

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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Indonesia: Criminalization of consensual intimacy or sexual activity for unmarried couples in Aceh must end

Amnesty International and the Institute for Criminal Justice Reform (ICJR) are seriously concerned about the Aceh Islamic Criminal Code (*Qanun Jinayat*), which came into effect in the province a year ago. The code criminalizes consensual sexual relations and extends the use of caning as a punishment. Our organizations call on the Indonesian authorities to adhere to their international human rights obligations to end the use of caning as a form of punishment, as well as repeal the provisions of the Aceh Islamic Criminal Code that violate international law.

The 2014 bylaw introduced as criminal offences consensual intimacy or sexual activity for unmarried couples, consensual sex outside marriage and same-sex sexual relations. In some cases, the law provides for up to 200 lashes as a punishment.

On 17 October, seven men and six women were caned between nine and twenty-five times at Al Ikhlas Mosque in Gampong Keuramat village, Kuta Alam sub-district, in the Banda Aceh province of Indonesia for violating the Islamic bylaw prohibiting being alone with someone of the opposite sex who is not a marriage partner or relative (*khalwat*), and committing sexual intimacy outside marriage (*ikhtilath*). A pregnant woman who was sentenced to caning will not receive her punishment until after she has given birth to her child. Our organizations urge authorities in Aceh to quash her conviction and sentence immediately.

Caning contravenes Indonesia's Constitution and is in clear violation of international human rights law and standards. It constitutes as a cruel, inhuman and degrading punishment and can amount to torture in violation of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), and the International Covenant on Civil and Political Rights (ICCPR), to which Indonesia is a State Party.

Amnesty International and ICJR are also concerned with the authorities' over-emphasis on enacting punishments and making a 'moral' example of offenders through public caning. Caning can harm the physical and mental health, cause long-term pain or lead to permanent injuries. Canings in Aceh are always carried out in public, drawing large crowds

and media attention. Those subject to such punishment may also experience psychological distress from pain, fear and humiliation. Authorities in Aceh and Indonesia must take practical steps to put an end to corporal punishment and to repeal provisions of Acehnese bylaw, permitting its use in the penal system.

Further, consensual sexual relationships must not be treated as a criminal offence nor are a crime against 'morality'. The UN Human Rights Committee and other expert human rights bodies have raised concerns about laws criminalizing 'adultery' or other consensual sexual relations outside marriage, because they violate the right to privacy. Our organizations call for authorities in Indonesia to repeal provisions criminalizing consensual sex and intimacy outside marriage.

Background

The Aceh Islamic Criminal Code, a provincial bylaw based on Shari'a (Islamic law), was passed by the Aceh parliament (DPRA) on 27 September 2014 and entered into force on 23 October 2015. It includes caning of up to 100 lashes as a punishment for same-sex sexual relations, premarital sex and other sexual relations outside marriage ("adultery" or *zina*), consumption of alcohol (*khamar*), gambling (*maisir*), "being alone with someone of the opposite sex who is not a marriage partner or relative" (*khalwat*), committing sexual intimacy outside marriage (*ikhtilath*), sexual abuse, rape, accusing a person of adultery without providing four witnesses, and intimacy between unmarried couples.

Aceh province is the only Indonesian province that enforces Shari'a law. In 2016 alone, have been at least 100 cases of caning carried out in 2016. At the end of 2015, there had been at least 108 cases. The Aceh Islamic Criminal Code applies only to Muslims in Aceh province, however, non-Muslims can also be convicted for offences in the bylaw not currently covered within the Indonesian Criminal Code. In April 2016, a Christian woman in Aceh was caned 28 times for selling alcohol – the first non-Muslim punished by caning under Shari'a law.

In 2013, the Human Rights Committee, the expert body which monitors states' compliance with the International Covenant on Civil and Political Rights (ICCPR), called on Indonesia to take practical steps to put an end to corporal punishment and to repeal the provisions of the Acehnese law permitting its use in the penal system.

