Keeping the Faith: A Study of Freedom of Thought, Conscience, and Religion in ASEAN
## Brunei Darussalam

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<td>Declared Relationship between State and Religion</td>
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<td>Regulation of Religion</td>
<td>The state regulates religion on all levels. The Prime Minister, Sultan Hassanal Bolkiah, is the “Head of religion.” Several governmental institutions are responsible for the control and administration of Islam. They include the Ministry of Religious Affairs, the State Mufti Department, the Religious Council, the Religious Council’s Legal Committee (headed by the State Mufti), the Faith Control Section, and several sub-institutions. In its advisory role to the Sultan, the Religious Council is the “chief authority” in “all matters relating to religion.” Any ruling given by the Council, whether directly or issued by its Legal Committee, is “binding on all Muslims of the Shafeite sect in Brunei.”</td>
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2. Section 41 (3), Religious Council and Kadi’s Courts Act (Chapter 77).
3. Section 38, Religious Council and Kadi’s Courts Act (Chapter 77).
4. Section 43 (2), Religious Council and Kadi’s Courts Act (Chapter 77).
“As Muslims, we uphold human rights with the Quran as our foothold. ... We choose Islam as a step to seek blessings from Allah the Almighty, not to persecute or oppress anyone”

(His Majesty Haji Hassanal Bolkiah Mu’izzadin Waddaulah, Sultan of Brunei Darussalam, 2013)

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6  “Other” (Lain-Lain) in Brunei’s Statistical Year Book, including Hindus, Taoists, Sikhs, Animists, Bahai and Atheists.

INTRODUCTION

The Constitution of Brunei Darussalam (henceforth Brunei) defines Islam as the state’s religion, and further specifies that “Islam” exclusively refers to “the [Sunni] Shafeite sect of that religion.” In his royal address (titah) on the occasion of the Declaration of Independence on 1 January 1984, the Prime Minister, Haji Sultan Hassanal Bolkiah, declared that Brunei “shall forever be a Malay Islamic Monarchy” (Melayu Islam Beraja or “MIB”). The government considers “MIB” as the official “state ideology” and consistently emphasises its categorical rejection of secularism, religious pluralism and liberalism since independence.

Brunei is the only Southeast Asian state whose constitution contains no bill of rights or provisions for the protection of fundamental liberties. Politically, it is an absolute monarchy, governed by a Sultan with absolute executive powers. Since the colonial era under British Indirect Rule, the country has had a dual legal system, with Syariah and non-Syariah courts existing side-by-side. The Syariah Law sector has gradually been strengthened since the 1980s, fuelled by the transnational waves of Islamic revitalism and subsequent state policies of legal Islamisation. During this process, non-Syariah laws have also been reviewed to ensure that they do not contradict Islamic teachings. Syariah Law in Brunei has mainly applied to Muslims in the past, whereas non-Syariah Law—covering a range of legal fields presided by a Supreme Court, including the Penal Code—applied to both Muslims and non-Muslims. This has fundamentally changed with the newly legislated Syariah Penal Code Order 2013 (Perintah Kanun Hukuman Jenayah Syariah 2013), which also includes numerous provisions and punishments for non-Muslims (see “Domestic Laws and Policies”). Brunei’s government is therefore now describing its previously dual legal system as “hybrid.”

Although Brunei’s legal scholars have not yet explained the deeper conceptual meanings of a “hybrid” system vis-a-vis the previous “dual system,” the new system is obviously characterised first by the intention to overcome (or “hybridise”) the clear-cut separation between Syariah and non-Syariah Law, so that the entire legal system can be considered Syariah-compliant, and second, by the widening of the applicability of Islamic Law to non-Muslims in the country.

The state regulates religion on all levels. The Prime Minister, Sultan Hassanal Bolkiah, is the “Head of religion.” Several governmental institutions are responsible for the control and administration of Islam. They include the Ministry of Religious Affairs (Kementerian Hal Ehwal Ugama), the State Mufti Department (Jabatan Mufti Kerajaan), the Religious Council (Majlis Ugama), the Religious Council’s Legal Committee (Jawatankuasa Undang-Undang), headed by the State Mufti, the Faith
Control Section (Bahagian Kawalan Akidah), and a number of other sub-institutions. In its advisory role to the Sultan, the Religious Council is the “chief authority” in “all matters relating to religion.”

Any ruling given by the Council, whether directly or issued by its Legal Committee, is “binding on all Muslims of the Shafeite sect resident in Brunei.”

In 2014, Brunei became the first ASEAN-country to implement a strict form of Islamic Criminal Law, where its most drastic provisions carry maximum penalties such as stoning to death for offenses like apostasy, adultery, homosexual intercourse, and blasphemy. Punishments for theft include the amputation of limbs. The Syariah Penal Code Order 2013 was first presented to the public in 2013, and will be implemented over three stages. The first stage took effect on 1 May 2014, and includes 55 offences that are punishable by fines or imprisonment. The most-controversial punishments will be enforced in the second and particularly the third period, which will start 12 and 24 months after the Syariah Courts Criminal Procedure Code (CPC) will have been published in the official gazette. The draft CPC, which supplements the Syariah Penal Code Order, is currently being finalized (as of June 2014). Under this unprecedented legal reform, 209 amendments have been made to Brunei’s previous Islamic laws, including the Islamic Religious Council Act, the Religious Council and Kadir Courts Act, and the Syariah Courts Act.

The Office of the UN High Commissioner for Human Rights and many international observers are concerned that the Syariah Penal Code Order 2013 would seriously violate international human rights law. Sultan Hassanal Bolkiah however argues that by implementing these legal reforms, the government of Brunei “uphold(s) human rights with the Al-Quran as our foothold.” Responding to accusations from foreign observers, Brunei’s State Mufti, Hj Abdul Aziz Juned, declared in October 2013 that “Islam has its own human rights” which, unlike human rights claims “stipulated by humans,” would “never change through the times.” From the State Mufti’s perspective, the only human rights that can be considered as truly universal are “stated in Syariah law.” Addressing the UN Human Rights Council, the government of Brunei has argued accordingly that the Syariah Penal Code Order 2013 aims “at providing basic human rights.”

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16 Section 38, Religious Council and Kadir Courts Act (Chapter 77).
17 Section 43 (2), Religious Council and Kadir Courts Act (Chapter 77).
18 Section 55 (1), Syariah Penal Code Order 2013.
19 ‘Khalwat offenders face heavy penalties,’ The Brunei Times, 30 Mar 2014.
20 ‘First phase of Syariah Code comes into effect on April 22’ The Brunei Times, 23 Mar 2014; ‘A new era for Brunei,’ The Brunei Times, 30 Apr 2014.
Brunei has not signed the International Covenant on Civil and Political Rights (ICCPR). Furthermore, it has conditioned its ratification of the CRC and CEDAW to religious considerations. Brunei has explicitly refused to subscribe to the state's obligation under the CRC to "respect the right of the child to freedom of thought, conscience and religion," and generally insists on the normative superiority of its constitutional religion, Islam, over the CRC's provisions. It made the following reservation to the CRC:

"[The Government of Brunei] expresses its reservations on the provisions of the said Convention which may be contrary to the Constitution of Brunei and to the beliefs and principles of Islam, the state, religion, and without prejudice to the generality of the said reservations, in particular expresses its reservation on articles 14, 20 and 21 of the Convention."  

It also made a similar reservation to CEDAW.

"[T]he Government of Brunei expresses its reservations regarding those provisions of the said Convention that may be contrary to the Constitution of Brunei and to the beliefs and principles of Islam, the official religion of Brunei and, without prejudice to the
generality of the said reservations, expresses its reservations regarding paragraph 2 of Article 9 and paragraph 1 of Article 29 of the Convention.”

The UN Committee on the Rights of the Child gave its Concluding Observations on Brunei in 2003, long before the enactment of the Syariah Penal Code Order 2013. Thus, it considered the state of Brunei’s policies and practices prior to recent legal reforms. The Committee on the Elimination of Discrimination against Women however published its first Concluding Observations on Brunei very recently on 7 November 2014. Among other recommendations, the Committee urged the government to immediately review the new Syariah Penal Code Order 2013 “with a view to repealing its direct and indirect discriminatory provisions affecting women.” The Committee stated as follows:

“The Committee is gravely concerned about the State party’s restrictive interpretation of Syariah law and about the adverse impact on women’s human rights of the recently adopted Syariah Penal Code Order 2013, which under its third phase of implementation will impose the death penalty by stoning for several “crimes,” in particular adultery and extra-marital relations (zina). While noting that the same penalties apply to women and men, the Committee is seriously concerned that women are disproportionately affected by punishment for “crimes” involving sex, and are at a higher risk of being convicted of adultery and extra-marital relations, due to discriminatory investigative policies and provisions on the weighing of evidence. In particular, it notes with concern that women will face greater difficulty in collecting the necessary evidence to prove rape, and thereby fear of being accused of zina is likely to prevent women from reporting rape.”

Brunei’s insistence on a divine prescription for unequal rights for men and women in certain fields of Islamic Law is in obvious tension with the CEDAW’s general aim of achieving equal rights for women. (See “Domestic Laws and Policies.”)

Brunei has asserted its commitment to human rights on various other occasions. Not only did it sign on to the ASEAN Human Rights Declaration (AHRD) in November 2012, it also hosted the 13th Meeting of the ASEAN Intergovernmental Commission on Human Rights (AICHR) in December 2013. The Sultan also underlined his government’s commitment to the AHRD during a speech in Indonesia in the same year.

33 Netherlands Institute of Human Rights, Declarations and reservations by Brunei Darussalam made upon ratification, accession or succession of the CEDAW <http://sim.law.uu.nl/SIM/Library/RATIF.nsf/f8bbb7ac2d00a38141256bf00342a3f/3b3c6f149224eb99c12571d100368c5c?OpenDocument> accessed 17 Apr 2014.


36 CEDAW, Concluding Observations, Par. 13.

37 CEDAW, Concluding Observations, Par. 12.

38 ‘ASEAN to consult on human rights,’ The Brunei Times, 28 Dec 2013; ‘HM lauds ASEAN role in promoting democracy,’ The Brunei Times, 8 Nov 2013.

39 ‘HM lauds ASEAN role in promoting democracy,’ The Brunei Times, 12 Nov 2013. See also ‘Brunei to attend human rights meeting,’ The Brunei Times, 28 Apr 2014. Brunei is also involved in the following regional human rights-related mechanisms: The ASEAN Committee on Women (ACW), the ASEAN Confederation of Women Organization (ACWO), and the Senior Officials Meeting on Social Welfare Development.
B. Domestic Laws and Policies

The Constitution of Brunei states that “all other religions [besides the state religion, Shafi’i Islam] may be practiced in peace and harmony by the person professing them.” However, it is nowhere specified what characterizes a religious practice “in peace and harmony,” and whether “may be practiced in peace and harmony” would imply or restrict freedom of thought, conscience and religion, and, if so, whether it would have the same scope of protection as provided for under the UDHR and AHRD. The Constitution does not make any further provision that protects religious freedom in that sense, neither directly nor indirectly. On the contrary, domestic laws and policies systematically restrict the individual right to religious freedom. By stipulating that “[n]o person shall be appointed to be Prime Minister unless he is a Brunei Malay professing the Muslim religion,” the Constitution underlines the privileged legal status of Islam and its central political role in the country. Non-Muslim religions, by contrast, are legally and politically marginalised, and there are no laws or policies that would protect atheism or non-religion.

Numerous national laws and policies limit freedom of thought, conscience and religion, some of which will be outlined in the following sections. Many of the most serious restrictions of religious freedom in domestic laws had been codified in the Religious Council and Kadis Courts Act of 1984. With the Syariah Penal Code Order 2013, some of these provisions have been repealed and replaced by even more far-reaching restrictions on the right to freedom of thought, conscience and religion. Each of the following sub-sections will therefore first describe the law as it stood prior to the legal reform, before it presents the newly enforced provisions. As some provisions of the Syariah Penal Code Order 2013 now also apply to non-Muslims, unlike Brunei’s previous Islamic Law, it will be noted for each case whether non-Muslims are affected. Members of the royal family are not explicitly exempted from any of the stated rules. As previously noted, the Syariah Penal Code would be implemented in three stages, and many of the provisions described here will come into force in the second phase of implementation. The third phase would see the implementation of provisions carrying the death penalty. Rules that are not yet enforced are marked with an asterisk “*”.

It should be noted that all convictions to death (for so-called hadd-offences) depend on very detailed procedural conditions that are described in various sections of the Syariah Penal Code Order 2013, with reference to further specifications in the Syariah Court Evidence Order 2001. Leaving aside the complex details, it is generally necessary that the offender makes a confession voluntarily without force and imputation. This should be done in court by applying the word “asyhadu” (Arabic: “I swear”). If there is no confession, there must be at least two witnesses who are “adil” (“just”), i.e. “a Muslim who performs the prescribed religious duties, abstains from committing capital sins and is not perpetually committing minor sins.” These witnesses must also apply the word “asyhadu,” thus making a religious oath. Offenders or witnesses must have reached the age of puberty (baligh) and be capable of knowing the nature of their offence. In some cases, it is possible to withdraw statements or to repent. If the court finds that the offence is proved by evidence other than these hadd-specific requirements, other regulations apply and the offender can be sentenced to alternative punishments, as specified in each section of the Code. Where such alternative

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40 Part II, Article 3 (1), The Constitution of Brunei Darussalam.
42 This pertains to the Sections 171, 172, 173, 174, 177, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195 and 196 of the Religious Council and Kadis Courts Act (Chapter 77), which have been repealed by the Syariah Penal Code Order 2013, as stated in Section 254.
43 With the first phase, the Syariah Penal Code order 2013’s General Offences (ta’zir) have been enforced (Sections 192-251, with some exceptions). The second phase will include offences liable for hadd/hudud, qisas (retribution) and diyat (compensation), except for those that carry the death penalty. The latter will be implemented in the third phase (‘Syariah Penal Code still warrants more, better clarifications,’ The Brunei Times, 6 Feb 2014.).
44 Section 31, Syariah Courts Evidence Order.
punishments are possible, this is noted in the following sections.

**Blasphemy**

Under the Religious Council and Kadis Courts Act, the usage of any passage from the Quran in places of public entertainment in a derisive manner, or the deriding of any act or ceremony relating to Islam, was punishable with a fine of up to BND 8,000 or one month imprisonment. \(^{45}\) Insulting or bringing “into contempt the Islamic religion or ... the teaching of any authorised religious teacher” or the State Mufti’s fatwas was furthermore punishable with up to six months imprisonment or a fine of BND 4,000. \(^{46}\) Contempt of members of the Religious Council, Syariah courts or mosque officials was punishable with up to one month imprisonment or BND 1,000. \(^{47}\) These provisions had only applied to Muslims.

The Syariah Penal Code Order 2013 introduced heavier punishments for blasphemy:

*Muslims* who declare themselves as God \(^{48}\) or Prophet \(^{49}\) can be punished with death, or up to 30 years imprisonment and up to 40 strokes.* Muslims who deny the validity of hadith as an Islamic “source of authority” face the same punishments. \(^{50}\)

*Both Muslims and non-Muslims* who insult the Islamic Prophet Muhammad can now, under specific procedural conditions, be sentenced to death. \(^{51}\) Otherwise they can be punished with up to 30 years imprisonment and 40 strokes, if they do not repent. \(^{52}\) Furthermore, any person who insults or “makes fun of” Islamic teachings, practices, holy words, laws, or the State Mufti’s fatwas, can now be fined with BND 12,000, three years imprisonment, or both. \(^{53}\) Contempt of members of the Religious Council, Court officials or any members of the administration of Brunei’s Syariah Law sector is now punishable with BND 8,000, two years imprisonment, or both, for Muslims and non-Muslims. \(^{54}\) The public dissemination of beliefs or practices that are contrary to Islamic Law, as Brunei’s government has codified it, or exposing Muslims to ceremonies, act or doctrines that are contrary to Islamic Law, can be punished with BND 20,000, five years imprisonment, or both, irrespective of whether the offender is Muslim or non-Muslim. \(^{55}\)

**Religious Deviance**

The government of Brunei traditionally defends its officialised Islamic truth claims vis-a-vis what it considers to be “deviant” (sesat) Muslim teachings and practices. Before 2014, religious authorities such as the Faith Control Section justified their respective actions with reference to several provisions of the Religious Council and Kadis Courts Act of 1984. The previous law stated, for example, that Muslims who are teaching or expounding “any doctrine or perform any ceremony or act relating to the Islamic religion in any manner contrary to Muslim law” can be punished with up to three months imprisonment and a monetary fine of BND 2,000. \(^{56}\) This provision, which is formally called “false doctrines,” has for example been applied to Muslim shrine (keramat)-worshippers (see Part I, 2b, “Places of worship”). Friday prayers are legally compulsory for male Muslims in Brunei. Those who failed to attend such prayers at a mosque had to pay a fine of BND 100, in the case of a second offence BND 200, and BND 500

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45 Section 189, Religious Council and Kadis Courts Act (Chapter 77).
46 Section 191, Religious Council and Kadis Courts Act (Chapter 77).
47 Section 190, Religious Council and Kadis Courts Act (Chapter 77).
50 Section 111 (1, b,), Syariah Penal Code Order 2013.
51 Section 221 (1), Syariah Penal Code Order 2013.
52 Sections 110 (1), 221 (2), Syariah Penal Code Order 2013.
54 Section 230 (2), Syariah Penal Code Order 2013.
55 Section 207, Syariah Penal Code Order 2013.
56 Section 186, Religious Council and Kadis Courts Act (Chapter 77).
for a third or subsequent offences. However, if the attendance was “prevented by rain,” or the person’s place of residence was “more than three miles by the nearest route from a mosque,” or the person was excused by a mosque official (e.g. because of sickness), it would not have been considered an offence. The public sale of any food, drink or tobacco to or consumption by Muslims during the fasting month of Ramadhan was punishable with a fine of BND 500 for the first offence, BND 750 for the second and BND 1,000 for the third or any subsequent offence.

The Syariah Penal Code Order 2013 introduced heavier punishments for these and other forms of what the government considers to be religious deviance:

Muslims who worship “any person, place, nature or any object, thing or animal in any manner” contrary to Islamic Law, e.g. believing that objects or animals possess certain powers, “increase wealth,” “grant wishes,” “heal diseases” or “bring good luck,” face a fine of BND 8,000, two years imprisonment, or both. They can also be forced to undergo religious “counselling” in order to “cure” them from their “deviant” beliefs. Muslim practitioners of “deviant teachings” (ajaran sesat) can also be charged under several other provisions of the new law. Any Muslim person who “claims that he or any other person knows an event or a matter that is beyond human understanding or knowledge” faces up to 10 years imprisonment or 40 strokes, “and the Court shall order him to repent.” Muslims who declare themselves “Imam Mahdi” (a mythical saviour) can be punished accordingly.

The fines for failure to attend Friday Prayers “without any reasonable excuse” (illness, travelling, or rain) by Muslim males who have reached the age of puberty have now been increased: The first offence can be punished with up to BND 200, the second offence with BND 300, and the third and subsequent offences with up to BND 1,000.

Both Muslims and non-Muslims can now be punished for inciting other Muslims to neglect their “religious duties,” such as persuading a Muslim not to attend Friday prayers or Islamic teachings, or convincing a Muslim not to pay Islamic taxes (zakat). Offenders can be imprisoned for up to one year, and/or a monetary fine of BND 4,000. The public sale of food, drinks or tobacco, or the public consumption of such products by Muslims during Ramadhan is now forbidden for both Muslims and non-Muslims, and the punishments are more drastic. Offenders can be fined with BND 4,000, one year imprisonment, or both. However, government officials have declared that at some places such as schools, special rooms for non-Muslim children will be provided for eating and drinking. Finally, persons who are “proven” to have conducted or advertised “black magic” (ilmu hitam) can be sentenced to five years imprisonment and a monetary fine of BND 20,000, irrespective of their religion. They can also be forced to undergo religious “counselling.” Attempts to commit murder (qatl) by “black magic” can be punished with up to ten years imprisonment, a fine of BND 20,000, and 40 strokes.

57 Section 171, Religious Council and Kadis Courts Act (Chapter 77).
58 Section 171 (1), Religious Council and Kadis Courts Act (Chapter 77).
59 Section 171 (2), Religious Council and Kadis Courts Act (Chapter 77).
60 Section 171 (3), Religious Council and Kadis Courts Act (Chapter 77).
61 Section 173, Religious Council and Kadis Courts Act (Chapter 77).
62 Section 216 (1), Syariah Penal Code Order 2013.
63 Section 216 (3), Syariah Penal Code Order 2013.
64 Section 206 (b), Syariah Penal Code Order 2013.
65 Section 206 (a), Syariah Penal Code Order 2013.
66 Section 194, Syariah Penal Code Order 2013.
68 Section 195, Syariah Penal Code Order 2013.
69 ‘Eating facility for non-Muslims during Ramadhan in schools mooted,’ The Brunei Times, 6 Apr 2014.
70 Section 208 (1), Syariah Penal Code Order 2013.
71 Section 208 (3), Syariah Penal Code Order 2013.
40,000, or both.*72 The category of “black magic” had not existed in Brunei’s criminal law prior to the legal reform.

Sexual Deviance

Under the Religious Council and Kadis Courts Act, Muslims who were “found in retirement with and in suspicious proximity to any woman, whether or not professing the Islamic religion other than” their husband or wife, were punishable for the offence of “khalwat.” For men, the punishment was BND 1,000 or one month imprisonment, or BND 2,000 and two months imprisonment for the second or subsequent offences.73 Female offenders faced BND 500 or 14 days imprisonment, or BND 1,000 and one month imprisonment.74 An additional provision stated that Muslim women who were “found in retirement and in suspicious proximity” with non-Muslim men would be punished accordingly.75 Sexual intercourse between persons who are forbidden by Islamic Law to marry was punishable with up to five years imprisonment for men, and one year for women.76 Cohabitation with a divorced partner was punishable with one month imprisonment or a fine of BND 1,000 for male offenders, and with seven days imprisonment or BND 200 for female offenders.77

The Syariah Penal Code Order 2013 repealed all of these provisions and introduced much heavier punishments for what the government considers to be sexual deviance.

Muslims can be punished under the Syariah Penal Code Order 2013 for extramarital sex78 with “stoning to death witnessed by a group of Muslims,” whipping with hundred strokes,* or, if the necessary procedural conditions are not met, with up to seven years imprisonment.*79 For Muslim women, pregnancy or childbirth out of wedlock is now punishable with two years imprisonment, a fine not exceeding BND 8,000, or both.*80 Whoever entices or causes a Muslim married woman “to leave the matrimonial home determined by her husband” faces the same punishment.81

Both Muslims and non-Muslims can be punished with the death penalty by stoning for homosexual intercourse,*82 and, irrespective of the offenders’ gender, also for sexual intercourse “against the order of nature that is through the anus.”83 If the necessary conditions for the death penalty are not met, they can be sentenced to seven years of imprisonment or whipping.84 The punishment for “living together, cohabiting, in confinement” or “isolating oneself in close proximity that can lead to suspicion” of “immoral act[s]” (khalwat) has been increased as well, offenders can now be sentenced to one year imprisonment, BND 4,000, or both.85 Non-Muslims can be similarly punished for “khalwat” if they are found in “close proximity” with Muslims under the said circumstances. Unlike the previously stated law, the Syariah Penal Code Order 2013 does not ascribe different penalties depending on the offenders’ sex anymore. Furthermore, cross-dressing “for immoral purposes” in public is now an offence for Muslims and non-Muslims, carrying different maximum penalties for men (BND 4,000,
one year imprisonment, or both) and women (BND 1,000, three months imprisonment, or both).86

**Indecent Behaviour and Dress-Code**

Prior to the Syariah Penal Code Order 2013, Brunei’s Islamic Law did not stipulate any rules regarding “indecent behaviour” (perbuatan tidak sopan). The new law has introduced this category, and states that behaviour is considered indecent “if it tends to tarnish the image of Islam, deprave a person, bring bad influence or cause anger to the person who is likely to have seen the act.”87

*Both Muslims and non-Muslims* can be punished with BND 2,000, six months, or both,88 for “indecent behaviour” in public. According to spokespersons from the government’s Islamic bureaucracy, the category of “indecent behaviour” would also include “indecent clothing.” However, no guidelines have yet been published to define what constitutes indecent clothing, although it had been reported that a codification of Brunei’s “Syariah dress-code” is planned for the future.89 To the surprise of many, the Sultan openly criticised the Ministry of Religious Affairs in May 2014 for making public statements about the applicability of Section 197 (“indecent behaviour”) to clothing without adequately specifying it. During a public speech, the Monarch asked: “Why was it necessary to bring up the Islamic ruling on dress code? And what is the relevance of the briefing touching on the need to cover up not yet made compulsory?”90 He gave an example of a person walking around in underpants and a female wearing a traditional Malay dress (baju kurung) but without a headscarf, then

said: “Between the two, which one deserves to be called indecent behaviour. Perhaps, by responding this way, people will understand and the dress code issue will no longer be brought up.”91 This statement may indicate there will be no general obligation for veiling, and that the supposed soon-to-be-announced dress-code guidelines92 might now be reconsidered. According to a spokesperson of the Attorney General’s Chambers, a committee is also developing regulations for a “Syariah-compliant” sportswear.93 Furthermore, a legal officer of the Ministry of Religious Affairs has declared that it will also be forbidden to upload images of oneself or others in “indecent clothing,” or of “images of indecent acts on online platforms” under the new regulation for “indecent behaviour.”94 However, following the Sultan’s intervention, it remains to be seen how Section 197 will be interpreted, and whether or not, or how precisely, it will be applied to clothing.

1. **Freedom to adopt, change or renounce a religion or belief; and freedom from coercion**

The government of Brunei emphasises that it does not consider the constitutional provision according to which all non-Muslim religions “may be practiced in peace and harmony” as “an absolute right.”95 Instead, the government and its religious clergy argue that “Art 3(1) empowers the government to take steps as it deems fit” to protect the “constitutional mandate to enact laws

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86 Section 198, Syariah Penal Code Order 2013.
87 Section 197, Syariah Penal Code Order 2013.
88 Section 197, Syariah Penal Code Order 2013.
90 ‘End confusion over Syariah law,’ *The Brunei Times*, 6 May 2014.
91 ‘End confusion over Syariah law,’ *The Brunei Times*, 6 May 2014.
92 ‘Brunei set to unveil Syariah dress code,’ *The Brunei Times*, 20 Apr 2014.
93 ‘Panel to look into sports dress code,’ *The Brunei Times*, 22 Apr 2014.
94 Ministry of Religious Affairs legal officer, Noor Diana Hj Awang, referring to Section 197, Syariah Penal Code Order 2013, quoted in ‘Punitive action for online obscenity,’ *The Brunei Times*, 6 Apr 2014.
95 ‘Religious freedom not violated in prohibition on use of Islamic words,’ *The Brunei Times*, 10 Apr 2014.
which reflect preference for Muslims.” Protecting the privileged position of Islam, and “curb[ing] the influences of other religions” is understood as necessary “to ensure that harmony and peace are maintained.” This position has consistently been held by the government since independence in 1984, justified with reference to the “national philosophy” of “MIB” and the country’s nature as an Islamic Sultanate that dates back to the 15th century.

Accordingly, non-Muslims in Brunei are free and encouraged to adopt the Muslim faith, whereas Muslims are not allowed to change their religion.

Prior to 2014, Muslims were legally required to report in writing their intention to change their religion to the Religious Council’s Secretary. In practice, permission to do so was rarely granted. Muslims who sought to leave Islam also faced pressure from government authorities and their social environment. Failure to report renunciation of Islam was punishable with a monetary fine by a Magistrate’s Court.

The Syariah Penal Code Order 2013 outlaws apostasy for Muslims. Declaring oneself as non-Muslim is now considered as Irtidad. Persons who have committed “Irtidad” can, in the most drastic case, be sentenced to death by stoning. If the earlier-mentioned procedural requirements for such a

“hadd” punishment are not met, apostates now face up to 30 years imprisonment and whipping. However, the Islamic Court can order the “offender” to repent, and if he/she does so, the Court shall order acquittal of the sentence.

2. Right to manifest one’s religion or belief

a. Freedom to worship

There are serious restrictions on freedom of worship in Brunei, for both Muslims and non-Muslims. For Muslims, this most notably affects persons who adhere to understandings of Islam that differ from the state’s official interpretation. These are considered as “false doctrines” (see Part I, A, Religious Deviance), and the government maintains a list of Muslim groups and teachings that are considered “deviant” (see Part III, Negative Contributing Factors). Religious enforcement agencies, such as the Syariah Affairs Department’s Faith Control Section, are responsible for ensuring the “purity” of Islam, and for investigating and prosecuting transgressions.

In addition to non-Shafi’i Muslim communities, one group that is restricted in its freedom of worship are Malay shamans/healers (bomoh) and their customers. The practices of bomoh have a centuries-old history in the Malay world, and have been openly present in many Bruneian villages until the late 20th century. Despite massive governmental pressure, bomoh are still active in Brunei until
today. However, from the government’s point of view, “Bomoh practice... is a big sin that is unforgivable.” Muslims are regularly reminded “to avoid being dragged or drifted to these devious teachings through Bomohs.”

Government authorities seek to prosecute bomoh by various means, including calls to the public to report such individuals. In 2004, 38 cases that were assisted by citizens led to the arrest of bomoh; in 2005, the number increased to 55. Since then, no further statistics have been publicised, but arrests of bomoh continue to be regularly reported on local news media. In an attempt to educate the public, an exhibition was organised in 2007 that showcased confiscated materials of “deviant” shamans (bomoh), such as deer skins with Quranic inscriptions, trees, rubies, nails, talismans, amulets, love potions, “mystic rice” to increase business profits, needles that give beauty to the wearer, or invincible suits. According to the Head of the Faith Control Section, the exhibition aimed at providing “awareness to society.”

Religious literature can also be seized under the Undesirable Publications Act, which empowers government authorities to seize “any publication prejudicial to public safety or public interest,” including materials that are considered to be incompatible with the state-ideology MIB. Religious publications that are considered to contravene Islamic Law can also be confiscated under the Islamic Religious Council Act and Kadi Courts Act. Section 188 stipulates a maximum punishment of six months imprisonment or a fine of BND 4,000. In 2013, a spokesperson of the Islamic Da’wah Center declared that a total of 5,573 publications, notably excluding magazines, newspapers, electronic media, and items relating to calligraphy, have so far been filtered by its Filtration and Publications Control Unit (UPKT).

The Syariah Penal Code Order 2013 states that “any act done or any word uttered [intentionally] by any Muslim ... which ... is contrary to the “aqidah [faith of Islam],” as Brunei’s government defines it, can be considered as Irtidad and is thus strictly forbidden. Some varieties of Irtidad are punishable with death.* This applies e.g. to Muslims who declare themselves or others as prophets (Nabi) after Prophet Muhammad.* The Ahmadiyyah group, for example, which is banned in Brunei for spreading “deviant teachings” (ajaran sesat), believes that its founder, Mirza Ghulam Murtaza (1835–1908), was either a Muslim Prophet, or a mythical saviour (Mahdi). Members of the Ahmadiyyah can now theoretically be sentenced to death for upholding one of the core convictions of their religion, once the new law will have been fully enforced.

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109 See for example ‘Bomoh Nabbed Over Love Potion,’ Borneo Bulletin, 6 Jul 2009; ‘Witchcraft, sorcery may lead to”syirik”,’ The Brunei Times, 11 Feb 2012.
111 ‘Exhibition raises awareness on banned objects,’ The Brunei Times, 9 Feb 2014.
112 Section 13 (1), Undesirable Publications Act (Chapter 25).
113 ‘Exhibition raises awareness on banned objects,’ The Brunei Times, 9 Feb 2014.
114 Section 188, Religious Council Act and Kadi Courts Act Section (Chapter 77).
115 ‘UPKT filtered over 5,000 publications,’ Borneo Bulletin, 14 Mar 2013.
116 Section 107 (1), Syariah Penal Code Order 2013.
117 Section 109, Syariah Penal Code Order 2013.
The same danger applies to Brunei's small Bahai community, which is considered “deviant” because of its belief that Mirza Husain-'Ali Nuri (also called Baha'ullah, 1817–1892) was a holy messenger fulfilling the prophecies of Islam and Christianity. Similarly, members of the Al-Arqam movement, which was banned in Brunei in 1991 but continues to exist throughout Southeast Asia, can now be sentenced to death for their belief that a certain religious scholar, Sheikh Muhammad Abdullah Al-Suhaimi, was the Mahdi. Furthermore, Muslims who deny the validity of hadith as a “source of authority” can be sentenced to death (and other punishments) for Irtidad. (See illustrative case, where the validity of hadith was supposedly questioned in Brunei, in “Serious Non-Violent Persecution on Account of Religion and/or Belief.”) It should be noted that Islamic scholars holding a government license to teach and discuss Islam-related matters can still have debates among themselves over proper interpretations of hadith within an orthodox Sunni-Shafi’i discursive framework. Questioning the validity of hadith that are officially considered as “authentic,” however, and denying their status as a source of Islamic Law is strictly forbidden.

Literature and other publications that are considered to contradict Islamic Law can now be seized under the Syariah Penal Code Order 2013, with penalties of up to two years imprisonment and a fine of BND 8,000 for printing, owning, broadcasting or distributing them.

Although theoretically possible, whether or not Irtidad as defined above will be applied to bomoh remains to be seen. In any case, other parts of Malay cultural traditions will now be affected as well. The State Mufti Department has warned the public in 2013 that some parts of traditional Malay weddings would contradict Islamic teachings and should therefore not be practiced anymore, including certain dances, music and dress. Referring to new regulations under the Syariah Penal Code Order 2013, particularly Section 216, Islamic officials have furthermore declared that some (not clearly specified) traditional practices and beliefs can be considered as offences and are punishable with two years imprisonment and monetary fines.

Another change is that non-Muslims can now be punished for “misusing” certain “Islamic” words that are considered sacred with three years imprisonment or a monetary fine of BND 12,000. There are 19 expressions that are forbidden “on the condition that the words are used and attributed to a religion other than Islam,” including “Allah,” which has traditionally been used by some Christian communities and bible translations in Borneo to refer to “God” in the Malay language.

In addition, it is compulsory for Muslims to pay religious taxes (zakat). Prior to 2014, non-payment was punishable with 14 days imprisonment or a fine of BND 1,000. The Syariah Penal Code Order 2013 stipulates a much heavier punishment for the non-payment of religious taxes, with up to two years imprisonment, a fine of BND 8,000, or both. As persons who are registered as Muslims are strictly prohibited from changing their religion, they are coerced to pay this tax even if they personally do not believe in its religious obligatoriness.

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119 Section 111 (1, b), Syariah Penal Code Order 2013.

120 Section 213, Syariah Penal Code Order 2013.
b. Places of worship

There are several restrictions on the right to build and maintain places of worship. It is forbidden to build a mosque without written permission of the Religious Council.\(^{128}\) Government permission is also necessary for using existing buildings for the purposes of a mosque,\(^{129}\) or for making material alterations to the structure of any mosque.\(^{130}\) There are 110 registered mosques and prayer halls in the country.\(^{131}\) Non-Muslim religious communities are allowed to maintain places of worship, provided that they have received a written permission from government authorities. However, some of these places and their clergy are under the surveillance of the Brunei Internal Security Department (BISD).\(^{132}\)

Presently there are six churches (three Roman Catholic, two Anglican, and one Baptist), three Buddhist temples, and one Hindu temple.\(^{133}\) It has been reported that the government also seeks to prevent the usage of private residences as places of worship for non-Muslim and non-Shafi'i Muslim communities, although several unregistered places, including a number of Christian congregations, continue to exist without governmental interference.\(^{134}\)

Muslims are not allowed to conduct worshipping practices at traditional spirit-shrines (keramat), which have long been part of Malay folk culture.\(^{135}\) Islamic authorities have, for example, erected a signboard next to a shrine in the Tutong district where, according to local narration, a once famous Islamic scholar has long ago been buried. The signboard issues a “warning” (Amaran) that reads in both English and Malay: “Strongly prohibited to undertake any activity/ceremony against Hukum Syara’ (Syariah Law). If found guilty of an offence [the offender] could be sentenced under Religious Council and Kadis Court Act Chapter 77, liable on conviction of imprisonment for three months or a fine is BND 2000.”

The Syariah Penal Code Order 2013 threatens Muslim shrine-worshippers with even heavier penalties of two years imprisonment and BND 8,000.\(^{136}\) The new law also supplements the previous ruling\(^{137}\) that no mosque can be built without written permission of the Religious Council with a fine of BND 10,000 for violations.

c. Religious symbols

Non-Muslims are allowed to possess religious symbols and scriptures for personal private use. However, there are reports that government authorities regularly confiscate bibles and non-Islamic religious symbols at customs controls.\(^{138}\) Islamic teaching materials can be confiscated as well if they are imported without government

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\(^{128}\) Section 124 (1), Religious Council and Kadis Courts Act (Chapter 77).

\(^{129}\) Section 124 (1), Religious Council and Kadis Courts Act (Chapter 77).

\(^{130}\) Section 124 (3), Section Religious Council and Kadis Courts Act (Chapter 77).


\(^{136}\) Section 216 (1), Syariah Penal Code Order 2013.

\(^{137}\) Section 240, Syariah Penal Code Order 2013; Section 124 (1), Religious Council and Kadis Courts Act (Chapter 77).

permission. Government authorities regularly censor or black out depictions of Christian religious symbols such as crucifixes from magazines and newspapers that are imported to Brunei. The sale and distribution of any products and items carrying non-Muslim symbols is heavily restricted.

d. Observance of holidays and days of rest

Government authorities allow Chinese temples to celebrate religious events. However, they are required to apply annually for permission to do so. Besides Islamic events such as Eid al-Fitr, Eid al-Adha, the First Day of the fasting month of Ramadhan, the First Day of the Islamic New Year, the “Night Journey” (Isra Me’raj, referring to a spiritual experience of Prophet Muhammad), Prophet Muhammad’s Birthday (Maulidur Rasul), and the Revelation of the Quran, certain non-Muslim celebrations are observed as national holidays as well, including Christmas and Chinese New Year.

It is forbidden to sell or serve food and beverages at restaurants in daylight hours during Ramadhan. Public consumption of food and beverages is similarly forbidden at that time. Local news media call on the public to report such offences to the religious enforcement agencies. Forty-one persons were temporarily arrested in 2012 for these offences, and restaurants have been fined under the Religious Council and Kadi Courts Act. These violations could only be committed by Muslims and Muslim restaurants in the past. At that time, non-Muslim restaurants and non-halal sections in supermarkets were still allowed to operate. Furthermore, Muslim restaurants are obliged to operate in accordance with government regulations for halal food, as specified in the Halal Certificate and Halal Label Order of 2005. Religious enforcement officers can arrest without warrant any person they suspect of having committed or attempting to commit any offence against this Order.

The Syariah Penal Code Order 2013 has widened the ban for consuming, selling and offering food and beverages during Ramadhan, which now also applies to non-Muslims. Offenders can be sentenced to higher fines and even jail terms of up to one year. The government’s Syariah Affairs Department reportedly also plans to introduce a new legal code that would include punishments for non-halal restaurant owners who serve food to Muslims and for Muslims who eat at non-halal restaurants at any time.

139 The Islamic Religious Council Act and Kadi Courts Act. Section 188, makes it a criminal offence to import any book or document that is considered to contravene ‘Muslim Law or Brunei Custom.’ Imported literature can also be seized under the Undesirable Publications Act (Chapter 25).


142 See e.g. ‘MoRA outlines fines for non-fasting Muslims,’ The Brunei Times, 14 Jul 2013.


144 Halal = permissible under Islamic Law.


146 Section 27 (1, a) Halal Certificate and Halal Label Order 2005.

147 Section 195, Syariah Penal Code Order 2013.

148 ‘Muslims eating at non-halal outlets may face penalty,’ The Brunei Times, 13 Dec 2011.
e. Appointing clergy

The government exclusively organize the appointment of Muslim clergy. All positions in its religious bureaucracy are systematically controlled, with clearly defined rules for the procedures of appointment and removal of Islamic officials. The Religious Council, which is appointed by the Sultan, maintains a register of all mosque officials (pegawai masjid) and imams. Mosque officials are obliged to inform the Council immediately about any vacancy or change on the particulars relating to their mosque. Every imam receives a government certificate carrying the Sultan’s seal.

It is forbidden to teach any matters related to Islam without written government approval. Before 2014, Islamic teaching without permission was punishable with one month imprisonment or a fine of BND 1,000, except for teaching in one’s own residence to family members. Fatwas (legal Islamic opinions) are legally binding on Muslims in Brunei. The State Mufti (Mufti Kerajaan) holds the exclusive right to issue fatwas, or to appoint a person acting under his powers to issue them. Prior to 2014, any Muslim, other than the State Mufti or a person acting under his powers, who issued or intended to issue any fatwa to be followed by the public pertaining to Islamic law or doctrine could be sentenced to a fine of BND 2,000 or three months imprisonment.

The Syariah Penal Code Order 2013 provides heavier punishments for Muslims who issue illegal fatwas, with maximum penalties of BND 8,000, two years imprisonment, or both. Public preaching and teaching without permit is now punishable with BND 8,000, two years imprisonment, or both. Teaching Islam to one’s family members in private is still allowed, provided that the contents of teaching do not contain “heretic” illegal elements.

The government generally respects the autonomy of non-Muslim religious institutions in appointing their clergy, and the legal reform of 2013/14 does not impose any restrictions in this field. The status of the Catholic Church of Brunei was raised to an apostolic vicariate in 2005. Brunei’s first Vicar Apostolic, Cornelius Sim, was ordained on 21 January 2005 at the Church of Our Lady of the Assumption in the capital, Bandar Seri Begawan. However, it is not possible for the Catholic Church in Brunei to exercise the missionary function that apostolic vicariates traditionally practice elsewhere (see below).

f. Teaching and disseminating materials

Missionary activities by non-Muslim religions are forbidden if they target Muslims or “persons having no religion” (in official understanding this refers to atheists and animists).

Laws and government policies systematically limit access to non-Muslim religious materials, literature and media.

It was and continues to be similarly forbidden to advertise interpretations of Islam that “deviate” from the government’s brand of Shafi’i Islam. The government is very active in propagating Islamic teachings. Such missionary activities (dakwha / da’wah) are conducted by several governmental institutions, such as the Ministry of Religious Affairs.

149 Compare Sections 129–31, Religious Council and Kadis Courts Act (Chapter 77).
150 Section 13 (1), Religious Council and Kadis Courts Act (Chapter 77).
151 Section 129 (1), Religious Council and Kadis Courts Act (Chapter 77).
152 Section 129 (1), Religious Council and Kadis Courts Act (Chapter 77).
153 Section 129 (2), Religious Council and Kadis Courts Act (Chapter 77).
154 Section 185 (2), Religious Council and Kadis Courts Act (Chapter 77).
155 Section 187, Religious Council and Kadis Courts Act (Chapter 77).
156 Section 228 (1), Syariah Penal Code Order 2013.
157 Section 229 (1), Syariah Penal Code Order 2013.
158 Section 229 (2, b), Syariah Penal Code Order 2013.
159 ‘Historic moment for Church in Brunei as first bishop is ordained,’ AsiaNews.it 14 Feb 2005.
Affairs and particularly the Islamic Da’wah Center (Pusat Da’wah Islamiah). The government also provides generous incentives for conversion to Shafi’i Islam. Some new converts have, among other forms of material support, received monthly financial donations, electric generators and water pumps, free pilgrimage travels and even new houses.\(^{160}\) According to statistics from the Islamic Da’wah Center, there were 21,100 conversions between 1985 and 2010, with 300–500 conversions per year.\(^ {161}\) Since 2010, 600 conversions per year have been registered.\(^ {162}\) The Islamic Da’wah Center’s personnel frequently makes “missionary visits” (ziarah da’wah) to non-Muslims, particularly in rural areas, and makes intense efforts to target urban audiences with new media channels such as Facebook, Twitter and weblogs.\(^ {163}\)

All conversions to Islam must be reported to the Religious Council, which maintains a register of all converts. The register also includes additional information about the circumstances of each conversion.\(^ {164}\) Whoever effects a conversion to Islam is obliged to report to the Religious Council “all necessary particulars.”\(^ {165}\) Intentional failure to report a conversion to the Council is an offence, for both converts and persons who have effected conversions, and can be punished under the Religious Council Act and Kadi Courts Act with one month imprisonment or a fine of BND 1,000.\(^ {166}\)

There have been many cases of conversion among Brunei’s ethnic groups (puak jati), with several family members or entire families having collectively embraced Islam in recent years, often accompanied by laudatory media coverage. When parents convert to Islam, government authorities reportedly exert pressure for the children to do the same, although this is not legally prescribed.\(^ {167}\) According to the law, no person under the age of 14 years and 7 months can be registered as a convert.\(^ {168}\)

**The Syariah Penal Code Order 2013** states that the propagation of non-Islamic religions to Muslims and to “persons having no religion” shall be punished with up to BND 20,000, five years imprisonment, or both.\(^ {169}\) Anyone who influences or tries to persuade a Muslim “to become a believer or a member of a religion other than Islam or to become inclined to that religion,”\(^ {170}\) or to “dislike” Islam,\(^ {171}\) similarly faces a maximum fine of BND 20,000 and/or five years imprisonment. The new Syariah legislation furthermore makes it possible to sentence persons who own or disseminate publications that are “contrary to Islamic Law” or relate to non-Islamic religions to up to two years imprisonment and monetary fines.\(^ {172}\) “Publications” comprise printing, broadcasting, or any other form of public distribution.\(^ {173}\) This provision can be applied to any Muslim missionary activities that are perceived to “deviate” from the state’s interpretation of Islam.

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\(^ {161}\) ‘Conversion figures prove Da’wah centre’s propagation work effective,’ *The Brunei Times*, 16 Dec 2010.

\(^ {162}\) ‘Islamic da’wah is expanding in Brunei,’ *The Brunei Times*, 29 Jul 2012.

\(^ {163}\) ‘Use new media to propagate Islam,’ *The Brunei Times*, 13 May 2012.

\(^ {164}\) Section 164, Religious Council and Kadi Courts Act (Chapter 77).

\(^ {165}\) Section 168, Religious Council and Kadi Courts Act (Chapter 77).

\(^ {166}\) Section 181, Religious Council and Kadi Courts Act (Chapter 77).


\(^ {168}\) Section 166, Religious Council and Kadi Courts Act (Chapter 77).

\(^ {169}\) Section 209 (1), Syariah Penal Code Order 2013.

\(^ {170}\) Section 211 (1), Syariah Penal Code Order 2013.

\(^ {171}\) Section 211 (2), Syariah Penal Code Order 2013.


\(^ {173}\) Section 213 (1b), Syariah Penal Code Order 2013.
g. The right of parents to ensure the religious and moral education of their children

The right of parents to ensure the religious and moral education of their children is protected insofar as they are free to educate them in private, provided that they do not violate any of the earlier mentioned prohibitions. However, at schools and other educational institutions, non-Muslim and non-Shafi’i Muslim children cannot receive any religious or moral education other than the government’s doctrines of MIB and Shafi’i Islam. Bible studies, which have been taught at Brunei’s six Christian schools in the past, are no longer permitted. Obligatory courses in Islam and MIB are taught in all schools and at the country’s universities. School textbooks present Islamic norms as exclusively true and desirable. School and school officials can be punished for teaching non-Islamic religious contents. Non-Muslim female students are required to wear Islamic dress at schools, including head covering (tudung), as part of their school uniform. Researchers at universities are explicitly required to practice self-censorship about matters pertaining to Islam and the Monarchy.

The Compulsory Religious Education Act makes it obligatory for Muslim parents to send their children to a religious school or to a school that teaches the government’s form of Shafi’i Islam for seven years, from the age of 7 to 15. Failure to do so can be punished with up to one year imprisonment, a fine of BND 5,000, or both. All private schools, including Christian and Chinese schools, are therefore required to offer Islamic teachings after their regular school hours for all Muslim students.

h. Registration

Under the Societies Order of 2005, all organisations must be registered. A list with the names of their members must be submitted regularly, and the Registrar of Societies (ROS) must be informed about procedural regulations for membership application. The same rule applies to non-Islamic religious groups, who must be registered in a similar manner like commercial or any other organisations. Unregistered organisations and unregistered members of registered organisations face various forms of punishment. Any person, who is a member of an unregistered organisation, who attends a meeting of such group or provides it with any form of aid can be sentenced to three years imprisonment and a monetary fine of BND

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178 The situation of academic censorship is also described in the resignation letter of Dr Maung Zarni, who left the University of Brunei Darussalam (UBD), because of various restrictions of academic freedom: Maung Zarni, ‘Resignation Letter’ 7 Jan 2013 <http://www.maungzarni.net/2013/01/dr-maung-zarni-resignation-letter.html> accessed 26 April 2014. Months before he first arrived at UBD, the Faculty’s Dean ordered him in writing “to steer clear ... of two taboo subjects, namely the Sultan and Islam.” Although he complied with this pre-condition for his appointment, he soon faced massive pressure for other political reasons and finally left the country.
179 Section 5, Compulsory Religious Education Act (Chapter 215).
180 Sections 5 (2), 12 (1), Compulsory Religious Education Act (Chapter 215).
182 Section 212, Syariah Penal Code Order 2013.
10,000. The same punishment can be applied to any person who is knowingly hosting a meeting of an “unlawful organisation,” such as unregistered religious groups. The government has the right to interfere in the internal affairs of any registered organisation, e.g. by prescribing restrictive rules for membership. Certain foreign organisations such as Rotary, Kiwanis, and the Lions Club, are legally registered in Brunei, but Muslims are not allowed to join them.

There is no comprehensive register of all Muslim residents. However, national identity cards carry the bearer’s ethnicity. As Malays are considered to be Muslims, religious enforcement officers reportedly request ID cards when conducting raids, in order to determine whether a person is Malay (and thus Muslim) and can be held accountable for Syariah-based offenses.

Interfaith marriage between Muslims and non-Muslims is forbidden under the law. Non-Muslim institutions are allowed to conduct religious marriages according to the rules, rites and ceremonies of their denomination, in accordance with government regulations. All religious non-Muslim marriages must be registered.

Islamic marriages must be registered within seven days after their solemnisation. It is allowed for Muslim men to marry up to four women, if certain criteria are met and an Islamic (Syar’ie) judge has granted written permission. Polygamous marriages must be registered as well. The imam of each mosque ex officio holds the position as Registrar of Muslim Marriages and Divorces. The Sultan can also authorise any person to solemnise Islamic marriages. Persons in Brunei are legally obliged to report unregistered or otherwise unlawful marriages to the responsible authorities.

i. Communicate with individuals and communities on religious matters at the national and international level

There are no laws expressly restricting members of religious groups from communicating with individuals and communities on religious matters at the national and international level. This is as long as such communication does not imply any dissemination of religious teachings other than Shafi’i, MIB-style Islam inside Brunei. However, until 2006, there were occasional reports of foreign clergy, such as certain bishops, priests or ministers, being denied entry into the country.

Both government religious groups as well as religious minorities maintain well-established contacts with foreign embassies, where questions of religious freedom and minority rights are regularly discussed. However, the government of Brunei insists on the principle of non-interference in domestic affairs and emphasises that the rights of all groups in the country are sufficiently protected.

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183 Section 41, 42, Societies Order 2005.
184 Section 43, Societies Order 2005.
188 Sections 5 (1), 6, 9, Marriage Act (Chapter 76). See also Chinese Marriage Act (Chapter 126).
189 Section 14, Marriage Act (Chapter 76).
190 Section 143 (1), Religious Council and Kadis Courts Act (Chapter 77).
191 Section 23, Islamic Family Law Act (Chapter 217).
192 Section 135 (3), Religious Council and Kadis Courts Act (Chapter 77).
193 Section 137 (1), Religious Council and Kadis Courts Act (Chapter 77); Section 8 (1), Islamic Family Law Act (Chapter 217).
194 Section 25, Islamic Family Law Act (Chapter 217).
195 This was described in each of the International Religious Freedom Reports of the U.S. Department of State from 2000 until 2006.
J. Establish and maintain charitable and humanitarian institutions

All non-governmental organisations in Brunei, whether Muslim or non-Muslim and irrespective of their purpose, must register under the Societies Order of 2005. Any involvement in unregistered organisations is an illegal offence (see “Registration”). No sufficient information was found pertaining specifically to charitable or humanitarian organisations.

k. Conscientious objection

A source notes that military conscription does not exist in Brunei. There are no known legal provisions concerning conscientious objection.

3. Freedom from intolerance and discrimination

The state-ideology of MIB rests on three sacrosanct pillars: “M” for Malay culture and tradition (Melayu), “I” for Islam and the “B” for the Monarchy (Beraja). Non-Muslim and non-Malay persons are by definition excluded from the core of governmentally prescribed national identity. In the government’s reading, their status is that of “protected minorities,” although some of them consider themselves rather as second-class citizens. Besides recognition as “good citizens” under MIB, Shafi’i Muslims enjoy various privileges vis-a-vis non-Muslims in Brunei. As stated earlier, the post of Prime Minister is legally reserved for Muslims only. In practice, most other positions in the government are given exclusively to Muslims as well. Muslims also enjoy privileged access to positions in the public service sector, which is the largest employer in the country. In village council elections, the only public elections held in Brunei, all candidates must be Muslims. As a consequence, non-Muslims cannot exercise their basic human right to participate in political and public affairs on an equal basis. Taken together with the numerous legal provisions described earlier that restrict the rights of non-Muslims or threaten them with punishment under Islamic Law, these examples illustrate a significant level of systemic discrimination against non-Muslims. Furthermore, Muslims face various forms of intolerance and discrimination as well, especially if their personal beliefs and practices differ from the government’s legally unchallengeable interpretation of Islam.

Another field of institutionalised discrimination on religious grounds are (un)equal rights for men and women. Although the Islamic Family Law Act generally ascribes equal rights to men and women under Brunei’s Islamic inheritance law, inheritance of Muslim women is half of that of men. Under certain provisions of the Syariah Penal Code Order 2013, the testimony of two male witnesses has the same status as that of one male and two female witnesses. At the same time, it is noteworthy that there are no other forms of discrimination against women in the public and private work sector. In 2013, 57% of positions in the civil service were held by women, as well as 28% of senior management posts. Women are widely

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198 Part III, Section 4 (5), The Constitution of Brunei Darussalam.


200 Compare Saadiah DDW Tamit, Wanita, Keluarga, dan Undang-Undang di Negara Brunei Darussalam (Berakas: Dewan Bahada dan Pustaka, 2009), 4–6.


202 See for example Sections 141 (1b, c), 148 (1b, c), Syariah Penal Code Order 2013.

represented in governmental positions, up to the position of Deputy Minister of Culture, Youth and Sports. There are also cases of discrimination against men: Female spouses of male citizens can apply for citizenship after 2 years, whereas male spouses of female citizens have to wait for at least 20 years.\footnote{Brunei 2013 Human Rights Report, States Department of State, Bureau of Democracy, Human Rights and Labor.}

Government policies and legislation discriminate against lesbian, gay, bisexual and transgender persons (LGBT), who are perceived by the government’s Islamic scholars as transgressing Islamic Law and the “order of nature.” With the Syariah Penal Code Order 2013, persons found guilty of homosexual intercourse can be sentenced to death.\footnote{Section 82 (2), Syariah Penal Code Order 2013.} No member of the government or civil society has publicly argued for the basic human rights of LGBT people in the reporting period, although a small LGBT community continues to exist in the country.\footnote{For a rare piece of writing on Brunei’s LGBT community, written by a Singaporean student at the University of Brunei Darussalam (UBD), see Nur Azlina Yusoff, \textit{Transvestite Culture in Bandar Seri Begawan}, unpublished B.A. thesis (Faculty of Arts and Social Sciences: University of Brunei Darussalam, 2004).} However, no individual cases of persecution based on sexual orientation have been published in the reporting period.

4. Right of vulnerable groups to freedom of religion and belief

a. Women

Women are in the same ways as men restricted in their choice of religion and beliefs, as well as in their right to practice their religion and beliefs. If they do not conform to the laws described in earlier sections, they face largely similar legal sanctions as men, although there are some offences for which the punishments vary depending on the sex of the offender.\footnote{Section 176, Religious Council and Kadis Courts Act (Chapter 77).}

Furthermore, Muslim women who “wilfully disobey” orders given by their husband “in accordance with Islamic law,” as specified in the Religious Council and Kadis Courts Act (Chapter 77), can be punished with imprisonment for up to seven days or a monetary fine of BND 500; this provision does not apply to women who are victims of domestic abuse or “ill-treatment on more than one occasion during the preceding year.”\footnote{Section 375 (Exception), Penal Code (Chapter 22).} “Disobedient wives” can also be sentenced under the Islamic Family Law Act to a fine of up to BND 1,000.\footnote{‘Marital rape: Are women in Brunei protected from it?’ \textit{The Brunei Times}, 13 Aug 2010.}

There is no sufficient protection against marital rape in Brunei, which reflects an internationally widespread perspective among conservative scholars of Islamic Law (that is rejected by Muslim women’s rights organisations in other countries). The Penal Code states that “sexual intercourse by a man with his own wife, the wife not being under 13 years of age, is not rape.”\footnote{‘Marital rape: Are women in Brunei protected from it?’ \textit{The Brunei Times}, 13 Aug 2010.} A spokesperson of the Royal Brunei Police Force admitted that the police is “unable to take any action when someone reports rape by their spouse.”\footnote{‘Marital rape: Are women in Brunei protected from it?’ \textit{The Brunei Times}, 13 Aug 2010.} There are no publicised statistics of such complaints. However, women are legally protected from other forms of domestic violence, and the government emphasises its commitment to the protection of women’s rights under the framework of Islamic values and Syariah Law.

b. Children

Neither children nor their parents are free to choose or practice their religion, insofar as the earlier-mentioned restrictions apply. Non-Muslim children who are adopted by Muslim parents are considered Muslims, with all the legal consequences, including the impossibility of leaving Islam and the subjugation
to Islamic Law for the rest of their life.\textsuperscript{211} However, Muslim children below the age of puberty (\textit{baligh}) are exempt from most punishments under Brunei’s Syariah Law codes.\textsuperscript{212}

c. Migrant workers

Migrant workers are subject to the same prohibitions and religious laws as Bruneian citizens. Although there are no published statistics, press reports indicate a remarkable frequency of foreign guest workers being arrested during raids of religious enforcement agencies on \textit{khalwat}, gambling\textsuperscript{213} and other “moral” offences.

In April 2014, the High Commission of Bangladesh expressed its concern that construction companies would not give their workers sufficient time to perform Friday prayers. The majority of the 10,000 mostly Muslim citizens from Bangladesh working in Brunei are employed in the construction sector. Since 25 October 2012, all shops, restaurants and other commercial premises are forced to close on Fridays between 12 pm and 2 pm; however, this ruling does not apply to the construction sector. With the Syariah Penal Code Order 2013, failure to attend Friday Prayers can be punished. The High Commission has therefore suggested giving all Muslim workers a full day off on Fridays instead of Sundays, to enable them to perform their religious duties.\textsuperscript{214} The government of Brunei has not yet responded to this request.

C. Redress Mechanisms and Interpretation of religious freedom

The common pattern of developing and implementing policies in the absolute monarchy of Brunei is top-down. In the absence of general elections or an elected parliament, there is very little space for civic political participation. There is no room for public discourse in which civil society actors critically discuss or openly challenge government policies. Accordingly, there are no independent non-governmental organisations that can openly criticise the government in any form, and there are no independent bodies or national human rights institutions where individuals could file complaints. However, the government of Brunei argues that it promotes and protects human rights in the country through an “inter-agency\textsuperscript{215} consultative mechanism,” in cooperation with government-approved NGOs. Nevertheless, citizens have no possibility of disputing, let alone changing, the government’s religious policies and legislation via judicial means, and there have been no cases of respective attempts in the reporting period.

\textsuperscript{211} Section 10, Islamic Adoption of Children Act 2010 (Chapter 206).
\textsuperscript{212} Compare Section 2 (1), Syariah Penal Code Order 2013; Section 3 (1), Syariah Courts Evidence Order 2001.
\textsuperscript{213} On rules and punishments pertaining to gambling, see Common Gaming Houses Act (Chapter 28).
\textsuperscript{214} ‘Adequate Friday prayer break time for workers: Bangladesh High Commissioner,’ \textit{The Brunei Times}, 18 April 2014.
\textsuperscript{215} The Inter-agencies consist of the Prime Minister’s Office, Attorney General’s Chambers, Ministry of Foreign Affairs and Trade, Ministry of Education, Ministry of Religious Affairs, Ministry of Home Affairs, Ministry of Health, Ministry of Development and Ministry of Culture, Youth and Sports.
PART TWO: TRENDS IN RELIGIOUS FREEDOM

A. Significant Changes in the Law

The government of Brunei has strengthened the Syariah Law sector throughout the reporting period. These changes have been made by enacting several new laws such as the Islamic Family Law Act 2000 (amended in 2004, 2005 and 2010), the Islamic Adoption of Children Act 2001, the Compulsory Religious Education Act 2012 and the Islamic Banking Order 2008. The Syariah Courts Act was amended in 2005 and 2010. In addition, fatwas that are regularly issued by the State Mufti must be taken into consideration, as they are legally binding on all Muslims in the country. However, none of these legislative measures have been as far-reaching as the Syariah Penal Code Order 2013, with its definition of various new offences and punishments, accompanied by 209 amendments to previous Islamic laws. Based on these amendments, the Attorney General’s Chambers have most recently published the Syariah Courts Act (Amendment) Order 2014, the Religious Council and Kadis Courts Act (Amendment) Order 2014, and the Syariah Courts Evidence (Amendment) Order 2014.

Simultaneously, however, the government of Brunei has signed the ASEAN Human Rights Declaration in 2012, which states that “[e]very person has the right to freedom of thought, conscience and religion. The constitutionally privileged position of Islam, as enshrined in the state ideology of a Malay Islamic Monarchy (MIB), is used by the government to justify far-reaching limitations on the freedom of thought, conscience and religion. These limitations are affecting non-Muslims, non-Shafi’i Muslims, as well as those Shafi’i Muslims who disagree with the state’s interpretation of Islam. Muslims who change their religion can now even be sentenced to death. Non-Muslims and non-Shafi’i Muslims cannot express their religious beliefs in public and are banned from proselytization. Even Muslims adhering to the state-ideology are restricted insofar as only governmentally registered Islamic scholars are allowed to teach or publish about religious matters in public, while the penalties for transgressions have increased.

The legal reform of 2013/14 has introduced several highly restrictive regulations pertaining to public morality which are justified by the government on religious grounds. “Indecent behaviour” and certain forms of sexual behaviour, music and entertainment have been strictly outlawed. The non-observance of religious duties, such as not attending Friday Prayers, non-payment of Islamic taxes or ignoring the rules pertaining to Ramadhan can now be punished with even heavier fines than before. Some traditional cultural practices and beliefs have been outlawed, while new restrictions have also been imposed on public entertainment.

Many of the legal provisions and sanctions that are described in Part I, B (“Domestic Laws and Policies”) clearly contravene the individual right to freedom of thought, conscience and religion that Brunei is obliged to protect under the UDHR and AHRD. With the Syariah Penal Code Order 2013, the number of punishable religious and moral offences, as well as the seriousness of potential penalties, has increased to an unprecedented level.

While certain elements of the Islamic Criminal Law had already been part of Brunei’s Syariah legislation under the Religious Council and Kadis

216 The State Mufti Department announces all of its Fatwas (Fatwa Mufti Kerajaan) to the public. Since its formation in 1962 under the leadership of State Mufti Hj Ismail bin Omar Abdul Aziz, the Department has published the Fatwas’ original texts and additional explanations in a large number of books, journals and newsletters, as well as through its homepage (<http://www.mufti.gov.bn>), where a list of all publications (Terbitan) can be found.

217 Article 22, Association of Southeast Asian Nations (ASEAN), ASEAN Human Rights Declaration, 18 Nov 2012.
Courts Act, the Syariah Penal Code Order 2013 now provides a much broader legal framework, which, from the government’s perspective, is now “comprehensive” and “complete.”

Not only do the maximum punishments (stoning to death, amputation of limbs, whipping, and jail sentences of up to 30 years), diversified offences, and procedural provisions represent a novelty, it is an equally new development that now subjegates non-Muslims to Syariah Law. A number of provisions of the Syariah Penal Code Order can now be used to prosecute non-Muslims for a wide range of offences pertaining to blasphemy, missionary work, sexual behaviour, public eating in Ramadhan, and for disrespect of the government’s religious truth claims more generally (for a detailed overview of specific provisions that apply to non-Muslims, see Part I, B “Domestic Laws and Policies”).

As mentioned above, the Brunei government now firmly characterizes its legal system as “hybrid.” This turn from a dual to a hybrid, now supposedly “fully Syariah-compliant” legal system reflects the country’s general trend of further empowering a decidedly anti-pluralist form of political Islam, a development that has been on-going since the 1980s and was strongly intensified by the government in recent years. While the government’s policies could serve to further stabilize its power and enhance its supposedly divine legitimacy, they also enable the country’s authorities to denounce political opposition as heretical opposition against God. At the same time, the clergy and many average Bruneians sincerely believe in the government’s religious truth claims and firmly reject religious pluralism and relativism, not to mention equal rights and status for Muslims and non-Muslims. Taken together, these salient political and societal trends could undermine any attempt to strengthen the protection of the individual right to freedom of thought, conscious and religion in the country.

There has been increase in laws restricting the general freedoms of individuals and groups on the basis of declared Islamic-based morality. For instance, on 20 November 2012, the Ministry of Home Affairs and Ministry of Religious Affairs announced a general ban on karaoke services and live band performances at business premises. In December 2013, the government issued an additional directive to close all family entertainment outlets in shopping malls offering “karaoke-boxes” (“K-boxes”). Both measures were justified as necessary “to curb immoral activities” that would contradict Islamic values, as government authorities had to ensure that Brunei is a “nation that is blessed by Allah the Almighty.” It was argued that karaoke-boxes might lead to “indecent behaviour,” such as khalwat (close proximity), and thus have a “negative impact” upon society. Owners of these entertainment outlets have emphasised that their services had been “Syariah-compliant,” and regular checks had been conducted. Couples had to present their marriage certificate before entering a “K-box” without company. However, neither the premises’ owners nor their customers have any possibility of legally challenging the government’s policy.

218 ‘Bruneians urged to be steadfast, united in face of criticism,’ The Brunei Times, 10 May 2014; ‘False accusation maker punishable under Syariah law,’ The Brunei Times, 26 Apr 2014; ‘Brunei ready for Syariah law,’ The Brunei Times, Apr 18, 2014.

219 ‘Unique hybrid legal system mooted,’ The Brunei Times 5 Jan 2012; ‘Islamic, civil law can work as one,’ The Brunei Times, 23 Oct 2013. The term “hybrid” has also been used to with reference to earlier revisions of Brunei’s Civil Law to ensure that it does not contravene Islamic teachings, a process that is ongoing since Independence. However, there has not yet been a more detailed publication by government officials or local scholars of constitutional law on the deeper conceptual dimensions of this “hybrid” system vis-a-vis the previous “dual” one.

220 ‘Karaoke boxes closed to curb immoral activities,’ Borneo Bulletin, 1 Jan 2014; ‘Arcades in k-box disposal dilemma,’ The Brunei Times, 13 Jan 2014; ‘Move aimed at curbing social ills, says Municipal Dep’t,’ The Brunei Times, 31 Dec 2013.

221 ‘Karaoke boxes in arcades shut down,’ The Brunei Times, 31 Dec 2013.
B. Significant Changes in State Enforcement

The strengthening of Brunei’s Syariah Law sector was accompanied by the expansion of the government’s Islamic bureaucracy, which consists of numerous Islamic institutions. These institutions, most notably the Religious Council, the Ministry of Religious Affairs, and the State Mufti Department, have retained and further stabilised their position as key advisors to the Sultan’s government for policy-making and legislation. In the absence of an elected parliament or independent non-governmental institutions, the Islamic bureaucracy and its clergy is perceived by many observers as the country’s most-powerful political actor outside the royal family. The implementation of the Syariah Penal Code Order 2013, which was previously lobbied for and drafted by the government’s Islamic clergy, demonstrates this presently nearly undisputed position.

In the prosecution of religious and moral offences, there has been a close cooperation between the Royal Brunei Police Force (RBPF), the Brunei Internal Security Department (BISD), and Islamic institutions, such as the Faith Control Section, throughout the reporting period. However, the Syariah Penal Code Order 2013 presents challenges for enforcement and will lead to structural transformations. Each case will require an initial decision to determine whether it shall be prosecuted under Civil or Syariah Law. In “duplicate” cases with offences that come under the jurisdiction of both Civil and Syariah courts, the RBPF will lead the investigations, whereas the Islamic institutions’ enforcement agencies will be responsible for cases that are handled by Syariah courts. However, for Syariah offenses such as apostasy, “close proximity” (khalwat), failure to perform Friday prayers, disrespecting the month of Ramadhan, or the propagation of non-Muslim religions, the Religious Enforcement Unit may, if necessary, be assisted by the RBPF and other law enforcement agencies.222 Duplicate cases will, for example, include theft, robbery, murder, or rape, which could be prosecuted under both the Penal Code Order and the Syariah Penal Code Order 2013. Non-duplicate cases comprise religious offences such as non-Muslim missionary work, “close proximity” (khalwat), or not performing Friday prayers.223 At the time of writing, however, no cases have yet been handled under the new law, and the structural details of enforcement appear to be still in a stage of unfinished formation. Since 2013, the Syariah Affairs Department and the Islamic Judge’s Prosecution Division of the Islamic Legal Unit (UPI) have been conducting training programs to prepare religious enforcement officers (such as the Religious Enforcement Section and the Faith Control Section) and the RBPF for the new law’s enforcement.224 As a result of this transformation process, which will continue to unfold until the third and final stage of the Syariah Penal Code Order’s implementation in 2016, the roles and responsibilities of religious enforcement agencies are expected to increase significantly.

Religious enforcement agencies have regularly conducted raids to seize alcoholic beverages and non-halal products.225 Only non-Muslims are allowed to possess limited amounts of alcohol for personal consumption, which they can bring from abroad, to be declared when entering the country. The sale or public consumption of alcohol is strictly forbidden also for non-Muslims. Government raids target persons who sell or import alcoholic beverages, non-Muslims who are in possession of undeclared beverages, and Muslims who possess or consume alcohol. There are regular press reports of arrests, but the government has not published annual statistics. Under the Syariah Penal Code Order 2013, the consumption of alcohol by Muslims

222 ‘Islamic, civil law can work as one,’ The Brunei Times, 23 Oct 2013,

223 ‘Syariah enforcement officers and RBPF to lead crime investigations,’ The Brunei Times, 30 Apr 2014.

224 See for example ‘Syariah criminal law course for 80 officers in the enforcement agencies commences,’ The Brunei Times, 17 Jan 2014.

can now be punished with 40 strokes, 80 strokes for the second offence, and two years imprisonment for any subsequent case.\footnote{Section 104 (1), Syariah Penal Code Order 2013.} Non-Muslims who drink alcohol in public face a fine of up to BND 8,000, two years imprisonment, or both.\footnote{Section 104 (5), Syariah Penal Code Order 2013.} The production, sale, advertising or serving of intoxicating drinks can be punished similarly, for both Muslim and non-Muslim offenders.\footnote{Section 104 (4, 6), Syariah Penal Code Order 2013.}

Raids and arrests have regularly been conducted to prosecute moral offences, such as \textit{khalwat} ("close proximity" of non-married couples), adultery (\textit{zina}), and gambling (\textit{judi}). In 2013, there were 106 \textit{khalwat} cases, involving 214 individuals, 15 of which were non-Muslims.\footnote{‘Khalwat offenders face heavy penalties’, \textit{The Brunei Times}, 30 Mar 2014.} Due to lack of evidence, many \textit{khalwat} cases were dropped before they went to Court.\footnote{\textit{Brunei 2012 International Religious Freedom Report}, United States Department of State, Bureau of Democracy, Human Rights and Labor; \textit{Brunei 2013 International Religious Freedom Report}, United States Department of State, Bureau of Democracy, Human Rights and Labor.} In most cases where Muslims were convicted, they were sentenced to monetary fines—up to BND 1,000 for males, and BND 500 for female offenders. There have also been cases of imprisonment for up to four months in recent years.\footnote{Data collected from various sources, including: ‘Khalwat,’ \textit{Ministry of Religious Affairs}, 31 Aug 2012 <http://www.religious-affairs.gov.bn/index.php?ch=bm_info&pg=bm_info_khutbah&ac=531> accessed 22 April 2014; ‘Imams slam promiscuity,’ \textit{Borneo Bulletin}, 27 Oct 2007; \textit{Brunei 2007 International Religious Freedom Report}, United States Department of State, Bureau of Democracy, Human Rights and Labor; \textit{Brunei 2008 International Religious Freedom Report}, United States Department of State, Bureau of Democracy, Human Rights and Labor; \textit{Brunei 2009 International Religious Freedom Report}, United States Department of State, Bureau of Democracy, Human Rights and Labor; \textit{Brunei 2010 International Religious Freedom Report}, United States Department of State, Bureau of Democracy, Human Rights and Labor; \textit{Brunei 2011 International Religious Freedom Report}, United States Department of State, Bureau of Democracy, Human Rights and Labor.} A government official declared in 2014 that the numbers were "on the rise" because penalties under the Religious Council and Kadis Courts Act were "too lenient."\footnote{‘Khalwat offenders face heavy penalties’, \textit{The Brunei Times}, 30 Mar 2014.} In previous years, however, much larger numbers of \textit{khalwat} cases were investigated (330 cases in 2006; 691 cases in 2007; 691 cases in 2008; 205 cases in 2009; 247 cases in 2010; and 256 cases in 2011).\footnote{‘New Year’s eve raid at hotel leads to one arrest,’ \textit{The Brunei Times}, 6 Jan 2008.} The extent of the implementation of the more drastic punishments for \textit{khalwat} and other moral offences under the Syariah Penal Code Order 2013 remains to be seen.

Public entertainment events can only be held with a permit. The government is particularly restrictive in terms of music and dance, with the exception of folkloristic performances of Brunei’s ethnic groups. On New Year’s Eve 2008, for example, the Sheraton Hotel in Bandar Seri Begawan was raided by more than 50 police officers because of the hotel’s failure to apply for a permit to conduct a party with music, and one person was arrested.\footnote{See e.g. ‘Enforcement officers go full force on NYE’, \textit{The Brunei Times}, 3 Jan 2013; ‘Valentine's Day crackdown,’ \textit{Borneo Bulletin}, 16 Feb 2007.} Throughout the reporting period, the government has also conducted raids and controls on the occasion of particular events such as New Year’s Eve and Valentine’s Day,\footnote{‘Valentine’s Day’ the movie banned in cinemas,’ \textit{The Brunei Times}, 13 Feb 2010.} particularly focusing on moral offenses such as \textit{khalwat} and the consumption of alcohol. In 2010, the government banned the American movie “Valentine’s Day,” following a declaration of governmental clerics that “Valentine’s Day is not for Muslims” because it encourages “promiscuous activities.”\footnote{‘Valentine’s Day’, \textit{The Brunei Times}, 13 Feb 2010.}
During the Muslim call for prayer (azan), all entertainment activities and music must be stopped.

C. Significant Changes in Religious Claims (by Non-State Actors)

In Brunei’s absolute monarchy, non-state actors are not in a position to, and traditionally do not, call for the recognition or improvement of their religious rights in public discourse. Since independence, the government consistently insists that there must not be open religious debates or polemics of any kind, as this could disturb “harmony” and “public order” in the “Abode of Peace” (literal translation of “Darussalam”). Accordingly, there have not been any significant changes in religious claims by non-state actors.

D. Significant Events of State Persecution of Religious Groups

Despite strict regulations and the central importance of religion in public life, very few individual cases of violent or serious non-violent religious persecution have been publicised in recent years. However, there are consistent reports of systematic state surveillance of non-Muslim religious institutions and communities. Some non-Muslim religious leaders were threatened with imprisonment and/or fines, and experienced other forms of harassment by state actors. There have been reports of the opening of mail. In other cases, non-Muslim communities were prohibited from receiving religious texts from abroad. Christian churches are legally allowed to repair or expand their buildings. However, the process of applying for permits to do so has often been made unnecessarily difficult and protracted. The Anglican Parish of St. Andrew’s renovation in 2007, for example, has been “the first major construction project on a non-Muslim house of worship to be approved in Brunei in decades.”

The permit had initially been issued by the Bandar Seri Begawan Municipal Board, but was revoked soon afterwards upon pressure of government Islamic clerics from the State Mufti Department. After several months and intense pressure from the U.S. Embassy as well as Brunei’s Ministry of Foreign Affairs and Trade, the Sultan himself made the final decision to allow the Church’s renovation works to proceed. In 2008, six Muslim youths were charged for having temporary tattoos depicting a Christian cross and text. However, the case was finally dropped and the “offenders” were given a warning.

One remarkable case of intra-religious persecution by state actors pursuant to a state policy stood out in 2013. When the Sultan declared in the same year that Brunei will implement the Syariah Penal Code Order 2013, Pg Hj Abdul Rahman Pg Hj Omar sent a letter to a local newspaper concerning stoning and flogging in Islam. The author did not question Syariah punishments as such, but claimed that for adultery (zina), 100 lashes—instead of death—were theologically adequate.

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237 Since 2003, all annual reports of the U.S. Department of State on Religious Freedom in Brunei Darussalam have described surveillance of religious services at Christian churches and senior church members.


244 ‘Enforcement of Islamic Law in stages,’ The Brunei Times, 13 Mar 2013; ‘Syariah Penal Code still warrants more, better clarifications,’ The Brunei Times, 6 Feb 2014.

245 ‘Should We Resort To Stoning Or Flogging’ (Opinion), Borneo Bulletin, 13 Mar 2013.
Despite Brunei’s long-established norms of media (self-)censorship, the letter was printed, and the religious authorities reacted immediately, with serious consequences for the letter’s author. First, the Ministry of Religious Affairs published a one-page article in the same newspaper on the Syariah Penal Code Order’s unquestionable theological foundation, and argued that institutionalising such penalties was obligatory for Muslims. The Ministry’s article ended with an “invitation” to the letter’s author to visit the Ministry for further “explanations.”

The letter’s author was soon afterwards sued for heresy (questioning the validity of hadith), and “given an explanation by the religious authority … with the cooperation of the Internal Security Department.”

His case was settled after he “confessed” and publicly repented in front of a Syariah Court Judge at the Islamic Da’wah Centre on 7 June 2013. According to news reports, the “offender” declared his “repentance for questioning and disputing the existence of stoning or flogging for adultery in Islam,” “regretted his actions” and stated that he will “not repeat his mistake.”

The declaration of repentance was attended by two formal witnesses, the Secretary of the Islamic Religious Council and the vice chancellor of the Seri Begawan Religious Teachers University College, as well as several high-ranking religious officials, including the Deputy State Mufti and members of the Religious Council. The authorities declared that “the next move would be to help” him “deepen his knowledge of Islam,” implying that he had to undergo what is officially called “religious counselling.”

This instance of non-violent persecution by government actors was justified under the Religious Council and Kadis Courts Act. Under the Syariah Penal Code Order 2013, the same offender could have been punished with death for “denying the validity of the Hadith as a source of Islamic authority” if he had refused to repent.

Referring to the same case, the State Mufti, Hj Abdul Aziz Juned, publicly warned of a deviationist “anti-hadith movement,” that denied Prophetic traditions (hadith) and selectively referred to the Quran without theological knowledge. During a visit to Bruneian students in New Zealand, the Sultan himself condemned the supposed “anti-hadith-movement,” which, out of “ignorance,” was “secretly desecrating the Islamic laws” and damaging the faith (akidah).

Furthermore, in April 2014, a series of Islamic lectures was cancelled upon intervention of the Islamic Religious Council, following rumours that the Canadian-born, Saudi-Arabian-trained speaker Sheikh Daood Butt was spreading “wahabi” teachings. Although the Council’s investigation concluded that the speaker was not “wahabi,” it was argued that his presence could lead to “confusion” among the population. The decision for nevertheless cancelling the lectures reflects the government’s policy of banning any religious event or publication that could lead to public controversies on religious matters.

### E. Significant Events of Non-State Persecution of Religious Groups

There were no reports of persecution of religious groups by non-state actors in the reporting period.

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247 ‘Confession, repentance for questioning Islamic law,’ The Brunei Times 8 Jun 2013.

248 This was the first Syariah-related ‘Declaration of Repentance’ in post-colonial Brunei Darussalam, see ‘Understanding ‘Ahli Sunnah Wal Jama’ah’ The Brunei Times, 16 April 2014.

249 ‘Confession, repentance for questioning Islamic law,’ The Brunei Times 8 Jun 2013.

250 ‘Confession, repentance for questioning Islamic law,’ The Brunei Times Jun 8 2013.

251 Section 111 (1), Syariah Penal Code Order 2013.

252 ‘Apostasy punishable by death,’ The Brunei Times, 1 Apr 2013.

F. Significant Events of Inter-Religious Conflict

There were no reports of inter-religious conflict in Brunei in the reporting period. The government and many citizens of Brunei take great pride in the fact that no violent conflict whatsoever, neither religiously nor politically motivated, has occurred in the “Abode of Peace” since the early 1960s.

G. Significant Events of Terrorism and/or Terrorist Threats

There were no reports of links to terrorist groups being made by the government or by non-governmental organisations in the reporting period, whether in their assessment of violent conflict or in any other form.

There have been no terrorist attacks or visible activities of militant groups in Brunei in the reporting period. There is no evidence that the government or any non-governmental organisations in Brunei are supporting any terrorist, militant or separatist groups in Southeast Asia, the Middle East or elsewhere. In fact, the government and its security agencies closely cooperate with regional and international partners in transnational counter-terrorism efforts. In addition to the Internal Security Act, the Anti-Terrorism Act (Financial and other Measures) provides a strong legal framework for counter-terrorism. Suspicious individuals in the country are under the tight surveillance of Brunei’s widely present intelligence agencies.

In contrast with all neighbouring countries, Brunei was long exempt from any noteworthy presence of jihadi-terrorist groups. In 2014, the Brunei Internal Security Department (BISD) arrested an Indonesian national accused to be a member of the militant group Jemaah Islamiyah (JI), which has operated elsewhere in Southeast Asia in the 2000s. The suspect had received military training in Afghanistan in the early 1990s and was later arrested for suspected involvement in a bombing in Medan, Indonesia, in 2000. The BISD accused him of trying to assist other JI-related individuals to settle in Brunei. Following the arrest, a BISD spokesperson declared that the Sultan’s government “does not tolerate terrorism-related elements,” and warned that “the public should be wary of those who attempt to use the implementation of the Syariah Penal Code to support extremism.” In the following Friday Prayer sermons, imams across the country warned that Brunei had “become a target as a protective haven for terrorist groups and a source of finance to sponsor anti-peace activities,” and cautioned listeners “to be careful not to be deceived by groups who pretend to preach for Brunei’s cause.” The imams re-affirmed the government’s unambiguous position that “militant forces” such as JI “were against everything that Islam stands for.”

H. Significant Cross-Border Incidents

There were no reports of any cross-border impact of religious conflict from or into neighbouring ASEAN-states in the reporting period. However, the government of Brunei tries to promote its understanding of Syariah Law, including Islamic Criminal Law, beyond the Sultanate’s shores. The Sultan and the State Mufti have expressed their hope that the Syariah Penal Code Order 2013 would become a positive example for the rest of the ASEAN-region (see “Analysing the Trends”). Upon the initiative of Brunei’s Chief Islamic Judge, a network of cooperation for Syariah courts of different ASEAN-countries was established in

254 ‘Man with terror links detained,’ The Brunei Times, 27 Feb 2014.
255 ‘Man with terror links detained,’ The Brunei Times, 27 Feb 2014.
256 ‘Man with terror links detained,’ The Brunei Times, 27 Feb 2014.
257 ‘Friday sermon warns against terror threat,’ The Brunei Times, 1 Mar 2014.
258 ‘Friday sermon warns against terror threat,’ The Brunei Times, 1 Mar 2014.
September 2013, a novelty in the region. Its members include representatives of Islamic courts in Malaysia, Singapore, Indonesia, the Philippines and Thailand.

In preparing the Syariah Penal Code Order 2013, Brunei’s authorities have also engaged in extensive networking with governments and Islamic bodies that have experiences with practicing punishments based on Syariah law, including Saudi-Arabia, Aceh (Indonesia), Pakistan and Malaysia. Particularly Saudi-Arabia has been referred to by the government of Brunei as a “leading” role-model in the “successful” implementation of Islamic criminal law. In 2013, the Pan-Malaysian Islamic Party (PAS), which has long campaigned for a more far-reaching implementation of Islamic Criminal Law in Malaysia, published an open letter to Sultan Hassanal Bolkiah, in which its party president, Abdul Hadi Awang, conveyed his congratulations and support for Brunei’s legal reforms. Several Malaysian Islamic politicians have since then referred to Brunei as a role model, and discussed possibilities to realise a similar legal code in their country. The Sultan of the Malaysian Aceh (Indonesia), Pakistan and Malaysia. Particularly Saudi-Arabia has been referred to by the government of Brunei as a “leading” role-model in the “successful” implementation of Islamic criminal law. In 2013, the Pan-Malaysian Islamic Party (PAS), which has long campaigned for a more far-reaching implementation of Islamic Criminal Law in Malaysia, published an open letter to Sultan Hassanal Bolkiah, in which its party president, Abdul Hadi Awang, conveyed his congratulations and support for Brunei’s legal reforms. Several Malaysian Islamic politicians have since then referred to Brunei as a role model, and discussed possibilities to realise a similar legal code in their country. The Sultan of the Malaysian


260 ‘Enforcement of Islamic Law in stages,’ The Brunei Times, 13 Mar 2013.

261 ‘Team off to Saudi Arabia to study Syariah law enforcement,’ The Brunei Times, 8 Feb 2014. An 18-member delegation of Brunei’s Ministry of Religious Affairs visited Saudi-Arabia in February 2014 to ‘learn from Saudi Arabian court officials’ experiences in enforcing their Islamic criminal law,’ and strengthen ‘the … mutual cooperation between the government of Brunei Darussalam and Saudi Arabia, especially on the Syariah Penal Code.’ See ‘Brunei delegates visit Saudi courtroom,’ The Brunei Times, 12 Feb 2014; ‘Brunei delegation discusses Syariah implementation with Saudi officials,’ The Brunei Times, 11 Feb 2014; ‘“Syukran” Saudi Arabia,’ The Brunei Times, 13 Feb 2014.


264 ‘Kanun syariah: MB Kelantan mengadap Sultan Brunei,’ Harakah Daily, 24 Dec 2013; ‘Kelantan to learn from Bruneian Syariah penal code,’ The Brunei Times, 26 Dec 2013. On a similar visit by the Malaysian State of Selangor’s Fatwa Council, see ‘Call for all Muslims to help educate others on Syariah law,’ The Brunei Times, 23 May 2014.


267 Martin van Bruinessen, Contemporary Developments in Indonesian Islam: Explaining the ‘Conservative Turn’ (Singapore: ISEAS, 2013).

I. Governmental Response

In the reporting period, the government undertook no measures, legislative or otherwise, to address religious persecution. The only reported forms of non-violent religious persecution that occurred were conducted from within the state apparatus, based on the legal provisions described above (although from the government’s official perspective, no persecution has taken place). No government or non-governmental actors have openly criticised such persecution, except for a number of anonymous commentators in online discussion forums. The state’s absolute monopoly on political decision-making and its tight system of

state Kelantan visited Brunei in December 2013, followed shortly afterwards by the Chief Minister and an eight-man delegation from the Kelantan state government. Kelantan’s Sultan, State Mufti, and Chief Minister all stated their admiration for Brunei’s legal reforms and expressed their intention to learn from Brunei. Brunei’s decision to forge ahead with its legal Islamisation programme may therefore raise the stakes in the region, particularly vis-a-vis the “Islamisation race” of “piety-trumping” between competing Muslim political groups in Malaysia and Indonesia’s on-going “conservative turn.”

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discourse control and media-censorship leaves very little space to publicly discuss religious persecution, discrimination and intolerance, and nothing indicates that the government intends to widen this space or to improve the protection of the right to freedom of thought, conscious and religion in the foreseeable future.

J. Developments in Advancing Religious Freedom, Dialogue, and Conflict Mediation

There are no government-led or non-state actor-led initiatives to promote individual and group rights to freedom of thought, conscience and religion, and there are no corresponding legislative protections. Similarly, there are no neutral education programmes raising awareness about religions, except for didactic propagation of MIB and the government’s claims of truth. However, the government has sponsored delegations to participate in inter-religious dialogue events abroad, such as the Regional Youth Interfaith forum in Australia in December 2007 and several Asia-Europe Meeting (ASEM) interfaith dialogue events in the late 2000s. In October 2009, government officials and several non-Muslim religious leaders from Brunei, including Christians and Buddhists, participated in the Fifth Asia Pacific Regional Interfaith Dialogue in Perth, Australia. In February 2014, a delegation from the University of Brunei Darussalam (UBD) visited the University of Oxford to participate in a workshop on “Contemporary Challenges to Inter-Religious and Inter-Cultural Dialogue in South East Asia,”268 where a UBD lecturer presented Brunei as a desirable “Model of a Multi-Religious Society.”

Notably, events to facilitate inter-religious dialogue rarely take place in Brunei; if they do, they are usually done behind closed doors. In 2010, it was reported that officials from the Prime Minister’s Office, the Ministry of Religious Affairs, and the Ministry of Foreign Affairs and Trade were holding regular meetings with non-Muslim religious leaders to discuss ideas on shared interests.269

K. Analysing the Trends

Non-violent persecution by state actors has occurred without significant tendencies of increase or decline throughout the reporting period. It is possible, however, that instances of violent persecution will occur and that non-violent religious persecution perpetrated by governmental actors will increase in qualitative and quantitative terms with the implementation of the Syariah Penal Code Order 2013.

Brunei’s legal reforms have imposed numerous new restrictions on the individual right to freedom of thought, conscious and religion on Muslims and non-Muslims. Paradoxically, the Syariah Penal Code Order was announced in 2013, the same year when Brunei chaired ASEAN and shortly after Brunei signed on to the AHRD, which requires the government to protect freedom of thought, conscious and religion, and to eliminate all forms of intolerance and discrimination. However, the laws that violate religious freedom are justified by the Sultan with great emphasis as “commanded by Allah”270 and thus as an unquestionable divine legislation that any Muslim country is obliged to implement. When the first phase of the legal reform was announced on 30 April 2014, the Sultan


described it as his “personal obligation”\textsuperscript{271} as a Muslim ruler to implement Islamic Criminal Law. The Deputy Minister of Religious Affairs similarly stated that “it is the duty of a Muslim ruler to provide laws that serve to protect the sanctity of Islam.”\textsuperscript{272} At the same time, the new law is explained by government officials as a necessary instrument to “safeguard” Brunei from “threats to its social and moral fabric,”\textsuperscript{273} and to ensure “justice as well as security for everyone.”\textsuperscript{274} The Syariah Penal Code Order 2013 would therefore “help to reduce the number of moral lapses” and preserve “the sanctity of Islam ... in the country”\textsuperscript{275} vis-a-vis negative influences caused by the “rapid development of a borderless world.”\textsuperscript{276} The State Mufti, who is the most powerful government religious official and enjoys the Sultan’s unconditional support, has proudly declared that the Syariah Penal Code Order 2013 should be “an example for the rest of Southeast Asia.”\textsuperscript{277} No member of the government or the royal family has openly disagreed with this great enthusiasm for the on-going changes in Brunei’s legal landscape.

The government’s enactment of the Syariah Penal Code Order 2013 raises serious doubts about its willingness to protect freedom of thought, conscience, and religion. Brunei has not yet shown substantial efforts to embed its international obligations in national laws and policies, although it is noteworthy that the government generally supports the protection of human rights under the AHRD’s framework.

### PART THREE: CONTRIBUTING FACTORS AND SURROUNDING CIRCUMSTANCES

#### A. Negative Contributing Factors

The government’s policies restricting religious freedom need to be understood vis-à-vis their wider political, socio-cultural and historical context. The absolute monarchy of Brunei derives its legitimacy not from elections but from a reciprocal patron-client relationship between a “Caring Sultan” and his subjects. In contrast to trends of democratisation in the region, there is no indication for such a tendency in Brunei. Instead of democracy, the country is massively empowering Islamic Law, a trend that has been on-going since the Declaration of Independence in 1984. Like any other policy in the country, Brunei’s Islamisation is implemented in a top-down, thoroughly authoritarian manner. Non-governmental actors have no opportunity, and traditionally do not, to contest government policies in any publicly visible form.

Brunei’s highly popular ruler, Sultan Hassanal Bolkiah—in office since 1967, officially crowned in 1968—is Prime Minister, Minister of Defence, Minister of Finance, and Head of Islam at the same time. His status of infallibility is, in accordance with the foundational principle of absolutistic monarchies that “the king can do no wrong” (\textit{rex non potest peccare}), legally enshrined and politically undisputed. Hassanal Bolkiah, the 29th in a line of Muslim rulers that dates back to the 14th century, is considered as an indirect descendent of Prophet Muhammad, which, in the local perception of the Muslim Malay majority population further adds to his charismatic aura of sacred leadership. The centrality of Islam in state politics is underlined by the fact that among the MIB’s three pillars, Islam is officially considered superior.\textsuperscript{278} Following the

\textsuperscript{271} ‘Upon command of Allah SWT,’ \textit{The Brunei Times}, 30 Apr 2014.

\textsuperscript{272} ‘Sacred words, phrases usage,’ \textit{The Brunei Times}, 10 May 2014.

\textsuperscript{273} ‘Syariah code to safeguard moral and social fabric,’ \textit{The Brunei Times}, 18 Feb 2014.

\textsuperscript{274} ‘Syariah law guarantees justice for all,’ \textit{The Brunei Times}, 23 Oct 2013.

\textsuperscript{275} ‘Syariah code to safeguard moral and social fabric,’ \textit{The Brunei Times}, 18 Feb 2014.

\textsuperscript{276} ‘Propagating religion other than Islam a crime under Syariah law,’ \textit{The Brunei Times}, 14 Feb 2014.

\textsuperscript{277} ‘Syariah law critics do not understand Islam: Mufti,’ \textit{The Brunei Times}, 4 Jan 2014.

infallible Sultan, MIB represents “God’s will.”

Besides religious (Muslim) and ethnic (Malay) power-political legitimation, the absolute monarchy’s political stability is enhanced by a well-established social security system and exceptionally high living standards. Brunei was ranked 30th on the Human Development Index 2012—number two in Southeast Asia, number one among Muslim majority countries. Among his subjects, the Sultan is widely perceived as a “benevolent ruler” or “Caring Monarch,” terms that are also frequently used in Brunei’s largely state-controlled, didactic news media. Upon his generosity, citizens enjoy privileges that are spectacular by any standards. No personal income tax, subsidised housing, free health care and education, free pension from the age of 60 and a remarkably low crime rate are only a few of the benefits that Bruneians receive in return for their loyalty.

Brunei’s population is commonly perceived as “apathetic” and “contented, even docile,” while public discourse, or the lack of it, is shaped by a “depoliticized general population.” This depoliticisation has been systematically imposed by the government since the early 1960s. After the British colonial administration granted autonomy in domestic political affairs to the former Sultan, Omar Ali Saifuddien III, in 1959, the monarchy experienced a short but traumatic experiment of holding elections and providing space for democratic expression. In 1962, a popular movement called the Brunei People’s Party (Parti Rakyat Brunei, PRB) made a landslide victory in the District Council elections and openly challenged the monarchy. As a consequence, an emergency legislation with drastic limitations on civil liberties was enacted, which is largely in place until today. Since the PRB’s defeat in the 1960s, no political movement of any kind has ever openly challenged the political status quo again. Instead, the absolute monarchy appears to enjoy an overwhelming support, especially among the Muslim-Malay majority population.

Despite the absence of general elections, there have been a handful of small and short-lived political parties during the last three decades. None had any significant impact. The demise of these political parties, which existed under tightest-possible control, is symptomatic of the government’s efficiency in minimising visible dissent, whereas the lack of popular support for these parties reflects the population’s disinterest in, or fear of, alternative political agendas. The only remaining party, the National Development Party (NDP), emphasises its unconditional support for the Sultan’s government. Despite not being known as an Islamist party, the NDP has enthusiastically lauded the establishment of the Syariah Penal Code Order 2013, adding that Muslims who do not support Allah’s legislation would become “infidel” (kafir).

The government takes pride in Brunei’s “cultural diversity,” with ethnic groups performing traditional dances on festive occasions such as the National Day and the Sultan’s Birthday. However, this celebration of plurality should not be confused with pluralism, as the Sultan and his religious authorities constantly emphasise. In a royal address in 2012, the Sultan condemned “liberal Islam” and “religious pluralism” as “deviationism” that “will never be related to...

Brunei. Since independence in 1984, Brunei’s Syariah Law and governmental Islamic bureaucracy have constantly expanded, fuelled by transnational Islamic resurgence, power-political considerations and an increasing piety of the Sultan in recent years. By implementing a particularly strict version of Islamic Law, the Sultan has effectively taken the wind out of a potential future Islamist opposition’s sails.

In remarkable contrast to vibrant Islam-related discourses and controversies elsewhere in the region, Brunei’s Islamic governance was never openly challenged by organised secular or religious public actors in the country. Instead, “[r] eligious innovations are discussed internally and ... introduced slowly and quietly. Open religious polemics and debates have never taken place.”

In this process, Brunei’s religious bureaucracy has standardised an orthodox brand of Islam as the sole acceptable Muslim truth vis-à-vis a codified conception of illegitimate “deviant teachings.” Islam-related statements by average Muslims, on the other hand, can be dangerous. The lack of any scholarly public debate on religious interpretation outside the tight borders set by the government reflects the government’s intention of thoroughly centralising Islamic discourse.

The government’s interrelated discourse on “deviant teachings” dates back to the early 1960s. During the tenure of State Mufti Ismail Omar Abdul Aziz (1962–1993), Brunei began to codify an official list of “deviant” groups. Since Brunei’s independence, “faith control” (kawalan akidah) measures have been carried out to an increasing extent by religious enforcement officers, hand-in-hand with other security and surveillance agencies. Groups that are officially considered as “deviant” include, among others, Al-Arqam, Shia Islam, Ahmadiyyah Muslim Jama’at (Qadiyyaniah), Naqsyabandiyyah, Khalidiyyah, Ilmu Pancar, Tariqat Mufarridiyah, Silat Lintau, and the Bahai. In addition, the teachings of a number of foreign individuals are banned.

Over decades, the government claims a religious duty for itself to “safeguard” the country from the “threat” that such “deviant groups” cause to the “pure faith” (akidah) of Islam. In the past, some members of these groups were forced to undergo lengthy religious “rehabilitation.” In September 2003, six members of the “deviant” group Al-Arqam were detained without trial under the Internal Security Act (ISA) for alleged attempts to revive the movement in Brunei, where it had been banned in 1991. Others, such as the small Bahai community are not subject to imprisonment and forced “religious counselling,” provided that they continue to practice their faith in private space only. The local Bahai community dates back to the early 1960s, when Iranian guest workers in Brunei’s oil industry converted some members of indigenous groups in the Tutong district to their religion. The Bahai have been classified as “deviant” by Brunei’s religious authorities as early as 1961.

Five decades of systematic de-politicisation of the population (once initiated as a reaction to the PRB rebellion), dependence on the “Shellfare State’s” generosity, and the sharp limitations on freedom

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286 Sultan Hassanal Bolkiah quoted in ‘Call to shun deviant beliefs, follow Prophet’s teachings,’ Borneo Bulletin, 15 Nov 2013.


291 Varying sources indicate that Brunei’s Bahai community presently comprises between 30 and 100 persons.

of speech have created the peculiar situation of a nearly complete absence of open political dissent. Incentives for loyalty, the iron fist of a powerful security and surveillance apparatus and the danger of sanctions continue to minimise the potential for open public debates on any political or religious matters. Islamic discourse, which in other Muslim societies provides a salient resource for political contestation, is widely controlled and serves as a key stabilising force for the ruling system, while political power and religious “authenticity” are inseparably intertwined. The Syariah Penal Code Order 2013, with its far-reaching restrictions of fundamental human rights, can be used as a powerful instrument to suppress critical discourse about the absolute monarchy’s religious legitimation and would thus serve to foreclose religio-political opposition in the future. At the same time, its implementation reflects tendencies of increasing orthodox piety in the state apparatus and among the Muslim majority population. Many Muslim citizens in Brunei passionately agree with the legal reform’s official justification of submitting to God’s will.

These interrelated factors, and absence of any civil society actors that would argue for religious freedom, contribute negatively to the situation of the freedom of thought, conscience and religion in Brunei. However, there is no indication of any likelihood of violent conflict or religious persecution by non-state actors in the foreseeable future.

B. Positive Contributing Factors

The state’s absolute monopoly of violence effectively ensures the absence of any forms of violent conflict or religious persecution perpetrated by non-state actors. Police and security services with far-reaching powers are widely present. Absolute rule, decades-long established “emergency” powers and the country’s small population make it possible to maintain a highly effective system of surveillance and control, albeit without any democratic checks-and-balances. In the government’s understanding of Brunei Darussalam being an “Abode of Peace,” no space can be provided for religious violence, religious controversies, or political dissent. Accordingly, Brunei has not witnessed any outbreaks of religious violence, or violent religious rhetoric, as they have to varying degrees occurred in most neighbouring countries in the reporting period. Whether the state’s absolute control of religious expression at the cost of civil liberties should be listed as a positive contributing factor is however doubtful, although this has remarkably contributed to the absence of violent religious conflict or violent persecution by non-state actors.

Government officials have in recent years attended cultural events of non-Muslim groups in Brunei, such as Chinese New Year. In 2008, government representatives attended the ethnic Iban’s “Gaway,” a thanks-giving ritual dedicated to the Iban’s God of Paddy, for the first time. This is particularly noteworthy also because the Iban do not belong to the seven ethnic groups that are officially acknowledged as “indigenous” (puak jati), and are therefore particularly marginalised. In 2013, an officer from the Ministry of Culture, Youth and Sports stressed during a UNESCO workshop that the cultural heritage of Brunei’s smaller ethnic groups, including the mostly non-Muslim Dusun and Bisaya, needs to be preserved.293

In the absence of possibilities for democratic participation, it is remarkable that the Legislative Council, which operated without pro forma powers since 1965 and became fully suspended in 1983, was re-opened in 2004.294 This may indicate a gradual opening of the political system for civic participation. For the time being, however, the Council does not have legislative power. Most of its 36 members are directly appointed by the Sultan, except for a smaller number of village heads, who are elected

293 ‘Call for research to document traditional practices of local ethnic minorities,’ The Brunei Times, 29 Nov 2013.
at the village-level, where they can only become candidates with governmental approval. Although the Council’s re-opening can be considered as a positive step, one of the most distinguished foreign observers of Brunei, A.V.M. Horton, has argued that this step is merely an attempt “to wrap the kingdom in some of the clothes of a liberal democracy without actually being one.”

Nevertheless, average citizens are now able bring up their concerns to the Council’s members and thereby participate in a new form of institutionalised political discourse. So far, religious freedom has not been discussed at the Legislative Council. Instead, in one instance, a member of the Council spoke of civic concerns about a Sunni Islamic missionary group, Jama’at al-Tabligh, which was suspected by average citizens of spreading “deviant teachings.” The group, which has a small presence in Brunei since the 1980s, is the only transnational Islamic movement that is allowed to proselytise. Due to its uncontroversial and apolitical adherence to MIB-conforming Sunni teachings, the former State Mufti did not list the group “deviant.” At a Legislative Council meeting in 2013, the delegate cited complaints about the Tabligh’s possibly “deviant” missionary work, adding that its presence at mosques was “not welcomed” by some parts of the population. The Minister of Religious Affairs responded at the same meeting that although the group is not banned for deviant teachings, “these people should not mix politics with Islamic preaching,” and warned that “the ministry does keep a close watch on them.”

In sum, there are very few positive contributing factors that would be conducive for the protection of religious freedom in Brunei. However, the AHRD might potentially provide a regional framework for protecting human rights more effectively in the future, which could then have a positive impact on the situation in Brunei.

PART FOUR: CONCLUSION

Throughout the reporting period, there was no substantial protection of the individual right to freedom of thought, conscious and religion in Brunei, particularly for persons whose convictions differ from those of the government. Reflecting its self-understanding as a non-secular Malay Islamic Monarchy, the country’s legal and political system unambiguously rejects pluralism and privileges Muslim citizens over non-Muslims, except for those “deviant” Muslims who disagree with the state’s interpretation of Islam. The government of Brunei argues that its policies of restricting the individual right to religious freedom, and its sanction-based enforcement of religious duties, are required by divine legislative commandments. The government’s equation of its religious policies with God’s unquestionable will de-legitimises criticism that calls for an improved protection of individual religious freedom as ignorance and heresy.

From the government’s official perspective, its submission to God’s will is furthermore necessary for safeguarding the more than 600 year-old Sultanate’s status as an “Abode of Peace,” as reflected in the remarkable absence of violent conflict or social unrest (“national harmony”), an exceptionally low crime rate, and economic wealth. At the same time, there are no visible actors in the country, neither from the government nor from civil society, who would openly advocate in public discourse for the improvement of freedom of thought, conscious and religion. It is difficult to determine, however, to what extent this absence is caused by an overwhelming popular support for the
government, by a general lack of interest, or by fear of drastic sanctions. As the government’s domestic policies are one-directional, and there is very little space for political participation or unrestricted public debates, particularly on matters pertaining to religion, it is unlikely that the state of religious freedom in Brunei will improve in the foreseeable future.

Restrictions of religious freedom have reached an unprecedented level with the announcement of the Syariah Penal Code Order 2013, which, besides numerous other violations of the right to religious freedom, includes the death penalty by stoning for religious offences such as extramarital sex, apostasy, heresy and blasphemy. Given the high burden of proof and procedural requirements, such as a voluntary confession or at least two witnesses of “just character,” among others, it is possible that the Syariah Penal Code Order’s most drastic penalties will not, or only in very few cases, be applied. Nevertheless, it has been argued by human rights groups that they would constitute torture and thus violate international law. The Office of the UN High Commissioner for Human Rights has communicated this assessment toward the government of Brunei in no uncertain terms, which is well-aware of this perspective. Nevertheless, it has so far ignored any criticism. Instead, the government has been lauded by several Islamic organisations and politicians from neighbouring countries for its God-serving “courage.”

The Sultan’s administration affirms its commitment to the protection of human rights in the ASEAN region, but simultaneously insists on restrictions of human rights in the name of “God’s commandments” (as they are interpreted by the country’s Islamic clergy in de jure unquestionable terms) vis-a-vis “man-made laws” and “foreign interventions.” Accordingly, the government of Brunei does not reject the notion of “religious freedom” in principle, but ascribes meanings to this term that substantially differ from those held within a secular pluralistic or UDHR-based normative framework. From this perspective, “true” religious freedom is ultimately expressed and protected by Islamic Law, albeit with sharp boundaries. As Sultan Hassanal Bolkiah summarises his government’s perspective, it “choose[s] Islam as a step to seek blessings from Allah the Almighty, not to persecute or oppress anyone.”

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