office of the Chief Minister and relevant Local Government Units) to implement concrete measures to protect the human rights of LGBTQ+ persons in their jurisdiction. (See Annex B for the Full Test of the Resolution).

In response to Resolution 170, several civil society organizations, including ASEAN SOGIE Caucus wrote a letter to the Bangsamoro Parliament to call for dialogues towards the effective implementation of measures to protect LGBTQ+ persons from violence. (See Annex C for the text of the civil society letter).

The complexity of the peace and security situation in the Bangsamoro was worsened by the existence of various armed organizations, reportedly splintered factions from the MILF as well as newly organized groups inspired by ISIS. On May 23, 2017, the entire City of Marawi, one of the cities covered within the jurisdiction of the BARMM, was sieged by armed elements who proclaimed to be part of the ISIS.²⁸ Skirmishes took place and resulted to massive internal displacements. Hostages were taken, some were killed during the encounter. There were reports of violence on the basis of SOGI, including profiling of LGBT persons prior to the siege, threats of killings to persons who were identified or perceived to be LGBT, and violence experienced by LGBT persons in evacuation centers. Media reports pointed out the discrimination of LGBTIQ+ during and after the crisis.²⁹ (See Annex D for the results of the FGD carried out by ASC with affected LGBT persons from Marawi)

²⁸ The state of martial law in Midanao, including the suspension of the write of habeas corpus was extended by the Philippine Congress until the end of 2018. Source: Rappler, December 13, 2017. “Congress extends martial law in Mindanao to end of 2018”. Retrieved from <https://www.rappler.com/nation/191207-congress-mindanao-martial-law-extension-2018>

²⁹ Santos, Ana, 2018. “Why the LGBT Community is dreading a Post-ISIS Philippines”, OZY, Retrieved from <https://www.ozy.com/fast-forward/why-the-lgbt-community-is-dreading-a-post-isis-philippines/83804>



Recommendations

- Strengthen intersectional and cross-movement dialogues between LGBTIQ+ advocates, and with humanitarian and peace-building organizations. Dialogues can be a starting point to mainstream SOGIESC perspectives into peace-building and conflict-transformation discourses and approaches.
- Recognize that LGBTIQ+ persons are stakeholders in peacebuilding and conflict resolutions initiatives, including the conduct of peace processes. Oftentimes, SOGIESC concerns are left-out even in gender-based peace processes (where the focus is only on the concerns of cisgender women).
- Strengthen the data gathering of the situation, needs, and concerns of LGBTIQ+ persons in situations of armed conflict. Conflict analyses need to have a SOGIESC perspective to probe further into the anti-LGBTIQ+ narratives and ideologies espoused by parties to the conflict, social stigma of associating emergency situations with LGBTIQ+ persons, and discrimination in accessing humanitarian responses.

Annexes

Annex A – BARMM Parliament Resolution 176

Annex B – BARMM Parliament Resolution 170

Annex C – Joint Civil Society Letter to the Bangsamoro Parliament

Annex D – Results of the FGD on LGBT Issues in Marawi

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