



**Civil society engagement with UN human rights mechanisms on sexual orientation, gender identity and expression, and sex characteristics (SOGIESC)**

# BRUNEI DARUSSALAM

## ABOUT THE COUNTRY BRIEF

This country brief charts efforts by lesbian, gay, bisexual, transgender, intersex, and queer (LGBTIQ) activists to raise issues related to sexual orientation, gender identity and expression, and sex characteristics (SOGIESC) within UN human rights mechanisms. This brief is based on a review of engagements with various mechanisms, including a desk review of civil society submissions and national-level discussions and individual interviews with activists and stakeholders. The discussions took place over the first half of 2016, with additional data gathered on review cycles. **The objective is to provide baseline information for LGBTIQ activists to help maximize their engagement with UN human rights mechanisms.**

# UNIVERSAL PERIODIC REVIEW

## 1ST CYCLE (2011)

During the first cycle review, a group of international organizations comprised of the International Gay and Lesbian Association (ILGA) Europe and Asia, International Gay and Lesbian Human Rights Commission, and ARC International, submitted information on the criminalization of consensual same-sex relations between adults. They recommended that “the Human Rights Council, urge Brunei Darussalam to bring its legislation into conformity with international human rights standards by repealing all provisions which criminalise “carnal intercourse against the order of nature” or other sexual activity between consenting adults.”<sup>1</sup>

The following recommendations<sup>2</sup> did not enjoy the support of Brunei Darussalam and were “Noted”:

### Netherlands

Repeal or amend the section of the Penal Code which provides for criminal sanctions against “carnal intercourse against the order of nature” and may thus be applied to criminalize sexual activity between consenting adults, so as to ensure that it does not discriminate against lesbians, gays, bisexuals and transsexuals.

### Canada

Decriminalize sexual activity between consenting adults and bring its legislation into conformity with international human rights standards by repealing legislative provisions which criminalize “carnal intercourse against the order of nature” or other sexual activity between consenting adults.

### Spain

Abrogate or amend section 377 of the Penal Code to guarantee non-discrimination on the grounds of sexual orientation or gender identity.

### Sweden

Amend section 377 of the Penal Code in order to decriminalize consensual sexual activity among persons of the same sex.

## 2ND CYCLE (2014)

During the second cycle review, there were no civil society submissions on SOGIESC issues. However, various countries made recommendations<sup>3</sup> which were “noted” by Brunei Darussalam:

### Czech Republic

Decriminalize sexual activity between consenting adults, and repeal all provisions of the newly enacted Penal Code discriminating against women and sexual minorities and introducing cruel or inhuman forms of punishment.

### Spain

Proceed to the abolition of current legislation criminalizing sexual relations between persons of the same sex.

### Canada

Decriminalize sexual activity between same-sex consenting adults and ensure the protection of human rights for sexual minorities in conformity with the State’s human rights obligations.

### France<sup>4</sup>

Decriminalise sexual relations between consenting adults of the same sex.

1 International Gay and Lesbian Association, 2009. Submission in the UPR review of Brunei Darussalam. Retrieved from: [http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/BN/ILGA\\_BRN\\_UPR\\_S06\\_2009.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/BN/ILGA_BRN_UPR_S06_2009.pdf).

2 UN Human Rights Council, 2010. Report of the Working Group on the Universal Periodic Review on Brunei Darussalam, A/HRC/13/14.

3 UN Human Rights Council, 2014. Report of the Working Group on the Universal Periodic Review\*- Brunei Darussalam: Addendum - Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/27/11/Add.1.

4 UN Human Rights Council, 2014. Report of the Working Group on the Universal Periodic Review\*- Brunei Darussalam: Addendum - Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/27/11/Add.1.

# TREATY MONITORING BODIES

## BRUNEI DARUSSALAM HAS RATIFIED<sup>5</sup> THE FOLLOWING INTERNATIONAL HUMAN RIGHTS TREATIES:

01

Convention on the Elimination of All Forms of Discrimination against Women

02

Convention on the Rights of the Child (with Optional Protocols 1 and 2)

03

Convention on the Rights of Persons with Disabilities

In 2014, the International Gay and Lesbian Human Rights Commission submitted a shadow report to the Committee on the Elimination of all Forms of Discrimination against Women (CEDAW) looking at criminalization, stereotypes, harmful practices, discrimination and violence against lesbian, bisexual and transgender persons. Among other issues, they reported that the provisions of the 2013 Syariah Penal Code “will disproportionately impact mostly women, LGBT people, and anyone who does not conform to strict norms on gender and sexuality” and that the implications are serious “for the physical integrity and autonomy of all women, including lesbians, bisexual women and gender non-conforming persons.”<sup>6</sup>

SOGIESC issues were not reflected in Concluding Observations on the review.<sup>7</sup>

# SPECIAL PROCEDURES

Brunei Darussalam has not accepted any country visits from the UN Special Procedures.

5 UN Office of the High Commissioner for Human Rights, n.d. Ratification of 18 International Human Rights Treaties: Brunei Darussalam. Retrieved from <http://indicators.ohchr.org/>

6 International Gay and Lesbian Human Rights Commission, 2014. Discrimination and Violence Against Women in Brunei Darussalam on The Basis of Sexual Orientation and Gender Identity. Retrieved from: [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/BRN/INT\\_CEDAW\\_NGO\\_BRN\\_18370\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/BRN/INT_CEDAW_NGO_BRN_18370_E.pdf)

7 UN Committee on the Elimination of All Forms of Discrimination Against Women, 2014. Concluding observations on the combined initial and second periodic reports of Brunei Darussalam\*, CEDAW/C/BRN/CO/1-2.

## OTHER POSITIONS AT THE UNITED NATIONS

In April 2014, the OHCHR issued a press release regarding the revised Penal Code in Brunei Darussalam, which introduced stoning to death as the specific method of execution for cases including rape, adultery, sodomy, and extramarital sexual relations. The OHCHR stated that the criminalization and application of the death penalty for consensual relations between adults in private violates a whole host of rights, including the rights to privacy, to equality before the law, the right to health and freedom from arbitrary arrest and detention. It also expressed concern that “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.”<sup>8</sup>

Brunei Darussalam voted against the inclusion of references to sexual orientation and gender identity in resolutions on extrajudicial executions at the General Assembly in 2010, 2012 and 2014.<sup>9,10,11</sup> In addition, it joined a statement delivered to the General Assembly in 2008, opposing attention to sexual orientation at the UN.<sup>12</sup>

In June 2016, the UN Human Rights Council approved a resolution establishing a new special procedure called the “Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity” (IESOGI), whose mandate is to assess the implementation of existing international human rights instruments with regard to ways to overcome violence and discrimination against persons on the basis of their sexual orientation or gender identity, and to identify and address the root causes of violence and discrimination.<sup>13</sup>

In November 2016, the African regional group filed a resolution in the UN General Assembly to block the work of the IESOGI. When a counter-resolution was filed to amend the earlier resolution by deleting the postponement of the IESOGI's functions, Brunei Darussalam voted against it.<sup>14</sup> Brunei voted against the IESOGI on another attempt to halt the mandate in December 2016.<sup>15</sup>

8 UN Office of the High Commissioner for Human Rights, 2014. Press briefing notes on Brunei penal code, Death penalty abolition and USA - execution of Mexican national. Retrieved from <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14501&LangID=E#sthash.7M15Xtgv.dpuf>.

9 UN General Assembly, 2010. 65th Session, 71st Plenary Meeting, A/65/PV.71.

10 UN General Assembly, 2012. “Amendment to draft resolution A/C.3/67/L.36” as contained in document L.68 (list of votes). Retrieved from [http://www.un.org/en/ga/third/67/docs/voting\\_sheets/L68.pdf](http://www.un.org/en/ga/third/67/docs/voting_sheets/L68.pdf).

11 UN General Assembly, 2014. Amendment to draft resolution A/C.3/69/L.47/Rev.1, A/C.3/69/L.64. Retrieved from [http://www.un.org/en/ga/third/69/docs/voting\\_sheets/L64.L47Rev1.pdf](http://www.un.org/en/ga/third/69/docs/voting_sheets/L64.L47Rev1.pdf).

12 ARC International, 2008. Syrian statement: Response to SOGI Human Rights Statement, read by Syria. Retrieved from: <http://arc-international.net/global-advocacy/sogi-statements/syrian-statement/>

13 UN Human Rights Council, 2016. Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity, A/HRC/32/L.2/Rev.1.

14 UN General Assembly, 2016. Amendment to draft resolution A/C.3/71/L.46, A/C.3/71/L.52. Retrieved from: [https://www.un.org/en/ga/third/71/docs/voting\\_sheets/L52.pdf](https://www.un.org/en/ga/third/71/docs/voting_sheets/L52.pdf).

15 APCOM, 2016. Another Victory of the UN Rejecting Another Effort to Suspend the Mandate of Independent Expert on Sexual Orientation and Gender Identity. Retrieved from: <https://apcom.org/2016/12/21/lgbtiq-regional-organizations-asia-pacific-welcome-decision-ungas-5th-committee-meeting-safeguard-mandate-independent-expert-sexual-orientation-gender-identity/>



## **ASEAN SOGIE CAUCUS**

Room 8R, Future Point Plaza 3  
111 Panay Avenue, South Triangle  
Quezon City 1103, Philippines  
Phone: (+63 2) 285 7950

Web: [www.aseansogiecaucus.org](http://www.aseansogiecaucus.org)  
Facebook: [/aseansogie](https://www.facebook.com/aseansogie)  
Twitter: [@aseansogie](https://twitter.com/aseansogie)

**ASEAN SOGIE Caucus (ASC)** is a regional organization of human rights defenders from various countries in Southeast Asia. ASC advocates for the promotion, protection and fulfilment of the rights of all persons regardless of their sexual orientation, gender identity and expression, and sex characteristics (SOGIESC). The organization aims to support capacities of local activists to engage with domestic and international human rights mechanisms. The organization envisions a SOGIESC-inclusive Southeast Asian community, and advocates for the human rights of all persons regardless of SOGIESC to be respected, protected, promoted, and fulfilled.

*The country briefs are outputs of a regional research project with UNDP and ASC which examined civil society participation in UN human rights reporting mechanisms. Support for the regional research project and country briefs was provided by UNDP and Arcus Foundation.*

Copyright: ASEAN SOGIE Caucus (2017). Civil society engagement with the UN human rights mechanisms on sexual orientation, gender identity & expression, and sex characteristics (SOGIESC) in Southeast Asia.



This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.  
To view a copy of this license, visit <http://creativecommons.org/licenses/by-nc/4.0/>