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Brunei Darussalam
Submission to the UN Universal
Periodic Review

Sixth session of the UPR Working Group of the
Human Rights Council
November-December 2009



Executive summary

In this submission, Amnesty International provides information under sections B, C and D as stipulated in the General Guidelines for the Preparation of Information under the Universal Periodic Review:¹

- Under section B, Amnesty International raises concerns, *inter alia*, about administrative detention laws and other restrictive legislation that denies individuals freedom from arbitrary detention; restrictions on press freedom; the status of ratification and implementation of international human rights treaties; and legislation discriminating against lesbians, gay, bisexual and transgender people.
- In section C, Amnesty International describes concerns over violations of human rights by the state through the prosecution of individuals under the Sedition Act.
- In section D, Amnesty International makes a number of recommendations for action by the government in the areas of concerns listed.

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

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B. Normative and institutional framework of the State

Infringements on human rights in national legislation

Restrictive legislation may be used by the State to detain individuals arbitrarily, and to deny them the right to a fair trial and other human rights. Although during the reporting period, there were no known instances of such legislation being invoked, the perceived threat of detention has the effect of limiting such freedoms in the country. The Internal Security Act allows an individual to be held without charge or trial for a period of up to two years; this is renewable indefinitely. The law effectively allows the government to detain individuals indefinitely on the basis of the Home Minister's directive alone.

Imprisonment and cruel punishment for immigration offences

Migrant workers who overstay beyond the expiry of their visa are regularly imprisoned and caned or whipped under Sections 6 or 15 of the Immigration Act of 1956. Caning and whipping constitute cruel, inhuman or degrading punishment and may amount to torture. Amendments to the Immigration Act in 2005 made caning mandatory for certain immigration offences such as illegal entry, overstaying after the expiry of travel documents or being undocumented.

During the period of review, there were numerous arrests of undocumented migrant workers. Those overstaying their visas were jailed and/or whipped. Numerous press reports in 2009 indicated that the Immigration Department had said that approximately 396 migrants had been whipped since 2004.

The death penalty

Brunei Darussalam is an abolitionist country in practice. According to official records, the last execution was carried out in 1957, although death sentences continue to be passed. The death penalty is provided for by various legal provisions, including the Penal Code, the Internal Security Act 1982, the Misuse of Drugs Enactment 1978 as amended by the Emergency (Misuse of Drugs) Amendments Order 1984, the Criminal Procedure Code 1951, and the Public Order Act 1983. Among the offences punishable by death are murder, drug trafficking and the unlawful possession of firearms and explosives.

Restrictions on the right to freedom of expression

Newspapers Act 1958

The Newspapers Act, as amended by the Local Newspapers Order 2001, requires newspapers to apply to the Minister of Home Affairs for annual publishing permits under section 3 of the Act. Under section 3(5), the Minister has sole discretionary power to grant or deny permits, and his decisions are not subject to appeal or judicial review. In addition, the Act grants the government absolute power to bar the distribution of foreign periodicals in Brunei. The Act requires any newspapers applying for permits to deposit 100,000 Bruneian

dollars (approximately US\$57,700) in cash with the government. Section 3A and 3B provide that anyone who publishes without a license is liable to a fine of up to B\$40,000 (approximately US\$23,100) or three years in jail. Section 4 of the Act further gives the authorities powers to shut down newspapers without showing cause, while printing equipment used in printing the newspaper can also be seized under section 4(4). Section 7 of the Act allows the Minister of Home Affairs to charge printers, publisher, editors and writers who “maliciously published any false news” with a crime punishable by a fine of B\$40,000 dollars, three years in jail, or both. This legislation severely restricts the right to freedom of information in Brunei.

Sedition Act 1948

The Sedition Act, as amended in 2005, further restricts freedom of expression. The Act was invoked in June 2007, as discussed in section C below. The amended Act makes it an offence to criticise the Sultan or the royal family. Sections 3(1), (iv) and (v), makes it an offence “to raise discontent or disaffection amongst the inhabitants of Brunei Darussalam” or “to promote feelings of ill-will and hostility between different classes of the population of Brunei Darussalam”. These provisions are vague and may be interpreted widely, exposing individuals and the media to prosecution for peacefully exercising their right to freedom of expression. The Act also makes it a punishable offence to have in one’s possession a “seditious” publication. Under sections 3 and 4 of the law, persons convicted of such crimes, or any publishers, editors, or proprietors of a newspaper publishing matters with seditious intention, face fines of up to B\$5,000 (US\$2,965) and up to three years’ imprisonment.

Restrictions on the rights to freedom of assembly and association

There are restrictions to freedom of assembly under the emergency laws implemented in 1962. Although there have been no reported incidents of the laws being used during the reporting period, their existence have sustained restrictions on the right to freedom of assembly.

Labour laws

Brunei has not ratified the core ILO Conventions, and its labour laws fully into line with the provisions of these conventions. Among the core Conventions that have not been ratified are Conventions 87 and 98 on the freedom of association and collective bargaining, Conventions 29 and 105 on the elimination of forced and compulsory labour, Conventions 100 and 111 relating to the elimination of discrimination in respect of employment and occupation, and Convention 138 on the abolition of child labour i.e. the Minimum Age Convention.

Children

Brunei ratified the UN Convention on the Rights of the Child on 26 January 1996, but made reservations to articles 14, 20 and 21. Article 14 provides for the child’s freedom in thought, conscience and religion to be respected, the only permitted exceptions being where such limitations are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. Articles 20 and 21 relate to the care and adoption of children. The reservations by Brunei were on the grounds that the said articles may be contrary to the Constitution of Brunei Darussalam and the principles of Islam, the official religion of Brunei.

Women

Brunei ratified the UN Convention on the Elimination of All Forms of Discrimination against Women on 24 April 2006. However, it made certain reservations to it, namely with regard to sections of Article 9 and 29. The reservations by Brunei were again on the grounds that the said articles may be contrary to the Constitution of Brunei Darussalam and the principles of Islam.

Restrictions on civil society

Societies Order 2005

According to section 8 of the Societies Order 2005, public gatherings of 10 or more persons, irrespective of their purpose, require a government permit or advance approval, and police have the authority to stop any unauthorised assembly. Police may also arrest individuals without a warrant under section 39 of the same Order. There are no registered civil society organizations dealing directly with human rights. A non-governmental organization (NGO) seeking to operate in the country is required to apply for permission under the Companies Act (1956) and provide a complete list of members. Alternatively, the abovementioned Societies Order requires that all organizations register and name all members. Registration can be refused by the Registrar of Societies or Commissioner of Police for any reason. The government may also suspend the activities of a registered NGO if it deems such an act in the public interest. Essentially, under Sections 11 and 13 of the Act, the Registrar of Societies is given wide powers to refuse registering a society, or if already registered, declare it unlawful should he believe that “the society is being used or is likely to be used for any unlawful purpose or for any purpose prejudicial to or incompatible with the peace, public order, security or public interest of Brunei Darussalam”.

Section 31 again broadly defines circumstances under which the state may declare a society unlawful. This includes any circumstances where, in the relevant Minister’s opinion, the Society “is being used or is likely to be used for any unlawful purposes or purposes prejudicial to or incompatible with the peace, public order, security or public interest of Brunei Darussalam”. This may be subject to an interpretation which may violate the rights to freedom of association and assembly. The final decision of the Sultan with regard to this is not subject to any form of judicial review and is deemed to be final under sub-section 31(5). Powers to search premises without warrant are given under section 32 of the Act.

According to a report published in 2008 by the US-based organisation, Freedom House, non-governmental organizations in Brunei have been limited to locally based professional or business groups. As mentioned above, there is no provision for judicial review in the event of an order being made to declare such an organisation unlawful. The decision by the Sultan or Yang Di-Pertuan is deemed to be final.

Legalisation of marital rape

The “Explanation” which forms part of Article 375 of Brunei’s Penal Code (rape) stipulates that “Sexual intercourse by a man with his own wife, the wife not being under thirteen (13) years of age, is not rape.” This amounts to legalisation and legitimization of marital rape, including the rape of children, in flagrant violation of international human rights law. In addition, the offence of rape is confined to acts against women and girls, thus providing no protection for men and boys who may be the victims of rape. Punishments for offenders, under Article 376, include whipping, which is a form of ill-treatment prohibited under international human rights law.

Discrimination based on sexual orientation or identity

Section 377 of Brunei’s Penal Code can be interpreted as penalising consensual same-sex sexual conduct between adults with imprisonment for up to 10 years as well as fines. Although there have been no reported cases of this provision being used during the period of review, provisions on “carnal intercourse against the order of nature” allows for discrimination against lesbians, gays, bisexuals and transsexuals.

C. Promotion and protection of human rights at the national level

Use of Sedition Act

In June 2007, three persons, Isa bin Haji Jaya, William bin Rahman and Tuah bin Sabang were detained under the Sedition Act 1948 for distributing a satirical video clip depicting immediate members of the royal family via mobile telephone. The three were sentenced to one year in prison and fined B\$5,000 (US\$ 3,300) each. On 17 January 2008, the three were released for good behaviour after serving eight months in prison.

D. Recommendations for action by the State under review

Amnesty International calls on the government:

Immigration laws

- To repeal or amend all provisions in the Immigration Act which criminalise migrant workers for administrative offences, so as to allow imprisonment only in extraordinary, narrowly defined circumstances.

Cruel, inhuman or degrading punishments

- To repeal or amend all provisions in domestic laws which provide for caning, whipping or any other cruel, inhuman or degrading punishment.

Administrative detention laws

- To repeal or amend the Internal Security Act so as to abolish all forms of administrative detention currently contained therein.

Laws curtailing freedom of expression

- To repeal or amend the Sedition Act to ensure that it conforms with international human rights standards, including by guaranteeing the right to freedom of expression;
- To repeal or amend the Newspaper Act 1958, to ensure that it respects and protect the right to freedom of expression in accordance with international human rights standards.

Freedom of Assembly

- To repeal or amend the Societies Order to ensure that it does not violate the right to peaceful association or assembly.

The death penalty

- To permanently abolish the death penalty in line with UN General Assembly resolution 62/149 of 18 December 2007;
- To repeal or amend the Penal Code, Internal Security Act 1982, the Misuse of Drugs Enactment 1978 as amended by the Emergency (Misuse of Drugs) Amendments Order 1984, Criminal Procedure Code 1951 and the Public Order Act 1983 so as to replace the death penalty with other penalties, which do not include cruel, inhuman or degrading punishments.

Rape

- To revise Section 375 of the Penal Code so as to criminalise all acts of rape without exception and irrespective of the marital status of the victim and his or her gender.

Discrimination based on sexual orientation or identity

- To repeal or amend Section 377 of the Penal Code, so as to ensure that it does not discriminate against lesbians, gays, bisexuals and transsexuals.

Labour Laws

- To ratify the seven core ILO Conventions and repeal or amend Brunei's domestic labour laws to ensure compliance with these.

Children's rights

- To remove all reservations to the Convention on the Rights of the Child.

Women's rights

- To remove all reservations to the Convention on the Elimination of All Forms of Discrimination against Women.

Ratification of international treaties:

- To ratify the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the 1951 UN Convention Relating to the Status of Refugees, and its 1967 Protocol;
- To ratify the Rome Statute of the International Criminal Court and implement it in national law;
- To accede to the Agreement on the Privileges and Immunities of the International Criminal Court and implement it in national law.