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BRUNEI DARUSSALAM

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Introduction

1. ADF International is a global alliance-building legal organization that advocates for religious freedom, life, and marriage and family before national and international institutions. As well as having ECOSOC consultative status with the United Nations (registered name 'Alliance Defending Freedom'), ADF International has accreditation with the European Commission and Parliament, the Organization for Security and Co-operation in Europe, and the Organization of American States, and is a participant in the FRA Fundamental Rights Platform.
2. This report explains why Brunei Darussalam must protect and promote the right to freedom of religion or belief.

Right to Freedom of Religion

3. The Constitution of Brunei Darussalam establishes the Islamic religion as the official religion of the nation, but also provides 'that all other religions may be practised in peace and harmony by the persons professing them.' Article 3(1).
4. Several constitutional provisions give practical effect to Article 3(1)'s establishment of Islam as the official religion. The Constitution establishes a religious council that advises the Sultan, the head of state who exercises Brunei Darussalam's executive power, 'on all matters relating to the Islamic Religion,' and allows for laws to be made by the Sultan relating to the Islamic Religion. Article 3(3) & 3(4).
5. The Constitution also provides that the Legislative Council may not introduce bills that 'may have the effect of lowering or adversely affect directly or indirectly the standing or prominence of the National Philosophy of Melayu Islam Beraja,' i.e., the Malay Islamic Monarchy), Article 42(1)(e), and further prohibits members of the Legislative Council from making any comments that are 'directly or indirectly derogatory of ... the National Philosophy of Malay Islamic Monarchy,' Article 53(1A)(a). Such restrictions are not limited to government officials: 'Whoever by words spoken or written or by visible representations insults or brings into contempt or attempts to insult or bring into contempt the Islamic religion or the tenets of any sect thereof or the teaching of any lawfully authorised religious teacher or any fatwa lawfully issued by the Mufti or under the provisions of this Act shall be guilty of an offence: Penalty, imprisonment for 6 months or a fine of \$4,000.'¹
6. The Constitution prohibits any individual who is not of 'the Malay race professing the Islamic Religion' to be appointed Ministers or Deputy Ministers of the nation, although the Sultan can make exceptions. Article 4(5). The same restriction is placed on appointments to certain other state offices. Article 84A(1). The identification of Islam as the religion of the state is emphasized throughout the Constitution, and both non-Malays and non-

¹ Laws of Brunei, Chapter 77, Section 191 (Rev. Ed. 1984).

Muslims are restricted from certain governmental offices, amounting to discrimination on the basis of religion.

7. Brunei Darussalam has a population of nearly 450,000, of whom around 65.7% are ethnic Malays.² Approximately 79% of the population is Muslim, with other religions practised in Brunei including Christianity (9%) and Buddhism (8%).³
8. Notwithstanding the constitutional protections stating that non-Islamic religions may be 'practised in peace and harmony,' the Pew Research Center has ranked Brunei Darussalam as having 'very high' levels of government restrictions on religion, which is its most-restrictive ranking for nations.⁴
9. Other observers have brought attention to Brunei Darussalam and its poor religious freedom record. The nation was ranked as number 26 on the 2018 World Watch List, which ranks the top 50 countries where Christians are most persecuted.⁵ Christians are not the only groups to face persecution in Brunei Darussalam: Baha'i are banned in the nation.⁶
10. The restrictions placed on religion in Brunei Darussalam take multiple forms. In their most recent and troubling iteration, these restrictions on religious freedom have been expanded and intensified by means of a phased implementation of Sharia law that began in 2014 and was announced with great support by the Sultan.⁷ This Sharia implementation has introduced many challenges to freedom of religious belief.
11. Beginning with phase one of the laws in 2014, the Islamic religious rules were extended beyond the civil sphere—where they had been largely contained—into the criminal code applicable to all in Brunei Darussalam, ushering in fines and prison terms for Islamic offenses. The second and third phases of the law, introduced beginning in 2015, include punishments for further Sharia-related offenses, such as amputation for theft.⁸

² Brunei Demographics Profile 2018, *Index Mundi* (20 Jan. 2018), https://www.indexmundi.com/brunei/demographics_profile.html.

³ Brunei Demographics, https://www.indexmundi.com/brunei/demographics_profile.html.

⁴ "Appendix 2: Government Restrictions Index," Religious Hostilities Reach Six-Year High, *Pew Research Center* (14 Jan. 2014), <http://www.pewforum.org/2014/01/14/appendix-2-government-restrictions-index/>.

⁵ World Watch List 2018, *Open Doors USA*, <https://www.opendoorsusa.org/wp-content/uploads/2018/01/WWL2018-BookletNew.pdf>.

⁶ "2. Harassment of religious groups hits highest point since 2007," Global Uptick in Government Restrictions on Religion in 2016, *Pew Research Center* (21 Jun. 2018), <http://www.pewforum.org/2018/06/21/harassment-of-religious-groups-hits-highest-point-since-2007/>.

⁷ See, e.g., "Brunei Christians Fear Harsh Islamic Law," *Religious Freedom Coalition* (22 May 2014), <https://www.religiousfreedomcoalition.org/2014/05/22/brunei-christians-fear-harsh-islamic-law/>.

⁸ "The Implications of Brunei's Sharia Law," *The Diplomat* (21 May 2015), <https://thediplomat.com/2015/05/the-implications-of-bruneis-sharia-law/>; see also "What would Sharia mean for non-Muslims in Brunei?" *World Watch Monitor* (1 May 2014), <https://www.worldwatchmonitor.org/2014/05/what-sharia-law-may-bring-for-non-muslims-in-brunei/>.

12. The imposition of Sharia law was ostensibly aimed primarily at Muslims.⁹ However, non-Muslims are also subject to the nation's Islamic laws and the severe penalties they bring. As further discussed herein below, former Muslims face particularly grievous consequences under the Sharia law, yet other non-Muslims likewise face religious constraints, oppressive government action, and denials of their right to freedom of religion or belief. For example, even non-Muslims are subject to the death penalty for disparaging Muhammad (depending on the evidence presented, the penalty may instead consist of imprisonment up to thirty years and/or flogging).¹⁰
13. Additionally, non-Muslims are prohibited from using nineteen religious words or terms, and Christians are prohibited from using the Malay version of the Bible—i.e., the version of the Bible in the official language of Brunei Darussalam.¹¹ 'Any person' may be imprisoned for 'consuming in public any food, drink or tobacco during the fasting hours in the month of Ramadhan,' without exceptions for non-Muslims.¹² Images and information of other faiths are 'routinely censored' by the government.¹³ Furthermore, public celebrations of Christmas are banned in Brunei Darussalam.¹⁴ While Christians are allowed to celebrate Christmas, they are directed not to do so 'excessively and openly' (and face the specter of a potential five-year jail sentence for perceived violations).¹⁵ Churches are required to register with the government and the government in practice blocks the construction of new churches.¹⁶
14. Particularly grievous among the Sharia laws introduced in Brunei Darussalam are those which concern speech regarding one's religious beliefs ('anti-propagation laws') and those which involve conversion from Islam ('apostasy laws').
15. Among the anti-propagation laws of concern are: punishments (i) for a non-Muslim who shares his or her religious faith with someone who is either a

⁹ See, e.g., "Brunei to implement Shariah penal code, including stoning, caning," *Religion News Service* (22 Oct 2014), <https://religionnews.com/2013/10/22/brunei-implement-shariah-penal-code-including-stoning-caning/>.

¹⁰ Sec. 221, Syariah Penal Code Order, 2013 (22 Oct. 2013), <https://www.icj.org/wp-content/uploads/2013/10/Brunei-Syariah-Penal-Code-Order-2013-eng.pdf>; see also Sec. 222 (announcing similar punishments for disparaging the Koran).

¹¹ "New churches or temples not allowed," *The Star Online* (3 Oct 2016), <https://www.thestar.com.my/news/nation/2016/10/03/new-churches-or-temples-not-allowed-only-completed-places-of-worship-to-remain-in-brunei/>; see also Sec. 217, Syariah Penal Code Order, *infra* fn. 17.

¹² Sec. 195(1), Syariah Penal Code Order, 2013, <https://www.icj.org/wp-content/uploads/2013/10/Brunei-Syariah-Penal-Code-Order-2013-eng.pdf>.

¹³ "Brunei to implement," <https://religionnews.com/2013/10/22/brunei-implement-shariah-penal-code-including-stoning-caning/>.

¹⁴ "Brunei Explains Its Christmas Celebration Ban," *The Diplomat* (31 Dec. 2014), <https://thediplomat.com/2014/12/brunei-explains-its-christmas-celebration-ban/>.

¹⁵ "Christmas ban to be strictly enforced in Brunei after sharia law introduced," *ABC News* (23 Dec 2015), <http://www.abc.net.au/news/2015-12-23/christmas-ban-to-be-strictly-enforced-this-year-in-brunei/7051680>.

¹⁶ See, e.g., "Brunei Christians Fear Harsh Islamic Law," Religious Freedom Coalition (22 May 2014), <https://www.religiousfreedomcoalition.org/2014/05/22/brunei-christians-fear-harsh-islamic-law/>; "New churches," *The Star Online* (3 Oct 2016), <https://www.thestar.com.my/news/nation/2016/10/03/new-churches-or-temples-not-allowed-only-completed-places-of-worship-to-remain-in-brunei/>.

Muslim or does not profess a religion at all (in the form of a fine of up to \$20,000 or a jail term of five years, or both); (ii) for anyone who ‘persuades, tells, causes, offers payment to, influences, incites, encourages, or lets a Muslim’ convert to another religion, leave Islam, or ‘dislike’ Islam; (iii) for anyone who persuades an atheist to convert to religion other than Islam or to ‘dislike’ Islam (likewise in the form of a fine of up to \$20,000 or a jail term of five years, or both); (iv) for anyone who persuades or influences the child of a Muslim or atheist to accept a religion other than Islam or to participate in an activity of a religion other than Islam (a violation of this law or those in subparagraphs 15(i) – 15(iii) hereinabove is subject to a fine of up to \$20,000 or a jail term of up to five years, or both); (v) for anyone who uses certain religious words ‘to state or express any fact, belief, idea, concept, act, activity, matter or instances of or relating to a religion other than the religion of Islam’ (with a fine of up to \$12,000 or a jail term of up to three years, or both).¹⁷

16. The apostasy laws seeking to prevent former Muslims from leaving the Islamic religion also infringe upon the religious freedom of Brunei Darussalam citizens. Former Muslims who declare themselves non-Muslims are subject to a death penalty (depending on the evidence presented, the penalty may instead consist of imprisonment up to thirty years and/or flogging).¹⁸
17. While Muslims may seek permission from a government entity, the ‘Ministry of Religious Affairs,’ if they desire to convert to another faith, in practice such conversion is highly unlikely to be permitted.¹⁹ Pronouncements by government officials also express the consequences of conversion from Islam, as in 2014, when Abdul Aziz Juned, the State Mufti, ‘declared apostasy an offence punishable by death for any Muslims who choose to disassociate themselves from the faith.’²⁰

International Law

18. Article 18 of the International Covenant on Civil and Political Rights (the ICCPR) protects the right to freedom of thought, conscience, and religion. As confirmed by the Human Rights Committee in its General Comment No.22, this right ‘encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others’ and includes the ‘freedom to have or to adopt a religion or belief of [one’s] choice,’ the right to ‘replace one’s current religion or belief with another or adopt atheistic views, as well as the right to retain one’s religion or belief.’ This same General Comment declares that even if ‘a religion is recognized as a state religion or that it is established as official or traditional or that its followers comprise the majority of the population,’ that

¹⁷ Sec. 209-212, 217, Syariah Penal Code Order, 2013 (22 Oct. 2013), <https://www.icj.org/wp-content/uploads/2013/10/Brunei-Syariah-Penal-Code-Order-2013-eng.pdf>.

¹⁸ *Id.*, Sec 112(1) & (2).

¹⁹ See, e.g., “Brunei,” *Freedom in the World 2011*, Freedom House, <https://freedomhouse.org/report/freedom-world/2011/brunei>; see also “International Religious Freedom Deserts: Their Locations & The Forces Causing Them,” *The St Charles Institute*, <http://www.stcharlesinstitute.org/voices/internationalreligiousfreedomdeserts>.

²⁰ “Brunei,” *End Blasphemy Laws*, <https://end-blasphemy-laws.org/countries/asia-central-southern-and-south-eastern/brunei/>

this fact 'shall not result in any impairment of the enjoyment of any of the rights under the Covenant.'

19. Article 18(2) of the ICCPR states, 'No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.' The HRC interprets this to include 'the use of threat of physical force or penal sanctions.'

Recommendations

20. In light of the aforementioned, ADF International suggests the following recommendations be made to Brunei Darussalam:

- (a) Enhance efforts to concretely recognize equal rights to all citizens, irrespective of their religious affiliation;
- (b) Take measures to enable Muslims to convert to religions other than Islam and to allow those of other faiths to proselytize;
- (c) Take measures to ensure the respect of freedom of religion and to end all types of reprisals against those who converted to another religion;
- (d) Ensure that the right to freedom of religion or belief is promoted and protected in Brunei Darussalam, including the right to practice one's religion by speaking to others about one's beliefs, to convert to religions other than Islam without encountering legal hurdles or fear of legal sanction up to and including death, and to avoid criminal punishment for Islamic religious offenses;
- (e) Recognize that a limited right for other religions to be 'practiced in peace and harmony,' paired with punishments for conversion, legal restrictions against expressing, speaking freely about, or sharing one's religious belief with others, legal restrictions on celebrating and practicing one's faith, and the prospect of harsh punishments for not following the rules of the Islamic faith (whether or not professed by the individual), does not satisfy the country's commitments to allow freedom of religion.



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