

Call for Inputs

Report of the Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity

	Questions/Indicator	Input
1	<p>Key areas in which people (in your country, region or worldwide) suffer socio-cultural and economic exclusion as a result of violence and discrimination on the basis of sexual orientation and/or gender identity; in particular,</p> <p>a. What knowledge, including data, exists in the State planning bases in relation to socio-cultural and economic exclusion based on sexual orientation and gender identity, including levels of poverty, homelessness, education, employment, health, political participation and any other relevant social indicator?</p>	<ul style="list-style-type: none"> • The Constitution recognizes the principle of non-discrimination. • Nawacita (The 9 priority agendas of President Joko Widodo’s government for 2014-2019) cited that it is the task of the state to protect and provide a safe environment for all its people. • The political stance of the state (especially state officials) tend to not recognize LGBT existence and identity. There is no legal umbrella that specifically recognizes and guarantees the right of LGBT people to be free from discrimination. • Although there are laws to protect people of diverse sexual orientations, implementation remains weak. These regulations are as follows: <ul style="list-style-type: none"> a) Police Chief Regulation No.8/2009 regarding the Implementation of Principles and Standards of Human Rights in the Carrying out of Duty for the Police Force, which in article 4 (h) states that Human Rights do not discriminate against

			<p>race, ethnicity, ideology, culture, religion, social status, gender or sexual orientation but rather prioritize a commitment to mutual respect to create a civilized world.</p> <p>b) Police Chief Circular No.6/X/2015 on the Handling of Hate Speech, Article 2 (g) Point 11 states that the incitement of hatred against individuals or groups based on sexual orientations.</p> <p>c) The Directorate General of Medical Services of the Ministry of Health in 1993 issued the Diagnostic and Statistical Manual of Mental Disorders (DSM) IV through Guideline Classification and Diagnostic of Mental Disorders (PPDGJ) III pts F66. This document states that that sexual orientations consisting of heterosexuality, homosexuality and bisexuality are not sexual disorders (Komnas Perempuan Independent Report for the 3rd Cycle of the Universal Periodic Review, 2017).</p> <ul style="list-style-type: none"> • Regarding national data, in general, Statistics Indonesia (BPS) does not have a special category for LGBT and only recognizes male and female genders. • The Basic Health Survey (Riskesdas – Riset Kesehatan Dasar) does contain data on transgender people, but only in relation HIV/AIDS status. • Komnas Perempuan collects and documents data on discrimination and violence against women (not limited to people who are biologically defined as women but also those who, from a social or psychological position, define themselves as women; and including sexual minorities). This data is based on complaints received from
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			individuals and groups in the LGBT community.
		<p>b. How are individuals, groups or communities differently affected, based on their sexual orientation and/or gender identity?</p>	<ul style="list-style-type: none"> • Komnas Perempuan has received complaints and noted that LGBT women experience violence in the form of: (a) gross maltreatment; (b) sexual violence; (c) stigmatization by media. (Komnas Perempuan Independent Report for the 3rd Cycle of the Universal Periodic Review, 2017) • LGBT individuals, groups and communities face persecution. These parties also face difficulties in pursuing justice through legal avenues, because they experience repeat violence and discrimination. These difficulties arise because of discrimination when attempting to access justice and many LGBT victims of persecution worry that their sexual orientation or gender identity will become known through the legal process. Often, they abandon their cases as they do not want to bring shame to their family, or because they worry about receiving unpleasant treatment in the legal process because of their sexual orientation or gender identity. • There are still many organizations that provide services to victims of violence (service provider institutions) that lack understanding and perspective regarding SOGIEB-based violence and diversity. Komnas Perempuan's 2019 Annual Notes demonstrates that service providers have documented that since mid-2015 LGBT and sexual minority groups have faced increased rejection and discrimination from various institutions, including government institutions, 28 universities, and the army. These rejections and discrimination have materialized in the form of discussions about sexual minorities being cancelled, representatives from these institutions making statements against sexual minorities, and discourse that positions sexual minority groups as a threat to the country. Rejection has increased after the issue of sexual minorities

			<p>became a major public point of discussion in 2016. (Komnas Perempuan Annual Notes on Violence against Women, 2019)</p> <ul style="list-style-type: none"> • Komnas Perempuan has received a number of reports of violence against LBT women including cases of forced evictions of transgender people from their houses in Bogor, universities enacting policies refusing to accept LGBT students, and criminalization of transgender peoples occurring when they are accused of faking identities. Komnas Perempuan has acted as an expert witness in two cases in Tanjung Balai, where the accused are transmen who gave birth and disposed the babies, and one case in Purworejo, where a transman has been accused of falsifying their identity on their marriage certificate. In these two cases, the construction of gender has placed women transmen in situations where they are forced to hide their identity for their own safety. (Komnas Perempuan Independent Report to the UN High Commissioner for Human Rights, 2018) • Komnas Perempuan observed a number of cases in which LBT women were deprived of their homes as a result of their sexual orientation and gender identity, including; forced eviction of lesbian and transgender women (<i>waria</i>) from their boarding home by local residents because they were considered to be morally corrupt and bring bad luck, forced to move from their parents' home when they are known to be LBT or leaving voluntarily because of violence within the family. This has impacted on their ability to access education (causing interruptions and/or termination), work, and health services. (Komnas Perempuan
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			<p>Independent Report on Implementation of ICESCR, 2014)</p> <ul style="list-style-type: none"> • One of the case example is the expulsion of transwomen in East Jakarta. On November 22, 2018, Komnas Perempuan received complaints from seven transwomen in the Kampung Sumur area, East Jakarta. They received rejection from the local mosque officials who installed two large banners mounted on the public road regarding the dismissal of LGBT. The victims also got threats of a raid by certain CSOs and they felt unsafe. The victims actually lived in a boarding house in the vicinity of the mosque, some of them have been living there 20 years, and before this there were no problems. With assistance from Victim Companions, the victims had mediation with the local neighborhood units (RT) and community units (RW), and finally they are allowed to stay in the area with several agreements. But after the RT and RW deliberated with the Mosque officials, they still refused, so the agreement became futile in the end. The victims still wanted to stay at the boarding house, considering that it is not easy to get new housing in such short notice. After the complaints, Komnas Perempuan listed it as part of acts of violence experienced by transwomen. Komnas Perempuan regrets this act of violence experienced by transwomen. (Komnas Perempuan Annual Notes on Violence against Women, 2019)
		<p>c. What are the main barriers in ensuring equal access to education, health care, employment and occupation, housing and other relevant sectors?</p>	<ul style="list-style-type: none"> • There is no specific policy on the issues mentioned. • There is no special budgeting allocated. • There is no aggregated data available.

			<ul style="list-style-type: none"> • There is insufficient knowledge about SOGIEB.
2	<p>Root causes and structural factors responsible for marginalisation and socio-cultural and economic exclusion, such as laws, public policies, institutional practices, organizational behaviours, and prevailing ideologies, values and beliefs?</p>		<p>1. Political Culture:</p> <ul style="list-style-type: none"> • Homophobic political attitudes prevail. • The state's view in which LGBT is still considered devious and contrary to ideologies, values, and religious beliefs results in marginalization. • Official statements that are discriminatory may encourage violence and further discrimination; examples of such statements include: <ul style="list-style-type: none"> ○ The Defense Minister saying that LGBT is a part of proxy war. ○ The Research, Technology and Higher Education Minister saying that the universities must be 'clean' from LGBT activities. • LGBT issues are experiencing increased politicization with an escalation of discrimination and stigmatization being spread through social media, religious institutions, state bodies, and by politicians. Universities have even enacted policies refusing to accept LGBT students and/or have released anti-LGBT statements. <p>2. Politicizing LGBT issues in the context of elections:</p> <ul style="list-style-type: none"> • The People's Consultative Assembly (MPR) Chairman made a statement that contended there are 5 parties that agrees with LGBT as part of black campaign so that these parties are not elected.

			<ul style="list-style-type: none"> • Including rejection of the revision/ratification of the law by using LGBT issues (for example encouraging the proposed revised draft for the Indonesian Criminal Code (RKUHP) to criminalize same-sex relationships carried out by adults; and obstructing the ratification of the Sexual Violence Bill (RUU-PKS) by stating that this bill authorizes same-sex relations). <p>3. Discriminatory regulations, such as:</p> <ul style="list-style-type: none"> • Law No. 1/1974 on marriage (Marriage Law) Article 1 states that marriage must be between a man and a woman. • Article 13 (f) of Government Regulation No. 54/2007 on child adoption Article 13 prohibits adoption for same-sex couples. • Law No. 23/2006 on population administration (Civil Administration Law) article 64 where the identity card (KTP) only recognizes male and female sex. • There are 14 regional regulations from local governments/parliaments which state that LGBT is categorized as a criminal offence. • The regency of Pasaman, West Sumatra, penalizes transwomen with fines. A Regulation in the city of Pariaman, West Sumatra, states LGBT and transgender people are sex offenders and also sets a fine. • The regency of Bireun, Aceh, prohibits employment for transgender people. • The regency of Cianjur, West Java, prohibits employers from
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			<p>giving jobs to transgender people.</p> <ul style="list-style-type: none"> • The Regent Head of West Pesisir, Regent Head of Karawang regulates the limitation of the economic rights of transgender people and LGBT activities (Komnas Perempuan Annual Notes On Violence Against Women, 2019). <p>4. The Indonesian Broadcasting Commission (KPI) in 2016 issued a circular letter to television and radio stations that forbids programs that raise any themes related to LGBT, and another circular that prohibits the broadcasting feminine-presenting men. KPI views that these programs are part of a pro LGBT campaign and therefore violate broadcasting behavior guidelines, namely respect for moral values, decency, and politeness; or violate the protection of children based on the belief that such content encourages children to learn about inappropriate behavior and justifies this behavior.</p>
3	State efforts to address socio-cultural and economic exclusion through legislation, policies, data gathering, and other means, for example		<ul style="list-style-type: none"> • The state tends to be ignorant of the existence of LGBT people, therefore existing public services do not take into consideration people's sexual identity and orientation. However, if a person's gender identity is visible, discrimination tends to occur against them. • Since there is no acknowledgment of the existence of LGBT people, all services and programs from the public service and social protection agencies only recognize male and female gender. People will only be categorized as male or female, thus any special needs cannot be recognized. • People whose gender expression is visible face discrimination and

			tend to be denied service.
		a. Destitution and poverty;	<ul style="list-style-type: none"> Once a training program provided hairdressing and cooking courses for transwomen, but there was no continuity of this program.
		b. Current efforts by States to address bullying and exclusion of LGBT people from education, including in education curricula teacher training, measures to promote continuing education or reinsertion in education settings and vocational training;	<ul style="list-style-type: none"> In 2019 the Head of Semarang City Social Affairs Office issued a statement calling on citizens to respect transgender and LGBT people.
		c. Homelessness among LGBT people, particularly youth, and inclusion in shelter programs;	<ul style="list-style-type: none"> Initiatives to provide housing and shelter were not initiated by the state, but rather carried out by the LGBT community itself. These community ran initiatives include establishing a <i>pesantren</i> (Islamic Boarding School) for transgender people in Yogyakarta, and a shelter for transgender women exposed to HIV by the NGO Kebaya (Transgender Family) Yogyakarta.
		d. Coverage by social security and benefits, as well as public and private health insurance (Taking into account survivor's pensions for same-sex couples, insurance coverage for gender affirming care, social housing for LGBT youth and older persons etc.);	<ul style="list-style-type: none"> There is no specific policy by the state.
		e. Equal access to health (including through training and sensitisation of health care personnel), regardless of	<ul style="list-style-type: none"> Law No. 36/2009 on health (Health Law) article 5 (1 & 2) states "every person" has the right to access and to obtain health

		<p>sexual orientation, gender identity or expression;</p>	<p>services.</p> <ul style="list-style-type: none"> • In the Yogyakarta area, there is a special community health center (<i>Puskesmas</i>) for Transgender groups. According to the transgender people, this particular <i>puskesmas</i> provides faster services to them. However, the existence of this <i>puskesmas</i> has further increased the existing gap and discrimination between transgender and other groups. So, the spirit of the service is not to be inclusive, but exclusive. Also, transgender health issues are largely limited to the issue of HIV/AIDS. A lot of transgender people lack general access to information about their sexual and reproductive health and rights. In some areas, minority sexual orientation groups often experience neglect and difficulties in accessing health services and education. (Komnas Perempuan Policy Brief on Minority Sexual Orientation Groups: Recognition of Identity and Rights, 2015) • The government is still ignorant of and even in denial of the existence of LGBT people and groups. In general, in accordance with the current regulations, public services do not differentiate or provide the needed specialized services for SOGIEB people, because health services only recognize the genders of male and female. • When there are special services for transgender people provided, these are usually directed only for HIV services. (Komnas Perempuan Policy Brief on Minority Sexual Orientation Groups: Recognition of Identity and Rights, 2015)

4	Complaints mechanisms available and accessible to LGBT people facing discrimination.		<p>The provision of complaint mechanisms and services is still limited to:</p> <ul style="list-style-type: none"> • National Human Rights Institutions (NHRIs): <ul style="list-style-type: none"> ○ The National Commission on Human Rights (Komnas HAM) ○ The National Commission on Violence Against Women (Komnas Perempuan) • Indonesian Ombudsman (Ombudsman RI) • The Witness and Victim Protection Agency (Lembaga Perlindungan Saksi dan Korban - LPSK) • CSOs (including legal aid agencies) and the LGBT community organizations.
5	Actions to ensure socio-cultural and economic inclusion based on sexual orientation and gender identity in measures undertaken to ensure implementation of the Sustainable Development Goals at the national and regional levels.		<p>The Presidential Regulation regarding the Implementation of Sustainable Development Goals (Pelaksanaan Tujuan Pembangunan Berkelanjutan) has not yet specifically included and targeted LGBT people. Even though protection as citizens in general is mentioned, including that if there are complaints to NHRIs, it must be followed up by said NHRI (Goals 16).</p>
6	Actions taken to raise		

	<p>public awareness and sensitisation on issues of sexual orientation and gender identity, in order to promote the meaningful socio-cultural and economic inclusion of LGBT people.</p>		<ul style="list-style-type: none"> • NHRIs, CSO networks, LGBT organizations, and international institutions encourage protection of LGBT people from acts of discrimination and violence. They do this through through public campaigns, including on social media such as IDAHOT (International Day against Homophobia, Transphobia, and Biphobia). However, this campaign has not specifically touched on ECOSOC rights, especially economic inclusion. • A number of corporations have begun to open themselves to recruit members of the LGBT community to gain access to work, even though they tend not publicize it.
7	<p>Services provided by civil society to excluded and marginalized LGBT people.</p>		<ul style="list-style-type: none"> • Health services provided to LGBT people (even without identity recognition) include clinics for HIV testing, sexually transmitted diseases (STD), abortion, contraception, and pap smears aimed at sexually active groups without considering marital status. • A number of institutions that provide consultation and treatment services include: The Indonesian Planned Parenthood Association (PKBI - Persatuan Keluarga Berencana Indonesia) through the Sexual and Reproductive Health Clinic (Klinik Kesehatan Reproduksi dan Seksual).