

URGENT ACTION

SHARI'A BYLAW PASSED BY THE ACEH PARLIAMENT

The Aceh parliament has passed a Shari'a bylaw that would criminalize, among other things, same-sex sexual relations and consensual sex outside marriage, punishable by caning. The governor of Aceh and central government have powers to block its implementation.

The Aceh Islamic Criminal Code, a provincial bylaw based on Shari'a (Islamic law), was passed by the Aceh parliament on 27 September. It includes caning of up to 100 lashes as a punishment for same-sex sexual relations and for premarital sex and other sexual relations outside marriage ("adultery"). Other offences in the bylaw punishable by caning include consumption of alcohol, gambling, "being alone with someone of the opposite sex who is not a marriage partner or relative" (*khalwat*), sexual abuse, rape, accusing a person of adultery without providing four witnesses and intimacy between unmarried couples. There are also concerns that evidentiary procedures related to rape and sexual abuse in the bylaw do not meet international standards. The Aceh Islamic Criminal Code will apply to Muslims in Aceh province while non-Muslims could also be convicted for offences in the bylaw not currently covered by the Indonesian Criminal Code.

The bylaw can only be submitted to Indonesia's central government if the Aceh governor signs-off on it. Under current legislation, the central government has 60 days after receiving the bylaw to call for revisions to provisions in it or strike down the law if it violates the Indonesian Constitution or other national laws.

Caning is a form of cruel, inhuman and degrading punishment, prohibited under international law in particular Article 7 of the International Covenant on Civil and Political Rights and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Indonesia is a state party.

Please write immediately in Indonesian, English or your own language:

- Urging the authorities to repeal or revise provisions of the bylaw which violate human rights;
- Expressing concern that the bylaw would violate Indonesia's international human rights obligations, particularly by providing for caning, which is a cruel, inhuman and degrading punishment, and by criminalizing consensual sexual relations in violation of the rights to privacy and non-discrimination;
- Calling on authorities both at Aceh and national level to undertake a review of all local regulations that have been put in place in the last decade in Aceh, to ensure that they are in full conformity with international human rights law and standards, as well as with human rights provisions set out in Indonesia's Constitution and the 1999 Law on Human Rights.

PLEASE SEND APPEALS BEFORE 14 NOVEMBER 2014 TO:

Governor of Aceh

Zaini Abdullah
Office of the Governor of Aceh
Jln. T. Nyak Arief No. 219, Banda Aceh
Indonesia 23121
Fax: +62 651 32386
Email: pengelola@acehprov.go.id
Salutation: Dear Governor

Director General of Regional Autonomy

Djohermansyah Djohan
Ministry of Home Affairs
Jl. Medan Merdeka Utara No.7
Jakarta Pusat 10110, Indonesia
Fax: +62 21 385 1193
Email: sapa@kemendagri.go.id
Salutation: Dear Director General

And copies to:

Director General for Human Rights
Harkristuti Harkrisnowo
Ministry of Law and Human Rights
Jl. H.R. Rasuna Said Kav No. 4-5
Kuningan, Jakarta Selatan 12950,
Indonesia
Fax: +62 215 253095
Email: rohumas@kemenkumham.go.id

Also send copies to diplomatic representatives accredited to your country. Please insert local diplomatic addresses below:

Name Address 1 Address 2 Address 3 Fax Fax number Email Email address Salutation Salutation

Please check with your section office if sending appeals after the above date. This is the first update of UA 238/14. Further information:

<http://www.amnesty.org/en/library/info/ASA21/028/2014/en>

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ADDITIONAL INFORMATION

As part of the decentralization process which started in 1999–2000, and special autonomy packages for certain provinces in Indonesia, there has been an increase in locally enacted bylaws and regulations on a number of issues, such as health, education and family affairs. At the same time, local and provincial government authorities in many parts of Indonesia have used these powers to legislate regulations and bylaws that discriminate against women and religious minorities. Aceh's provincial legislature passed a series of bylaws governing the implementation of Shari'a law after the enactment of the province's Special Autonomy Law in 2001.

In 2009, the Aceh parliament ((Dewan Perwakilan Rakyat Aceh, DPRA) passed the Aceh Islamic Criminal Code which provided for stoning to death for "adultery" and caning of up to 100 lashes for same-sex sexual relations and premarital sex. However, the Aceh Governor refused to approve this code and it was not implemented, in part because of intense criticism at local, national, and international levels. The stoning sentence which was initially included in the revision of the code has since been removed. However the bylaw continues to impose caning as a form of punishment.

The UN Human Rights Committee and the UN Committee against Torture have both explicitly called on states to abolish caning and other forms of corporal punishment. Specifically, in 2008 the Committee against Torture 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 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. In addition to violating international law, caning is contrary to the human rights provisions set out in the Indonesian Constitution and in the country's 1999 Law on Human Rights.

The UN Human Rights Committee has repeatedly called for the repeal of laws criminalizing consensual same-sex sexual relations which violate the right to privacy and the right to non-discrimination. Similarly the UN Human Rights Committee and other expert human rights bodies have raised concern about laws criminalizing "adultery" or other consensual sexual relations outside marriage not only because they violate the right to privacy but also because they are discriminatory, having a disproportionate impact on women.

Further, the human rights obligations of the Indonesian authorities apply to Indonesian laws and practices at whatever level – national, regional or local – and the central government must ensure that human rights are respected in all its provinces and autonomous regions whatever the internal governance arrangements. Under international law, states may not invoke the provisions of internal law as justification for their failure to comply with their international human rights obligations.