

**Submission to the 3<sup>rd</sup> Cycle of the Universal Periodic Review of Brunei Darussalam  
On human rights concerns relating to sexual orientation and gender identity and expression  
(SOGIE)**

**Introduction to Submission**

1. This submission to the 3<sup>rd</sup> cycle of the Universal Periodic Review of Brunei Darussalam was prepared by ASEAN SOGIE Caucus (ASC), is a regional network of human rights defender advocating for the protection, promotion and fulfilment of the rights of all persons regardless of sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC).<sup>1</sup> The information presented in this submission is based on various reports produced by ASC and other organizations, supplemented by contextual information and additional data collected and verified by Bruneian human rights defender, Aziq Azman in early-mid 2018.<sup>2</sup>
  
2. This submission stresses that the Bruneian government continues to not only ignore the plight of lesbian, gay, bisexual, and transgender (LGBT) people, but appears dedicated to increasing it. In the past five years, they have done this through the perpetuation of volatile domestic legislation, its consistent opposition to inclusive resolutions in the United Nations (e.g. the resolutions establishing the mandate of the Independent Expert on Sexual Orientation and Gender Identity), and the actions of abusive state actors.<sup>3</sup> We wish to emphasize that the Bruneian government’s claims of its “stronger emphasis in promoting human rights”<sup>4</sup> and its thrusts towards “the promotion and protection of human rights and fundamental freedoms”<sup>5</sup> are, in the experience of LGBT people, categorically false.

**Background information from UN human rights mechanisms and other reports**

3. During the 1<sup>st</sup> UPR cycle in 2009, a submission wrote that the Human Rights Council must “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.”

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<sup>1</sup> For more information, see: <https://www.aseansogiecaucus.org>.

<sup>2</sup> Aziq Azman, in his communication to ASC, has given consent to be named in this report.

<sup>3</sup> ASEAN SOGIE Caucus (2017). The Rainbow in Context: An Overview of the Situation of Lesbian, Gay, Bisexual, Transgender, Intersex, and Queer (LGBTIQ) Persons in Southeast Asia.

<sup>4</sup> UN Human Rights Council (2009). National Report Submitted in Accordance with Paragraph 15 (A) of the Annex to Human Rights Council Resolution 5/1: Brunei Darussalam. A/HRC/WG.6/6/BRN/1.

<sup>5</sup> UN Human Rights Council (2014). National Report Submitted in Accordance with Paragraph 15 (A) of the Annex to Human Rights Council Resolution 16/21: Brunei Darussalam. A/HRC/WG.6/19/BRN/1.

Various governments gave recommendations along these lines, specifically asking that Section 377 of the Penal Code be repealed. All recommendations were “Noted” by Brunei Darussalam. Recommendations regarding the criminalization of consensual sexual activity between adults during the 2<sup>nd</sup> UPR cycle in 2014 were similarly “Noted”.<sup>6</sup>

4. Later on, a shadow report to the Committee on the Elimination of all Forms of Discrimination against Women in 2014 continued to emphasize how such provisions would “disproportionately impact mostly women, LGBT people, and anyone who does not conform to strict norms on gender and sexuality”. This report offered examples of how this current criminal climate has been abused by state forces, including scenarios of “military and other security forces demanding sexual favors in exchange for not arresting LBT individuals”.<sup>7</sup> And in April 2014, the OHCHR issued a press release regarding the country’s revised Penal, expressing in particular that its provisions on death by stoning as the method of execution for cases of sodomy, adultery, and extramarital sexual relations “encourage further violence and discrimination against women and also against people on the basis of sexual orientation.”<sup>8</sup>
5. As of this writing, Brunei Darussalam continues to criminalize LGBT people and do not appear interested in revoking these laws in the interest of preserving and promoting the human rights of its citizens. Contextually, as phrased in a 2018 review of the UPR cycles of Southeast Asian countries, “it appears that Brunei considers that such reforms [regarding matters of sexuality] would contradict its traditional values, particularly in respect of the family unit.”<sup>9</sup> Similarly, we noted in an earlier report that “this denial of LGBTIQ people’s human rights is often justified on the grounds of religious beliefs, cultural identity, and defense of sovereignty”.<sup>10</sup>

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<sup>6</sup>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: BRUNEI DARUSSALAM.

<sup>7</sup>ASEAN SOGIE Caucus (2017). Policy Brief on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and Sexual Orientation, Gender Identity and Expression, and Sex Characteristics (SOGIESC) in Southeast Asia.

<sup>8</sup>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: BRUNEI DARUSSALAM.

<sup>9</sup>Destination Justice (2018). Revealing the Rainbow: The Human Rights Situation of Southeast Asia’s LGBTIQ Communities and Their Defenders.

<sup>10</sup>ASEAN SOGIE Caucus (2017). The Rainbow in Context: An Overview of the Situation of Lesbian, Gay, Bisexual, Transgender, Intersex, and Queer (LGBTIQ) Persons in Southeast Asia.

## Documented reports of violence and discrimination perpetrated by the Bruneian State

6. The following cases documented in various platforms are not exhaustive, as anecdotal evidence from other sources indicate that a widespread fear of political and social persecution within the country have kept many LGBT people from coming forward to report cases of violence and discrimination both perpetrated by Bruneian citizens and encouraged by the Bruneian state. The following serve to illustrate the continued denial of Brunei Darussalam to respect and protect LGBT people within its borders.
7. It was reported that a person named Roslani Hj Metasan was arrested in the evening of 17 October 2014 for wearing women's clothes and "improper conduct", violating Section 198 (1) of the *Syariah* Penal Code of 2013.<sup>11</sup> The arrest took place within the context of joint operation "*Sepadu Cegah Jenayah*", launched that year by the religious enforcement officers and the Royal Brunei Police Force (RBPF). The prosecutor who handled the case said to the media: "[i]f this is not dealt with, it can lead to the spread of social disorder such as homosexuality, free sexual relations, drug abuse and so on".<sup>12</sup> Such statement reflects social stigma towards transgender persons, i.e. associating gender non-conformity with "drug abuse", and reflects a lack of understanding of differences between one's sexual orientation and gender identity.
8. In 2015, following his criticisms online related to the anti-LGBT policies of the Sultan , Aziq Azman was barred from travel outside the country and was investigated by Brunei's Keselamatan Dalam Negara (Homeland Security Ministry), after which the matter was resolved and he was allowed to travel. In 2017, the Ministry of Religious Affairs re-opened the case and Aziq Azman was formally charged with "contempt of *Syariah* Justice" and "opposition of the Sultan's Titah (Speech)" under the *Syariah* Court. Debating that the case was settled with Homeland Security, the charges were formally filed into the *Syariah* Court system and his passport was blacklisted and banned from travel outside of the country again. The presiding judge then offered an out-of-court settlement that the defendant attend religious counseling, and having completed said counseling was told after the last session on the 28th of April 2018 that his case would be reviewed in two weeks time. As of July 2018, the defendant's remains being banned from his right to travel, and has been told to not contact the prosecutors and to "hold patience".<sup>13</sup>

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<sup>11</sup> Ak Md Khairuddin Pg Harun (11 March 2015). "Brunei Civil Servant Fined \$1,000 for Cross-dressing". Brunei Times. Retrieved from <https://btarchive.org/news/national/2015/03/11/bruneian-civil-servant-fined-1-000-cross-dressing>.

<sup>12</sup> Ak Md Khairuddin Pg Harun (11 March 2015). "Brunei Civil Servant Fined \$1,000 for Cross-dressing". Brunei Times. Retrieved from <https://btarchive.org/news/national/2015/03/11/bruneian-civil-servant-fined-1-000-cross-dressing>; "Crossdresser detained in 'Sepadu Cegah Jenayah'" (August 16, 2016). Brudirect.com. Retrieved from <http://www.brudirect.com/news.php?id=11708>.

<sup>13</sup> Based on the report by Aziq Azman to ASEAN SOGIE Caucus received on 2 July 2018. The case is also described in other reports, such as in: Destination Justice (2018). *Revealing the Rainbow: The Human Rights Situation of Southeast Asia's LGBTIQ Communities and Their Defenders*.

9. In June 2018, it was reported to ASC that a young gay man was drugged and brutally raped by multiple local men, and out of fear of both ridicule and being penalized for homosexuality, refused to report the case to a court of law. Refusing to be named, the victim stood firm in the belief that such a system would offer no protection and only further victimize him and others like him. As of this writing, the victim has declined further attempts to contact him for fear of his safety.<sup>14</sup>
10. In an on-line survey, apprehensions among LGBT youth in Brunei to report cases of violence and discrimination was found. Factors include feelings of apathy and fear of authorities. Reasons included feelings of “apathy” and fear of authorities. One respondent said: “I think Brunei should follow their own laws, understand that Brunei is trying to be an Islamic country. Those who protest or do not support, they are free to leave the country, why bother complaining when there’s more things to do outside?”<sup>15</sup>

### Conclusions and Recommendations

10. To reiterate, we consider Brunei Darussalam’s dismal human rights record with regards to LGBT people and the government’s continued amplification of those practices that contribute to this plight to be deeply disturbing. To probe on these issues further, we recommend to the Human Rights Council to propose the following **Advanced Questions**:
  - 10.1. How will the Bruneian government, through its current work with its inter-agency consultative mechanisms (e.g. The National Council on Social Issues), act towards the promotion and protection of its citizens of diverse sexual orientations and gender identities?
  - 10.2. What was the work of the “Special Committee on Immoral Behavior”, as reported by the Bruneian government during the 2<sup>nd</sup> UPR cycle, and how has it ensured that its work does not infringe on the rights of persons of diverse sexual orientations and gender identities?
  - 10.3. How will the Bruneian government act on cases wherein feedback and criticism of state policies regarding treatment of LGBT people is used as the basis to harass and silence citizen through the use of vague laws (e.g. “contempt of Syariah Justice”) and other methods?

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<sup>14</sup>Based on the provided by Aziz Azman to ASEAN SOGIE Caucus, received on 2 July 2018.

<sup>15</sup>Results of an on-line survey conducted by Aziz Azman to obtain views from LGBT youth. Due to security reasons, face to face data gathering was not possible. The survey took place from 1 April 2018 to 30 May 2018.

11. We also recommend to the Human Rights Council the following **recommendations**:
- 11.1. Take steps towards addressing the human rights abuses experienced by LGBT people in the country, such as through sensitivity education of relevant government units.
  - 11.2. Take steps to repeal laws criminalizing consensual sexual activity between adults, or at the very least define them in terms of public indecency so as not to harass individual rights to privacy and consensual adult activity.
  - 11.3. Define specifically provisions in laws regarding defamation/sedition/contempt of religious law in accordance with international standards regarding freedom of speech, freedom of religious expression, and freedom to peaceful assembly.
  - 11.4. Take steps to ensure, under Brunei's international obligations ratified in the CEDAW and the CRC, the promotion and protection of the rights of all women and children, including women and children of diverse SOGIE.

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*ASEAN SOGIE Caucus is a regional organization of LGBTIQ human rights defenders. Our work is to empower local groups and activists in doing innovative and diverse advocacy tactics to influence domestic, regional and UN human rights mechanisms. ASC applies an intersectional approach in its work by collaborating with fellow civil society actors in shaping an inclusive and transformative ASEAN region. We are legally registered as an NGO in Manila, Philippines, and our work covers 11 countries in the Southeast Asian region.*