



Brunei Darussalam
Joint Stakeholder Report for the United Nations Universal Periodic Review

Submitted by The Advocates for Human Rights,
a non-governmental organization in special consultative status
and
The World Coalition against the Death Penalty

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Founded in 1983, **The Advocates for Human Rights** (“The Advocates”) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publication. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a Death Penalty Project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

The World Coalition Against the Death Penalty, an alliance of more than 150 NGOs, bar associations, local authorities and unions, was created in Rome on 13 May 2002. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

EXECUTIVE SUMMARY

1. Brunei Darussalam is a *de facto* abolitionist State having no reported executions since 1957. Since the last UPR in 2014, however, Brunei Darussalam has begun implementation of Syariah Penal Code Order, 2013 which is to be implemented in three phases. Phase 3 of the Syariah Penal Code Order, 2013 calls for a mandatory death penalty by stoning for many ordinary crimes, including crimes which do not result in death. At present, Brunei Darussalam has delayed the implementation of this third phase.
2. Despite not carrying out any executions since 1957, courts in Brunei Darussalam continue to sentence people to death by hanging. Since the last UPR in 2014, two people have been sentenced to death, one for murder and one for a drug offense. Both are foreign nationals.
3. In 2015, Brunei Darussalam became a signatory to the Convention Against Torture but has not yet ratified it. Brunei Darussalam is not a State Party to the International Covenant on Civil and Political Rights or ICCPR-OP2.

I. BACKGROUND AND FRAMEWORK

A. 2014 Universal Periodic Review

Recommendations to implement an official moratorium and abolish the death penalty

Status of Implementation: Not Accepted, Not Implemented

4. At the last UPR, Brunei Darussalam was recognized and commended for having a *de facto* moratorium on the death penalty. Eight countries called upon Brunei Darussalam to consider adopting an official moratorium and to pursue permanent abolition of the death penalty.¹ Brunei Darussalam did not accept the recommendations and responded by maintaining the death penalty would remain in its laws and asserting that abolition of the death penalty “is not required by international law.”²

Recommendations to abandon legal reforms that would condone torture as a form of punishment

Status of Implementation: Not Accepted, Partially Implemented

5. Five countries expressed concern about Syariah Penal Code Order, 2013 which employs stoning as the method of execution and amputation of limbs as a form of corporal punishment, noting the potential violation of international human rights standards regarding torture and cruel, inhuman, or degrading treatment or punishment. These countries recommended Brunei Darussalam delay implementation of the Syariah Penal Code Order, 2013, amend it or withdraw it completely.³ Brunei Darussalam responded that “the Syariah Penal Code Order 2013 is necessary to strengthen the current criminal law.”⁴ Brunei Darussalam nonetheless delayed implementing Phase 3 of Syariah Penal Code Order, 2013.⁵

Recommendations to ratify the ICCPR and OP2

Status of Implementation: Not Accepted, Not Implemented

6. Many countries recommended that Brunei Darussalam sign and ratify the ICCPR and the ICCPR-OP2. Brunei Darussalam did not accept nor implement these recommendations.⁶

Recommendations to ratify the CAT

Status of Implementation: Not Accepted, Partially Implemented

7. Six countries recommended Brunei Darussalam sign and ratify the CAT. Since these recommendations were made in conjunction with requests to sign and ratify the ICCPR and the ICCPR-OP2, Brunei Darussalam noted these recommendations. Nonetheless, in 2015, Brunei Darussalam became a signatory to the CAT. Ratification is still pending.

B. Domestic Legal Framework

1. *Legal Basis for the Death Penalty*

8. The Laws of Brunei contain various legal provisions which include the death penalty. The crimes which are punishable by death by hanging include: murder,⁷ abetting the suicide of a person unable to give legal consent,⁸ participation in a gang robbery during which a murder takes place,⁹ arson,¹⁰ terrorism-related offenses (including illegal possession of firearms and explosives),¹¹ kidnapping,¹² drug trafficking and possession of drugs,¹³ treason,¹⁴ military offenses,¹⁵ and perjury resulting in the conviction of an innocent defendant charged with a capital offense.¹⁶
9. Under Phase 3 of the Syariah Penal Code Order, 2013, the following crimes would be punishable by death by stoning: adultery, sodomy, rape, apostasy, blasphemy, and insulting Islam.¹⁷
10. Brunei Darussalam is an absolute monarchy under the Sultan of Brunei, Haji Hassanal Bolkiah Mu'izzaddin Waddaulah. The death penalty is mandatory, under the Laws of Brunei Chapter 7 Criminal Procedure Code Chapter XXV, but it is ultimately the Sultan of Brunei's decision as to whether the sentence is carried out. The trial judge forwards the decision and record of the case along with his opinion as to any reasons which should mitigate the death penalty to the Chief Justice who then forwards it to the Sultan of Brunei for the final decision.¹⁸

2. *Use of the Death Penalty in Practice*

11. In practice, Brunei Darussalam has a de facto moratorium on the death penalty; the last execution was in 1957. Brunei Darussalam continues to sentence people to death by hanging. Since the last UPR in 2014, two people have been sentenced to death, one for murder and one for a drug offense. Both are foreign nationals.¹⁹

II. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

12. Brunei Darussalam is commended for not carrying out any executions since 1957 and for becoming a signatory to the CAT on September 22, 2015.²⁰

13. Nonetheless, Brunei Darussalam courts continue to impose and uphold new death sentences. In 2017, a Malaysian national was sentenced to the mandatory death penalty for drug trafficking. The sentence was upheld by the Court of Appeals.²¹ In 2015, a Filipino national was convicted of murder and sentenced to death.²²

Right or area 12.4. Death penalty

A. Brunei Darussalam does not limit the death penalty to the most serious crimes.

14. The Laws of Brunei Darussalam do not limit the death penalty to the “most serious crimes” as is the standard under international law. A crime does not have to involve an intentional death to be eligible for the death penalty, and in many instances, a crime does not have to result in death at all and still carries a mandatory death sentence, including crimes such as drug offenses and treason.²³

B. Under Syariah Penal Code Order, 2013, additional crimes are punishable by death by stoning.

15. Contrary to international human rights standards, adultery, sodomy, rape, apostasy, blasphemy, and insulting Islam are all punishable by death by stoning under Syariah Penal Code Order, 2013.

Right or area 12.5. Prohibition of torture and cruel, inhuman or degrading treatment

A. Stoning as method of death penalty

16. Under the Syariah Penal Code Order, 2013, the death penalty is carried out by stoning, which is prohibited under international law as it constitutes torture or other cruel, inhuman, or degrading treatment or punishment.²⁴

B. Amputations as corporal punishment

17. The Syariah Penal Code Order, 2013 also calls for the amputation of limbs as punishment in violation of the prohibition against torture or other cruel, inhuman, or degrading treatment or punishment.²⁵

III. RECOMMENDATIONS

18. This stakeholder report suggests the following recommendations for the Government of Brunei Darussalam:

- Immediately adopt a formal moratorium on the death penalty.
- Commute all existing death sentences to terms of imprisonment.
- Ratify the Convention Against Torture.
- Sign and Ratify the International Covenant on Civil and Political Rights and its Second Optional Protocol.

- Prohibit imposition of the death penalty for any crime in which the person accused is not prove to have committed an intentional killing, consistent with international human rights standards.
- Eliminate the mandatory death penalty and give sentencing judges discretionary authority to impose alternate penalties, taking into account the facts and circumstances of the crime and the defendant.
- Repeal Phase 3 of the Syariah Penal Code Order, 2013 and amend the Code to bring it in line with CAT and international law standards regarding the death penalty and torture or other cruel, inhuman or degrading treatment or punishment.

¹ *Report of the Working Group on the Universal Periodic Review: Brunei Darussalam*, (7 July 2014), U. N. Doc. A/HRC/27/11, ¶¶ 113.18, 113.19, 113.58, 113.126, 113.127, 113.128, 113.130, and 113.132.

² *Report of the Working Group on the Universal Periodic Review: Brunei Darussalam Addendum*, (10 September 2014), U. N. Doc. A/HRC/27/11/Add.1, ¶113.18.

³ *Report of the Working Group on the Universal Periodic Review: Brunei Darussalam*, (7 July 2014), U. N. Doc. A/HRC/27/11, ¶¶ 113.58, 113.61, 113.64, 113.66, and 113.129.

⁴ *Report of the Working Group on the Universal Periodic Review: Brunei Darussalam Addendum*, (10 September 2014), U. N. Doc. A/HRC/27/11/Add.1, ¶113.48

⁵ Freedom of Thought Report: Brunei Darussalam 2018. Also available online at <https://freethoughtreport.com/countries/asia-south-eastern-asia/brunei-darussalam/?print=pdf>

⁶ *Report of the Working Group on the Universal Periodic Review: Brunei Darussalam Addendum*, (10 September 2014), U. N. Doc. A/HRC/27/11/Add.1.

⁷ Brunei Penal Code, art. 302, No. 16 of 1951, Laws of Brunei Ch. 22, Rev. Ed. 2001. Brunei Penal Code, art. 302, No. 16 of 1951, Laws of Brunei Ch. 22, Rev. Ed. 2001.

⁸ Brunei Penal Code, art. 305, No. 16 of 1951, Laws of Brunei Ch. 22, Rev. Ed. 2001.

⁹ Brunei Penal Code, art. 396, No. 16 of 1951, Laws of Brunei Ch. 22, Rev. Ed. 2001.

¹⁰ Brunei Penal Code, art. 435 (1)(b), No. 16 of 1951, Laws of Brunei Ch. 22, Rev. Ed. 2001.

¹¹ Brunei Internal Security Act, arts. 40-41, Rev. ed. 2008; Brunei Public Order Act, art. 28, Laws of Brunei Ch. 133, Rev. Ed. 2002.

¹² Brunei Penal Code, art. 364, No. 16 of 1951, Laws of Brunei Ch. 22, Rev. ed. 2001.

¹³ Brunei Misuse of Drugs, arts. 3-5, 15-16, Second Schedule, Laws of Brunei Ch. 27, Rev. Ed. 2001

¹⁴ Brunei Penal Code, art. 121, No. 16 of 1951, Laws of Brunei Ch. 22, Rev. ed. 2001.

¹⁵ Brunei Penal Code, art. 132, No. 16 of 1951, Laws of Brunei Ch. 22, Rev. ed. 2001.

¹⁶ Brunei Penal Code, art. 194, No. 16 of 1951, Laws of Brunei Ch. 22, Rev. ed. 2001.

¹⁷ Syariah Penal Code Order, 2013

¹⁸ Brunei Criminal Procedure Code, art. 244, Laws of Brunei Ch. 7.

¹⁹ *Amnesty International Global Report: Death Sentences and Executions 2017*. Also available online at <https://www.amnesty.org/download/Documents/ACT5079552018ENGLISH.PDF> and *Amnesty International Global Report: Death Sentences and Executions 2015*. Also available online at https://www.amnestyusa.org/files/act_5034872016_en_2103_web.pdf

²⁰ U.N. Office of the High Commissioner of Human Rights: Ratification Status for Brunei Darussalam-CAT. Also available online at https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=25&Lang=EN

²¹ *Amnesty International Global Report: Death Sentences and Executions 2017*. Also available online at <https://www.amnesty.org/download/Documents/ACT5079552018ENGLISH.PDF>

²² *Amnesty International Global Report: Death Sentences and Executions 2015*. Also available online at https://www.amnestyusa.org/files/act_5034872016_en_2103_web.pdf

²³ Brunei Misuse of Drugs, arts. 3-5, 15-16, Second Schedule, Laws of Brunei Ch. 27, Rev. Ed. 2001; Brunei Penal Code, art. 121, No. 16 of 1951, Laws of Brunei Ch. 22, Rev. ed. 2001.

²⁴ U.N. Office of the High Commissioner of Human Rights, *UN concerned at broad application of death penalty in Brunei's revised penal code*, (April 11, 2014). Also available online at <https://news.un.org/en/story/2014/04/465902>; U.N. Office of the High Commissioner of Human Rights, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Also available online at <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>.

²⁵ Syariah Penal Code Order, 2013.