



Discrimination and Violence Against Women in Brunei Darussalam on the Basis of Sexual Orientation and Gender Identity

Presented to the 59th Session of The Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW)



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Against Women (CEDAW)

November 2014 • Geneva

Submitted by:

International Gay and Lesbian Human Rights Commission (IGLHRC)

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Introduction

This submission is made by the International Gay and Lesbian Human Rights Commission (IGLHRC) on the application and implementation of the Convention on the Elimination of All Forms of Discrimination Against Women for lesbians, bisexual women, and transgender (LBT) persons in Brunei Darussalam. The information we are presenting is pertinent to the List of Issues adopted by the CEDAW Committee's pre-sessional working group in March 2014, and raises our concerns about the current conditions for LBT persons in Brunei Darussalam and the outlook for protections.

Syariah Penal Code Order 2013

In October 2013, the State adopted the Syariah Penal Code (SPC) Order 2013¹ which imposes syariah (sharia) punishments for a broad range of offenses, including some that were also previously considered illicit but incur more severe penalties under SPC Order 2013 than before (e.g., drinking alcohol, not carrying out Islamic rites). Although syariah has always existed in Brunei Darussalam, in October the State chose to implement syariah provisions selectively and imposed higher fines, longer prison terms, more whipping, even stoning to death for some offenses.² Among these offenses are **“prohibited sexual relationships,”** and **“sexual offenses”** including infidelity, adultery, pre-marital sex, cohabitation outside marriage, abortion, homosexuality, lesbianism, and gender impersonation.

The State has allegedly planned to carry out the selective implementation of these more severe punishments in three phases. **Phase one** began in April 2014 and covered fines and imprisonment for various offenses including cross-dressing, lesbianism, abortion, theft, alcohol consumption, and sexual abuse. **Phase two** will enforce whipping and amputation. **Phase three** will enforce death by stoning which applies to a broad range of sexual offenses, including rape, adultery, pre-marital sex, and anal sex between heterosexual or homosexual couples. Phases two and three have yet to be implemented in keeping with the timeline set by the religious council responsible for the syariah code enforcement.

Based on what IGLHRC knows from other countries that use “morality laws” to control women's sexuality, and secular and religious laws to criminalize same sex relationships and gender nonconformity, SPC Order 2013 will disproportionately impact mostly women, LGBT people, and anyone who does not conform to strict norms on gender and sexuality.

¹ Constitution of Brunei Darussalam, Order made under Article 83(3), Syariah Penal Code Order 2013, October 22, 2013.

² <http://www.bt.com.bn/news-national/2011/11/27/hm-vows-make-brunei-zikir-nation>

Brunei Darussalam does not currently have legislation to protect women from discrimination or specific legislation criminalizing gender violence. These realities compound the implications that SPC Order 2013 almost certainly will have for the physical integrity and autonomy of all women, including lesbians, bisexual women and gender non-conforming persons.

Discrimination Against LBT Women (Articles 1 and 2)

Article 1 of the Convention on the Elimination of All Forms of Discrimination Against Women specifies women's right to enjoy and exercise their human rights and fundamental freedoms, irrespective of their marital status. Article 2 defends women's rights to enjoy constitutional protection and/or legislatively guaranteed non-discrimination, equality between men and women, equality before the law and equal rights under the law. The State is required to amend or remove discriminatory laws, customs and practices, including the "repeal of all national penal provisions which constitute discrimination against women."

In the List of Issues (no. 3) adopted in March 2014, the CEDAW Committee asked the Brunei Darussalam government:

"Please provide information on whether a review and revision of the Syariah Penal Code Order 2013 is envisaged with a view to repealing all discriminatory provisions. Please also provide information on the steps taken to harmonize the legal system of the State party with international human rights standards and, in particular, the provisions of the Convention."

Criminalization of Lesbians and Bisexual Women

Brunei Darussalam criminalizes "mushaqah," specified in SPC Code 2013 as "any physical activities between a woman and another woman which would amount to sexual acts between a man and a woman, other than penetration."³ Penalties for mushaqah apply to any Muslim or non-Muslim woman, convicted for private or public sexual intimacy with another woman, regardless of consent and legal adult status. Women caught for same sex conduct can be sentenced to a fine of 40,000 Brunei dollars (about USD 32,000), up to 10 years in prison, whipping not exceeding 40 lashes, or any two of these punishments. This provision applies to citizens residing in Brunei Darussalam as well as outside and foreigners in the country, including migrant workers.⁴

About 78 percent of Brunei's population is Muslim, 22 percent are non-Muslim. Over 70 percent of Bruneians are ethnic Malay, 15-20 percent are ethnic Chinese, and the remaining are indigenous communities. Of Brunei's 422,000 residents, 100,000 are migrant workers. Most of the LBT migrant workers are from the Philippines, Indonesia and Thailand, among whom are lesbians, bisexual women and transgender women who have lived and worked in Brunei Darussalam for many years.

³ Syariah Penal Code Order, 2013, Part IV no. 92.

⁴ http://www.agc.gov.bn/agc1/images/LAWS/Gazette_PDF/2013/EN/syariah%20penal%20code%20order2013.pdf.

Criminalization of Transgender Persons

Brunei Darussalam criminalizes gender-non-conforming behavior, which SPC Order 2013 State defines as “any man who dresses or poses as a woman or any woman who dresses or poses as a man in any public place without a reasonable excuse.”⁵ Under this provision, any Muslim or non-Muslim appearing in public as “a man posing as a woman or vice versa” is subject to a fine of 1000 Brunei Dollars (about USD 780), three months in prison, or both.⁶ This provision affects all tomboys, masculine-looking women, transgender women, and cross-dressing individuals who are citizens and non-citizens, including migrant workers.

Proposed Questions for the State Party

IGLHRC suggests that the CEDAW Committee ask the government of Brunei Darussalam the following questions:

- What measures will the government take to remove extreme punishments such as heavy fines, long prison terms, whipping and the death penalty for women engaging in same-sex intimacy and individuals with non-conforming gender?
- What protections will the government extend to lesbians, bisexual women and transgender persons seeking redress for discrimination, mistreatment or exploitation by employers and other members of the community?
- What measures will the government take to ensure respect for sexual and gender identities as integral to personhood?

⁵ Syariah Penal Code Order, 2013 Part IV no. 198.

⁶ Penalties for “gender impersonation” in public for “immoral purposes” increase to a fine of 4000 Brunei Dollars (over USD 3100), one-year imprisonment, or both.

Stereotypes and Harmful Practices (Article 5)

Article 5 of the CEDAW Convention calls for the elimination of prejudices and customary or other practices that stereotype and harm women.

In the List of Issues (no. 7) adopted in March 2014, the CEDAW Committee asked the Brunei Darussalam government:

“Please provide information on the efforts taken through aware-raising and educational campaigns addressing religious and community leaders, parents and teachers to counter stereotypical attitudes towards women and girls, including those who experience multiple forms of discrimination on the basis of their age, disability, ethnicity, or other characteristic.”

Stigmatization of LBT Persons Encourages Mistreatment

Where negative values and meanings are associated with lesbianism, same sex love, and non-conforming expressions of femininity and masculinity, those who identify as or are thought to be lesbian, bisexual or transgender suffer stigma. This situation is magnified where the behavior or expression is condemned as criminal by the State. State-sanctioned stigma through the criminal law tends to encourage mistreatment by police, healthcare services, religious enforcement officers, and exploitation by employers, landlords, and other members of the community who use discriminatory laws as a justification for violations against people perceived to be engaging in criminal activity.

Stigmatization Encourages Silence and Myths

Social stigma and negative stereotypes reinforce the silence of LBT persons, which prevents them from seeking healthcare, or disclosing their specific sexual healthcare needs to medical and mental health professionals. Negative stereotypes also foster myths and mis-perceptions by medical and mental health professionals, which contribute to insensitive, poorly informed and discriminatory treatment, and lack of patient confidentiality.

Proposed Questions for the State Party

IGLHRC requests the CEDAW Committee to ask the Brunei Darussalam government:

- How does the government plan to take into account the particular experiences and vulnerabilities of lesbians, bisexual women and transgender persons when it works with State actors, religious and community leaders to combat negative stereotypes and prejudiced actions that harm LBT persons?

Violence Against LGBT Persons

General Recommendation 19 includes gender violence as discrimination against women and calls on States to eliminate private and public acts of violence through civil and criminal remedies, preventive and protective measures, and support services and sheltering for victims of violence.

In the List of Issues (no. 8) adopted in March 2014, the CEDAW Committee asks the Brunei Darussalam government:

“[Since] there is no indication of whether the State party is planning to adopt legislation specifically criminalizing all forms of violence against women, please provide information on any specific steps to adopt such legislation.”

No Legal Protections from Violence

No legal protections exist in Brunei Darussalam for lesbians, bisexual women and transgender persons experiencing sexual harassment, domestic violence, partner violence, and rape. The general narrow understanding of what constitutes these types of violence excludes LBT persons from protection, redress and remedies.

IGLHRC’s experiences and research in other countries in Asia (including some with syariah law) tells us that LBT individuals often suffer family violence following the discovery or revelation of their sexual orientation or gender identity. The enforcement of SPC Order 2013 is likely to result in even tighter family control and increased violence to force Bruneian lesbians, tomboys, masculine-looking women, bisexual women and transgender women to conform to social norms (and now criminal law) on sexuality and gender.

Furthermore, testimonies that IGLHRC has gathered from elsewhere in the region tell us that the greater the visibility of a woman’s sexual orientation and non-conforming gender, the more frequent the violence and the more opportunities for violence.⁷ Our research shows that this is particularly apparent in countries with state endorsed religious intolerance for LGBT people and criminalization of homosexuality, lesbianism, and gender non-conformity.

Stigma and Criminalization Prevent Reporting and Redress

The CEDAW Committee noted that there are obstacles to reporting on violence against women in general in Brunei Darussalam. These obstacles are even more prevalent for LBT individuals.

⁷ *Violence: Through The Lens of Lesbians, Bisexual Women and Transgender People in Asia*, International Gay and Lesbian Human Rights Commission, p. 36, May 2014.

Criminalization on the basis of sexual orientation, gender identity and gender expression is a major obstacle to reporting violations and access to redress for lesbians, bisexual women and transgender persons. In much of Asia as elsewhere, women tend to be blamed or held partly responsible for violence that they experience, be it partner violence or stranger assault. There usually is no safe way for them to disclose violence without being shamed, dishonored or ostracized. In addition to these challenges, LBT persons face another layer of vulnerability that prevents reporting – they can be charged for criminal conduct.

Anecdotal information from lesbians, bisexual women and transgender individuals in environments similar to Brunei Darussalam indicates that State actors such as police officers and religious enforcement officers, or private individuals such as employers and community leaders abuse their authority, even break the law themselves while carrying out their duties in an environment where people are stigmatized and criminalized for their sexual orientation, gender identity and gender expression. Some examples of this include police extorting LBT persons, and military or other security forces officers demanding sexual favors in exchange for not arresting LBT individuals. Abusive behaviors by State violators usually signal an acceptance and normalization of human rights violations against LBT people by the state.⁸ LBT victims then get the message that they have to silently bear the abuses “against a backdrop of ‘punitive and discriminatory legal frameworks’ with only themselves and their friends for solace.”⁹

Proposed Questions for the State Party

IGLHRC requests the CEDAW Committee to ask the Brunei Darussalam government the following questions:

- How does the government plan to protect lesbians, bisexual women and gender non-conforming persons from violence with regard to family and relationships?
- What measures will the government take to remove obstacles in reporting of violence against LBT persons?
- Will Syariah Court judges be trained in international human rights standards relating to sexual orientation and gender identity, e.g., CEDAW?

⁸ IGLHRC, p. 44, May 2014.

⁹ UNDP, Asia Pacific Forum, and IDLO, Regional Report, *The Capacity of National Human Rights Institutions to Address Human Rights In Relation to Sexual Orientation and Gender Identity and HIV*.

Conclusion

Brunei Darussalam has a poor track record in the ASEAN (Southeast Asian) region on aligning national policies and positions with international human rights standards relating to sexual orientation and gender identity. In 2013, Brunei Darussalam along with Malaysia and Singapore successfully blocked the inclusion of sexual orientation and gender identity in the ASEAN Human Rights Declaration and the ASEAN Declaration for the Elimination of Violence Against Women and Violence Against Children.

While LBT individuals are politically active and advocate for equality in eight of the ten ASEAN states (including Malaysia and Singapore), in Brunei Darussalam, LGBT people in general and LBT persons in particular are too afraid to do so and are glaringly absent in a region where LGBT activism and human rights advocacy are extremely visible. Some Bruneian women have said that in such a small country as theirs, “where everyone seems to know everyone” family, community, employers, faith leaders and the state will quickly find out if someone is lesbian or gay, and create problems.¹⁰

Like other former British colonies, Brunei Darussalam has a Section 377 of the Penal Code that criminalizes “carnal intercourse against the order of nature with any man, woman or animal” with up to ten years in prison and a fine. Although Section 377 applies to heterosexual people as well, it is used more often against homosexuals, although in most Asian countries that have this law, there is limited or no active enforcement. The introduction of SPC Code 2013 has changed the Brunei landscape and made it more dangerous for people whose choice of partners and gender expression do not conform to State norms.

Brunei has not enforced the death penalty since 1957.¹¹ The enforcement of SPC Code 2013 brings back not only the death penalty but methods of killing such as stoning and whipping to death that contravene international human rights law, including CEDAW.

Government officials assure the international community that the SPC Code 2013 looks harsher on paper and will be mitigated by compassionate syariah judges. But prohibited sexual relationships are premised on the expectation that there is only heterosexuality, only two genders, only sex within marriage, and no recognition of marital rape. It is difficult to imagine that in Brunei Darussalam women’s bodily integrity and sexual autonomy will be defended as legitimate

¹⁰ Information obtained by IGLHRC.

¹¹ Rupert Colville, spokesperson for UN High Commissioner for Human Rights.
<http://www.un.org/apps/news/story.asp?NewsID=47552#.VCQxKSldV6M>

rights integral to personhood. International legal standards do not allow the State to invoke internal law as a justification for not fulfilling its international obligations, including its obligations under CEDAW. Despite legislation that criminalizes homosexuality, lesbianism, and gender non-conformity, it is the responsibility of the State to promote women's equality and protect all women, including LBT persons from violence and discrimination.