

Topic: Human Rights Implications of Sharia Law

The United Nations General Assembly Third Committee: The Social, Cultural and Humanitarian Committee (SOCHUM) was founded along with the UN in 1945, and is tasked with covering a wide range of social, humanitarian, and human rights issues. The third committee was instrumental in creating the Universal Declaration of Human Rights, and as such is a well-respected and influential committee, despite its resolutions being crucially non-binding. It is perhaps the most important committee of the UN, for it debates and protects the lifeline of the UN, democracy, and indeed the rule of law: our humanity. The topic to be discussed at BayMUN Fall 2015 will be the “Human Rights implications of Sharia Law”. Thus the discussion at hand is the entanglement of socio-cultural and religious principles coming into conflict with basic human rights. Sharia Law influences the legal code in the majority of Muslim countries, and it has come to the attention of SOCHUM, as well as the international community, that it carries with it numerous major international human rights violations that are to be considered and discussed. They include, but are not limited to, discrimination against women, violations of the rights of freedom of religion, freedom of opinion and expression, implementation of torture or cruel, inhuman, or degrading treatment or punishment as penalties for crimes committed.

We hope that you enjoy these debates, that you learn something from them, and that you enter BayMUN with a truly open mind. It is important to remember the importance of humanity in these debates, and that you make it your guiding mission to serve that humanity.

Statement of the Problem

Sharia law influences the legal code in the majority of Muslim countries. It has existed alongside other normative systems since the eighth century (Johnson and Vriens). Most countries decide to adopt only a few aspects of it; adopting the entire code is rare. The term “Sharia” or “Syariah” translated from archaic Arabic means “pathway to be followed,” and its etymology comes from verse 45:18 in the Quran. Sharia law tackles issues commonly addressed by secular law such as crime, politics and economics, as well as personal matters, such as sexual intercourse, diet, praying, and fasting. The content of Sharia is primarily derived from the Quran and the Sunnah – the two major primary sources on Islam (Johnson and Vriens).

According to Steven A. Cook, a Council on Foreign Affairs Middle East specialist, “there are so many varying interpretations of what sharia actually means that in some places, it can be incorporated into political systems relatively easily” (Johnson and Vriens, par. 1). Sharia law raises many controversies when addressing issues concerning personal status law and criminal law, because it is often used as a justification for cruel punishments (amputation, stoning), as well as unequal treatment of women (dress, independence). The biggest question raised by the international community, however, is whether “Sharia can coexist with secularism, democracy and modernity.” The answer is to be found in Brunei and its decision to adopt the Sharia Penal Code Order.

Brunei, being the world's fifth richest nation (as well as one of two nations with a public debt at 0% of the national debt) is an oil-rich pene-enclave located in Southeast Asia (Too, and Country Profile Brunei 3). As a constitutional sultanate, Sultan and Prime Minister Sir Hassanal Bolkiah (His Majesty Paduka Seri Baginda Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah) is head of state with full executive authority.

In April 2014, the Sharia Penal Code Order 2013 took effect (Black par. 1). Considering the fact that Brunei has one of Asia's highest Internet penetrations and social media use, the decision faced stark public criticism in the online space – the only “outlet for public criticism of authorities” ('Brunei sultan hits back at rare criticism over sharia' par 3).

“It is truly frightening to think that we might potentially be stoned to death for being lovers, that we may be fined for being of a different sexual orientation, and that what we wear will be regulated,” one recent posting said (Brown par. 10). The Sharia Penal Code carries with it four major international human rights violations that are to be considered and discussed. They are, as follows, discrimination against women, violations of the rights of freedom of religion, freedom of opinion and freedom of expression, implementation of torture or cruel, inhuman, or degrading treatment or punishment as penalties for crimes committed, and criminalization of adultery, extramarital sexual relations, and sodomy, in violation of international human rights laws.



History and Discussion of the Problem

The above mentioned four major international human rights violations, and the details regarding each one, have been laid out in a formal letter addressed to Sir Hassanal Bolkiah himself from Sam Zarifi of the International Commission of Jurists (ICJ – not to be confused with the International Court of Justice) (4).

Discrimination against Women

According to the submission of Women Living Under Muslim Laws International Solidarity Network to the UN Secretary General on the question of the “Death Penalty,” stoning exists as a death penalty in 11 countries (Brunei, Iran, Mauritania, Nigeria (in one-third of the country's states), Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, the United Arab Emirates, and Yemen). In addition, stoning is also practiced in Malaysia (despite being banned under national legislation), as well as Afghanistan, Iraq and Mali (Stoning: Legal or Practiced in 16 Countries and Showing No Signs of Abating 2).

BayMUN: Social, Cultural & Humanitarian Committee

Although the penalty of death by stoning is applicable to both males and females, studies have shown that women face the penalty more often than men, and are less likely to escape the execution (if a criminal is able to escape from the pit they are buried in to be stoned during the stoning, they are usually allowed to go free. However, because women are buried up to their breasts while men are only buried up to their waists, men have an easier job escaping the punishment) ('Frequently Asked Questions about Stoning' par. 10). This makes the Penal Code contrary to the stance Brunei had upon being made party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1979.

In order to understand the degree of significance of the problem, it should be discussed as both a gendered human rights violation, as well as a result of the socio-political climate in the countries. On the one hand, the gendered human rights violation can be illustrated by the case of Aisha Ibrahim Duhulow. The thirteen-year-old girl was stoned to death in Somalia in 2008 in front of 1,000 people, after being gang-raped for the crime of adultery. While none of the men accused of the rape were arrested, the act of stoning showed the attempt of authorities "to police female sexuality from as young an age as possible, applying concepts of honour to their bodies before they even approach adulthood" (Stoning: Legal or Practiced in 16 Countries 4, and 'Somalia: Girl stoned was a child of 13'). Furthermore, according to the Iran legislative system, adultery punishable by stoning is practiced if the crime is proven by eyewitnesses – either four just men, or three just men and two just women (Stoning: Legal or Practiced in 16 Countries 4). This violates the Universal Declaration of Human Rights (1948), which guarantees "the right to life, liberty, and security of person without distinction of any kind, including sex" (Articles 2 and 3 of the UDHR, see also 'Stoning and Human Rights').

On the other hand, when discussing the problem of discrimination against women, the social-political climate in the countries should be taken into consideration, and several observations should be made. Firstly, it is a symptom of the existence of a parallel legal system, which allows the state to repress its citizens. This results in "a climate of fear" and "arbitrary justice." Secondly, laws related to "morality" pose an everyday threat and psychological burden to women (Stoning: Legal or Practiced in 16 Countries 5). This violates Article 14, paragraph 1 of the ICCPR: "All persons shall be equal before courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit of law, everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law." Paragraph 2 of the same Article states "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law."

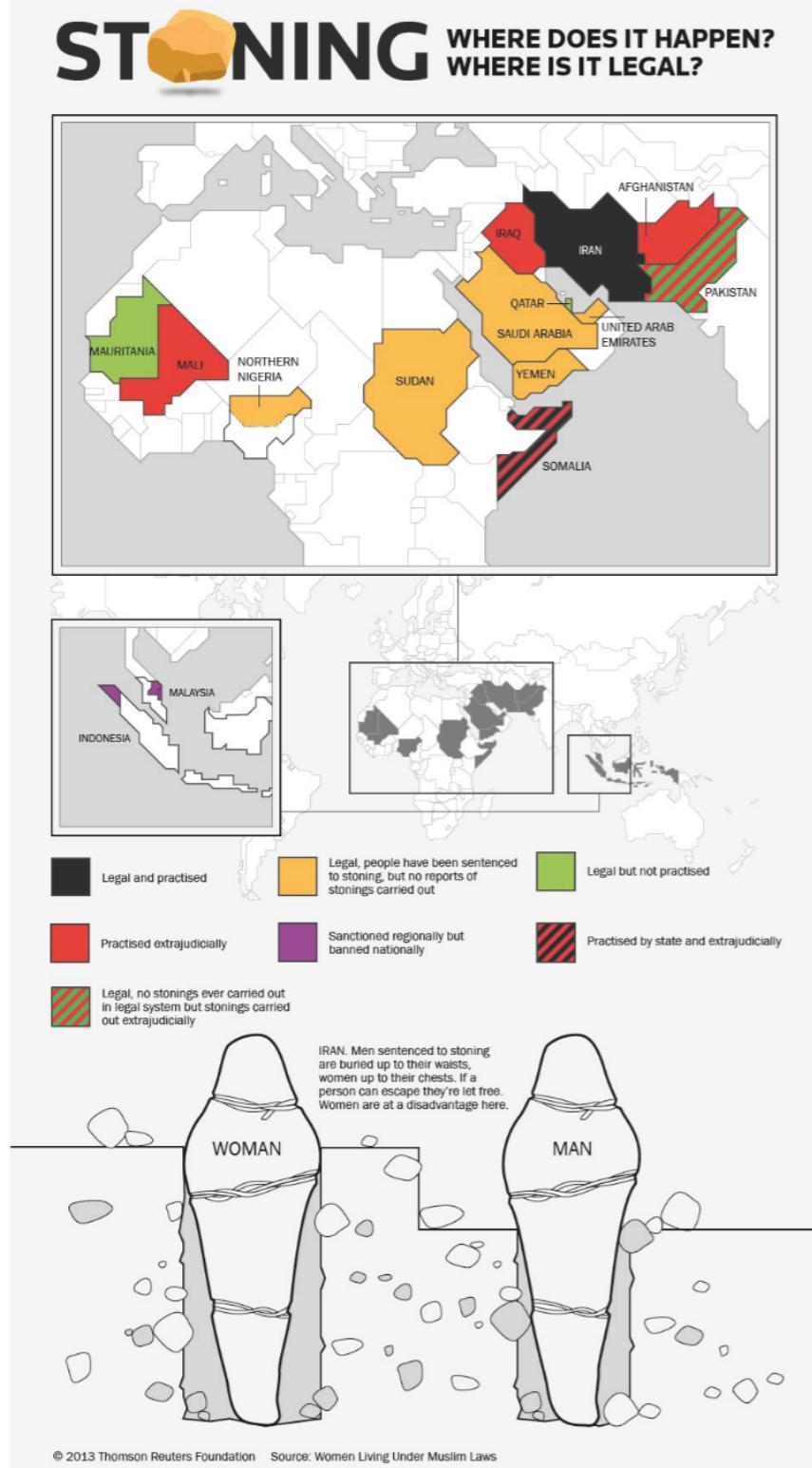
Torture and Death Penalty

According to the report on Death Sentences and Executions 2013 by Amnesty International, there are 22 countries that performed the death penalty in 2013. The overall number of recorded executions worldwide is 778 during 2013, which is an almost 15% increase compared to 2012 ('Summary' 3). Although Brunei has not implemented the death penalty since 1957, the punishments for both Muslims and non-Muslims according to the Penal Code for the crimes of robbery, rape, adultery, and sodomy are death. Furthermore, Muslims will also face the death penalty should they partake in extramarital sexual relations. In addition, the Penal Code defines the end of childhood by the age of puberty, which allows the death penalty to be imposed on defendants below the age of 18 (Death Sentences and Executions 2013 'Regional Overview' 19).

BayMUN: Social, Cultural & Humanitarian Committee

“Brunei Darussalam’s new Penal Code legalizes cruel and inhuman punishments. It makes a mockery of the country’s international human rights commitments and must be revoked immediately. The new code even permits stoning to death for acts which should not be considered ‘crimes’ in the first place, such as extra-marital sexual relations and consensual sex between adults of the same gender” – said Rupert Abbott, Deputy Asia-Pacific Director at Amnesty International (‘Brunei Darussalam: Revoke new Penal Code allowing stoning, whipping and amputation’ par. 3,5). This step away from the global abolition of the death penalty is in contrast to Resolution 67/176 adopted on 20 December 2012 urging all states to impose a moratorium on the use of the death penalty (A/RES/67/176). Rupert Colville, the spokesperson for the Office of the UN High Commissioner for Human Rights said about the new Penal Code: “Application of the death penalty for such a broad range of offences contravenes international law” (‘UN concerned at broad application of death penalty in Brunei’s revised penal code’ par. 3).

Furthermore, the absolute prohibition on torture and other cruel, inhuman, or degrading treatment or punishment is firmly entrenched in Article 5 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Civil and Political Rights, and Article 16 of the Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment. In 1997, the Special Representative of the Commission on Human Rights on the situation in the Islamic Republic of Iran denounced the practice of stoning, a penalty provided in Iran’s Islamic Criminal Code.



Violations of Freedoms

Another questionable rule put forth by the Penal Code is the penalizing of both Muslims and non-Muslims for printing, broadcasting, or distributing any publications “contrary to Hukum Syara” (Articles 213, 214, and 215). This is in direct contrast with the estoppel established by the Government in response to the Report of The Working Group on the Universal Periodic Review stating, “the importation of religious materials or scriptures regardless of any faiths is not banned in the country” (A/HRC/13/14/Add. 1). In addition, the Constitution of Brunei Darussalam does not contain any section or provision for a Bill of rights for citizens. Freedom of expression and the press is mainly governed by the Sedition Act (‘Freedom of Expression in the Constitutions of Southeast Asian Countries’ 1).

The Sedition Act was amended in 2005, worsening the state of press freedom in Brunei. It contains an expanded list of punishable offenses including “criticism of the sultan, the royal family, and the national Malay Islamic Monarchy ideology, which promotes Islam as the state religion and the idea that monarchical rule is the only acceptable form of governance” (Brunei in Freedom House’s ‘Freedom of the Press 2013’ par. 1). Any violator of the law faces a fine of up to US\$4,000. Moreover, the government has the authority to arbitrarily shut down media outlets or bar distribution of foreign publications, with no possibility of appeal, if the content does not comply with the state requirements. According to the Internet Code of Practice published in 2001, individuals, content, and service providers are liable for publishing anything “against the public interest or national harmony or which offends against good taste or decency” (Broadcasting Act ‘Internet Code of Practice’ 1.a). It also obliges all sites that discuss or contain religious and political content to register with the Broadcasting Authority. Failing to do so is punishable by up to three years of imprisonment and a fine of up to US\$200,000.

Despite the fact that the country has one of the largest Internet penetration rates in Asia, the primary Internet provider is state owned, which gives the government control over the content. In 2006, the government enforced a law for all Internet cafes to install firewalls, so that users will be prevented from viewing immoral content. In addition, the government monitors private emails and Internet chat rooms’ activities of citizens suspected of subversive behaviour. It is considered that the fear of government retribution has reduced the number of chat room visitors (‘Brunei’ in Freedom House’s ‘Freedom of the Press 2013’ par. 5).

Proposed Solutions

There are four major solutions that could be considered when discussing the problem. All of them are in accordance with the different positions of several state actors, but are not necessarily in accordance with universal human rights and democratic practices. When representing a country, delegates will need to take into consideration their country’s position, even if it is not in compliance with their own understanding and expectations of the matter.

First, the solution proposed by the Sultan of Brunei, after adopting Sharia law, to also start implementing it as a supreme legislative system. This solution is highly likely to be supported by other radical Islamic countries that also have Sharia law implemented in their legislative systems, such as Iran or Somalia.

BayMUN: Social, Cultural & Humanitarian Committee

Second, the solution proposed by international organizations dealing with human rights violations and gender inequalities, such as Amnesty International, the UN Human Rights Council, and Human Rights Watch. According to them, the adoption of Sharia law should be reversed, as it is not in accordance with international democratic standards. This solution is likely to involve a call for reports on human rights and gender equality to be conducted in Brunei, as well as huge publicity, protests, and petitions.

The **Third** proposed solution is to remain neutral to Brunei's internal affairs, as currently no severe

Human rights violations (such as stoning) have taken place. This solution is likely to be supported by countries that are actively trading with Brunei and have no interest in harming diplomatic relations; countries whose democratic practices are questionable, or countries that have taken the neutrality standpoint.

The **Final** option is to force Brunei to abolish Sharia Law, either by diplomatic isolation, economic sanctions, or other means. This decision is likely to be proposed by countries that have a very high level of human rights equality, human rights protection, and living standards.

When choosing a solution, the countries representatives are expected to form coalitions that best fit their international standpoint, and must try to achieve their countries' goals by means of lobbying and negotiating. However, it is crucial to keep in mind the council's jurisdiction, and to focus on a solution that is in accordance with the council's framework (the council cannot force its decisions: it can only recommend certain actions, and work closely with other UN bodies such as the Human Rights Council).

Key Actors and Positions

I. The Sultan and Prime Minister Sir Hassanal Bolikah – initiator of Sharia Law – According to him, “theory states that God’s law is harsh and unfair, but God himself has said that his law is indeed fair” (Brunei adopts ‘phase one’ of Islamic law’ par. 5).

II. The United States’ position is rather ambiguous, as on the one hand they are bound to provide the sultanate with economic privileges by the Trans-Pacific Partnership (TPP) (Signorile par. 3), while on the other hand, American society is vigorously protesting against the human rights violations and undemocratic behavior of the Sultan of Brunei (“Clive Davis, Oscar party dump hotel over Sultan owner’s Sharia law in Brunei”).



BayMUN: Social, Cultural & Humanitarian Committee

III. Amnesty International, Human Rights Watch, the UN and other NGOs – condemning Sharia Law, aiming at putting an end to human rights violations:

Deputy Director for the Asia Division of Human Rights Watch, said: “Brunei’s decision to implement criminal Sharia law is a huge step backwards for human rights in the country. It constitutes an authoritarian move towards brutal medieval punishments that have no place in the modern, 21st century world. The entire world should express its outrage and heap criticism on this ill-considered move and urge the Brunei government to immediately reconsider” (Hunt, par. 7-8).

Rupert Abbott of Amnesty International noted the laws carried the death penalty for acts that should not be considered crimes and would “take the country back to the dark ages.” He further added, “Brunei Darussalam’s new Penal Code legalizes cruel and inhuman punishments. It makes a mockery of the country’s international human rights commitments and must be revoked immediately” (Hunt, par. 8-9).

The UN has said it considers some of the penal ties to be “torture or other cruel, inhuman or degrading treatment or punishment” under international law (Hunt, par. 10). As such their use could warrant an investigation from the International Criminal Court (ICC).

IV. China – how will China’s relations with the US and Brunei change based on these recent events? Is China going to join the coalition condemning Sharia Law, or will it support the decision of the Sultan, because of their military and economic cooperation?

V. Brunei’s neighboring countries – if one small South- East Asian country with Muslim influence is able to fully implement Sharia law, what will be stopping neighboring countries in similar positions from following suit? Looking for strength in numbers, an Islamic collective in South East Asia (with the possibility of a recent partner, ISIS, in the Levant) could be both a military and economic heavy-hitter from day one. How will the Philippines, dealing with their own Muslim separatist movement, feel?

VI. Russia – after adopting the Anti-LGBT Propaganda Bill in 2013, making it “illegal for anyone to take acts that could be seen as influencing children on thoughts of alternative sexual lifestyles”, it will be interesting to see if and how Russia will react.

Questions a Resolution must Answer

There are several questions that need to be considered when preparing a resolution. Fellow delegates, especially those of nearby states, will raise many questions and concerns, as their best interests may be affected by this monumental decision. The debate will be a lively questioning of both human rights under Sharia Law, and the state of global Human Rights, regardless of location.

1. Will there be an influx of refugees escaping religious (or non-religious) prosecution?
Will a population of non-Muslims (or more secular Muslims) feel the need to escape the country for their own safety? Being part of a landlocked island, escape can be complicated, leading to crime, increased deaths, and extradition strains among neighboring nations.

BayMUN: Social, Cultural & Humanitarian Committee

2. Will neighboring smaller nations with a Muslim majority begin to attempt to implement Sharia Law themselves?

As stated above, what will be stopping other similar nations from copying Brunei? Brunei would certainly cherish the opportunity to have a closer proximity to Sharia Law nations. How will this affect the rest of East Asia, including countries rapidly growing economically (i.e. Vietnam), and countries struggling to maintain order (i.e. Thailand).

Closing Remarks

It is difficult to see how Brunei will be able to follow through with plans to implement this Penal Code in the next two years while, also complying with international laws and standards. As the UN is a group dedicated to limiting human rights violations in the coming years, it seems Brunei is taking a step backwards from this goal. A group is only as strong as the weakest link, and if some links start taking steps away from the collective goal that will certainly impede forward progress. The delegates are expected to conduct substantial research and to follow the development of the problem, as their countries' positions are likely to change over the course of time. All delegates are encouraged to be creative, passionate, and to use any kind of negotiation techniques, as long as it does not violate any rules or procedures of the UCBMUN club, and the universal diplomatic code.

The Chair board wishes you the best of luck with your preparation, and we look forward to seeing you in November!

List of References and Useful Links:

http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/67/176&referer=http://www.un.org/en/ga/67/resolutions.shtml&Lang=E

<http://brudirect.com/national/national-national-local/15927-fine-imprisonment-for-negative-comments-remarks-against-syariah-law>.

<http://www.bt.com.bn/2014/02/14/propagating-religion-other-islam-crime-under-syariah-law>.

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/626/47/PDF/N1262647.pdf?>

<http://www.bbc.com/news/world-asia-24624166>.

http://www.huffingtonpost.com/michelangelo-signorile/brunei-sharia-law-will-be-rewarded-by-obamas-fast-track-trade-deal_b_5277637.html

“Brunei turns back the clock with sharia law.” *South China Morning Post*. 13 May 2014. Web. <http://www.scmp.com/comment/insight-opinion/article/1510874/brunei-turns-back-clock-sharia-law?page=all>.

<http://www.amnesty.org/en/library/asset/ACT50/001/2014/en/652ac5b3-3979-43e2-b1a1-6c4919e7a518/act500012014en.pdf>.

BayMUN: Social, Cultural & Humanitarian Committee

“Freedom of Expression in the Constitutions of Southeast Asian Countries.” *Southeast Asian Press Alliance*. Web. <http://www.seapa.org/wp-content/uploads/Freedom-of-Expression-in-the-Constitutions-of-Southeast-Asian-Countries.pdf>.

“Freedom of the Press 2013: Brunei.” *Freedom House*. Web. <http://www.freedomhouse.org/report/freedom-press/2013/brunei#.U7sDFLG3uet>.

“Frequently Asked Questions about Stoning.” *Violence is Not Our Culture*. Web. http://www.violenceisnotourculture.org/faq_stoning

Hunt, Luke. “Brunei Imposes Sharia Law.” *The Diplomat*. 2 May 2014. Web. <http://thediplomat.com/2014/05/brunei-imposes-sharia-law/>.

Johnson, Toni and Vriens, Lauren. “Islam: Governing Under Sharia.” *Council on Foreign Relations*. 9 Jan. 2014. Web. <http://www.cfr.org/religion/islam-governing-under-sharia/p8034>.

“Stoning and Human Rights.” *Violence is Not Our Culture*. Web. <http://www.violenceisnotourculture.org/content/stoning-and-human-rights>.

“Stoning: Legal or Practised in 16 Countries and Showing No Signs of Abating.” *Women Living Under Muslim Laws*. Web. March 2014. <http://www.wluml.org>

“UN concerned at broad application of death penalty in Brunei’s revised penal code.” *UN News Centre*. Web. 11 April 2014. <http://www.un.org/apps/news/story.asp?NewsID=47552#.U7sAubG3uet>.