

Inhuman sentencing of children in Brunei Darussalam

Briefing for the 33rd session of the Human Rights Council Universal Periodic Review in April 2019, submitted by the Child Rights International Network (www.crin.org), October 2018.

Inhuman sentencing of child offenders in Brunei Darussalam

1. In Brunei Darussalam, children may currently be lawfully sentenced to life imprisonment and corporal punishment. In October 2013, Brunei enacted the Syariah Penal Code Order (SPCO) which, if fully implemented, would introduce the death penalty for offences committed by children and allow children to be sentenced to whipping and amputation.
2. The first phase of the SPCO entered into force in May 2014 introducing fines and jail terms, but the provisions on the death penalty and corporal punishment are yet to be implemented. In March 2018, a draft Criminal Procedures Code on Syariah was approved by the Brunei Islamic Religious Council,¹ which would pave the way for the full entry into force of the SPCO.

Legality of inhuman sentencing

Death penalty

3. The death penalty provisions of the Syariah Penal Code Order have not yet entered into force, but the Code contains a large number of provisions that would allow courts to apply sentences of death for offences committed while under the age of 18. Currently, the Criminal Procedure Code provides: "Sentence of death shall not be pronounced on or recorded against a person convicted of an offence if it appears to the Court that at the time when the offence was committed he was under the age of 18 years".²

Syariah Penal Code Order 2013

4. The Syariah Penal Code Order authorises capital punishment for a large number of offences and would permit courts to sentence to a child offender to be stoned to death for committing *zina* (adultery), *hirabah* during which *qatl* is committed (robbery in which murder is committed), *zina bil-jabr* (rape), *liwat* (anal intercourse between a man and another man or a man and a woman who is not his wife) while aged 15 or older.³
5. For several forms of the offence or *irtidad* (apostasy), the death penalty is a lawful offence without limit of age, which would appear to permit children to be sentenced to death if a child is "able to differentiate".⁴ The Court must overturn such sentence and acquit the convicted person, however, where the court is satisfied that he or she has repented.⁵ Death is also a

¹ Borneo Bulletin, "Next phase of Syariah penal code underway" 11 March 2018. Available at: <https://borneobulletin.com.bn/next-phase-of-syariah-penal-code-underway/>.

² Criminal Procedure Code, Section 238(1).

³ Syariah Penal Code Order 2013, Sections 69(1), 70, 63, 76(1), 82.

⁴ Syariah Penal Code Order 2013, Sections 108(1), 209, 110, 111, 112.

⁵ Syariah Penal Code Order 2013, Section 117.

lawful penalty for a number of *qisas* (retaliation) offences, including various forms of *qatl* (murder).⁶

Corporal punishment

6. The Penal Code Order provides for whipping as a sentence for a wide range of offences. Other laws providing for punishment of whipping include the Children Order 2000, the Intoxicating Substances Act 1992, the Arms and Explosives Act 1927 and the Rules 1928, the Misuse of Drugs Act 1978, the Public Order Act 1983, the Kidnapping Act 1992 and the Women and Girls Protection Act 1972.

Syariah Penal Code Order 2013

7. The Syariah Penal Code Order 2013 prescribes corporal punishment for males and females, including children, for Syariah and related offences. At the time of writing, these provisions had not yet entered into force. In a statement made on 30 April 2014, the Sultan of Brunei announced that the corporal punishment provisions of this Code would enter into force as part of a “second phase” of implementation, though he did not set a date for when this would take place.⁷

8. If the Code fully entered into force, amputation of the right hand would be lawful for *sariqah* (theft) and amputation of the left foot would be lawful for a second conviction for theft.⁸ These penalties are prohibited for offenders under the age of 15.⁹ Amputation would also be a lawful penalty for *hirabah* (piracy / robbery), including for children from the age of 15. Whipping would be permitted for a large number of offences, including for children under the age of 15.¹⁰ *Zina* (sexual intercourse outside marriage) would be punishable by stoning, but children under the age of 15 or those who have not reached puberty would be punished with whipping and detention in a rehabilitation centre.¹¹

Life imprisonment

9. Children under the age of 18 may be sentenced to “detention at the pleasure of His Majesty the Sultan and Yang di-Pertuan”, an indeterminate sentence that may extend for the rest of a person’s life.

10. Where a child or young person is convicted of murder, culpable homicide not amounting to murder, attempted murder or of voluntarily causing grievous hurt, and the court considers that none of the other measures by which the case may legally be dealt with is suitable, it may sentence him or her to detention “in such place and on such conditions as His Majesty the Sultan and Yang Di-Pertuan may direct”.¹² Such sentences must be reviewed at least

⁶ Syariah Penal Code Order, Sections 126(1), 128, 151, and 155(1).

⁷ See BBC, “Tough Islamic Penal Code introduced”, 30 April 2014.

⁸ Syariah Penal Code, Section 55(1).

⁹ Syariah Penal Code, Section 56(b).

¹⁰ Syariah Penal Code, Sections 63, 65, 66 and 69.

¹¹ Syariah Penal Code, Sections 70, 72, 74 and 79.

¹² Children and Young Persons Order, Section 45(2).

once a year, when “His Majesty the Sultan and Yang Di-Pertuan may thereupon order him to be released or further detained, as the case may be”.¹³

11. In prohibiting the death penalty for all persons under the age of 18 at the time an offence was committed, the Criminal Procedure Code requires courts to sentence children to be detained during the Pleasure of His Majesty where they have been convicted of an offence that would otherwise carry the death penalty.¹⁴ A person detained in this way may at any time be discharged on licence by His Majesty.¹⁵

Syariah Penal Code Order 2013

The Syariah Penal Code does not provide for life imprisonment, though lengthy prison sentences are lawful for a number of offences, including up to 30 years’ imprisonment for abetting the commission of *zina bil-jabr* (rape) while aged over 15.¹⁶

Inhuman sentencing in practice

12. We have been unable to obtain statistical information on the sentencing of children to corporal punishment and life imprisonment.

The review of Brunei Darussalam by the members of the Human Rights Council

13. In light of the clear international human rights consensus against the imposition of the death penalty, life imprisonment and corporal punishment on children and the specific recommendations made to Brunei Darussalam by the Committee on the Rights of the Child¹⁷ and during the first and second cycles of the Universal Periodic Review,¹⁸ we hope that members of the Human Rights Council will recommend that Brunei Darussalam:

- Refrain from implementing the Syariah Penal Code Order 2013;
- Explicitly prohibit sentences of death, corporal punishment and life imprisonment for children, including detention at the Pleasure of His Majesty the Sultan and Yang Di-Pertuan, under all systems of justice and without exception;
- Raise the minimum age of criminal responsibility.

¹³ Children and Young Persons order, Section 45(5).

¹⁴ Criminal Procedure Code, Section 238(1).

¹⁵ Criminal Procedure Code, Section 238(2).

¹⁶ Syariah Penal Code Order 2013, Section 80(1).

¹⁷ Committee on the Rights of the Child, Concluding observations on the combined second and third periodic reports of Brunei Darussalam, CRC/C/BRN/CO/2-3, 24 February 2016, paras. 9, 10, 39, 40, 45, 46, 69, 70.

¹⁸ During the first cycle of the Universal Periodic Review, France, Chile, Italy and Germany made recommendations on the abolition of corporal punishment. During the second cycle of the Universal Periodic Review, six States made recommendations on the abolition of corporal punishment; 13 States on the abolition of the death penalty, and four States on the abolition of life sentences for child offenders.