



## **Women's rights in Brunei are highly threatened:**

*Brunei's new Syariah Penal Code Order 2013 has provisions that clearly infringe on universal human rights and will open up women, children and sexual minorities to more violations. With harsh Syariah law embraced, what will happen to the fate of women in Brunei? ASEAN needs to take action.*

**23 May 2014**

The Southeast Asia Women's Caucus on ASEAN (hereafter Women's Caucus) condemns the implementation of the new Syariah 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 Syariah Penal Code Order 2013.

Punishments like fines and jail terms, which are now in effect under the first phase, for missing Friday prayers and for out-of-wedlock pregnancies, violates one's basic Right to Freedom of thought, Right to Religion, and Right over one's body. This could also invite violence against unmarried women who end up being pregnant.

The punishments under the second phase, which will come into force in April/May 2015, include whipping for offences like drinking alcohol or other intoxicating drinks. Additional punishments include amputations of hand or foot in cases of theft are not only cruel but infringes one's right against torture.

The punishments under the third phase scheduled to be in effect from end of 2015 shall introduce capital punishment include death by stoning for a number of offences and crimes that include adultery, rape, abortion, sodomy and insulting the prophet Muhammad. Personal freedoms and the right to freedom of religion, opinion and expression are under threat.

Furthermore, 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<sup>1</sup>, 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 Syariah Penal Code Order 2013.

Thus the new Syariah 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

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<sup>1</sup> Punishment for men in the Sharia Law is based on three proofs: i) Confession, ii) pregnancy proof and iii) four witnesses must see the sexual act

rights standards and ASEAN Charter and ASEAN Human Rights Declaration. ASEAN's adherence to 'respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice' is clearly laid down in the 'purpose' and 'principles' of ASEAN Charter. Specifically the Syariah Penal Code Order violates the following articles of the ASEAN Human Rights Declaration:

- Its commitment 'to respect for, and promotion and protection of human rights and fundamental freedoms, as well as the principles of democracy, the rule of law and good governance' as mentioned in the Preamble.
- General principles 5, 6, 7, 8 and 9 [which generally refer to right to effective remedy, enjoyment of human rights and fundamental freedoms without impartiality, objectivity, non-discrimination, etc.]
- Civil and Political Rights 11, 14, 22 and 23. [Article 11 particularly states 'one's inherent right to life', while Article 14 states 'no one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment'.]
- Economic, Social and Cultural Rights 29(1) and 30 (3), [which affirms one's right to reproductive health.]

Brunei like all ASEAN member states has ratified the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The CEDAW Convention is the basis for all ASEAN members international legal obligations on gender equality and women's human rights. Brunei will report to the CEDAW Committee in October 2014. At this time, it will have to justify its actions on codifying this extreme version of the Syariah code, when there are other global examples of more just, fair, scholastically-supported and progressive forms of the Syariah being practiced in other Muslim countries<sup>2</sup>.

This step by Brunei is a setback towards ASEAN's move towards one community. Hereby, the Women's Caucus urges ASEAN and its sectoral bodies, particularly AICHR and ACWC, to refer to the ASEAN Human Rights Declaration, and particularly article no. 39 which calls for inter alia cooperation to fulfill commitment to the promotion and protection of human rights and fundamental freedom in accordance with the ASEAN Charter. ASEAN cannot justify its silence by invoking non-interference in this grave situation.

The Women's Caucus reiterates its commitment in supporting ASEAN and its mechanisms in protecting and promoting the human rights of women in the region.

***The Southeast Asia Women's Caucus on ASEAN is the primary civil society network that engages ASEAN to advance women's human rights in the region. We are an extensive alliance of women's organizations across Southeast Asia, with about 100 partners in 11 countries.***

***Women's Caucus can be contacted at [sunee@apwld.org](mailto:sunee@apwld.org).***

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<sup>2</sup> The CEDAW Committee has in the past demonstrated its approach to the congruence of CEDAW and the Syariah. In 2006 it recommended to Malaysia, another Muslim majority ASEAN nation, employ a comparative approach to Islamic jurisprudence and legislation, and borrow from more progressive interpretations of Islamic law have been codified in legislative reforms. "...to undertake a process of law reform to remove inconsistencies between civil law and Syariah law, including by ensuring that any conflict of law with regard to women's rights to equality and non-discrimination is resolved in full compliance with the Constitution and the provisions of the Convention and the Committee's general recommendations, particularly general recommendation 21 on equality in marriage and family relations." CEDAW/C/MYS/CO/2, Para 14.