



General Assembly

Distr.
GENERAL

A/HRC/WG.6/6/BRN/3
21 July 2009

Original: ENGLISH

HUMAN RIGHTS COUNCIL
Working Group on the Universal Periodic Review
Sixth session
Geneva, 30 November -11 December 2009

SUMMARY PREPARED BY THE OFFICE OF THE HIGH COMMISSIONER FOR
HUMAN RIGHTS, IN ACCORDANCE WITH PARAGRAPH 15 (C) OF THE
ANNEX TO HUMAN RIGHTS COUNCIL RESOLUTION 5/1

Brunei Darussalam*

The present report is a summary of four stakeholders' submissions¹ to the universal periodic review. It follows the structure of the general guidelines adopted by the Human Rights Council. It does not contain any opinions, views or suggestions on the part of the Office of the United Nations High Commissioner for Human Rights (OHCHR), nor any judgement or determination in relation to specific claims. The information included herein has been systematically referenced in endnotes and, to the extent possible, the original texts have not been altered. Lack of information or focus on specific issues may be due to the absence of submissions by stakeholders regarding these particular issues. The full texts of all submissions received are available on the OHCHR website. The report has been prepared taking into consideration the four-year periodicity of the first cycle of the review.

* The present document was not edited before being sent to the United Nations translation services.

I. BACKGROUND AND FRAMEWORK

A. Scope of international obligations

1. Amnesty International (AI) noted that Brunei Darussalam has not ratified the core International Labour Organisation Conventions, including Conventions 87 and 98 on the freedom of association and collective bargaining, Conventions 29 and 105 on the elimination of forced and compulsory labour, Conventions 100 and 111 relating to the elimination of discrimination in respect of employment and occupation, and Convention 138 on the abolition of child labour.² It recommended ratifying the seven core ILO Conventions and repealing or amending Brunei's domestic labour laws to ensure compliance with them.³

2. AI noted Brunei's reservations to articles 14, 20 and 21 of the Convention on the Rights of the Child, on the grounds that these articles may be contrary to the Constitution of Brunei Darussalam and the principles of Islam, the official religion of Brunei. It also noted reservations to sections of articles 9 and 29 of the Convention on the Elimination of All Forms of Discrimination Against Women, on the same grounds.⁴ AI called on Brunei to remove all its reservations to both Conventions.⁵

3. Furthermore, AI called on Brunei to ratify the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the 1951 United Nations Convention Relating to the Status of Refugees, and its 1967 Protocol, the Rome Statute of the International Criminal Court and implement it in national law, and to accede to the Agreement on the Privileges and Immunities of the International Criminal Court and implement it in national law.⁶

B. Constitutional and legislative framework

N/A

C. Institutional and human rights infrastructure

N/A

D. Policy measures

N/A

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

A. Cooperation with human rights mechanisms

N/A

B. Implementation of international human rights obligations

1. Equality and non discrimination

4. The Institute on Religion and Public Policy (IRPP) noted that the Government issues identity cards which include a person's ethnic identity. This identity is often used to determine

religion and hence whether or not that person is subject to Shari'a law. It called on the Government to stop issuing such cards.⁷

2. Right to life, liberty and security of the person

5. AI noted that Brunei Darussalam is an abolitionist country in practice. While the death penalty is provided for by various legal provisions, including the Penal Code, the Internal Security Act 1982, the Misuse of Drugs Enactment 1978 as amended by the Emergency (Misuse of Drugs) Amendments Order 1984, the Criminal Procedure Code 1951 and the Public Order Act 1983, the last execution was carried out in 1957. Among the offences punishable by death are murder, drug trafficking and the unlawful possession of firearms and explosives.⁸ AI recommended that Brunei permanently abolish the death penalty in line with General Assembly resolution 62/149 of 18 December 2007; repeal or amend the Penal Code, Internal Security Act 1982, the Misuse of Drugs Enactment 1978 as amended by the Emergency (Misuse of Drugs) Amendments Order 1984, Criminal Procedure Code 1951 and the Public Order Act 1983 so as to replace the death penalty with other penalties, which do not include cruel, inhuman or degrading punishments.⁹

6. Noting that Brunei's Penal Code with regards to rape stipulates that "sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape," AI said this amounts to legalisation and legitimization of marital rape, including the rape of children, in flagrant violation of international human rights law. It added that the offence of rape is confined to acts against women and girls, thus providing no protection for men and boy victims of rape.¹⁰ AI recommended that Brunei revise Section 375 of the Penal Code so as to criminalise all acts of rape without exception and irrespective of the marital status and gender of the victim.¹¹

7. The Global Initiative to End All Corporal Punishment of Children (GIEACPC) noted that corporal punishment is lawful in the home, in schools, and in penal institutions as a disciplinary measure and not prohibited in alternative care settings. GIEACPC further noted that corporal punishment can be used in the penal system as a sentence for a crime. For instance, males aged 7 – 17 may be sentenced to be whipped up to 18 strokes for a wide range of offences under the Penal Code and other laws. The Children and Young Persons Order would allow such a sentence to be passed only by the High Court. GIEACPC highlighted the concerns of the Committee on the Rights of the Child on corporal punishment and its recommendations for explicit prohibition in the home, schools and institutions, and as a sentence of the courts.¹² AI also recommended that Brunei repeal or amend all provisions in domestic laws which provide for caning, whipping or any other cruel, inhuman or degrading punishment.¹³

8. AI noted that migrant workers who overstay beyond the expiry of their visa are regularly imprisoned and caned or whipped under Sections 6 or 15 of the Immigration Act of 1956. According to AI, amendments to the Immigration Act in 2005 made caning mandatory for certain immigration offences such as illegal entry, overstaying after the expiry of travel documents or being undocumented. It also stated that there were numerous arrests of undocumented migrant workers and those overstaying their visas were jailed and/or whipped.¹⁴ AI recommended that Brunei Darussalam repeal or amend all provisions in the Immigration Act which criminalise migrant workers for administrative offences so as to allow imprisonment only in extraordinary, narrowly defined circumstances.¹⁵

9. AI noted that the Internal Security Act allows an individual to be held without charge or trial for a period of up to two years and this is renewable indefinitely. According to AI, this law effectively allows the Government to detain individuals indefinitely on the basis of the Home

Minister's directive alone.¹⁶ It recommended repealing or amending the Internal Security Act so as to abolish all forms of administrative detention currently contained therein.¹⁷

3. Right to privacy, marriage and family life

10. The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), ILGA-Europe, ILGA-Asia, the International Gay and Lesbian Human Rights Commission and ARC International in a joint statement noted that Brunei Darussalam maintains criminal sanctions against "carnal intercourse against the order of nature," and such provisions are often applied to criminalise sexual activity between consenting adults.¹⁸ AI added that these provisions allow for discrimination against lesbians, gays, bisexuals and transsexuals.¹⁹ ILGA recommended that the Human Rights Council urge Brunei 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".²⁰

11. The Institute on Religion and Public Policy (IRPP) noted that marriage between Muslims and non-Muslims is prohibited; non-Muslims must convert to Islam if they wish to marry a Muslim.²¹

4. Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life

12. The IRPP stated that while the Constitution provides protections for religious minorities, the status of religious freedom in Brunei is poor and the Government favours Islam at the expense of other religions. Several ministerial posts and other government positions are reserved exclusively for Shafi'i Muslims.²²

13. IRPP added that non-Muslims face a wide array of prohibitions and restrictions that negatively affect the status of religious freedom. All non-Shafi'i religious groups are required to register and provide the names of members, and an application can be refused for any reason.²³ The Government prohibits proselytization by all non-Shafi'i Muslim groups. It restricts and censors the availability of religious material for non-Shafi'i Muslims. The importation of spiritual and reaching material, including the Bible, is banned. Construction of new religious facilities for non-Shafi'i Muslims has been severely restricted limiting the abilities of these groups to conduct their religious services. Permission to construct new shrines, temples and churches has been denied and the Government enforces zoning laws that prohibit the use of private residences for religious ceremonies.²⁴ The Ministry of Education prohibited the teachings of other religious traditions as well as "comparative religious studies" and it requires teachings on Islam which follow a state designated curriculum.²⁵

14. According to IRPP, non-Muslims are required to wear a head covering as part of their uniform in government schools and institutions of higher learning. Non-Muslim teachers have also been pressured into wearing Muslim head scarves.²⁶

15. It noted that the Government has banned several religious groups which it considered deviant. It added that Christians in particular were subject to harassment by state agencies and officials, and church members are believed to be subject to periodic surveillance.²⁷ The Government, according to IRPP, takes measures to prevent the distribution and sale of any item that features images of undesirable or religious symbols. Government authorities censor magazine articles depicting such symbols.

16. IRPP stated that Muslims face restrictions as well. While Muslims may legally convert to another religion, they must obtain permission from the Ministry of Religious Affairs to do so.²⁸

17. The Government of Brunei must, IRPP stressed, reverse the bans on groups which it considers deviant. Discriminatory practices against Christians and others such as the censorship of magazine articles and the ban on the importation of religious literature must be lifted. Permits must be issued for the construction of new religious facilities for minority religious communities. The Sultan must end his interference with the operation of the Muslim community in Brunei. The blatant favouritism for Shafi'i Islam at the expense of all other religious communities must be stopped. Ministerial posts restricted to certain individuals must be removed as well, it added.²⁹

18. AI noted that under section 3(5) of the Newspapers Act, the Minister of Human Affairs has the sole discretionary power to grant or deny annual publishing permits to newspapers, and that his decisions are not subject to appeal or judicial review. Publishing without a license can result in a fine or three years in jail, and authorities have powers to shut down newspapers without showing cause. Section 7 of the Act, AI noted, allows the Minister of Home Affairs to charge printers, publisher, editors and writers who "maliciously published any false news" with a crime punishable by a fine, three years in jail, or both. AI added that the Act also grants the government absolute power to bar the distribution of foreign periodicals in Brunei, and that it severely restricts the right to freedom of information in Brunei.³⁰

19. AI cited the Sedition Act as further restricting freedom of expression. The Act makes it an offence to criticise the Sultan or the royal family, "to raise discontent or disaffection amongst the inhabitants of Brunei Darussalam" or "to promote feelings of ill-will and hostility between different classes of the population of Brunei Darussalam". AI stated that these provisions are vague and may be interpreted widely, exposing individuals and the media to prosecution for peacefully exercising their right to freedom of expression. The Act also makes it a punishable offence to have in one's possession a "seditious" publication.³¹ It cited the arrest in 2007 of three persons, who were subsequently sentenced to one year in prison and fined under the Sedition Act for distributing a satirical video clip depicting immediate members of the royal family via mobile telephone. The three were released for good behaviour after serving eight months in prison.³²

20. AI added that there are restrictions to freedom of assembly under the emergency laws implemented in 1962. According to the Societies Order 2005, public gatherings of 10 or more persons, irrespective of their purpose, require a government permit or advance approval, and police have the authority to stop any unauthorised assembly. Police may also arrest individuals without a warrant under the same Order.

21. AI said there were no registered civil society organizations dealing directly with human rights in Brunei. The government may also suspend the activities of a registered NGO if it deems such an act in the public interest. The law gives the Registrar of Societies wide powers to refuse registering a society, or if already registered, declare it unlawful should he believe that "the society is being used or is likely to be used for any unlawful purpose or for any purpose prejudicial to or incompatible with the peace, public order, security or public interest of Brunei Darussalam". The final decision of the Sultan with regard to this is not subject to any form of judicial review.³³

22. AI recommended repealing or amending the Sedition Act and the Newspaper Act 1958, to ensure that they respect and protect the right to freedom of expression in accordance with international human rights standards. It also recommended repealing or amending the Societies Order to ensure that it does not violate the right to peaceful association or assembly.³⁴

III. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES AND CONSTRAINTS

N/A

IV. KEY NATIONAL PRIORITIES, INITIATIVES AND COMMITMENTS

N/A

V. CAPACITY-BUILDING AND TECHNICAL ASSISTANCE

N/A

Notes

¹ The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: www.ohchr.org. (One asterisk denotes a non-governmental organization in consultative status with the Economic and Social Council.

Civil society

AI	Amnesty International*, London, United Kingdom
GIEACPC	Global Initiative to End All Corporal Punishment of Children
ILGA	Joint Submission submitted by International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), ILGA-Europe*, ILGA-Asia, International Gay and Lesbian Human Rights Commission, and ARC International
IRPP	Institute on Religion and Public Policy, Washington, United States of America

² AI, p.4

³ AI, p.6

⁴ AI, p.4

⁵ AI, p.6

⁶ AI, p.6

⁷ IRPP, paras. 15-16

⁸ AI, p. 3.

⁹ AI, p. 6.

¹⁰ AI, p.5

¹¹ AI, p.6

¹² GIEACPC, p. 2.

¹³ AI, p. 6.

¹⁴ AI, p. 3.

¹⁵ AI, p. 6.

¹⁶ AI, p. 3.

¹⁷ AI, p. 6.

¹⁸ ILGA, p. 1

¹⁹ AI, p.5

²⁰ ILGA, p. 2

²¹ IRPP, para. 8.

²² IRPP, para. 1.

²³ IRPP, para. 7

²⁴ IRPP, para. 8.

²⁵ IRPP, para. 13.

²⁶ IRPP, para. 11.

²⁷ IRPP, para. 14.

²⁸ IRPP, para. 9.

²⁹ IRPP, para. 16.

³⁰ AI, p. 3-4.

³¹ AI, p.4.

³² AI, p. 3, 5.

³³ AI, p.4-5.

³⁴ AI, p.6.
