



Brunei Darussalam's Compliance with the Convention on the Elimination of All Forms of Discrimination against Women

Suggested List of Issues Relating to: The Death Penalty

Submitted by The Advocates for Human Rights

a non-governmental organization in special consultative status with ECOSOC since 1996

and

The World Coalition Against the Death Penalty

**for the 94th Session of the Committee on the Elimination of Discrimination against Women
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The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law since its founding in 1983. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publication. The Advocates is the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States. The Advocates is committed to ensuring human rights protection for women around the world. The Advocates has published more than 25 reports on violence against women as a human rights issue, provided consultation and commentary of draft laws on domestic violence, and trained lawyers, police, prosecutors, judges, and other law enforcement personnel to effectively implement new and existing laws on domestic violence. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

The World Coalition Against the Death Penalty is a membership-based global network committed to strengthening the international dimension of the fight against the death penalty. Established in 2002, its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

EXECUTIVE SUMMARY

1. The Committee last reviewed Brunei Darussalam's compliance with the Convention on the Elimination of All Forms of Discrimination against Women in 2014.
2. Little to no information is available about the various aspects of the death penalty as applied to women in Brunei Darussalam. The absence of data about women subject to the death penalty may obscure ways in which Brunei Darussalam's death penalty practices have disparate impacts on women or arise out of a discriminatory criminal legal system.
3. Brunei has not carried out any executions since 1957 and therefore is *de facto* abolitionist.¹ Yet authorities still have the power to sentence women to death for crimes that are not the most serious under international law. Women face institutionalized discrimination at many stages of the criminal legal system, putting them at an increased risk of being sentenced to death. Brunei Darussalam has also failed to address gender-based violence, placing women at risk of coming into conflict with the law for capital crimes. To date, Brunei Darussalam does not appear to have taken any steps toward a *de jure* moratorium on executions.
4. This report suggests questions for the Committee on the Elimination of Discrimination against Women to pose to the Government of Brunei Darussalam in its List of Issues Prior to Reporting, particularly with respect to the administration of the death penalty against women.

Brunei Darussalam fails to uphold its obligations under the Convention on the Elimination of All Forms of Discrimination against Women

I. Authorities have the power to sentence women to death for crimes that are not the “most serious” under international law (Concluding Observations paras. 12-13).

5. In its 2014 Concluding Observations, the Committee expressed deep concern about Brunei Darussalam's “restrictive interpretation of sharia law and at the adverse impact on women's human rights of the recently adopted Sharia Penal Code Order 2013.”² The Committee was specifically concerned with the implementation of laws that “impose the death penalty . . . for several ‘crimes.’”³
6. In its 2017 State Party Report on Follow-Up to Concluding Observations, Brunei Darussalam took note of this concern and asserted that the Syariah Penal Code (SPC) is “necessary to strengthen the current criminal law and the protection of human rights including rights of women.”⁴

¹ Amnesty International, “Brunei Darussalam: Sultan's speech a first step to repealing ‘heinous’ laws,” accessed July 16, 2025, <https://www.amnesty.org/en/latest/news/2019/05/brunei-darussalam-sultan-speech-first-step-repealing-heinous-laws-2/>.

² UN Committee on the Elimination of Discrimination against Women, Concluding observations on the combined initial and second periodic reports of Brunei Darussalam, 14 November 2014, U.N. Doc. CEDAW/C/BRN/CO/1-2, ¶ 12.

³ UN Committee on the Elimination of Discrimination against Women, Concluding observations on the combined initial and second periodic reports of Brunei Darussalam, 14 November 2014, U.N. Doc. CEDAW/C/BRN/CO/1-2, ¶ 12.

⁴ UN Committee on the Elimination of Discrimination against Women, State Party report on Follow-up to Concluding Observations, 17 August 2017, U.N. Doc. CEDAW/C/BRN/CO/1-2/Add.1, ¶ 5.

7. The SPC does not limit the death penalty to the “most serious crimes,” but rather authorizes the death penalty for crimes that do not entail an intentional killing.⁵ The laws of Brunei Darussalam contain various provisions authorizing the death penalty. Crimes punishable by death include murder,⁶ abetting suicide of a person unable to give legal consent,⁷ participation in a gang robbery during which a murder takes place,⁸ arson,⁹ terrorism-related offenses (including illegal possession of firearms and explosives),¹⁰ kidnapping,¹¹ drug trafficking and possession of drugs,¹² treason,¹³ military offenses,¹⁴ and perjury resulting in the conviction of an innocent defendant charged with a capital offense.¹⁵ Crimes punishable by death by stoning include adultery, sodomy, rape, apostasy, blasphemy, and insulting Islam.¹⁶
8. Under the Criminal Procedure Code Chapter XXV, the death penalty is mandatory, but it is ultimately the Sultan’s decision as to whether the sentence is carried out. The trial judge forwards the decision and record of the case along with the judge’s opinion as to any reasons mitigating against the application of the death penalty to the Chief Justice, who then forwards the matter to the Sultan for a final decision.¹⁷ By mandating a penalty of death for certain offenses, Brunei Darussalam significantly limits the offender’s opportunity to present any potential mitigating circumstances.
9. In response to widespread criticism of the SPC, the Sultan in 2019 declared that Brunei had adopted a *de facto* moratorium on the death penalty in all cases—a moratorium that appears to remain in effect.¹⁸ Although the available information does not indicate that courts have imposed any death sentences since 2017,¹⁹ as of the end of 2024, there was at least one person on death row.²⁰ The *de facto* moratorium on executions nonetheless allows the Sultan to restore the death penalty at any time.²¹

⁵ Human Rights Watch, “Brunei’s Pernicious New Penal Code,” accessed Jul. 7, 2025, <https://www.hrw.org/news/2019/05/22/bruneis-pernicious-new-penal-code>.

⁶ Brunei Penal Code, art. 302, No. 16 of 1951, Laws of Brunei Ch. 22, Rev. Ed. 2001.

⁷ Brunei Penal Code, art. 305, No. 16 of 1951, Laws of Brunei Ch. 22, Rev. Ed. 2001.

⁸ Brunei Penal Code, art. 396, No. 16 of 1951, Laws of Brunei Ch. 22, Rev. Ed. 2001.

⁹ Brunei Penal Code, art. 435 (1)(b), No. 16 of 1951, Laws of Brunei Ch. 22, Rev. Ed. 2001.

¹⁰ Brunei Internal Security Act, arts. 40-41, Rev. ed. 2008; Brunei Public Order Act, art. 28, Laws of Brunei Ch. 133, Rev. Ed. 2002.

¹¹ Brunei Penal Code, art. 364, No. 16 of 1951, Laws of Brunei Ch. 22, Rev. Ed. 2001.

¹² Brunei Misuse of Drugs, arts. 3-5, 15-16, Second Schedule, Laws of Brunei Ch. 27, Rev. Ed. 2001.

¹³ Brunei Penal Code, art. 121, No. 16 of 1951, Laws of Brunei Ch. 22, Rev. Ed. 2001.

¹⁴ Brunei Penal Code, art. 132, No. 16 of 1951, Laws of Brunei Ch. 22, Rev. Ed. 2001.

¹⁵ Brunei Penal Code, art. 194, No. 16 of 1951, Laws of Brunei Ch. 22, Rev. Ed. 2001.

¹⁶ Huffington Post, “Brunei Law To Allow Death By Stoning For Gay Sex,” accessed Jul. 7, 2025, https://web.archive.org/web/20170425024514/http://www.huffingtonpost.com/2014/04/15/brunei-gay-sex-law_n_5154960.html.

¹⁷ Brunei Criminal Procedure Code, art. 244, Laws of Brunei Ch. 7.

¹⁸ Human Rights Watch, “Brunei’s Pernicious New Penal Code,” accessed July 7, 2025, <https://www.hrw.org/news/2019/05/22/bruneis-pernicious-new-penal-code> (internal quotations omitted).

¹⁹ Amnesty International, “Brunei Darussalam: Sultan’s speech a first step to repealing ‘heinous’ laws”, accessed August 11, 2025. Available online at <https://www.amnesty.org/en/latest/news/2019/05/brunei-darussalam-sultan-speech-first-step-repealing-heinous-laws-2/>.

²⁰ Amnesty International, Death Sentences and Executions 2024 (2025), at 21. Available online at <https://www.amnesty.org/en/documents/act50/8976/2025/en/>.

²¹ Human Rights Watch, “Brunei’s Pernicious New Penal Code,” accessed July 7, 2025, <https://www.hrw.org/news/2019/05/22/bruneis-pernicious-new-penal-code>.

10. Without a *de jure* moratorium on capital punishment, authorities continue to have the power to sentence women to death, including for crimes that are not the “most serious” under international law, and the Sultan could order their executions at any time after conviction.

II. Gender discrimination at many stages of the criminal legal system puts women at risk of being sentenced to death (Concluding Observations paras. 12-15).

11. In its 2014 Concluding Observations, the Committee expressed serious concern about the effect on women of Brunei Darussalam’s “discriminatory investigative policies and provisions on the weighing of evidence.”²² Specifically, the Committee noted that “women are disproportionately affected by punishment for ‘crimes’ involving sex, and are at a higher risk of being convicted of adultery and extramarital relations.”²³ The Committee urged the state to “repeal[] . . . direct and indirect discriminatory provisions affecting women,” and “[t]o undertake law reform to eliminate all discrimination against women.”²⁴
12. In its 2017 State Party Report on Follow-Up to Concluding Observations, Brunei Darussalam asserted that the SPC is “non-discriminatory in nature.”²⁵
13. Global trends also show that women sentenced to death face intersectional discrimination. According to a groundbreaking 2018 study by the Cornell Center on the Death Penalty Worldwide, most women on death row worldwide come from backgrounds of severe socioeconomic deprivation, a factor that can reinforce unequal access to effective legal representation.²⁶ This intersectional discrimination exacerbates the risk that a woman charged with a capital crime will face an unfair trial. The Cornell study found that most women who are detained are unable to afford a lawyer and are more likely to be illiterate and unaware of their legal rights.²⁷ Illiteracy and lack of education among poor women also leave them more vulnerable to discrimination, coercion, and exploitation,²⁸ which are conditions that can bring them into conflict with the law.
14. Research by the Cornell Center also shows that women are more likely to receive a death sentence when the adjudicating authority perceives that they are violating entrenched gender

²² UN Committee on the Elimination of Discrimination against Women, Concluding observations on the combined initial and second periodic reports of Brunei Darussalam, 14 November 2014, U.N. Doc. CEDAW/C/BRN/CO/1-2, ¶ 12.

²³ UN Committee on the Elimination of Discrimination against Women, Concluding observations on the combined initial and second periodic reports of Brunei Darussalam, 14 November 2014, U.N. Doc. CEDAW/C/BRN/CO/1-2, ¶ 12.

²⁴ UN Committee on the Elimination of Discrimination against Women, Concluding observations on the combined initial and second periodic reports of Brunei Darussalam, 14 November 2014, U.N. Doc. CEDAW/C/BRN/CO/1-2, ¶ 13.

²⁵ UN Committee on the Elimination of Discrimination against Women, State Party report on Follow-up to Concluding Observations, 17 August 2017, U.N. Doc. CEDAW/C/BRN/CO/1-2/Add.1, ¶ 5.

²⁶ Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty, Cornell Center on the Death Penalty Worldwide 3 (Sept. 2018), <https://dpw.lawschool.cornell.edu/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

²⁷ Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty, Cornell Center on the Death Penalty Worldwide 18 (Sept. 2018), <https://dpw.lawschool.cornell.edu/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

²⁸ Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty, Cornell Center on the Death Penalty Worldwide 18 (Sept. 2018), <https://dpw.lawschool.cornell.edu/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

norms, being cast as the “femme fatale” or the “witch.”²⁹ Women are often put on trial not only for acts they performed but also for allegedly being “a bad wife, a bad mother, and a bad woman.”³⁰

15. As discussed in Section III below, global trends show that the murder crimes for which women are sentenced to death are often committed in a context of gender-based violence, including domestic violence.³¹ Furthermore, in many countries that retain the death penalty, courts fail to take into account a defendant’s experience as a survivor of gender-based violence when making sentencing decisions.³²

III. Brunei’s failure to address gender-based violence and improve women’s access to justice for gender-based violence puts women at increased risk of being sentenced to death (Concluding Observations paras. 22-23).

16. In its 2014 Concluding Observations, the Committee expressed grave concern regarding Brunei Darussalam’s failure to address gender-based violence.³³ The Committee specifically noted concern regarding “the absence of specific legislation on violence against women or on domestic violence.”³⁴ The Committee recommended that Brunei Darussalam “adopt specific legislation to criminalize all forms of violence against women, including domestic violence and marital rape,” “amend the penal code with a view to criminalizing marital rape,” “strengthen support services for women who are victims of violence,” and “provide gender-sensitive training for the judiciary, law enforcement officers and health professionals.”³⁵
17. Despite the Committee’s concerns, available information does not indicate that Brunei Darussalam has made any meaningful progress to address gender-based violence. In particular, Brunei Darussalam has not engaged any legislation specifically criminalizing domestic

²⁹ Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty, Cornell Center on the Death Penalty Worldwide 4 (Sept. 2018), <https://dpw.lawschool.cornell.edu/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

³⁰ Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty, Cornell Center on the Death Penalty Worldwide 4 (Sept. 2018), <https://dpw.lawschool.cornell.edu/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

³¹ Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty, Cornell Center on the Death Penalty Worldwide 3 (Sept. 2018), <https://dpw.lawschool.cornell.edu/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

³² Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty, Cornell Center on the Death Penalty Worldwide 4 (Sept. 2018), <https://dpw.lawschool.cornell.edu/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

³³ UN Committee on the Elimination of Discrimination against Women, Concluding observations on the combined initial and second periodic reports of Brunei Darussalam, 14 November 2014, U.N. Doc. CEDAW/C/BRN/CO/1-2, ¶ 22; United States Department of State, *Brunei Darussalam’s 2022 Human Rights Report*, (2022), 1, 15. Available online at <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/brunei/>.

³⁴ UN Committee on the Elimination of Discrimination against Women, Concluding observations on the combined initial and second periodic reports of Brunei Darussalam, 14 November 2014, U.N. Doc. CEDAW/C/BRN/CO/1-2, ¶ 22; United States Department of State, *Brunei Darussalam’s 2022 Human Rights Report*, (2022), 1, 15. Available online at <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/brunei/>.

³⁵ UN Committee on the Elimination of Discrimination against Women, Concluding observations on the combined initial and second periodic reports of Brunei Darussalam, 14 November 2014, U.N. Doc. CEDAW/C/BRN/CO/1-2, ¶ 23.

violence or recognizing marital rape as a crime.³⁶ Furthermore, a lack of available data on the prevalence of gender-based crimes, such as rape, undermines efforts to monitor progress.³⁷

18. Women in Brunei Darussalam continue to lack protection against gender-based violence under the law, and therefore may be subject to increased risk of coming into conflict with the law. In the global context, studies have found that women on death row for violent crimes such as murder were often victims of gender-based violence that required them to act in self-defense against the perpetrator.³⁸ Brunei Darussalam's failure to adopt legislation that criminalizes acts of domestic violence and marital rape increases women's exposure to gender-based violence. These women are at risk of coming into conflict with the law either because they are prompted to kill in self-defense or because a coercive control relationship may propel them toward engaging in criminal acts.
19. Brunei Darussalam's broad application of the death penalty to crimes such as rape and sex between unmarried individuals may obstruct women's access to justice for gender-based violence by dissuading survivors from reporting such crimes. Studies indicate that most survivors of sexual violence are assaulted by people they know.³⁹ As such, there is concern that survivors of sexual violence may be reluctant to report such crime, particularly if they know that doing so could result in a court sentencing someone they know to death.⁴⁰ Additionally, in circumstances in which the offender is not the survivor's spouse, the survivor may choose to not report the crime out of fear of being accused of committing *zina* (sex between unmarried individuals), a crime that is punishable by death under the SPC.⁴¹ If gender-based violent crimes go unreported, there is an increased risk that undaunted offenders will act again. The threat of the death penalty therefore functions as a barrier to women's access to justice, thereby increasing the risk that women are subjected to gender-based violence.
20. Brunei Darussalam's failure to address gender-based violence and remove barriers that obstruct women's access to justice for gender-based violence increases the likelihood that survivors of gender-based violence will experience prolonged trauma. Studies on the effects of past trauma on incarcerated women indicate that women are more likely to be imprisoned due to past trauma because, as compared to men, women tend to be subjected to trauma at a younger age, in a greater variety of ways (e.g., domestic violence) and more frequently.⁴² Women in Brunei Darussalam are more likely to experience prolonged trauma as a result of

³⁶ Brunei Penal Code, art. 375, No. 16 of 1951, Laws of Brunei Ch. 22, Rev. Ed. 2001.

³⁷ United States Department of State, *Brunei Darussalam's 2022 Human Rights Report*, (2022), 15. Available online at <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/brunei/>.

³⁸ Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty, Cornell Center on the Death Penalty Worldwide 4 (Sept. 2018), <https://dpw.lawschool.cornell.edu/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>; Peters, Anjuli, *The Death Penalty and the Right to a Fair Trial*, The Death Penalty Project, 26-7 2019. Available online at https://www.deathpenaltyproject.org/wp-content/uploads/2019/08/Anjuli-Peters_DPP-Research-Report-.pdf.

³⁹ Morine Chauvris, *Why is the Death Penalty not the answer to Rape?* World Coalition Against the Death Penalty, 2024. Available online at: <https://worldcoalition.org/2024/07/08/why-is-the-death-penalty-not-the-answer-to-rape/>.

⁴⁰ Morine Chauvris, *Why is the Death Penalty not the answer to Rape?* World Coalition Against the Death Penalty, 2024. Available online at: <https://worldcoalition.org/2024/07/08/why-is-the-death-penalty-not-the-answer-to-rape/>.

⁴¹ Brunei Penal Code, art. 68, No. 16 of 1951, Laws of Brunei Ch. 22, Rev. Ed. 2001.

⁴² Jeffries Samantha et al., *Expectations and Experiences of Women Imprisoned for Drug Offending and Returning to Communities in Thailand: Understanding Women's Pathways into, Through, and Post-Imprisonment*, Laws 9, no. 2 (2020): 15, 2. Available online at <https://doi.org/10.3390/laws9020015>.

unmitigated gender-based violence, placing them at an increased risk of coming into conflict with the law for a capital crime.

IV. Suggested questions for the Government of Brunei Darussalam

21. The coauthors of this report suggest the following questions for the Government of Brunei Darussalam:

- What steps has Brunei Darussalam taken to abolish the death penalty and replace it with a penalty that is fair, proportionate, and consistent with international human rights standards or to institute a *de jure* moratorium on executions?
- What steps has Brunei Darussalam taken to limit the number of offenses that are eligible for the death penalty and the number of offenses subject to a mandatory death penalty?
- Please indicate whether and how courts take into account gendered vulnerabilities, such as trauma, gender-based violence against women, poverty, coercive control, and dependency as mitigating factors in cases where women are charged with capital crimes. What steps, if any, has Brunei Darussalam taken to codify such gender-specific defenses and mitigation?
- What standards do courts apply regarding the immediacy and intensity of the threat in order for a defendant charged with murder to successfully plead self-defense? Are those standards subjective (belief of the defendant at that point in time) or objective (belief of a reasonable person in similar circumstances)?
- Under what circumstances may a woman who has experienced domestic violence successfully plead self-defense for killing her abuser? Which legal standards apply in such cases?
- To what extent do law enforcement, prosecutors, or defense counsel in capital cases receive training on gender-based discrimination, domestic violence, and tactics of coercive control that may influence or prompt a woman to commit a death-eligible offense?
- How do authorities ensure that all women accused of capital crimes have access to free and effective legal representation by attorneys who specialize in death penalty cases, ensure access to counsel at all times (from the start of the investigation through any appeals), and ensure that the defense team has sufficient funding to conduct a thorough investigation and to secure relevant expert witnesses, particularly regarding gender-specific defenses and mitigation?
- What steps has the State Party taken to ensure that no judge discounts a person's testimony because she is a woman and to ensure that all judicial officials are aware that such practices are discriminatory and violate the State Party's obligations under the Convention? What remedies are available to a party to a legal proceeding during which the judge discounts a woman's testimony because she is a woman?
- Please provide comprehensive data on all reports of rape and sexual assault that authorities received during the reporting period, disaggregated by authority receiving the report, relationship (familial, employment, educational, etc.) between the alleged victim and the alleged perpetrator, response of the authority, whether authorities brought charges, whether

the alleged offender was brought to trial, outcome of any trial (including any penalties), services provided to the victim, and remedies or reparations provided to the victim.

- What measures has Brunei Darussalam taken to encourage reporting of gender-based violence, including rape and sexual assault?
- Has Brunei Darussalam considered eliminating the death penalty for crimes such as rape and sex between unmarried individuals?
- What measures have authorities taken to adopt and implement a national action plan to combat all forms of gender-based violence against women?