UNITED STATES COMMISSION *on* INTERNATIONAL RELIGIOUS FREEDOM

FACTSHEET

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BRUNEI

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To advance international freedom of religion or belief, by independently assessing and unflinchingly confronting threats to this fundamental right.

Brunei's Syariah Penal Code Order 2013

By Patrick Greenwalt, Researcher

Overview

Although the United States Commission on International Religious Freedom (USCIRF) has not recommended Brunei for designation by the State Department as a "country of particular concern" or inclusion on the State Department's Special Watch List under the International Religious Freedom Act, it has discussed Brunei in three reports: the 2005 *A Comparative Textual Analysis of the Constitutions of Predominantly Muslim Countries*, the *2012 Comparative Study of Constitutions of OIC Countries* and the *2017 A Right for All: Freedom of Religion or Belief in ASEAN*. USCIRF's *2020 Annual Report* also noted Brunei's *Syariah Penal Code Order* of 2013, which went into full effect on April 3, 2019.

This factsheet provides an outline of ongoing religious freedom issues in Brunei, largely focusing on the penal code. The Syariah Penal Code Order represents the culmination of Brunei's efforts to establish a legal system based on a particular interpretation of Sunni Islam. It is enforceable against all Muslim residents—whether or not they are citizens of Brunei—and has specific provisions that are applicable to non-Muslims. This contravenes international religious freedom standards, particularly Article 18 of the *Universal Declaration of Human Rights*. However, the government does not currently enforce some of the most egregious provisions of the penal code.

Background

According to the *1959 constitution*, Brunei is an absolute monarchy that has been ruled since before independence in 1984 by Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah. The Sultan is advised by five councils, one of which is the Religious Council. Shortly after independence, the Legislative Council was suspended as part of a declared state of emergency that is renewed every two years. The suspension of the Legislative Council ensured that the Sultan was the primary source of all law. In 2004, the Legislative Council was reinstituted. Sultan Hassanal Bolkiah bases his power on the state ideology of Malay Muslim Monarchy (*Melayu Islam Beraja* or MIB), which conflates the Sultanate, Islam, and Malay ethnic identity. Brunei's continued state of emergency has allowed the government to tightly censor and restrict the freedoms of association and expression. There is no *constitutional guarantee* for freedom of

www.USCIRF.gov
@USCIRF
Media@USCIRF.gov

732 N. Capitol Street, NW, Suite #A714
Washington, DC 20401
202-523-3240

speech. While the *constitution* does state that the official religion is Islam, it promises "that all other religions may be practiced in peace and harmony by the persons professing them." In practice, this is not the case as the government routinely restricts the actions of non-Muslim faith communities. Brunei is not party to the International Covenant on Civil and Political Rights; but on September 22, 2015, it joined the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

The population of Brunei is approximately 460,000, of which an *estimated* 78.8 percent are Muslim, 8.7 percent Christian, and 7.8 percent Buddhist. In addition, 65.7 percent of the population is Malay, 10.3 percent Chinese, and 24 percent identify as other ethnicities, including indigenous peoples. Despite a long historical presence, many Chinese are stateless or have only received permanent residency. In order to obtain permanent residency or citizenship, some Chinese Bruneians *reportedly* have converted to Islam.

Regulating Islam

The constitution of Brunei defines the Sunni Shafi'i legal school of Islam as the state's religion. Except for the Islamic missionary movement known as Tablighi Jamaat, all other forms of Islam and Islamic movements remain banned and classified as "deviant." Although not labeled as deviant, the Tablighi Jamaat is not permitted to establish its own registered organizations, mosques, or media. There is no public space for non-state Muslim organizations or voices. Official government rhetoric against "deviant" groups portrays them as threats to Islam. Three government organizations—the Ministry of Religious Affairs (MoRA), the State Mufti Department, and the Islamic Religious Council—formulate and regulate official Islamic positions. The State Mufti Department is Brunei's chief interpreter of Islam and holds the exclusive authority of issuing *fatwas*, which in Brunei are state law. The 2013 Syariah Penal Code criminalizes the disobeying of a fatwa with up to two years' imprisonment (Section 228), showing contempt for the Sultan's religious authority with up to five years in prison, and showing contempt for a member of the Legislative Council, the courts, or the administration of the Syariah justice system with fines up to $8,000 in Brunei dollars (USD 5,900) and/or imprisonment up to two years (Section 230). Members of the Al-Arqam and Baha'i religious communities, in particular, face sanctions, including imprisonment and "re-education." Non-Muslims are not legally permitted to use certain "Islamic" words under penalty of a fine of $12,000 (USD 8,840) and/or up to three years imprisonment (Section 217(2)).

1964 Fatwa
In 1964, the State Mufti issued a fatwa prohibiting Muslims from assisting non-Muslim organizations in perpetuating their faith. MoRA and other Brunei authorities use this fatwa as justification for denying permission to non-Muslim faith organizations for a range of religious and administrative activities. The authorities regularly restrict the importation of religious material, including enforcing strict customs controls on importing non-Islamic religious texts such as bibles.

Syariah Penal Code Order 2013

From independence in 1984 to 2013, Brunei maintained a clear dual legal system, with a religious system based on Shari'a law and a secular system with roots in the British colonial period. Sultan Hassanal Bolkiah was the primary proponent behind the drafting of the Syariah Penal Code Order. The code is divided into four chapters, which compile both new and previously existing offences in a structure that provides a specific Islamic interpretation and justification for each offence, including general offenses (known as *ta'zir*) and more severe punishments (known as *hudud* and *qisas*). *Hudud* and *qisas* are interpreted to be derived directly from the Qur'an and Sunnah, and incorporate punitive measures that can include corporal punishment, amputation, and even death, although the country has not carried out any executions since 1957. The Syariah Penal Code Order 2013 expands upon the existing religious legal system which originated during the colonial period, mandating that all Muslims within Brunei, including visiting or residing foreigners, must adhere to the state-sponsored version, without any possibility of opting out. Implementation was initially split into three phases, the first of which was implemented in May 22, 2014. The full law went into *effect* on April 3, 2019.

Certain provisions of the Syariah Penal Code Order overlap with already existing provisions of the civil and criminal laws, but impose different sentences and burdens of proof. It is unclear whether this makes all Shari'a applicable to non-Muslims, though there are several provisions that directly hold non-Muslims accountable in their interactions with Muslims.

Regulating the Behavior of Muslims
Muslims are legally forbidden from consuming or advertising the consumption of alcohol (Sections 104(5) and 104(6)). Any individual, Muslim or not, selling food or alcohol during Ramadan hours is subject to fines or imprisonment (Section 195). Attending Friday prayers is a legal obligation (Section 194), and not doing so can be penalized with a fine.

Corporal and Capital Punishments
The penal code includes punishments such as whipping, amputation, and stoning to death, and bases criminal offenses on Shari'a for a wide range of behaviors and practices, including those that go against state-sanctioned Muslim practice. For example, the punishment for sexual activity between men, as well as adultery, initially included death by stoning. In May 2019, after significant international *outrage* and media attention, the Sultan *declared* a moratorium on the death penalty. However, the death penalty has not been stricken from the penal code.

Blasphemy and Apostasy
Blasphemy and proselytization are criminal offenses subject to imprisonment up to 30 years and whipping up to 40 strokes (section 110 (2)). According to Section 112(1), Muslims who change their faith can be charged and sentenced to death. Non-Muslims cannot share or proselytize to either Muslims or those without faith under penalty of fines up to $20,000 in Brunei dollars (USD 14,740) and/or five years imprisonment (Section 209–211). At the time of writing, USCIRF has not uncovered any recent instance in which these sections have been enforced. It is unclear what alternative punishments would be applied to Muslims changing their faith given the moratorium on the death penalty.

Irtidad, or knowingly and willfully speaking or acting contrary to "Islamic religious beliefs" by any Muslim, is criminalized by Sections 108–114.

A Muslim parent or guardian cannot legally surrender parental rights for a minor to a non-Muslim guardian. The attempt to do so is punishable with up to five years imprisonment and/or a fine up to $20,000 in Brunei dollars (USD 14,740) (Section 204). Exposing a Muslim child (defined as under 18) or a child of nonreligious parents to beliefs and practices of a religion other than Islam is illegal and punishable with a fine of $20,000 in Brunei dollars (USD 14,740) and/or five years imprisonment (Section 212). Based on this provision, the government has demanded that businesses *remove* Christmas decorations and prevented children from wearing clothing associated with Christmas, such as Santa hats.

Religious Regulation of Sexuality
The Syariah Penal Code Order also enforces a particular religious interpretation with regard to sexual activity. *Zina*, or sexual intercourse between an unmarried man and woman, including for non-Muslims if the offending partner is a Muslim, is punishable with corporal punishment, fines, and/or imprisonment up to seven years (Sections 68–81). Sodomy is also illegal (Sections 82–84). Punitive measures include corporal punishment, fines, and imprisonment for up to seven years. Sexual or other intimate activity between two men other than penetration is criminalized with punishments including caning, fines, and imprisonment up to 10 years (Section 92).

Khalwat, or close proximity between unrelated members of the opposite sex in any instance in which a Muslim is involved, is punishable with fines up to $4,000 in Brunei dollars (USD 2,970) (Section 196). The penal code also criminalizes "any man who dresses and poses as a woman or any woman who dresses and poses as a man in any public place without reasonable" purpose with fines of $1,000 in Brunei dollars (USD 740) and/or imprisonment of up to three months and/or imprisonment up to one year (Section 198). Doing so for "immoral purposes" is punishable with fines up to $4,000 in Brunei dollars (USD 2,970) and/or imprisonment up to one year (Section 199).

Conclusion

Brunei's Syariah Penal Code Order 2013 forces a particular version of Islam on all persons within Brunei, denying individuals the right to freely practice and express their faith outside of this version. It also criminalizes the right of individuals to choose their faith or to convert from Islam to another faith, and to share their faith if they are not Muslims. Although Bruneian law had long included Islamic criminal offenses, the 2013 law was the result of a long campaign by Sultan Hassanal Bolkiah for a stricter religious penal code. Moreover, although international pressure sparked a moratorium on the death penalty in 2019, it has not led to the removal of the death penalty from the penal code.

Professional Staff

Danielle Ashbahian
Senior Communications Specialist

Keely Bakken
Policy Analyst

Dwight Bashir
Director of Outreach and Policy

Elizabeth K. Cassidy
Director of Research and Policy

Mingzhi Chen
Policy Analyst

Patrick Greenwalt
Researcher

Gabrielle Hasenstab
Communications Specialist

Roy Haskins
Director of Finance and Office Management

Thomas Kraemer
Senior Advisor for Strategic Outreach

Kirsten Lavery
Supervisory Policy Analyst

Niala Mohammad
Senior Policy Analyst

Jason Morton
Policy Analyst

Mohyeldin Omer
Policy Analyst

Jamie Staley
Senior Congressional Relations Specialist

Kristina Teater
Policy Analyst

Zack Udin
Researcher

Nina Ullom
Congressional Relations Specialist

Madeline Vellturo
Policy Analyst

Scott Weiner
Supervisory Policy Analyst

Kurt Werthmuller
Supervisory Policy Analyst

The U.S. Commission on International Religious Freedom (USCIRF) is an independent, bipartisan federal government entity established by the U.S. Congress to monitor, analyze, and report on threats to religious freedom abroad. USCIRF makes foreign policy recommendations to the President, the Secretary of State, and Congress intended to deter religious persecution and promote freedom of religion and belief.

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732 N. Capitol Street, NW, Suite #A714
Washington, DC 20401
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