



General Assembly

Distr.: Limited
21 May 2019

Original: English

UNEDITED VERSION

Human Rights Council
Working Group on the Universal Periodic Review
Thirty-third session
Geneva, 6-17 May 2019

Draft report of the Working Group on the Universal Periodic Review*

Brunei Darussalam

* The annex is being circulated without formal editing, in the language of submission only.

I. Summary of the proceedings of the review process

A. Presentation by the State under review

....

20. The Syariah Penal Code Order (SPCO) does not criminalise a person's status based on sexual orientation or belief, nor does it victimise. Both laws continue to protect the morality and decency of the public, while at the same time respecting the privacy of individuals. Brunei society, regardless of their sexual orientation, have continued to live and pursue their activities in their private space. No citizens or Permanent Residents are discriminated against in any way in receiving the nation's benefits, including obtaining employment, education and healthcare.

21. The delegation emphasised that Brunei will continue to be a responsible member of the international community. Brunei will continue to uphold the obligations and adhere to international covenants that it is a party to including the CRPD; CEDAW; and CRC. Brunei has also signed UNCAT in 2015 and is currently working on the necessary steps towards its ratification. For over several decades Brunei has practised a de facto moratorium on the execution of death penalty for cases under the common law, and this as recently clarified will also be applied to cases under the Syariah Penal Code Order which have already by itself provided a wider scope for remission.

....

B. Interactive dialogue and responses by the State under review

23. During the interactive dialogue, 91 delegations made statements. Recommendations made during the dialogue are to be found in section II of the present report.

....

35. Canada was seriously concerned that moving towards increasingly inhumane treatment of citizens and non-citizens found guilty of certain crimes through the Syariah Court.

....

39. Croatia commended the announced future ratification of CAT and the de facto moratorium on capital punishment, while concerned that homosexuality is a criminal offense, and children under 18 may be sentenced to life imprisonment and corporal punishment.

41. Czechia appreciated activities towards women's rights, and expressed concern about the possible consequences of recently implemented 3rd phase of the 2013 Penal Code Order.

42. Denmark commended Brunei on its de facto moratorium on death penalty and was alarmed by the entry into force of the new Sharia Penal Code.

....

50. Germany welcomed the de facto moratorium on the death penalty and expressed concern about the Syariah Penal Code Order prescribing death penalty and corporal punishments.

....

52. Greece noted ratifications of CRPD and OP-CRC-AC and the de-facto abolition of the death penalty. It was concerned with the detrimental impact on LGBTIQ, women and children of the entry into force of 2013 Penal Code.

....

60. Ireland expressed concern at the implementation of 2013 Penal Code Order. It hoped that the death penalty moratorium would be formally abolished. It urged to uphold the international human rights obligations.

....

68. Luxembourg was concerned by the enactment of the revised Penal Code. It urged that the announcement on the moratorium of the death penalty is followed by concrete guarantees.

....

71. Malta referred to the definition of adultery and consensual same-sex relationships as criminal offences in the Syariah Penal Code and noted the response to the Special Procedures and the statement by the Sultan.

....

73. Mexico acknowledged progress regarding education and health care. It welcomed the moratorium of the death penalty and other inhuman punishments, particularly affecting LGBTI persons.

....

77. The Netherlands complimented confirmation on maintaining the moratorium on death penalty and ratifying CAT, concerned that the revised Penal Code Order included harsh penalties that would have detrimental impact on LGBTI persons, women and children.

78. New Zealand was concerned about the impact of the implementation of the Penal Code Order 2013 on a broad range of human rights. It acknowledged the announcement on the moratorium on death penalty.

....

92. Slovenia noted the ratification of CRPD and OP-CRC-SC. It expressed concern about the revised Penal Code Order containing harsh penalties, including amputation and stoning to death for specific acts, which may constitute a form of torture.

93. Spain expressed concern at the entry into force of the new Penal Code and the related penalties that were incompatible with international human rights law.

....

97. Sweden was concerned over the introduction of legislation on death penalty by stoning and other cruel punishments in violation to human rights law.

98. Switzerland was concerned about the revision of the Penal Code introducing the death penalty for homosexual acts and adultery and that Brunei Darussalam had not ratified some core human rights conventions.

....

104. United Kingdom of Great Britain and Northern Ireland highlighted the assurances outlaw all forms of cruel, inhumane or degrading punishments through ratifying CAT and welcomed the confirmation of the moratorium on the death penalty.

105. United States of America was concerned with the Sharia Penal Code if implemented and the vulnerability of migrant workers. It welcomed the decision to extend the moratorium on the death penalty to include stoning and urged ratifying CAT and ICCPR.

....

113. Australia congratulated Brunei for the high standard of living including, education and healthcare. Remained concerned by continuing limitations on fundamental freedoms and the existence of corporal and capital punishments under both of Brunei's legal systems.

....

115. The Brunei delegation expressed its appreciation for the opportunity to engage with the international community and thanked all delegates for their encouragement and constructive comments.

....

117. Brunei laws are designed to preserve public peace and security as the society demands. The Syariah Penal Code Order, like the common law, is to ensure peace and societal integrity, and the rights of all individuals be it of different religion, race, abilities or orientation are protected and that they are not in any way discriminated. While it is the act that is criminalized, these are to protect the religion, tradition and social fabric and values. As such, it is to ensure such acts are refrained and limited to the private space where the rights of those individuals to privacy is respected and protected.

....

II. Conclusions and/or recommendations

121. The following recommendations will be examined by Brunei Darussalam, which will provide responses in due time, but no later than the forty-second session of the Human Rights Council.

....

121.22 Ratify the International Covenant on Civil and Political Rights and Second Optional Protocol thereto on abolishing the death penalty, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention for the Protection of All Persons from Enforced Disappearance, and to ensure their implementation into national legislation (Ukraine);

121.23 Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Montenegro); (Uruguay);

....

121.36 Repeal the new punitive measures of the Shariah Penal Code Order 2013, and ensure that the implementation of this law will not infringe on human rights, and will be fully consistent with the international and regional human rights commitments and obligations undertaken by Brunei Darussalam (Bulgaria);

121.37 Repeal the punishments such as death penalty by stoning, hand cutting and whipping that violate international law by constituting torture or

other cruel, inhuman, or degrading treatment and bring the penal code in line with international law standards (Czechia);

121.38 Immediately repeal the provisions of the Penal Code, which legalizes cruel, inhuman and degrading punishments, hereunder, death penalty for adultery and consensual same-sex sexual acts (Denmark);

121.39 Eliminate all norms, including in the Penal Code, which provide for capital punishment, stoning, maiming and flogging inter alia as sanctions for certain offences or conducts (Ecuador);

121.40 Repeal the provisions of the new Penal Code providing for corporal punishment and the death penalty for several crimes including adultery, homosexuality, apostasy or blasphemy, contrary to the international commitments in human rights freely taken by Brunei Darussalam (France);

121.41 Decriminalize consensual same-sex conduct and repeal provisions in the Syariah Penal Code Order that are not compliant with international human rights norms (Germany);

121.42 Review, revise and repeal provisions of the Penal Code to bring it into conformity with international human rights standards and in particular the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women (Greece);

121.43 Repeal the newly-implemented sections of the Penal Code and bring the Penal Code in line with international human rights laws and standards (Iceland);

121.44 Repeal the new provisions of the revised Penal Code which, if implemented, will enshrine in legislation a range of extreme punishments that amount to torture, acts of cruel, and inhuman or degrading treatment (Ireland);

121.45 Repeal the Penal Code Order in order for it to comply with international human rights law (Italy);

121.46 Repeal the recent revisions to the Penal Code which stipulate the death penalty (Portugal);

121.47 Repeal the new penalties of the 2013 Penal Code Order, and ensure that the implementation of the 2013 Penal Code Order and the related 2018 Criminal Court Order is fully consistent with all international and regional human rights commitments and obligations undertaken by the Government (Latvia);

121.48 Abolish all provisions of the revised Penal Code which are contrary to Brunei's international human rights obligations and commitments, including with regards to the prohibition of torture and other cruel, inhuman and degrading punishments or treatments, as well as the right to equal protection before the law for all without discrimination (Luxembourg);

121.49 Ensure that the criminalization of offences in the Syariah Penal Code is compliant with international human rights standards by undertaking immediate efforts to review, revise and repeal sections that are contrary to its legal obligations under the Universal Declaration of Human Rights and human rights treaties that Brunei Darussalam has signed or ratified (Netherlands);

121.50 Repeal or amend those sections of the Penal Code that criminalize consenting same-sex conduct and discriminate against people based on sexual orientation and gender identity, in line with SDG 10 (Netherlands);

....

121.59 Revoke immediately the new legislation from April 3rd 2019 that imposes the use of death penalty for homosexuality and adultery and introduces other cruel and inhuman punishments (Sweden);

121.60 Revise its amendments to the Penal Code of 3rd April 2019 in order to bring it in line with the international human rights standards (Switzerland);

....

121.62 Repeal criminal penalties under the Sharia Penal Code Order of 2013 that undermine the freedoms of religion and expression and prohibitions on torture and other cruel, inhuman or degrading treatment or punishment, and would have a detrimental impact on a number of vulnerable groups, including women at risk of violence, religious and ethnic minorities, and lesbian, gay, bisexual, transgender and intersex persons (United States of America);

121.63 Ensure that all amendments to the Penal Code announced in April, which reintroduced the death penalty for adultery and same sex relations and other offences considered serious by the new legislation, remain without effect (Uruguay);

121.64 Review the provisions of the Penal Code of 2013 in order to ensure that they comply with international human rights law (Argentina);

121.65 Review the penal code in order to ensure its strict compliance with Brunei Darussalam's human rights obligations and commitments (Austria);

....

121.67 Suspend the Syariah Penal Code and make comprehensive amendments to reflect its obligations under international law (Canada);

....

121.69 Consider alternatives to the current Penal Code, which enshrines in legislation cruel and inhuman punishments such as the application of the death penalty for offences such as rape, sodomy, extramarital sexual relations, among other offences (Malta);

....

121.73 Implement the Syariah Penal Code Order in a manner consistent with International human rights standards (Australia);

....

121.108 Immediately suspend any kind of punishment that would harm the life or physical integrity of human beings (Austria);

121.109 Consider establishing a formal moratorium on executions (Namibia);

121.110 Implement an official moratorium on the death penalty (Australia)/ Immediately establish an official moratorium on executions with a view to abolishing the death penalty (Greece) / Immediately establish an official moratorium on the application of the death penalty and all forms of corporal punishment, with a view to their abolition (Brazil)/Declare and uphold a de

facto moratorium on the application of death penalty, as a first step towards its full abolition (Norway) /Establish an official moratorium on executions with a view to abolishing the death Penalty (Croatia)/ Adopt a formal moratorium on the death penalty (Italy)/ Adopt a formal moratorium on death penalty, with a view towards its abolition (Denmark)/ Adopt a formal moratorium on the death penalty and commute all existing death sentences to terms of imprisonment (Iceland)/ Approve an immediate official moratorium to abolish the death penalty and commute all existing death sentences to prison terms (Chile)/ Maintain its de-facto moratorium and establish an official moratorium on execution with a view to abolishing the death penalty (Austria)/ Maintain its moratorium on the death penalty with a view to abolishing the death penalty (Holy See); (France)/ Maintain the current de facto moratorium with a view to formally abolishing the death penalty (Germany)/ Maintain a moratorium on the death penalty under both the Civil and Syariah Penal Codes (Canada)/ Maintain the moratorium on executions with a view to abolishing the death penalty and revoke the Shariah penal code which foresees in the death penalty (Belgium)/ Maintain the de facto moratorium on the application of the death penalty as a first step towards its abolition, and amend the Penal Code to reduce the number of offences punishable by death (Spain);

121.111 Declare an official moratorium on the use of the death penalty under both syariah and common law, as a step towards its eventual abolition (New Zealand);

121.112 Uphold long-lasting moratorium on the death penalty, as previously recommended (Czechia);

121.113 Abolish the death penalty and commute all existing death sentences, and explicitly prohibit the application of the death penalty against children, corporal punishment and life imprisonment (Costa Rica);

121.114 Abolish the death penalty and other cruel, inhuman or degrading punishments such as whipping and lashings, particularly against minors, as well as raise the minimum age of criminal responsibility, which is currently 7 years old (Mexico);

....

121.128 Continue the policy that allows those sentenced to death to continue to be able to postpone the execution and afforded the maximum guarantees of a fair trial (Oman);

....

121.196 Undertake law reform and eliminate all cruel violations of the rights of the child such as capital punishment, amputation and whipping of children (Montenegro);