

UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD  
**71st Session of the UN Committee on the Rights of the Child**

11 January to 29 January 2016

**THE INTERNATIONAL COMMISSION OF JURISTS' SUBMISSION  
TO THE UN COMMITTEE ON THE RIGHTS OF THE CHILD FOR THE  
PREPARATION OF THE LIST OF ISSUES TO BE CONSIDERED DURING THE  
EXAMINATION OF THE SECOND AND THIRD PERIODIC REPORTS OF  
BRUNEI DARUSSALAM**

Submitted on 10 April 2015

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**ICJ Submission to the Committee on the Rights of the Child on the  
Preparation of the List of Issues for the Examination of the Second and Third  
Periodic Reports of Brunei Darussalam**

1. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the preparation by the Committee on the Rights of the Child (the Committee) of the List of Issues (LOI) for the examination of the Second and Third Periodic Reports of Brunei Darussalam pursuant to Article 44 of the Convention on the Rights of the Child (the Convention).

**Executive Summary**

2. In this submission, the ICJ draws the attention of the Committee to the concerns related to:
  - i.) the minimum age of criminal responsibility;
  - ii.) minimum age for marriage and/or forced marriage;
  - iii.) whipping as a judicially imposed punishment on children; and
  - iv.) undue limitations on the right to freedom of religion.
3. The ICJ concludes this submission with a list of recommended questions for inclusion in the List of Issues for the examination of Brunei Darussalam

**i.) the minimum age of criminal liability**

4. There are two main sources of criminal laws in Brunei: the Penal Code, which was enacted in 1951 during the British colonial period and revised in 2001, and the Syariah Penal Code, which was enacted in 2013. Both the Penal Code and the Syariah Penal Code apply to both Muslims and non-Muslims, although there are some provisions in the Syariah Penal Code that apply to Muslims only.<sup>1</sup> The Penal Code and the Syariah Penal Code run in parallel with each other. There are "offences" that are found in both, the Penal Code and Syariah Penal Code, such as murder, "causing hurt or injury", and "sodomy".<sup>2</sup>
5. At present, there are no official publicly available rules to determine clearly whether a case will be heard before the ordinary courts or Syariah courts. However, in a briefing given to foreign diplomats in January 2015, Hj Mohd Yusree Hj Junaidi, Assistant Solicitor-General at the Attorney General's Chambers (AGC), explained that each criminal case would be investigated by the Royal Police Force and, once the investigation had been completed, the

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<sup>1</sup> Examples of provisions that apply to Muslims only are: Section 194 on failure to perform Friday prayers, Section 236 on the non-payment of *zakat*, i.e. taxation of income and wealth of a Muslim or obligatory alms given by Muslims, etc.

<sup>2</sup> Section 82(2) of the Syariah Penal Code defines "sodomy" or *liwat* as "sexual intercourse between a man and another man or between a man and a woman other than his wife, done against the order of nature, that is through the anus". On the other hand, Section 377 on "unnatural offences" under the ordinary Penal Code describes "sodomy" as "carnal intercourse against the order of nature with any man, woman, or animal."

case would be forwarded to public prosecutors at the Attorney General's Chambers, who would then assess the case with the assistance of the Syariah Chief Prosecutor. They would determine whether the case would be transferred to the Syariah Court for prosecution or whether the public prosecutor would bring proceedings under the Penal Code in the ordinary criminal courts.<sup>3</sup>

6. At the outset, it should be noted that it is concerning that there is a lack of publicly available and clear rules on how to determine which court would try people, including children, charged with crimes that are defined as offences under both the Penal Code and Syariah Penal Code. The ICJ considers this situation to be inconsistent with the principle of legal certainty, one of the critical underpinnings of the rule of law, and which, in turn, acts as a safeguard against arbitrary prosecution, conviction, and punishment.<sup>4</sup> Further, the organization is concerned that the situation may also be inconsistent with the rights of children in conflict with the law who, within any criminal justice system, are entitled to enjoy the right to equality before the law and equal protection of the law without discrimination in accordance with, among others, Article 2 of the Convention.
7. Under the Penal Code, children under seven years of age are not criminally responsible.<sup>5</sup> Those between the ages of seven and 12 may be criminally liable if it is shown that they are capable of discerning right from wrong or that the child in question has "attained sufficient maturity of understanding to judge the nature and consequences of his [or her] conduct on that occasion."<sup>6</sup> This means that if the *doli incapax* presumption is successfully rebutted, a seven-year-old child may be held criminally responsible under the Penal Code.
8. The ICJ considers that the fact that children from the age of seven may be held criminally responsible under the Penal Code is inconsistent with the State Party's obligations under Article 40(3) of the Convention. In elucidating States Parties' obligations under Article 40(3) of the Convention, the Committee took into consideration Rule 4.1 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules") according to which the minimum age of criminal responsibility "shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity".<sup>7</sup> The Committee authoritatively held that a minimum age of criminal responsibility below the age of 12 years is not "internationally acceptable" and encouraged those States Parties with a minimum age of criminal responsibility lower than 12 years of age to increase it to 12 as the absolute minimum age of criminal responsibility and to continue to increase it

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<sup>3</sup> Quratul-Ain Bandial, *Foreign Envoys Briefed on Syariah*, The Brunei Times, 31 January 2014, available at <http://bt.com.bn/news-national/2014/01/31/foreign-envoys-briefed-syariah>.

<sup>4</sup> *Pietraroia v. Uruguay*, Communication No. 44/1979, UN Doc. CCPR/C/OP/1 at 76 (1984), paras. 13.2 and 17.

<sup>5</sup> Section 82 of the Penal Code of Brunei.

<sup>6</sup> Section 83 of the Penal Code of Brunei.

<sup>7</sup> The Human Rights Committee in turn has referred to taking into account "physical and mental immaturity"; See General Comment No. 32, UN Doc. CCPR/C/GC/32 (2007), para. 43.

to a higher age level.<sup>8</sup> On several occasions, the Committee has recommended to States Parties to raise the minimum age of criminal responsibility. For instance, the Committee recommended to Indonesia to “consider raising the minimum age of criminal responsibility to at least 14 years of age.”<sup>9</sup> The Committee also recommended to Pakistan to “raise the minimum age of criminal responsibility to an internationally acceptable level and ensure that children below 18 years are accorded the protection of juvenile justice provisions and are not treated as adults.”<sup>10</sup> In 2008, the Committee recommended to the United Kingdom of Great Britain and Northern Ireland to raise its minimum age of criminal responsibility, noting that the criminal age of responsibility is set at 8 years in Scotland and 10 years for England, Wales, and Northern Ireland.<sup>11</sup>

9. In addition to having expressed concern about the setting of a minimum age of criminal responsibility at too low an age, the Committee has also expressed concern about the failure to establish a minimum age of criminal responsibility,<sup>12</sup> which is the case in Brunei under the Syariah Penal Code, which does not provide a precise minimum age of criminal responsibility. Instead, it establishes, under Section 12, that a child who is not yet capable of discerning right from wrong or who is not yet able to comprehend the social significance of his or her behaviour cannot be held criminally responsible.<sup>13</sup> In addition, children who are capable of discerning right from wrong, but have not yet reached puberty (not *baligh*<sup>14</sup>) and have committed crimes punishable with *hadd*<sup>15</sup> or *qisas* punishments,<sup>16</sup> upon conviction, shall not receive sentences imposing the *hadd* or *qisas* penalties. If convicted they may, however, be sentenced to other punishments provided under the Syariah Penal Code.<sup>17</sup>

10. States parties are obliged under the Convention to establish a specific minimum age below which children shall be presumed not to have the capacity to infringe the penal law. The minimum age of criminal responsibility means

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<sup>8</sup> Committee on the Rights of the Child, General Comment No. 10: Children’s rights in juvenile justice, UN Doc. CRC/C/GC/10 (25 April 2007), para. 32.

<sup>9</sup> Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Indonesia, UN Doc. CRC/C/IDN/CO/3-4 (10 July 2014), para. 78.

<sup>10</sup> Committee on the Rights of the Child, Consideration of reports submitted by States Parties under Article 44 of the Convention, Concluding observations: Pakistan, UN Doc. CRC/C/PAK/CO/3-4 (15 October 2009), para. 100.

<sup>11</sup> Committee on the Rights of the Child, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, UN Doc. CRC/C/GBR/CO/4 (2008), para. 78.

<sup>12</sup> See the concern expressed by the Committee with respect to the failure to fix a minimum age of criminal responsibility, Concluding Observations: Senegal, CRC/C/15/Add 44, paras. 11, 25.

<sup>13</sup> Section 12 of the Syariah Penal Code states: “Nothing is an offence which is done by a child who is not *mumaiyiz*.” *Mumaiyiz* is defined under Section 3 of the Syariah Courts Evidence Order 2001 as “a child who has attained the age of being capable of differentiating a matter.”

<sup>14</sup> Section 3(1) of the Syariah Courts Evidence Order 2001, defines *baligh* as “a person who has attained the age of puberty.”

<sup>15</sup> *Hadd* punishments are those fixed in the Quran, e.g. amputation of hand or death, for crimes considered to be against “the rights of God”, e.g. robbery, adultery, rape, and consensual same-sex relations.

<sup>16</sup> *Qisas* punishments entail retaliation or similar punishment.

<sup>17</sup> Section 13 of the Syariah Penal Code states: “No *hadd* or *qisas* punishment may be imposed for any offence attracting *hadd* or *qisas* punishment, committed by a *mumaiyiz* child who is not *baligh*, but [the child] may be punished with punishments other than *hadd* or *qisas*.”

that children who commit an offence at an age below that minimum cannot be held criminally responsible. If they do commit an offence when below the minimum age of criminal responsibility, instead of being charged, "special protective measures can be taken, if necessary, in their best interests."<sup>18</sup>

## **ii. the minimum age of marriage and forced marriage**

11. The laws of Brunei prescribe a very low minimum age of marriage and, in certain instances, the age prescribed differs for boys and girls. Under the Marriage Act, the age of consent for marriage for both boys and girls is 14 years old.<sup>19</sup>
12. Ethnic Chinese constitute at least 15% of Brunei's population and marriages contracted under established Chinese customs fall under the Chinese Marriage Act, where the minimum marriage age for girls is 15 years of age.<sup>20</sup> The Chinese Marriage Act does not provide for a minimum age of marriage for boys. Under customary marriage laws, the minimum age of marriage for Muslim girls is 16 years of age, while for Muslim boys it is 18 years of age.<sup>21</sup>
13. Under international law, child marriage is defined as any marriage where one of the parties is under the age of 18 years.<sup>22</sup> Ordinarily, child marriage is considered to be a form of forced marriage, given that one and/or both parties have not expressed full, free and informed consent.<sup>23</sup> Even where children are not forced into marriage, the Committee on the Elimination of Discrimination against Women has held that consent cannot be considered as 'free and full' as a child's capacity to appreciate the implications of marriage and to make an informed choice about a life partner may not yet be fully developed.<sup>24</sup> Child marriage is considered as a harmful practice and may amount to ill-

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<sup>18</sup> Committee on the Rights of the Child, General Comment No. 10: Children's rights in juvenile justice, UN Doc. CRC/C/GC/10 (25 April 2007), para. 31.

<sup>19</sup> Section 3(1)(a) of the Marriage Act (Note: marriages solemnized under the Marriage Act are those between persons not Muslim, Hindu, or Buddhist).

<sup>20</sup> Section 6 of the Chinese Marriage Act. (Note: the Chinese Marriage Act covers those marriages contracted according to established Chinese law or custom.)

<sup>21</sup> Committee on the Elimination of Discrimination against Women, Concluding observations on the combined initial and second periodic reports of Brunei Darussalam, UN Doc. CEDAW/C/BRN/CO/1-2 (24 November 2014), para. 38(b).

<sup>22</sup> Neither the Convention on the Elimination of All Forms of Discrimination against Women (the Women's Convention) nor the Convention on the Rights of the Child prescribe a minimum age for marriage but both the Committee and the Committee on the Elimination of Discrimination against Women have advocated that the minimum age of marriages for men and women should be 18 years (Committee on the Rights of the Child, general comment No. 4, paras. 9 and 20; Committee on the Elimination of Discrimination against Women, general recommendation No. 21, para. 36). See also Committee on the Elimination of Discrimination Against Women and Committee on the Rights of the Child, Joint general recommendation (No. 31 for the CEDAW Committee and No. 18 for the Committee on the Rights of the Child), UN Doc. CEDAW W/C/GC/31 – CRC/C/GC/18 (4 November 2014), para. 19.

<sup>23</sup> Committee on the Elimination of Discrimination Against Women and Committee on the Rights of the Child, Joint general recommendation (No. 31 for the CEDAW Committee and No. 18 for the Committee on the Rights of the Child), UN Doc. CEDAW W/C/GC/31 – CRC/C/GC/18 (4 November 2014), para. 20.

<sup>24</sup> See Committee on the Elimination of Discrimination against Women, general recommendation No. 21, para. 36.

treatment,<sup>25</sup> and it may violate a range of children's rights under the Convention, including the right of the child to be heard and the child's right to protection from all forms of violence.<sup>26</sup>

14. Child marriage has wide-ranging deleterious consequences, particularly for girls, including with respect to their rights to the highest attainable standard of health, education, freedom of movement, and equal status and responsibility within marriage. This is often the case because child marriages are often characterized by early or frequent pregnancy and childbirth, resulting in higher than average maternal morbidity and mortality rates and also contributing to higher rates of school dropouts, especially among girls; they often also lead to forced exclusion from school and increased risk of domestic violence, in addition to limiting girls' right to freedom of movement. In cases of child and/or forced marriage, in particular where the husband is significantly older than the wife, the girls generally have limited decision-making powers in relation to their own lives.<sup>27</sup> In light of this, as child marriage affects girls disproportionately, it may also constitute a form of gender-based violence, or violence against women and girls.<sup>28</sup> It is, in any event, a discriminatory practice affecting mostly girls and impeding the full realization of their human rights, as well as violating their right freely to choose a spouse and to enter into marriage by free and full consent.<sup>29</sup> The Women's Convention, to which Brunei is a party, expressly prohibits the marriage or the promise in marriage (betrothal) of children.<sup>30</sup>

15. Further, the Committee, on several occasions, expressed the view that "the minimum age of marriage and sexual consent for boys and girls must be the same, or it will be discriminatory."<sup>31</sup> Very recently, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) expressed concern on the very low minimum age of marriage in Brunei and the different minimum ages for boys and girls. The CEDAW Committee therefore recommended to Brunei to "raise the minimum age of marriage for all girls and boys to 18 years."<sup>32</sup>

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<sup>25</sup> As prohibited by the Convention, art. 24(3). See also Committee against Torture, Concluding Observations: Yemen, CAT/C/YEM/CO/2, para. 31.

<sup>26</sup> As enshrined respectively in arts. 12 and 19 of the Convention.

<sup>27</sup> Committee on the Elimination of Discrimination Against Women and Committee on the Rights of the Child, Joint general recommendation (No. 31 for the CEDAW Committee and No. 18 for the Committee on the Rights of the Child), UN Doc. CEDAW W/C/GC/31 – CRC/C/GC/18 (4 November 2014), para. 22. The differential in social and physical development between a child and an adult may undermine the equality of spouses in marriage, in particular where a young girl is married to a significantly older man (Women's Convention, art. 16(1)).

<sup>28</sup> See Report of the Special Rapporteur on violence against women, its causes and consequences, E/CN.4/1999/68/Add.4, paras. 36-38.

<sup>29</sup> As enshrined in ICCPR art. 23(3), ICESCR art. 10(1), CEDAW art. 16(1)(b); Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages art 2.

<sup>30</sup> CEDAW, Art. 16(2).

<sup>31</sup> Committee on the Rights of the Child, General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child, UN Doc. CRC/GC/2003/4 (1 July 2003), para. 9.

<sup>32</sup> Committee on the Elimination of Discrimination Against Women, Concluding observations on the combined initial and second periodic reports of Brunei Darussalam, UN Doc. CEDAW/W/C/BRN/CO/1-2 (14 November 2014), para. 39.

16. Furthermore, observing that in certain States Parties forced marriages or re-marriages were permitted on the basis of custom, religious beliefs or ethnic origins, the CEDAW Committee emphasized "a woman's right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being", and "a woman's right to choose when, if, and whom she will marry must be protected and enforced at law."<sup>33</sup>

### **iii. whipping as a judicially imposed punishment for children**

17. Whipping is one of the types of punishments prescribed under both the Syariah Penal Code and the ordinary Penal Code. Under the Syariah Penal Code, whipping is one of the types of punishments prescribed for crimes such as extramarital sexual relations (*zina*),<sup>34</sup> and rape (*zina bil-jabar*).<sup>35</sup> A child who is 15 years of age or above, but has not reached the age of puberty, and who has been convicted of *zina*, may be sentenced to be whipped from anything between 15 and 30 strokes and detained in a rehabilitation center for a period not exceeding three years.<sup>36</sup>

18. A child who is 15 years of age or above, but has not reached the age of puberty and has been found guilty of attempting to commit *zina* shall be sentenced to be whipped up to 10 strokes and shall be detained in a rehabilitation center for a term not exceeding one year.<sup>37</sup> A child who is 15 years of age or above but has not reached the age of puberty and who is convicted of abetting *zina*, shall be sentenced to be whipped up to 15 strokes and detained in a rehabilitation center for a period not exceeding 3 years.<sup>38</sup>

19. A child convicted of rape who is 15 years of age or above but has not reached the age of puberty, shall be sentenced to be whipped with 20 to 40 strokes and detained in a rehabilitation center for a period not exceeding five years.<sup>39</sup>

20. The ordinary Penal Code provides for sentences of whipping upon conviction for several crimes, such as gang robbery (Article 395), intentionally causing bodily harm in committing robbery (Article 394), and mischief by killing or maiming an animal (Article 428).

21. The Committee, in 2003, called on Brunei to abolish the sentence of whipping for boys.<sup>40</sup> Furthermore, the Committee has, on several occasions, stated that corporal punishment is a violation of the leading principles of juvenile justice and is also a violation of the right not to be subjected to cruel or degrading forms of punishment.

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<sup>33</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations* (1994), para. 16.

<sup>34</sup> Section 68 of the Syariah Penal Code.

<sup>35</sup> Section 75 of the Syariah Penal Code.

<sup>36</sup> Section 70 of the Syariah Penal Code.

<sup>37</sup> Section 72 of the Syariah Penal Code.

<sup>38</sup> Section 74 of the Syariah Penal Code.

<sup>39</sup> Section 77 of the Syariah Penal Code.

<sup>40</sup> Committee on the Rights of the Child, Concluding observations on Brunei Darussalam, UN Doc. CRC/C/15/Add. 219 (27 October 2003), para. 55.

22. In certain States, the Committee observed that children, in some cases from a very young age, in other cases from the time they have reached puberty, may be sentenced to punishments of extreme violence, prescribed under certain interpretations of religious law. These punishments violate the Convention and other international human rights standards.<sup>41</sup> Several UN and regional human rights bodies have held that corporal punishment, such as flogging or whipping, constitutes cruel, inhuman or degrading treatment or punishment, or even torture.<sup>42</sup>
23. The Committee has also observed that some States parties justify the imposition of corporal punishment on the basis of religion, suggesting that certain interpretations of religious texts not only justify its use, but prescribe its imposition as a religious duty in certain circumstances. In those contexts, the Committee has noted that practice of a religion or belief must be consistent with respect for children's human dignity and physical integrity. Freedom to practice one's religion or belief may be legitimately limited in order to protect the fundamental rights and freedoms of others.

#### **iv. undue limitations on the right to freedom of religion of children**

24. The Government of Brunei has imposed several measures recently that limit celebrations of other religions, such as the Christian and Buddhist religions. For instance, last December 2014, the Syariah Affairs Department's Religious Enforcement Division visited businesses owned by both Muslim and non-Muslim in Bandar Seri Begawan and allegedly instructed them to take down Christmas decorations such as Christmas trees, banners, and Santa Claus figures.<sup>43</sup>
25. According to a press release issued by the Ministry of Religious Affairs, Muslims should not follow celebrations such as Christmas that are in no way

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<sup>41</sup> Committee on the Rights of the Child, General Comment No. 8: The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia), UN Doc. CRC/C/GC/8 (2007), para. 29.

<sup>42</sup> Human Rights Committee, general comment No. 20, para. 5; Communication No. 759/1997, *Osbourne v. Jamaica* Views adopted by the Human Rights Committee on 15 March 2000, paras. 9.1, 9.2 and 11; Committee against Torture, concluding observations: Indonesia, CAT/C/IDN/CO/2, para. 15; and concluding observations: Yemen, CAT/C/YEM/CO/2/Rev.1, para. 18; Committee on Economic, Social and Cultural Rights, general comment no. 13, para. 41; Committee on the Rights of the Child, general comment No. 4, para. 17; Human Rights Council Resolution 8/8, art. 7(a). See also Inter-American Court of Human Rights, *Caesar v Trinidad and Tobago*, Judgment of 11 March 2005, Series C, No. 123, para. 88. According to the Human Rights Committee, the prohibition of torture and ill-treatment in the ICCPR "must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure", Human Rights Committee, general comment No. 20, para. 5. In its jurisprudence, the Committee has held that "[i]rrespective of the nature of the crime that is to be punished, however brutal it may be, it is the firm opinion of the Committee that corporal punishment constitutes cruel, inhuman and degrading treatment or punishment contrary to article 7 of the Covenant", Communication No. 759/1997, *Osbourne v. Jamaica* Views adopted by the Human Rights Committee on 15 March 2000, para. 9.1. See also Report of the Special Rapporteur on Torture, A/HRC/13/39/Add.5, paras. 209- 228.

<sup>43</sup> Prashanth Parameswaran, *Brunei's War on Christmas?*, The Diplomat, 25 December 2014, available at <http://thediplomat.com/2014/12/bruneis-war-on-christmas/>.



related to Islam since this could “unknowingly damage the *aqidah* (faith) of Muslims.”<sup>44</sup> In its press release, the Ministry of Religious Affairs also noted that there were Muslim children, teenagers, and adults that have been seen wearing hats or clothes resembling that of Santa Claus. It warned that these children, teenagers, and adults may be liable under Section 207(1)<sup>45</sup> of the Syariah Penal Code, which prohibits performing or practicing a ceremony or act contrary to Syariah law (Hukum Syariah).

26. On February 2014, a letter allegedly from the Government of Brunei was circulated in social media limiting Chinese New Year celebrations. Specifically, it said that lion dances could only be performed from 19 to 21 February 2015 and only in three places: the temple, school halls, and the homes of Chinese association members, and not at hotels, restaurants, commercial premises, roads or public areas.<sup>46</sup> The letter also specifically said that on 20 February 2015, which was a Friday, lion dances would only be allowed to be performed in the afternoon from 2:00pm to 5:15pm, following Friday prayers for Muslims. Lion dances could not be performed if accompanied by firecrackers or fireworks and members of the dance troupe must be Chinese students or Chinese community members. The Ministry of Home Affairs later confirmed that the contents of the letter that had been circulating through social media were accurate and indeed that the letter came from the Government.<sup>47</sup>
27. The Ministry of Religious Affairs has warned that those publicly displaying festivities of religions other than Islam may be prosecuted under Section 209(1) of the Syariah Penal Code,<sup>48</sup> which prohibits the propagation of religions other than Islam.
28. The ICJ considers that limiting the public display of festivities of religions other than Islam and threatening to prosecute under the Syariah Penal Code those who undertake such acts constitute undue limitations on the right to freedom of thought, conscience, and religion of children and may cause feelings of intolerance among the people living in Brunei. The Special Rapporteur on freedom of religion or belief, noted that anti-proselytism or anti-blasphemy

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<sup>44</sup> Press release from the Ministry of Religious Affairs, Brunei Times, 27 December 2014, available at <http://www.bt.com.bn/print/1059367>

<sup>45</sup> Section 207(1) of the Syariah Penal Code: Any Muslim who (a) teaches or expounds any doctrine relating to the religion of Muslims in a manner contrary to Hukum Syariah; or (b) teaches, expounds any doctrine or carries out, performs or practices, a ceremony or act contrary to Hukum Syariah, is guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding 5 years or both.

<sup>46</sup> *Lion dances to see limited performance, no firecrackers or fireworks*, [www.BruDirect.com](http://www.BruDirect.com), available at <http://www.brudirect.com/0-national/national/national-local/item/18783-lion-dances-to-see-limited-performance-no-firecrackers-or-fireworks>

<sup>47</sup> Prashanth Parameswaran, *Brunei cracks down on Chinese New Year*, The Diplomat, 14 February 2015, available at <http://thediplomat.com/2015/02/brunei-cracks-down-on-chinese-new-year/>

<sup>48</sup> Section 209(1) of the Syariah Penal Code: Any person who propagates religion other than religion of Islam, to a Muslim or a person having no religion is guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding 5 years or both.

laws, like Section 209(1) of the Syariah Penal Code,<sup>49</sup> disproportionately affect religious minorities and are likely to cause feelings of intolerance and acts of violence in the name of religion.<sup>50</sup> Attacks against religious minorities also likely increase where there is a recognized “official” or State religion or when a religion is used as a medium to define national identity,<sup>51</sup> as in the case of Brunei.

29. The Special Rapporteur on freedom of religion or belief has said the obligation to respect the right to freedom of religion or belief requires States to “repeal anti-blasphemy laws, anti-conversion laws and criminal laws that discriminate against certain people according to their religious affiliations or beliefs or criminalize their “dissident” practices. Apart from further increasing the vulnerability of marginalized groups or individuals, these laws may give a pretext to vigilante groups and other perpetrators of hatred for intimidating people and committing acts of violence”.<sup>52</sup>

### **Recommendations**

Against the background of the information provided within this submission, and in the context of the thematic areas considered in this submission, the ICJ recommends that the following questions be included in the List of Issues for the examination of Brunei Darussalam:

#### **i. On the minimum age of criminal responsibility**

1. Is the Government of Brunei Darussalam taking steps towards adopting and making publicly available official rules to determine whether a particular case will be tried in the ordinary criminal courts or the Syariah Courts?
2. What are the measures being taken by the Government of Brunei Darussalam to raise the minimum age of criminal responsibility to an internationally acceptable level?
3. What steps does the Government intend to take to ensure that the a minimum age of criminal responsibility, set at an internationally acceptable level, is provided under the Syariah Penal Code?
4. What measures does the Government of BD envisage taking to ensure that equality before the law and equal protection of the law is guaranteed to

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<sup>49</sup> Section 209(1) of the Syariah Penal Code: Any person who propagates religion other than religion of Islam, to a Muslim or a person having no religion is guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding 5 years or both.

<sup>50</sup> Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, UN Doc. A/HRC/28/66 (29 December 2014) para 35.

<sup>51</sup> Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, UN Doc. A/HRC/28/66 (29 December 2014) para 6.

<sup>52</sup> Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, UN Doc. A/HRC/28/66 (29 December 2014) para 42.

children who are tried for offences that qualify as crimes under both criminal codes?

**ii. On the minimum age of marriage and forced marriage**

5. What laws and measures are being taken by the Government of Brunei Darussalam to combat early and forced marriage throughout the country?
6. Will the government of Brunei consider setting 18 years as the minimum marriage age?
7. How does the Government of Brunei intend to ensure equality between men and women, including girls, in respect of the various unequal ages of marriage that exist in the country?

**iii. On whipping as a judicially imposed punishment for children**

8. What are the steps being taken by the Government of Brunei Darussalam to abolish the sentence of whipping as recommended by the Committee in 2003?
9. What steps are being taken by the Government of Brunei Darussalam to ensure compatibility of national legislation with the Convention, especially with respect to including explicit prohibition in domestic legislation on judicially imposed punishment for children that constitute torture or cruel or degrading forms of punishment?

**iv. On undue limitations on the right to freedom of religion of children**

10. What measures are being taken by the Government of Brunei Darussalam to ensure compatibility of provisions in the Syariah Penal Code with the Convention, especially those provisions prohibiting the discussion or dissemination of teachings of religions other than Islam?
11. What measures are being taken by the Government of Brunei Darussalam to combat intolerance on the grounds of religion or other beliefs and to promote religious dialogue in society, ensuring that religious teachings promote tolerance and understanding among children from all communities?