

# Musawah Comprehensive Fact-Sheet on Muslim Family Laws: Brunei Darussalam 59<sup>th</sup> CEDAW Session October 2014

## I. INTRODUCTION

This is the CEDAW Committee's first engagement with the Government of Brunei Darussalam, which acceded to the CEDAW Convention on 24 May 2006, and entered **reservations to Article 9.2 and Article 29.1**, and a general reservation **'regarding those provisions of [CEDAW] that may be contrary to the Constitution of Brunei Darussalam and to the beliefs and principles of Islam, the official religion of Brunei Darussalam.'**<sup>1</sup>

In response to the CEDAW Committee's list of issues and questions (2014), the Government of Brunei Darussalam stated that **'without prejudice to the generality of CEDAW, [it] wishes to retain its reservations'** (para. 8). The Government has also noted in its responses that it still has not ratified the Optional Protocol (para. 73).

*The information and analysis presented in this comprehensive fact-sheet is based on field research carried out in Brunei in October 2014. Musawah researchers interviewed over 20 women on their first-hand experiences of gender discrimination in marriage and family relations. The report also makes use of official materials produced and circulated by the Government within the State party territory. Although research documenting realities of family life on the ground is meant to be illustrative, and in no way comprehensive, secondary research, including review of other analysis on gender discrimination in Brunei, suggests that the types of women's human rights abused documented are common.*

*The seriously limited space for free association, expression, and assembly, including the monitoring of discussion of Government law and policy in person, print and online spaces, imposed significant obstacles on Musawah researchers, including connecting with respondents willing to engage in open discussion of gender discrimination in law and in practice.*

## II. CRITICAL ISSUES: MUSLIM FAMILY LAWS + PRACTICES

### A. Guardianship (Negative Stereotypes):

- ❖ **Male guardian (*wali*) must provide consent for a Muslim female to marry.** The Government states that 'Muslim women have the same right as men to choose a spouse with free consent;' and that further, it is an offence according to *Islamic Family Law (2000)* for any person to use any force, threat, or deception to compel a person to marry (SPR 2011, 16.2.3). However, in order for a marriage contract to be considered valid, consent of the woman's *wali* (guardian) or a *wali Hakim* (a representative appoint by the monarchy) is necessary.<sup>2</sup> Thus, in reality, the requirement of a male guardian restricts the right of women to freely choose a spouse and to enter into marriage with their free and full consent, on an equal basis with men.
- ❖ **Under new *Syariah Penal Code Order (2013)*, 'enticing female Muslim to leave custody of her parents or guardian,' and 'unmarried female Muslim who leaves custody of parents or guardian' are considered criminal activities.** These acts are punishable by up to 8000BND and 2 years in prison (*Syariah Penal Code 2013, Article 202*), and 1000BND and 3 months in prison (*Syariah Penal Code 2013, Article 203*), respectively. The Court can also order the woman to return to her parents or guardian in both cases. There are no similar provisions criminalizing (enticing) men who leave 'custody of parents or guardian'; guardianship is assumed and codified over women only. An age limit is not specified in either Articles of the Penal Code, indicating that women are perpetual legal minors. Both offences were implemented in the first phase of the *Syariah Penal Code (2013)* in April 2014; Musawah was unable to find documented offenses committed since implementation this year.

<sup>1</sup> United Nations Treaty Collection: *CEDAW Declarations and Reservations*, available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en).

<sup>2</sup> Brunei Darussalam, "List of issues and questions in relation to the combined initial and second periodic reports of Brunei Darussalam: Replies of Brunei Darussalam," *United Nations*, CEDAW/C/BRN/Q/1-2/Add.1, (12 June 2014), 15.

- ❖ **Culturally, male guardianship manifests as control over women's freedom of movement.** Several unmarried women reported requiring consent from their fathers to leave their home, and that such parental approval was not required of their brothers. Often times, instances of harassment and gendered violence in the media are used to further justify parental guardianship.

#### B. Early & Forced Marriage:

- ❖ **Discriminatory minimum age of marriage.** According to Brunei's *Islamic Family Law (2000)*, Muslim girls can marry as early as 16 years old; Muslim boys must be 18.<sup>3</sup> Non-Muslim girls can marry as young as 14.<sup>4</sup>
- ❖ **Puberty declared universally at age 16.** The age of puberty for women is defined at 16 years according to Section 35 of *Islamic Family Law (2000)*. Thus, at the age of 16 a woman may enter marriage.<sup>5</sup> Puberty does not occur at the same time for every woman, and reaching puberty does not entail a readiness for marriage.
- ❖ **Underage marriage legally allowed.** Additionally, in laws regarding rape, it is alluded that a 'wife' may be as young as 13 years of age, indicating the legality of underage marriage in Brunei.<sup>6</sup>

#### C. Equality of Spouses (Negative Stereotypes):

- ❖ **'Complementary' rights and responsibilities within marriage.** Negative gender stereotypes are still present in Brunei and impact views of what a wife's and husband's marital roles should be. Little has been done by the country to eliminate stereotypes and patriarchal notions that subordinate women.<sup>7</sup>
- ❖ **Working women expected to maintain household duties.** Women in Brunei who work away from the home are still expected to complete traditional household duties. (There have been discussions from female leaders that men need to learn new skills to help working wives balance their many responsibilities.)<sup>8</sup>

#### D. Polygamy:

- ❖ **Permissibility of polygamy.** Section 23 of the of the *Islamic Family Law (2000)* allows a man to marry more than one woman, provided that he obtains written permission from the Court and has a written declaration stating the grounds on which the proposed marriage is claimed to be just and necessary.<sup>9</sup> Several respondents noted the abuse of the legal requirements, and instances of men entering polygamous marriages without the consent of their first wives. In some of these cases, the men did not adequately provide (or provide at all) for their first households; they faced no legal consequence.

#### E. Divorce:

- ❖ **Commonality of *Talaq* divorce.** Legislation allows a man to divorce his wife using the method of One, Two, or Three *Talaqs*. The husband must report the divorce to the court within seven days.<sup>10</sup> Divorce outside of court is the most common form.<sup>11</sup>

<sup>3</sup> Bureau of Democracy, Human Rights and Labor, "Brunei 2012 Human Rights Report," *United States Department of State*, (2012), 13.

<sup>4</sup> For Chinese marriage under the Chinese Marriages Act (Cap. 126), the female must be over 15; SPR 2013: Part II, para. 16.1.2, *supra* note 1. For non-Muslim marriages of boys and girls under 18, the parents or one of the parents or natural guardian of the minor must declare on oath that the minor child has consented, SPR 2013: Part II, para. 16.1.1, *supra* note 1.

<sup>5</sup> Brunei, CEDAW/C/BRN/1-2, 38.

<sup>6</sup> CEDAW, "List of issues and questions in relation to the combined initial and second periodic reports of Brunei Darussalam," *United Nations*, CEDAW/C/BRN/Q/1-2, (March 20, 2014), 4 and 7.

<sup>7</sup> Brunei, CEDAW/C/BRN/1-2, 22 and CEDAW/C/BRN/Q/1-2, 2.

<sup>8</sup> Rabiatal Kamit, "Brunei Women third highest paid in world," *Brunei Times*, (4 July 2012). Accessed at: <http://www.bt.com.bn/news-national/2012/07/04/brunei-women-third-highest-paid-world>

<sup>9</sup> Brunei, CEDAW/C/BRN/Q/1-2/Add.1, 15-16.

<sup>10</sup> Emory University Law School, "Brunei," Accessed at: <http://aannaim.law.emory.edu/ifl/legal/brunei.htm>

<sup>11</sup> Hanaffi Hidup, "Rising Divorce Rate a Worrying Trend," *Brunei Times*, (4 April 2013). Accessed at: <http://www.bt.com.bn/2013/04/04/rising-divorce-rate-worrying-trend>

- ❖ **Wife must apply to *Kathi's* court for divorce.** Upon a woman's application, the *Kathi's* will determine whether to summon the husband. If the husband consents the divorce is registered. If he does not consent, then the wife may offer to pay the husband *cherai tebus talak (khul)*. If the husband still does not consent, the *Kathi's* will arrange for two arbitrators to continue working out the settlement.<sup>12</sup> Several respondents noted cases of lengthy, tedious, and expensive court processes when wives initiated the divorce process.

#### F. Nationality:

- ❖ **Women cannot pass nationality to children and foreign spouses on the same basis as men.**<sup>13</sup> Children of Bruneian mothers and non-national fathers must *apply* for citizenship; children of Bruneian fathers obtain citizenship automatically at birth.
- ❖ **Lengthy waiting time for children of Bruneian mothers to apply for nationality:** In 2013, 386 persons obtained citizenship after an average waiting period of 1.5 to 2 years.<sup>14</sup> Some respondents shared that as children of Bruneian mother and non-national fathers, they had to wait for several years before obtaining Bruneian citizenship; in the meantime, they lost access to heavily subsidized healthcare and education, as well as Government university scholarships for study abroad. One respondent had to wait till her 16<sup>th</sup> birthday before applying for citizenship; she lived with her mother only, and her father was both unavailable and unwilling to sign the necessary paperwork, resulting in delay.
- ❖ **Available alternative mechanisms.** The State party justifies this discrimination by claiming that it prevents people from holding dual citizenship. However, other states that do not recognise dual nationality address this question through a variety of mechanisms, including by requiring children to choose one of the nationalities at the age of 18.<sup>15</sup>

#### G. Inheritance:

- ❖ **Discriminatory inheritance distribution.** Muslim daughters are awarded only half of what sons are awarded in the distribution of family inheritance. These practices are justified because men are responsible for providing maintenance. However, there are no provisions to provide a woman a larger portion of the inheritance if the man fails to provide maintenance. Also, a wife inherits one-quarter of her deceased husband's property if there are no children, and one-eighth if he does have children. By contrast, a husband gets half or a quarter of his late wife's assets, depending on whether there are children.<sup>16</sup> Brunei encourages the use of wills and gifts for women, which are not subject to the same stipulations as inheritance laws.<sup>17</sup> Many respondents were unaware of discrimination in inheritance laws.

#### H. Violence against Women:

- ❖ **Marital rape is neither recognized nor penalized.** The *Syariah Penal Code (2013)*, Section 75, *Zina bil-jabar*, denies the existence of marital rape in Islam.<sup>18</sup> Additionally, Brunei's penal code states that sexual intercourse by a man with his own wife, if the wife is not under 13-years-old, is not rape.<sup>19</sup> Many respondents were unaware that marital rape is not criminalised.
- ❖ **No domestic violence law & Under-reportage.** Stigma, reluctance, shame, and fear of personal safety are all stated by government officials as reasons why women fail to report domestic

<sup>12</sup> Emory University.

<sup>13</sup> Brunei, CEDAW/C/BRN/Q/1-2, 3.

<sup>14</sup> From January 1 to September 1 of 2013, 386 persons obtained citizenship after an average waiting period of 1.5 to 2 years, according to the government. Of those, 186 persons were previously stateless. Bureau of Democracy, Human Rights and Labor, U.S. Department of State, 'Country Reports on Human Rights Practices for 2013: Brunei' (2013), p. 10. Available at: <http://www.state.gov/documents/organization/220391.pdf>.

<sup>15</sup> Women's Refugee Commission & Tilburg University, *supra* note 98, p. 6.

<sup>16</sup> Abid Hussain, "Islamic Laws of Inheritance," *Islam101*, Accessed at: <http://www.islam101.com/sociology/inheritance.htm>

<sup>17</sup> Brunei, CEDAW/C/BRN/1-2, 38.

<sup>18</sup> Brunei, CEDAW/C/BRN/Q/1-2/Add.1, 7.

<sup>19</sup> Brunei, CEDAW/C/BRN/Q/1-2, 2.

violence.<sup>20</sup> Exact data on domestic violence is unavailable, due to these obstacles.<sup>21</sup> Efforts to change public perceptions should be pursued by the government in order to understand and combat domestic violence. Brunei does not have a specific domestic violence law<sup>22</sup>, but as of 2010 domestic violence is defined in the *Married Woman Act* and in the *Islamic Family Law Order (2000)*.<sup>23</sup>

- ❖ **Female genital mutilation (FGM) widely prevalent.** Although no official data is available, Musawah has strong reason to believe that FGM is widely prevalent in Brunei. All 20 of the respondents that Musawah interviewed had undergone the process; some noted that this was a ‘default’ procedure that occurs in all government hospitals. Female circumcision is often associated with Islamic practices, but researchers indicate the practice predates Islam and is not mentioned in the Qur’an or hadith.<sup>24</sup>

### III. ADDITIONAL INFORMATION: SYARIAH PENAL CODE ORDER (2013)

#### A. Direct Discrimination:

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, including: (1) Women will be disqualified as witnesses; and (2) the *diyat* (blood money or financial compensation) given to the family of a victim will be half if the victim is female.

#### B. Indirect Discrimination:

‘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.<sup>25</sup>
- ❖ Women also face greater difficulty in collecting the necessary evidence to prove rape, 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).<sup>26</sup> 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,<sup>27</sup> 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.<sup>28</sup>

<sup>20</sup> Brunei, CEDAW/C/BRN/1-2, 19.

<sup>21</sup> “Brunei lacks legislation on domestic violence,” *Womensphere*, (April 25, 2008). Accessed at: <http://womensphere.wordpress.com/2008/04/25/brunei-lacks-legislation-on-domestic-violence/>

<sup>22</sup> United States State Department, 14.

<sup>23</sup> Brunei, CEDAW/C/BRN/1-2, 12.

<sup>24</sup> Quratul-Ain Bandial, “Female circumcision is cultural practice,” *Brunei Times*, (16 June 2012). Accessed at: <http://www.bt.com.bn/news-national/2012/06/16/female-circumcision-cultural-practice>

<sup>25</sup> 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%99-penal-code>

<sup>26</sup> Bilal Dannoun, “The Islamic Ruling Concerning the Criminal Act of Zina,” *Mission Islam*. Accessed at: <http://www.missionislam.com/knowledge/ruling%20zina.htm>

<sup>27</sup> “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>

<sup>28</sup> 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.

### C. Information on Challenging Government Justification for Implementation:

- ❖ **On the argument that penalties under the *Penal Code* serve ‘as a deterrent, which aims to create a crime-free society** (Government responses, para.11).’ Empirical research and analysis in sociology and criminal legal studies clearly demonstrate that severe punishment *does not* deter crime.<sup>29</sup> Again, here we note how the record of practice and enforcement in other Muslim contexts have systematically resulted in greater gender discrimination, violence, and harm.
- ❖ **On the use of Islam to defend implementation:**
  - 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)?
  - 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.
  - 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.

## IV. SUGGESTIONS FOR FOLLOW-UP PRIORITY ISSUES

Given the grave violations of international human rights norms and standards in Muslim family law and practice, and the *Syariah Penal Code (2013)*’s, and the ways that the Government of Brunei justifies discrimination in both areas on the grounds of religion, Musawah urges the CEDAW Committee to highlight Article 16 and Article 2 [*Syariah Penal Code (2013)*] as follow-up priority issues, and to recommend that the State party immediately repeal its many provisions that discriminate against women, in both substance and practice.

## V. MUSAWAH VISION

Musawah asserts that in the twenty-first century, there cannot be justice without equality. Many provisions in Muslim family laws, as defined by classical jurists and as reproduced in modern legal codes, are neither tenable in contemporary circumstances nor defensible on Islamic grounds. Not only do they fail to fulfill the *Shari’ah* requirements of justice, but they are being used to deny women rights and dignified choices in life. These elements lie at the root of marital disharmony and the breakdown of the family.

Musawah believes that Qur’anic teachings which encompass the principles of justice, equality, dignity, and love and compassion lay out a path towards reform of Muslim family laws and practices, in line with contemporary notions of justice, which includes equality between the sexes and equality before the law.<sup>30</sup>

Musawah believes that Islamic teachings and universal human rights standards, including the CEDAW Convention, are fully compatible, and that both are dynamic and constantly evolving, based on changing times and circumstances.<sup>31</sup>

<sup>29</sup> 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>.

<sup>30</sup> *Musawah Framework for Action*, *supra* note 3.

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 and the growing scholarship in Islam that recognises equality and justice and the possibility and necessity for reform of Muslim family laws today.
- ❖ Promote human rights standards as intrinsic to the teachings of Islam, national guarantees of equality and non-discrimination, and the lived realities of men and women today.
- ❖ Encourage open and inclusive public debate regarding diversity of opinion and interpretations in Muslim laws and principles relating to family laws and practices.
- ❖ Support civil society groups and individuals engaged in family law reform campaigns, moving the family towards relationships of equality, justice, dignity and mutual respect.

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<sup>31</sup> *Musawah Framework for Action*, *supra* note 3.

## VI. WORKS CITED

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## VII. ANNEX: ADDITIONAL INFORMATION

### General Information

- “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>
  - The Southeast Asia Women’s Caucus on Asean (hereafter Women’s Caucus) condemns the implementation of the new Shariah Penal Code Order 2013 by Brunei Darussalam, making it the first country in Southeast Asia where such a harsh interpretation of the Islamic legal system is enforced at a national level. Parts of the code came into force from May 1, 2014, despite huge outcry from the international community.
  - The Women’s Caucus hereby, with grave concern, calls upon the Asean Member States and Asean human rights bodies: Asean Intergovernmental Commission on Human Rights (AICHR) and Asean Commission on Promotion and Protection of the rights of Women and Children (ACWC) to immediately hold talks with authorities in Brunei Darussalam to recall the implementation of the Shariah Penal Code Order 2013.
  - Several UN studies reveal that in countries where these laws are practiced, women experience grave injustice as women are at a higher risk of being found guilty of adultery and extra-marital affairs. Thus women are more likely subjected to these inhumane punishments. Women also face more difficulty to gather evidence to prove their innocence[1], especially in cases of rape or adultery where four male witnesses are required and a woman herself cannot be a witness as she is not an equal in the eyes of this law – the Shariah Penal Code Order 2013.
  - Thus the new Shariah Penal Code Order is a major regression for human rights in Brunei Darussalam, and in Asean. By enforcing this new code, Brunei mocks its own commitments to international human rights standards and Asean Charter and Asean Human Rights Declaration.

### Minimum Age of Marriage:

- UNICEF has no numbers on child marriage in Brunei:  
<http://www.unicef.org/infobycountry/bruneidarussalam.html>

### Equality of Spouse

- Rabiatul Kamit, “Brunei Women third highest paid in world,” *Brunei Times*, (July 4, 2012). Accessed at: <http://www.bt.com.bn/news-national/2012/07/04/brunei-women-third-highest-paid-world>
  - WOMEN in Brunei earn the third highest estimated income in the world, making an average of US\$38,000 annually, according to the Deputy Minister of Culture, Youth and Sports.
  - "Women are given equal rights and opportunities in education, training, healthcare, employment, business, ownership of assets, benefits and citizenship among others," she said, pointing out that Brunei ranks 20th in the world in terms of economic participation of women.
  - "Even though women are working and holding full-time jobs, women's responsibility in taking care of the family should remain intact. It has therefore become imperative for women to learn how to balance their workload with their traditional responsibilities at home," said Datin Hj Adina. She said that it is imperative for women to ensure that the family security is not negatively affected. "With the increase in working women, men will also need to adjust their expectations and also learn new skills. Parenting responsibilities should be shared by both mother and father," she said, adding that women are entitled to 105 days of paid maternity leave.

### Divorce

- Hanaffi Hidup, “Rising Divorce Rate a Worrying Trend,” *Brunei Times*, (4 April 2013). Accessed at: <http://www.bt.com.bn/2013/04/04/rising-divorce-rate-worrying-trend>
  - DIVORCE declared outside the Syariah Court account for the highest of all divorce statistics in Brunei Darussalam, with 106 reported cases in 2012 alone.
  - According to Syariah law, a divorce should be filed legally in the court. Nevertheless, the instances of husband divorcing their wife outside the court's jurisdiction was a mainstay among the public.

- According to the Brunei Darussalam Government Gazette Chapter 55 (Islamic Family Law 1999), "a man who has divorced his wife by pronouncing a talaq in whatever form outside of the Court and without the permission of the Court, shall within seven days report the pronouncement of talaq to the court."
- Failure for the husband to report the pronouncement to the court within seven days would result in two penalties; first, he would have to pay a total of \$2000 for declaring the "talaq" outside of Syariah court. Secondly, another \$2000 should be paid for going over seven days to report the pronouncement of divorce. However, if the man was unable to pay, he would be imprisoned up to six months.

### **Violence Against Women**

- **Bureau of Democracy, Human Rights and Labor, "Brunei 2012 Human Rights Report," *United States Department of State*, (2012), 13.**
  - The law stipulates imprisonment of up to 30 years and caning with not fewer than 12 strokes for rape. The law does not criminalize spousal rape; it explicitly states that sexual intercourse by a man with his wife, as long as she is not under 13 years of age, is not rape.
  - Protections against sexual assault by a spouse are provided under the amended Islamic Family Law Order 2010 and Married Women Act Order 2010, and the penalty for breaching a protection order is a fine not exceeding BN\$2,000 (\$1,538) or imprisonment not exceeding six months.
  - During the year 23 rape cases were reported; at year's end police were investigating 11 and had forwarded 10 to the Attorney General Chambers. There is no specific domestic violence law, but arrests have been made in domestic violence cases under the Women and Girls Protection Act.
  - During the year there were a total of 62 cases of spousal dispute abuse reported; at year's end 55 cases were under investigation, and eight had been forwarded to the Attorney General Chambers.
  - There is no specific domestic violence law, but arrests were made in domestic violence cases under the Women and Girl's protection act...During the year there were 77 cases of domestic abuse reported; at year's end 68 cases were under investigation, three prosecuted, and six convicted.
- **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%99-penal-code>**
  - Women's rights organisations are particularly concerned that the new penal code includes stoning as a punishment for the crime of adultery.
  - Stoning is not prescribed in the Qur'an or in any other religious texts. We view the introduction of this penal code as part of a larger retrogressive step for women's rights and gender equality in the country where spousal rape, for instance, is still tolerated under the Shari'a law. We reiterate our call that no 'religion', 'culture', or 'tradition' should be used to excuse killing and maiming for supposed moral crimes. While stoning is a method of punishment to be applied to both women and men, the victims in reported cases of stoning are overwhelmingly women.
  - This stems from the fact that stoning is primarily used for crimes of adultery or other crimes related to moral or sexual conduct. Patriarchal and misogynist interpretations of religious laws – aimed at controlling women's basic freedoms of movement and expression and control over their bodies – underlie judicial codes governing sexual relationships and the family [1].
- **Saeed, Sana and Ghilan, Mohamed, "Brunei: When Sharia serves the sultan and the US media," *Al Jazeera*, (29 May 2014). Accessed at: <http://www.aljazeera.com/indepth/opinion/2014/05/brunei-sharia-law-at-what-cost-2014528134130788926.html>**
  - On May 1, the Sultanate of Brunei [introduced](#) the first of three phases in its adoption of a penal code based on Islamic law, or Sharia. The move brought with it a flurry of international outcry, condemnation and moral indignation in the United States.
  - Condemnations have focused, in particular, on the application of the death penalty by stoning for offences such as blasphemy and illicit sex acts such as sodomy, rape and extra-marital sex; whipping and amputations for "less serious crimes".
  - According to the [United Nations](#), Brunei's adoption of the penal code violates international law as "stoning people to death constitutes torture or other cruel, inhumane or degrading treatment or punishment and is thus clearly prohibited".

- Amnesty International also warned that the move [threatened](#) to send the country back to the "dark ages".
  - In contrast to what has been communicated through US media about the sultan introducing Sharia to target homosexuals or apply extreme punishments for crimes, he actually stated that **his motives are political in nature**: "[The critics] can no longer be given the liberty to continue with their mockery, and if there is a basis for them to be brought to court, the first phase of the [Sharia] (criminal) law this coming April will be relevant to them."
  - Any further talk of religion is superfluous at this point. Focusing the discussion on Brunei's move to adopt Sharia penal code, which more importantly relies on mischaracterizations of Sharia, is dishonest framing. It encourages knee-jerk reactionary protests that pick and choose their causes for alarm. Both the sultan and US media are exploiting Sharia for their own purposes. Meanwhile, the people of Brunei who are in the middle and ignored, will face the real possibility of the oncoming oppression.
- **Zareena Amiruddin, "Marital rape: Are women in Brunei protected from it?" *Brunei Times*, (13 August 2010). Accessed at: <http://www.bt.com.bn/news-national/2010/08/13/marital-rape-are-women-brunei-protected-it>**
    - There have been complaints of forced sexual intercourse by women against their husbands to the police in the past, but these complaints are usually unattended as there is no law against marital rape in Brunei.
    - Brunei's Attorney General's Chambers said it currently has no plans to amend Section 375 of the Penal Code, which states that sexual intercourse by a man with his own wife, the wife not being under 13 years of age, is not rape.
    - A Royal Brunei Police Force officer said they were unable to take any action when someone reports rape by their spouse, as the law does not permit it. No official figures were disclosed on how many complaints were received.
  - **"Brunei lacks legislation on domestic violence," *Womensphere*, (April 25, 2008). Accessed at: <http://womensphere.wordpress.com/2008/04/25/brunei-lacks-legislation-on-domestic-violence/>**
    - Currently Brunei Darussalam has no legislation specific to domestic violence and a draft of the domestic violence order is still being considered by relevant authorities as the nation has been seeing a steady rise in domestic violence cases year-on-year from 2000 to 2006.
    - Minister of Health, Pehin Orang Kaya Indera Pahlawan Dato Seri Setia Awang Haji Suyoi bin Hj Osman, was the guest of honour. Touching on the steady rise in domestic violence cases, the minister said, "We cannot take comfort in the low number of reported cases. Although the number does not appear to be high, the actual prevalence of domestic violence is difficult to obtain, even in a multinational study because of stigma and fear as many women are reluctant to disclose their suffering."
    - Datin Hj Adinah said domestic violence is one of the three social ills faced by Brunei, the other two being drug abuse and promiscuity.
    - The challenges they face at the moment are under reporting, stigma, shame and reluctance. Too many people believe domestic violence is a private matter.
    - Under reporting is due to a wife or the concerned victim who thinks about his/her welfare or the impact it may have on their children if they report to the relevant authorities.

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### **About Musawah**

*Musawah is a global movement of women and men who believe that equality and justice in the Muslim family are necessary and possible. Musawah, which means 'Equality' in Arabic, builds on centuries of effort to promote and protect equality and justice in the family and in society. For details, visit the Musawah website at <http://www.musawah.org>.*