

# “Human Rights Violation of Transgender Men in Indonesia”

Submission to the Human Rights Committee 140 Session (4-28 March 2024)  
Review of the third periodic report by Indonesia

submitted by Transmen Indonesia  
February 2024



With support from:

The Swedish Federation for Lesbian, Gay, Bisexual, Transgender, Queer and Intersex Rights (RFSL) and  
Global Action for Trans Equality (GATE)

**Transmen Indonesia** is a trans men organization in Indonesia, founded collectively in 2015. We aim to be a safe and inclusive space for trans men in Indonesia to fight for their human rights. We advocate the recognition, respect, protection, and fulfillment of the human rights of trans men through research, campaign and public education, and community empowerment.

Email: [transmenindonesia@gmail.com](mailto:transmenindonesia@gmail.com)

**GATE- Global Action for Trans Equality** is an international advocacy organization working towards justice and equality for trans, gender diverse, and intersex (TGDI) communities. GATE focuses on advocating for the human rights of trans, gender diverse, and intersex people, while also playing a pivotal role in strengthening the global trans, gender diverse, and intersex (TGDI) movements through training, capacity building, resource mobilization and political mobilization.

Email: [info@gate.ngo](mailto:info@gate.ngo) ; Webpage: <https://gate.ngo/about-us/>

**RFSL - The Swedish Federation for Lesbian, Gay, Bisexual, Transgender, Queer and Intersex Rights**, is a non-profit organization founded in 1950. RFSL strives to create an equal world where all LGBTQI people’s human rights are respected and no one is left behind. Some of the core values of RFSL’s international work are meaningful participation by rights holders, gender equality, non-discrimination, transparency, and sustainability.

Webpage: <https://www.rfsl.se/en/>

## INTRODUCTION

Transmen Indonesia is pleased to report to the Human Rights Committee ahead of its 140th Session. This report is compiled through a series of research on the human rights situation of transgender men in Indonesia, desk research, and consultations with representatives of the transgender men community. We express our gratitude for the HRCtee's recognition of transgender and gender identity in its List of Issues for Indonesia. This submission emphasizes concerns about Indonesia's compliance with the International Covenant on Civil and Political Rights (the Covenant), focusing on violations faced by transgender men:

- State-sponsored pathologization of transgender individuals;
- Discriminatory laws and absence of protection;
- Torture and ill treatment; especially regarding to state-sponsored “conversion therapy”, abusive and discriminatory legal gender recognition, and unlawful detention.

### A. STATE-SPONSORED PATHOLOGIZATION OF TRANSGENDER INDIVIDUALS

- (1) As explained by Global Trans Action for Equality (GATE),<sup>1</sup> pathologization can be defined as the psycho-medical, legal and cultural practice of identifying a feature, an individual or a population as intrinsically disordered. The Independent Expert on SOGI stated that lesbian, gay, bisexual, trans and gender non-conforming persons are often treated as if they were by definition sick or disordered,<sup>2</sup> a process referred to by the mandate holder as “pathologization”.<sup>3</sup>
- (2) In Indonesia, the pathologization of transgender individuals is outlined in the Minister of Social Affairs Regulation<sup>4</sup> which categorizes transgender individuals as ‘people with social disabilities and behavioral deviations. This regulation becomes the legal basis for many discriminatory laws and by laws that can be found in the next section.

### B. DISCRIMINATORY LAWS AND ABSENCE OF PROTECTION

- (3) During the 4th cycle of the Universal Periodic Review (UPR) in November 2022, the Government of Indonesia accepted recommendation No. 140.254 from Ireland<sup>5</sup> to repeal discriminatory laws against LGBTI+ persons.
- (4) However, no action has been taken. On the contrary, since 2014, **18 new discriminatory laws and policies have been implemented**, including the bylaw on the Prevention and Handling of Sexual Deviation Behavior<sup>6</sup> that says, “Forms of sexually deviant behavior include homosexual, lesbian,

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<sup>1</sup> Kara, Sheherezade (2017) Gender is not an illness. *How pathologizing trans people violates international human rights law*. GATE.

<sup>2</sup> A/HRC/35/21, paras. 48 and 58.

<sup>3</sup> A/HRC/38/43, para. 34.

<sup>4</sup> Minister of Social Affairs Regulation no. 8 year 2012.

<sup>5</sup> A/HRC/52/8/Add.1.

<sup>6</sup> Bylaw of Bogor City no. 10 year 2021 on Prevention And Mitigation Of Sexual Deviant Behavior.

bisexual, and transvetisme” and eleven other bylaws on Family Protection.<sup>7</sup> Bylaw of West Sumatra Province no. 17 year 2019 on the Implementation of Family Resilience Development, for instance, stating that the community can participate in the implementation of social welfare, including by “preventing the spread of deviant behaviors such as lesbians, gays, bisexuals, and transgender” (art. 51 and 52). These regulations classify lesbian, gay, bisexual, and transgender individuals as deviants, which are **rooted in the state-sponsored pathologization of transgender individuals** explained above.<sup>8</sup>

- (5) Indonesia also accepted UPR recommendations from Norway<sup>9</sup>, United Kingdom of Great Britain and Northern Ireland<sup>10</sup>, Australia<sup>11</sup>, and Ireland<sup>12</sup> at enhancing anti-discriminatory protection for LGBTIQ people through the enactment of comprehensive anti-discrimination legislation. The Committee on Economic, Social and Cultural Rights also called Indonesia to strengthen legislative protection against discrimination, including through the adoption of a comprehensive framework law.<sup>13</sup>
- (6) However, **Indonesia has not established any comprehensive anti-discrimination law** that prohibits discrimination, including indirect discrimination, on all grounds, including gender identity and expression.
- (7) The existing discriminatory laws and the lack of protection furthermore contribute to the emergence of discriminatory policies in various institutions such as workplaces and educational institutions, and deprive impacted communities of legal instruments for seeking justice. In December 2023 only, two of the largest universities in Indonesia issued a ban on 'LGBT behavior':
  - (a) On December 1, 2023, the Dean of the Faculty of Engineering Universitas Gadjah Mada issued a circular letter on the Prohibition of Lesbian, Gay, Bisexual, and Transgender Activities within the Faculty of Engineering.<sup>14</sup> This applies to students, faculty members, and education staff. The letter was issued after a transgender student was reported for using a restroom designated for women. Individuals within the academic community who violate this directive face 'maximum sanctions,' which could result in expulsion as a student, termination as a faculty member, or dismissal as education staff.

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<sup>7</sup> i.e. Bylaw of West Sumatra Province no. 17 year 2019 on the Implementation of Family Resilience Development; Bylaw of Tasikmalaya City no. 6 year 2019 on Family Resilience. The full lists can be found in Catatan Kelam 2018-2020 Persekusi LGBTI di Indonesia, Arus Pelangi, 2022.

<sup>8</sup> i.e one of legal basis of Bylaw of West Sumatra Province no. 17 year 2019 is the Minister of Social Affairs Regulation no. 8 year 2012.

<sup>9</sup> A/HRC/52/8/Add.1., Recommendation No. 140.70

<sup>10</sup> A/HRC/52/8/Add.1., Recommendation No. 140.71

<sup>11</sup> A/HRC/52/8/Add.1., Recommendation No. 140.192

<sup>12</sup> A/HRC/52/8/Add.1., Recommendation No. 140.254

<sup>13</sup> E/C.12/IDN/CO/1, para 10.

<sup>14</sup> Circular Letter of the Dean of Faculty Of Engineering, Universitas Gadjah Mada no. 2480112/UN1/FTK/I/KM/2023

- (b) On December 12, 2023, the Academic Senate of the Bandung Institute of Technology issued regulations on the Prevention and Handling of Risky Sexual Behaviors and Sexual Deviations,<sup>15</sup> which explicitly mentions transgender individuals as a sexual deviation, which should be handled through "conversion therapy" practices.

## C. TORTURE AND ILL TREATMENT

### STATE-SPONSORED TORTURE THROUGH "CONVERSION THERAPY"

- (8) **The discriminatory laws mentioned above promote and enforce rehabilitation or so-called "conversion therapy" which involves detaining individuals, unnecessary body examinations that lead to sexual harassment, revealing their status to their families, conducting religious lectures, psychotherapy, physical punishment, and coercing individuals to alter their appearance.**<sup>16</sup>
- (9) *"My partner and I were sitting in the town square, and there were many people there. Suddenly, the Sharia police came and arrested us, claiming that we were lesbians, considered forbidden, and violating the Qanun. We were taken to their office, our parents were called and informed that we were lesbians. After that, I was detained for around 3 weeks. I was moved between social shelters, their office, the office of Integrated Service Center for Women and Children Empowerment. I was repeatedly told to repent, recited prayers, received counseling, and forced to wear a hijab."* - trans man from Aceh<sup>17</sup>
- (10) United Nations entities and human rights mechanisms have expressed concern about these "conversion therapy" practices.<sup>18</sup> The Committee against Torture and the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment have issued explicit reproaches against the treatments that are forced, involuntary, or otherwise coercive or abusive.<sup>19</sup>
- (11) Since 2015, Transmen Indonesia and other LGBTIQ+ organizations have assisted at least seven transgender men in Indonesia who experienced raids and arrests, conducted by either law enforcement or members of the community, in public spaces or within their residences. Subsequently, they were sent to the Social Affairs Department for so-called rehabilitation or "conversion therapy."

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<sup>15</sup> Regulation of Academic Senate Institut Teknologi Bandung no. 12/IT1.SA/PER/2023 on the Prevention and Handling of Risky Sexual Behaviors and Sexual Deviations for the Continuity of a Conducive Academic Atmosphere.

<sup>16</sup> Case documentation of Transmen Indonesia

<sup>17</sup> Case documentation of Transmen Indonesia

<sup>18</sup> CRC/C/RUS/CO/4-5, para. 55; CCPR/C/ECU/CO/6, para. 12; CEDAW/C/ECU/CO/8-9; and Committee on Economic, Social and Cultural Rights, general comment No. 22.

<sup>19</sup> A/74/148, para. 50; A/56/156, para. 24; A/HRC/43/49; and CAT/C/CHN/CO/5, para. 56.

## ABUSIVE AND DISCRIMINATORY LEGAL GENDER RECOGNITION PROCEDURE

- (12) In their reply to Paragraph 4 of the list of issues on non-discrimination, the Government of Indonesia responded “As for transgender, they could propose to change their sex legally through court decision.”<sup>20</sup>
- (13) Although the current legislation in Indonesia allows change of transgender persons’ documentation<sup>21</sup>, **the procedure is abusive and discriminatory**. In practice, the Indonesian court mandates a diagnosis of F64.0 ('transsexualism,' according to ICD-10) and completion of hormonal replacement therapy and gender reassignment surgeries as prerequisites for changing the gender marker. Based on our documentation, in the case of a transgender man applying for a gender marker change in 2022, he was required to demonstrate that he is 'not a woman' by undergoing the removal of his reproductive organs.
- (14) The latest Health Law of 2023 has made the Legal Gender Recognition procedure more complex and confusing by stating requirements that contradict current court practices, which specify, "Gender reassignment surgery can only be done through a court decision in accordance with the provisions of the legislation."<sup>22</sup> Furthermore, the Health Law criminalizes healthcare professionals conducting gender-affirming reconstructive and aesthetic plastic surgery with a maximum prison sentence of 10 (ten) years.
- (15) Imposing requirements of such procedures violates the principles of personal autonomy and integrity. The Committee Against Torture (CAT) in its Concluding Observations on China expressed concern about the “long-term physical and psychological suffering” caused by “abusive preconditions” for legal gender recognition, such as sterilization and sex reassignment surgery.<sup>23</sup>
- (16) UN inter-agency statement on eliminating forced, coercive and otherwise involuntary sterilization, notes that sterilization without full, free and informed consent has been recognized as “a violation of fundamental human rights, including the right to health, the right to information, the right to privacy, the right to decide on the number and spacing of children, the right to found a family and the right to be free from discrimination,” as well as the right to be free from torture and other cruel, inhuman or degrading treatment or punishment.<sup>24</sup>
- (17) The Committee on Economic, Social and Cultural Rights (CESCR) has acknowledged that “[l]aws and policies that indirectly perpetuate coercive medical practices, including [...] hormonal

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<sup>20</sup> CCPR/C/IDN/2, para. 62.

<sup>21</sup> Law on Population Administration no. 23 year 2006, explanation of Article 56 (1).

<sup>22</sup> Law on Health no. 17 year 2023, explanation of Article 137 (2).

<sup>23</sup> CAT/C/CHN-HKG/CO/5, para. 28-29.

<sup>24</sup> OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO (2014) *Eliminating forced, coercive and otherwise involuntary sterilization: an interagency statement*. Geneva: WHO.

therapy, as well as surgery or sterilization requirements for legal recognition of one's gender identity, constitute additional violations of the obligation to respect."<sup>25</sup>

- (18) In the context of name changes, as per the Population Administration Law<sup>26</sup>, individuals have the right to change their names, and there are no specific norms or prohibitions stipulated. However, Transmen Indonesia has documented numerous cases where requests for name changes by trans men were rejected on the vague and unfounded/inexistent concept of grounds of 'not conforming to norms', with the latest case of rejection occurring on December 19, 2023. This reflects inequality before the law faced by transgender men.
- (19) Based on the same Law, all population events, including name changes and changes of gender mark, must be recorded in civil registration. In practice, the new name approved by the court will be placed in the margin of the birth certificate or other population administration documents, including diplomas. This means that these documents still contain the deadname or birth name that is no longer used by transgender individuals. This practice increases the vulnerability of transgender men to violence, as it indirectly reveals their transgender identity through documents.
- (20) All the practices above violate the right to recognition before the law guaranteed under article 6 of the Universal Declaration on Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) as well as other international treaties.<sup>27</sup> Furthermore, the principle of bodily integrity is protected under the rights of security of the person (UDHR, article 3; ICCPR, article 9), the right to privacy (UDHR, article 12; ICCPR, article 17) and the right to be free from torture, and cruel, inhuman or degrading treatment (UDHR, article 5; ICCPR, article 7).<sup>28</sup>

### **UNLAWFUL DETENTION, TORTURE, AND ILL TREATMENT**

- (21) Transmen Indonesia, along with other LGBTIQ organizations, have documented numerous cases in which transgender men facing the legal system experience ill treatment and acts of torture including unlawful and inhumane detention.
- (22) *"On February 4, 2017, Farel was interrogated alone without the presence of legal counsel. The following day, the police issued a detention order and immediately detained Farrel without clear reasons specified by the Criminal Procedure Code (KUHAP). During detention, Farel slept in a holding cell with minimal facilities, using a carpet as bedding."* - case of Farel, trans man from North Sumatera.<sup>29</sup>

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<sup>25</sup> E/C.12/GC/22, General Comment, para. 58.

<sup>26</sup> Law on Population Administration no. 23 year 2006.

<sup>27</sup> International Covenant on Civil and Political Rights, Article 16; Convention on the Elimination of all forms of Discrimination Against Women, Article 15; Convention on the Rights of the Child, Article 8.

<sup>28</sup> Kara, Sheherezade (2017) Gender is not an illness. *How pathologizing trans people violates international human rights law*. GATE.

<sup>29</sup> FAREL, Jalan Panjang Untuk Keadilan Seorang Transgender (2018). Arus Pelangi and Cangkang Queer.

- (23) *"When I visited D, his face was bruised and his lips were torn. During detention, he was repeatedly beaten by the police, stomped on, and forced to confess as a woman. They continuously threatened to rape D to 'prove and remind D that he is a woman.'" - testimony from D's legal companion, a trans man from Central Java.*
- (24) Despite the emergence of new positive policies such as the Sexual Violence Criminal Law, the lack of understanding among law enforcement officials regarding gender identity issues leads to discrimination and violence against transgender men facing the law, including those who experience violence and report their cases. This results in a lack of trust among transgender men in the law enforcement process.
- (25) These conditions obstruct trans men from seeking assistance when experiencing discrimination and violence. Our study reveals that 71.1% of transgender men ultimately avoid seeking any help when encountering discrimination and violence, with one of the reasons being the fear of additional violence.<sup>30</sup>
- (26) The impact of all human rights violations mentioned above can be substantial, particularly in the context of trans men. It may involve various mental and physical health consequences, including mental health problems, isolation, and loneliness. 86.8% of trans men experience stress, anxiety, depression, and other mental health issues. 53.9% have contemplated suicide, and 32.9% have attempted suicide.<sup>31</sup>
- (27) This is in line with World Health Organization's statement that "Suicide is linked to multiple, complex and intersecting social, economic, cultural and psychological factors and challenges, including the denial of basic human rights and access to resources, ... , discrimination and other life crises."<sup>32</sup>

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<sup>30</sup> Research on the Situation of Economic, Social, and Cultural Rights of Transgender Men In Indonesia (2023). Transmen Indonesia.

<sup>31</sup> Ibid.

<sup>32</sup> WHO policy brief on the health aspects of decriminalization of suicide and suicide attempts (2023). World Health Organization.

## RECOMMENDED QUESTIONS

1. What measures has the Government of Indonesia taken to repeal discriminatory laws, bylaws, and policies that categorize LGBTQ+ individuals, particularly transgender individuals, as socially disabled or deviant as committed during the Universal Periodic Review (UPR)?
2. What measures has the Government of Indonesia taken to ensure that legal gender recognition process aligns with international human rights standards without abusive and discriminatory requirements such as unnecessary medical procedures and forced sterilization, and allowing individuals to change their gender marker without unnecessary preconditions?
3. What measures has the Government of Indonesia undertaken to establish and implement a comprehensive framework law aimed at safeguarding marginalized groups, including lesbian, gay, bisexual, and transgender persons, from discrimination, including instances of indirect discrimination?
4. What measures has the Government of Indonesia taken to ban the abusive and cruel practices of the so-called 'rehabilitation' and 'conversion therapy,' whether state-sponsored or conducted by the community?

## SUGGESTIONS FOR RECOMMENDATIONS

1. Take immediate action to repeal discriminatory laws, bylaws, and policies that categorize LGBTQ+ individuals, particularly transgender individuals, as socially disabled or deviant, and take action to prevent the emergence of such new discriminatory laws.
2. Fulfill the commitment made during the Universal Periodic Review (UPR) to address discriminatory laws against LGBTI+ persons.
3. Explicitly ban and criminalize so-called "conversion therapy" practices, recognizing them as human rights violations, and implement measures to monitor and prosecute individuals or institutions involved in promoting or carrying out conversion therapy.
4. Reform the legal gender recognition process and ensure it aligns with international human rights standards, eliminate abusive and discriminatory requirements such as unnecessary medical procedures and forced sterilization, and allowing individuals to change their gender marker without unnecessary preconditions.
5. Ensure Privacy and Dignity in Legal Gender Recognition by respecting the right to privacy and dignity in the legal gender recognition process, refraining from unnecessary disclosure of personal information.
6. Develop and enact comprehensive anti-discrimination legislation that explicitly prohibits discrimination on all grounds, including gender identity and expression, and providing penalties in the case of violation as well as accessible remedies and reparation for victims.
7. Collaborate with relevant stakeholders, including civil society organizations, to ensure the comprehensive and effective implementation of anti-discrimination laws, and promote awareness and sensitivity training for educational and workplace communities to prevent discrimination and bias.