



musawah

For Equality in the Muslim Family

Musawah Oral Statement: Brunei Darussalam

59th Session of the CEDAW Committee

Monday, 27 October 2014

Thank you, Madam Chair.

My name is Natasha Dar and I represent [Musawah](#), the global movement for equality and justice in the Muslim Family. We are honoured to address the CEDAW Committee today about the implementation of Article 2 in Brunei, specifically with regards to the recently enforced *Syariah Penal Code Order (2013)*.

We hope that the thematic report we have prepared on this issue, as well as on concerns related to Muslim Family Laws, can help provide critical information, analysis, and recommendations during the constructive engagement with State parties, and in the follow-up thereafter.

First, I will highlight how key areas of the *Syariah Penal Code (2013)* discriminate against women in law and in practice.

Next, I will challenge the State party's defense of the *Syariah Penal Code (2013)* as an obligation of the Islamic faith.

I. ON GENDER DISCRIMINATION IN THE SYARIAH PENAL CODE (2013):

a) In 2014, Brunei began a three-phase implementation of the *Syariah Penal Code (2013)*. Under the third phase (the so-called 'Hudud Law'), women will be directly discriminated against in several ways:

- ❖ Women will be disqualified as witnesses; and
- ❖ The *diyat* (blood money or financial compensation) given to the family of a victim will be half if the victim is female.

b) 'The Hudud Law' will also discriminate against women in practice and implementation:

- ❖ **While stoning applies to both men and women in law for crimes of adultery, rape, abortion, sodomy, and insulting the prophet Muhammad, the experience of other Muslim countries with similar laws reveal that women disproportionately bear the brunt of punishment for crimes involving sex, and are at a higher risk of being found guilty of adultery and extra-marital affairs, due to discriminatory investigative policies.**¹

- ❖ **Women also face greater difficulty in collecting the necessary evidence to prove rape,**

¹ WLUML, "Brunei Darussalam: Fundamental Rights and Freedoms Violated under the new Shari'a Penal Code," (11 November 2013). Accessed at: <http://www.wluml.org/action/brunei-darussalam-fundamental-rights-and-freedoms-violated-under-new-shari%E2%80%9999-penal-code>

as they must provide *four pious male witnesses* who will testify that they saw penetration occur. If a woman cannot find four men who witnessed the act and will testify in her defense, she can be accused of the crime of *zina* (extra-marital sex) (punishable by death by stoning, or flogging of 100 lashes), as well as the crime of *qazaf* (false accusation) (punishable by flogging of 80 strokes).² In reality, rape is unlikely to occur in the open, such that four pious men might observe the act; thus, it is nearly impossible for a woman to prove rape,³ and the fear of being accused of *zina* prevents women from reporting. In Pakistan, it is reported that three out of four women in prison under its *Shari'ah Penal Code (2013)* were rape victims.⁴

- c) In its replies to the CEDAW Committee's List of Issues and Questions, the Government of Brunei justifies the imposition of penalties under the *Penal Code* 'as a deterrent, which aims to create a crime-free society (para.11).' However, empirical research and analysis in sociology and criminal legal studies clearly demonstrate that severe punishment *does not* deter crime.⁵ Again, here we note how the record of practice and enforcement in other Muslim contexts has systematically resulted in greater gender discrimination, violence, and harm.
- d) Finally, we note that the introduction of the *Syariah Penal Code (2013)* is part of a larger regressive step for women's rights and gender equality in the country, where marital rape, for instance, is still not recognised.⁶

II. ON THE USE OF ISLAM TO DEFEND THE SYARIAH PENAL CODE (2013):

- a) Given the likely gravity of harm on women and girls' physical integrity, as well as on family peace and wellbeing, the question is whether manmade systems of Islamic Penal Code — with their flaws in substance, procedure, and record of enforcement — really do reflect the word and intent of God, and will serve the *maqasid* (objectives) of *Shari'ah* and the *maslahah* (public interest)?
- b) The Government of Brunei must acknowledge that there is a huge public divide, even among scholars of Islam, on the application of *hudud* in the modern age. The *hudud* punishments provided for in the Qur'an were specific and contextual, and no longer apply to contemporary society. The Government of Brunei has selected the most unforgiving and severe *fiqh* (juristic opinion) to be codified into law.
- c) We note that there is often resistance to the idea of changing Muslim laws and practices because of the notion that they are rooted in Islam, and that therefore these laws are divine and unchangeable. Musawah highlights the distinction between *Shari'ah*, the revealed way, and *fiqh*, or human understanding of the *Shari'ah*, and the fact that much of what is deemed to be 'Islamic law' today in Bruneian State party discourse is *fiqh* and not divine law, and therefore is human, fallible and changeable.

² Bilal Dannoun, "The Islamic Ruling Concerning the Criminal Act of Zina," *Mission Islam*. Accessed at:

<http://www.missionislam.com/knowledge/ruling%20zina.htm>

³ "Women's Rights in Brunei are Highly Threatened – ASEAN Women's Caucus," *Malaysian Insider*, (28 May 2014).

Accessed at: <http://www.themalaysianinsider.com/sideviews/article/womens-rights-in-brunei-are-highly-threatened-womens-caucus>

⁴ Research done by the National Commission on Women in Pakistan revealed that 80% of the women in prison were there for offences under *zina*; another, earlier study showed that over 1,000 women were in prison for *zina*, compared with only two men. Public outcries over injustice and repeated calls for repeal forced the Pakistani government to weaken its *Hudood Ordinance* through the *Protection of Women Act (2006)*. For more information, see: Sisters in Islam, *Dear Editor: A Collection of Sisters in Islam's statements and Letters to the Editor*. SIS Forum (Malaysia): 2014.

⁵ Lawrence Katz, Steven D. Levitt, and Ellen Shustorovich, 'Prison Conditions, Capital Punishment, and Deterrence,' *American Law and Economics Review* (2003) 5(2): 318-343. Accessed at: <http://aler.oxfordjournals.org/content/5/2/318.abstract>.

⁶ Section 75-*Zina bil-jabar*, denies the existence of marital rape in Islam. Brunei, CEDAW/C/BRN/Q/1-2/Add.1, 7.

III. CONCLUDING REMARKS:

Given the *Syariah Penal Code (2013)*'s grave violations of international human rights norms and standards, and the ways that the Government of Brunei justifies implementation on the grounds of religion, Musawah urges the CEDAW Committee to highlight the *Syariah Penal Code (2013)* as a follow-up priority issue, and to recommend that the State party immediately repeal its many provisions that discriminate against women and marginalised communities, in both substance and practice.

Finally, it is our hope that the CEDAW Committee will encourage Governments everywhere, and particularly those purporting to speak for and in the name of Islam, to:

- ❖ *Recognise the diversity of opinions, laws, and practices in the Muslim world*
- ❖ *Promote human rights standards as intrinsic to the teachings of Islam*
- ❖ *Encourage open and inclusive public debate regarding diversity of opinion and interpretations in Muslim family laws and practices*
- ❖ *Support civil society groups and individuals engaged in family law reform campaigns.*

We thank you for this opportunity, Madame Chair.