


# Criminalisation of Homosexuality

Updated 25 October 2015

 <span style="margin-left: 100px;"><b>Brunei Darussalam</b></span>		
<p><b>National Law:</b></p> <p><i>Penal Code, 1951</i><sup>1</sup></p> <ul style="list-style-type: none"> <li>- <b>S377:</b> Unnatural Offences<sup>2</sup></li> </ul> <p><i>Syariah Penal Code Order 2013</i><sup>3</sup></p> <ul style="list-style-type: none"> <li>- <b>S82(1):</b> Liwat (sexual intercourse between two men)<sup>4</sup></li> </ul>	<p><b>Maximum Penalties:</b></p> <ul style="list-style-type: none"> <li>- 10 years' imprisonment with the possibility of a fine</li> <li>- Not yet in force. Reports suggest this provision will eventually result in a punishment of stoning (see legislative news below).</li> </ul>	<p><u>Treaty Ratification</u></p> <p>CEDAW</p> <p>CRC</p>
<p>The law is only applicable to men.</p>		
<p><b>Enforcement</b></p>	<ul style="list-style-type: none"> <li>- Despite new legislative developments (detailed below) there have been few reported instances of sustained prosecutions under the Brunei Penal Code; however, this is not to say the law has not been used in order to arrest members of sexual minorities.</li> <li>- <b>11 March 2015:</b> A Bruneian civil servant was fined \$1,000 under the Syariah Penal Code Order after he pleaded guilty to cross-dressing in a public place.<sup>5</sup></li> <li>- <b>2014:</b> The US Human Rights Country Report documented that there were no reports of arrests or prosecutions of LGBT persons during the year.<sup>6</sup></li> </ul>	
<p><b>Statements by Public Figures</b></p>	<ul style="list-style-type: none"> <li>- <b>21 May 2014:</b> A group of 20 US lawmakers, led by Democrat Mark Pocan of Wisconsin, signed a letter calling on the US Government to pressure Brunei to revoke Islamic criminal laws that will punish sodomy and adultery with the death penalty, including by stoning.<sup>7</sup></li> <li>- <b>February 2015:</b> Singer John Legend expressed his concern about Brunei's anti-gay laws by boycotting an event at a hotel owned by the Sultan of Brunei.<sup>8</sup></li> <li>- <b>11 May 2014:</b> Reports that the Dorchester Hotel in Los Angeles had lost an estimated £1 million in bookings due to a boycott over the actions of its owner, the Sultan of Brunei, in approving anti-gay laws in Brunei. Stephen Fry and Richard Branson were among those publicly promoting the boycott of the Dorchester</li> </ul>	

	<p>Chain.<sup>9</sup></p> <ul style="list-style-type: none"> <li>- <b>1 May 2014:</b> See the words of the Prime Minister (Legislative news, below)</li> <li>- <b>11 April 2014:</b> Spokesman for the UN High Commission for Human Rights, Rupert Colville, condemned the proposed implementation of a new penal code based on local interpretations of sharia law (below) as contravening international human rights standards. He added: <i>'The provisions of the revised penal code may encourage further violence and discrimination against women and also against people on the basis of sexual orientation.'</i><sup>10</sup></li> <li>- <b>24 January 2014:</b> Sam Zarifi, Regional Director (Asia and the Pacific) of the International Commission of Jurists) published an open letter to the Prime Minister of Brunei condemning amendments to the country's Penal Code which provide for the penalty of death by stoning for the offence of sodomy.<sup>11</sup></li> </ul>
<p>Persecution and Discrimination</p>	<ul style="list-style-type: none"> <li>- <b>November 2014:</b> The International Gay and Lesbian Human Rights Commission submitted a report to the Committee on the Elimination of Discrimination Against Women stating that:  <i>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.</i><sup>12</sup></li> <li>- <b>2014:</b> The 2014 US Human Rights Country Report stated that there were no reports of official or societal discrimination based on sexual orientation in employment, housing, or access to education or health care, although societal stigma may cause affected individuals to refrain from reporting such problems. Anecdotal information indicated LGBT individuals avoided disclosing their sexual orientations due to fear of societal or legal retribution. There were no NGOs working on human rights for LGBT persons in the country.<sup>13</sup></li> </ul>
<p>Legislative News</p>	<ul style="list-style-type: none"> <li>- <b>May 2015:</b> In their 2015 State-Sponsored Homophobia report, the International Lesbian and Gay Association (ILGA) stated that:  <i>Brunei Darussalam is currently phasing in a Syariah Penal Code that sees, in black letter law, the death penalty introduced for certain same-sex sexual activity in 2016, but seems unlikely to be implemented in actuality.</i><sup>14</sup></li> <li>- <b>24 March 2015:</b> Voted in favour of a failed Russian draft decision at the UN General Assembly's Fifth Committee (Administrative and Budgetary) that would have had the Secretary-General withdraw his bulletin laying UN staff benefits for same-sex couples.<sup>15</sup></li> </ul>

	<ul style="list-style-type: none"> <li>- <b>1 May 2014:</b> Despite a temporary halt, the first phase of the implementation of a new <i>Syariah</i> Penal Code, one which will eventually lead to the stoning of people found guilty of same-sex sexual activity, was started. Speaking about the penal code, the Prime Minister was quoted as saying: <i>'The decision to implement the (penal code) is not for fun but is to obey Allah's command as written in the Quran.'</i><sup>16</sup></li>   <li>- Universal Periodic Review (2010 and 2014): In 2010, Brunei rejected the recommendations to amend section 377 of the Penal Code in order to decriminalise consensual sexual activity among persons of the same sex.<sup>17</sup> In 2014, despite concerns raised about its new <i>Sharia</i> Penal Code order 2013, Brunei rejected all recommendations to decriminalise sexual activity between same-sex consenting adults and ensure the protection of human rights for sexual minorities.<sup>18</sup></li> </ul>
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<sup>1</sup> The text of the law is : [https://www.unodc.org/tldb/pdf/Brunei\\_Penal\\_Code\\_1951\\_Full\\_text.pdf](https://www.unodc.org/tldb/pdf/Brunei_Penal_Code_1951_Full_text.pdf)

<sup>2</sup> *Penal Code 1951, s377: '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.'*

<sup>3</sup> The text of the law is :

[www.agc.gov.bn/aGc%20images/Laws/Gazette\\_pdf/2013/en/syariah%20penal%20code%20order2013.pdf](http://www.agc.gov.bn/aGc%20images/Laws/Gazette_pdf/2013/en/syariah%20penal%20code%20order2013.pdf)

<sup>4</sup> *Syariah Penal Code 2013, s83: '(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.'*

<sup>5</sup> 'Bruneian civil servant fined \$1,000 for cross-dressing', *The Brunei Times*, 11 March 2015,

<<http://www.bt.com.bn/news-national/2015/03/11/bruneian-civil-servant-fined-1-000-cross-dressing>>

<sup>6</sup> US Department of State Bureau of Democracy, *Country Reports on Human Rights Practices for 2014: Brunei, Human Rights and Labor*, 2014,

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dldid=236426>>

accessed on 5 September 2015

<sup>7</sup> 'Lawmakers urge U.S. to shun Brunei in trade talks over sharia law', *Reuters (US)*, 21 May 2014,

<<http://www.reuters.com/article/2014/05/21/us-usa-trade-brunei-idUSBREA4K1A520140521>>

<sup>8</sup> Ennis, D., 'John Legend Boycotts Event to Protest Sultan of Brunei', *The Advocate*, 5 February 2015,

<<http://www.advocate.com/politics/media/2015/02/05/john-legend-boycotts-event-protest-sultan-brunei>>

<sup>9</sup> Bridge, S, 'Luxury hotel chain which owns the Dorchester on Park Lane loses £1m in boycott over gay rights', *Daily Mail*, 11 May 2014, <<http://www.dailymail.co.uk/money/markets/article-2625511/Dorchester-Collection-luxury-hotel-chain-loses-1m-boycott.html#ixzz31bwydlfO>>

<sup>10</sup> UN, *UN concerned at broad application of death penalty in Brunei's revised penal code*, 11 April 2014,

<[http://www.un.org/apps/news/story.asp?NewsID=47552&Cr=death+penalty&Cr1=#.U7p\\_r\\_ldXUV](http://www.un.org/apps/news/story.asp?NewsID=47552&Cr=death+penalty&Cr1=#.U7p_r_ldXUV)>

accessed on 19 July 2014

<sup>11</sup> Open letter from International Commission of Jurists to the Prime Minister of Brunei Darussalam, 24 January 2014, <<http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/01/Brunei-Open-letter-on-2013-Penal-Code.pdf>>

<sup>12</sup> IGLHRC, *Discrimination and Violence Against Women in Brunei Darussalam On The Basis of Sexual Orientation and Gender Identity*, Presented to the 59<sup>th</sup> session of the Committee on the Elimination of All Forms of Discrimination Against Women, November 2014

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<sup>13</sup> US Department of State, Bureau of Democracy, *Human Rights and Labor, Country Reports on Human Rights Practices for 2014: Brunei*, 2014,

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236426>>  
accessed on 5 September 2015

<sup>14</sup> ILGA, *State-Sponsored Homophobia*, 28, May 2015,

<[http://old.ilga.org/Statehomophobia/ILGA\\_State\\_Sponsored\\_Homophobia\\_2015.pdf](http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2015.pdf)>

<sup>15</sup> Lavers, M., K., 'Bid to block spousal benefits for gay U.N. employees fails', *Washington Blade*, 24 March 2015,

<<https://www.washingtonblade.com/2015/03/24/bid-to-block-spousal-benefits-for-gay-u-n-employees-fails/>> accessed 25 October 2015

<sup>16</sup> Margolin, E., 'Gay couples in Brunei could soon be sentenced to death by stoning', *MSNBC*, 1 May 2014,

<<http://www.msnbc.com/msnbc/brunei-sharia-penal-code-gay-stoning>> accessed on 19 July 2014

<sup>17</sup> UNHRC, *Report of the Working Group on the Universal Periodic Review: Brunei Darussalam* (OHCHR 4 January 2010), A/HRC/13/14

<sup>18</sup> UNHRC, *Report of the Working Group on the Universal Periodic Review: Brunei Darussalam* (OHCHR 7 July 2014), A/HRC/27/11; see also: UNHRC, *Addendum: Report of the Working Group on the Universal Periodic Review: Brunei Darussalam* (OHCHR 10 September 2014), A/HRC/27/11/Add.1