

AMNESTY INTERNATIONAL PUBLIC STATEMENT

Index: ASA 21/6279/2017
17 May 2017

Indonesia: Revoke conviction and caning sentence for gay men in Aceh

Amnesty International urges the authorities in Aceh to immediately revoke the conviction and sentence of 85 lashes to two gay men convicted of consensual same-sex sexual relations (*liwath*) by the Shari'a court. This is the first case of conviction for consensual same-sex sexual relations, criminalised under the Aceh Criminal Code (*Qanun Jinayat*), which came into effect in October 2015.

The two men were subjects of an ambush by their neighbors who stormed into their home, filmed them and handed them over to the Shari'a police. Subsequently, the Aceh Shari'a police who immediately arrested and detained the pair. Amnesty International call for the police to investigate the vigilante acts committed by the mob against the two men.

On 17 May 2017 the Banda Aceh Shari'a Court sentenced the two men to 85 lashes each for committing "same-sex sexual relations (*liwath*)". The prosecutor announced that the pair would be caned before the Islamic fasting month, Ramadan, which will begin on 26 May, although the pair can still appeal the decision to the Banda Aceh High Court.

Under international human rights law, the use of caning as a punishment constitutes cruel, inhuman and degrading punishment and may amount to torture. Victims of caning experience pain, fear and humiliation, and caning can cause long-term or permanent injuries. The right to be free from torture and other cruel, inhuman or degrading or treatment punishment is guaranteed in the Indonesian Constitution (Article 28G) as well the Law No.39/1999 on Human Rights (Article 33). All forms of corporal punishment violate 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), which Indonesia ratified in 1998 and 2006, respectively.

In 2008, the UN Committee against Torture, the expert body which monitors states' compliance with the UNCAT, called on Indonesia to review all national and local legislation that authorizes the use of corporal punishment as criminal sanctions, with a view to the immediate abolition of such punishments. In 2013, the Human Rights Committee, which has the same function for the ICCPR, called on Indonesia to take practical steps to put an end to corporal punishment and to repeal the provisions of the Acehese law permitting its use.

Further, laws criminalizing consensual sexual activity contravene international human rights law and standards. 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 human rights to privacy, non-discrimination and others rights, and should be repealed.

These provisions under Aceh Islamic Code also contravene the 2005 MOU Helsinki agreement which ended the conflict in Aceh, and which provides that the legal code for Aceh will be based on "universal principles of human rights as provided for in the UN ICCPR" (Article 1.4.2).

Background

The Aceh Islamic Criminal Code was passed by the Aceh parliament (DPRA) in 2014 and came into effect throughout Aceh Province on 23 October 2015. Shari'a bylaws have been in force in Aceh since the enactment of the province's Special Autonomy Law in 2001, and are enforced by Islamic courts. These laws expanded the range of offences where caning could be imposed, in some cases providing for up to 200 lashes as punishment. Punishable offences include consensual intimacy or sexual activity for unmarried couples, consensual sex outside marriage, same-sex sexual relations, the consumption and sale of alcohol, and gambling. The Aceh Criminal Code applies to both Muslims and non-Muslims; it includes offences, which are not treated as crimes under the Indonesian Criminal Code (KUHP). Under international human rights law, all forms of corporal punishment are prohibited – they constitute cruel, inhuman or degrading punishment and often torture.

Canings are regularly carried out in public spaces drawing large crowds where people take photographs and video which can add to the humiliation and long-term suffering of those who are subjected to this cruel, painful, and degrading punishment.

In 2015, at least 108 people were caned in Aceh while in 2016 at least 100 people were caned. The law was applied to non-Muslims for the first time in April 2016 when a Christian woman received 28 strokes of the cane for selling alcohol.