Indonesia

Policing Morality

Abuses in the Application of Sharia in Aceh, Indonesia

HUMAN RIGHTS WATCH

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Glossary

Adat: A customary legal system in Indonesia consisting of a largely uncodified body of rules. In Aceh, these are understood to correspond closely with Sharia principles but can vary between communities. Community leaders enforce *adat* in traditional dispute resolution procedures

Aurat: literally, "nakedness"; refers to parts of the body that certain Muslims believe should be covered in public. In Aceh, for men, often from the knee to navel, and for women, the entire body with the exception of the hands, feet, and face

Dewan Perwakilan Rakyat Aceh (DPRA): Aceh's provincial legislature

Dinas Syariat Islam: Office of Sharia Islam, an official government institution in Aceh with offices at the provincial and district/municipality level

Gerakan Aceh Merdeka (GAM): Free Aceh Movement

Jilbab: an Islamic headscarf

Jinayah/Jinayat: Islamic criminal law

Khalwat: literally, "seclusion"; in Qanun 14/2003, defined as occurring when two mature people of different sexes who are not married and are not related by blood are together in an isolated place. The common English transcription from Arabic for this term is *khalwa*; however, this report reflects the Bahasa Indonesia transcription, which is *khalwat*

Komnas Perempuan: Indonesia's National Commission on Violence against Women

Law on the Governing of Aceh (LoGA): national law implemented in 2006; intended to reflect the terms of the August 2005 Memorandum of Understanding signed in Helsinki, Finland, that ended the decades-long conflict between GAM and the Indonesian government

Mesum: literally, "indecency"; interpreted by the WH to mean intimate proximity falling short of sexual activity by a man and a woman who are not related or married to one another

Meunasah: a small mosque used by a neighborhood or village

Mushollah: an Islamic chapel in which members of communities pray and, in Aceh, often hold village-level deliberations and meetings.

Qanun: literally, "law"; a term derived from Arabic used in Aceh to refer to all local laws enacted by provincial, district, or municipal administrations, whether or not they implement Sharia

Razia: "raid" or "sweeping"; a term used by the Wilayatul Hisbah (Sharia police) to describe their enforcement activities, including establishing checkpoints to monitor community observance of the Islamic attire requirement and responding to community reports of Sharia violations

Satuan Polisi Pamong Praja (Satpol-PP): municipal police; district and municipal governments in Indonesia are permitted to form these forces, which are separate from the national police, to enforce local administrative regulations concerning public order and security. The Wilayatul Hisbah is a part of this force in Aceh

Seclusion: see definition of *khalwat*, above

Sharia: literally, the "way" or "path"; a set of standards governing all aspects of life, derived primarily from the *Quran*, the central religious text of Islam, and the *hadiths*, a collection of sayings and descriptions of the *sunna*, or exemplary and normative conduct, of the Prophet Muhammad

Transgender people: people whose gender identity or gender expression differs from the physical characteristics (or "sex") of their body at birth. Gender describes the social and cultural meanings attached to ideas of "masculinity" and "femininity," and is separate from biological sex, the classification of bodies as male or female on the basis of biological factors, including hormones, chromosomes, and sex organs

Village: in Aceh, *gampong*; the lowest administrative unit within the Indonesian governance system. Most Acehnese villages have populations of less than 1,000 people. Every village is led by a village head (in Aceh, *keucik*) who is selected by the community and officially appointed to head the *gampong* administration. Each *gampong* consists of several "neighborhoods" (in Aceh, *dusun*), each of which is led by a neighborhood head (*kadus*)

Village council: in Aceh, *tuhapeut*; a village-level body, independent of the *keucik*, that functions as the primary deliberative body for the village. Where *tuhapeut* exist, their responsibilities may include reaching *adat* determinations and referring proposed decisions to the *keucik* for consideration

Wilayatul Hisbah (WH): Sharia police

Ulama: men of Islamic learning

Map of Aceh


Map of Aceh
The locations marked on this map are where Sharia enforcement actions discussed in the report occurred
Banda Aceh
Darusalaam
ANDAMAN SEA
Aceh Besar
Strait of Malacca
Aceh Barat (West Aceh)
ACEH
Langsa
Meulaboh
SUMATERA UTARA
(NORTH SUMATRA)
INDIAN OCEAN
Simeulue
Tuangku
CAMBODIA
VIETNAM
THAILAND
PHILIPPINES
BRUNEI
PACIFIC OCEAN
MALAYSIA
Sumatra
INDONESIA
Moluccas
West Papua
Papua
Sulawesi
Jakarta
Java
EAST TIMOR
Timor
INDIAN OCEAN
0
50
100 km
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I. Summary

My mom came to get me [from the Sharia police office] at 7 a.m. I was crying. The head lecturer at my campus, Doni, was there to lecture me. A Sharia police officer told him that I had been caught [on an isolated road on a motorcycle with my boyfriend]. He told my mom and me that I should be buried and stoned to death. I said, "Sir, I was only trying to look for a shortcut, and I should be stoned for that? What about the officers who raped me last night?"
– Nita, 20, apprehended by the Sharia police (Wilayatul Hisbah, WH) in January 2010 for the crime of "seclusion" and then raped while in WH custody.

The police didn't question anyone that night about what happened to Budi, even though he had a broken rib, cigarette burns on his body, a black and blue face, and split, bleeding lips…. The government has to make sure this won't happen again to other people.
– Rohani, witness to the 2009 beating of her 17 year-old-daughter Sri's 21-year-old boyfriend Budi by members of her community who believed that Sri and Budi had committed "seclusion" inside Rohani's home.

I said, "It's my choice to wear the veil–it's my business with God." The [WH officer's] answer was, "No, there is a rule in Islam that regulates it." Then they gave back my ID card, and told me that if I did the same thing three times I would be whipped…. I might want to use a veil, but not because I'm forced by the WH, because I want to.
– Dewi, stopped by the WH for violating the Islamic attire requirement in May 2010.

Aceh, alone among Indonesia's provinces, has been authorized by national law to implement local Sharia laws derived from the primary religious sources of Islam. In its ideal form, supporters say, Sharia is a complete system of guidance on all matters in life, one that promotes charity, social welfare, and communal harmony. As applied in Aceh, however, two Sharia-inspired laws are denying many people—predominantly the poor, women, and youth—the right to make personal decisions central to the conduct of their lives and the expression of their faith, identity, and morals.

Aceh's provincial parliament to date has adopted five Sharia-inspired criminal laws on issues ranging from charitable giving, to gambling, to regulation of Islamic ritual and proper Muslim behavior. Human Rights Watch takes no position on Sharia law or on provisions that regulate the internal workings of Islam. We are concerned, however, that two of the laws—one prohibiting unmarried individuals of different sexes from being together in certain circumstances, the other imposing public dress requirements on Muslims—violate Indonesia's constitutional protections for basic rights as well as international human rights law which Indonesia has accepted as legally binding.

Our research builds on prior work by Indonesia's National Commission on Violence against Women, Komnas Perempuan, which has repeatedly warned that the way Sharia is implemented in Aceh facilitates a range of abuses.

The two criminal laws that are the focus of this report are being enforced primarily by special municipal Sharia police known as Wilayatul Hisbah (WH), a force numbering approximately 6,300 across Aceh, and by neighbors and community members, who are empowered to act against suspected violators by provisions of the relevant laws. The laws on their face are inconsistent with human rights law and are too often being implemented in an abusive fashion, with some suspects violently assaulted and their homes forcibly broken into by vigilante groups with no meaningful police response.

Law against *Khalwat* (Seclusion)

In Aceh today, it is a crime for two mature people of different sexes who are not married or related by blood to be together in an isolated place. Such unlawful proximity is banned by Aceh's *khalwat* (*mesum*) law (literally "seclusion (indecency)" law; hereafter, "Seclusion Law"). Violations are punishable by caning and/or a fine of up to 10 million Rp (US$1,116).

While many people in Aceh believe the Seclusion Law prohibits only adultery, an interpretation bolstered by the governor's insistence that only adultery should be prosecuted, the law is broadly worded and repeatedly has been applied to a much wider range of behavior. Indeed, Wilayatul Hisbah officers have interpreted the law so broadly as to prohibit merely sitting and talking in a "quiet" space with a member of the opposite sex to whom one is not married or related, regardless of whether there is evidence of intimacy. Many of the most serious abuses under the Seclusion Law documented by Human Rights Watch occurred during the period when individuals were initially detained. In a particularly egregious case, WH officers detained Nita, 20, overnight in Langsa on suspicion of "seclusion" after they found her and her boyfriend on a motorbike on an isolated road; during her detention, a number of WH officers

aggressively interrogated her and three of them raped her. The head of the local WH force subsequently was replaced and two of the WH officers accused of the rape were tried, convicted, and sentenced to prison. While it is commendable that the rape was investigated and prosecuted, authorities have not taken additional steps to curb the practices that lead to the detention of people like Nita in the first place.

In the course of their investigations, WH officials say, they sometimes force women and girls to submit to virginity exams, and in some cases, condition suspects' release on their agreement to marry. Both practices violate international human rights law.

According to WH officials, the majority of those apprehended and detained on suspicion of "seclusion" are never formally charged with an offense, let alone prosecuted in the Sharia court system. Rather, the WH relinquish suspects to the custody of family members, often in exchange for a signed apology from the detained individual, a signed guarantee from a family member that he or she will ensure that the suspect will not commit wrongdoing again, and occasionally payment. The head of WH in Aceh, Marzuki Abdullah, told Human Rights Watch that many of the individuals detained for "seclusion" are minors. This too is inconsistent with human rights law, which enshrines the principle that children should be detained "only as a measure of last resort."

There is also evidence the law is selectively enforced: many Acehnese we spoke with said the law is rarely if ever applied to politically well-connected individuals. One woman told Human Rights Watch that the head of the WH force, Marzuki, told her relative that if she had made it clear to WH officers who approached her that she had a connection to him, she would not have been arrested. She said, "The law discriminates—if you have connections to people in power, you get released." Other people complained that police and military officials are exempt from the Sharia provisions. Some suggested that the WH target the poor, noting that the Sharia police rarely if ever conduct raids at restaurants, coffee shops, and places of recreation frequented by the affluent.

In many instances, WH officers hand over suspects to national police. The staff of a sub-district police station in Banda Aceh told Human Rights Watch that they take custody of people apprehended on suspicion of "seclusion" from the municipal WH around five or six times a month. Human Rights Watch spoke to three women who said they or their close family members were detained overnight by the police, along with their male acquaintances, after they were accused of "seclusion" and reported to the police.

As noted above, Aceh's Sharia provisions explicitly call for community participation in the enforcement of the Seclusion Law. Another local law requires law enforcement officers to defer to the authority of village-level customary dispute resolution practices for the resolution of "seclusion" accusations and cases of minor assault and other crimes. The result is that communities enforce the law by identifying, apprehending, and punishing suspected violators on their own initiative. A number of high-level public officials in Aceh, including Aceh's Vice-Governor, Muhammad Nazar, and the head of the WH, Marzuki Abdullah, have spoken out publicly against the use of such violence. Yet the police are admittedly unwilling to take steps to apprehend and prosecute the perpetrators of such abuses, citing difficulties in dealing with mass crimes.

In several cases investigated by Human Rights Watch, community members determined that people were guilty of "seclusion" pursuant to arbitrary standards. In some of those cases, the community subjected the accused to violent and humiliating treatment during the apprehension process. Later, some of those accused were required to pay restitution or other penalties determined by traditional leaders in processes lacking any semblance of due process. Restitution can include forced marriage, expulsion from the village, and arbitrary fines.

One woman, Rohani, described a 2009 incident in which her 17-year-old daughter Sri's boyfriend Budi came to her home to talk with Sri late in the evening. Rohani and her younger daughter were also at home. When Budi tried to leave the house an hour later, members of the community apprehended him believing he had committed "seclusion." They beat him and took him to the local *meunasah* (prayer space), where around 50 men continued to beat him and burned him with cigarettes while other men summoned Rohani and Sri to join them. Community members tried to compel Budi and Sri to marry, but Rohani refused to allow it on the grounds that her daughter was still in high school and needed to complete her studies. When the village head called the Sharia police and regular police, they detained Budi and Sri overnight for investigation. Later, members of the community informed Rohani that they had determined that she would have to pay a penalty in the form of goods to the community as a punishment for her daughter's offense. Rohani paid the punishment, but no one in the community was held accountable by the police or community leaders for assaulting Budi.

WH officers also actively encourage communities to identify alleged violators of the law and to report them to the authorities. Rosmiati described how police detained her and a male friend, Nurdin, overnight after members of her friend's community accused them of "seclusion." Rosmiati had gone into Nurdin's house for 20 minutes to deliver books in the early evening. She told Human Rights Watch, "Even though we were fully clothed, they treated us like we were doing something wrong. We didn't do anything, but they took the law into their hands."

Some people told Human Rights Watch their communities establish curfews after which time it is considered conclusive proof of "seclusion" for one to be found alone with a person of the opposite sex to whom one is not married or related. The combination of such rules and law enforcement practices facilitates arbitrary arrests and detention.

People accused of "seclusion," whether apprehended by WH, police, or members of their own community experienced a variety of negative social, personal, and professional consequences following their release, including severe stigmatization, expulsion from academic programs, and pressure to restrict their professional or personal conduct. This stigmatization particularly affects women. Fatimah, 37, who was detained by the Banda Aceh WH for several hours and then released described how this seemingly minor incident gave rise to serious detrimental effects on her personal and professional life, saying, "It ruined my reputation even though I hadn't done anything bad.... My family members were angry ... I lost many friends. Since that time, I've quit working on the project [that brought me to Banda Aceh]."

Islamic Dress Requirements

Another Acehnese law requires that all Muslims in Aceh wear Islamic attire, defined as clothing that covers the *aurat* (for men, the area of the body from the knee to navel, and for women, the entire body with the exception of the hands, feet, and face), that is not transparent, and that does not reveal the shape of the body. In practice, this means that Muslim women are required to wear the *jilbab* (Islamic headscarf) in public at all times and are prohibited from wearing clothing that reveals the shape of the body. While the law applies to both men and women, it places far more stringent restrictions on women than it does on men and has a discriminatory impact. Not surprisingly, women constitute the overwhelming majority of those reprimanded pursuant to the law.

Implementation of the dress law is also often arbitrary. Human Rights Watch spoke to several women in Aceh who were stopped by the WH during patrols or at public roadblocks established to monitor public compliance with the Islamic dress code. The WH stopped women they believed were wearing clothing that did not meet the standard for Islamic attire. The WH recorded their personal details, informed them that their clothing was inappropriate, lectured them, and threatened them with detention or lashing if they repeated their behavior. According to Erni, a woman stopped and lectured at a WH checkpoint in May 2010, "The [WH officer] told us to wear skirts and never to wear pants. But then a woman WH officer said I could wear pants, but if I did, my shirt had to be below my knee. I don't know what is acceptable."

Several women told us the law is particularly likely to be used against the poor, noting that WH officers do not stop passengers traveling in cars, an indicator of wealth, at their dress code checkpoints, and focus their attention only on those Acehnese traveling on motorbikes or using public transportation.

Transgender women in Aceh are vulnerable to being targeted by the WH for failing to meet their expectations regarding proper gender expression and identity. A transgender woman told Human Rights Watch how the WH detained her and another transgender woman, ostensibly for failing to wear Islamic attire, despite the fact that one was wearing women's clothing that conformed to the law and the other was wearing men's clothing that conformed to the law.

The Status of the Laws Today

The future of Aceh's "seclusion" and Muslim dress laws is uncertain. Governor Irwandi and the newly seated Partai Aceh parliamentary majority are not viewed as proponents of the laws and favor a more toned down approach to enforcement. The governor, for example, has expressed his view that police should "only take action against those who truly commit adultery." At the same time, however, two new, more stringent Sharia-inspired criminal laws were passed by Aceh's outgoing parliament in 2009. One contains a host of additional Sharia offenses accompanied by stricter penalties, including lashing for homosexual conduct and adultery by unmarried persons and death by stoning for adultery by married persons; the other would expand the powers of the Sharia police, including by permitting pretrial detention of suspected Sharia offenders. Supporters of the laws continue to press for their implementation, but to date, the stricter laws have not taken effect. Governor Irwandi takes the position that the draft laws have no effect without his signature, and to date, he has refused to sign them into law. Governor Irwandi has said that the legislature must present revised drafts of the laws before they can be considered again, and as current parliamentary leaders do not support key aspects of the earlier drafts, they have yet to propose revised versions for renewed consideration.

However, the existing broadly worded "seclusion" and dress laws continue to be enforced. While anecdotal evidence suggests that the number of people publicly caned for violations has declined significantly since election of Governor Irwandi in 2007, the public canings have not ceased entirely. And statistics show that, overall, enforcement of the Seclusion Law and Muslim dress law have remained at their 2007 levels, with more than 800 Seclusion Law violations recorded by the WH in 2009 alone.

District governments in Aceh, which can implement Sharia laws, have also attempted to implement tougher standards on personal conduct and appearance they claim are derived from Sharia. In July 2010, the West Aceh district government implemented a law on Islamic attire that regulates acceptable clothing for Muslims with even greater specificity than the provincial-level law; the district government has also authorized the local WH force to require women wearing pants that do not conform with the regulation to immediately change into a government-issued skirt. The local government claims to have purchased 20,000 such skirts in an effort to facilitate the implementation of the law, and WH officers began distributing them in May 2010, even before the local regulation entered into effect.

Aceh's Sharia regime appears to be influencing other government officials in Indonesia; a 2009 report by Indonesia's National Commission on Violence against Women found that a number of local governments throughout the country had looked to Aceh's laws in implementing dress and conduct regulations purportedly based on Islam which impermissibly restricted women's rights.

Official Justifications for the "Seclusion" and Muslim Dress Laws

Qanun 14/2003 states that the purpose of the law is to enforce Sharia and custom in Aceh, to protect the public from actions that "damage their honor and dignity," to prevent community members from committing adultery and the like at an early stage, to "enhance community participation in preventing and combating 'seclusion,'" and to prevent the moral degradation of the people.

Despite these clearly articulated objectives, both the Seclusion Law and dress requirements run afoul of well-established international human rights law. The Human Rights Committee, the body charged with interpreting the International Covenant on Civil and Political Rights (ICCPR), which Indonesia has ratified, has determined that consensual association—of a sexual nature or otherwise—between adults in private constitutes a protected aspect of the right to privacy.

Human rights law also guarantees the right to freely manifest one's religious beliefs and the right to freedom of expression. Any limitations on these rights must be directed to a legitimate aim, applied in a non-arbitrary and non-discriminatory manner, and the extent and impact of any limitation must be strictly proportionate to meeting that aim. While the protection of public safety and morals are legitimate government aims, Aceh's ban on "seclusion" is unnecessary to achieve these aims and is a disproportionate response to the perceived problems it is intended to address. Banning all private association between

unmarried, unrelated men and women severely restricts the exercise of men's and women's rights to autonomy and expression and gives rise to lasting negative effects for those accused of violating it, and particularly for women, who suffer enduring stigmatization by their communities as a result of the law.

Aceh's requirement that all Muslims wear Islamic clothing also violate individuals' rights to personal autonomy, expression, and to freedom of religion, thought, and conscience. While the requirement is ostensibly designed in part to protect women against vigilante violence from those who seek to impose Sharia, it is both an unnecessary and a disproportionate response to such acts of violence. Officials in Aceh presented no evidence that forcing women to wear a veil and clothing that hides the shape of their bodies is capable of achieving the aim of reducing or eliminating violence against women. Moreover, in fulfilling its duties to protect individuals from violence and in particular to prevent violence against women, the state should be targeting the offending behavior of the perpetrators of the violence, not denying fundamental rights of the victims of violence.

Government officials in Aceh and experts on Islamic law in Aceh to whom Human Rights Watch spoke had varying opinions on the human rights issues associated with the implementation of Sharia law identified in this report. Those who defended the laws on "seclusion" and Islamic dress argued that they constitute permissible restrictions on the human rights of people in Aceh because they are intended to uphold public morality. They also argued that implementation of the laws contribute to public safety by reducing the level of vigilante violence occurring in communities, which every observer to whom Human Rights Watch spoke acknowledged to be a problem. Other authorities, however, told Human Rights Watch they believed that the laws may be exacerbating, rather than combating, the problem of vigilante violence in Aceh. One stated that the abuses committed by the WH force suggest that it should be deployed for some purpose other than implementing criminal laws derived from Sharia.

Methodology

This report is based on Human Rights Watch research in Banda Aceh, Bireuen, Lhokseumawe, Langsa, and Meulaboh, in Aceh and Jakarta in April and May 2010 and follow-up desk and telephone research through September 2010. Human Rights Watch conducted in-depth interviews with more than 90 people, including 11 women and one transgender woman who faced abuses in the enforcement of Sharia and five women, three men, and one transgender woman who witnessed such abuses. We spoke with three men who participated in one or more episodes in which community members apprehended people suspected of "seclusion," five witnesses of such incidents, and four women who were the victims of such incidents.

Human Rights Watch also spoke with five representatives of international organizations that work in Aceh in Banda Aceh and in Jakarta, 32 local civil society activists, and an additional 33 individuals, including 29 women and four transgender women, about their opinions regarding the implementation of Sharia law in Aceh. We distributed a detailed questionnaire via email and with the assistance of civil society activists in Aceh on personal opinions and experiences regarding the implementation of Sharia law and received 48 responses.

Human Rights Watch conducted interviews with four police officials in Banda Aceh and Meulaboh and two officials at the provincial-level Office of Sharia Islam. We also spoke with the vice governor of Aceh, the speaker of Aceh's provincial parliament, and two Islamic scholars at IAIN Al-Raniry Islamic State University.

Interviews were conducted in English or Indonesian through an interpreter. Victims and eyewitnesses were identified through media reports and with the assistance of NGO and civil society representatives. The names and in some cases identifying details of those with whom we met have been withheld to protect their safety. We use pseudonyms throughout for all victims of human rights abuse mentioned in the report as well as a WH officer, a police officer, and perpetrators of vigilante violence who asked us to withhold their names, fearing repercussions for sharing information with us. All those interviewed were informed of the purpose of the interview, its voluntary nature, and the ways in which the information would be used. All interviewees provided oral consent to be interviewed. All were told that they could decline to answer questions or could end the interview at any time. None were compensated.

Other sources we consulted included government documents, laws, and policies, NGO reports, news articles from Acehnese, Indonesian, and international media sources, and Sharia court decisions and summonses.

For statistics on the number of Sharia enforcement actions in the recent past we have relied on figures provided by the provincial municipal police office in Aceh (Satuan Polisi Pamong Praja-Wilayatul Hisbah, Satpol PP-WH), of which the WH force is one component. However, while the Satpol PP-WH office compiled statistics regarding the number of "violations" of Sharia law recorded in each of Aceh's 24 districts in 2009, the data does not include figures from six of those jurisdictions and the statistics do not indicate what constitutes a "violation" for purposes of the record. The data similarly does not account for the Sharia enforcement activities of the national police in Aceh or for situations where "seclusion" accusations were resolved by village authorities according to customary procedures.

Human Rights Watch believes that there are many more cases of abusive implementation of Aceh's Sharia-inspired laws than documented in this report. Due to the sensitivity of the issue and severe stigmatization that alleged violators of the laws face, people are reluctant to speak out about their experiences, especially to strangers. Some women told Human Rights Watch that they had gone to great lengths to prevent others from finding out about the accusations against them. This reluctance to speak openly about the laws and their enforcement extends beyond immediate victims of the laws to civil society activists, several of whom told Human Rights Watch that, when they speak out, they too face stigmatization and public denunciation as "traitors" to their religion and Acehnese identity.

II. Background

> *Sharia, our religion, has been mixed with politics. This is the root of the problem. For 29 years, Aceh did not have any law–no law, no order. Here, you can do whatever you want. You want to kill, you want to beat, you want to rob, you want to burn the house? Ok! No law, no question, no problem. Who did what? Forget it…. So then the people said, "Give us law." It's not simply because we believe that our way of being should be according to Sharia. Sharia has been here for hundreds of years … even our local custom and tradition has been taken from the Sharia. This is simply, how to have positive law working, in us, among us, within us.*
>
> – Prof. Yusni Sabi, former rector, IAIN Al-Raniry Islamic State University, Aceh

The Indonesian province of Aceh, sometimes referred to as "Mecca's Verandah," is widely considered the place where Islam first entered Southeast Asia. Located on the northwest tip of the island of Sumatra, Aceh was a natural landing place for Islamic traders traveling the Strait of Malacca. By 800 A.D. their faith had taken hold within the region. Islam later spread throughout much of Indonesia and eventually became the dominant religion in what is today the world's fourth most populous country. While there is diversity of faith in Aceh as in other regions, strong belief in Islam remains an important aspect of identity for many Acehnese.

The relationship between Islam and the state has played a significant role in armed conflict in Aceh over the last 60 years. In the 1950s, Acehnese religious leaders led by *ulama* including Teungku M. Daud Beureueh fought the central government in an effort to establish an Islamic state as part of a broader rebellion in Indonesia known as the *Dar-ul Islam* (House of Islam) revolt.[1] The conflict concluded in Aceh in 1962 when the Indonesian government granted the province concessions including "broad autonomy" in the areas of religion and custom and the right to establish Sharia courts that handled family law and civil law disputes.[2]

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[1] The *Dar-ul Islam* movement was founded in 1942 in West Java by Muslim fighters seeking to establish an independent state based on Islamic law, and eventually became comprised of groups from locations including Aceh, South Sulawesi, South Kalimantan, and Central Java. Initially, these forces aligned with those fighting in favor of Indonesia's independence from the Dutch. Following the formation of the Indonesian Republic in 1945, President Sukarno constituted Indonesia as a secular state, and various factions of the *Dar-ul Islam* movement took up arms against the new central government in the *Dar-ul Islam* revolt. The various regional groups comprising the movement were gradually suppressed by the government from 1957-1965.

[2] See International Crisis Group, "Islamic Law and Criminal Justice in Aceh," Crisis Group Asia Report N°117, July 31, 2006, p. 3. Edward Aspinall, *Islam and Nation: Separatist Rebellion in Aceh, Indonesia* (2009), p. 33.

In 1976, a new separatist movement, the Free Aceh Movement (Gerakan Aceh Merdeka, GAM), began to challenge Jakarta's claim to control of the province. GAM leaders were primarily concerned with the exploitation of Aceh's wealth and natural resources by the central government, but they initially invoked the same aspirations to establish an Islamic state as their *Dar-ul Islam* predecessors.[3] At first, Indonesian forces suppressed the movement, but in 1990 Indonesian President Suharto declared Aceh an area of military operations (*daerah operasi militer* or DOM) and launched a counterinsurgency campaign that would endure until 1998, during which the military committed human rights abuses on a wide scale.[4] GAM forces also committed serious human rights abuses, including extrajudicial executions of suspected "informants."[5]

Upon President Suharto's resignation in May 1998, civil society groups in Aceh mobilized rapidly, demanding that the Indonesian government address human rights violations committed during the previous decade.[6] In early 1999, Acehnese student activists launched a province-wide campaign calling for a referendum on independence from Indonesia. In response, in September 1999, Indonesian legislators enacted a law on the Special Status of the Province of Aceh. Although it was not something GAM representatives or student activists had prioritized, the law included a provision giving Acehnese authorities the right to implement Sharia, defined as "guidance on Islamic teachings in all aspects of life."[7]

In 2001, Indonesia's legislature, with the support of presidents Abdurrahman Wahid and his successor, Megawati Sukarnoputri, enacted Law No. 18/2001 which outlined "Special Autonomy" for Aceh.[8] In part, it permitted Aceh to implement Sharia as a formal legal system, establish a Sharia court system, and articulate rules in the form of local regulations, known

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[3] Edward Aspinall, *Islam and Nation: Separatist Rebellion in Aceh, Indonesia* (2009), p. 199.

[4] At least one thousand Acehnese were killed by the army or were declared missing and later found dead, tens of thousands of Acehnese were imprisoned and tortured in military camps, and rape was reportedly widespread. Human Rights Watch, *Indonesia: The War in Aceh*, Vol. 13, No. 4 (C) August 2001, http://www.hrw.org/reports/2001/aceh/indaceho801-02.htm#TopOfPage (accessed August 31, 2010).

[5] Human Rights Watch, *Indonesia: Why Aceh is Exploding*, Press Backgrounder, August 27, 1999 http://www.hrw.org/campaigns/indonesia/aceho827.htm (accessed August 31, 2010).

[6] Government officials formally ended DOM and issued public apologies to the Acehnese people, but military officers were not tried for past abuses, and military activity against GAM, accompanied by an increase in the human rights violations, continued. Ibid.

[7] Law 44/1999. Aspinall, pp. 146, 209. (tuntunan ajaran Islam dalam semua aspek kehidupan).

[8] Law No. 18/2001 on the Exclusive Autonomy for the Special Province of Aceh as Nanggroe Aceh Darussalam Province. On file with Human Rights Watch.

in Aceh as *qanuns*.[9] The Indonesian government's call for the implementation of Sharia in Aceh was supported in part by representatives of Islamic political parties at the national level who believed that the conflict in Aceh was a response to President Suharto's insistence on secular nationalism, but it was not uniformly welcomed in Aceh.[10] Indonesian authorities also supported the implementation of Sharia as part of a calculated political strategy to bolster support for the government among the Acehnese people, weakening support for secular GAM.[11]

Sharia Law and the Approach of the Aceh *Qanuns*

In Islam, Sharia (the "way" or "path") is often described as a comprehensive set of standards governing all aspects of life from religious observance, to banking, to proper social conduct, derived primarily from the *Quran*, the central religious text of Islam, and the *hadiths*, a collection of sayings and descriptions of the *sunna*, or exemplary and normative conduct, of the Prophet Muhammad. But there is no single interpretation of Sharia among Muslims worldwide; vast differences exist in the interpretations of Islamic jurists regarding which prophetic examples are authentic and the validity or appropriateness of applying certain passages verbatim to the modern era. Beginning in 1999, the Indonesian and Acehnese governments adopted an approach to Sharia implementation emphasizing the state's responsibility for ensuring that individuals fulfill religious obligations derived from Islam.[12]

Following the promulgation of Law 44/1999, Aceh's governor began to issue limited Sharia-based regulations, for example requiring female government employees to wear Islamic dress.[13] These regulations were not enforced by the provincial government,[14] but as early as April 1999, reports emerged that groups of men in Aceh were engaging in vigilante violence in an effort to impose Sharia, for example, by conducting "*jilbab* [veil] raids," subjecting women who were not wearing Islamic headscarves to verbal abuse, cutting their hair or

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[9] Ibid., art. 25. The law gave Aceh 70 percent of revenues from oil and natural gas production in the province and gave the provincial government increased authority over security matters. *Qanuns* were to be "based on Sharia Islam within the system of national law," (didasarkan atas syariat Islam dalam sistem hukum nasional).

[10] Michelle Ann Miller, *Rebellion and Reform in Indonesia: Jakarta's Security and Autonomy Policies in Aceh* (2009) p. 52; Aspinall, p. 211.

[11] Aspinall, p. 211.

[12] Islam in Aceh is predominately Sunni (Sunnah wal Jamaah), and particularly follows the Shafi'i doctrine (one of the four major schools of Islamic jurisprudence, the others being Hanafi, Hanbali, and Maliki).

[13] Regional Regulation No.451.1/21249 (enacted September 6, 1999, entered into force September 23, 1999). Miller, p. 54.

[14] International Crisis Group, "Aceh: Can Autonomy Stem the Conflict?," ICG Asia Report N°18, June 27,2001, p. 10. See also Perda 5/2000 on The Implementation of Islamic Sharia. Apparently this perda was not enforced as a result of lack of funding. Ibid.

clothes, and committing other acts of violence against them.[15] The frequency of these and other attacks on individuals considered to be violating Sharia principles appeared to increase following the enactment of Law 44/1999 and the governor's Sharia regulations.[16]

Upon the enactment of the Special Autonomy Law in 2001, Aceh's provincial legislature (Dewan Perwakilan Rakyat Aceh, DPRA) enacted a series of *qanuns* ("local laws," an Arabic term which is used to characterize all local laws enacted in Aceh, not merely those implementing Sharia) governing the implementation of Sharia. Five *qanuns* enacted between 2002 and 2004 contained criminal penalties for violations of Sharia: Qanun 11/2002 on Sharia in the aspects of "belief, ritual, and promoting Islam," which contains the Islamic attire requirement; Qanun 12/2003 prohibiting the consumption and sale of alcohol; Qanun 13/2003 prohibiting gambling; Qanun 14/2003 prohibiting "seclusion"; and Qanun 7/2004 on the payment of Islamic alms. The regulations include a number of features distinguishing them from criminal laws applied elsewhere in Indonesia. With the exception of gambling, none of the offenses are prohibited outside of Aceh. Responsibility for enforcement of the *qanuns* rests both with the National Police and with a special Sharia police force unique to Aceh, known as the Wilayatul Hisbah (WH, "Sharia Authority"). All of the *qanuns* provide for penalties including fines, imprisonment, and caning, the latter a punishment unknown in most parts of Indonesia.[17]

GAM's Reaction to the Implementation of Sharia Law

While the broader population of Aceh appeared supportive of the introduction of Sharia law,[18] GAM representatives initially strongly criticized it, calling it a "trick" intended to mislead the Acehnese people and religious authorities into supporting the Jakarta-backed government.[19] GAM leaders argued that Jakarta's Sharia proposal failed to address the central justifications for GAM's rebellion: that the government was using Sharia to

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[15] Miller p. 55. National Commission on Violence against Women (Komnas Perempuan), *Violence Mapping: Indonesian Women's Experiences* (Jakarta: 2002), p. 239 (citing a 2000 report that 40 women had become victims of violent "veil sweeps" conducted by groups of local youths who cut their hair, poured paint on them, and sexually harassed them).

[16] Miller, p. 55.

[17] Qanun 14/2003 on "Seclusion" authorizes caning between 3-9 lashes, and/or a fine between 2.5 to 10 million rupiah. Art. 22(1). Caning is also authorized as a punishment for crimes such as adultery and gambling in Bulukumba regency, South Sulawesi Province, although it does not appear that the punishment has been implemented frequently. Andi Hajramurni, "Makassar's 'sharia' bylaws see a decline in enforcement effort," *The Jakarta Post*, August 31, 2010.

[18] ICG, "Islamic Law and Criminal Justice in Aceh," p. 4.

[19] Aspinall, 213 (citing Serambi Indonesia, December 14, 2000 and March 25, 2002). While GAM's membership was Muslim, by the 1990s the movement had ceased to explicitly advocate for the implementation of Islamic law, calling instead for independence and an end to human rights abuses by the Indonesian military and declining to specify the legal system that GAM would support in a sovereign Aceh. Damien Kingsbury, *Peace in Aceh: A Personal Account of the Helsinki Peace Process* (2006), p. 182.

undermine international support for GAM by suggesting that GAM's leaders were radical Muslims who demanded such a concession; and that Jakarta had no right to dictate the means of adherence to Islam to the Acehnese people.[20] GAM opposed the enactment of Sharia laws by the provincial legislature, and in 2002, as police prepared to begin enforcing the requirement that Muslims wear Islamic clothing, GAM issued a statement condemning the effort.[21] Yet military and central government representatives continued to encourage the implementation of Sharia,[22] and Aceh's governor formally created the WH force in 2004 by decree.[23] Thereafter officers began to "inform and guide" suspected Sharia violators, issuing verbal warnings to those who supposedly broke the laws, but not formally investigating, charging, or recommending offenders for prosecution before the Sharia court.

Resolution of the Conflict in Aceh and Post-War Sharia Implementation

Following the collapse of a five-month ceasefire in May 2003, President Megawati placed Aceh under martial law and authorized full-scale military operations which persisted until May 2004.[24] A powerful tsunami struck Aceh on December 26, 2004, killing over 130,000 people in Aceh alone and leaving immense physical destruction in its wake.[25] Within a month, representatives of GAM and the Indonesian government, now led by President Susilo Bambang Yudhoyono, began a series of peace negotiations that would lead to the August 2005 signing of a Memorandum of Understanding (MoU) in Helsinki, Finland, that ended the decades-long conflict. The terms of the Helsinki MoU were implemented into national law in the 2006 Law on the Governing of Aceh (LoGA).[26]

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[20] Aspinall, pp. 213-215.

[21] GAM Central Bureau for Information 2002, in Aspinall at 215 ("[GAM] has always maintained that Achehnese do not need any outsiders to teach us about Islam or to implement any law, even the so-called syariah, to force us to adhere to our religion…. As far as [GAM] is concerned, although we agree that women and men dress modestly, we don't consider it is a matter for the State to dictate.").

[22] ICG "Islamic Law and Criminal Justice in Aceh," (2006) p. 5. The military reportedly constructed Office of Sharia Islam bureaus in those areas most affected by the conflict.

[23] Governor's Decree 1/2004 on the Establishment and Functions of the WH. See UNDP Indonesia, "Access to Justice in Aceh," pp. 48-49.

[24] During that time, Human Rights Watch documented widespread human rights violations by Indonesian security forces. These included extra-judicial executions, forced disappearances, beatings, arbitrary arrests and detentions, and drastic limits on freedom of movement. Human Rights Watch, *Aceh at War: Torture, Ill-Treatment, and Unfair Trials* , September 26, 2004, http://www.hrw.org/en/node/11979/section/5 (accessed August 31, 2010). Thereafter, the situation was downgraded to a "civil emergency."

[25] Kingsbury, *Peace in Aceh*, p. 20.

[26] Unlike the Helsinki MOU, which permitted Aceh to draft a new legal code based on international human rights treaties, the LOGA permitted the implementation of Sharia without reference to international human rights. Law 11/2006, arts. 127., 244. Helsinki MOU (August 15, 2005), art. 1.4.2, reprinted in Kingsbury, *Peace in Aceh*, p. 199-208.

Both the resolution of the long conflict between the central government and GAM, and the dislocation and massive humanitarian relief effort that followed the tsunami brought significant changes to Acehnese society. The end of the conflict enabled significantly greater freedom of movement for people of all ages and an end to restrictions on information coming in and out of the province. Some observers have suggested that this sudden lifting of restrictions on information and news from Jakarta and the rest of the world, exacerbated by the sudden influx of foreign aid workers, significantly liberalized the outlook of some in Aceh, particularly the young.[27] The increased emphasis on the implementation of Sharia that followed was perceived to be the result of a backlash to the sudden influx of outside—particularly Western–influences in post-conflict, post-tsunami Aceh.[28] Indeed, even as the Helsinki peace negotiations were taking place, WH officers moved from merely "advising" suspected violators about the requirements of the Sharia *qanuns* to investigating and formally prosecuting violators.[29] Between mid-2005 and early 2007, at least 135 people were caned in Aceh for transgressing the *qanuns*.[30]

In December 2006, Irwandi Yusuf, a former GAM military spokesman running for governor as an independent candidate, won Aceh's first post-war gubernatorial election after publicly criticizing the manner in which Sharia was being implemented in the province.[31] Rather than proposing fundamental reforms to the existing Sharia system, however, Irwandi adopted a strategy of deemphasizing Sharia in favor of economic development.[32] Over the course of the first two years of Irwandi's term, no new criminal Sharia offenses were implemented in Aceh, and the number of individuals subjected to caning decreased significantly.[33] However,

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[27] Orlando Guzman, "Indonesia: After the Wave," *Frontline World*, June 26, 2007, http://www.pbs.org/frontlineworld/stories/indonesia605/reporters_diary.html (accessed August 31, 2010) ("For years Aceh was closed to the rest of the world, and teenagers were best kept inside at night because of the fighting. With peace has come a more liberal, carefree atmosphere, and Acehnese youth are embracing this. Young Acehnese now have boyfriends and girlfriends, and they are ditching their headscarves in favor of global popular fashion.").

[28] Eliza Griswold, *The Tenth Parallel* (2010), pp. 193-94.

[29] Bill Guerin, "Flogging for Islamic law," *Asia Times*, Hong Kong, 30 June 2005. On June 24, 2005 in Bireuen district, fifteen men convicted of violating the Qanun on gambling were lashed between six and ten times each in Aceh's first public caning. The men were convicted of placing RP. 1,000 ($0.10) bets on a game at a party.

[30] Fabio Scarpello, "Rebel-led democracy for Indonesia's Aceh," *Asia Times*, February 3, 2007, http://www.atimes.com/atimes/Southeast_Asia/IB10Ae02.html.

[31] Stephen Fitzpatrick, "Hope for moderate in Aceh," *The Australian*, December 9, 2006 (Irwandi stated in part, "This is not real Sharia law. Sharia should not be about seeing what people are doing wrong, but about increasing the prosperity of the people.").

[32] In March 2008, Irwandi stated, "In my opinion, opinions on Sharia should not be dominated by these three issues [alcohol, gambling, and *khalwat*. … [W]e would do better to focus more on the economy. So, education, health and economy are all tied together, and I will focus on these issues." Riyadi Suparno, "Central government must allow Aceh to sustain hard-won peace," *The Jakarta Post*, March 3, 2008, http://www.thejakartapost.com/news/2008/03/03/central-government-must-allow-aceh-sustain-hardwon-peace.html.

[33] Human Rights Watch Interview with NGO activists in Aceh, Banda Aceh, May 9, 2010. One activist suggested that low levels of caning were also a result, not of reluctance on the part of the governor to implement the law, but rather of the confusion as to whether funding the execution of caning sentences is the responsibility of the provincial government or of the district

caning has not ceased entirely in Aceh; on August 6, 2010, a man and a woman were caned for violating the law prohibiting "seclusion" and three men were caned for gambling in Pidie Jaya district's first-ever caning.[34] Elsewhere in Aceh, the WH has conducted Sharia enforcement activities–*razias (raids),* patrols, and response to community reports of violations—at a steady rate since 2007.

In April 2009, Partai Aceh, a political party founded by former GAM combatants, won control of the DPRA in Aceh's first post-war legislative elections. In September 2009, one month before the new legislators were to take office, the outgoing DPRA unanimously endorsed two new *qanuns* that aim to supersede and significantly expand the existing criminal Sharia framework in Aceh.[35] One bill, the Qanun on Criminal Procedure (Qanun Hukum Jinayat), would create an entirely new procedural code for the enforcement of Sharia law by police (including WH), prosecutors, and courts in Aceh.[36] The other bill, the Qanun on Criminal Law (Qanun Jinayat), would consolidate and expand the body of criminal Sharia law in Aceh. It reiterates the existing criminal Sharia prohibitions, at times enhancing their penalties,[37] and a host of new criminal offenses, including *ikhtilat* (intimacy or mixing),[38] *zina* (adultery, defined as willing intercourse by people not married to one another), sexual harassment, rape, and homosexual conduct.[39] The law would also authorize extraordinarily harsh punishments, including up to 60 lashes for "intimacy," up to 100 lashes for engaging in homosexual conduct, up to 100 lashes for adultery by unmarried persons, and death by stoning for adultery by a married person.[40]

Governor Irwandi's office and new DPRA speaker Hasbi Abdullah refused to accept the implementation of the Qanun on Criminal Law without revisions to the stoning article.[41] As

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government in which the sentence is to be carried out. The activist also noted that Sharia prosecutors have had difficulty in locating and compelling persons found guilty of violating Sharia provisions to appear before the Sharia Court and agree to submit to caning following conviction and sentencing.

[34] Nurdin Hasan, "Shariah Police in Aceh Cane 5 for Adultery, Gambling," *The Jakarta Globe* , August 7, 2010.

[35] All were representatives of national political parties elected during the conflict in 2004.

[36] Draft Qanun Hukum Jinayat (2009). On file with Human Rights Watch. Presently, all law enforcement officials in Aceh must adhere to the National Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana, KUHAP).

[37] For example, under Qanun 11/2003, gambling is punishable with up to a maximum of 12 lashes. Under the draft Qanun Jinayat, gambling can be punished with up to 60 lashes. Qanun 12/2003, art. 23(1); draft Qanun Jinayat (2009), art. 17.

[38] Defined as hugging, holding hands, or kissing, by unmarried people. The offense is punishable with up to 60 lashes, 60 months' imprisonment, or a fine of 600 grams of gold. Draft Qanun Jinayat, arts. 1(17)-(18), 22.

[39] Ibid. arts. 1(20), 24; arts. 1(21), 27; arts. 1(24), 29. arts. 1(22)-(23), 33. Marital rape is excluded from the definition of rape.

[40] "Indonesia: New Aceh Law Imposes Torture," Human Rights Watch news release, October 11, 2009, http://www.hrw.org/en/news/2009/10/11/indonesia-new-aceh-law-imposes-torture (accessed August 31, 2010).

[41] Hamid Zein, the head of the legal bureau of the Aceh governor's office, stated, "As long as the executive and legislative bodies do not settle differences in the application of [capital punishment by] stoning, the Aceh government will not sign the

Abdullah put it: "[w]e don't want Aceh to be regarded as a place that is not friendly to the international community and lax on upholding human rights."[42] Disagreeing over an ambiguous provision of the LoGA, Governor Irwandi claimed that the laws cannot enter into effect without his signature, while some DRPA members claimed that the laws would automatically enter into effect 30 days after their approval by parliament, with or without Irwandi's approval.[43]

To date, Irwandi's interpretation of the LoGA appears to have prevailed, and as a result of his refusal to endorse the 2009 *qanuns*, neither one has been implemented by authorities on the ground in Aceh. Some government officials, including at the Office of Sharia Islam and at the provincial headquarters of the police, told Human Rights Watch that they had pushed the governor to negotiate revisions to the laws with the DRPA to facilitate their implementation. However, as of the date of publication, the governor's office did not appear to have acted on those officials' recommendations, and the head of the DPRA, Hasbi Abdullah, told Human Rights Watch in May 2010 that legislators were not prioritizing the revision of either law.[44]

In a 2009 report, Indonesia's National Commission on Violence against Women, Komnas Perempuan, noted that other regions of Indonesia appear to have drawn inspiration from Aceh in enacting local Sharia-inspired regulations that discriminate against women.[45] The report identified over 150 existing local regulations that referred to Sharia as the source of their legitimacy, 63 of which discriminate against women, including 21 which implement a Muslim dress code in certain contexts and a number of laws that, while purporting to combat prostitution, restrict all women's freedom of movement.[46]

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bylaw." "Aceh government rejects Shariah bylaw," *Fridae.com*, September 22, 2009. http://www.fridae.com/newsfeatures/2009/09/22/8985.aceh-government-rejects-Shariah-bylaw (accessed August 31, 2010).

[42] "New Aceh council to rethink controversial stoning bylaw," The Jakarta Post, October 22, 2009, http://www.thejakartapost.com/news/2009/10/22/new-aceh-council-rethink-controversial-stoning-bylaw.html (accessed August 31, 2010).

[43] The relevant provision of the LoGA to this dispute is article 234(1), which states "In the event that a draft qanun that has been jointly agreed by the DPRA and the Governor…is not ratified by the Governor… within 30 (thirty) days of the draft qanun having been agreed, the draft qanun shall become a valid qanun and must be promulgated through publication in the Aceh Regional Gazette…." Governor Irwandi has relied on the phrase "jointly agreed" in claiming that the DPRA was required to obtain his approval regarding the draft Qanun Jinayat and Qanun Hukum Jinayat in order for them to be eligible for automatic entry into force 30 days after their endorsement by the DPRA. Law No. 11/2006 on the Governing of Aceh (LoGA), art. 234(1).

[44] Human Rights Watch interview with Hasbi Abdullah, chairman, DPRA, Banda Aceh, May 21, 2010.

[45] Komnas Perempuan, *In the Name of Regional Autonomy: The Institutionalisation of Discrimination in Indonesia* (2009), section 3.2. On file with Human Rights Watch. See also The Global Campaign to Stop Killing and Stoning Women and Women Living Under Muslim Laws (WLUML), "West Aceh, Indonesia: New regulation forbidding the wearing of 'tight clothing' by women may be open to abuse," June 7, 2010, http://www.wluml.org/node/6380 (accessed August 31, 2010).

[46] Ibid.

III. Sharia Enforcement in Aceh

National police are empowered to enforce all laws in Aceh, including provincial and district laws and regulations, but the principal enforcers of Aceh's Sharia-inspired criminal laws are municipal police (Satuan Polisi Pamong Praja, Satpol-PP), particularly the Wilayatul Hisbah (WH). As detailed below, private citizens also play a direct role in enforcing the Sharia-inspired laws, a role expressly provided for in those laws.

The role of the Wilayatul Hisbah

The governor and the heads of districts and municipalities in Aceh, like other administrative entities in Indonesia, can form municipal police forces to enforce regulations related to "public order and community tranquility."[47] The Law on the Governing of Aceh (LoGA) specifically authorizes Aceh's provincial and local governments to form WH units with responsibility for implementing Sharia law as components of their municipal police forces.[48] Other municipal force officers occasionally conduct joint patrols and operations with their WH counterparts.

Marzuki Abdullah, the head of the WH police force in Aceh, told Indonesian media sources in August 2010 that the force was made up of 6,300 officers—male and female—across Aceh.[49] WH officers are deployed at the provincial level as well as at the district/municipality levels. Bustami, a WH officer who began training in January 2010, told Human Rights Watch that the force is made up of officers hired under contract and a number of "volunteers," who do not receive a salary but who go through the same hiring process as contract workers.[50] When Bustami met Human Rights Watch in May 2010 he was in the process of undergoing training on how to arrest and interact with people. He said his recruitment consisted of a physical test, a urine test, and an assessment to evaluate his ability to read certain Islamic texts and his understanding of Islamic law (*fiqh*).[51]

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[47] Art. 244(1). A number of district and municipal governments throughout Indonesia have established Satpol-PP *Satuan* forces. They are separate from the police and are empowered to enforce administrative regulations concerning public order and security and are generally used to collect local taxes and to enforce local public order ordinances. Human Rights Watch has documented the use of excessive force by Jakarta's Satpol-PP force in evicting residents of urban slums. Human Rights Watch, *Condemned Communities* , September 5, 2006, http://www.hrw.org/en/node/11220/section/4#_ftn39 (accessed August 30, 2010).

[48] Art 244(2). Although Aceh's WH force was initially established under the authority of the Office of Sharia Islam, it was later merged with the *Satuan Polisi Pamong Praja* (Satpol-PP, Municipal Police Unit).

[49] Human Rights Watch interview with Marzuki Abdullah, head of the WH in Aceh, Banda Aceh, May 19, 2010.

[50] Human Rights Watch interview with "Bustami," Banda Aceh, May 17, 2010. One civil society activist in Banda Aceh told Human Rights Watch that a WH officer had confirmed to her that he was paid approximately 1.2 million Rp (US$134) per month.

[51] Ibid.

All WH officers have the power to "rebuke and advise, warn, and provide moral guidance" to people they suspect of violating Sharia law in Aceh, to inform appropriate authorities about possible violations of Sharia law, and to facilitate the settlement of Sharia violations through customary law (*adat)* processes. WH officers who have been appointed civil service investigators (Penyidik Pegawai Negeri Sipil, or PPNS) have the added power to arrest and detain people accused of committing certain Sharia offenses, including "seclusion," for up to 24 hours and to carry out police-style investigations into allegations of Sharia offenses, including soliciting testimony from witnesses and ordering forensic medical exams. In January 2010, the head of the Office of Sharia Islam, which oversees Islamic law in Aceh and the drafting of Sharia *qanuns*, stated that prior to April 2009, at least 50 WH members had been appointed as civil service investigators and had received additional training from the Ministry of Home Affairs in Jakarta.[52]

The LoGA, Aceh's qanuns, and the local regulation creating the WH all describe the powers of the WH differently. Governor's decree 1/2004, which officially established the WH, outlines the WH's role as a source of guidance and spiritual advocacy for the people of Aceh.[53] Qanun 11/2002, which contains Islamic dress requirements, authorizes the WH to "rebuke and advise" offenders where there are "reasonable grounds" to suspect they have breached the law.[54] The law does not give WH officers power to arrest suspects, instead directing them to hand offenders over either to national police officers or civil service investigators if their behavior does not change.[55] Qanun 14/2003 on "seclusion" explicitly states that police officers are permitted to arrest, detain, and seize suspected violators.[56] It also authorizes civil service investigators to conduct investigations under the coordination of police investigators, and states that WH officers can be appointed civil service investigators, clearly contemplating a role for WH officers in arrest and detention of suspects.[57] Qanun 14/2003 does not indicate

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[52] "Kasus Oknum WH Tamparan Bagi Penegak Hukum," Serambi Indonesia, January 21, 2010. The officers had received recommendations from the WH and the Government of Aceh and had received training from the Ministry of Home Affairs in Jakarta. See also Qanun PPNS Dibahas, Nov. 24, 2009.

[53] This includes informing the public of Qanun relating to Sharia law; monitoring compliance of Sharia law; rebuking, warning, and providing moral guidance to those suspected of violating Sharia law; trying to stop activities/conduct suspected of violating Sharia law; settling violations through customary (*adat*) processes; and transferring violations of Sharia law to criminal investigators. UNDP, "Access to Justice in Aceh," p. 48-50.

[54] Art. 1(11).

[55] Art. 14.

[56] As well as to receive reports of violations, take action at the scene of an offense, tell someone to stop and request identification, inspect and seize documents, take fingerprints and photographs, and summon people as suspects or witnesses.

[57] Qanun 14/2003, art. 18; art. 1(11). The National Police are to facilitate the provision, training, and development of Civil Servant investigators. Arts. 133-134. Under the LOGA, civil service employees in Aceh are a unit of the national civil service corps, (art. 118). The governor recommends the desired composition of civil service employees for approval through the Minister of Home Affairs to the Minister for Utilization of State Apparatus (art. 121). See also LoGA, art. 245 (also stating that WH officers can be appointed Civil Servant Investigators).

the basis on which arrests for "seclusion" are to be made or how long suspected violators can be detained in the absence of judicial authorization.

In May 2010, WH head Marzuki and Aceh Vice-Governor Mohammad Nazar confirmed to Human Rights Watch that the force has interpreted these laws to authorize WH investigators to arrest and detain individuals suspected of "seclusion" for up to 24 hours, to conduct an investigation, and to provide violators with guidance about Islamic law.[58] The 2009 Qanun on Criminal Procedure, adopted by Aceh's provincial parliament but not yet implemented at this writing, states that investigators can arrest anyone suspected of having committed any criminal act (including misdemeanors) for investigation for up to 24 hours, explicitly authorizing this interpretation of the relevant laws.[59]

Human Rights Watch acquired enforcement data from 2009 for WH forces serving 18 of Aceh's 23 local government jurisdictions. The data show that of the five Sharia qanuns which contain criminal penalties, the WH's enforcement efforts center on two: Qanun 14/2003 on Khalwat (mesum) (literally, "Seclusion (indecency)") and Qanun 11/2002, titled "The Implementation of Islamic Sharia in the Aspects of Aqidah (Theology), Ibadah (Rituals) and Syiar Islam (Islamic Festivals)." The latter contains a number of Sharia obligations, requiring Muslims to refrain from disseminating deviant teachings, to attend Friday prayers, to observe the fast during Ramadan, to refrain from providing Muslims with an opportunity to break the fast during Ramadan, and to wear Islamic clothing.[60] Of the 3,701 Sharia violations recorded by the WH in 2009, 2,689 involved Qanun 11/2002, and 836 involved Qanun 14/2003.[61]

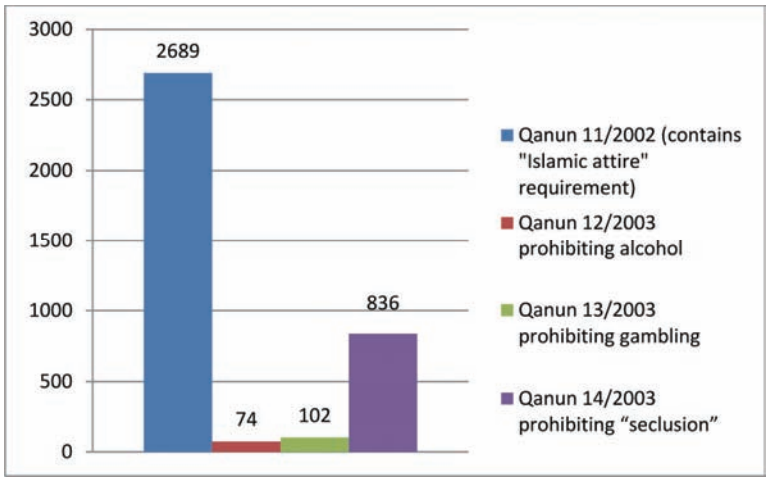
[58] Human Rights Watch interview with Marzuki Abdullah, head of the WH in Aceh, Banda Aceh, May 19, 2010; Human Rights Watch interview with Mohammad Nazar, Vice Governor of Aceh, Banda Aceh, May 18, 2010.

[59] Qanun Hukum Jinayat, arts. 15-18. Arrests are to be carried out with an arrest warrant unless perpetrators are caught in the act.

[60] Art 13(1).

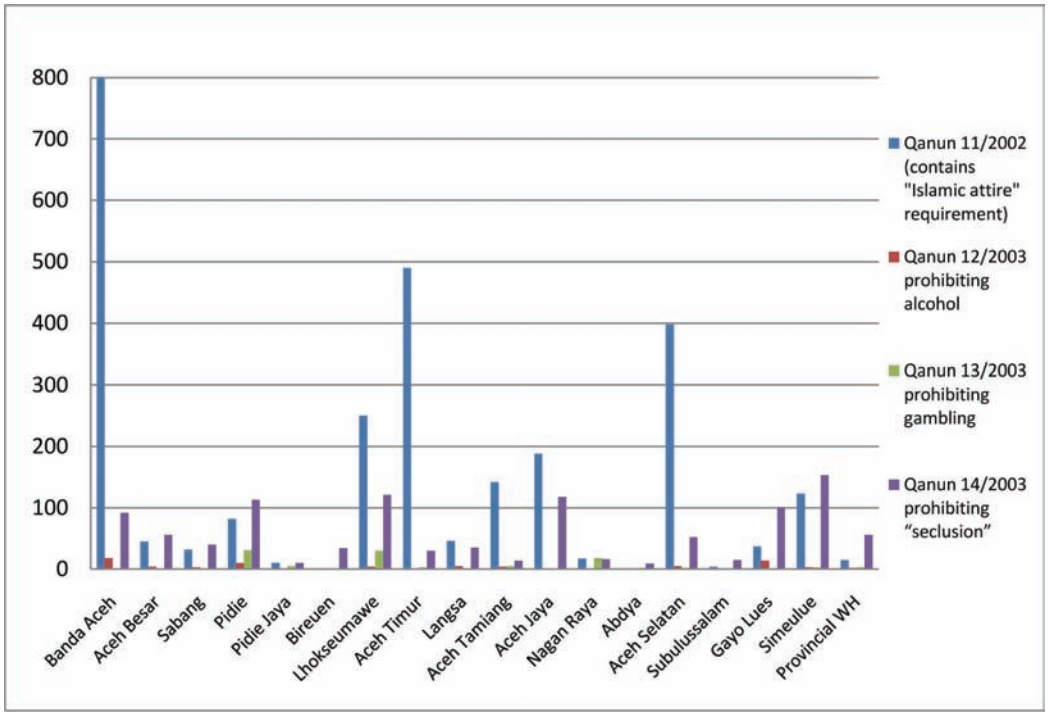
[61] Satpol PP-WH Aceh, "Report of Data on Breaches of Sharia Laws in the Province in Aceh in 2009, on file with Human Rights Watch.

Sharia Violations Recorded by the WH in 2009[62]



In Banda Aceh, the capital, WH officers have enforced Sharia law at a consistent rate since Governor Irwandi came to power in 2007—they recorded a total of 992 Sharia violations in 2007, a total of 894 violations in 2008, and a total of 920 violations in 2009.[63] While Banda Aceh's enforcement levels are the highest in the province, the municipality is hardly alone in implementing the laws.

Sharia violations recorded by the WH in 2009 (by District/Municipality)[64]



The WH recorded a total of 836 violations of the prohibition against "seclusion" across Aceh in 2009. Those areas with the most violations include the city of Lhokseumawe, the districts of Pidie and Gayo Lues, and Banda Aceh. Anecdotal evidence suggests that the number of people apprehended by members of the WH and police may be much higher.

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[62] Ibid.

[63] "Ada 920 Pelanggar Syriat Islam di Aceh," *Serambi Indonesia*, Jan. 4, 2010.

[64] Satpol PP-WH Aceh, "Report of Data on Breaches of Sharia Laws in the Province in Aceh in 2009." On file with Human Rights Watch.

Community Participation in Sharia Enforcement and Traditional Dispute Resolution

The WH is not the only institution responsible for implementing Sharia in Aceh. In addition to the WH and police, communities are encouraged to implement the prohibition against seclusion and to resolve allegations of seclusion in *adat* (customary law) dispute resolution mechanisms. The Sharia legal system overlaps closely with Aceh's *adat* legal system. *Adat* is a largely uncodified body of rules which can vary from community to community and which community leaders enforce in traditional dispute resolution procedures. *Adat* customs and standards in Aceh are heavily influenced by Islam and are understood to correspond closely with Sharia principles.[65] The *adat* system plays a significant role in the resolution of disputes affecting the daily lives of many Acehnese people.[66]

Qanun 14/2003 states that communities are to participate in the enforcement of the prohibition against "seclusion" and provides that they should submit offenders that they catch "red-handed" to the appropriate authorities.[67] Additionally, Qanun 9/2008 on *Adat* Life and Guidance states that WH and national police officers are obligated to defer to village level authorities both where individuals are accused of committing "seclusion" and where violence occurs in their apprehension,[68] and authorizes *adat* bodies to impose sanctions on violators, including monetary damages and expulsion or ostracism from the village.[69]

[65] Qanun No. 7/2000 defines adat as "rules or actions based on Islamic Sharia that have long been generally followed, respected and honored, and that form the foundation of life."

[66] UNDP, "Access to Justice in Aceh," p. 49 ("adat continues to be the justice system upon which Acehnese predominately rely for resolution of their grievances.").

[67] Arts. 8(1)-(2) and 9.

[68] Art. 13.

[69] Art. 16.

IV. Four Illustrative Cases

Sri and Budi[70]

Rohani, a civil servant, told Human Rights Watch about an October 2009 incident in which authorities apprehended her 17 year-old daughter, Sri, and Sri's 20 year-old boyfriend, Budi, on suspicion of seclusion.

On that night, Budi visited Rohani's house to talk with Sri at 10 p.m., "My daughter was home, but I was also home and so was Sri's little sister. Sri let Budi go into her bedroom because it was late, but they were just chatting." When Budi attempted to leave the house at 11 p.m., three men from the community immediately apprehended him and then took him to the local *meunasah* (small mosque). A short while later, members of the community brought Rohani and Sri there to join him. Rohani told Human Rights Watch, "They beat Budi in front of the house, and then they brought him to the neighborhood *meunasah* on foot. There, they kept hitting him and burned him with cigarettes. Many other men from the community came–probably around 50. And many of them were hitting him."

The neighbors and community members did not let Rohani, Sri, or Budi explain the situation; rather, they pressured Sri and Budi to agree to marry. Rohani strongly objected to the idea and was able to persuade the community to drop their demand. Shortly thereafter, the police arrived, and detained Sri and Budi without giving them, or Rohani, a chance to explain. Rohani said, "I don't think what happened was fair. The community punished Budi without proof, without asking whether he committed seclusion or not, but still [he and Sri] were detained."

The police released Sri to Rohani's custody early the next morning, but Rohani said that the WH force took custody of Budi and detained him for the next 15 days. Following the incident, the police made no effort to identify or apprehend Budi's attackers. Rohani told Human Rights Watch:

> The police didn't question anyone that night about what happened to Budi, even though he had a broken rib, cigarette burns on his body, a black and blue face, and split, bleeding lips…. The government has to make sure this won't happen again to other people. It's very important to let them know

[70] Human Rights Watch interview with "Rohani," Banda Aceh, May 19, 2010.

> what is happening in the community–that there is bad behavior, and they don't understand the law.

In December, members of the community approached Rohani and told her that she was required to give them three goats, three large boxes of rice, a young jackfruit, and a recipe for goat soup. She told Human Rights Watch, "They told me it was a punishment for what Sri did, but I don't know how they reached that decision. I gave them what they wanted because I didn't want to be stigmatized for not doing what custom requires." Rohani added that Sri had stopped dating as a result of the incident and that Budi had not been to her house again.

Rosmiati and Nurdin[71]

Police detained Rosmiati, who is not Indonesian, but is Muslim, and a male friend, Nurdin, in January 2009 after Rosmiati's neighbors accused them of committing seclusion. Rosmiati told Human Rights Watch that she entered Nurdin's home early one evening intending to give him a number of books. Within 20 minutes, community members surrounded the house. Rosmiati described what happened next:

> I heard noise, like a crowd of angry people. There was a group of more than 10 but less than 50 men. I heard them knocking, kicking, trying to break open the door. They broke the door, came in, and without saying anything, they punched [Nurdin]. His nose was bleeding. The man who punched him came in, kind of like a leader. He was so angry. He had a knife…. They took some of our things, like our handphones and chargers, and a small television set. One of them touched my breasts, like I am a loose woman, being caught with a man in a house. I was so embarrassed. I felt like slapping him.

Shortly thereafter, a policeman arrived and took Rosmiati and Nurdin to a nearby police office, where they were held for more than 24 hours on suspicion of "seclusion." At the police station, Rosmiati was interrogated in a large room by a number of police officers, while several other people in the office watched. During the interrogation, the police told her that if she confessed, she would be released within 24 hours, and that if she refused to confess or sought help from a lawyer, "It would make things harder." Rosmiati gave a false confession thinking it would lead to her immediate release, but the police nevertheless held her overnight.

[71] Human Rights Watch phone interview with "Rosmiati," July 7, 2010.

The following day, Rosmiati spoke with the head of the police station. She felt he was holding her in order to compel her to pay a bribe. "He was talking nonsense, about the electricity, about how he has to eat, how he doesn't want to involve other parties, again and again.... The police were just trying to get the money– [the chief was suggesting that] if they got it, they'd keep the matter in the police station. If they didn't, they'd involve other parties, like the prosecutors." The police finally released her into the custody of friends late that evening after requiring her to sign an apology letter and requiring her friends to sign a form guaranteeing her good future behavior. The police retained her passport and told her to report to the police twice the following week to get it back. With help from a diplomatic official from her country, Rosmati was able to retrieve her passport from the police within a week.

No one was punished for the assault or theft Rosmiati and Nurdin experienced. Rosmati said that while she considered pressing charges against those who attacked them, at the time she was not sure how to do it. During her interrogation, she told the police how members of the community had forced their way into Nurdin's home and stolen some of their belongings. However, the police never suggested that she file charges against community members, and continued to pressure her to confess to the charges of seclusion. Rosmiati said that these factors, combined with the stress of her experience, overwhelmed her desire to petition the police to apprehend her attackers. Rosmiati fled Aceh as soon as her passport was returned to her. She and Nurdin continued to suffer from the effects of the accusation against them long after their release from detention:

> After I was released [from police custody] I wanted to leave [Aceh] immediately... because my [confession] was fiction, in a very embarrassing way. It was so sickening, and I was so embarrassed. It was really traumatic for me, a very painful memory. It was hard for me, but even harder for [Nurdin]. When he came back home, the village head told him he couldn't stay there anymore and that he had to give the village all of his things, and money to slaughter a cow or sheep and cook it, as compensation for embarrassing the village. [Nurdin] was afraid for his safety. He had a friend come with a van and they quickly took most his things and never came back even though he had already paid the rent through June.... When he tried to get a new house, he had trouble for the next few months because he had a reputation.

Siti and Ahmad[72]

Siti and Ahmad were violently apprehended by members of Siti's community in late April 2010 and turned over to the custody of the police, along with Siti's 6-year-old son. Siti, who is divorced, told Human Rights Watch that the incident occurred when Ahmad, whom she had been seeing romantically for years, came to her house in the village she had moved to two months before:

> Ahmad came to my house in the evening. My six year-old son was asleep in the house. We were romantic and got undressed. Then I heard people come into my house. I panicked and tried to put on a dress, and then the people broke down my bedroom door. There were six men in my house. They started hitting Ahmad, and I tried to protect him. I shielded him with my body, and so I got hurt too. There was blood in my living room from his mouth. They brought Ahmad outside, and there were at least 100 men around my house, maybe more. They brought Ahmad onto the verandah and kept hitting him. Then they took him to a different house, took off his clothes, and hit him from all sides. Ahmad was screaming for them to stop, saying he would marry me. The people said that was a good solution.

The police detained Siti and Ahmad, forcing Ahmad to spend the night in a cell and Siti and her son to spend the night in the station's *mushollah*. The following morning, the WH took custody of Siti and Ahmad and took them to the WH office, where they pressured Siti and Ahmad to marry. The WH told them they would drop the case against them after they agreed to get married. Initially, Siti and Ahmad both agreed to marry one another, and Siti told Human Rights Watch that she thought "they were going to do it right then." However, shortly thereafter, the WH realized that Ahmad was already married and that his first wife had declined to give her permission for him to take another wife, as is required under Indonesia's laws permitting polygamy. Siti told Human Rights Watch:

> The vice-head of the WH office said I couldn't marry Ahmad because he had a wife and she refused to give permission. Then the WH officers said bad things to me. They asked why I would have an affair with a married man. I told them that he'd lied to me and that I didn't know he was married. They said, "do you want to get a lashing?" and they took a lash off the wall and threatened me with it. I cried and my son was crying.

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[72] Human Rights Watch interview with "Siti," Banda Aceh, May 20, 2010.

The WH released Siti and her son from detention around midnight and permitted her to return home, although they required her to return for additional questioning the following day. In May 2010, Siti learned from police that the WH had forwarded her case file to prosecutors, but she was unaware whether they had decided to prosecute her and Ahmad in the Sharia court.

The police made no attempt to investigate the violence inflicted on Siti and Ahmad. Siti said, "The people in my community should be arrested because they came into my house without my permission…. but the police only asked me to marry Ahmad." Today, Siti lives in the same village and is not married; she has not seen Ahmad since the incident. Siti told Human Rights Watch: "I'm ashamed, because my village is ashamed. I'm afraid to leave my house and I'm under stress. I feel powerless and traumatized. I'm afraid to go back to the WH office. … I'm worried that the Sharia court process will take a long time, or that I'll forget the details about what happened. I'm afraid that they will detain me or punish me. I have a child and he is still very young. No one will take care of him."

Nita and Azhar[73]

Nita, 19, a university student, described an incident in January 2010 when WH officers detained her after finding her and her boyfriend on an isolated road in the middle of the day. Nita told Human Rights Watch that she and Azhar were attempting to pick up Nita's younger sister from school on Nita's motorbike and had taken the road, which ran through a coconut plantation, thinking it was a shortcut. Nita told Human Rights Watch:

> We were at a crossroad and we stopped so that Azhar could look for the road we wanted to take. Two men drove up–they were WH. They took my motorbike key and asked if we had committed "seclusion." I said no. The WH officer said they wanted to ask us questions. I asked the WH officer to give me a written request. He just told me I had to come to their office at 1pm.
>
> [Soon after her arrival] my step-brother came to the WH office and asked the WH for proof that I had done something. The head of the WH office told him he wouldn't release me unless my parents came. Then the WH interrogated me roughly. They yelled, 'What did you do?' again and again and hit walls and tables. There were about 40 people in the WH office. Around 15 of them interrogated me. One of the WH officers, Fedi, was asking suggestive questions, like 'do you have a boyfriend?' There was a female officer interrogating me who

[73] Human Rights Watch Interview with "Nita," Langsa, Aceh, May 11, 2010.

accused me of having sex with my step-brother…. My step-mom came at 3 p.m. to get me but they wouldn't let me go with her because I'm not directly related to her…. I felt like I was being treated like a terrorist–like I blew up the president's house. The WH brought in a couple later, and they made the girl pay 2 million Rp and the boy 1 million Rp to get out.

At about 10:30 p.m. they moved me to a small room next to the bathroom, far away from the main room. It was small, dark, and dirty. About two hours later, one of the WH officers, Nazir came in and closed the door. He said 'do you want this problem to be settled? You don't want this to go to the police, do you?' He forced food and drink into my mouth that had already been in his mouth and on the floor. He pulled up my skirt. He said, 'if you scream, there are many guys outside, and they'll all take turns.' I was raped, then he left, and I cried myself to sleep. Two or three hours later, two other WH officers, Feri and Dedi, came in and closed the door. Feri asked me why I was crying, I said that Nazir had done terrible things to me. Then Dedi covered my mouth and held down my arms and Feri raped me. Dedi forced me to perform oral sex on him.

The next morning, another WH officer came to the room and told me to go. I told him that his three friends had raped me. He told me not to tell anyone other than him. My mom came to get me at 7 a.m. I was crying. The head lecturer at my campus, Doni, was there to lecture me, because he also works for the Satpol PP [municipal police]. A female WH officer told him that I had been caught in the act of "seclusion." He told my mom and me that I should be buried and stoned to death because of the offense I had committed. I said to Doni, 'Sir, I was only trying to look for a shortcut, and I should be stoned for that? What about the officers who raped me last night?' … Late in the morning the police did a lineup of the WH officers. When I pointed out Nazir, Doni said to him, 'You've done this several times, but we always forgave you.'

The Langsa police apprehended two of the three WH officers that raped Nita, Mohammed Nazir, 29, and Feri Agus, 28. Shortly after Nita's allegations against the WH became public knowledge, Syrahil, the head of the WH Langsa office, was replaced. Nazir and Feri's rape trial concluded on July 15, 2010; both men were found guilty and sentenced to 8 years in prison, less than the 12-year sentence sought by prosecutors.[74] As of November 2010 the

[74] Agence France-Presse, "Indonesian Islamic Police Jailed for Gang-Raping Woman," July 15, 2010.

third WH officer who raped Nita remained at large, and there was no indication that authorities in Aceh were still attempting to locate him for prosecution.

In May 2010, while the trial of Nita's attackers was ongoing, Vice-Governor Mohammad Nazar told Human Rights Watch that what happened to Nita was an isolated case and that he had ordered the head of the WH to administer "strong sanctions" to the members of the WH in Langsa. But when Human Rights Watch spoke to the head of the WH in Aceh, he said that he believed that Nita's allegations were false and that she was trying to "trap" the WH force, suggesting few sanctions had been applied to the Langsa WH force.

Today, Nita remains traumatized by the abuse she endured and no longer sees Azhar. Her family moved as a result of the incident, and Nita has not returned to school since it happened. She told Human Rights Watch, "I want to continue my studies, but not in this city. I'm still reluctant to go out of the house." Nita said that the government could do several things to prevent the abuse she endured from occurring again: "No more manipulation of the process… have justice for members of the WH; and … no more victims. Let me be the last victim."

Wilayatul Hisbah officers in West Aceh question an unmarried couple detained for allegedly violating Aceh's Sharia-inspired law prohibiting "seclusion."

V. Human Rights Violations in Implementation of the Seclusion Law

The cases detailed in Chapter III above starkly illustrate the range of human rights abuses, at times including violence and custodial abuse, which have accompanied enforcement of the Seclusion Law by Wilayatul Hisbah officers and local communities. They show that the law is applied against entirely innocuous behavior that should not be criminalized, that it is applied selectively, that those enforcing the law often pressure suspects to "confess" to romantic feelings for one another and then pressure them to marry, and that in some cases the laws is applied to minors. Each of these issues is addressed in a separate section below.

The Law is Applied Arbitrarily to Criminalize Innocuous Behavior

Government officials, people accused of "seclusion," and members of the public all agree that the offense of "seclusion" is expansively and ambiguously defined in Qanun 14/2003. This ambiguity has opened the door to arbitrary application of the law.

The goal of the Qanun appears to be to prevent acts of adultery and sexual activity outside of marriage; in Article 2, the law notes that the prohibition against "seclusion" applies to "all activities, acts, and circumstances that lead to fornication."[75] The definition of "seclusion" provided in the law, however, is vague and broad, and the WH, as well as private individuals, has enforced the law against a wide range of acts, including sitting together at food stalls and places of recreation, conversing with one another inside a home, and traveling together on a motorbike.

Part of the problem lies in the initial definition of the offense. Qanun 14/2003, in article 1(20), defines *khalwat (mesum)* as a single offense–although the word "*khalwat*" translates to "seclusion" and the word "*mesum*" translates to "indecency." Qanun 14/2003 defines only *khalwat* ("two mature people of different sexes who are not married and are not related by blood together in an isolated place") and does not define *mesum*.[76]

WH officials take the law to mean that couples who engage in any behavior that an individual WH officer subjectively believes "could lead to" sexual relations are in violation of the law.

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[75] Art. 2.

[76] Adultery (*zina*) is a criminal offense under Indonesian national law, pursuant to article 284 of the Criminal Code, although police are only permitted to enforce the law if an affected spouse files a complaint with the police within three months of filing for divorce or separation as a result of the adulterous conduct.

Fatimah, a 37-year-old civil servant, told Human Rights Watch about an experience in Banda Aceh in November 2009 that shows how arbitrary the enforcement of the law can be. At about 8 p.m. one night, Fatimah, who had traveled from elsewhere in Aceh to Banda Aceh for work, and a male professional acquaintance, Sofyan, a journalist whom she had just met, went to a popular port area to sit by the harbor and eat roasted corn. They were waiting for another colleague to contact them. As they ate, WH officers approached them and asked if they were married and had a marriage certificate. When Fatimah and Sofyan said they were not married, the WH officers confiscated their ID cards and told them they would have to report to the office to obtain their IDs and receive "guidance" two days later. Sofyan reacted angrily, telling the WH they could keep his ID, and the WH responded by detaining them. Fatimah told Human Rights Watch, "I was accused of 'seclusion,' but I was in a public place. [Later], I went back and I measured the distance between the place where I was sitting and the sellers–I was 15 steps away from them. It was not isolated, and there were lights, and it was crowded. I was just a victim of the situation."[77]

Zuhriyah, 26, described how on the evening of May 1, 2010, WH approached her and her boyfriend as they were sitting at a food stand at the beach in Banda Aceh, eating noodles, with a bag between them. The two WH officers asked if they were married and demanded proof in the form of a marriage certificate. When they could not produce such a document, the WH told them they were not permitted to sit together and that they had to leave. They moved to opposite sides of the table and attempted to keep eating, but the WH officers observed this and began walking in their direction again, so they left the beach.[78]

These sorts of enforcement activities, even where they do not result in an arrest, give rise to confusion and anger on the part of those affected. Zuhriyah told Human Rights Watch, "[My boyfriend and I] weren't doing anything wrong. We were just talking. Shouldn't we be able to sit and talk to each other?"[79]

The broad interpretation of "seclusion" by the WH makes people fearful of being arrested for seemingly trivial acts. Fatimah told Human Rights Watch, "That law makes me uncomfortable and cautious … if we have to spend all of our time with relatives by blood or marriage then that will make life difficult. And there is no definition of what a 'quiet place is' or what is a 'quiet hour.' It is arbitrary–it depends on what the WH wants to find."[80] Dewi, a journalist

[77] Human Rights Watch interview with "Fatimah," Banda Aceh, May 15, 2010.

[78] Human Rights Watch interview with "Zuhriyah," Banda Aceh, May 10, 2010.

[79] Ibid.

[80] Human Rights Watch interview with "Fatimah," Banda Aceh, May 15, 2010.

from Banda Aceh, noted that the vagueness of the definition of "seclusion" makes it very easy for individuals to use the law as a tool for harassment, saying, "If there's no standard, and I don't like someone and see them with their boyfriend or girlfriend, I can just report them to the WH and the WH will arrest them."[81]

The Law is Applied Selectively

There is also evidence that well-connected and wealthy individuals are not punished for violating the laws. As Fatimah told Human Rights Watch, after the WH released her from detention, they told her that she would have to return the following week with a relative to guarantee that she would not violate the law in the future. She asked a relative to accompany her who personally knew the head of the WH in Aceh. Fatimah says that when her relative called the WH head, he said that if Fatimah had simply told the WH officers who approached her about her relative, she would not have been detained. Fatimah told Human Rights Watch, "The law discriminates - if you have connections to people in power, you get released. The law will only apply to those without links."[82]

Bustami, a WH officer, told Human Rights Watch that WH officers are instructed not to apprehend members of the National Police and Indonesian armed forces; rather, if WH officers suspect them of violating Sharia law, they must turn them over to their supervisors to receive internal discipline. Bustami told Human Rights Watch that he strongly objected to this policy, "For the policeman, we give them to their office. But their girlfriend, we bring to our office. This is very unfair."[83] One activist in Aceh explained that this is the case because police and military officials are subject only to national laws, not to laws enacted at the provincial or district levels, effectively exempting them from the Sharia *qanuns* in Aceh.[84]

Several Acehnese told Human Rights Watch that they believed that the WH conducted raids aimed at apprehending perpetrators of "seclusion" only in locations frequented by those of modest means, avoiding those places frequented by the relatively wealthy. The WH conducts raids in an effort to apprehend non-married couples at certain beach areas in Banda Aceh frequented by young people and those of modest means on a regular basis. However, there have been few reported incidents of similar WH operations at restaurants, coffee shops, or other recreation spots frequented by the wealthy. Fatimah told Human Rights Watch that

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[81] Human Rights Watch interview with "Dewi," May 17, 2010.

[82] Human Rights Watch interview with "Fatimah," Banda Aceh, May 15, 2010.

[83] Human Rights Watch interview with "Bustami," Banda Aceh, May 17, 2010.

[84] Human Rights Watch email communication with activist in Banda Aceh, November 7, 2010.

after she and a male acquaintance were detained while eating food purchased from a roadside vendor at a popular beach location, "I said [to a WH officer that participated in her arrest], 'If you want to do an operation for [people committing "seclusion"], you should conduct them in restaurants, too, because I'm sure there are lots of couples there with no marriage certificate. You should implement Sharia systematically.'"[85] Maliyah, a radio journalist, agreed, telling Human Rights Watch, "WH are unfair in doing raids. They conduct raids in places where only common people go, not places like cafes, because they are afraid [of challenging people of higher status]."[86]

Forced "Confessions"

The WH and police also aggressively interrogate suspects and pressure them to confess to having romantic feelings for the co-accused. For instance, Fatimah, whose case is described above, told Human Rights Watch what happened after she and her colleague Sofyan were detained by the WH:

> A male WH officer asked who my companion was. I told them the truth, but he wanted a different answer. He kept asking, 'Do you like him?' and 'What is your relationship?' I kept answering, 'Purely professional.' Then the WH officer interrogated Sofyan…. He kept asking him if he liked me, again and again. Finally, he answered, 'Yes, I like her.' Then he said, 'Are you going to marry her?' and Sofyan said, 'I don't know.' Then the WH officer called me again. He said that I couldn't go home until our answers were similar. He said I should think about my answer or else they'd arrest me. I said, 'If I'm going to be arrested, take me to the police.' But he refused. By midnight, I was really worried about getting my work done and getting back home. So I decided I wanted it over with. I told the WH I liked [Sofyan].[87]

Following her "confession," the WH officers told Fatimah that they would not force her to marry Sofyan, but that if she wished to be released from detention a relative would have to come to the WH office and guarantee her good future behavior. Fatimah explained that her parents were deceased and that her only sibling lives in Jakarta, and initially, the WH refused to release her from custody. She then mentioned the name of a well-known more distant relative, and her interrogator abruptly excused himself and left the office for the night. A few hours later,

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[85] Human Rights Watch interview with "Fatimah," Banda Aceh, May 15, 2010.

[86] Human Rights Watch interview with Maliyah, Banda Aceh, May 14, 2010.

[87] Human Rights Watch interview with "Fatimah," Banda Aceh, May 15, 2010.

at 2 a.m., other WH officers told her she was being released and that they would drive her to her hotel, although she would have to return to their office with a relative the following week.

Rosmiati similarly told Human Rights Watch that the police interrogated her aggressively and urged her to confess to engaging in sexual activity with the friend with whom she had been apprehended, whether or not her confession was true. And Siti, whose case appears in Chapter III, told Human Rights Watch that the WH had specifically included questions about her willingness to marry the man with whom she was detained. In Siti's case, the WH specifically pressured her and Ahmad to agree to marry one another and told them the WH would close their "seclusion" investigation and release them from detention if they did so.[88]

The WH's practice of putting pressure on couples to marry in exchange for dropping the "seclusion" charges against them is not uncommon. According to media reports from 2009 and 2010, WH representatives stated either that they would "ensure" that an apprehended couple would marry,[89] or that they would only release individuals suspected of "seclusion" to their parents if the parents agreed to ensure that they would marry one another.[90] Aceh operations commander Tgk Adin told media in Aceh in June 2010 that the WH consider this to be part of their "educational" function, saying, "If the couple has engaged in sexual relations, then we suggest for them to get married to ensure their safe future. Marriage is not a legal or *adat* sanction, but it is a solution to educate the suspects."[91] It is unclear how and whether the WH is able to confirm that couples who agree to marry actually do so. However, Siti told Human Rights Watch that after she and Ahmad initially agreed to marry one another under pressure from the WH, she believed that the marriage was going to occur immediately.

Budiyono, the head of legal development for the National Police in Aceh, told Human Rights Watch that the police remain unsure about the steps they are allowed to take when they investigate suspected violations of Sharia laws, but that he considered forced marriage to be a crime. This is in keeping with human rights law, which clearly requires that states protect

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[88] Human Rights Watch interview with "Siti," Banda Aceh, May 20, 2010.

[89] Dwi Putrasyah, chief of Satpol PP-WH Banda Aceh, confirmed this in one case in which a young couple was apprehended by campus security at IAIN Al-Raniry in Banda Aceh in an empty room. The couple was detained by WH and Dwi stated, "We will see how far they went and if it is mesum, then we will discuss what should happen with their families. After that, we will educate and return the couple to their families. They will report back to us every day this week. However, if we find out that they did go too far, then we will make sure that they get married. "Dua Sejoli Dicokok Satpam Kampus," *Serambi Indonesia*, April 25, 2010.

[90] "Masukan Pacar ke Kamar, PRT Diserahkan ke WH," *Serambi Indonesia*, June 2, 2010 (A maid and her boyfriend were apprehended in her room at her employer's house and taken to the WH office in Banda Aceh. According to Danops Evendi, "we are still waiting for their families to report to us so that we can finalize this matter. If the families are prepared to allow them to marry, then we will leave this case to the families.").

[91] "Berduaan dalam Toko, Sepasang Kekasih Ditangkap," *Serambi Indonesia*, June 24, 2010.

the right of people to enter into marriage only with their free and full consent, a right which is violated when law enforcement officials condition criminal suspects' release from detention on their agreement to marry.[92]

Other Abuses: Virginity Tests and Application of the Seclusion Law against Minors

The head of the WH in Aceh, Marzuki, also told Human Rights Watch that as part of their investigation into "seclusion" cases WH officers can, and in many cases do, require female suspects to submit to virginity tests.[93] Mohammad Nazar, Aceh's vice-governor, told Human Rights Watch that he believed it was acceptable for the WH to require "seclusion" suspects to submit to virginity tests, although he believed that it "seldom" happened.[94]

Human rights law forbids state authorities from requiring women to submit to such virginity tests because they violate the rights of women and girls to physical integrity and privacy.[95] They are also unnecessary, as there is no legitimate medical or forensic rationale for such tests and they are discriminatory toward women.[96]

WH officers also apply the Seclusion Law against minors. According to Marzuki, the head of the WH in Aceh, "many" of those detained and investigated by the WH on suspicion of committing "seclusion" are, like Sri, "around 17 years old."[97] News media in Aceh have reported several instances in the past year in which WH officials detained children between

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[92] The Convention on Elimination of All forms of Discrimination against Women (CEDAW), in art. 16(1)(b), specifically requires that states must afford to women the right to enter into marriage only with their free and full consent. CEDAW, adopted December 18, 1979, G.A. Res. 34/180, U.N. GAOR Supp. (No. 46) at 193, U.N. Doc A/34/36, entered into force September 3, 1981. Indonesia ratified CEDAW in 1984. Committee on the Rights of the Child, General Comment 3, CRC/GC/2003/3, March 17, 2003,para 11.

[93] Human Rights Watch interview with Marzuki Abdullah, head of the WH in Aceh, Banda Aceh, May 19, 2010.

[94] Human Rights Watch interview with Mohammad Nazar, Vice Governor of Aceh, Banda Aceh, May 18, 2010.

[95] See Interim Report of the Special Rapporteur to the Commission on Human Rights on the question of torture and other cruel, inhuman, or degrading treatment or punishment, A/55/290, August 11, 2000, http://www.un.org/documents/ga/docs/55/a55290.pdf (accessed May 13, 2010), p. 7 (finding that virginity testing is a form of gender-specific torture).

[96] A virginity test is a gynecological examination undertaken to determine the status of the hymen in which a physical rupture of the hymen, regardless of its connection to sexual activity, is considered evidence of lost virginity. This focus on the hymen has no legal or medical basis, and instead reflects a misplaced preoccupation with the victim's ostensible virginity status and popular misconceptions about the medical verifiability of virginity. Experts have confirmed that the state of a woman's hymen is not a reliable indicator of recent sexual intercourse and the nature, consensual or otherwise, of any such intercourse. The degree of elasticity, resilience, and thickness of the hymen, its location in the vaginal canal, and consequently its susceptibility to tearing and bruising, vary from person to person. Human Rights Watch, *Libya: A Threat to Society?*, February 27, 2006, http://www.hrw.org/en/node/11468/section/6#_ftn82 (citing interview with Dr. Greg Larkin, Professor of Emergency Medicine at the University of Texas Southwestern Medical Center, February 14, 2006) (accessed August 31, 2010).

[97] Human Rights Watch interview with Marzuki Abdullah, head of the WH in Aceh, Banda Aceh, May 19, 2010.

the ages of 15 and 18 on suspicion of "seclusion."[98] The arrest of minors on suspicion that they have violated the Seclusion Law is particularly problematic under international human rights law, which, like Indonesian domestic law, states that children should be deprived of their liberty "only as a measure of last resort."[99]

Stigmatization and Other Effects Resulting from the Prohibition against "Seclusion"

Both women and men detained by the WH or police on suspicion of "seclusion" experienced a variety of negative social, personal, and professional consequences following their release. These include stigmatization, expulsion from academic programs, and pressure to restrict their professional or personal conduct. This stigmatization has a particularly damaging effect on women. As one women's rights activist told Human Rights Watch, "After WH raids, women are the ones who are stigmatized. Men just walk away."[100]

Fatimah, the woman detained along with her male colleague Sofyan, by a WH patrol and detained on suspicion of "seclusion," recounted experiencing such stigmatization. She told Human Rights Watch:

> I got back home and the news that I had been arrested was in the newspaper and on Facebook. The WH head made a statement in the media, and the newspaper mentioned my profession and details that made it possible to tell who I was. It ruined my reputation even though I hadn't done anything bad. My family members were angry. I tried to explain but they said, 'If you didn't do anything wrong, then why did you get arrested?' I felt like I was being judged, like I had ruined my family's reputation because of this incident. As a result, I lost many of my friends…. Since that time, I've quit working on the project [in Banda Aceh] because of what happened.[101]

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[98] Newspapers have reported on "seclusion" apprehensions by the WH in 2009 and early 2010 and noted that at least one member of the couple was under 18 years old on several occasions. "WH Pergoki Pasangan Mesum dalam Bus Sekolah," *Serambi Indonesia*, April 29, 2009 (16 year old female arrested in Sabang); "4 Pria 1 Wanita Diarak Warga," *Serambi Indonesia*, December 1, 2009, (16 year old female and 15, 17, and 18 year old males arrested in Aceh Tengah); "Pekerja Salon Garap Brondong," *Serambi Indonesia*, February 22, 2010, (17 year old male arrested).

[99] Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, art. 37(b); Law 39/1999 on Human Rights, art. 66.

[100] Human Rights Watch interview with Flower Aceh, Banda Aceh, May 10, 2010.

[101] Human Rights Watch interview with "Fatimah," Banda Aceh, May 15, 2010.

Rosmiati, who was detained by the police along with her friend Nurdin on suspicion of "seclusion," told Human Rights Watch that the experience had tarnished her and Nurdin's reputations and that Nurdin had experienced difficulty finding a new place to live after he was expelled from his village as a result of the incident.[102] Wati, who was detained by the WH and interrogated on a "seclusion" report made by members of her community, told Human Rights Watch, "When people on my college campus heard the news, they didn't know the whole story, and so the head of the school said I had to drop out. A faculty member tried to intervene on my behalf, but she could not change the result. I only had one semester left to finish."[103] She was eventually allowed to return to school to complete her degree program, but only after a new head of the university was appointed. Wati's fiancé was expelled from the village in which he had been renting a room as a result of the incident.

Several women moved away from their homes or avoided travelling to certain areas, or left Aceh altogether, after being accused of "seclusion." Wati recounted being compelled to restrict her own movements and associations as a result of what happened to her. She told Human Rights Watch, "I tried to hide myself afterwards. It was hard for me to meet my friends…. I was traumatized. Now, my husband and I have an agreement–I will never go anywhere alone with another man. It is too great of a risk."[104]

For some women—including Nita, Siti, and Rohani's daughter Sri—the allegations against them destroyed their relationships with the men with whom they were accused of being in "seclusion."

Justifications for the Seclusion Law, and Some Dissenting Views

A number of officials in Aceh defended the criminalization of "seclusion" and the use of the police and WH to enforce the law as a means for combating vigilante or village-level violence against people suspected of engaging in immoral conduct. Al Yasa' Abubakar, the former head of the Office of Sharia Islam, which played an instrumental role in drafting Qanun 14/2003, told Human Rights Watch, "We wanted to make the 'seclusion' law to prevent the communities from doing their own punishment of people."[105] Husni M. Agee, a staff member of the law development department at the Office of Sharia Islam, agreed, saying, "Islam prohibits anarchy in the community. We implemented Sharia so people won't punish those

[102] Human Rights Watch phone interview with "Rosmiati," July 7, 2010.

[103] Human Rights Watch interview with "Wati," Darussalam, May 25, 2010.

[104] Ibid.

[105] Human Rights Watch interview with Prof. Dr. Al Yasa' Abubakar, Banda Aceh, May 21, 2010.

who do wrong on their own–so people who commit violations will be punished by the government, not by the community."[106]

Budiyono, the head of law development for the Aceh Regional Police, told Human Rights Watch that while the police are not permitted to detain people accused of "seclusion" for more than 24 hours, he believed the force was under popular pressure to do so.[107] Budiyono claimed that the public in Aceh believe the police are failing to uphold the law when they quickly release people accused of "seclusion." He strongly supported the 2009 draft Qanun on Criminal Procedure, saying that it would allow the police to order detention for "seclusion" suspects for up to 15 days.

However, Budiyono also told Human Rights Watch that he believed the formal implementation of Sharia law was encouraging higher levels of community violence, saying, "This [community] practice has been happening for a long time, it's a custom. But before, we weren't [violent]…. Violence started happening after peace came to Aceh. People were euphoric about enforcing Sharia Islam."[108]

Other officials felt that the ambiguous definition of "seclusion" in Qanun 14/2003 is very problematic and could lead to over-application of criminal laws by the WH.[109] Hasbi Abdullah, the chairman of the DPRA, also agreed that the existing definition of "seclusion" was "subjective" and that it should be clarified.[110]

Yusni Sabi, the former rector of IAIN Al-Raniry in Banda Aceh, told Human Rights Watch that cases involving arbitrary detention and abusive interrogations by the WH in the enforcement of Sharia law demonstrate that the government of Aceh should redefine the role of the WH, saying, "When you talk about Sharia, you talk about kindness, peace, with good persuasion, not with harsh [methods]. The WH cannot just do whatever they want. That's why I think that the WH should have very special guidelines, not just acting … in ways which are sometimes ridiculous. This brings shame on Sharia."[111]

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[106] Human Rights Watch interview with Drs. Abdullah Muhammad and Husni M. Agee, Office of Sharia Islam, May 20, 2010.

[107] Human Rights Watch interview with Budiyono, the head of law development for the National Police in Aceh, Banda Aceh, May 24, 2010.

[108] Ibid.

[109] Human Rights Watch interview with Drs. Abdullah Muhammad and Husni M. Agee, Office of Sharia Islam, May 20, 2010.

[110] Human Rights Watch interview with Hasbi Abdullah, chairman, DPRA, Banda Aceh, May 21, 2010.

[111] Human Rights Watch interview with Yusni Sabi, Banda Aceh, May 18, 2010.

Private citizens in Aceh Besar regency, near Banda Aceh, punish an unmarried couple they accused of violating Aceh's Sharia-inspired "seclusion" law by pouring sewage on them. The couple was subsequently turned over to the custody of the provincial Wilayatul Hisbah force.

VI. Community Enforcement of the "Seclusion" Law

The "seclusion" law also encourages private individuals to participate in the implementation of the law, and other local laws in Aceh give customary law (*adat*) mechanisms power to resolve such cases. In combination with the law's vague definition of "seclusion," this encourages vigilantism and leads private individuals to arbitrarily accuse members of their communities of wrongdoing, as illustrated above in three of the four cases detailed in Chapter III. And when community members engage in abuses, such as assaulting suspects, police rarely intervene and do little to prosecute offenders.

This chapter details the human rights abuses associated with community enforcement of the Seclusion Law. It concludes with analysis of the inadequate police response to violent or arbitrary community enforcement efforts.

Qanun 14/2003 states, "Members of the public must also be given a role in preventing the crime of 'seclusion' or indecency in order to fulfill their obligations as Muslims and implement the mandate of conquering the unjust." Although the law also notes that such enforcement should not take the form of vigilantism. Dewi, a journalist, told Human Rights Watch that this is a commonly held interpretation of what Islam requires, saying, "We believe that if someone in our community makes a mistake … if we don't try to stop it, Allah will blame us too."[112]

Official law enforcement policies also encourage community resolution of such claims: at least one district-level Office of Sharia Islam recently announced that law enforcement officials would only handle "seclusion" accusations that had already been first addressed by village-level authorities.[113]

Nearly every person whom Human Rights Watch interviewed in Aceh was familiar with the practice of community-level enforcement of Sharia laws and many were aware of recent instances in their own villages in which it had occurred, although they noted that such events are not commonly discussed outside the community. Press accounts include many more such cases.[114] According to Surya, 23, a student in Banda Aceh, "It frequently happens

[112] Human Rights Watch interview with "Dewi," May 17, 2010.

[113] Umar Budiman, the head of Dinas Syariat Islam for Bireuen, told reporters that from January to April 2010, the WH and Sharia police only dealt with cases that had already been heard by village authorities and only at the advice of the local government office. "Pelanggaran Teteap, WH Sigap," *Serambi Indonesia*, April 13, 2010.

[114] Incidents reported by the media in Aceh in 2009-2010 in which communities apprehended suspected perpetrators of "seclusion" include the following: "Warga Lambhuk Gerebek Pasangan Mesum" (Lambhuk Citizens Raid Mesum Couple), *Serambi Indonesia*, January 23, 2009 (couple raided; beaten up by community; soaked in cold water); "Janda Muda Ditangkap Warga" (Young Widow Captured by Citizens), *Serambi Indonesia*, March 18, 2009 (citizens watched the house; raided; man

that people catch offenders and want to resolve it through *adat* [customary procedures] and don't want others to know about it. It's to maintain a good name for the village."[115] This reluctance to publicize "seclusion" incidents leads some communities to avoid calling the WH and the police when they make such apprehensions.

Human Rights Watch spoke to a dozen people who participated in, witnessed, or were victims of such incidents. In these cases and in many cases discussed in news reports community enforcement of the Seclusion Law involved private citizens, and often designated "watchers" on the lookout for people in violation of the law. In some instances, groups of people are taken in mass roundups; in a number of cases, suspected offenders are required to endure a ritual punishment in which they are doused with water or sewage. Community level leaders then attempt to settle the issue, potentially by requiring that offenders marry one another, pay a penalty to the village, leave the village immediately, or walk around the village in a shaming ritual.

In several of the cases Human Rights Watch investigated, the victims of community-level enforcement of the Seclusion Law were considered "outsiders" (*orang luar*) by the community, people born outside the village in which they reside. Bustami, the WH officer quoted earlier, told us he had participated in several such community enforcement actions prior to his appointment to the force in January 2010: "Many people who are caught are outsiders. We have never caught a man and a woman together who both lived in the village. And many of the women [villagers who were caught] were not native, although they lived here for a long time–when they were kids their families moved to the village."[116]

Bustami told Human Rights Watch about one emblematic case in early 2009 in which he participated in the apprehension and punishment of a woman who had lived in his village for some time and a man that had moved in with her. Although the pair had been sharing the house for some time, the community initially had not realized that the man was not married or related to the woman:

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half naked and woman in muken; brought to Polsek Tapaktuan), "Warga Ciduk Pasangan Indehoi [Mesum] dalam Mobil" (Citizen Snags Mesum Couple In Car) *Serambi Indonesia*, May 30, 2009 (mesum in a car at night caught by citizen), "Petugas Kebersihan Dicukur Rambut dan Dimandikan Warga" (Sanitation Employee Shaved and Bathed by Mob),*Serambi Indonesia*, June 13, 2009 (Caught by citizen; shaved, showered and beaten),"4 Pria 1 Wanita Diarak Warga" (Four Males and One Female Paraded by Citizens), *Serambi Indonesia*, December 1, 2009 (raided; alcohol found; paraded across 8 villages; signs hung around necks and heads shaved), "Siang Bolong Pasok Lelaki ke Kamar" (Bringing Man into Boarding Room in the Middle of the Day); *Serambi Indonesia*, January 13, 2010 (Caught in the middle of the day in the female's boarding room; male was beaten badly), "Dokter dan Pegawai Ditangkap" (Doctor and Employee Apprehnded); *Serambi Indonesia*, January 18, 2010 (doctor accused of khalwat with employee; caught and brought to village head).

[115] Human Rights Watch interview with "Surya," May 15, 2010.

[116] Human Rights Watch interview with "Bustami," Banda Aceh, May 17, 2010.

> We gave a warning–if in one week the man didn't leave her house, we would apprehend him. But the man stayed in the woman's house, so we caught them. We [poured water on] them. And then we processed them at the *meunasah*. As a punishment, they [each gave the community a goat]. The woman was a student so she didn't want to marry him, and [forfeiting goats] is the easiest punishment…. Then the woman moved away. All offenders who conduct adultery have to leave because it will give the village a bad reputation if they do not.[117]

Assaults on Individuals Accused of "Seclusion" and the Inadequate Police Response

In five cases, individuals accused of "seclusion" told Human Rights Watch that private individuals broke into their homes or violently attacked them in the course of apprehending them. While many victims said they were reluctant to report abuses to police for fear of further proceedings against them or because they did not know how to file police reports, others said that police rarely take action against community members who attack individuals suspected of "seclusion." In the cases of Rohani and Siti, detailed in Chapter III, police made arrests and conducted investigations into the "seclusion" allegations but did not apprehend anyone connected with the serious assaults perpetrated against Siti's friend Ahmad and Rohani's daughter's boyfriend, Budi. And, as also detailed in Chapter III, police did not investigate the forcible entry, assault, and theft perpetrated by community members against Rosmiati and her friend Nurdin.

Hamid, from West Aceh, recounted another such incident in his village in February 2009. He told Human Rights Watch that he had ordered men from the village to watch a home rented by several men after seeing one of the men chatting with a woman who rented a room nearby on the verandah of the man's house. At 2 a.m. that morning, the men reported seeing her enter the house through a back door, and Hamid called a group of 20 youths, including two policemen, to help them apprehend the couple. He told Human Rights Watch:

> We surrounded the house. I knocked on the door, but nobody opened it. Since we were sure that there was a girl inside, one of the youths kicked in the door. Seven of us entered the house, three through the front door and four through the back door. We opened the door to the bedroom and saw the boy on the bed…. The men lifted up the bed and they found the woman,

[117] Ibid.

> naked, hiding underneath it. We told her to get dressed and then we brought the man and woman outside. We slapped the man and woman because they lied to us. We questioned them one by one, asking where they're from, what they do, where they live.[118]

Hamid and other men from the village eventually required the man to pay them a penalty and expelled the couple from the village. The policemen in the group did not exert authority or involve other law enforcement officials to address the "seclusion" accusation and did nothing to prevent the forcible entry or slapping of the suspects.

In at least one case, police failed to prosecute community members involved in a severe assault on a "seclusion" suspect but moved quickly to prosecute the victim of that assault and the woman with whom he was alleged to have engaged in adultery. Achyar, a neighborhood head in West Aceh,[119] told Human Rights Watch how upon the request of a resident, Husein, who suspected that his wife Sudarmi was having an affair, he assigned watchmen to observe Husein's home on April 7, 2010.[120] Late that night, the watchmen reported that Khaidir, the other man, was inside the house. Many villagers then surrounded the house and called Husein, who entered and found Sudarmi and Khaidir together, unclothed. Husein beat Khaidir and brought him outside, at which point a number of young men from the village began to beat Khaidir as well.

Achyar acknowledged that he forced Khaidir, who was naked, and Sudarmi, who had put on a nightgown and was holding her young child, to walk 300 meters to a security post in the village, saying that he did so for their protection. When they arrived at the security post, members of the community tied Khaidir to a post, ostensibly to prevent his escape. The police eventually arrived and took custody of Sudarmi and Khaidir, who were subsequently prosecuted for "seclusion." While police took statements from Achyar and another village level official that evening and summoned Achyar and several youths from the village again later in the week, they did not charge anyone with assault for perpetrating the violence against Khaidir. Village authorities expelled Sudarmi from the village immediately after the incident.

Suwalto, the head of the criminal investigation division for the West Aceh police, told Human Rights Watch that when police took custody of Khaidir, he was "in bad condition" and required

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[118] Human Rights Watch interview with "Hamid," West Aceh, May 22, 2010.

[119] A "neighborhood" is an officially-recognized administrative entity at a level below that of "village" in the local government hierarchy. "Neighborhood head" is an officially recognized position, below the level of village head (*guecik*).

[120] Human Rights Watch interview with "Achyar," West Aceh, May 22, 2010.

medical care.[121] However, police did not charge anyone with assault as a result of the incident. Suwalto told Human Rights Watch that his office had tried to process both the assault and "seclusion" claims, and that while they had conducted interviews in relation to both, they had been unable to solve the assault case. He told Human Rights Watch, "We always got the answer that the crime was done by the community and there many actors–they didn't identify 'A,' 'B,' or 'C,' and we can't just arrest lots of people. The problem we face is with the eyewitnesses–they try to protect each other because they are in the same community."[122]

Regardless of the cause of community violence against "seclusion" suspects, officials, Islamic scholars, and activists who spoke to Human Rights Watch universally agreed that neither Islam, nor the law itself, sanctions community violence in the apprehension or processing of "seclusion" suspects.[123]

On several occasions, law enforcement and government officials in Aceh have publicly urged people to refrain from violence in the implementation of the prohibition against "seclusion." In early 2009, WH head Marzuki told a local reporter, "This is not enforcing the law, but rather breaking the law," and that those who committed acts of brutality in the apprehension of *khalwat* suspects would be prosecuted. In May 2010, Vice Governor Mohammad Nazar gave a public speech in which he emphasized that the essence of Islam is development, not punishment.[124] However, Nazar also acknowledged that police in Aceh remained reluctant to apprehend perpetrators of violence committed in the name of Islam.[125]

Yusni Sabi, the former rector at IAIN Al-Raniry Islamic State University in Aceh, told Human Rights Watch that community members who believed that Islam required them to engage in vigilante enforcement of the laws were relying on a mistaken interpretation of religious texts, saying, "There is a prophetic tradition that says if there is any transgression of law, if you have the power to stop it in your hands, you should. But this is not to say that everybody has power in their hands…. Law is not in the hands of anybody and everybody, law is in the

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[121] Human Rights Watch interview with Suwalto, head of the criminal investigation division, West Aceh police, May 22, 2010. Suwalto said he was out of town when the incident occurred but that he was aware of the details of the case. Achyar claimed that following the incident, Khaidir "was black and blue," but that he was not seriously injured and that Sudarmi was unharmed. In April 2010, several newspapers in Indonesia reported on the incident, suggesting that the amount of violence inflicted upon Sudarmi and Khaidir had been even more severe. Officials in Jakarta demanded an investigation into the incident and the arrest of the perpetrators. "Religious Official Badly Beaten for Adultery," *The Jakarta Globe*, April 9, 2010.

[122] Human Rights Watch interview with Suwalto, head of the criminal investigation division, West Aceh police, May 22, 2010.

[123] "Warga Lambhuk Gerebek Pasangan Mesum," *Serambi Indonesia*, January 23, 2009.

[124] Human Rights Watch interview with Mohammad Nazar, Vice Governor of Aceh, Banda Aceh, May 18, 2010.

[125] Ibid.

hands of law enforcement."[126] Mohammad Nazar, Aceh's vice-governor, concurred, saying that he objects to vigilante enforcement of the laws, and does not think it is called for by Islam. He affirmed that the government is committed to enforcement of the law by formal authorities, like the WH, for that reason.[127]

Arbitrary Curfews

Several Acehnese we spoke with said that their villages had established informal curfews, setting an hour after which men and women who are not related found alone together will be automatically presumed to be violating the law and treated as if they have engaged in sexual conduct even if there is no additional evidence supporting this charge.

Bustami told us that people in his neighborhood consider it conclusive proof of "adultery" if an unrelated male and female are in the house of one of them after 10 p.m. at night. Bustami said he found this rule helpful, saying, "We have a standard so it's easy for us to catch people who break it."[128] He described one December 2009 case in which he and other men from the community assigned as watchmen had applied the standard to a woman who lived in the community whom they suspected was having sexual relations outside of marriage with her boyfriend, who was Malaysian. After receiving the approval of the village chief, approximately 10 men conducted surveillance on the couple for approximately one month. One evening, the man stayed in the woman's home past 10 p.m., and then the community surrounded the house, apprehended the couple, and subjected them to a "cleansing" procedure, required them to each pay a goat to the community, and expelled the woman from the village.[129]

In the above case and others, such time-based determinations of when physical proximity becomes a crime led to blatantly arbitrary applications of the Seclusion Law. In the case recounted by Rohani, detailed in Chapter III, her daughter and boyfriend were accused of "seclusion" by community members simply because the boyfriend visited their house from 10 p.m. until 11 p.m., despite the fact that Rohani was home at the time.[130] Rosmiati, who was accused of "seclusion" by members of a male friend's community because she went into his home with him for 20 minutes in the early evening, told Human Rights Watch, "Once you have been suspected, you are already punished. It doesn't matter if you are right or wrong."[131]

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[126] Human Rights Watch interview with Yusni Sabi, Banda Aceh, May 18, 2010.

[127] Human Rights Watch interview with Mohammad Nazar, Vice Governor of Aceh, Banda Aceh, May 18, 2010.

[128] Human Rights Watch interview with "Bustami," Banda Aceh, May 17, 2010.

[129] Ibid.

[130] Human Rights Watch interview with "Rohani," Banda Aceh, May 19, 2010.

[131] Human Rights Watch phone interview with "Rosmiati," July 7, 2010.

Due process violations and arbitrary punishments

In six cases Human Rights Watch investigated, village-level institutions punished people accused of "seclusion" following a village-level determination of guilt. Under Indonesian law and practice, *adat* institutions are authorized to settle disputes and hand out punishments that have the force of law. Yet in these cases, the accused had no presumption of innocence, no opportunity to speak with, or challenge the claims of, witnesses against him or her, and no institutional safeguards to ensure that decision-makers were fair or impartial. Punishments included expelling the accused from the village, confiscating their property, or requiring them to marry. These findings are in line with those reported by certain civil society activists in Aceh, who told Human Rights Watch that, in practice, traditional institutions often hand down arbitrary and abusive punishments, with the burden typically falling most heavily on already marginalized members of society.[132]

Rohani told Human Rights Watch that she was approached by members of her community in December 2009, a few months after her daughter and her daughter's boyfriend had been accused of committing "seclusion," and told she must pay a fine—a large quantity of food, including rice—to compensate them for the humiliation her daughter had brought to the village.[133] Rohani told Human Rights Watch that she did not know how or when the community determined she was guilty or the penalty she would have to pay, and she was not provided with an opportunity to present her side of the story.

Rosmiati told Human Rights Watch that village authorities punished her friend, Nurdin, after he was accused of committing "seclusion" in January 2009 by ordering him to leave the village immediately, despite the fact that he had paid the next six months' rent for his dwelling.[134] Nurdin's community also told him that they had determined that he would have to forfeit all of his personal property and pay restitution in the form of an animal to be slaughtered and cooked for the village. Nurdin was not present when the community determined that he was guilty and the punishment he would have to face, nor was he permitted to provide his version of the events.

Bustami, from Banda Aceh, described one incident in 2009 in which he had participated in the apprehension of suspected "seclusion" perpetrators, a woman who lived in the village and her boyfriend, from outside the village:

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[132] Human Rights Watch interview with LBH Banda Aceh.

[133] Human Rights Watch interview with "Rohani," Banda Aceh, May 19, 2010.

[134] Human Rights Watch phone interview with "Rosmiati," July 7, 2010.

> We caught the couple and brought them to the meunasah. We poured water from the well on them. Then we asked the elders in the village to process the case. The elders gave them three options: do you want to walk around the village [a public shaming process], do you want to give the village two goats, or do you want to get married? In that case, the man chose the second option– each of them gives one goat— because the woman was still a student and was not ready to marry. After that the woman moved out … she had to go.[135]

Hamid, 27, from West Aceh, recounted an incident in early 2010 in which he claimed that members from his community caught a man and a woman committing "seclusion" at night in the man's car. The man had a salaried position in a large company. The community confiscated the woman's motorbike to compel the man to submit to punishment by the village head, who ordered him to pay Rp 10 million (approximately US$ 1,120) in exchange for the return of the bike and agreement not to report him to the WH or police. Hamid noted that the standard fine for "seclusion" in his village is Rp 3 million, but added, "The village head said that since the offender worked at a big company the normal fine was not sufficient, so he had to pay Rp 10 million."[136]

Hamid defended the punishment as less degrading than those imposed by other villages, saying that a neighboring village requires offenders to stand in sewage up to their necks for one hour. Newspaper reports confirm that this practice and related punishments involving pouring sewage on suspected offenders occur in some communities.[137] Hamid explained a side benefit of settling "seclusion" accusations within the community rather than calling the WH or police to report offenders: "We don't want to take people we catch to the WH because then the WH will get the fine. We used the fines to build a volleyball court, and when we have ceremonies, we use the money to pay for that."[138]

Police Failure to Respond to Abuses by Community Members

Police representatives in Aceh told Human Rights Watch that they are presently unwilling to attempt to enforce the criminal laws prohibiting assault and other violent crimes in situations of community-level violence, citing difficulties in investigating such incidents and problems associated with combating crime involving many perpetrators from the same community.

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[135] Human Rights Watch interview with "Bustami," Banda Aceh, May 17, 2010.

[136] Human Rights Watch interview with "Hamid," West Aceh, May 22, 2010.

[137] See, e.g. "Cari Kehangatan di Toko Pakan" (Khalwat in Animal Feed Shop); *Serambi Indonesia*; April 24, 2010, couple in Banda Aceh caught committing "seclusion" in animal feed store by citizens, taken to *meunasah* and bathed with sewage water, then brought to WH office).

[138] Human Rights Watch interview with "Hamid," West Aceh, May 22, 2010.

Ibu Elfiana, the chief of police in Baiturrahman sub-district, Banda Aceh, told Human Rights Watch that police in Aceh do not attempt to apprehend the perpetrators of violence in "seclusion" cases.[139] As she described standard procedure: "we get the woman, we tell the community, 'you can't do that–that's a crime,' and we take the woman to the hospital if she is hurt."[140] Elfiana told Human Rights Watch that there had been five or six cases involving community apprehension of "seclusion" suspects in April 2010 in the geographical area her office covers, one involving violence, but police had not arrested anyone for the assault, even though the male suspect's arm had been broken and he had been beaten around the face. As Elfiana put it: "We never arrest people for that kind of violence, because it's hard to prove who was the actor, or the couple didn't see who it was. And if it was committed by many people, we can't arrest them all."[141]

Budiyono, the head of law development for the Aceh Regional Police, told Human Rights Watch that the official policy of the police in such situations is simply to attempt to stop community violence and protect victims, and that the police will not process assault or other claims against the perpetrators of such violence unless victims file a report.[142] If they do not file a report, the police will assume, based on Qanun 9/2008, that *adat* procedures will resolve any minor assault claims satisfactorily. One significant shortcoming of this approach is that many people in Aceh are unwilling to affirmatively seek out assistance from the police by filing criminal claims, particularly when the perpetrators of violence against them live in their communities.[143] A 2006 UNDP study suggests that this phenomenon results in part from a perception in Aceh that the formal justice system is labyrinthine, intimidating, and pervasively corrupt; and in part from pressure by village authorities on residents to refrain from referring issues for resolution outside the village structure.[144]

Budiyono also told Human Rights Watch that his office has tried to convince communities to refrain from vigilantism.[145] While the Aceh police's efforts have been less than successful, he

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[139] Human Rights Watch interview with Ibu Elfiana, Banda Aceh, May 15, 2010.

[140] Ibid.

[141] Ibid.

[142] Human Rights Watch interview with Budiyono, the head of law development for the National Police in Aceh, Banda Aceh, May 24, 2010.

[143] Human Rights Watch has learned of only one case in which violence occurred in private apprehension of "seclusion" suspects and in which police detained any of the perpetrators of that violence, in West Aceh district.

[144] UNDP Indonesia, "Access to Justice in Aceh," p. 79. The study noted that this pressure comes from a belief promoted by village leaders that social harmony must be maintained at all costs and that referring a problem for resolution outside the village structure escalates the dispute and embarrasses both traditional leaders and the community. The study concluded that "lack of confidence [in the formal justice system] has, over the years, created an attitude of resignation…so that, rather than exhaust one's self attempting to access justice with futile results, people prefer to 'submit to their fate.'"

[145] Human Rights Watch interview with Budiyono, the head of law development for the National Police in Aceh, Banda Aceh, May 24, 2010.

was hopeful that a recent "community policing" (Pemolisan Masyarakat, POLMAS) initiative being implemented by the Aceh police, as part of a national program implemented by the police together with the International Organisation for Migration (IOM), would improve the situation.[146]

The POLMAS program is intended to "build the trust of the people towards the [police]," in part by empowering community members "to actively find, identify, analyze and find solutions for problems which adversely affect security, order and other social problems."[147] Budiyono told Human Rights Watch that pursuant to the POLMAS program in Aceh, the police ask every village council (*tuhapeut*) to designate at least one Community Policing officer (Petugas Polmas, CP officer), who is given responsibility for ensuring that village councils resolve issues like "seclusion" allegations through *adat* mechanisms, but without the use of violence. According to Budiyono, the CP officer is also tasked with convincing village authorities to contact the police if community enforcement of the prohibition against "seclusion" gets out of hand.

Gaut Pengasihan, a Project Officer for IOM Indonesia's Police Reform Programme in Aceh, confirmed that CP officers[148] do work with village council members to find legally proper solutions for the resolution of low-level disputes within the jurisdiction of *adat* bodies, as part of a component of the POLMAS program called the "Community Policing Forum" (CPF, Forum Kemitraan Polisi dan Masyarakat).[149] IOM plays a role in this process by assisting police trainers that conduct community policing and human rights trainings for CP officers and police officers. In these trainings, IOM attempts to promote the institutionalization of basic human rights principles, such as the need for active and meaningful participation by women in the CPF. However, in Aceh, its training programs do not specifically address Sharia or the implementation of Aceh's *qanuns*.

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[146] The POLMAS program in Aceh is one part of a nation-wide POLMAS initiative outlined in National Police regulations. INP Chief Regulation (Perkap) No. 7/2008 Regarding the Basic Manual on Strategies and implementation of community policing in the performance of the Indonesian National Police's duties, unofficial translation on file with Human Rights Watch. IOM assisted in the formulation of this regulation and in some training initiatives associated with the program.

[147] Ibid., art.7-8.

[148] Each district chief of police in Aceh, like those elsewhere in Indonesia, generally assigns one Community Policing (CP) officer to every village. The Indonesian police have long had a policy of assigning one police member to every village, but since the implementation of the POLMAS program, the title of that officer has been changed from Officer of Community Security and Order Development (Babinkamtibmas) to Community Police (CP) officer (Petugas Polmas). IOM does not play a role in this selection process. Human Rights Watch email correspondence with Ibu Gaut Pengasihan, Sept. 9 and 13, 2010.

[149] Human Rights Watch email correspondence with Ibu Gaut Pengasihan, Sept. 9 and 13, 2010. During the first stage of implementation of the POLMAS program, (2007–2009) the Indonesian national police trainers at the national and local levels, assisted by IOM Project assistants, promoted the integration of a CPF into existing *adat* institutions such as the village council. In the CPF, CP officers and village council members use a technique called SARE (Scanning, Analyze, Response and Evaluation), to address public order concerns of community members and attempt to prevent the commission of low-level crimes, including theft, at the village level.

One possible effect of the POLMAS program could be to place CP officers in a position to attempt to convince village-level authorities to refrain from using violence in apprehending people suspected of committing "seclusion" (as well as other minor crimes). Indeed, one civil society activist in Meulaboh told Human Rights Watch that she thought the POLMAS program was reducing the degree of violence occurring in community processing of "seclusion" cases, though she agreed that *adat* mechanism needed to be made more representative of women's interests.[150] However, the POLMAS initiative does not discourage the use of *adat* dispute resolution mechanisms to resolve disputes including allegations of "seclusion," as it is one of the "low-level" offenses which *adat* bodies are authorized to resolve under Aceh's local laws. The POLMAS program also does not directly address the serious due process shortcomings of the *adat* process identified above; nor does it place any particular emphasis on promoting accountability for members of the community who commit violence in their implementation of the law prohibiting "seclusion."

Wilayatul Hisbah officers in West Aceh give a verbal warning to women stopped at a checkpoint for wearing clothing that reveals the shape of their bodies in alleged violation of Aceh's Sharia-inspired law requiring all Muslims to wear "Islamic attire."

[150] Human Rights Watch interview with civil society activist, Meulaboh, May 23, 2010.

VII. Human Rights Violations in Enforcement of Islamic Dress Requirements

Wilayatul Hisbah officers conduct raids, surveillance, and patrols to implement the dress code restrictions for Muslims contained in Qanun 11/2002. The WH in Aceh reported that they recorded 2,689 violations of Qanun 11/2002 in 2009.[151] Anecdotal evidence suggests that the majority of these were for violating Islamic dress codes.[152] As with the Seclusion Law, enforcement of the law is often arbitrary and accompanied by human rights abuse.

WH Islamic dress raids can net a significant number of alleged offenders in a matter of hours. On January 26, 2010, for example, the Banda Aceh WH and Satpol PP conducted a raid near Syiah Kuala University that resulted in the brief detention of approximately 200 people for alleged violations of the Islamic dress code.[153] In another raid at a major intersection in Banda Aceh on May 4, 2010, WH officers temporarily detained 194 people, 191 of whom were women, at the checkpoint area in order to give them "advice and guidance" concerning Sharia law and appropriate Islamic attire.[154] A female journalist apprehended in this raid, Dewi, told Human Rights Watch that the WH stopped her while she was riding on her motorbike, wearing jeans, a close-fitting shirt, and a scarf on her shoulders rather than a veil. She was asked to dismount and report to two female WH officers. She told Human Rights Watch:

> The [two female WH officers] took my ID card and took down my name and my ID number and asked me to sign the book and write down the bad thing I'd done. I asked 'what have I done?' [One of the female WH officers] said, 'your clothing. You're not wearing a veil.... There's a regulation in Islam about that.' I said, 'it's my choice whether to wear the veil–it's my business with

[151] Satpol PP-WH Aceh, "Report of Data on Breaches of Sharia Laws in the Province in Aceh in 2009." On file with Human Rights Watch.

[152] The law also contains requirements related to prayer and Ramadan fasting obligations which the WH occasionally enforce. For example, on July 22, 2010, the Meulaboh WH stopped three US citizens they believed to be missionaries for violating Qanun 11/2002's prohibition against attempted conversion of Muslims to another religion. "Pelaku dan Korban Pemurtadan Ditangkap," *Serambi Indonesia*, July 22, 2010. On January 9, 2010 in Pidie Jaya, the WH arrested dozens of fishermen who were caught fishing on Friday in violation of Qanun 11/2002's requirement that Muslim men attend Friday prayers. "Belasan Nelayan Pijay Ditangkap," *Serambi Indonesia*, Jan. 9, 2010. On August 30, 2009 in Sigli, WH officers apprehended two women who were selling food before sundown during Ramadan in violation of Qanun 11/2002's requirement that individuals must refrain from giving people an opportunity to break the fast during the month of Ramadan. "Dua Wanita Pedagang Dibekuk Satpol PP dan WH Pidie ," *Serambi Indonesia*, August 30, 2009.

[153] Nurdin Hasan, "Tight Jeans and Shorts Under Attack in Aceh," *The Jakarta Globe*, January 28, 2010, http://www.thejakartaglobe.com/home/tight-jeans-and-shorts-under-attack-in-aceh/355504 (accessed August 31, 2010).

[154] "Ratusan Pelanggar Syariat Terjaring Razia WH," *Serambi Indonesia*, May 5, 2010. The men were apprehended for wearing shorts above the knee.

> God.' Her answer was, 'No, there is a rule in Islam that regulates it.' Then she gave back my ID card, and told me that it if I did the same thing three times I would get whipped.[155]

Erni, a student, gave an account of her experience at the same raid, where she was similarly stopped by the WH for failing to wear Islamic attire, presumably because she was wearing jeans:

> I was trying to go to my college. I was on my motorbike, wearing a veil and jeans and a long shirt to my knee. A WH officer stopped me and caught me and put me with other offenders. There were many women stopped–around 100. We had to show our student IDs, and they wrote down our names and said it was the first warning, but if we did it again, we'd be brought to the WH office. Then they gave us all advice. There were 20 women per group. They quoted a hadith verse about how women should behave and how women are the foundation of the country and if women are bad, everything will be ruined.[156]

WH officers also conduct patrols and surveillance to briefly apprehend and lecture individuals suspected of violating Sharia law. Erni told Human Rights Watch that she was apprehended by the WH in a patrol and accused of violating Qanun 11/2002's dress code provisions in mid-2009 for wearing a dress that didn't completely cover her legs, "A WH officer stopped me and he was impolite. He said, 'why are you dressed like that? It will look bad for your family.' I had to tell him my name, my occupation, my address, and sign a form."[157] Another woman, Nursiah, recounted an incident in April 2010. "I was trying to go to a store, and WH official yelled at me in front of many people. He said to make sure my hair was all covered because my veil was pushed back some."[158]

While interactions with WH personnel in such operations are often—but not always—brief,[159] women who had experienced them expressed frustration at the interference of state

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[155] Human Rights Watch interview with "Dewi," Banda Aceh, May 17, 2010.

[156] Human Rights Watch interview with "Erni," Banda Aceh, May 15, 2010.

[157] Ibid.

[158] Human Rights Watch interview with "Nursiah," May 13, 2010.

[159] At times WH patrols exceed their authority by detaining individuals apprehended for not wearing proper Islamic dress, even though the law on dress does not state that violators can be arrested or detained. Fatimah told Human Rights Watch that she was held by the WH in detention on suspicion of "seclusion" in November 2009 along with six young women who were all detained for failing to wear a veil. She told Human Rights Watch, "One female WH officer was yelling at the girls without veils because they were covering their faces. She yelled, 'why are you doing that?' and one of the girls answered, 'Because I am ashamed.' The WH yelled back, 'You didn't feel ashamed when you were outside?'"

authorities in what they considered to be a purely private matter. Dewi told Human Rights Watch:

> One of the female Acehnese heros, [Cut Nyak Dien], used a scarf [on her shoulders], not a veil, and she wore pants, even though there was Sharia Islam in Aceh then too. Why can't we use a scarf anymore? It's like they want to make us Arabs. It's not our custom, it's not our culture, and it's not suitable for the conditions in Aceh. I might want to wear a veil, but not because I'm forced by the WH, because I want to. I don't want to wear it just to look respectable. I just want to be who I am.[160]

As noted above, the Islamic attire requirements in Qanun 14/2003 and West Aceh's district-level regulation contain gender-neutral language and apply to both women and men, but they have a disproportionate and therefore discriminatory impact on women in practice, as they place far more stringent restrictions on women than they do on men. And women constitute the overwhelming majority of those reprimanded pursuant to the law. Bustami, a WH officer, told Human Rights Watch that when the WH conducts such raids, "We just look for women that do not cover their hair or that are wearing tight skirts and pants."[161] The head of the WH, Marzuki, stated, "We focus on everybody, but it's usually women that make mistakes."[162]

Human Rights Watch spoke to women in Aceh who expressed anger that the government had denied them the ability to choose whether or not to wear the *jilbab* and that authorities believed it was appropriate to force them to dress in a certain way. Women who were stopped said that the WH enforcement actions inconvenienced and humiliated them and that WH officers implemented the dress requirements arbitrarily, giving rise to confusion as to what sort of clothing is considered impermissibly tight.

Other women we spoke with gave other examples showing the law is enforced in an arbitrary manner. Maliyah, a journalist, said that she encountered a WH raid in early 2010 outside a Banda Aceh mosque: "There was a young woman who wanted to pray. A female WH stopped her because she said she was wearing tight clothing. But the woman's dress was polite!"[163] Erni told Human Rights Watch that even after she was stopped by the WH, she was unclear about the standards the WH apply to evaluate women's dress, saying, "The [male WH officer]

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[160] Human Rights Watch interview with "Dewi," Banda Aceh, May 17, 2010.

[161] Human Rights Watch interview with "Bustami," Banda Aceh, May 17, 2010.

[162] Human Rights Watch interview with Marzuki Abdullah, head of the WH in Aceh, Banda Aceh, May 19, 2010.

[163] Human Rights Watch interview with "Erni," Banda Aceh, May 15, 2010.

told us to wear skirts and never to wear jeans. But then a woman WH officer said I could wear pants, but if I did, my shirt had to be below my knee. I don't know what is acceptable–maybe if I used tight pants but with a very long shirt?"[164]

Anecdotal evidence also suggests that women targeted in such actions are also primarily young and not wealthy. A primary complaint voiced by women was that when the WH establish checkpoints, they only stop women on motorbikes or using public transportation and do not stop automobiles. As a result, WH enforcement actions disproportionately target the poor. WH target young women by conducting raids near high schools and universities. Maliyah recalled one incident she observed in December 2009. She told Human Rights Watch, "There was a raid in front of a high school. There were lots of people on the road, but they only stopped women who were riding motorbikes. I was in a car, and I wasn't wearing a veil, but I wasn't stopped. WH are unfair."[165]

Komnas Perempuan and media sources have cited evidence suggesting that WH police also use Sharia law—both Qanun 11/2002 and Qanun 14/2003—as a pretext for apprehending and reprimanding transgender women (male-to-female transgender individuals) and gender non-conforming individuals on the basis of their gender expression and identity. Our interviews support their conclusions. [166]

Transgender women in Aceh told Human Rights Watch that they felt the WH singled them out for violating the Islamic attire requirement. Surya, a transgender woman, told Human Rights Watch that she and another transgender woman were detained by a joint Satpol PP-WH patrol in early 2009, in part because the patrol members believed that she and her friend were violating the Sharia laws simply because they were dressed as women, not because of any specific problem with their clothing. As they were released from detention the following morning, one WH official told Surya, "You cannot be like this. You will get whipped."[167]

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[164] Ibid.

[165] Human Rights Watch interview with "Maliyah," Banda Aceh, May 14, 2010. See Tom Boellstorff, "The Emergence of Political Homophobia in Indonesia: Masculinity and National Belonging," *Ethnos*, vol. 69:4, December 2004, pp. 465–486, http://www.asylumlaw.org/docs/sexualminorities/IndonesiaBoellstorff-Homophobia123004.pdf (accessed August 31, 2010).

[166] There is a long tradition of transgender expression in Indonesia, where transgender women are known as *waria* (a word which comes from the Indonesian word *wanita*, meaning woman, and *pria*, meaning man). Homosexual conduct is not outlawed at the national level in Indonesia; however, some observers have noted increasing prejudice against people perceived to be homosexual and transgender. Dédé Oetomo, "Claiming gay persons' sexual rights in Indonesia," *Sexual Health Exchange* vol. 3, 2001, http://www.kit.nl/exchange/html/2001-3-claiming_gay_persons.asp (noting that Waria have traditionally met a relatively high level of tolerance and acceptance in Indonesian society, although mainly through ghettoised occupations, such as entertainers, beauticians, wedding consultants and psychics) (accessed August 31, 2010).

[167] Human Rights Watch interview with "Surya," Banda Aceh, May 23, 2010.

In December 2009, a WH patrol detained two of Surya's transgender friends, Cici and Andi, for dress code violations while they attempted to buy dinner at a food stall late at night. According to Surya, who saw them at the WH office when she went there in an attempt to secure their release, Cici was wearing clothing that complied with the Islamic dress requirements for a woman—loose pajama pants, a long shirt to her shins, and a veil—and Andi was wearing clothing that should have complied with the dress code requirements for a man—a t-shirt and trousers. Surya told Human Rights Watch, "They discriminate against us–it does not matter what we do.... We should dress properly in public, but I think I am dressing properly."[168]

In August 2010, Marzuki, the head of the WH force, told an Indonesian media source that in his opinion, homosexuality is forbidden in Aceh, whether or not a local law prohibiting it exists. Of transgender women, he said, "We consider them men, and they should dress accordingly."[169] These comments suggest that the WH force has equated gender expression and identity with sexual orientation–assuming that transgender women have sex with men—and that WH police are using Qanun 11/2002 as a means to criminalize homosexuality and nonconforming gender identity.

A District Government Follows Suit

District and municipality-level governments in Aceh are permitted to contribute to the implementation of Sharia law. In one case, a district-level government has attempted to do so by enforcing additional requirements regarding Islamic dress. In October 2009, Ramli Mansur, the head of West Aceh district, proposed a local regulation that would build upon the dress code provisions of Qanun 11/2002 and implement a ban on tight women's clothing, particularly pants that show the shape of their legs, and would also ban retail shops from selling tight women's clothing. Ramli also authorized WH officials to provide women found wearing tight pants with a government-issued skirt and to confiscate the offending articles of clothing. The West Aceh district government reportedly purchased 20,000 skirts in order to facilitate the implementation of this provision of the law.[170]

In early 2010, Ramli delayed the implementation of the regulation, reportedly at the urging of Governor Irwandi. However, following a "public comment" session on the draft law in May 2010, WH officers in West Aceh began distributing the government-issued skirts to women

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[168] Human Rights Watch interview with "Surya," Banda Aceh, May 23, 2010.

[169] Dewi Kurniawati, "Acehnese Gays Face a Climate of Fear and Abuse," *The Jakarta Globe*, August 19, 2010.

[170] Tom Allard, "No question over who wears the pants in West Aceh," *The Age*, May 27, 2010 (reporting that "West Aceh's [WH] have been setting up roadblocks outside the district's capital of Meulaboh, inspecting every car and stopping motorcycle riders if there is a female rider on board wearing pants.").

they stopped near the district border for violating the dress code.[171] Civil society activists told Human Rights Watch that the regulation officially entered into force in July 2010.[172]

Official Justifications for the Islamic Dress Requirements

Some religious and government officials have defended Aceh's Islamic clothing requirement on religious and public order grounds. In particular, staff at the Office of Sharia Islam indicated that female clothing requirements are intended to reduce male sexual desire and violence against women. These officials argued that it was appropriate for the state to force women to wear veils and other Islamic clothing, as it would reduce the risk that they would become victims of vigilante violence. Others disagreed with the imposition of the Islamic dress requirement on the ground that it would not increase the public's piety and could actually weaken it.

Officials at the Office of Sharia Islam, Drs. Abdullah Muhammad, the Director of Law Development, and Husni M. Agee, a staff member in his department, justified the Islamic dress requirements on morality grounds, stating that the government has the right to impose restrictions on personal conduct derived from Islam, and that Islamic teachings specifically required the clothing restrictions they had imposed.[173] Ramli Mansur, the head of West Aceh district, echoed these sentiments in an interview with an Indonesian paper, saying, "It's … stated in the [Quran] that if a woman imitates a man [by wearing pants], then she will spend 500 years in solitude before she ever gets to heaven…. It's my obligation as a leader to help the people so they won't suffer in the afterlife…. If you question it, then you're an apostate."[174]

Drs. Abdullah Muhammad and Husni M. Agee also defended the Aceh-wide Islamic dress requirement on public order grounds, telling Human Rights Watch that it was intended to reduce male sexual desire and violence caused by women wearing tight jeans and other

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[171] Fakhrurradzie Gade, "Tight Pants Ban Takes Effect in Indonesia," May 27, 2010 (noting that on May 27, "Islamic police caught 18 women traveling on motorbikes who were wearing [*jilbabs*] but were also dressed in jeans. Each woman was given a long skirt and her pants were confiscated. They were released from police custody after giving their identities and receiving advice." Ramli said any shopkeepers caught violating restrictions on selling short skirts and jeans would face a revocation of their business licenses.). Tom Allard, "No question over who wears the pants in West Aceh," *The Age*, May 27, 2010.

[172] Human Rights Watch email correspondence with civil society activist, August 20, 2010.

[173] They argued that Quran, and particularly *Surah* (Chapter) *An Nur* (The Light), prohibits women from showing the shape of their bodies. That *Surah* states, "Tell the believing men to lower their gaze, and protect their private parts. That is purer for them. Verily, Allah is All-Aware of what they do. And tell the believing women to lower their gaze, and protect their private parts and not to show off their adornment except only that which is apparent, and to draw their veils all over *Juyubihinna* [bodies, faces, necks and bosoms, etc.] and not to reveal their adornment except to their husbands [and blood relatives and their female spouses, children, and certain servants]. And let them not stamp their feet so as to reveal what they hide of their adornment…" (*Surah An Nur*: 31-32, translation by Muhsin Khan).

[174] Dewi Kurniawati, "West Aceh District Chief Says Shariah Law Needed or There Will Be Hell to Pay," *The Jakarta Globe*, August 18, 2010.

improper clothing. Agee, citing vigilante violence against women documented in Aceh in 1999 as Sharia was first being implemented, said that dress requirements were intended to protect women from being targeted in similar attacks, because Islamic dress, when properly implemented by women, minimizes the risk of violence by increasing community respect for them. Both Agee and Drs. Abdullah Muhammad, the head of law development at the Office of Sharia Islam, agreed that banning women from wearing pants altogether (unless worn under a skirt) would increase the effectiveness and clarity of the law.[175] Ramli cited the same justification as support for West Aceh's stricter dress standards, telling a journalist, "[W]hen women don't dress according to Sharia law, they're asking to get raped. It's a fact that men go wild when they see a woman's breasts and thighs. It arouses them."[176]

In contrast, Yusni Sabi, the former rector of IAIN Al-Raniry State Islamic University in Aceh, told Human Rights Watch that he questioned the value of criminal laws implementing dress standards: "Formality sometimes lessens sincerity. People act not because of their piety but because they don't want to be caught by the police, and that has no value at all. The state should be very selective on this and not make a police state, where government is everywhere. Sharia should be implemented first in the family, in the house, in the community … it's not the business of the police."[177] Al Yasa' Abubakar, the former head of the Office of Sharia Islam, said that he believed that WH enforcement activities that went beyond the provision of advice and attempted to compel women to change their attire were not likely to be effective, saying, "the only thing that can force [people] to wear proper dress is their environment."[178]

[175] Human Rights Watch interview with Drs. Abdullah Muhammad and Husni M. Agee, Office of Sharia Islam, Banda Aceh, May 20, 2010.

[176] Dewi Kurniawati, "West Aceh District Chief Says Shariah Law Needed or There Will Be Hell to Pay," *The Jakarta Globe*, August 18, 2010.

[177] Human Rights Watch interview with Yusni Sabi, Banda Aceh, May 18, 2010.

[178] Human Rights Watch interview with Al Yasa' Abubakar, Banda Aceh, May 21, 2010.

VIII. Legal Standards

Qanuns 11/2002 and 14/2003 violate the internationally-recognized rights to a private life and to autonomy in areas of activity that do not infringe upon the rights of others. Qanun 14/2003, the Seclusion Law, impermissibly prohibits consenting adults from associating with one another in a wide variety of situations. Although it may have been implemented in an effort to address the problem of vigilante violence, it is neither necessary for addressing this problem nor a proportionate response to the issue. Similarly, Qanun 11/2002 impermissibly and discriminatorily restricts the right of women and transgender women to make personal decisions about their attire, denying them the right to autonomy, as well as the right to free expression and freedom of religion. The laws also authorize the punishment of those convicted of violating Sharia laws with caning, a sanction that is never permissible under human rights law regardless of the manner in which it is carried out, as it constitutes corporal punishment.

The manner in which the WH and police are implementing Sharia law, and particularly Qanuns 11/2002 and 14/2003, is also giving rise to violations of a host of human rights that Indonesia has pledged to safeguard under various human rights treaties. The vague definition of "seclusion" and arbitrary application of the laws by law enforcement authorities violate the requirement enshrined in human rights law that criminal laws be sufficiently narrowly and precisely drawn to satisfy the principles of legal certainty and foreseeability.

The discriminatory impact of Qanun 11/2002 on women, and selective enforcement of the law against transgender women and the poor violate the right to non-discrimination. The Wilayatul Hisbah practice of conditioning release from detention or the closing of a criminal investigation upon the agreement of people accused of "seclusion" to marry one another violates the right to enter into marriage only with one's free and full consent. The WH's stated practice of requiring women and girls accused of "seclusion" to submit to forced virginity tests is unnecessary, discriminatory, and abusive of their right to privacy and personal integrity and constitutes torture under international law. Indonesia has an obligation to cease these abusive practices and provide those whose rights have been violated with an effective remedy, including accountability and reparations.

Indonesia also has an obligation to prevent the commission of vigilante enforcement of the Sharia laws by private individuals, to sanction private violence when it occurs, and to protect people from the threat of further violence against them. At present, it is failing to satisfy this obligation, as law enforcement authorities do not encourage victims of violence to report

acts of violence and refuse to investigate and prosecute people for engaging in such violence when they become aware of it. It is not a sufficient response to this problem to simply encourage the resolution of such issues via customary law mechanisms when such mechanisms themselves are selectively applied, lack basic due process guarantees, fail to punish perpetrators of violence, and impose inappropriate and disproportionate punishments on those accused of "seclusion."

Sharia, National Law, and Human Rights in Indonesia

Sharia implementation in Aceh is taking place in the context of a complex legal architecture. Three overlapping legal frameworks operate in Aceh: a formal system of general law, a formal system of Sharia law, and an informal system of *adat* (customary) law. These legal systems operate in a clear hierarchy; the Indonesian constitution is the highest source of authority, followed by laws enacted at the national level, followed by general and Sharia laws enacted at the provincial and district levels in Aceh, followed by *adat* laws and customs. However, there are few mechanisms in place to ensure that this hierarchy is maintained and that rules at all three levels are compatible with one another. Those that do exist appear to be functioning poorly.

Several Islamic scholars, from Aceh as well as elsewhere in Indonesia, stressed to Human Rights Watch that there is not an inherent theoretical conflict between most aspects of human rights law, Indonesian national law, and the implementation of Sharia law in Aceh. Al Yasa' Abubakar, the former head of the Office of Sharia Islam, told Human Rights Watch that in principle, Sharia laws can harmoniously fit within the framework of Indonesian national law, although officials in Aceh had found the task difficult, as they believed there were no adequate existing examples for them to follow.[179] Mohammad Nazar, Vice-Governor of Aceh, agreed that in many aspects, Sharia can be compatible with human rights, saying, "For us, Islam is a way from God to determine the life of the people, with civilization, not with radical ideology. We have to prepare people to understand that Islamic law is not violent…. Islamic law is about welfare, not about disturbing the rights of the people. Islam can become the power of change for the good of the people. [But] this reformation and transformation cannot be done with violence."[180] Yusni Sabi agreed, saying, "human rights is definitely compatible with Islam, there is no question…. The very basic teachings of Islam are compatible with

[179] Human Rights Watch interview with Al Yasa' Abubakar, Banda Aceh, May 21, 2010.

[180] Human Rights Watch interview with Mohammad Nazar, Vice Governor of Aceh, Banda Aceh, May 18, 2010.

human rights…. The real Sharia [is]: 'Do good things for your neighbors, your brothers.' But since we are-narrow minded, we have only focused on the small things."[181]

The Indonesian constitution broadly protects freedom of expression and association. Article 28E states,
(1)Every person shall be free to choose and to practice the religion of his or her choice…
(2)Every person shall have the right to the freedom to believe in his or her faith, to express his or her views and thoughts, in accordance with his or her conscience.
(3)Every person shall have the right to … associate, to assemble and to express opinions.

The constitution recognizes the right to freedom of religion in article 29, noting that "the State guarantees all persons the freedom of worship, each according to his or her own religious belief."[182] Article 28I states that the rights to freedom of thought and conscience and freedom of religion are rights "that cannot be limited under any circumstances."[183] The constitution affirms the rights to legal certainty and "equal treatment before the law," and "to be free from torture or inhuman or degrading treatment."[184] It provides that every person has the right to be free "from discriminatory treatment based upon any grounds whatsoever" and the right to protection from discrimination.[185]

Indonesia's law 39/1999 on Human Rights reaffirms these provisions[186] and also guarantees the right to freedom from arbitrary arrest and detention.[187] Law 39/1999 notes that these rights may only be limited by law, and then only for the purposes of "guaranteeing recognition and respect for the basic rights and freedoms of another person, fulfilling moral requirements, or in the public interest."[188] It further states that children may be arrested or

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[181] Human Rights Watch interview with Yusni Sabi, Banda Aceh, May 18, 2010.

[182] Art. 29(2).

[183] Art. 28I

[184] Art. 28D; art. 28G

[185] Art. 28I; art. 28B (noting that every child has "the right to protection from violence and discrimination").

[186] Law 39/1999 guarantees the freedom to choose and practice religion and to worship according to one's religion and beliefs and states that the rights to freedom of thought and conscience cannot be diminished under any circumstance. Arts. 22 and 4. It also guarantees the rights to equal treatment under the law, the right to peaceful assembly and association, the right to protection and security, the right to freedom from torture and cruel, inhuman, and degrading treatment, and the right to be free from discrimination. Arts. 2, 5, 24, 30, 33, and 3(3). Discrimination is defined as: "every restriction, abuse, or exclusion, directly or not directly, based on the human differentiation based on…class, social status, economic status, sex…[or] political convictions, which results in the impairment, violation, or nullification of the recognition, implementation, or exercise of human rights…"

[187] Art. 34.

[188] Art. 73.

detained "only as a measure of last resort."[189] In 2005, the DPR incorporated the entirety of the International Covenant on Civil and Political Rights (ICCPR) into national law.[190] As discussed in below, the ICCPR and other international human rights treaties to which Indonesia is a party similarly require Indonesia to respect and protect rights including freedom of expression, religious freedom, and non-discrimination.

The Law on the Governing of Aceh (LoGA) guarantees equal standing before the law, freedom of speech, and freedom of association. It prohibits subjecting residents of Aceh to any form of arbitrary or unlawful search of their persons or residences, the revocation of their rights, the restriction of their individual freedoms; arbitrary torture; or unlawful arrest, detention, prosecution and imprisonment.[191] It also calls for government officials to "promote and protect the rights of women and children."[192]

The LoGA also states, however, that one of the "special authorities" of the Aceh government is its power to administer religious affairs by implementing Sharia for Muslims in Aceh "with guidance from prevailing laws and regulations."[193] The LoGA states that Sharia in Aceh can include *jinayah* (criminal law), as well as regulations related to devotion, family law, civil law, the courts, education, lecturing, religious teachings, and the defense of Islam.[194] Aceh's provincial, municipal, and district governments can implement Sharia, but they must also "guarantee freedom, foster harmony, respect the religious values practiced by religious faiths, and protect the followers of various faiths to allow them to practice their faiths…"[195] Officials in Aceh are prohibited under the LoGA from "making decisions … in a manner that violates the provisions of prevailing laws and regulations, adversely affects the public interest, and causes unrest within a segment of the community, or discriminates against citizens and/or other groups in society."[196]

While the executive branch of the central government normally has power to invalidate laws that contravene the public interest, or conflict with other laws or superseding laws and regulations, the LoGA exempts Sharia-based *qanuns* from this authority. As a result, the Supreme Court is the only national government institution in Indonesia that can invalidate

[189] Art. 66.

[190] Law 11/2005.

[191] Art. 227.

[192] Art. 231(1).

[193] Art. 7(2); art. 16(2)(a)-(b); art. 17(2)(a)-(b)); art. 16(4)).

[194] Art. 125.

[195] Art. 127.

[196] Art. 47.

Sharia *qanuns*.[197] However, as Indonesia's National Commission on Violence against Women (Komnas Perempuan) has reported, the Supreme Court has historically declined to review the substance of local morality regulations in Indonesia for compatibility with higher laws, instead requiring only that they be enacted in a procedurally proper manner.[198]

International Standards

Indonesia is a party to the major human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR),[199] the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture),[200] the Convention on the Rights of the Child (CRC),[201] and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).[202]

The Right to Legal Certainty

Article 15 of the ICCPR requires that all crimes be adequately detailed in the law, which encompasses the principles of legal certainty and foreseeability, requiring that criminal laws be sufficiently, narrowly, and precisely drawn to target specific behavior.[203]

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[197] LoGA, art. 235. In September 2009, Saut Situmorang, head of Information for the Ministry of Home Affairs, confirmed, "the Qanun that governs Sharia may only be rejected by a material review conducted by [the Supreme Court." "Qanun yang Bertentangan dengan UU Akan Diuji Materi," *Serambi Indonesia*, September 26, 2009, http://www.serambinews.com/news/view/14221/qanun-yang-bertentangan-dengan-uu-akan-diuji-materi (accessed August 31, 2010).

[198] In April 2007, the Supreme Court refused to review a regulation implemented in the district of Tangerang that vaguely criminalized "prostitution" for substantive compatibility with higher laws or the constitution, and instead determined that the law did not conflict with higher Indonesian law because it had been approved in a procedurally correct manner. "Perda Pelacuran Tangerang Tak Bertentangan dengan UU" ("Tangerang Government Decree Regarding Prostitution Does Not Violate Other Laws"), *Gatra*, April 13, 2007. The law provided: "anyone whose behavior or attitude…raises a suspicion that she is a prostitute is prohibited to be…in areas that can be seen publicly." Tangerang Regional regulation No. 8/2005, translation in Komnas Perempuan *In the Name of Regional Autonomy: The Institutionalisation of Discrimination in Indonesia*, (2009), Table 7. In addition, in 2008, the Supreme Court has heard appeals in five Sharia cases from Aceh, four of which involved caning sentences. In each, it sustained the guilty verdict and did not examine the compatibility of the underlying law with national law. Case Nos. 01 K/AG/JN/2008, No. 01 PK/JN/2008, No. 02 K/AG/JN/2008, No. 03 K/AG/JN/2008, No. 04 K/AG/JN/2008, on file with Human Rights Watch.

[199] International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976. Indonesia ratified the ICCPR in 2006.

[200] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987. Indonesia ratified the Convention against Torture in 1998.

[201] Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990. Indonesia ratified the CRC in 1990.

[202] Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. Res. 34/180, U.N. GAOR Supp. (No. 46) at 193, U.N. Doc A/34/36, entered into force September 3, 1981. Indonesia ratified CEDAW in 1984.

[203] ICCPR, art.15; see Manfred Nowak, UN Covenant on Civil and Political Rights: CCPR Commentary, 2nd rev. ed,. (Kehl am Rhein: Engel, 2005), p.361.

The Right to Privacy

Article 17 of the ICCPR states, "no one shall be subjected to arbitrarily or unlawful interference with his privacy" and that everyone has "the right to the protection of the law against such interference."[204] This right includes "that particular area of individual existence and autonomy that does not touch upon the sphere of liberty and privacy of others."[205] One protected aspect of the right to privacy and autonomy, confirmed by the Human Rights Committee, is adult consensual sexual activity in private. States should protect this right and other aspects of the individual right to autonomy: the right to make decisions freely in accordance with one's values, beliefs, personal circumstances and needs. States should refrain from imposing illegitimate restrictions and coercion that restricts this right, even where the purpose of such restrictions is to prevent people from adopting a lifestyle that the majority believes is distasteful or harmful to the person who pursues it. Any limitations on the right to autonomy must be directed to a legitimate aim and applied in a nondiscriminatory manner, and the extent and impact of the limitation must be strictly proportionate to meeting that aim.[206]

Freedom of Religion

Human rights law also guarantees the right to freedom of religion, including the right to manifest one's religious beliefs through worship, observance, practice, and teaching in private and in public. The ICCPR, which Indonesia ratified in 2006, states that "no one shall be subject to coercion which would impair his [or her] freedom to have or to adopt a religion or belief of his [or her] choice."[207] Governments can only limit the right to freedom of religion when it is necessary to protect public safety, public order, health, or the fundamental rights and freedoms of others, a high threshold. Any restriction must be nondiscriminatory and proportionate.[208]

Asma Jahangir, the UN special rapporteur on freedom of religion and belief, and her predecessor, Abdelfattah Amor, have both criticized rules that require the wearing of religious dress in public, and Jahangir has stated that "use of coercive methods and sanctions applied to individuals who do not wish to wear a religious dress or a specific

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[204] ICCPR, art. 17.

[205] Manfred Nowak, U.N. Covenant on Civil and Political Rights: CCPR Commentary (Kehl am Rhein, Germany: N.P. Engel, 1993), p. 294.

[206] UN Human Rights Committee (HRC), General Comment 16 to article 17 of the ICCPR , "Compilation of General Comment and General Recommendations Adopted by Human Rights Treaty Bodies," UN Doc. HRI/GEN/Rev.3, 15 August 1997.

[207] ICCPR, art. 18.

[208] UN HRC, General Comment No. 22, issued to clarify the meaning of article 18 (Forty-eighth session, 1993), July 20, 1993, Doc.CCPR/C/21/Rev.1/Add.4, para. 8.

symbol seen as sanctioned by religion" is generally incompatible with international human rights law.[209] Human rights law also guarantees the right to freedom of expression, and the Human Rights Committee, the body tasked with monitoring the implementation of the ICCPR, has noted that laws specifically regulating the clothing that women can wear in public can violate this right, as well as the rights to freedom of religion and non-discrimination.[210]

The Prohibition against Torture

The Convention against Torture outlaws corporal punishment, including caning. The Human Rights Committee has noted that the prohibition against torture or cruel, inhuman, and degrading treatment or punishment "relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim."[211] The Committee has noted that the prohibition extends to "corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure."[212] The Special Rapporteur on Torture has specifically addressed the impermissibility of corporal punishment even when laws authorizing it are derived from religion, noting that "those States applying religious law are bound to do so in such a way as to avoid the application of … corporal punishment in practice."[213]

In 2008, the Committee against Torture, which monitors the implementation of the Convention of Torture, specifically discussed the introduction of corporal punishment in Aceh, finding that "the execution of punishment in public and the use of physically abusive methods (such as flogging or caning) … contravene the Convention."[214] The Committee concluded that Indonesia should review laws in Aceh "that authorize the use of corporal punishment as criminal sanctions, with a view to abolishing them immediately, as such punishments constitute a breach of the obligations imposed by the Convention."[215]

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[209] Report of the Special Rapporteur on freedom of religion or belief Mr. Abdelfattah Amor, "Implementation of the Declaration on the Elimination of all Forms of Intolerance and Discrimination Based on Religion or Belief," Commission on Human Rights, fifty-fourth session, E/CN.4/1998/6, January 22, 1998, para 60(a) (identifying Afghanistan's obligations that women wear "what is described as Islamic dress" as a violation of the principle of tolerance in matters of religion and belief).

[210] Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, "Civil and Political Rights, Including the Question of Religious Intolerance," Commission on Human Rights, sixty-second session, E/CN.4/2006/5, January 9, 2006, p.17, para. 55.

[211] Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994), para. 5.

[212] Ibid.

[213] Report of the Special Rapporteur, Commission on Human Rights, 53d sess., Item 8(a), U.N. Doc. E/CN.4/1997/7 (1997).

[214] Concluding observations, Committee against Torture: Indonesia, CAT/C/IDN/CO/2, July 2, 2008, para. 15.

[215] Ibid.

The Prohibition against Discrimination

Article 3 of the ICCPR states that men and women should enjoy equal access to all the civil and political rights set forth in the covenant, a principle reiterated in the Convention on Elimination of All Forms of Discrimination against Women (CEDAW).[216] Under human rights law, both direct and indirect discrimination on protected grounds is strictly prohibited. Therefore a law nominally neutral on its face may still result in indirect discrimination if it has a disproportionate impact on a group.[217] CEDAW obliges states to "refrain from engaging in any act or practice of discrimination against women," to ensure that public authorities and institutions similarly refrain from doing so, and to "take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise."[218] It permits differences of treatment based on sex only where they are based on reasonable and objective criteria, pursue a legitimate goal, and are proportionate to the aims sought to be realized. The Islamic attire requirement, which mandates that women wear the veil, prohibits them from wearing close-fitting clothing, and requires them to cover all of their bodies except their hands, feet, and face, fails this test.

The ICCPR affirms the equality of all people, as well as the right to privacy, freedom of expression, and freedom of assembly.[219] These rights entail the freedom to lead an intimate life peacefully; the freedom to express oneself, including one's gender identity, through clothes or comportment; and the freedom to move and meet in public without fear of harassment or assault. The ICCPR also prohibits discrimination based on sexual orientation; in 1994, the UN Human Rights Committee held that "sexual orientation" is a status protected from discrimination under the ICCPR. Indonesia must take steps to eradicate discrimination by the WH on the basis of gender identity and sexual orientation.[220]

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[216] ICCPR, art. 3; CEDAW, art. 2.

[217] The CEDAW Committee has stated that the definition of discrimination in article 1 of the convention covers both direct and indirect discrimination by public and private actors. See for example, "CEDAW Committee Concluding Comments on the Belize initial report," cited in United Nations/Division for the Advancement of Women, Assessing the Status of Women: A Guide to the Reporting Under the Convention on the Elimination of All Forms of Discrimination Against Women (New York: United Nations, 2000), p. 102.

[218] CEDAW, art.2.

[219] ICCPR, arts. 17, 19, and 21.

[220] ICCPR, arts 2, 6. *Nicholas Toonen v Australia*, 50th Sess., Communication No. 488/1992, CCPR/c/50/D/488/1992, April 14, 1994, para 8.7 (finding that "the reference to 'sex' in articles 2, paras. 1, and 26 is to be taken as including sexual orientation."). "Report of the Independent Expert on Minority Issues," E/CN.4/2006/74, January 6, 2006, para 28.

The Prohibition against Arbitrary Arrest

Article 9 of the ICCPR states, "No one shall be subjected to arbitrary arrest or detention."[221] The prohibition on arbitrariness means that the deprivation of liberty, even if provided for by law, must be proportional to the reasons for arrest. As the UN Human Rights Committee has explained, "arbitrariness" is not "against the law," but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law.[222] The UN Human Rights Committee has determined that legally authorized detention must be reasonable, necessary and proportionate taking into account the specific circumstances of a case.[223] According to the U.N. Working Group on Arbitrary Detention ("the Working Group"), a deprivation of liberty is considered arbitrary when it results from the exercise of the rights or freedoms guaranteed in Article 18 of the ICCPR, which guarantees the right to freedom of thought, conscience, and religion.[224]

The Right to Enter Marriage Freely

CEDAW specifically requires that states must afford to women the right to enter into marriage only with their free and full consent, a right that is violated when WH officers place individuals in a coercive situation in which they must agree to marry in order to gain prompt release from custody.[225] The Committee on the Rights of the Child has similarly condemned forced marriage as a harmful practice.[226]

Human Rights Law and Virginity Tests

Virginity tests violate provisions of CEDAW, CAT, and the ICCPR. They are inherently discriminatory to women, and as there is no legitimate rationale for forced virginity examinations, they are a violation of the rights of women and girls to physical integrity and

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[221] ICCPR, art. 9.

[222] Communication No 305/1988: Netherlands. CCPR/C/39/D/305/1988 (Jurisprudence), Views Of The Human Rights Committee Under Article 5, Paragraph 4, Of The Optional Protocol To The International Covenant On Civil And Political Rights - Thirty-ninth Session concerning Communication No. 305/1988, August 15, 1990.

[223] Van Alphen v. The Netherlands, Communication No. 305/1988, adopted 15 Aug. 1990, U.N. GAOR, Hum. Rts. Comm., 39th Sess., ¶ 5.8, U.N. Doc. CCPR/C/39/D/305/1988 (1990); A v. Australia, Communication No. 560/1993, adopted 30 Apr. 1997, U.N. GAOR, Hum. Rts. Comm., 59th Sess.,¶ 9.2, U.N. Doc. CCPR/C/59/D/560/1993 (1997).

[224] See Fact Sheet No. 26, section IV "Criteria Adopted by the Working Group to Determine whether a Deprivation of Liberty is Arbitrary," U.N. Working Group on Arbitrary Detention, http://www2.ohchr.org/english/about/publications/docs/fs26.htm (accessed Oct. 16, 2010).

[225] Art. 16(1)(b)

[226] See Committee on the Rights of the Child, General Comment 3, CRC/GC/2003/3, March 17, 2003,para 11.

privacy.[227] Sir Nigel Rodley, the former UN special rapporteur on torture and other cruel, inhuman, or degrading treatment, has classified virginity testing as a form of gender-specific torture.[228]

The Right to a Remedy

The ICCPR and CAT impose an obligation on Indonesia to investigate, prosecute, and remedy these and other human rights abuses committed by law enforcement officials against individuals detained on suspicion of Sharia violations.[229] The Committee against Torture concluded in 2008 that Indonesia's obligations in this regard include "ensur[ing] that members of the [Wilayatul Hisbah] exercise a defined jurisdiction, are properly trained and operate in conformity with the provisions of the Convention, especially on the prohibition of torture and ill-treatment, and that their acts are subject to review by ordinary judicial authorities."[230] The Committee also concluded that State institutions in Indonesia should supervise the actions of the [Wilayatul Hisbah] and ensure that fundamental legal safeguards apply to all persons who are accused of violating matters of its concern," and that Indonesia "should further ensure that a legal aid mechanism exists to guarantee that any person has an enforceable right to a lawyer and other due process guarantees, so that all suspects have the possibility of defending themselves and of lodging complaints of abusive treatment in violation of national law and the Convention."[231]

Human Rights Violations by Private Actors

International human rights law recognizes state accountability for abuses by private actors and requires states to show due diligence in preventing and responding to human rights violations.[232]

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[227] See Human Rights Watch, *Dignity on Trial: India's Need for Sound Standards for Conducting and Interpreting Forensic Examinations of Rape Survivors*, September 6, 2010, http://www.hrw.org/en/node/92720/section/1; Human Rights Watch, *Libya: A Threat to Society?*, February 27, 2006, http://www.hrw.org/en/node/11468/section/6#_ftn82 (citing interview with Dr. Greg Larkin, Professor of Emergency Medicine at the University of Texas Southwestern Medical Center, February 14, 2006) (accessed August 31, 2010).

[228] Interim Report of the Special Rapporteur to the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment, A/55/290, August 11, 2000, http://www.un.org/documents/ga/docs/55/a55290.pdf (accessed May 13, 2010), p. 7.

[229] ICCPR, art. 2(3)(a); CAT art.7.

[230] Concluding observations, Committee against Torture: Indonesia, CAT/C/IDN/CO/2, July 2, 2008, para. 15.

[231] Ibid.

[232] ICCPR, art. 9.

The Right to Due Process

Indonesia similarly fails to satisfy its obligations under the ICCPR in requiring people accused of "seclusion" and/or who have been the victim of violent crimes to submit to traditional dispute resolution mechanisms that lack basic due process guarantees and which may require the payment of arbitrary penalties to village authorities, expulsion of the accused from the community, or forced marriage. As experts have noted, the *adat* system "contain[s] no safeguards to ensure the rights of the disputants, including the presumption of innocence, the right to representation, and the right to appeal," and they tend to recommend dispute outcomes that are "geared at maintaining social harmony over the individual's interest."[233] Article 14 of the ICCPR guarantees all persons the right to a fair and public hearing by a competent, independent and impartial tribunal established by law and a right to access to the courts of a state party in cases involving criminal charges. The Human Rights Committee's General Comment No. 32 elaborates, "access to administration of justice must effectively be guaranteed in all such cases to ensure that no individual is deprived, in procedural terms, of his or her right to claim justice."[234] According to the Human Rights Committee, courts based on customary law must meet the basic requirements of fair trial, including the guarantee of a fair and public hearing and the presumption of innocence.[235] Those accused of a criminal offense must have a right to defend themselves, to examine witnesses against them, and to challenge customary judgments in a procedure that also satisfies the ICCPR's due process requirements.[236]

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[233] UNDP Indonesia, "Access to Justice in Aceh," p. 98.

[234] Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2007).

[235] Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2007). This means that no guilt can be presumed until the charge has been proved beyond reasonable doubt.

[236] Ibid.

IX. Recommendations

To the Governor of Aceh

- Publicly denounce arbitrary and discriminatory enforcement of the Seclusion Law and dress requirements. Urge the DPRA to repeal or amend Qanuns 11/2002 and Qanun 14/2003 to bring them in line with human rights standards set forth in Indonesian law and human rights treaties.
- Refuse to endorse any pending or draft *qanuns* that violate human rights law.
- Enact a decree clearly circumscribing the authority of the Wilayatul Hisbah and prohibiting WH from arresting and detaining persons suspected of committing "seclusion."
- Establish a fully independent complaints mechanism for individuals to register concerns about Wilayatul Hisbah behavior or abuses.
- Order an independent review of the recruitment and training procedures of the Wilayatul Hisbah, including training provided by police. Ensure that WH personnel receive training on the protection of human rights guaranteed by the constitution and national law.
- Explicitly prohibit all law enforcement authorities from arresting and detaining transgender and gender non-conforming persons and people perceived to be homosexual on the basis of their gender identity or perceived sexual orientation.

To the Indonesian President

- Publicly call for repeal or reform of Aceh's Seclusion Law and restrictions on dress on grounds that the laws, as implemented, are incompatible with Indonesia's human rights obligations and constitutional guarantees of freedom of religion, expression, and association.
- Order national police in Aceh to investigate and prosecute private actor violence against those suspected of violating Sharia laws.
- Order the Minister of Home Affairs to review all local laws that aim to promote morality, including Qanun 11/2002 and Qanun 14/2003, and to invalidate or petition the Supreme Court to review those that conflict with the constitution or national laws.

To the Minister for Home Affairs and the Minister for Law and Human Rights

- Review all local laws that aim to promote morality, including in Aceh, and invalidate or petition the Supreme Court to review those that conflict with the constitution or national laws, including Qanun 11/2002 and Qanun 14/2003.
- Evaluate all proposed provincial and district-level laws, including in Aceh, that aim to promote morality and advise local governments on potential conflicts with human rights guarantees in Indonesia's national laws and constitution.

To the Aceh Provincial Parliament

- Repeal Qanun 14/2003 on "Seclusion" and amend Qanun 11/2002 by eliminating the Islamic dress requirement.
- Establish effective, independent bodies that can receive citizen complaints about abuse of power by WH and police, recommend disciplinary action or prosecution for those found to have abused their power, and make their findings available to the public.
- Seek input from the Ministry of Law and Human Rights, national human rights institutes, including Komnas Perempuan, and Acehnese civil society prior to enacting *qanuns* containing criminal penalties to ensure that they comply with national laws and constitutional guarantees on human rights.
- Amend Qanun 8/2009 so that it no longer requires law enforcement officers to defer to village-level authorities for the resolution of cases of "seclusion," assault, and forcible entry.
- Strengthen the independence and impartiality of *adat* dispute resolution mechanisms. Ensure that *adat* mechanisms protect the right of the individual to due process. Protect the right of individuals to have disputes heard by formal authorities instead of *adat* authorities if any party to a dispute so desires.
- Provide sufficient funding to provincial human rights bodies and related agencies (see list below) to enable them to carry out awareness raising campaigns promoting freedom of expression and discouraging violence.
- Provide sufficient funding to the Badan PPPA and other bureaus to enable them to carry out awareness raising campaigns promoting freedom of expression and discouraging violence.

To the Bureau of Law and Human Rights at the Department of Social Services, the Women's Empowerment and Child Protection Body (Badan PPPA), and the Aceh Adat Council (Majelis Adat Aceh, or MAA)

- Implement awareness-raising campaigns discouraging vigilantism and private violence related to Sharia law. Such campaigns should emphasize that all forms of private violence—including acts taken in the name of community solidarity or morality—are criminal acts. The campaigns should also stress the incompatibility of such acts with Islam and national, provincial, and *adat* law.
- Compile and publish statistics annually on the nature and extent of village-level settlements of "seclusion" cases.
- Ensure that women who suffer abuse related to the enactment of Sharia provisions in Aceh are able to access services for female victims of violence.

To the Wilayatul Hisbah

- End the practices of establishing checkpoints to monitor dress and conducting sweeps in an effort to identify perpetrators of "seclusion."
- Immediately end the practice of encouraging "seclusion" suspects to marry and the practice of ordering virginity tests during "seclusion" investigations.
- Investigate and punish, including with dismissal, all WH officials who exceed their authority or use violence against individuals under their control.
- Ensure that WH officials notify the police in every instance in which it appears that people accused of "seclusion" have been assaulted by members of the community.
- Make all procedures and internal standards governing the WH publicly available online and record and publish statistics on the age and gender of all individuals detained by the WH, the basis for their detention, and length of their detention.
- Provide training for WH officers on respecting human rights, including of transgender people, in implementing Sharia in Aceh.

To the National Police in Aceh

- Record and publish statistics on the age and sex of all individuals detained by the police for violating Qanun 14/2003, the justification for their detention, and length of detention.
- Order police to investigate acts of violence perpetrated by community members.
- Launch a village-level public education campaign with the message that violence against suspected Sharia violators is a crime.

- Ensure that police responding to reports of Sharia violations encourage victims of community-level violence or intrusion to report such incidents to the police. Ensure that all such incidents are recorded.
- Investigate all reports of violence and submit cases to prosecutors.
- Ensure that women's units have been established in all police stations so that female victims can confidentially report incidents of violence in privacy and to a female case officer.
- Provide adequate training for law enforcement officials on human rights principles in national and constitutional law and how to respect human rights in conducting their duties. Evaluate this training to ensure that it is having a measurable impact on police performance. Ensure that police officers who fail to act in accordance with this training are disciplined.
- Provide adequate training for law enforcement officials on sexual orientation and gender identity and expressly prohibit the targeting of people on grounds of gender expression and perceived or real sexual orientation. Evaluate this training and modify it as necessary to ensure that it is having a measurable impact on police performance. Ensure that police officers who fail to act in accordance with this training are disciplined.

To the Governments of the United States, Australia, the Netherlands, the EU, and the UK, the IOM and other international donors

- Press government officials in Indonesia and Aceh to implement Sharia law in Aceh within a framework of respect for national law and human rights; urge officials to amend or repeal *qanuns* that do not comply with these standards.
- Support efforts to enhance the capacity and human rights awareness of legislators and civil servants in Aceh and within the Ministry of Home Affairs in Jakarta.
- Support NGOs and civil society groups in Aceh that monitor Sharia law provisions and report on their implementation, as well as those that represent individuals accused of violating such laws.
- Support police training programs in Indonesia and ensure that those programs emphasize the responsibility of police and law enforcement officials to prosecute perpetrators of violence at the village level, including in the implementation of Sharia law by communities. Thoroughly vet officers being trained to ensure they have not been implicated in abuses.
- Support programs that aim to increase the provision of free medical, psychological, economic, and legal support to women in Aceh who have experienced violence, rape, and expulsion from their communities.

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(front cover) The operations commander of the West Aceh Wilayatul Hisbah (Sharia police) sits between a young unmarried man and woman detained for allegedly violating Aceh's Sharia-inspired "seclusion" law.

(below) A Wilayatul Hisbah (Sharia police) officer in Banda Aceh gives a verbal warning to women stopped at a checkpoint for wearing clothing that reveals the shape of their bodies in alleged violation of Aceh's Sharia-inspired law requiring all Muslims to wear "Islamic attire."

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Aceh, alone among Indonesia's provinces, has been explicitly authorized by national law to adopt local Sharia laws. While supporters say such laws should promote social welfare and communal harmony, two such laws are being used to deny many people the right to make personal decisions central to the conduct of their lives and the expression of their faith, identity, and morals. One of the laws prohibits "seclusion," whereby it is a criminal offence in certain circumstances for unmarried individuals of opposite genders to associate together. The other imposes public dress requirements on all Muslims; while the dress law is gender-neutral on its face, in practice it imposes far more onerous restrictions on women than on men.

Policing Morality documents the experiences of individuals in Aceh who have been accused of violating these two laws. It demonstrates how the laws violate Indonesia's constitutional protections for basic rights as well as international human rights law.

The report also documents recent cases in which the Sharia police, regular police, and private individuals have enforced the laws in an abusive fashion. The laws are applied arbitrarily and selectively, and particularly affect women, the poor, and youths. Several suspects have been beaten or tortured.

Policing Morality urges Indonesian and Acehnese authorities to repeal the two laws and ensure that all local regulations in force throughout Indonesia, including those purportedly based on Islam, comply with Indonesia's human rights obligations.