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HRW – Human Rights Watch

Malaysia: Two Women Face Caning for Same-Sex Conduct

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Criminalizing LGBT Relations Fosters Intolerance, Discrimination

(Bangkok) – Malaysian (<https://www.hrw.org/asia/malaysia>) authorities should drop the case against two women for same-sex relations before their scheduled caning on August 28, 2018, Human Rights Watch said today. A court convicted the two on August 12 of violating a state Shariah law that criminalizes sex between women and sentenced each to six strokes of the cane and an RM 3,300 (US\$800) fine.

The Malaysian government should ban the punishment of caning, which constitutes torture under international human rights law.

“The scheduled caning of two women is the latest blow to Malaysia’s LGBT community, which had hoped for better protection under the country’s new government,” said Graeme Reid (<https://www.hrw.org/about/people/graeme-reid>), director of the lesbian, gay, bisexual, and transgender (LGBT) rights program. “This prosecution and punishment will only fuel the recent wave of homophobia and transphobia in Malaysia.”

Under Malaysia’s Constitution, each state is empowered to enact laws governing offenses by Muslims against Islamic precepts. The state of Terengganu, like most states in Malaysia, has outlawed sexual relations between women, or *musahaqah*. Local media quoted the prosecutor in the case (<https://www.malaysiakini.com/news/438890>) as saying this will be the first time women have been caned for same-sex relations in the state.

Caning is considered cruel and inhuman punishment under international law and should be abolished, Human Rights Watch said. The criminalization of sexual relations between women also violates Malaysia’s obligations under the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which Malaysia ratified in 1995. At the conclusion of Malaysia’s most recent CEDAW review in March 2018, the CEDAW Committee called on Malaysia (https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?

symbolno=CEDAW/C/MYS/CO/3-5&Lang=En) to “amend all laws which discriminate against LGBTI women, including the provisions of the Penal Code and Syariah laws that criminalise same-sex relations between women and cross-dressing,” and “to prohibit the whipping of women as a form of punishment.”

The case comes at a time when the new government’s position on the rights of LGBT people in Malaysia is under intense scrutiny. On August 8, the government minister for religious affairs ordered the removal of portraits (<https://www.malaysiakini.com/news/437956>) of a transgender rights activist and an LGBT rights activist from a display of photographs of Malaysians at the Georgetown Festival, citing the government’s policy of “not promoting LGBT rights.” Deputy Minister in the Prime Minister’s Department Fuziah Salleh defended the action (<http://says.com/my/news/kuantan-mp-people-don-t-want-lgbts-to-be-role-models-for-their-children>) by saying LGBT people are unwanted as “role models for their children.” A mufti, or Islamic law jurist, from Penang, likened LGBT activism (<https://www.malaysiakini.com/news/438315>) to fighting “for the freedom of animals.”

In addition to the discriminatory state Shariah (Islamic) laws, section 377A of the federal penal code, a British colonial relic (<https://www.hrw.org/report/2008/12/17/alien-legacy/origins-sodomy-laws-british-colonialism>), outlaws “carnal intercourse against the order of nature,” defined as oral or anal intercourse between a man and another person of any sex, punishable by up to twenty years in jail and a whipping. Section 377D of the penal code also outlaws “any act of gross indecency with another person” – historically intended to refer to same-sex conduct – punishable by up to two years in prison.

“Malaysia’s new government should stand against discrimination and brutality and foster a culture of tolerance and equality,” Reid said. “As part of that effort, it should seek to abolish all laws against same-sex conduct and end the cruel practice of caning once and for all.”

ecoi.net summary:

Court has convicted 2 women to caning and a fine for same-sex relations



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