

BRUNEI

*Briefing on Brunei's implementation of
the Syariah Penal Code Order 2013*

Prepared April 2019

Human
Dignity
Trust

Briefing on Brunei's implementation of the Syariah Penal Code Order 2013

10 April 2019

Human
Dignity
Trust

This briefing provides a legal analysis of Brunei's Syariah Penal Code Order 2013 as it pertains to the criminalisation of consensual same-sex intimacy between men and between women, the criminalisation of the gender expression of trans and gender diverse people, and how these provisions are in violation of international human rights laws and norms.

Key Points:

- (i) The full implementation of the *Syariah Penal Code Order 2013* on 3 April 2019 provides for:
 - The criminalisation of 'liwat' (penetrative sex between men), punishable - where proved with confession or four witnesses - with death by stoning or whipping and imprisonment, depending on whether the person is 'muhshan' ("legally married and had sexual intercourse in the marriage") or 'ghairu muhshan' ("not married, or married but never had sexual intercourse in the marriage"). Where proved with other evidence, 'liwat' is punishable with whipping with up to 30 strokes and imprisonment for up to seven years. This is also applicable to non-Muslim men who engage in penetrative sex with Muslim men.
 - The criminalisation of 'musahaqah' (sexual activity between women), punishable with any two of the following: a fine of up to B\$40,000 [approx. £22,650], whipping with up to 40 strokes, or up to 10 years' imprisonment. This is also applicable to non-Muslim women who engage in sexual activity with Muslim women.
 - The criminalisation of the gender expression of trans and gender diverse people, punishable with a fine of up to B\$4,000 [approx. £2,250] and imprisonment of up to one year. This is applicable to both Muslims and non-Muslims.
- (ii) Brunei already criminalised "*carnal intercourse against the order of nature*" (capturing penetrative sexual activity between men only) under Section 377 of the Penal Code 1951, punishable with up to 10 years' imprisonment. This provision finds its origins in the Indian Penal Code 1860, imposed by British colonial authorities in numerous countries.
- (iii) The criminalisation of same-sex intimacy and the autonomous gender expression of trans people violates numerous international human rights standards.
- (iv) The provision of these severe punishments violates the prohibition against torture and other cruel, inhuman or degrading treatment or punishment - a *peremptory norm* of international law - that binds Brunei even though it has signed but not ratified the Convention against Torture 1984 and not ratified the International Covenant on Civil & Political Rights 1966 (both of which prohibit torture and ill-treatment).
- (v) There are a number of provisions that should be opposed with the same vigour as those that impact on LGBT people, such as provisions that impose, among other things, amputation for theft and death for extramarital sex and apostasy.

1. Background:

In October 2013, Brunei announced the introduction of a new Islamic code – the *Syariah Penal Code Order 2013* (“*Syariah Penal Code*”).¹ The Sultan of Brunei declared on 30 April 2014 that “*tomorrow, Thursday 1 May 2014, will see the enforcement of Sharia law phase one, to be followed by other phases.*”² The *Syariah Penal Code* was to be introduced over three years, in three separate phases. This prompted international criticism and condemnation³, and the implementation of the second and third phases had been delayed.⁴

However, in March 2019, the Brunei Project, “*an independent social media-based human rights initiative that has been raising awareness about human rights in Brunei since May 2015*”, indicated Brunei’s intention to fully implement the *Syariah Penal Code* on 3 April 2019.⁵ Amnesty International similarly reported that the remaining *Syariah Penal Code* provisions would shortly be implemented and called on Brunei to “*immediately halt its plans to implement these vicious punishments, and revise its Penal Code in compliance with its human rights obligations.*”⁶ This followed a discreet notice on the Attorney General’s website dated 29 December 2018, without any public announcement.⁷

2. Key provisions:

Provisions pertaining to LGBT people

The *Syariah Penal Code* criminalises consensual same-sex intimacy between men and between women (punishable with death by stoning or whipping and imprisonment) and the gender expression of trans and gender diverse people (punishable with a fine of up to B4,000 and up to one years’ imprisonment).

• Same-Sex Intimacy Between Men

The *Syariah Penal Code* criminalises ‘*liwat*’ under Section 82(1), defined under Section 82(2) as encompassing “*sexual intercourse between a man and another man... done against the order of nature that is through the anus*”. ‘*Liwat*’ is punishable – where proved with confession or four witnesses – with “*stoning to death*” if the person is ‘*muhshan*’ (“*legally married and had sexual intercourse in the marriage*”⁸), or “*whipping with 100 strokes...and imprisonment for a term of one year*” if the person is ‘*ghairu muhshan*’ (“*not married, or married but never had sexual intercourse in the marriage*”⁹).

Where this standard of proof is not met but is supported with other evidence, ‘*liwat*’ is punishable with “*whipping with not exceeding 30 strokes and imprisonment for a term not exceeding 7 years*” if ‘*muhshan*’, and “*whipping not exceeding 15 strokes and imprisonment for a term not exceeding 3 years*” if ‘*ghairu muhshan*’.

Sections 69(3) & (4) provide that the punishments outlined above are also applicable to non-Muslim men who commit ‘*liwat*’ with Muslim men.

• Same-Sex Intimacy Between Women

The *Syariah Penal Code* also criminalises ‘*musahaqah*’ under Section 92(1), defined under Section 92(3) as “*any physical activities between a woman and another woman which would amount to sexual acts if it is done between a man and a woman, other than penetration.*” ‘*Musahaqah*’ is punishable with “*a fine not exceeding \$40,000 [approx. £22,650], imprisonment for a term not exceeding 10 years, whipping not exceeding 40 strokes or a combination of any two of the punishment.*” Section 92(2) provides that “*any non-Muslim woman who commits musahaqah with a Muslim woman*” is also guilty of an offence and subject to the same punishment.

Section 377 of the *Penal Code 1951* already criminalised “*carnal knowledge against the order of nature*”, applicable only to sexual intercourse between men and punishable with up to 10 years’ imprisonment.¹⁰ This provision finds its origins in the Indian Penal Code 1860¹¹, exported to numerous countries by British colonial authorities.¹² The implementation of the Syariah Penal Code significantly increases the severity of punishments as well as extending criminalisation to same-sex intimacy between women.

- **Gender Expression of Trans & Gender Diverse People**

The Syariah Penal Code criminalises “*any man who dresses and poses as a woman or any woman who dresses and poses as a man in any public place without reasonable excuse*” under Section 198(1), punishable with “*a fine not exceeding \$1,000 [approx. £560], imprisonment for a term not exceeding 3 months or both.*” It further criminalises “*any man who dresses and poses as a woman or any woman who dresses and poses as a man in any public place for immoral purposes [undefined]*” under Section 198(2), punishable with “*a fine not exceeding \$4,000 [approx. £2,250], imprisonment for a term not exceeding one year or both.*” These provisions were implemented during the first phase in May 2014 and at least one individual has already been convicted and fined under Section 198(1), with another arrested in August 2016.¹³ They are applicable to both Muslims and non-Muslims.¹⁴

Provisions pertaining to apostasy, abortion and extra-marital sex

While the focus of this briefing is the criminalisation of consensual same-sex intimacy between men and between women and the gender expression of trans and gender diverse people, it is vital to situate this within the wider human rights concerns raised by the Syariah Penal Code. The violations of the rights of LGBT people enabled by the Code are indivisible from a range of abuses it promotes. In addition to the criminalisation of consensual same-sex intimacy and the gender expression of trans and gender diverse people, there are a number of other very concerning provisions:

- **Section 55 of the Syariah Penal Code** criminalises ‘*sariqah*’ (“*removing by stealth a movable property from the hirz or possession of its owner without his consent and with the intention to deprive him thereof*” – i.e. theft), punishable with “*amputation of his right hand from the joint of the wrist*” (first offence), “*amputation of his left foot up to the ankle*” (second offence), “*imprisonment for a term not exceeding 15 years*” (third or subsequent offence). Section 63 further criminalises ‘*hirabah*’ (armed robbery), punishable with “*death, if during the commission of hirabah, qatl [murder] has been committed*”, otherwise “*amputation of the right hand from the wrist and of the left foot from the ankle.*”
- **Section 69 of the Syariah Penal Code** criminalises ‘*zina*’ (extramarital sexual intercourse), punishable with “*stoning to death*” if the person is ‘*muhshan*’, or “*whipping with 100 strokes ... and imprisonment for a term of one year*” if the person is ‘*ghairu muhshan*’.
- **Section 161 of the Syariah Penal Code** criminalises abortion – “*any person who voluntarily causes the miscarriage of the pregnancy of a woman*” including “*a woman who causes herself to miscarry*” – punishable with “*a fine not exceeding \$12,000 [approx. £6,800], imprisonment for a term not exceeding 3 years or both.*” The Syariah Penal Code further criminalises “*any person who commits qatl [murder] on a foetus by intentionally causing its miscarriage*” – defining a foetus as “*a child in the womb of its mother, part of whose organ have been formed and is alive.*” This offence is punishable, in addition to up to 15 years’ imprisonment, with “*one twentieth of diyat*” if the foetus dies or “*diyat*” if the foetus lives and later dies. ‘*Diyat*’ is a form of financial compensation payable to the family, outlined in Section 120 of the Syariah Penal Code of 2013 as “*1000*

dinar (4250 grammes of gold) or its value in the local currency at the time the offence of qatl was committed.” Section 164 exempts medical practitioners under these offences where they are “*of the opinion, in good faith, that the continuance of the pregnancy would involve risk to the life of the woman, greater than if the pregnancy were terminated.*”

- **Section 112 of the Syariah Penal Code** criminalises apostasy, punishable with death – if proved by confession or two witnesses – or, where proved by other evidence, with up to 30 years’ imprisonment and whipping with up to 40 strokes.

3. International Human Rights Law:

Violations regarding sexual orientation and gender identity

There is a substantial body of jurisprudence, at the national¹⁵, regional¹⁶ and international level¹⁷, establishing that the criminalisation of private, consensual sexual activity between adults of the same-sex is in violation of numerous human rights norms and constitutionally protected rights. Courts have recognised that these criminalising provisions violate not only the right to privacy¹⁸ but a number of other fundamental human rights, including equality before the law/non-discrimination¹⁹, dignity²⁰, freedom of expression²¹, and the right to health.²² These laws are, in themselves, violative of international human rights standards, regardless of the extent to which they are enforced.²³ However, their application and enforcement also enables and encourages other violations of fundamental human rights.

While the jurisprudence is markedly less developed, courts have similarly recognised that the criminalisation of trans and gender diverse people is incompatible with international human rights norms and constitutional principles. As the Indian Supreme Court recognised in *NALSA v. Union of India*, “*privacy, self-identity, autonomy and personal integrity are fundamental rights guaranteed to members of the transgender community... and the State is bound to protect and recognize those rights.*”²⁴ Such laws facilitate the violation of these and other fundamental rights. The Caribbean Court of Justice in *Quincy McEwan et al. v Attorney General of Guyana* held that the criminalisation of “*every person who... being a man, in any public way or public place, for any improper purpose, appears in female attire; or being a woman... for any improper purpose, appears in male attire*”, under Section 153(1)(xlvii) of the Summary Jurisdiction (Offences) Act, was violative of the right to equality and non-discrimination and freedom of expression under Sections 149, 149D and 146 respectively and so unconstitutional.²⁵

Beyond jurisprudence, numerous human rights mechanisms and entities, including the Office of the UN High Commissioner for Human Rights²⁶, the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity²⁷, and the Universal Periodic Review mechanism²⁸ have affirmed the position that the criminalisation of consensual same-sex intimacy and the gender expression of trans and gender diverse people is wholly incompatible with international human rights standards. This has been reinforced with the creation of the Yogyakarta Principles²⁹ (now supplemented by the Yogyakarta Principles plus 10).³⁰ It was also recognised, in a 2015 joint statement from 12 different UN agencies, that “*human rights are universal – cultural, religious and moral practices and beliefs and social attitudes cannot be invoked to justify human rights violations against any group, including LGBTI persons.*”³¹

The particularly severe nature of the punishments for certain offences in the Syariah Penal Code Order 2013 also places it in conflict with international human rights law. In particular, the provision for whipping, amputation and death by stoning is violative of the prohibition against torture and other cruel, inhuman or degrading treatment or punishment. This has been reaffirmed by the Office of the UN High Commissioner for

Human Rights.³² Brunei has signed but not ratified the UN Convention against Torture and has neither signed nor ratified the International Covenant on Civil and Political Rights, both of which prohibit torture and ill-treatment.³³ However, this prohibition is a *peremptory norm* of international law (or *jus cogens*), and so binding on Brunei regardless of whether it has ratified the relevant international treaties.³⁴

Violations regarding the rights of women and girls

The Syariah Penal Code is incompatible with Brunei's obligations under both the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW)³⁵ and the *Convention on the Rights of the Child* (CRC).³⁶

Brunei ratified CEDAW on 24 May 2006 and is accordingly bound by its provisions.³⁷ The Committee on the Elimination of Discrimination against Women, the treaty body responsible for monitoring the implementation of CEDAW by states parties, has called on states to "*extend the grounds for legalization of abortion to cases of rape, incest and severe foetal impairment.*"³⁸ This was reaffirmed in the Committee's recent consideration of Northern Ireland's restrictive abortion laws, which were found to be violative of numerous CEDAW provisions.³⁹ As noted above, Section 164 of the Syariah Penal Code only precludes the application of Sections 158 and 161 to cases of abortion where the life of the mother is deemed by the medical practitioner to be at greater risk should the pregnancy continue. Such restrictive provisions therefore criminalise abortion even in cases of rape, incest and severe foetal impairment and are in violation of Brunei's obligations under CEDAW.

Brunei ratified the CRC on 27 December 1995⁴⁰ and is in violation of its obligations to the extent that the provisions of the Syariah Penal Code impact upon children.⁴¹ While Section 12 exempts from the Syariah Penal Code children who are not '*mumaiyiz*' ("*a child who has attained the age of being capable to differentiate a matter*")⁴², and Section 13 exempts children ('*mumaiyiz*' or otherwise) from the more severe ('*hadd*' or '*qisas*') punishments, the provisions and accompanying punishments may be imposed on children who are '*baligh*' ("*a person who has attained the age of puberty*")⁴³. Among other provisions, Article 2(1) of the CRC requires that states parties "*respect and ensure*" the rights set out in the Convention "*without discrimination*" and the Committee on the Rights of the Child, the treaty body responsible for monitoring the implementation of the CRC by states parties, has determined that Article 2(1) encompasses sexual orientation and gender identity as protected characteristics.⁴⁴ Further to this, Article 37(a) of the Convention requires states to ensure that "*no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.*" The Committee on the Rights of the Child has emphatically determined that corporal punishment is incompatible with the CRC.⁴⁵ The existence and application of the provisions of the Syariah Penal Code that criminalise same-sex sexual activity and the gender expression of trans and gender diverse people and impose whipping, amputation or death by stoning violate Brunei's obligations under the CRC.

Annex of Key Provisions

Syariah Penal Code Order 2013

Section 55, Punishment for *sariqah*.

(1) Any person who commits *sariqah*, where the property amounts to or exceeds *nisab* and the *sariqah* is proved either by *ikrar* [confession] of the accused or by *syahadah* of at least two *syahid* [witnesses] in accordance with *Hukum Syara'* other than the victim's evidence, after the Court is satisfied having regard to the requirements of *tazkiyah al syuhud* is guilty of an offence and shall be liable on conviction to *hadd* punishment as follows -

- (a) for a first offence, amputation of his right hand from the joint of the wrist;
- (b) for a second offence, amputation of his left foot up to the ankle; and
- (c) for a third or subsequent offence, imprisonment for a term not exceeding 15 years.

[“*sariqah*” means an act of removing by stealth a movable property from the *hirz* or possession of its owner without his consent and with the intention to deprive him thereof.]

Section 68, *Zina*.

(1) A man and a woman are said to commit *zina* if they willfully had sexual intercourse without being validly married to each other or such intercourse is not *syubhah* intercourse.

[“*syubhah* intercourse” means a sexual intercourse performed with a presumption that it is a valid marriage but in actual fact the marriage is not valid (*fasid*) or sexual intercourse occurred by mistake.]

Section 69, Punishment for *zina*.

(1) Any Muslim who commits *zina* and it is proved either by *ikrar* [confession] of the accused, or by *syahadah* of at least four *syahid* [witnesses] according to *Hukum Syara'* after the Court is satisfied having regard to the requirements of *tazkiyah al syuhud*, is guilty of an offence and shall be liable on conviction to *hadd* punishment as follows -

- (a) if he is *muhshan*, stoning to death witnessed by a group of Muslims; or
 - (b) if he is *ghairu muhshan*, whipping with 100 strokes witnessed by a group of Muslims and imprisonment for a term of one year.
- (2) Any Muslim who commits *zina* and it is proved by evidence other than that provided under subsection (1) is guilty of an offence and shall be liable on conviction -
- (a) if he is *muhshan*, whipping with not exceeding 30 strokes and imprisonment for a term not exceeding 7 years; or
 - (b) if he is *ghairu muhshan*, whipping with not exceeding 15 strokes and imprisonment for a term not exceeding 3 years.
- (3) Any non-Muslim who commits *zina* with a Muslim and it is proved either by *ikrar* [confession] of the accused, or by *syahadah* of at least four *syahid* [witnesses] according to *Hukum Syara'* after the Court is satisfied having regard to the requirements of *tazkiyah al syuhud*, is guilty of an offence and shall be liable on conviction to the same punishment as provided under subsection (1).
- (4) Any non-Muslim who commits *zina* with a Muslim and it is proved by evidence other than that provided under subsection (3) is guilty of an offence and shall be liable on conviction to the same punishment as provided in subsection (2).

[“*muhshan*” means a legally married person and had sexual intercourse in the marriage; “*ghairu muhshan*” means a person who is not married, or married but never had sexual intercourse in the marriage.]

Section 82, *Liwat*

(1) Any person who commits *liwat* is guilty of an offence and shall be liable on conviction to the same punishment as provided for the offence of *zina*.

(2) For the purposes of this Order, “*liwat*” means sexual intercourse between a man and another man or between a man and a woman other than his wife, done against the order of nature that is through the anus.

Section 83, Proof of *liwat*

Liwat shall be proved in the same manner as provided for the offence of *zina*.

Section 92, *Musahaqah*

(1) Any Muslim woman who commits *musahaqah* is guilty of an offence and shall be liable on conviction to a fine not exceeding \$40,000, imprisonment for a term not exceeding 10 years, whipping not exceeding 40 strokes or combination of any two of the punishment.

(2) Any non-Muslim woman who commits musahaqah with a Muslim woman is guilty of an offence and shall be liable on conviction to a fine not exceeding \$40,000 [approx. £22,650], imprisonment for a term not exceeding 10 years, whipping not exceeding 40 strokes or a combination of any two of the punishment.

(3) In this section, “musahaqah” means any physical activities between a woman and another woman which would amount to sexual acts if it is done between a man and a woman, other than penetration.

Section 112, Declaring oneself as non-Muslim

(1) Any Muslim who declares himself as a non-Muslim and it is proved either by ikrar [confession] of the accused, or by syahadah of at least two syahid [witnesses] according to Hukum Syara’ after the Court is satisfied having regard to the requirements of tazkiyah al syuhud, is guilty of the offence of irtidad and shall be liable on conviction to death as hadd.

(2) Any Muslim who declares himself as a non-Muslim and it is proved by evidence other than those provided under subsection (1) is guilty of the offence of irtidad and shall be liable on conviction to imprisonment for a term not exceeding 30 years and whipping not exceeding 40 strokes.

Section 158, Qatl by miscarriage of foetus

(1) Any person who commits qatl on a foetus by intentionally causing its miscarriage is guilty of an offence and shall be liable on conviction for each foetus to be punished with the following -

(a) when as a result of the miscarriage, the foetus dies, the person who causes the woman to have a miscarriage shall be punished with one twentieth of a diyat as provided in this Order;

(b) when as a result of the miscarriage, the foetus lives and later dies, the person who causes the woman to have a miscarriage shall be punished with diyat as provided in this Order;

(c) when the pregnant woman herself causes the miscarriage and the foetus is in a condition as mentioned in paragraph (a) or (b), she shall be punished as provided in paragraph (a) or (b), as the case may be,

And the Court shall impose a sentence of imprisonment for a term not exceeding 15 years.

Section 161, Miscarriage of pregnancy

(1) Any person who voluntarily causes the miscarriage of the pregnancy of women is guilty of an offence and shall be liable on conviction to a fine not exceeding \$12,000, imprisonment for a term not exceeding 3 years or both.

(2) For the purposes of this section and sections 162, 163 and 164, “pregnancy” means something in the womb of a pregnant woman that has not developed into a foetus.”

Explanation – A woman who causes herself to miscarry is within the meaning of this section.

Section 164, Exceptions for sections 158 and 161

Sections 158 and 161 does not extend to a medical practitioner registered under any written law who causes miscarriage of foetus or pregnancy of a woman if such medical practitioner is of the opinion, in good faith, that the continuance of the pregnancy would involve risk to the life of the woman, greater than if the pregnancy were terminated.

Section 198, Man posing as woman or vice versa

(1) Any man who dresses and poses as a woman or any woman who dresses and poses as a man in any public place without reasonable excuse is guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 [approx. £560], imprisonment for a term not exceeding 3 months or both.

(2) Any man who dresses and poses as a woman or any woman who dresses and poses as a man in any public place for immoral purposes is guilty of an offence and shall be liable on conviction to a fine not exceeding \$4,000 [approx. £2,250], imprisonment for a term not exceeding one year or both.

Penal Code 1951

Section 377, Unnatural Offences

“Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment for a term which may extend to 10 years, and shall also be liable to fine.

Explanation — Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.”

ENDNOTES

- ¹ BBC News, *Brunei announces tough new code of Islamic law* (22 October 2013). Available at: <https://www.bbc.co.uk/news/world-asia-24624166>; *Syariah Penal Code Order 2013*. Available at: http://www.agc.gov.bn/aGc%20images/Laws/Gazette_pdf/2013/en/syariah%20penal%20code%20order2013.pdf
- ² BBC News, *Brunei introduces tough Islamic penal code* (30 April 2014). Available at: <https://www.bbc.co.uk/news/world-asia-27216798>
- ³ Arshiya Khullar, *Brunei adopts sharia law amid international outcry* (CNN, 1 May 2014). Available at: <https://edition.cnn.com/2014/05/01/world/asia/brunei-sharia-law/index.html>
- ⁴ The Straits Times, *Brunei yet to implement harsher Syariah penalties* (13 July 2015). Available at: <https://www.straitstimes.com/asia/se-asia/brunei-yet-to-implement-harsher-syariah-penalties>; Matthew Wolfe, *Brunei's new Sharia laws threaten LGBT+ people with death by stoning – this human rights abuse can't be ignored* (The Independent, 28 March 2019). Available at: <https://www.independent.co.uk/voices/bruneis-new-sharia-laws-threaten-lgbt-people-with-death-by-stoning-this-human-rights-abuse-cant-be-a8843441.html>
- ⁵ Available at: <http://www.thebruneiproject.com> & <https://www.facebook.com/thebruneiproject/>
- ⁶ Amnesty International, *Brunei Darussalam: Heinous punishments to become law next week* (27 March 2019). Available at: <https://www.amnesty.org/en/latest/news/2019/03/brunei-darussalam-heinous-punishments-to-become-law-next-week/>
- ⁷ *Syariah Penal Code Order 2013, Notification of commencement* (29 December 2018). Available at: http://www.agc.gov.bn/AGC/Images/LAWS/Gazette_PDF/2018/S068.pdf
- ⁸ Section 2, *Syariah Penal Code Order 2013*. Available at: http://www.agc.gov.bn/aGc%20images/Laws/Gazette_pdf/2013/en/syariah%20penal%20code%20order2013.pdf
- ⁹ *Ibid.*
- ¹⁰ *Penal Code 1951*, Section 377. Available at: <http://www.agc.gov.bn/AGC%20Images/LOB/pdf/Cap22.pdf>
- ¹¹ *Indian Penal Code* (1860). Available at: <https://indiankanoon.org/doc/1569253/>
- ¹² E. Han & J. O'Mahoney, *British Colonialism and the Criminalization of Homosexuality: Queens, Crime and Empire* (Routledge, 2018), p.13; Human Rights Watch, *This Alien Legacy: The Origins of "Sodomy" Laws in British Colonialism* (2008), p.21. Available at: https://www.hrw.org/sites/default/files/reports/lgbt1208_webwcover.pdf
- ¹³ *Brunei Times*, *Bruneian civil servant fined \$1000 for cross-dressing* (11 March 2015). Available at: <https://btarchive.org/news/national/2015/03/11/bruneian-civil-servant-fined-1-000-cross-dressing>; Bru Direct, *Crossdresser Detained in 'Sepadu Cegah Jenayah'* (16 August 2016). Available at: <http://www.brudirect.com/news.php?id=11708>
- ¹⁴ Section 3, *Syariah Penal Code Order 2013*: "(1) Save as otherwise provided therein, this Order shall apply to Muslims and non-Muslims."
- ¹⁵ *Navtej Singh Johar & Ors. v Union of India* (Writ Petition (Criminal) No. 76 of 2016 & Ors), Supreme Court of India judgment of 6 September 2018. Available at: <https://www.humandignitytrust.org/wp-content/uploads/resources/2018.09.06-Johar-v-India-judgment-Indian-SC.pdf>; *Caleb Orozco v Attorney General of Belize* (Claim No. 668 of 2010), Supreme Court judgment of 10 August 2016. Available at: <https://www.humandignitytrust.org/wp-content/uploads/resources/Judgment-Orozco-v-The-Attorney-General-of-Belize.pdf>
- ¹⁶ *Dudgeon v. United Kingdom*, 4 EHRR 149 (1981). Available at: https://www.humandignitytrust.org/wp-content/uploads/resources/Dudgeon_v_United_Kingdom.pdf
- ¹⁷ UN Human Rights Committee, *Toonen v. Australia*, Communication No. 488/1992, CCPR/C/50/D/488/1992, 31 March 1994. Available at: https://www.humandignitytrust.org/wp-content/uploads/resources/Toonen_v_Australia.pdf
- ¹⁸ *Dudgeon v. United Kingdom*, 4 EHRR 149 (1981), para. 63; *Toonen v. Australia*, UN Human Rights Committee, Communication No. 488/1992, CCPR/C/50/D/488/1992, 31 March 1994, para. 9
- ¹⁹ *Caleb Orozco v Attorney General of Belize* (Claim No. 668 of 2010), Supreme Court judgment of 10 August 2016, para. 96; *Navtej Singh Johar & Ors. v Union of India* (Writ Petition (Criminal) No. 76 of 2016 & Ors), Supreme Court of India judgment of 6 September 2018, para. 237 per Misra, CJI & para. 52 per Dr Chandrachud, J
- ²⁰ *National Coalition for Gay and Lesbian Equality v Minister of Justice* (Case CCT 11/98), Constitutional Court of South Africa judgment of 9 October 1998, para. 28 per Ackermann J. Available at: https://www.humandignitytrust.org/wp-content/uploads/resources/National_Coalition_for_Gay_and_Lesbian_Equality_v_Minister_of_Justice.pdf; *Caleb Orozco v Attorney General of Belize* (Claim No. 668 of 2010), Supreme Court judgment of 10 August 2016, para. 67; *Navtej Singh Johar & Ors. v Union of India* (Writ Petition (Criminal) No. 76 of 2016 & Ors), Supreme Court of India judgment of 6 September 2018, para. 16.1 per Malhotra, J
- ²¹ *Caleb Orozco v Attorney General of Belize* (Claim No. 668 of 2010), Supreme Court judgment of 10 August 2016, para. 97; *Navtej Singh Johar & Ors. v Union of India* (Writ Petition (Criminal) No. 76 of 2016 & Ors), Supreme Court of India judgment of 6 September 2018, para. 253(vii) per Misra, CJI
- ²² *Navtej Singh Johar & Ors. v Union of India* (Writ Petition (Criminal) No. 76 of 2016 & Ors), Supreme Court of India judgment of 6 September 2018., para. 16.3 per Malhotra, J.
- ²³ *Dudgeon v. United Kingdom*, 4 EHRR 149 (1981), para. 41; *Toonen v. Australia*, UN Human Rights Committee, Communication No. 488/1992, CCPR/C/50/D/488/1992, 31 March 1994, para. 8.2.
- ²⁴ *National Legal Services Authority v. Union of India & Ors.* (Writ Petition (Civil) No. 604 of 2013), Supreme Court of India, judgment of 15 April 2014, para. 66 per Radhakrishnan, J. Available at: https://www.humandignitytrust.org/wp-content/uploads/resources/NALSA_v_UoI.pdf
- ²⁵ *Quincy McEwan et al. v Attorney General of Guyana* (CCJ Appeal No. GYCV2017/015), Caribbean Court of Justice judgment of 13 November 2018. Available at: <https://www.humandignitytrust.org/wp-content/uploads/resources/MC-EWAN-et-al-v-AG-OF-GUYANA-Copy.pdf>
- ²⁶ OHCHR, *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law* (2012), pp.28-37. Available at: <https://www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes.pdf>
- ²⁷ UN General Assembly, *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity*, 19 July 2017 (A/72/172), paras. 31-32. Available at: <https://undocs.org/A/72/172>;
- ²⁸ UN Human Rights Council, *Report of the Working Group on the Universal Period Review: Brunei Darussalam*, 7 July 2014. Available at: <https://undocs.org/A/HRC/27/11> - see recommendations 113.69 -113.72.
- ²⁹ *The Yogyakarta Principles: Principles on the application of international human rights law in relation to sexual orientation and gender identity* (2007), Principle 6B, 6C & 6D. Available at: http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf

-
- ³⁰ *The Yogyakarta Principles plus 10: Additional Principles and State Obligations on the Application of International Human Rights Law in relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to complement the Yogyakarta Principles* (10 November 2017), Principle 33. Available at: https://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf
- ³¹ UN Joint Statement, *Ending Violence and Discrimination against Lesbian, Gay, Bisexual, Transgender and Intersex People* (September 2015). Available at: https://www.ohchr.org/Documents/Issues/Discrimination/Joint_LGBTI_Statement_ENG.PDF
- ³² UN Press briefing notes on *Brunei penal code, Death penalty abolition and USA – execution of Mexican national*, 11 April 2014: “Under international law, stoning people to death constitutes torture of other cruel, inhuman or degrading treatment of punishment and is thus clearly prohibited.” Available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=14501&LangID=E>
- ³³ Available at: https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=25&Lang=EN; *UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984) Available at: <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>; *International Covenant on Civil & Political Rights* 1966, Article 7. Available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>
- ³⁴ *Vienna Convention on the Law of Treaties* (1969), Article 53 defines a peremptory norm as “a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted. Available at: <https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf>
- ³⁵ *Convention on the Elimination of All Forms of Discrimination against Women* 1979. Available at: <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>
- ³⁶ *Convention on the Rights of the Child* 1989. Available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>
- ³⁷ Available at: https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=25&Lang=EN
- ³⁸ *Committee on the Elimination of Discrimination against Women, Concluding observations on the combined seventh and eighth periodic reports of Peru* (CEDAW/C/PER/CO/7-9, 24 July 2014), para. 36(a). Available at: <https://undocs.org/CEDAW/C/PER/CO/7-8>; see also *Committee on the Elimination of Discrimination against Women, L.C. v Peru* (CEDAW/C/50/D/22/2009, 25 November 2011), para. 9.2(c): “Review its legislation with a view to decriminalizing abortion when the pregnancy results from rape or sexual abuse.” Available at: <https://undocs.org/CEDAW/C/50/D/22/2009>
- ³⁹ *Committee on the Elimination of Discrimination against Women, Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW/C/OP.8/GBR/1, 6 March 2018), para. 77 & 83. Available at: <https://undocs.org/CEDAW/C/OP.8/GBR/1>
- ⁴⁰ See n.1 above.
- ⁴¹ *International Commission of Jurists, Brunei Darussalam: implementation of Syariah Penal Code is anathema for Human Rights* (2 April 2019). Available at: <https://www.icj.org/brunei-darussalam-implementation-of-syariah-penal-code-is-anathema-for-human-rights/>
- ⁴² *Syariah Courts Evidence Order 2001*, Section 3. Available at: http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2001/EN/s063.pdf
- ⁴³ *Ibid.*
- ⁴⁴ *Committee on the Rights of the Child, Concluding observations on the combined second to fourth periodic reports of Switzerland* (CRC/C/CHE/CO/2-4, 26 February 2015), para. 25. Available at: <https://undocs.org/CRC/C/CHE/CO/2-4>; *Committee on the Rights of the Child, Concluding observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland - Isle of Man* (CRC/C/15/Add.134, 16 October 2000) para. 23. Available at: <https://undocs.org/CRC/C/15/Add.134>
- ⁴⁵ *Committee on the Rights of the Child, General Comment No. 8: The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment* (CRC/C/GC/8, 2 March 2007). Available at: <https://undocs.org/CRC/C/GC/8>