

## Country Briefing on Freedom of Religion or Belief in the Universal Periodic Review Process - Brunei Darussalam

### Key points

An examination of the Universal Periodic Review (UPR) of Brunei Darussalam across two cycles (2009, 2014) reveals concerns for:

- The official recognition of Islam at the expense of other religions,
- Discriminatory practices that disadvantaged the full enjoyment of Freedom of Religion or Belief (FoRB) by minority groups,
- The impact of the Syariah Penal Code of 2013 on FoRB, and
- Reservations under international treaties that may affect FoRB, notably reservations under the Convention on the Rights of the Child (CRC).

### Key UPR recommendations on FoRB

The following recommendations were made on FoRB across two cycles:

- Ensure that the Syariah Penal Code of 2013 did not violate the right to FoRB,
- Lifting of bans on importation of religious materials of other religions,
- Elimination of restrictions on the construction of new religious facilities for non-Shafi'i Muslims, and
- Withdrawal of reservations to the CRC that negatively impacted children's rights.

### Follow-up action for parliamentarians

Whereas the Government of Brunei Darussalam promoted its guarantees on FoRB, *Parliamentarians must follow-up in order to:*

- Ensure full compliance with international standards on FoRB,
- Lift restrictions on importing religious materials essential to the FoRB of religious minorities,
- Ensure that Syariah laws do not negatively impact FoRB, and
- End discriminatory practices against non-Muslims.

The situation of FoRB in Brunei as revealed in the UPR is outlined hereafter.

### What is the UPR?

The UPR of the United Nations Human Rights Council (HRC) is a peer-review process to foster dialogue on human rights and to improve adherence to universal standards and best practices .

It was launched in 2007 through UN General Assembly Resolution 60/251.

Every 4.5 years each Member State's human rights record is examined by peers.

A number of key documents are submitted:

- National Reports from Member State concerned,
- Information from UN bodies and treaty-based rights mechanisms,
- Information provided by relevant stakeholders, including civil society and think-tanks.

The State under review (SUR) is evaluated on its compliance with the international human rights standards and best practices.

The SUR receives recommendations from other States on how the national human rights practices could be improved.

The SUR may accept, note or reject each recommendation made.

Two cycles of the UPR - 2009-2011 and

## Background

### *Demographics*

1. Brunei Darussalam is a multi-ethnic society with a population of 436,620 (July 2016 est.). The population comprises Malay (65.7%), Chinese (10.3%), other indigenous (3.4%) and others (20.6%) (2011 est.) Although Malay is the official language, English is widely spoken. Other languages, which are also spoken by the respective communities, include Mandarin (as well as various Chinese dialects such as Hokkien, Hakka and Cantonese), Dusun, Iban, Hindi and Tamil. (CIA, *World Factbook*, 2017)

### *The Religious Mix*

2. The population comprises Muslims (78.8%), Christians (8.7%), Buddhists (7.8%) and others (includes indigenous beliefs) (4.7%). (2011 est.) Islam is the official religion. (CIA, *World Factbook*, 2017)

### *Legal Provisions on FoRB*

3. The Constitution of 1959 guarantees FoRB. It stipulates that: (1) The official religion of Brunei Darussalam shall be the Islamic Religion and provides that all other religions may be practised in peace and harmony by the persons professing them; (2) The Head of the official religion of Brunei Darussalam shall be His Majesty the Sultan and Yang Di-Pertuan; (3) The Religious Council shall be the authority responsible for advising His Majesty the Sultan and Yang Di-Pertuan on all matters relating to the Islamic Religion; and (4) His Majesty the Sultan and Yang Di-Pertuan may, after consultation with the Religious Council, make laws in respect of matters relating to the Islamic Religion. His Majesty does not necessarily have to follow the advice of the Council.

## Brunei government submissions

4. The Government reported in the first cycle that Islam was as established as the official religion of the country in the 15<sup>th</sup> Century.. Nevertheless, today, all faiths are able to practice their religion and preserve their cultures. It noted that, Islam is the official religion and a way of life for the people of Brunei as enshrined in the 1959 Constitution and again reflected in a Constitutional amendment in 2004.
5. The Constitution provides that persons of all religions shall have the freedom to practice their faiths. Furthermore, Brunei Darussalam had in place relevant provisions under Chapter XV of the Penal Code (CAP 22), which related to the peaceful practice of religions in this country.
6. The government called attention to various domestic laws introduced, enforced and/or amended to ensure the continued promotion and protection of human rights in the country. These included: a) The Syariah Penal Code Order, 2013, gazetted on 22 October 2013 which was an Order that related to laws in respect of Syariah crimes and any matters connected therewith. The Order generally applied to both Muslims and non-Muslims, and

its applicability to: i) Muslims only; ii) non-Muslims only, and iii) both Muslims and non-Muslims, depends on the types of offences as stated in the Order. b) The Compulsory Religious Education Act (Cap 215), enforced on 1 January 2013, which provided for 7 years of compulsory religious education for all Muslim children. The Act required every parent whose child has attained a compulsory religious school age to ensure his child is enrolled as a pupil in a religious school in that year and remains as such for the duration of the compulsory religious education.

7. The practice of their religions by Non-Muslims, is also enshrined in the Constitution. For example, there are no restrictions on wearing religious attire or personal items depicting religious symbols. In addition, major religious celebrations are also observed as public holidays such as Eid Fitri (Hari Raya Aidilfitri), Chinese New Year and Christmas.
8. The Government supported any programmes related to religious harmony, in line with the Constitution of Brunei Darussalam and Islamic principles.
9. In June 2012, Brunei Darussalam became a member of the United Nations Alliance of Civilizations (UNAOC) Group of Friends, in support of its efforts to promote better understanding among different faiths and civilisations.

### **Stakeholder submissions across the two cycles**

10. Civil society groups and United Nations (UN) bodies noted a number of concerns related to the favouring of Islam at the expense of minority religions, restrictions on importation of religious materials, discriminatory practices against minority religions and the need for removal of reservations on international treaties that may affect FoRB.
11. The status of FoRB in Brunei was poor according to the Institute on Religion and Public Policy (IRPP) since the Government favoured Islam at the expense of other religions. It stated that despite Constitutional guarantees religious minorities faced discrimination. For example, some ministerial posts and other government positions were reserved exclusively for Shafi'i Muslims.
12. Identity cards which included a person's ethnic identity were often used to determine the religion of a person and hence whether or not that person is subject to Syariah law. IRPP called on the Government to stop issuing such cards
13. Non-Muslims faced a wide array of prohibitions and restrictions that negatively affected the status of religious freedom. IRPP noted the following:
  - a. All non-Shafi'i religious groups were required to register and provide the names of members, and an application can be refused for any reason,
  - b. Prohibition by the Government of proselytization by all non-Shafi'i Muslim groups,

- c. Restrictions and censorship of the availability of religious material for non-Shafi'i Muslims. The importation of spiritual and teaching material, including the Bible, is banned,
  - d. Restrictions on the construction of new religious facilities for non-Shafi'i groups limited their ability to conduct their religious services. Permissions to construct new shrines, temples and churches had been denied, zoning laws had prohibited the use of private residences for religious ceremonies,
  - e. Prohibitions by the Ministry of Education on the teaching of other religious traditions as well as "comparative religious studies" and requiring teaching on Islam in accordance with a state designated curriculum,
  - f. Non-Muslims were required to wear a head covering as part of their uniform in government schools and institutions of higher learning and pressuring of Non-Muslim teachers into wearing Muslim headscarves,
  - g. The banning of several religious groups considered deviant,
  - h. Harassment of Christians by state agencies and officials
  - i. Subjecting of church members to periodic surveillance,
  - j. Measures by the Government to prevent the distribution and sale of any item featuring images of undesirable or religious symbols as well as censorship of magazine articles depicting such symbols, and
  - k. While Muslims may legally convert to another religion, they must obtain permission from the Ministry of Religious Affairs to do so.
14. A call for reversal on bans on groups which it considers deviant was made by IRPP. It cited discriminatory practices against Christians and others such as the censorship of magazine articles and the ban on the importation of religious literature must be lifted. For example, permits must be issued for the construction of new religious facilities for minority religious communities, incurring unwarranted interference.
15. IRPP called for: 1) The Sultan to end his interference with the operation of the Muslim community in Brunei, 2) An end to the favouritism for Shafi'i Islam at the expense of all other religious communities must be stopped and 3) The removal of restrictions in allocation of ministerial posts which were restricted to certain individuals.
16. With regard to the rights of the child, the Committee on CRC, was deeply concerned that the broad and imprecise nature of Brunei Darussalam's general reservation to the CRC which potentially negated many of its provisions and principles. The reservations were allegedly based on religious grounds. A 2002 report of the Special Rapporteur on freedom of religion and belief was recalled as it noted similar concerns about the reservations and declarations based on religious considerations. The Committee recommended re-examination of the reservations with a view to ultimately withdrawing them. UNHCR highlighted the same concerns and the disparities in the enjoyment of all rights covered by the CRC by children practising religions other than Islam and by non-national children. The Committee recommended taking all necessary measures to ensure that all children

within Brunei Darussalam's jurisdiction enjoy all the rights set out in the CRC without discrimination

17. Amnesty International (AI) also noted Brunei's reservations to articles 14, 20 and 21 of the CRC on the grounds that these articles may be contrary to the Constitution of Brunei Darussalam and the principles of Islam. AI also noted reservations to sections of Articles 9 and 29 of the CEDAW, on the same grounds. AI called on Brunei to remove all its reservations to both Conventions.
18. Discrimination against women was also noted in a 2008 report by the Special Rapporteur on freedom of religion or belief who argued that women faced discrimination in the application of religious laws, in particular in areas such as divorce, inheritance, custody of children and transmission of citizenship, citing a report of 2000. IRPP noted that marriage between Muslims and non-Muslims was prohibited and that non-Muslims had to convert to Islam if they wished to marry a Muslim.
19. United Nations Educational, Scientific and Cultural Organization (UNESCO) noted in the treaty bodies its concern that the Undesirable Publication Act empowered the Minister to prohibit importation or sales of publications deemed to be against the public interest.

#### **Observations by other states**

20. Some states, like Azerbaijan, Kazakhstan and the Syria Arab republic, noted a high level of ethnic and religious tolerance in Brunei and the importance placed by Brunei on religious freedom and tolerance as well as its role in the Alliance of Civilizations. Others, like Myanmar, noted the practical measures to strengthen human rights without racial and religious discrimination, commending Brunei's vibrant and prosperous multi-ethnic society.
21. Clarifications were sought by Australia and Brazil on measures to religious discrimination and guarantee fundamental freedoms such as freedom religion and belief. Canada also called for removal of all restrictions on FoRB. In cycle two, Australia expressed concerned about the impact of the Syariah Penal Code on religious freedom. India encouraged Brunei Darussalam to review changes to criminal law which impacted freedom of religious minorities.
22. Concern was expressed about freedom of religion by Sweden and the United Kingdom (UK), asked about the use of religion to justify reservations to international human rights treaties. It urged the Government in the second cycle to ensure that the Syariah Penal Code did not violate rights to freedom of religion. In the first cycle, Brunei noted the UKs advice to take a human rights approach to issues of religion to foster an inclusive society in which all are equally protected.

23. Concerns were raised by the United States (US) over the ban on religious groups such as the Baha’I, bans on proselytizing by religious groups other than the Shafi’i school of Islam, and bans on the importation of religious materials such as the Bible, the establishment of new places of worship, and the teaching of other religious traditions. The US called for permitting members of all religious groups to practice their beliefs freely and allow members of other religious minorities to import scriptures, proselytize, establish new places of worship and instruct their believers, in line with the right to freedom of religion. In cycle two it called for revising the Penal Code Order of 2013 to bring Brunei’s domestic legislation in line with its international human rights commitments on the freedoms of religion and of expression
  
24. Lifting of the ban on the importation of religious teaching materials and scriptures in order to enhance and protect freedom of religion and worship was suggested by Italy and Canada. The latter called for increased access to religious literature, places of worship, and public religious gatherings for non-Muslims and non-Shafi’i Muslims
  
25. Allowing visits by the Special Rapporteurs on freedom of religion or belief was suggested by New Zealand.

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## References

### General Reference

*CIA World Factbook 2017*

### References on the UPR of Brunei

Documents on the UPR of Southeast Asian States are available on the websites of UPR Info and of the OCHR. They consist of National Reports, Stakeholder Submissions and Recommendations by Peers. For Indonesia all documents are available as follows:

UPR Info: <https://www.upr-info.org/en/review>

OHCHR: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx>

### UPR First Cycle 2009

1. National Report Submitted In Accordance With Paragraph 15 (A) Of The Annex To Human Rights Council Resolution 5/1. A/HRC/WG.6/6/BRN/1 9 September 2009
2. Compilation Prepared By The Office Of The High Commissioner For Human Rights, In Accordance With Paragraph 15(B) Of The Annex To Human Rights Council Resolution 5/1. A/HRC/WG.6/6/BRN/2 7 August 2009
3. Summary Prepared By The Office Of The High Commissioner For Human Rights, In Accordance With Paragraph 15 (C) Of The Annex To Human Rights Council Resolution 5/1. A/HRC/WG.6/6/BRN/3 21 July 2009
4. Draft Report Of The Working Group On The Universal Periodic Review. A/HRC/WG.6/6/L.13 11 December 2009

### UPR Second Cycle 2014

5. National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21\* Brunei Darussalam A/HRC/WG.6/19/BRN/1, 30 January 2014
6. Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21. A/HRC/WG.6/19/BRN/2. 12 February 2014
7. Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution

5/1 and paragraph 5 of the annex to Council resolution 16/21. A/HRC/WG.6/19/BRN/3 . 29  
January 2014.

8. Draft report of the Working Group on the Universal Periodic Review. A/HRC/WG.6/19/L.9.  
6 May 2014