Update on the Rule of Law for Human Rights in ASEAN: The Path to Integration
The State of Brunei Darussalam
Brunei

Update on the Rule of Law for Human Rights in ASEAN: The Path to Integration

Table 1: Snapshot

<table>
<thead>
<tr>
<th>Formal Name</th>
<th>Negara Brunei Darussalam</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital City</td>
<td>Bandar Seri Begawan</td>
</tr>
<tr>
<td>Independence</td>
<td>1 January 1984</td>
</tr>
</tbody>
</table>

Historical Background

Brunei is one of the longest surviving continuous monarchies. The Sultanate, which once extended from Borneo to the Philippines, had been steadily declining since the late 16th century. Since the arrival of the European colonial powers, Brunei had faced colonial aspirations of Spain, Holland and Portugal as well as Britain. It was the latter that was to dominate Brunei’s future. In 1888, Brunei entered into a formal agreement to become a British Protectorate and in 1905 a Resident was appointed.

In 1950, reforms started which were designed to lead Brunei toward self-government while maintaining the authority of the Sultan. At the same time, the first political party, Partai Rakyat Brunei (PRB), was founded in 1956. It was largely comprised of non-aristocratic Malays dissatisfied with colonial and monarchic rule.

In 1959, the first Constitution was proclaimed which abolished the position of British Resident, but the British maintained jurisdiction over external affairs, defence and internal security. Although Executive, Legislative and Privy Councils were established under the Constitution, it did not provide for separation of powers or any “meaningful checks” on the Sultan’s powers.

In 1962, the PRB’s military wing revolted, but was quickly suppressed by British troops and a state of emergency announced. On 19 December 1962, the Legislative Council was dissolved and replaced by an Emergency Council. The Emergency Order that suspended the Legislative Council was lifted in 2004 after further Constitutional amendments broadened the Sultan’s powers.

In 1984 Brunei gained independence. Yet, the state of emergency has been renewed continuously since then and in 2012, Brunei marked the 50th anniversary of being under emergency rule.

Size

5,765 km²

Population

429,646 (July 2015 est.)

**Demography**

<table>
<thead>
<tr>
<th>Age Group</th>
<th>Percentage</th>
<th>Male (in thousands)</th>
<th>Female (in thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-14 years</td>
<td>23.82%</td>
<td>52,750</td>
<td>49,579</td>
</tr>
<tr>
<td>15-24 years</td>
<td>17.13%</td>
<td>36,485</td>
<td>37,127</td>
</tr>
<tr>
<td>25-54 years</td>
<td>46.9%</td>
<td>97,228</td>
<td>104,286</td>
</tr>
<tr>
<td>55-64 years</td>
<td>7.88%</td>
<td>17,366</td>
<td>16,470</td>
</tr>
<tr>
<td>65 years and over</td>
<td>4.27%</td>
<td>8,925</td>
<td>9,430 (2015 est.)</td>
</tr>
</tbody>
</table>

**Ethnic Groups**

- Malay 65.7%
- Chinese 10.3%
- Other indigenous 3.4%
- Other 20.6% (2011 est.)

**Languages**

- Malay (official), English, Chinese dialects

**Religion**

- Muslim (official) 78.8%
- Christian 8.7%
- Buddhist 7.8%
- Other (includes indigenous beliefs) 4.7% (2011 est.)

**Adult Literacy**

- Definition: age 15 and over can read and write
- Total population: 96%
- Male: 97.5%
- Female: 94.5% (2015 est.)

**Gross Domestic Product**

- $32.9 billion (2015 est.)
- $33.28 billion (2014 est.)
- $34.08 billion (2013 est.)

**Government Overview**

Brunei is a constitutional monarchy and one of the few absolute monarchies in the world. In an absolute monarchy the ruler claims full power as both head of state and head of government. It is the only absolute monarchy in Asia.

**Human Rights Issues**

Brunei does not have a constitutional or legislative bill of rights. Moreover, Brunei has not ratified most of the international core human rights treaties. The most discussed human rights issues in Brunei are freedom of religion, discrimination against women, freedom of speech, freedom of the press and freedom of assembly. The start of the implementation of the Syariah Penal Code Order in 2013 attracted significant international attention and several human rights concerns were raised in connection with this.

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2 Please note that the collection of material for Brunei is extremely difficult, as it is not covered in numerous reports that have been used for the other countries, i.e. neither Amnesty International nor Human Rights Watch have a country report on Brunei, [https://www.amnesty.org/en/countries/](https://www.amnesty.org/en/countries/) and [https://www.hrw.org/publications](https://www.hrw.org/publications) accessed 15 March 2016.

With Laos, these are the only two ASEAN country not ranked in the World Justice Project's 2015 Rule of Law Index, which provides and ranks data on how the rule of law is experienced in a particular country. See generally World Justice Project, 'Rule of Law Index 2015', [http://data.worldjusticeproject.org/](http://data.worldjusticeproject.org/) accessed 15 March 2016.


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2 **Update on the Rule of Law for Human Rights in ASEAN:**

The Path to Integration
| Membership in International Organizations<sup>3</sup> | *Asia Cooperation Dialogue (ACD)  
*Asia-Middle East Dialogue (AMED)  
*Asia-Pacific Economic Co-operation (APEC)  
*Asia-Europe Meeting (ASEM)  
Asian Development Bank  
*Commonwealth, Forum for East Asia-Latin America Cooperation (FEALAC)  
International Labor Organization (ILO)  
International Maritime Organization (IMO)  
International Monetary Fund (IMF)  
New Asia-Africa Strategic Partnership (NAASP)  
*Non-Aligned Movement (NAM)  
*Organization of Islamic Cooperation (OIC)  
World Bank  
World Trade Organization (WTO)  
*United Nations (UN) |

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Brunei is not party to some of the core international human rights law instruments, i.e. International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR).

It has the following commitments under international human rights treaties:

<table>
<thead>
<tr>
<th>International Document</th>
<th>Year of Signature</th>
<th>Year of Ratification/Accession</th>
<th>Reservations / Declarations</th>
</tr>
</thead>
<tbody>
<tr>
<td>UN Convention on the Rights of the Child (CRC)</td>
<td>1995</td>
<td>1995</td>
<td>Articles 14, 20 and 21 Reservations to paragraphs 1 and 2 of Article 20, as well as paragraph (a) of Article 21, were withdrawn in 2014.</td>
</tr>
<tr>
<td>UN Convention on the Elimination of All Forms of Discrimination Against women (CEDAW)</td>
<td>2006</td>
<td>2006</td>
<td>Article 9(2) and Article 29(1)</td>
</tr>
<tr>
<td>Convention of the Rights of Persons with Disabilities</td>
<td>2006</td>
<td>2006</td>
<td></td>
</tr>
<tr>
<td>Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT)</td>
<td>2015</td>
<td>2015</td>
<td></td>
</tr>
</tbody>
</table>

I. INTRODUCTION

Brunei Darussalam, also called the Nation of Brunei, the “Abode of Peace” or Negara Brunei Darussalam in Malay, is located on the north-west coast of Borneo in Southeast Asia. It was the sixth member of ASEAN, joining shortly after Brunei gained independence in 1984. It is a member of the ASEAN Community (AC), which was launched officially at the end of 2015.

The Constitution was first promulgated in 1959 while under British colonial rule. Full powers were vested in the Sultan under the terms of the Constitution of 1959 thereby replacing the colonial residency system. The Constitution had “granted internal self-government to the Sultan, not to the people. There was no elective majority on the Legislative Council and no direct elections [...].”5 In fact, elections were not held until 1961, and all electoral seats were won by the Partai Rakyat Brunei (Brunei People’s Party, PRB). However, only 16 seats of 33 were designated for elected members and PRB was thus unable to form a government. As tensions rose over the Sultan’s proposal to merge with Malaya, rebels of the military wing of the PRB, calling themselves the North Kalimantan National Army, staged a revolt against the government. The Sultan proclaimed a state of emergency and British troops from Singapore quelled the revolt within days. The PRB was banned, and the leaders were arrested or fled.

Technically, Brunei remains in the same state of emergency declared in 1962, with that declaration renewed every two years since then. Thus in Bruneian legal terminology, “Orders” are legislation instituted by the Sultan under his emergency powers in Section 83(3) of the Constitution, while “Acts” are those enacted through normal processes involving the Legislative Council. The intention is that the Emergency Orders will be eventually promulgated as Acts over time.6 However, Acts are also frequently replaced by Orders, so it is difficult to recognise any trends to these institutional changes.

According to the Constitution, the Sultan is the Head of State with full executive authority and thus one of the few absolute monarchies in the world.7 The executive and legislative powers of the Sultan are neither separate nor independent but form a Personaleinheit.8 In his role as both Head of Government and Head of State, the Sultan is assisted and advised by five councils – the Council of Cabinet Ministers, the Privy Council, the Legislative Council, Islamic Religious Council and the Council of Regency, commonly also referred to as the Council of Succession.9

The Council of Cabinet Ministers, including the Sultan, forms the executive branch of government. As of 23 October 2015, the current Sultan, Hj Hassanal Bolkiah Mu’izzaddin Waddaulah, is at once King, and holds the “posts of Prime Minister, Minister of Defence and Minister of Finance while also taking over the post of Minister of Foreign Affairs and Trade.”10 Ministers are appointed by the Sultan, in line with Articles 4(3) and 11 of the Constitution. Following the 2004 constitutional reforms, the power of the Cabinet is further

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7 The few states still ruled by absolute monarchies where the ruler claims full power as both Head of State and Head of Government include Vatican City, Oman, Saudi Arabia, Qatar and Swaziland.
8 The German term ‘Personaleinheit’ refers to an amalgamation of roles and powers in one person.
9 The Council of Succession or Regency existed prior to the Constitution of 1959 and is formed whenever the sultan is under the age of 18 when he ascended to the throne. This happened for instance when Ahmad Tajuddin succeeded his father Sultan Muhammad Jamal Alam in 1924. The Council of Regency temporarily held the reign until Ahmad Tajuddin reached the age of 18 in 1931. Jatswan S. Sidhu, Historical Dictionary of Brunei Darussalam (Maryland: The Rowman & Littlefield, 2010) 67, 68.
limited as the Sultan is neither bound by the decision of the Council,\(^\text{11}\) nor are the decisions by the Council valid without the consent of the Sultan.\(^\text{12}\)

This absolute power of the Sultan is also evident when it comes to the legislative powers of the Sultan and his central role in changing the law, that is constitutional and law making procedure.

The Privy Council advises the Sultan in matters concerning constitutional reforms and the appointments of persons to Malay customary positions.\(^\text{13}\) The control the Sultan has over this Council is evident in the rules regarding the establishment of the Council. According to Article 5 of the Constitution, Privy Councillors are appointed by the Sultan and the tenure is held at the Sultan's pleasure.

Article 39 of the Constitution states that the Sultan makes laws, and while the Legislative Council may reject a bill, the Sultan after considering the negative resolution, can still pass the bill.\(^\text{14}\) Therefore the role and influence of this body is tenuous at best.\(^\text{15}\) It was suspended in early 1984, was only reinstated in 2004 following constitutional reforms which broadened the Sultan's powers. Tey summarises the effects of the amendments as having:

provided for the Sultan's unfettered legislative authority, rendered the Legislative Council a meaningless rubber stamp chamber, centralized and accentuated the executive authority in the person of the Sultan, enhanced protection of the Sultan's status as an absolute sovereign and ousted judicial review. The Sultan was now clearly made 'above the law', with the effect that the Constitution is certainly not a superior law in Brunei. Instead, the Sultan has become the state’s Grundnorm.\(^\text{16}\)

In September 2004, the Legislative Council was revived and 21 members appointed, with no immediate timetable for election of the proposed 15 directly elected members. The Sultan has the power to suspend any of those members "for such reason as may appear [...] to be good and sufficient."\(^\text{17}\) Members of the Legislative Council are furthermore precluded to introduce or propose any legislation that might have the “effect of lowering or adversely affect directly or indirectly the rights, position, discretion, powers, privileges, sovereignty or prerogatives” of the Sultan.\(^\text{18}\)

One year later, the Sultan dissolved the existing Legislative Council and appointed 29 new members.\(^\text{19}\) The theme of disbanding the Legislative Council continued in the following years. In March 2011, after its first five-year term, the Legislative Council was disbanded and replaced by a newly appointed and expanded

\(^{11}\) Article 19 of the Constitution.

\(^{12}\) Article 19A of the Constitution.

\(^{13}\) Article 6 of the Constitution.

\(^{14}\) Article 43 (3), (4) and (5) of the Constitution.


\(^{17}\) Article 31(5) of the Constitution.

\(^{18}\) Article 42(1)(d) of the Constitution.

\(^{19}\) According to Article 1, 2nd Schedule of the Constitution, the Legislative Council consists of no more than 45 members, 30 of those members are appointed by the Sultan and up to 15 members who are elected in accordance with the laws relating to elections in force in Brunei Darussalam. Freedom House, *Freedom in the World: Brunei Report 2013*, <https://freedomhouse.org/report/freedom-world/2013/brunei> accessed 27 March 2016.
33-member council in June 2011. In March 2014, the council included 19 appointed members, 11 cabinet members, the Sultan as well as royal family members including Prince Al-Muhtadee Billah, and Prince Mohamed Bolkiah. The 19 appointed members represented Brunei’s four administrative districts, cheteria (titled officials), and professional, social, and religious groups. Commentators such as Kershaw made an observation in 2007 that the Council is tightly controlled by the Sultan, and this still holds true today.

In addition to the executive and legislative powers, the Sultan wields religious power as head of religion. The Islamic Religious Council, as provided in Article 3(3) of Brunei’s Constitution, is “responsible for advising His Majesty the Sultan and Yang Di-Pertuan on all matters relating to the Islamic Religion.” Its very broad general authority is granted in Section 38 of the Religious Council and Kadis Court Act, Cap 77, 1984:

[t]he Majlis shall, on behalf of and under the authority of His Majesty as Head of the Religion of Brunei Darussalam, aid and advise His Majesty on all matters relating to the religion of Brunei Darussalam, and shall in all such matters be the chief authority in Brunei Darussalam, save in so far as may be otherwise provided by this Act.

In consultation with the Sultan, the Religious Council is the highest religious authority in Brunei. The Religious Council has broad authority to independently initiate policies regarding Islamic law. As Müller stated, “in the absence of democratic institutions or an influential civil society, the Islamic bureaucracy [comprising the Islamic Religious Council and the Ministry of Religion as well as the State Mufti Department] has become the sultanate's most powerful political actor outside of the royal family.” Yet its powers are not unfettered as the Sultan has the power to veto any of its decisions.

As the Sultan has these five councils at his disposal, they are not providing any checks and balances on his power. Therefore “there is no alternative locus of power to the ‘soft authoritarianism’ of the Sultanate.”

In addition to the constitutional framework, the authority of Brunei’s absolute monarchy is formally enshrined in the state ideology of “Melayu Islam Beraja” (MIB, “Malay Muslim Monarchy”), which explicitly equates sovereignty and political legitimacy with the Sultanate, Islam and Malay identity and which, arguably, are sacrosanct.

21 Ibid.
23 Article 3(2) of the Constitution.
27 Members of the Legislative Council are not allowed to introduce or propose a bill without the approval of the Sultan 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 (known in English as Malay Islamic Monarchy)”, Article 42 (1)(e) of the Constitution. The members are also not allowed to speak or make comments that “directly or indirectly derogatory of the rights, status, position, powers, privileges, sovereignty or prerogatives of His Majesty the Sultan and Yang Di-Pertuan, his Successors, His Consort or other members of the Royal Family or the National Philosophy of Malay Islamic Monarchy”, Article 53(1A)(a) of the Constitution.
The central role that Islam plays in the make up of Brunei is evident in the new Syariah Penal Code Order 2013 (Perintah Kanun Hukuman Jenayah Syariah 2013), which had in particular far-reaching consequences on the judicial structure in Brunei. Previously, Brunei's legal system could be described as a dual legal system with Islamic law and civil law side by side. The civil legal system is based on English Common Law with the UK Privy Council, Supreme Court, Intermediate Court and Subordinate Courts. The new additions to the civil legal system are:

- the Juvenile Court which was established in 2011 and has jurisdiction over criminal offences committed by juveniles below 18 years of age, juveniles who are beyond parental control and juveniles who are in need of care and protection orders;
- the Small Claims Tribunal established in 2013 which hears private summons based on either contract or tort law and have claims under $10,000.00 BND; and
- the Commercial Court which came into operation in 2015.

As stated above, the Islamic legal system operated alongside the civil legal system. The Syariah Courts Act, Cap 184, of 2000 introduced a three-tier Islamic court system consisting of the Syariah Subordinate Courts, the Syariah High Court and the Syariah Appeal Court. Originally the jurisdiction of the Syariah courts was limited to Muslims. In civil law matters, its jurisdiction was confined mostly to family law, and in criminal matters to specific religious offenses mentioned in the Religious Council and Kadis Court Act 1984; the Islamic Family Law Emergency Order 1999; the Syariah Courts Act 2000; and the Syariah Courts’ Civil Procedure Order 2005.

The new Syariah Penal Code Order 2013 broadened the criminal jurisdictions of the Syariah courts and certain provisions are applicable to non-Muslims as well, for instance

- the public consumption or advertisement of alcohol by non-Muslims can result in imprisonment not exceeding two years and/or a fine not exceeding $8,000 BND (Sections 104(5) and 104(6));
- non-Muslims are also prohibited from using certain words deemed to be reserved for the exclusive use of Muslims, except for citation or reference (Section 217(2)). These appear in Part II of the Fifth Schedule and include “Allah,” “fatwa,” “hadith,” “haji,” “hukum syaria,” “imam,” “mufti,” “solat,” etc. The punishment is a fine of $12,000 BND and/or imprisonment of up to three years.

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28 To call this law “secular” or “state” law would arguably be a misnomer. According to Article 3(1) of the Constitution, “[t]he official religion of Brunei Darussalam shall be the Islamic religion.” Unlike in neighbouring Malaysia, there has not been a discussion as to whether this would make Brunei an Islamic state or a not. The answer has always been affirmative for the former. Therefore no law in Brunei is secular. Furthermore, Islamic law in Brunei is state law as syariah (Islamic law) is encapsulated in Acts and Orders. The term civil legal system is therefore adopted to describe the non-Islamic legal system.


The introduction of the Syariah Penal Code Order 2013 has had significant implications for the behaviour of non-Muslim Bruneians and how they exercise their freedom of religion. In 2014, for example, “the religious police ordered shops and restaurants to remove trees, decorations and even Santa Claus hats on pain of five years’ in jail.” In a press release issued a few days later, the Ministry of Religious Affairs reaffirmed that “public displays of Christmas cheer - or any other non-Islamic religious festival - were prohibited under sharia.” Educational institutions are also affected by the new rules, with “[c]hurch schools [...] banned from teaching Christianity and compelled to teach Islam.” It has even been reported that St Andrew’s school, a Christian school in Bandar Seri Begawan, the capital, “had to drop its school hymn because of its reference to “the Lord”.” The consequences of the Syariah Penal Order 2013 has been described as placing “extensive restrictions on the freedom of thought, conscience, and religion, while also prescribing draconian punishments for their violations.”

Given the punishments envisioned in the Syariah Criminal Order 2013, it is quite interesting to note that Brunei ratified the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) in 2015. The government of Brunei did make a broad reservation to the Convention, stating that

> [t]he Government of Brunei Darussalam reserves the right to formulate and communicate, upon ratification, such reservations, interpretative understandings, and/or declarations which it might consider necessary.

Interestingly, no specific reservation has been made in regard to the application of Islamic law and the punishments carried out under it.

In relation to international human rights treaties in general, Brunei has been described as the “most reluctant ratifiers” of the AC countries, together with Singapore and Myanmar. This might be because MIB has been elevated to the official state ideology and, since independence, the governments consistently rejected in particular ideas of liberalism which are arguably closely connected to international human rights.

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33 Adam Minter, ‘Sharia shakes up Southeast Asia - Nowhere is the tension between modernity and fundamentalist Islam more on display’, *Pittsburgh Post-Gazette (PA)*, 25 January 2015.


37 As discussed below, news regarding the implementation of the Syariah Penal Code Order 2013 are scarce and so far only convictions for minor offences have been handed down.


### TABLE 2
ADMINISTRATION OF JUSTICE GRID

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Figure</th>
</tr>
</thead>
</table>
| No. of judges in country | Supreme Court  
  • 1 Chief Justice  
  • 2 High Court judges  
Intermediate Courts  
  • 8 Intermediate Court judges  
Subordinate Courts  
  • 1 Chief Magistrate  
  • 3 Senior Magistrates  
  • 5 Magistrates |
| No. of lawyers in the country | According to a statistic provided by the Prime Minister's Office, there are 34 law firms operating in Brunei in 2016 and 107 advocates with a practising certificate. |
| Annual bar intake (including costs and fees) | Not applicable as Brunei accepts qualifications from a variety of institutions, including from outside the country. |
| Standard length of time for training/qualification | Qualifications can be obtained from numerous jurisdictions, on average about 4 years, though less for Syariah advocates. |
| Availability of post-qualification training | Ad hoc training appears to be available. |
| Average length of time from arrest to trial (criminal cases) | No data available. |
| Average length of trials (from opening to judgment) | No data available. However, a new Judiciary Case Management System (JCMS) was implemented in 2015 in order to streamline and speed up procedures, implying there is room for improvement. This electronic management system was implemented by the State Judiciary Department for civil courts in all four districts in order to establish and maintain an efficient way to manage court documents as well as provide access for both the public and legal community. |
| Accessibility of individual rulings to public | Judgments are available. |

### Appeal structure

<table>
<thead>
<tr>
<th>Cases before the National Human Rights Institution</th>
<th>For the civil legal system</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not applicable as there is no such institution</td>
<td>Privy Council (limited jurisdiction only in certain civil cases)</td>
</tr>
<tr>
<td></td>
<td>Supreme Court</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Intermediate Courts</td>
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<td></td>
<td>Intermediate Courts</td>
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</tr>
<tr>
<td></td>
<td>For the Islamic legal system</td>
</tr>
<tr>
<td></td>
<td>Sultan</td>
</tr>
<tr>
<td></td>
<td>Syariah Appeal Court</td>
</tr>
<tr>
<td></td>
<td>Syariah High Court</td>
</tr>
<tr>
<td></td>
<td>Syariah Subordinate Court</td>
</tr>
</tbody>
</table>
### Complaints filed against the police, the military, lawyers, judges/justices, prosecutors or other institutions (per year)\(^{44}\)

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of persons investigated for corruption</th>
<th>Number of persons prosecuted for corruption</th>
<th>Number of persons convicted for corruption</th>
<th>Number of public officers convicted for corruption</th>
<th>Number of public officers disciplined for corruption</th>
</tr>
</thead>
<tbody>
<tr>
<td>1982-2013 (^{45})</td>
<td>2,469</td>
<td>284</td>
<td>231</td>
<td>209</td>
<td>*260</td>
</tr>
<tr>
<td>2014 (^{46})</td>
<td>63</td>
<td>62</td>
<td>8</td>
<td>NA</td>
<td></td>
</tr>
<tr>
<td>2015 (^{47})</td>
<td>530</td>
<td>0</td>
<td>8</td>
<td>NA</td>
<td>*210</td>
</tr>
</tbody>
</table>

### Complaints filed against other public officers and employees

No other data available apart from the above.

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44 Table partially based on David Seth Jones (2016), ‘Combatting corruption in Brunei Darussalam’, 5(2) Asian Education and Development Studies, 148. Please note that the table has been updated based on the following sources.

Please also note that some date seems to be conflicting and given the lack of official statistics impossible to reconcile. The data is marked with *. The data for 2014 and 2015 in the source is an aggregated total for the years the Anti Corruption Bureau (ACB) has been operative. The newspaper article states that there have been 210 reprimands implying this was over the total operative number of years of the ACB. This however appears to contradict the information from the ACB’s website which states that in total 260 disciplinary actions were taken. If there were 210 disciplinary actions in 2015, this would indeed be a significant increase in actions compared to the previous years.


46 Numbers based on newspaper article by Quratl-Ain Bandidal, ‘Brunei stands firm against corruption’, The Brunei Times, 10 December 2014.

47 Numbers based on newspaper article by Quratl-Ain Bandidal, ‘Fight against corruption must be a collective effort’, The Brunei Times, 10 December 2015.
II. COUNTRY PRACTICE IN APPLYING THE CENTRAL PRINCIPLES OF RULE OF LAW FOR HUMAN RIGHTS

As noted in the 2011 Rule of Law Baseline Study, Brunei’s unique constitutional structure as well as technically being in a state of emergency for over five decades mean that for every indicator that will be discussed below, the Sultan is above the law.

A. On Central Principle 1
   (Government and its officials and agents are accountable under the law)

Definition and Limitation of the Powers of Government in the Fundamental Law

As stated above, there is no separation of powers. The executive and legislative powers rest with the Sultan, while the Cabinet of Ministers and the Legislative Council have subordinate roles. When the Legislative Council was reinstated in 2004, the newly added Article 84(2) of the Constitution made the limitations of this Council clear, stating that “nothing in this Constitution shall be deemed to derogate from the prerogative powers and jurisdiction of [...] the Sultan who [...] retains the power to make laws and to proclaim a further Part or Parts of the law of this Constitution as [...] the Sultan [...] may seem expedient.”

The absolute power of the Sultan is further cemented by the State of Emergency declared more than five decades ago. The emergency powers in Article 83(3) of the Constitution (and Section 3(1) of the Emergency Regulations Act, Cap 21, 1984) grant the Sultan absolute discretion to issue Orders as long as the Sultan himself considers such Orders to be “desirable in the public interest” and thus there are no external limits to these powers according to the Constitution.

The decisions, acts, etc. of the Sultan are final with no judicial review available for them, Article 84C of the Constitution makes this explicitly clear. Moreover the newly introduced Syariah Penal Code Order 2013 under Section 230 exposes a person who “contempts, neglects, contravenes, opposes or insults” (sic) a titah or decree of the Sultan and Yang Di-Pertuan to a prison term of up to five years. This provision is applicable to Muslims and non-Muslims alike. No similar provision existed in the civil Penal Code, Cap 22, 1951.

Amendment or Suspension of the Fundamental Law

Article 85(1) of the Constitution grants the Sultan the exclusive power to amend the Constitution. Based on the amendments made in 2004 to the Constitution, the Sultan has to submit the draft of the constitutional amendment to the Privy Council but is not bound to act in accordance with the advice of that Council.

The only judicial review of the Constitution can be carried out through an International Tribunal with members being appointed by the Sultan.
**Laws Holding Public Officers and Employees Accountable**

Internationally, Brunei signed and ratified the United Nations Convention against Corruption (UNCAC)\(^{51}\) and is a member of the Asia/Pacific Group on Money Laundering (APG),\(^{52}\) but is not a member of the Asian Development Bank (ADB)/OECD Anti-Corruption Initiative for Asia and the Pacific.\(^{53}\)

In the 2013 *Corruption Perception Index*, the latest that included Brunei, the country had a score of 60, with zero being very corrupt and 100 very clean. In terms of perceived “cleanliness,” it was ranked 38\(^{\text{th}}\) out of 177 countries—second in ASEAN only after Singapore.\(^{54}\) There is, however, no data provided in the 2014 or 2015 reports.\(^{55}\)

In line with the absolute power of the Sultan, the Sultan receives immunity in his private and public capacity.\(^{56}\) In addition to this, his “act, decision, grant, revocation or suspension, or refusal or omission to do so, any exercise of or refusal or omission to exercise any power, authority or discretion” are not subject to judicial review.\(^{57}\)

For officials working on behalf of the Sultan, immunity is granted for actions conducted in their official capacity, although provisions can be made by written law against these officials to initiate proceedings against them.\(^{58}\) In addition, their actions are also not subject to judicial review.\(^{59}\)

Two legislations, the Prevention of Corruption Act, Cap 131, 1984 and the Penal Code, Cap 22, 1951\(^{60}\) provide the provisions to hold public officers and employers accountable for certain actions. In 2015, the Prevention of Corruption (Amendment) Order 2015 was enacted following several “high profile” cases including “the jailing of the surveyor-general on four counts of corruption, and the indictment of a high-ranking police officer for accepting a luxury car from a convicted criminal.”\(^{61}\)

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\(^{51}\) See the UN webpage on the signature and ratification status [https://www.unodc.org/unodc/en/treaties/CAC/signatories.html], accessed 10 April 2016.

\(^{52}\) See [http://www.apgml.org/members-and-observers/members/details.aspx?m=2bdc69a1-2844-4db3-8024-4000d87e9f0d], accessed 10 April 2016.

\(^{53}\) Brunei is not on the list of member states, [https://www.oecd.org/site/adboecdanti-corruptioninitiative/theinitiativesmember-countriesandeconomies.htm], accessed 10 April 2016 but is listed as observer in some of the Steering Committee's meeting minutes. The last one being the 18\(^{\text{th}}\) Steering Group Meeting in 2013, [https://www.oecd.org/site/adboecdanti-corruptioninitiative/18thsteeringgroupmeeting.htm], accessed 10 April 2016.


\(^{56}\) See Article 84B(1) of the Constitution.

\(^{57}\) Article 84C(2) of the Constitution.

\(^{58}\) Article 84B (2) of the Constitution.

\(^{59}\) Article 84C (2) of the Constitution.

\(^{60}\) Specifically Chapter IX of the Penal Code lists the offences by or relating to public servants. Please note that the new Syariah Penal Code Order 2013 does not have any similar provisions. There are only exceptions provided, for instance for a Syariah court judge who in good faith believes himself to be acting accordingly to the law when acting in his capacity as a judge, Section 7 Syariah Penal Code Order 2013.

\(^{61}\) Quratul Ain Bandidal 'Fight against corruption must be a collective effort', *The Brunei Times*, 10 December 2015.
The new Order in particular focused on the integrity and honesty of public officers, a concern that had been raised by the Sultan previously, and it also ensures compliance with UNCAC. Changes include

- the inclusion of a new section 12A which considers it an offence if a public officer uses public funds for private purposes, gives undue preferential treatment, misuses information acquired in the course of his duties or conducts himself in such a manner as to bring his private interests into conflict with his public duties.

- a new Section 12B punishes wilful misconduct or neglect of duty which amounts to an abuse of public trust in the office holder.

It is not necessary to receive a gratification or monetary benefit in order to be sentenced for one of these offences. Furthermore, a public officer can be found guilty for these offences if he is found to be involved in the abuse of powers or discretion, misuse of official functions or failure to declare any conflicts of interest.

Further amendments include the list of Public Bodies in the Schedule and the interpretation of “public body” in Section 2 to include Government Linked Companies and statutory bodies.

In addition, the Criminal Asset Recovery Order 2012 was passed. It is designed to further strengthen the efforts to fight financial crimes, including corruption. The Order broadens the authority of the Financial Intelligence Unit, for instance allowing it to suspend transactions for a limited period of time and access and review information related to the government, financial institutions or non-financial businesses and professions. The Order allows for certain sanctions such as restraining orders, recovery orders, confiscation orders, etc. to be carried out for conduct that occurred before the Order came into force.

Special Courts and Prosecutors of Public Officers and Employees

There are no separate courts and prosecutors to handle cases against public officers and employees. The Anti-Corruption Bureau (ACB) investigates the cases, and the prosecution and hearing is conducted in the criminal court system.

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64 The summary of these changes is based on the speech by the then Attorney-General Yang Berhormat Datin Seri Paduka Hajah Hayati binti POKSDSP Hj Mohd Salleh, Opening of the Legal Year 2016, 4 February 2016, <http://www.malaysianbar.org.my/speeches/speech_by_yang_berhormat_datin_seri_paduka_hajah_hayati_binti_poksdsp_hj_mohd_salleh_attorney_general_of_brunei_at_the_opening_of_legal_year_2016_brunei_4_feb_2016.html> accessed 10 April 2016. Please note that the Order is not yet available online at time of writing.
65 Section 33(2) Criminal Asset Recovery Order 2012.
66 Section 31(2) Criminal Asset Recovery Order 2012.
67 Section 48(3) Criminal Asset Recovery Order 2012.
B. On Central Principle 2 
(Laws and procedures for arrest, detention and punishment are publicly available, lawful, and not arbitrary)

Publication of and Access to Criminal Laws and Procedures

Acts and Orders have been accessible from the website of the Attorney-General’s Chambers free of charge since 2008. Printed copies may also be purchased from the Attorney-General’s Chambers in Bandar Seri Begawan at nominal sums.

Cases heard in Brunei are published in the annual Judgments of the Courts of Brunei Darussalam (JCBD) published by the government. A list of cases decided in the Supreme Court since 2010 are available from the Prime Minister’s Office website for the Judiciary.68

Accessibility, Intelligibility, Non-retroactivity, Consistency, and Predictability of Criminal Laws

Most laws are published only in English and very few, mostly pertaining to Islamic law, have been officially translated into Malay. There may thus be some difficulties in accessibility for the general population, although court-appointed interpreters mitigate this risk.69

Predictability of criminal law is closely linked to the idea that laws should also not be given retroactive effect. Changing the law retroactively undermines the predictability of the law as the criminal law did not exist at the time when the conduct in issue occurred. Some criminal laws, it appears, can be given retroactive effect. For example, Article 40 of the Prevention of Corruption Act, Cap 131, 1984 allows for the Act to be applied retroactive. This is however not applicable to the more general criminal laws as neither the Syariah Penal Code Order 2013 nor the Penal Code, Cap 22, 1951 provide for their sections to be applied retroactively.

Preventive Detention

While the law prohibits arbitrary arrest and detention, preventive detention is possible under two legislations.

Under the Criminal Law (Preventive Detention) Act, Cap 150, 1984, the Minister of Home Affairs can make an Order to detain a person for up to a three-year period.70 The order has to be referred to an advisory board within 28 days of having been made. The advisory board is appointed by the Minister of Home Affairs with the approval of the Sultan.71

The Internal Security Act (ISA), Cap 133, 1984 also provides for detention of suspects without trial for renewable two-year periods. An advisory board appointed by the Sultan72 reviews individual ISA detentions and recommends whether they should be renewed for an additional two years. In 2013 and 2014 there were

69 Proceeding before the Syariah courts is the Malay language though it may allow the use of any other language in the interest of justice, Section 7(2)(a) Syariah Courts Act, Cap 184, 2000.
70 Section 2 Criminal Law (Preventive Detention) Act 1984.
71 Section 10 Criminal Law (Preventive Detention) Act 1984.
72 Section 5(2) Internal Security Act, Cap 133.
no detainees under ISA. In 2015, the media reported the detention of two police officers under ISA. Staff Sergeant Baha Hj Damit was issued a two-year detention order for allegedly providing protection as well as operational information to criminals within and outside the country involved in illegal activities including gambling, prostitution and illegal supply of alcohol into the Sultanate. Hj Khairur Rijal Hj Abu Salim, former head of Special Investigation Unit at the Royal Brunei Police Force, was also detainted under ISA for also abetting criminals. A foreign national, Koh Tieng Poh, was under a two-year restriction order under ISA for his involvement with Hj Khairur Rijal Hj Abu Salim and in activities that jeopardised the security of the country.

**Rights of the Accused**

As stated above, the Constitution does not provide for an independent judiciary nor does it include any fundamental rights. Certain rights of an accused are however considered part of the legal system as stated by then Chief Justice Yang Amat Arif Mohammed Saied:

> I say that our criminal justice system is time honoured, has been tested over the centuries and has survived with on-going amendments to the laws to meet the demands of changing times and for dealing with more sophisticated and white-collar crimes, but what has not altered an iota are the three fundamental principles upon which the fate of an accused person is decided by our courts; those being first, the **presumption of innocence**, that is, an accused is presumed to be innocent until proven guilty, the second that the burden that is on the **prosecution of proving the accused guilty is proof beyond reasonable doubt**, and the third that all are **equal before the law** and are treated alike by the country’s courts, so that the personality of the parties does not matter [emphasis added].

These rights are, however, not necessarily applicable to detainees under the ISA, for instance, they are not presumed innocent and are denied right to counsel.

An arrest can only be made if approved by a magistrate except in cases when the police is unable to obtain an endorsement in time to prevent the flight of a suspect. The police can detain a suspect for up to 48 hours before they are obliged to bring the individual before a magistrate. It appears practice that during those 48 hours there is no access to the detained individual. In criminal proceedings, the accused

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74 *ISD Detains Second Cop*, *The Brunei Times*, 25 April 2015; Rabiatul Kamit, ‘Ex-head of CID unit issued order of detention,’ *The Brunei Times*, 5 April 2016.

75 Ibid.


78 In 2013 and 2014 there were no reports that the accused had been deprived of this right to a hearing. See US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports for Brunei for 2013 and 2014*, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> accessed 10 April 2016.

79 This is not applicable to detainees under the ISA.
has the right to a defence counsel. Only in cases where an accused is charged with a death penalty offense is legal aid available. This provision of legal aid is subject to certain conditions and legal representation is not appointed as of right. Defendants when applying for legal aid have to undergo an examination of their financial means and if it is assessed that the defendants clearly could not afford their own counsel, legal representation would be appointed for them by the court.

Based on statistics gathered for the past 10 years, 19 applications were granted for legal aid with a sum of about $318,170.00 having been paid out to legal representatives under the scheme. This supports the importance of the legal aid scheme as part of the justice system.  

Legal aid in general is considered one of the challenges of the legal system in Brunei. In 2016, the then re-elected president of the Law Society appealed to law firms to provide more legal services to people who could not afford legal fees. 

The right of appeal is explicitly mentioned in the Criminal Procedure Code, Cap 7, 1951. Section 271 allows the accused person to appeal to the High Court which therefore has appellate and original jurisdiction in certain criminal matters. In cases where the High Court has original jurisdiction, a further appeal is possible to the Court of Appeal which allows the public prosecutor and the trialled person to appeal.

The Relationship between Penal Code, Cap 22, 1951 and the Syariah Penal Code Order 2013

Following the enactment of the Syariah Penal Code Order 2013, there is now potential overlapping jurisdiction for certain offences to be trialled under the Penal Code and the Syariah Penal Code as the latter, unlike previous Islamic legislations, is applicable to Muslims and non-Muslim.

Non-Muslims have expressed concern about some other aspects of the Sharia Penal Code, which appear to restrict their personal freedoms. For instance, there were concerns expressed as to whether non-Muslims would be allowed to eat at non-halal restaurants during the month of Ramadan. It remains to be seen whether the relevant authorities will adopt entirely the liberal practices of other countries that employ sharia law, such as UAE, compared with other nations, such as Saudi Arabia, that enforce sharia practices very strictly.

The decision as to where the case will be filed will initially be done by the public prosecutor. The then Attorney General also tried to assure that in cases of concurrent jurisdiction such as murder, only the provisions of the sharia law will be applied if the stringent evidentiary conditions required by Islamic law are fulfilled; otherwise the

82 Section 17 Supreme Court Act, Cap 5, 1984.
83 Sections 406 and 414 Criminal Procedure Code, Cap 7, 1951 and Section 19 Supreme Court Act, Cap 5, 1984.
existing penal code will continue to apply.\textsuperscript{85}

News of application of the Syariah Penal Code Order 2013 is scarce, with reports claiming that “[s]o far there have been only two prosecutions for minor offences under the first part of the new code.”\textsuperscript{86} One prosecution involved an immigrant Indonesian worker charged with smoking during the fasting hours of Ramadan, resulting in a conviction of six months imprisonment in lieu of a fine. Another case included khalwat, or close proximity causing suspicion.\textsuperscript{87}

It therefore remains to be seen how the overlap of those two jurisdictions will play out in the future as the interaction still remains to be tested in practice.

\section*{C. On Central Principle 3
(The process by which the laws are enacted and enforced is accessible, fair, efficient and equally applied)

Law Enactment

\textit{Openness and Timeliness of Release of Record of Legislative Proceedings}

Attending the sessions of the Legislative Council is reserved to members, with the Sultan or the Speaker having the power to summon a person to address the Council.\textsuperscript{88} The Council meets at least once a year with sessions having to take place within 12 months of each other.\textsuperscript{89} Minutes of the Legislative Council are kept by the Clerk of the Council.\textsuperscript{90} There is however no law that gives the public rights to access government information, although certain material is available.\textsuperscript{91} The \textbf{Brunei Times} provides reports on certain topics discussed in the Legislative Council sessions.\textsuperscript{92}

Public participation and feedback in the drafting of laws is not provided for under Brunei law, except that bills are to be published in the \textit{Gazette} save in a case of urgency.\textsuperscript{93} Brunei is technically still under state of emergency allowing the Sultan to issue Orders under Article 83(3) of the Constitution which are in the public interest. Those are to “be published in the \textit{Gazette} as soon as circumstances permit.”\textsuperscript{94}

\textsuperscript{86} Richard Lloyd Parry, ‘Fear of Sharia stalks opulent Brunei: Homosexuals face being stoned to death after sultan’s legal changes, writes Richard Lloyd Parry’, \textit{The Times}, 6 June 2015.
\textsuperscript{88} See Article 34 of the Constitution.
\textsuperscript{89} See Article 52 of the Constitution.
\textsuperscript{90} See Article 51 of the Constitution.
\textsuperscript{92} The reports pick up certain discussions that are deemed important <http://www.bt.com.bn/legco> accessed 16 April 2016
\textsuperscript{93} Article 41(1) of the Constitution.
\textsuperscript{94} Article 83(8) of the Constitution.
Equality before the Law

Equality before the law is one aspect of rule of law. As mentioned above, the Sultan and government authorities are granted immunity for actions carried out in their official capacities under Article 84(B) of the Constitution. Nevertheless, provisions may be made by written law for proceedings against anyone except the Sultan for wrongs committed in the course of official duties.

Equality arguably also includes gender equality meaning that everyone has access to the same rights and freedoms as everyone else. The new Syariah Penal Code Order 2013 has been criticised for its gender discrimination in two aspects, women as offenders and also women as providing evidence before the Syariah courts. Regarding the former, Emerlynne Gil of the International Commission of Jurists commented that

> [t]he code does prescribe that stoning to death applies regardless of whether the offender is male or female … studies have shown that in countries where stoning is still imposed, women face more risks of receiving this penalty […] because of the institutionalisation of gender discrimination in the laws. Women are more likely to receive the penalty of stoning to death because for instance, there is the visible evidence of pregnancy, so […] women are more easily found to have engaged in extramarital relations, or having committed adultery.95

The Syariah Penal Code Order 2013 distinguishes as to how certain offences can be proven. It refers to the Syariah Courts Evidence Order of 2001, which, in Section 106, prescribes the number of witnesses who must provide evidence of an offence having been committed, and authorises the substitution of a single male Muslim witness by two female Muslim witnesses.96

Reparation for Crimes and Human Rights Violations’ Victims/ Survivors

There are different mechanisms regarding the reparation for victims of crime. In accordance with Islamic law, the Syariah Penal Code Order 2013 allows the victim of a crime or the relatives to accept compensation in lieu of punishment. It generally grants wali-ad-dam (heir or relatives of the victim) the opportunity to inflict qisas (retaliation),97 pardon the offender,98 or compound the qisas with badal-al-sulh (compensation).99

Section 382 of the Criminal Procedure Code, Cap 7, 1951 provides the courts with the power to order the payment of compensation to “any person or the representatives of any person, injured in respect of his person, character or property by the crime or offence for which the sentence is passed.” Such order for payment does not preclude a right to a civil remedy for recovery of any property or damages.

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96 Section 106(6) Syariah Courts Evidence Order of 2001, except in certain circumstances.
97 Section 131 Syariah Penal Code Order 2013. Qisas (Ar.) is defined in s 118 as “retaliation or similar penalty for offences of qatlul-‘amd or causing hurt”.
98 Sections 133, 142, 149 and 173 Syariah Penal Code Order 2013.
Law Enforcement

The crime rate in Brunei is low and the country unmarked by social or political violent conflict. The police force has been described as “generally professional and courteous.”\(^{100}\) Most crimes are non-violent crimes of opportunity, including petty theft and residential or vehicle break-ins.\(^{101}\)

Yet the police has been criticised not least by the Sultan himself when in 2015, he censured the police for “corrupt practices, questioning why only 21 per cent of criminal cases were solved in 2014.”\(^{102}\) In order to address the issue of corruption in the law enforcement, the Prevention of Corruption (Amendment) Order 2015 was passed.

D. On Central Principle 4
(Justice is administered by competent, impartial, and independent judiciary and justice institutions)

Appointment and Other Personnel Actions in the Judiciary and among Prosecutors

Although there have been significant changes in the structure of the judicial system, with the creation of new courts and the expansion in the jurisdiction of Syariah courts, the manner of appointing prosecutors and judges remains the same. The Sultan of Brunei appoints members of the judiciary and maintains wide latitude with regard to their discipline and dismissal.

While the laws provide for the necessary qualifications of judges of the Supreme Court\(^{103}\) and Intermediate Courts\(^{104}\) as well as Judicial Commissioners of the Supreme Court,\(^{105}\) the Sultan “may appoint any fit and proper person” to a judgeship in the Subordinate Courts.\(^{106}\) The Sultan also may appoint as many judges to the Intermediate Courts as he may think fit.\(^{107}\) For the Chief Syariah Judge, Syariah Appeal Court judges, or High Court judges, the requirement is seven years of experience as a Judge of a Syariah Court, or Kadi, or “being learned in Hukum Syara.” Syariah Court judges are appointed by the Sultan on the advice of the President of the Majlis and after consultation with the Majlis.\(^{108}\)


\(^{101}\) Ibid.

\(^{102}\) Quratul-Ain Bandidal, ‘HM censures police for corrupt practices’, The Brunei Times, 1 April 2015.

\(^{103}\) See Section 7 Supreme Court Act, Cap. 5, 1984.

\(^{104}\) See Section 10 Intermediate Courts Act, Cap 162, 1999.

\(^{105}\) See Section 11(1) Supreme Court Act Cap 5, 1984 requires Judicial Commissioners to posses the same qualifications as Supreme Court Judges. Section 11(5) provides the powers of the Commissioners as follows:

A Judicial Commissioner appointed under this section shall have power to act as a Judge and all things done by him in accordance with the terms of his appointment shall have the same validity and effect as if they had been done by a Judge and in respect thereof he shall have the same powers and enjoy the same immunities as if he had been a Judge.

\(^{106}\) See Section 9, Supreme Court Act, Cap 5, 1984.

\(^{107}\) See Section 10(2) Intermediate Courts Act, Cap 162, 1999.

\(^{108}\) Sections 8, 9, 10 Syariah Courts Act, Cap 184, 2000.
The Attorney General, who is at the same time the Public Prosecutor, is appointed by and holds office at the pleasure of the Sultan.\textsuperscript{109} The Sultan “may from time to time appoint fit and proper persons to be Deputy Public Prosecutors who shall be under the general control and direction of the Public Prosecutor.”\textsuperscript{110} The Sultan, on the advice of the President of the Majlis and after consultation with the Majlis, also appoints the Chief Syariah Prosecutor, who must possess the qualifications required of a Syariah High Court judge. His Majesty similarly appoints “fit and suitable persons” from members of the public service to be Syariah Prosecutors.\textsuperscript{111}

The laws regarding tenure and removal from office have also remained unchanged. Judges of the Supreme Court as well as the Chief Syariah Judge and Syariah High Court Judges serve until they are 65 years old or beyond if approved by the Sultan.\textsuperscript{112} Judges of the Supreme Court may be removed from office for “inability to perform the functions of his office or for misbehaviour.”\textsuperscript{113} The Sultan may remove Supreme Court judges from office upon the advise of the Judicial Committee of the Privy Council. Pending the decision of the Judicial Committee of the Privy Council, the Sultan may suspend the judge.\textsuperscript{114}

Syariah court judges can be removed from office for misconduct or inability to properly perform their duty upon the recommendation of a tribunal constituted to decide on the matter. Pending the report of the tribunal, the Sultan may, on the recommendation of the Majlis or the Chief Syariah Judge, suspend the Chief Syariah judge or the Syariah judge from performing his duties.

There are no provisions in the Constitution that guarantee the independence of the judiciary. In fact, several provisions of the laws governing the various courts allow for the influence of the Sultan over the court. For instance, the oaths of office of judges of the Supreme Court and Intermediate Court are by law prescribed by the Sultan.\textsuperscript{115} Further, the Sultan has the authority to direct a civil or Syariah court to hold the hearing of any proceedings at a time and place of his choosing.\textsuperscript{116}

Nonetheless, despite the absence of guidelines to ensure independence, there is no information to indicate that the executive government exerts pressure with regard to how actual controversies are to be decided. The US Department of State’s \textit{2014 Investment Climate Statement} reported that “in practice the court system operates without government interference. Post has received no complaints from companies regarding the judicial system.”\textsuperscript{117}

\begin{flushright}
109 Articles 81(1) and 81(6) of the Constitution; Section 374(1) Criminal Procedure Code, Cap 7, 1984.  
112 See Section 8, Supreme Court Act, Cap 5, 1984.  
113 See Section 8(2) Supreme Court Act, Cap 5, 1984.  
114 See Section 8(3) and (4) Supreme Court Act, Cap 5, 1984.  
115 See Section 10 Supreme Court Act, Cap. 5, 1984; Section 10(4) Intermediate Courts Act, Cap 162, 1999.  
116 Section 27B(3) Syariah Courts Act, Cap 184, 2000; Section 15(6) Supreme Court Act, Cap 5, 1984; Section 7(5) Intermediate Courts Act, Cap 162, 1999; Section 7(5) Subordinate Courts, Cap 6, 1984.  
\end{flushright}
Training, Resources, and Compensation

There does not appear to be any regular or systematic training curriculum for the continuous development of prosecutors and judges. Training is however given on an ad hoc basis, presumably based on perceived needs. For instance, to improve case management, plans were developed for both the judicial officers and staff to undergo training in judicial administration, with the aim of improving management of the court systems and management of cases. Judges and prosecutors are also sent abroad for training. In November 2013, four prosecuting officers from the Syariah Prosecution Division attended a one-day course on “Advocacy Skills Course” organised by the Malaysia Syariah Lawyers Association in Kuala Lumpur, Malaysia.

In September 2015, the then new Chief Syariah Judge, Pehin Orang Kaya Paduka Seri Utama Dato Paduka Seri Setia Hj Awg Salim Hj Besar, stated that he is planning to further train Syariah court judges in better handling proceedings once the Syariah Penal Code is fully implemented. The Syariah court system, he disclosed, is developing guidelines for Syariah judges on crime-related cases.

This is because criminal cases that will be heard in the Syariah court, especially on hudud and qisas, are based on the new law that has not yet been carried out especially in Asia, furthermore Brunei is the first country in the region to carry out such law.

In fact, more judges may be needed when the Syariah Penal Code Order 2013 is fully implemented, he said.

Salaries of judges are determined by the Sultan and these are charged to the consolidated budget. There are no Constitutional protections against reduction of salaries.

State’s Budget Allocation for the Judiciary and Other Principal Justice Institutions

In March 2016, the Legislative Council passed a national budget of $5.6 billion BND for the fiscal year 2016-2017. Among the entries under the Prime Minister’s Office, allotments were made for

- the Law Section for $941,415 BND (0.017 per cent of the total budget);
- Attorney General’s Chambers for $10.568 million BND (0.19 per cent of the total budget); and
- the State Judiciary Department for $9.415 million BND (0.17 per cent of the total budget).

The State Judiciary Department was established in May 2002 to oversee the administration and finance of

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119 Hudud are offences that carry specific punishments as stipulated by Syariah. Qisas allows victims or the victim's heirs to inflict equal retaliation against an accused as punishment for an offense, see Sections 118 and 131 Syariah Penal Code Order 2013.

120 Waqiuuddin Rajak, ‘Syariah Court judges to get further training,’ The Brunei Times, 7 September 2015.

121 Section 9 Supreme Court Act, Cap. 5, 1984 and Section 28(b) Syariah Courts Act, Cap 184, 2000.

122 Rachel Thien, ‘LegCo passes $5.6b budget,’ The Brunei Times, 22 March 2016.

the Civil and Syariah courts of Brunei.\textsuperscript{123}

Impartiality and Independence of Judicial Proceedings

Sources generally indicate that, while the law does not provide for an independent judiciary, there are no known instances of government interference in the judiciary. “[J]udges in the common law courts have established a reputation for independence. Practitioners report confidence in the independence of the courts, particularly the Supreme Court.”\textsuperscript{125} It has been noted however, that courts “have yet to be tested in political cases.”\textsuperscript{125}

Similarly, there are no reports of private corporations improperly influencing judicial proceedings. Generally, the government implements laws punishing corruption effectively, with the Anti-Corruption Bureau resourced to conduct investigations and to hold regular corruption prevention programs.\textsuperscript{126} As mentioned above, in the 2013 Corruption Perception Index, Brunei was the second ranked non-corrupt country in ASEAN only after Singapore.\textsuperscript{127} In 2015, while corruption cases were among the prominent ones heard in the country, there was no mention of newly-instituted or on-going corruption complaints against judicial officers during that year.\textsuperscript{128}

Provision of Competent Lawyers or Representatives by the Court to Witnesses and Victims/Survivors

There is no law school teaching civil law in Brunei, although those wanting to train in Syariah law may attend the Universiti Islam Sultan Sharif Ali.\textsuperscript{129} Those aspiring to work in the civil courts must get a civil law degree outside the country, usually from a university in another common law country such as Australia, England, Malaysia, or Wales. This, according to the Judicial Commissioner and Chief Registrar of the Supreme Court, explains why the number of civil lawyers in Brunei is limited.\textsuperscript{130}


\textsuperscript{128} Syazwan Sadikin, ‘Major court cases in 2015,’ The Brunei Times, 12 December 2015.


The number of Syariah lawyers who have applied to practice before the Syariah courts is relatively low. As of June 2014, only 16 out of 103 qualified and registered Syariah lawyers applied to practice in the Syariah courts, a number the Chief Syariah Judge viewed as unsatisfactory to meet the demands the implementation of the Syariah Penal Code will bring. He opined that there should be around 50 practicing Syariah lawyers for cases to run smoothly.\(^{131}\)

Practice in the civil courts is regulated by the Legal Profession Act, Cap 132, 1984. To be admitted as an advocate and solicitor in Brunei, one must have obtained qualification as an advocate, barrister or solicitor in another common law country including England, Northern Ireland, Singapore, Malaysia or Australia.\(^{132}\) In addition to these qualification requirements, an applicant who is not a citizen of Brunei Darussalam or a permanent resident must have been practicing in the United Kingdom, Singapore, Malaysia, Australia or in any other country in the Commonwealth designated by the Attorney General for at least seven years immediately preceding his or her application. Bruneians or Bruneian permanent residents may be admitted even without having obtained qualifications as an advocate, barrister or solicitor overseas “if he has obtained such alternative qualification as may be prescribed.”\(^{133}\) The Chief Justice may declare that there are sufficient advocates in Brunei, after which only nationals of Brunei Darussalam may be admitted as an advocate.\(^{134}\)

According to Section 27 of the Syariah Courts Act, Cap 184, 2000, the Chief Syariah Judge may admit a person who possesses sufficient knowledge about Hukum Syara’ and is suitable to become a Syariah lawyer to represent parties in any proceeding before any Syariah Court. Additional qualifications are provided in Rule 10 of the Syariah Courts (Syar’ie Lawyers) Rules 2002, including that the applicant be a Muslim who has (i) obtained a bachelor’s degree in Syariah from any institution recognised by Brunei, (ii) an advocate or solicitor enrolled under the Legal Profession Act who has passed the Syariah Lawyer Certificate examination, (iii) a Syariah judge, Kadi or Syariah prosecutor for not less than three years, or (iv) has received professional training in Islamic judicial matters or who specializes in Hukum Syara’.\(^{135}\)

**Safety and Security of the Judiciary, Prosecutors, Litigants, Witnesses, and Affected Public**

No information detailing measures to ensure the physical safety of court participants and the judiciary were found, and neither are there reports of recent violence committed against judges, prosecutors, or accused persons by reason of a judicial or administrative proceeding. As noted in the *2011 Rule of Law Baseline Study*, Brunei is a peaceful country and it has remained so in the last five years. As mentioned above, judicial officers are provided legal protection from suit “for any act done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction, provided that he at the time in good faith believed himself to have jurisdiction to do that act.”\(^{136}\)

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\(^{131}\) Rasidah Hab, ‘Only 16 lawyers have applied to practise Syariah law,’ *The Brunei Times*, 27 June 2016.

\(^{132}\) Section 3 Legal Profession Act, Cap 132, 1984.

\(^{133}\) Ibid.

\(^{134}\) Section 12 Legal Profession Act, Cap 132, 1984.


\(^{136}\) Section 33(1) Supreme Court Act, Cap. 5, 1984.
Specific, Non-Discriminatory, and Unduly Restrictive Thresholds for Legal Standing

Order 15 of the Rules of the Supreme Court 2004 details the procedure surrounding causes of actions, counter-claims and parties. It allows the court, on its own or on application, to exclude a person who has been improperly or unnecessarily made a party or who has ceased to be a proper or necessary party. The courts can also order the inclusion of

6(2)(b)(i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon; or

(ii) any person between whom and any party to the cause or matter there may exist a question or issue [...] connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.137

No reports that might indicate that the courts have in recent years unduly prevented persons from filing complaints or seeking remedies from the courts were found.

Publication of and Access to Judicial Hearings and Decisions

Section 6(1) of the Criminal Procedure Code, Cap 7, 1951 provides for court proceedings to be open, stating that “[t]he place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them.” Nonetheless, the presiding judge or magistrate may, on grounds of public policy or expediency, order for the public or a particular person to be excluded. The grounds for such exclusion shall be recorded. The US Department of State, Bureau of Democracy, Human Rights and Labor Brunei Human Rights Report 2014 stated that judges conducted most criminal cases in public trials.138

The Supreme Court Act, Cap 5, 1984 and Syariah Courts Act, Cap 184, 2000 require the High Court, Court of Appeal and Syariah courts to pronounce a decision, either orally or in writing at the conclusion of the hearing or at some time thereafter.139 The Criminal Procedure Code, Cap 7, 1984 provides more extensive guidelines. It requires judgments in every trial in any court of original jurisdiction to be pronounced in open court, or the substance of such judgment explained in open court. This should be done “immediately” or at a subsequent time of which parties or their legal representatives have been notified. Every such judgment shall be delivered in Malay or in English, and in some language understood by the accused. It should contain the reasons for the decision. If the judgment is delivered orally, the substance of it shall be reduced to writing and filed with the record.140

Judgments on appealed cases are also to be ordinarily delivered in open court; in the absence of the appellant or for other just cause, the court may deliver judgment by service of a written copy or may direct that the

137 Rules of the Supreme Court Act, Cap. 5, 1984, R 1, 0.15, r.6.
139 Section 25 Supreme Court Act, Cap. 5, 1984; Section 7(c) Syariah Courts Act, Cap 184, 2000.
judgment be read out in the subordinate court. Some judgments are accessible via the judiciary Electronic Filing System website. The website does not indicate how comprehensive and complete the database is, although judgments of the High Court and Court of Appeal from as far as 2009 were found.

Reasonable Fees and Non-arbitrary Administrative Obstacles to Judicial Institutions

As reported in the 2011 Rule of Law Baseline Study, the Legal Profession Act, Cap 132, 1984 stipulates that associated costs must be fair and reasonable, though this is left to the court's discretion. No reports indicating that fees are arbitrary or exorbitant were found.

In the last five years, there has been a visible move to adopt measures to avoid the high cost and inconvenience of lengthy litigation. The Small Claims Tribunal (SCT) was established in 2013 to hear and determine small claims, with parties not having to engage the services of lawyers, relating to contract disputes not exceeding the amount of $10,000 BND.

To enhance efficiency and improve public and legal services, the judiciary launched the Judiciary Case Management System (JCMS) on 23 March 2015. It includes an e-filing system that allows court users and lawyers 24-hour access to case documents and case schedules. It also allows lawyers to file court documents online. The e-filing website allows the public to download certain documents, access cause lists of the various courts, obtain contact details of the active law firms in the country, and conduct case and judgment searches. A Queue Management System will allow the public and legal practitioners to obtain hearing lists, case statuses and other court schedules via kiosks located in selected court buildings.

In 2015, then Chief Justice Dato Seri Paduka Hj Kifrawi Dato Paduka Hj Kifli said that the civil court will also look into introducing court-annexed mediation to encourage early settlement of any dispute. He added that mediation has already been adopted in certain High Court cases such as divorce and defamation, with most cases successfully settled amicably.

Assistance for Persons Seeking Access to Justice

As mentioned above, legal aid is only available in criminal cases to those who cannot afford legal representation in court and are charged with capital punishment offences that will lead to death sentences. Eligibility to receive free legal aid is determined by the Chief Registrar of the Supreme Court and appointed.

146 'Justice system should be last resort,' The Brunei Times, 24 April 2015.
lawyers are given remuneration equal to the average of regular rates charged by lawyers in non-legal aid cases. In 2016, the Chief Justice said that 19 legal aid applications were granted in the past 10 years, with legal representatives having been paid around $318,170 BND from the scheme. In other cases, indigent defendants may act as their own lawyer in court.

There are other organisations that render legal assistance. For instance the Law Society of Brunei Darussalam conducts legal clinic on civil, criminal, and syariah matters. Law firms, on a rotational basis, render free legal advice to those earning less than $750 BND a month. Pro bono representation appears to not be available. The president of the Law Society however recognizes that giving advice is not the same as representing clients in court and said that implementing legal aid will be the biggest challenge for the society in 2016. The Law Society was established in 2003 and its membership is comprised of all advocates and solicitors in private legal practice.

The Brunei Council on Social Welfare, established in 2009, launched its legal advice and advisory clinic in 2013. It runs a weekly legal clinic with the assistance of three volunteer law firms. To be eligible, clients must have an average family income of less than $400 BND per family member per month. In “deserving cases,” the Council also appoints a lawyer to represent a client in legal proceedings on a subsidised or pro bono basis.

No data on the level of awareness of the public of pro bono initiatives was found. However, the activities of the Law Society of Brunei Darussalam and Brunei Council on Social Welfare are reported in national newspapers. The Brunei Council on Social Welfare has indicated an increase in the number of people seeking their services. In 2013, the legal clinic provided advice on 37 cases, 42 in 2014, and 90 in 2015.

Other forms of assistance may be sought from the Council of Women of Brunei Darussalam which operates a resource and referral service to provide advice and counselling on social and legal matters. The Royal Brunei Police Force also has a Women and Children’s Unit and the Ministry of Culture, Youth and Sports provides welfare homes to those in need of protection, such as women who seek refuge from their abusive husbands.

Measures to Minimize Inconvenience to Litigants and Witnesses, and their Families,
Protect their Privacy, and Ensure Safety from Intimidation/Retaliation

The protections afforded to witnesses and victims have stayed unchanged. Brunei does not have a law providing for a comprehensive victim or witness protection scheme. Instead, protections are found in various legislations. The Criminal Procedure Code, Cap 7, 1984, Supreme Court Act, Cap 5, 1984, Intermediate Courts Act, Cap 162, 1999, and Subordinate Courts Act, Cap 6, 1984 for instance, all allow proceedings to be held in camera in the interests of public policy, justice, public security, propriety or other sufficient reason.\(^{155}\)
The courts may also order that no one shall publish the name, address or photograph of a witness or any evidence or information that would to lead to the identification of such witness.\(^{156}\)

There are several protections with regard to child witnesses. For instance, a child witness under 14 years is allowed to give evidence via live television link in cases involving assault, injury or sexual offences.\(^{157}\) Where a video-recording has been admitted as evidence in relation to such cases, a child witness shall not to be examined-in-chief on matters already dealt with in his or her video-recording evidence.\(^{158}\) In cases involving assault, injury or sexual offences, an accused is also precluded from cross-examining in person a child witness, a person who witnessed the commission of the offense, or the person against whom the offenses were allegedly committed.\(^{159}\)

As indicated in the 2011 *Rule of Law Baseline Study*, the Women and Girls Protection Act, Cap 120, 1984 also requires the use of in camera proceedings for girls below the age of 16 years; it also restricts publication of details of the victim.\(^{160}\) Measures to protect female witnesses in cases relating to sexual offences are also stipulated. However, as was also noted in the 2011 *Rule of Law Baseline Study*, the law allows the court to detain a woman or girl on whom the following had been committed:

- offences punishable under the Act; or
- under certain provisions of the Penal Code, Cap 22, 1951 for instance:
  - Section 354 (Assault or criminal force to person with intent to outrage modesty),
  - Section 375 (Rape),
  - Section 498 (Enticing or taking away or detaining with criminal intent a married woman), or
  - Sections 360 and 361 (Kidnapping).\(^{161}\)

The Commissioner (Director of Welfare, Youth and Sports) may also order the detention in a place of safety of any woman or girl whose detention in a place of safety is requested by her guardian, who needs protection and whose lawful guardian is not found, who is ill-treated, or “whom the Commissioner considers to be

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\(^{155}\) Section 15 Supreme Court Act, Cap. 5, 1984; Section 7 Intermediate Courts Act, Cap 162, 1999; Section 7 Subordinate Courts, Cap 6, 1984; Section 7 Criminal Code of Procedure, Cap 7, 1984.

\(^{156}\) Section 15(3) Supreme Court Act, Cap. 5, 1984; Section 7(2) Intermediate Courts Act, Cap 162, 1999; Section 7(2) Subordinate Courts, Cap 6, 1984.

\(^{157}\) Section 236B Criminal Procedure Code, Cap 7, 1984.

\(^{158}\) Section 236C Criminal Procedure Code, Cap 7, 1984.

\(^{159}\) Section 236E Criminal Procedure Code, Cap 7, 1984.

\(^{160}\) Sections 8(1) and 8(4) Women and Girls Protection Act, Cap 120, 1984.

\(^{161}\) Section 10(1) Women and Girls Protection Act, Cap 120, 1984.
in moral danger." While these provisions are intended to keep women and girls safe, they are arguably inconsistent with Article 15(4) of the Convention on the Elimination of Discrimination against Women.

The Attorney General’s Chambers has a victim response unit within the Criminal Justice Division to assist victims of crimes to understand the criminal justice process, including informing them of the status of their cases. The Ministry of Culture’s Social Affairs Services Unit runs places of safety known as Taman Nor Hidayah, Darussyaafaah and Darussakinah for people in various needs of protection, including victims of abuse, rape, incest and negligence.

**III. INTEGRATING INTO A RULES-BASED ASEAN**

**Progress towards Achieving a Rules-Based ASEAN Community**

*On Mutual Support and Assistance on the Rule of Law*

Brunei, as a member of ASEAN, participates in the activities of the ASEAN Law Ministers Meeting (ALAWMM). Initiatives of the ALAWMM include the ASEAN Government Law Directory, ASEAN Legal Information Authority (ALIA), ASEAN Government Legal Officers’ Programmes (AGLOP) and Exchange of Study Visits that aim to promote awareness and understanding of each other’s legal system.

The country was also represented at the Court Excellence and Judicial Cooperation Forum held in Singapore in 2014. The forum served to promote sharing of best practices in the area of judicial administration and delivery of justice among ASEAN judiciaries.

The ASEAN Law Association, a non-governmental organization of lawyers in the ASEAN region that promotes close relations and mutual understanding amongst lawyers, has a National Chapter in Brunei. In 2016, then Chief Justice of Brunei, Dato Seri Paduka Haji Kifrawi bin Dato Paduka Haji Kifli, is among the Vice-Presidents of the organisation and, at the same time, the Chairman of ASEAN Law Association Brunei.

Additionally, Brunei Darussalam’s Legislative Council became a full member of the ASEAN Inter-Parliamentary Assembly (AIPA) in 2009. Before this it only had Special Observer status as the Legislative Council had been suspended until 2004. AIPA “serves as the center of communication and information”

162 Ibid, Section 15.


164 Syazwana Souyono, 'Finding strength to return,' The Brunei Times, 7 July 2014.


among member parliaments.\footnote{ASEAN Inter-Parliamentarian Assembly ‘About Us: Background and History,’ <http://www.aipasecretariat.org/about-us/background-history/> accessed 16 April 2016.} According to its Statutes, it aims to encourage understanding, cooperation, and close relations among its member parliaments and “promote the principles of human rights, democracy, peace, security and prosperity in ASEAN.”\footnote{ASEAN Inter-Parliamentarian Assembly ‘About Us: Statutes,’ <http://www.aipasecretariat.org/about-us/statutes/> accessed 16 April 2016.} Brunei hosted the 34th General Assembly of AIPA in Bandar Seri Begawan in 2013.

**On Legislative and Substantive Changes Promoting the Rule of Law**

There is no information regarding legislative changes that were adopted particularly to promote rule of law at the regional level. While the country has made improvements regarding legislation on corruption, these changes seem to have been adopted primarily to support the country’s drive against graft. Nonetheless, Brunei’s Criminal Asset Recovery Order 2012 contributes positively to regional efforts to fight transnational crimes as it establishes, among others, the measures for the disclosure of information regarding cross-border movements of currencies and negotiable instruments involved in money-laundering and related offences, as well as provides guidelines with regard to requests for enforcement of foreign restraining, confiscation, and benefit recovery orders.

**On Enactment of Laws relating to the ASEAN Community Blueprints and Similar Plans**

The then Attorney General, Yang Berhormat Datin Seri Paduka Hajah Hayati binti POKSDSP Hj Mohd Salleh, reconfirmed Brunei’s commitment to the Blueprint at the 9th ASEAN Law Ministers Meeting, stating that

> As stated in the APSC Blueprint, our overall goal is not only limited to the ratification of the treaty but also to discuss and consider its elevation to an ASEAN treaty. This mandate needs to be achieved fully bearing in mind the current role of ASLOM as the sectoral body guarding issues relating to mutual assistance in criminal matters.\footnote{The then Attorney General, Yang Berhormat Datin Seri Paduka Hajah Hayati binti POKSDSP Hj Mohd Salleh, 9th ASEAN Law Ministers Meeting, 22 October 2015, <http://www.agc.gov.bn/AGC%20Site%20Pages/AGCspeechesview.aspx> accessed 5 April 2016.}

Brunei has undertaken some changes that positively affect rule of law, particularly by strengthening its legislative framework surrounding corruption through the amendment of the Prevention of Corruption Act, Cap 131, 2002 and enactment of the Criminal Asset Recovery Order 2012.

The aims of these laws overlap with those of the ASEAN Political-Security Community Blueprint,\footnote{ASEAN Political-Security Community Blueprint 2025, A.2.} the Treaty on Mutual Legal Assistance, and the ASEAN Convention Against Trafficking in Persons, Especially Women and Children.\footnote{ASEAN Convention Against Trafficking in Persons, Especially Women and Children, Articles 7 and 8.}
On Integration as Encouraging Steps toward Building the Rule of Law and Stronger State Institutions

The impact of integration on the state of rule of law in the country is unclear. While Brunei has actively participated in regional initiatives, the configuration of Brunei’s rule of law institutions has not changed dramatically since plans to create an ASEAN Community took shape in 2003 at the ASEAN Summit in Bali.

Brunei remains in the same state of emergency that was declared over 50 years ago; executive and legislative powers still rest with the Sultan; and the judiciary, although recognised to be free from government interference, does not have the power of judicial review.

Furthermore the impact on institution-building in Brunei appears to have been minimal, if any. Brunei has for years been a country of peace and political stability. However, political stability is largely because of the unbalanced sharing of power among the three branches of government and the absence of checks and balances. This has not changed in the years of Brunei’s membership in the ASEAN.

Moving forward, among the key elements of Brunei’s National Vision 2035 is an institutional development strategy. This strategy will “enhance good governance in both the public and private sectors, high quality public services, modern and pragmatic legal and regulatory frameworks and efficient government procedures that entail a minimum of bureaucratic ‘red tape.’”[^1]

Prospects and Challenges

The most substantial challenge to the rule of law in Brunei is to define and adopt a conceptualisation of rule of law that is acceptable to Brunei as well as being compatible with international standards and expectations. This will be discussed below in IV. Conclusion.

Commitments and Plans/Initiatives in relation to ASEAN-wide Commitments and Declarations on Human Rights

Brunei Darussalam participates in some regional human rights related mechanisms including the ASEAN Committee on Women (ACW), the ASEAN Confederation of Women Organization (ACWO), and the Senior Officials Meeting on Social Welfare Development.

Since the 2011 Rule of Law Baseline Study, Brunei’s progress in certain areas of human rights have been noted, in particular in the area of protection of persons against trafficking. In the 2nd cycle of the Universal Periodic Review for Brunei Darussalam—completed in 2014—the changes to Sections 294B and 377F of the Penal Code, Cap 22, 1951 to curb commercial sexual exploitation among children enacted in 2012 were mentioned as achievements.[^2]

Advancements were also made in the protection of labour as a licensing system was introduced by the[^3]


[^3]: Update on the Rule of Law for Human Rights in ASEAN: The Path to Integration
Department of Labour, Ministry of Home Affairs, requiring labour recruitment agencies to provide a monetary deposit as well as company-wide and individual background checks. In January 2012, the Employment Agencies Order 2004 was fully implemented, providing for comprehensive measures to further stabilise security, welfare, safety and the protection of workers’ rights by taking into account the standards of the International Labour Organization.\(^{175}\)

The protection of foreign workers and human trafficking can be closely linked. Attorney General’s Chambers Report 2013-2015 singled out the case of *Esmidiade Bujang and Sanawa Sanaddin v PP* [Court of Appeal CA No. 1 & 3 of 2015] as showing the progress made in those areas.

One of the two Bruneian men who were found guilty for arranging and assisting in the unlawful entry of Indonesian nationals into Malaysia in April 2013 at the Sungai Tujoh Immigration Post under section 7(1) of the Trafficking and Smuggling Persons Order 2004 appealed against his conviction. Esmidiade Bujang’s conviction was upheld.

The Public Prosecutor made a cross appeal against both defendants’ sentences which was allowed. Esmidiade Bujang was sentenced to 4 years imprisonment and 3 strokes of the whipping whereas Sanawa Sanaddin was sentenced to 5 years imprisonment and 4 strokes of whipping. The Court of Appeal then imposed an additional fine of $1 on both defendants as the penalty prescribed sentences of imprisonment, fine and whipping to be inflicted cumulatively.\(^{176}\)

Despite the progress made, Brunei was taken to task in the 2\(^{nd}\) cycle of the Universal Periodic Review for Brunei Darussalam on the basis that the implementation of legal protections was not sufficient. Instead the Committee of Experts noted that Brunei Darussalam did not have a proactive system to formally identify victims of trafficking among vulnerable groups, such as foreign workers and foreign women and children in prostitution, and that the Government had not implemented training for its officials on identifying trafficking victims. It also observed that children of migrant workers were at increased risk of becoming victims of sale and trafficking and requested the Government to take effective and time-bound measures to ensure that this group of children were protected from that worst form of child labour.\(^{177}\)

Since then plans have been made to further amend the Trafficking and Smuggling of Persons Order 2004 in order to fulfil obligations under the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP) and the ASEAN Plan of Action Against Trafficking in Persons. According to then Minister of Energy at the Prime Minister’s Office, Pehin Datu Singamanteri Colonel (Rtd) Dato Seri Setia (Dr) Awang Haji Mohammad Yasmin bin Haji Umar, possible amendments include the “provisions for enhanced penalties in aggravated cases of trafficking in persons, assistance for victims of trafficking in persons, immunity from prosecution for victims of trafficking and increased powers of investigations for...”


\(^{177}\) See the 2\(^{nd}\) cycle of the Universal Periodic Review for Brunei Darussalam completed in 2014, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BNSession19.aspx> accessed 20 March 2016 and in particular the Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21, A/HRC/WG.6/19/BRN/2.
enforcement agencies.”

IV. CONCLUSION

One of the challenges is defining as to what exactly constitutes rule of law. The ASEAN Charter sets out that rule of law is a purpose of ASEAN (Article 1(7) of the ASEAN Charter), obliging ASEAN and its member states to act in accordance with the fundamental principle of adherence to the rule of law (Article 2(2)(h) of the ASEAN Charter).

The question is how this rule of law is envisioned in the national frameworks and whether the national frameworks share common ground.

The then Attorney General, Yang Berhormat Datin Seri Paduka Hajah Hayati Binti POKSDSP Hj Mohd Salleh commented at the 9th ASEAN Law Ministers Meeting (ALAWMM) in 2015 on some of the challenges, stating that ASEAN’s mandate changed from “exchange of legal information to one that is more substantive with efforts to find ways to harmonize our diverse legal systems.”

The identification of common interest which call for legal cooperation among ASEAN member states or establishment of a regional legal framework [...] Cooperation and coordination with other ASEAN sectorial bodies as well as entities associated with ASEAN including the ASEAN Law Association is important in realizing ASEAN goals to strengthen the rule of law, Judicial systems and legal infrastructure. Such cooperation and coordination may be intensified by streamlining each other’s work processes, enhancing information exchange and experience sharing and other relevant activities.

It is difficult to answer what rule of law means in the context of Brunei. Rule of law can be understood in different manners, from “thin” to “thick” descriptions or combining “formal” as well as “substantive” elements. Randall Peerenboom aptly summarised that

Rule of law is essentially a contested concept. It means different things to different people, and has served a variety of different political agendas [...] That is both its strength and its

178 The then Minister of Energy at the Prime Minister’s Office, Pehin Datu Singamanteri Colonel (Rtd) Dato Seri Setia (Dr) Awang Haji Mohammad Yasin bin Haji Umar at the 10th ASEAN Ministerial Meeting on Transnational Crime (10th AMMTC), 28 September - 1 October 2015 as reported in ‘Brunei intensifies combat against human trafficking’ Borneo Bulletin, 2 October 2016.

179 Several countries mention similar concepts to the rule of law in their constitution. For example, the General Elucidation in the Constitution of Indonesia states that “Indonesia is a State based on law (Rechtsstaat) not on power (Machtstaat)”. Rechtsstaat a continental civil law concept translated in “Indonesian as Negara Hukum, a term that literally means ‘law state’, but is often understood to imply ‘rule of law’”, see Simon Butt and Tim Lindsey, The Constitution of Indonesia: A Contextual Analysis (Oxford: Hart Publication, 2012). Articles 2(1), 8(1) and 4(3) of the Constitution of the Socialist Republic of Vietnam of 2013 which defines the defines Vietnam as a “socialist state ruled by law”.


182 Formal elements of the rule of law include concepts such as equality, accountability, and avoidance of arbitrariness.

183 Substantive understanding of rule of law includes human rights norms and standards, while retaining more traditional concepts, such as supremacy of the law.
He concludes that despite the differences it has a “core meaning and basic elements” which include a system in which law is able to impose meaningful restraints on the state and individual members of the ruling elite as captured in the rhetorically powerful if overly simplistic notions of a governments of laws, supremacy of the law and equality of all before the law.185

Yet looking at these core elements in the context of an absolute monarchy that has been under a state of emergency is challenging. The challenge is aptly illustrated in the Worldwide Governance Indicator which compiled a report on Brunei based on numerous different sources and their understanding of “rule of law. ”186

It appears that the majority of international organisations prefer not to answer the question of what rule of law means for Brunei and the ones that do, present very different results. In short, the challenge is how to classify a system that possesses such an exceptional legal foundation in which the absolute monarch is the foundation or Grundnorm, meaning that the Sultan is above the law.

This notion appears to be accepted by many Bruneians187 with their loyalty188 to the Sultan in Brunei resting on the reciprocal arrangement that while “the Ruler must act justly to his subjects,” “the subjects must be loyal to their Ruler.”189 It is for instance enshrined in the Bruneian-drafted Independence Declaration of 1984 which states that Brunei “shall be forever a sovereign, democratic and independent Malay Muslim Monarchy [founded upon] the teachings of Islam according to Ahlis Sunnah Waljamaah and based upon the principle of liberty, trust and justice.”190

Given the absolute power of the monarch and the lack of democratic institutions, the word “democratic” seems out of place. This has been explained by some commentators that, in the Bruneian context, “democratic” means that the “people's will is expressed through the supremacy of Islam, or that their welfare and national aspirations are completely understood and cared for by the monarch.”191 Supporters of the MIB ideology argue, predictably, that alternative conceptions of democracy, including “Western” notions of representative democracy, are inappropriate for Brunei’s cultural circumstances192 and that some descriptions of Brunei are based on “deconstructivist foreign analyses” which have been perceived by local scholars as “ignorant,

185  Ibid, 2.
186  See Annex 1.
188  This loyalty is not only voluntary but also encapsulated in various norms. The new Syriah Penal Code Order 2013 criminalises behaviour of a person who “contempts, neglects, contravenes, opposes or insults” (sic) a titah or decree of the Sultan and Yang Di-Pertuan to a prison term of up to five years, Section 230. Furthermore for members of the Legislative Council it is not permissible to question the MIB according to Article 42 (1)(e) of the Constitution of 1959.
192  Ibid.
orientalist and possibly malicious misrepresentations of Brunei.”

The question is therefore whether the ASEAN conceptualisation of rule of law, if and when it emerges, will be able to influence the further development in Brunei. As the question of what constitutes rule of law at a regional level is not yet answered, it is too early to predict as to what effect it will have on Brunei, if any at all.

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**Annex 1**

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**Brunei Darussalam, 1996-2014**

**Aggregate Indicator: Rule of Law**

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**Individual Indicators used to construct Rule of Law**

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1. Please refer to the source for specific details.
Human Rights Resource Centre:
University of Indonesia, Depok Campus
Guest House Complex/Ex Rumah Dinas Rektor UI
(next to VOKASI Building)
West Java 16424
Phone/fax: 6221-7866 720
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