

Brunei Darussalam
Joint Stakeholder Report for the United Nations Universal Periodic Review:
The Death Penalty

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

for the 47th Session of the Working Group on the Universal Periodic Review
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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. The Advocates is the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States. 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 (WCADP), 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. This report addresses Brunei Darussalam’s compliance with its international human rights obligations with respect to the death penalty and related issues.
2. Brunei Darussalam is a monarchy and former British protectorate. Sultan Haji Hassanal Bolkiah has governed Brunei since 1967.¹ The Sultan has few limitations on his authority. A Legislative Council, composed of appointed, elected, and ex officio members, has a consultative role in approving legislation and state budgets.²
3. Brunei has not carried out any executions since 1957 and therefore is de facto abolitionist.³ Since the third-cycle UPR, Brunei completed implementation of its Syariah (*i.e.*, Sharia) Penal Code (SPC).⁴ The SPC includes a mandatory death penalty by stoning for many crimes, including crimes that do not result in death. The SPC also authorizes the death penalty for sex outside of marriage and consensual same-sex sexual relations, among other conduct.⁵ In response to widespread criticism of the SPC, the Sultan in 2019 declared that Brunei had “adopted a de facto moratorium on the death penalty in all cases”—a moratorium that evidently is still in effect.⁶ There have been no known death sentences handed down in Brunei since 2017, at which point there were an estimated six individuals on death row.⁷
4. As of 2019, Brunei described itself as “taking steps towards the ratification of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT).”⁸

I. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

A12 Acceptance of international norms

Status of Implementation: Not Accepted, Not Implemented

5. In its third-cycle UPR, Brunei noted fourteen recommendations to ratify the International Covenant on Civil and Political Rights and noted two additional recommendations to ratify or accede to the Second Optional Protocol to the ICCPR. Since 2019, Brunei has taken no steps toward ratification of the ICCPR or OP2.⁹

D23 Death Penalty

Status of Implementation: Not Accepted, Not Implemented

6. In the third-cycle UPR, eight member-states made recommendations related to the death penalty.¹⁰ Brunei noted each of these recommendations. Thirteen countries made recommendations to alter the SPC in other respects to eliminate or mitigate its most severe punishments.¹¹ Brunei did not accept any recommendations to change the SPC. Brunei responded, “The law is there to respect and protect the religion and social fabric and values

of Brunei society. On the issue of homosexual acts, Brunei Darussalam affirms the right of privacy of individuals.”¹²

7. In its Addendum to the Report of the Working Group in the third-cycle UPR, Brunei explained its general approach to criminal justice issues, including the death penalty, as follows:

“The promulgation of the Syariah Penal Code Order, 2013 (SPCO) is to preserve and protect religion, life, intellect, lineage, and property. It is applied uniformly regardless of gender and in line with Brunei Darussalam’s religious and cultural norms that are highly valued in our society.

“The corporal punishments in the SPCO will not be carried out arbitrarily and are intended to protect the society against serious crimes through the mechanism of deterrence, ensuring justice for the victims and their family and generally to preserve peace, morality, and the decency of the public.

“The basic rights of the accused are guaranteed throughout all stages of criminal proceedings, with stringent safeguards to ensure a fair and proper administration of justice as well as high evidential threshold required for prosecution for offenses of hadd and qisas.

(“Hadd” means punishments under Islamic law. “Qisas” means to inflict a punishment on the offender similar to the crime he committed against the victim.)

“A de facto moratorium on executions the execution of the death penalty for cases under the common law has been extended to cases under the SPCO which provides a wider scope for remission.”¹³

8. The laws of Brunei do not limit the death penalty to the “most serious crimes.” A crime does not have to involve an intentional killing to be eligible for the death penalty.¹⁴ The laws of Brunei contain various legal provisions authorizing the death penalty. Crimes punishable by death by hanging include: murder,¹⁵ abetting suicide of a person unable to give legal consent,¹⁶ participation in a gang robbery during which a murder takes place,¹⁷ arson,¹⁸ terrorism-related offenses (including illegal possession of firearms and explosives),¹⁹ kidnapping,²⁰ drug trafficking and possession of drugs,²¹ treason,²² military offenses,²³ and perjury resulting in the conviction of an innocent defendant charged with a capital offense.²⁴ Crimes are punishable by death by stoning include: adultery, sodomy, rape, apostasy, blasphemy, and insulting Islam.²⁵
9. Under the Criminal Procedure Code Chapter XXV, the death penalty is mandatory, but it is ultimately the Sultan’s decision as to whether the sentence is carried out. The trial judge forwards the decision and record of the case along with the judge’s opinion as to any reasons mitigating against the application of the death penalty to the Chief Justice, who then forwards the matter to the Sultan for a final decision.²⁶

10. As noted above, Brunei has a de facto moratorium on executions; the last execution was in 1957.²⁷ Nonetheless, courts continue to sentence people to death. In 2017, courts sentenced a foreign national to death for a drug-related offense.²⁸

D25 Prohibition of torture and cruel, inhuman or punishment

Status of Implementation: Accepted, Not Implemented

11. In the third-cycle UPR, Brunei accepted 16 recommendations to ratify the CAT and partially accepted two additional recommendations to do the same.²⁹ Brunei signed the CAT in 2015 but has made no further progress toward ratification or accession since the last UPR.³⁰ Moreover, the SPC calls for the amputation of limbs as punishment for certain crimes, in violation of the prohibition against torture and other forms of cruel, inhuman, or degrading punishment.³¹

II. RECOMMENDATIONS

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

- Abolish the death penalty and replace it with penalties that are fair, proportionate, and consistent with international human rights standards.
- Ratify or accede to the Second Optional Protocol to the ICCPR.
- In the interim:
 - Immediately adopt a formal moratorium on executions.
 - Commute all existing death sentences to terms of imprisonment.
 - Prohibit the imposition of the death penalty for any crime in which the person accused is not proven to have committed an intentional killing, consistent with international human rights standards.
 - Issue a directive prohibiting judges from sentencing a person to death for blasphemy, adultery, or consensual same-sex sexual conduct between adults.
 - Eliminate the mandatory death penalty in the Syariah Penal Code and give sentencing judges the express authority to impose alternate penalties, taking into account the facts and circumstances of the crime and the defendant.
- Ratify the Convention Against Torture.
- Amend the Syariah Penal Code to bring it into line with the Convention Against Torture and international human rights standards regarding torture and other cruel, inhuman or degrading treatment or punishment.

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- ¹ Britannica, “Brunei – Sultanate, Oil, Islam,” accessed Apr. 3, 2024, <https://www.britannica.com/place/Brunei/History>.
- ² Freedom House, “Brunei: Freedom in the World 2022 Country Report,” accessed Apr. 3, 2024, <https://freedomhouse.org/country/brunei/freedom-world/2022>.
- ³ Amnesty International, “Brunei Darussalam: Sultan’s speech a first step to repealing ‘heinous’ laws,” accessed Apr. 4, 2024, <https://www.amnesty.org/en/latest/news/2019/05/brunei-darussalam-sultan-speech-first-step-repealing-heinous-laws-2/>.
- ⁴ Human Rights Watch, “Brunei’s Pernicious New Penal Code,” accessed Apr. 3, 2024, <https://www.hrw.org/news/2019/05/22/bruneis-pernicious-new-penal-code>.
- ⁵ Human Rights Watch, “Brunei’s Pernicious New Penal Code,” accessed Apr. 3, 2024, <https://www.hrw.org/news/2019/05/22/bruneis-pernicious-new-penal-code>.
- ⁶ Human Rights Watch, “Brunei’s Pernicious New Penal Code,” accessed Apr. 3, 2024, <https://www.hrw.org/news/2019/05/22/bruneis-pernicious-new-penal-code>.
- ⁷ Wikipedia, “Capital Punishment in Brunei,” accessed Apr. 3, 2024, https://wikipedia.org/wiki/Capital_punishment_in_Brunei.
- ⁸ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Brunei Darussalam Addendum* (Sept. 3, 2019), U.N. Doc. A/HRC/42/11/Add.1, ¶ 121.1.
- ⁹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Brunei Darussalam*, (June 25, 2019) U.N. Doc. A/HRC/42/11, ¶¶ 121.5, 121.6, 121.7, 121.22, 121.23.
- ¹⁰ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Brunei Darussalam*, (June 25, 2019) U.N. Doc. A/HRC/42/11, ¶¶ 121.110, 121.112 121.114.
- ¹¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Brunei Darussalam*, (June 25, 2019) U.N. Doc. A/HRC/42/11/Add.1, ¶¶ 121.37, 121.38, 121.39, 121.40, 121.44, 121.46, 121.48, 121.62, 121.69.
- ¹² Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Brunei Darussalam Addendum* (Sept. 3, 2019), U.N. Doc. A/HRC/42/11/Add.1, ¶ 121.38.
- ¹³ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Brunei Darussalam Addendum* (Sept. 3, 2019), U.N. Doc. A/HRC/42/11/Add.1, ¶ 121.36.
- ¹⁴ Huffington Post, “Brunei Law To Allow Death By Stoning For Gay Sex,” accessed Apr. 4, 2024, https://web.archive.org/web/20170425024514/http://www.huffingtonpost.com/2014/04/15/brunei-gay-sex-law_n_5154960.html.
- ¹⁵ Brunei Penal Code, art. 302, No. 16 of 1951, Laws of Brunei Ch. 22, Rev. Ed. 2001.
- ¹⁶ Brunei Penal Code, art. 305, No. 16 of 1951, Laws of Brunei Ch. 22, Rev. Ed. 2001.
- ¹⁷ Brunei Penal Code, art. 396, No. 16 of 1951, Laws of Brunei Ch. 22, Rev. Ed. 2001.
- ¹⁸ Brunei Penal Code, art. 435 (1)(b), No. 16 of 1951, Laws of Brunei Ch. 22, Rev. Ed. 2001.
- ¹⁹ Brunei Internal Security Act, arts. 40-41, Rev. ed. 2008; Brunei Public Order Act, art. 28, Laws of Brunei Ch. 133, Rev. Ed. 2002.
- ²⁰ Brunei Penal Code, art. 364, No. 16 of 1951, Laws of Brunei Ch. 22, Rev. Ed. 2001.
- ²¹ Brunei Misuse of Drugs, arts. 3-5, 15-16, Second Schedule, Laws of Brunei Ch. 27, Rev. Ed. 2001.
- ²² Brunei Penal Code, art. 121, No. 16 of 1951, Laws of Brunei Ch. 22, Rev. Ed. 2001.
- ²³ Brunei Penal Code, art. 132, No. 16 of 1951, Laws of Brunei Ch. 22, Rev. Ed. 2001.
- ²⁴ Brunei Penal Code, art. 194, No. 16 of 1951, Laws of Brunei Ch. 22, Rev. Ed. 2001.
- ²⁵ Huffington Post, “Brunei Law To Allow Death By Stoning For Gay Sex,” accessed Apr. 4, 2024, https://web.archive.org/web/20170425024514/http://www.huffingtonpost.com/2014/04/15/brunei-gay-sex-law_n_5154960.html.
- ²⁶ Brunei Criminal Procedure Code, art. 244, Laws of Brunei Ch. 7.
- ²⁷ Amnesty International, “Brunei Darussalam: Sultan’s speech a first step to repealing ‘heinous’ laws,” accessed Apr. 4, 2024, <https://www.amnesty.org/en/latest/news/2019/05/brunei-darussalam-sultan-speech-first-step-repealing-heinous-laws-2/>.
- ²⁸ Amnesty International, *Amnesty International Global Report: Death Sentences and Executions 2017* (London: Peter Benson House, 2018), 20, accessed Apr. 4, 2024, <https://www.amnesty.org/en/documents/act50/7955/2018/en/>.

²⁹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Brunei Darussalam Addendum* (Sept. 3, 2019), U.N. Doc. A/HRC/42/11/ Add.1, ¶ 121.10.

³⁰ Human Rights Watch, “Brunei’s Pernicious New Penal Code,” accessed Apr. 3, 2024, <https://www.hrw.org/news/2019/05/22/bruneis-pernicious-new-penal-code>.

³¹ Human Rights Watch, “Brunei’s Pernicious New Penal Code,” accessed Apr. 3, 2024, <https://www.hrw.org/news/2019/05/22/bruneis-pernicious-new-penal-code>.