

7 June 2019

## LAWASIA STATEMENT OF CONCERN ON THE SYARIAH PENAL CODE IN BRUNEI

LAWASIA, The Law Association for Asia and the Pacific, expresses deep concern over the elements of the Syariah Penal Code introduced by the Government of Brunei Darussalam which are in violation of international human rights standards.<sup>1</sup>

LAWASIA's objectives include the promotion of “the administration of justice, the protection of human rights and the maintenance of the rule of law within the [Asia and the Pacific] Region”. In pursuit of the objectives, LAWASIA Council resolved to “call on governments in the ESCAP region which currently retain the death penalty to review their respective policies on capital punishment.”<sup>2</sup>

LAWASIA notes that the Syariah Penal Code, which was introduced in 2013 via the Syariah Penal Code Order, 2013<sup>3</sup> and being fully implemented as from 3<sup>rd</sup> April 2019, inter alia stipulates the death penalty for offences of rape, adultery, sodomy, extramarital sexual relations, robbery, insults of the Prophet Muhammad, and amputation as the maximum penalty for the offence of theft, and other offences.

LAWASIA draws attention to the rights guaranteed by Article 3, Article 5 and Article 9 of the Universal Declaration of Human Rights, 1948 (UDHR)<sup>4</sup> as well as by Article 7 and Article 26 of the International Covenant on Civil and Political Rights, 1966 (ICCPR).<sup>5</sup>

LAWASIA also notes that the nation of Brunei Darussalam became a signatory to the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, 1984 (CAT)<sup>6</sup> on 22<sup>nd</sup> September 2015.<sup>7</sup> LAWASIA further notes that Brunei Darussalam has been abolitionist in practice through a de facto moratorium on the execution of the death penalty in cases under the common law.

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<sup>1</sup> BBC, ‘Brunei implements stoning to death under anti-LGBT laws,’ at <https://www.bbc.com/news/world-asia-47769964> accessed 16 April 2019.

<sup>2</sup> ‘LAWASIA RESOLUTION ON THE DEATH PENALTY,’ 2 November 2018 at <https://www.lawasia.asn.au/sites/default/files/2018-11/Resolution-Death-Penalty-2Nov2018.pdf>

<sup>3</sup> Syariah Penal Code Order, 2013, (22 October, 2013) available at [http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette\\_PDF/2013/EN/syariah%20penal%20code%20order2013.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2013/EN/syariah%20penal%20code%20order2013.pdf).

<sup>4</sup> UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), available at <http://www.un.org/en/universal-declaration-human-rights/> accessed 16 April 2019.

<sup>5</sup> UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, at <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> accessed 16 April 2019.

<sup>6</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 <http://legal.un.org/avl/ha/catcidtp/catcidtp.html> accessed 16 April 2019.

<sup>7</sup> United Nations Human Rights Office of the High Commissioner, Ratification Status for Brunei Darussalam, [https://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=25&Lang=EN](https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=25&Lang=EN) accessed 16 April 2019.

LAWASIA commends the stated intention, expressed in a speech made by His Majesty, the Sultan and Yang Di Pertuan of Brunei Darussalam on 5<sup>th</sup> May 2019, to ratify the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, 1984, and for the country to apply its de facto moratorium on the death penalty to cases under the Syariah Penal Code.

LAWASIA however expresses deep concern over the potential for the application of some offences and penalties under the Syariah Penal Code which could violate the inherent rights and dignity of the human person, recognised in the Convention.

LAWASIA supports and adopts the statement of the UN High Commissioner for Human Rights issued on 1<sup>st</sup> April 2019 with respect to the Syariah Penal Code, stating:

“Human rights and faith are not opposing forces – indeed, it is human interpretation that creates tensions. It is vital that the Government, religious authorities and a wide range of civil society actors work jointly to uphold human dignity and equality for all.”<sup>i</sup>

LAWASIA emphasises ‘The Beirut Declaration’ and its 18 commitments on “Faith for Rights” adopted on 28-29 March 2017.<sup>ii</sup> LAWASIA reiterates the spirit of the 18 commitments to monitor, revisit and reform interpretations or religious views that manifestly conflict with universal human rights norms and standards.<sup>iii</sup>

LAWASIA applauds the exemplary courage displayed by rights activists in Brunei and across the globe for voicing their critique of aspects of the Syariah Penal Code.

LAWASIA urges the Government of Brunei Darussalam to take concrete steps to ratifying the CAT, to enact the de facto moratorium on the death penalty into law, and to repeal laws providing for amputation of limbs.<sup>iv</sup>

LAWASIA calls on the authorities in Brunei Darussalam to withdraw the implementation of all laws which violate international human rights standards, including those which promote the discrimination of vulnerable groups.

LAWASIA urges the government of Brunei Darussalam to ensure that any action taken by the authorities concerned is in due compliance of the country’s legal obligations under international human rights laws.



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<sup>8</sup> United Nations Human Rights Office of the High Commissioner, ‘Bachelet urges Brunei to stop entry into force of “draconian” new penal code’, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24432&LangID=E> accessed 16 April 2019.

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<sup>9</sup> The Beirut Declaration and its 18 commitments on “Faith for Rights” <https://www.ohchr.org/Documents/Press/Faith4Rights.pdf> accessed 16 April 2019.

<sup>10</sup> United Nations Human Rights Office of the High Commissioner, “Beirut Declaration and its 18 commitments on “Faith for Rights,” <https://www.ohchr.org/EN/Issues/FreedomReligion/Pages/FaithForRights.aspx> accessed 16 April 2019.

<sup>11</sup> See English Translation of Titah of his Majesty Sultan and Yang Di Pertuan of Brunei Darussalam, 5 May 2019, available at <http://www.pmo.gov.bn/Lists/TITAH/NewDispform.aspx?ID=332&Source=http%3A%2F%2Fwww%2Epmo%2Egov%2Ebn%2FPMO%2520Pages%2FTitah-View%2Easpx&ContentTypeld=0x0100422E821587FC974C9DFFAF38C117CE34>; and ‘Brunei halts plan to punish gay sex with death by stoning,’ Al Jazeera, 6 May 2019, <https://www.aljazeera.com/news/2019/05/brunei-halts-plan-punish-gay-sex-adultery-death-190505181513614.html>, accessed 27 May 2019.