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BRUNEI DARUSSALAM

DIO:UNGA/C/1.1/3

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or arbitrary executions

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Ms. Dubravka Simonovic
Special Rapporteur on violence against women,
Its causes and consequences

Ms. Ivana Radacic
Chair Rapporteur of the Working Group on
the issue of discrimination against women in
law and in practice

Dear Special Rapporteurs,

Reference is made to your communication of 1 April 2019 concerning the implementation of the Syariah Penal Code Order, 2013 (SPCO) in Brunei Darussalam.

At the outset, I hereby reaffirm the commitment of the Government of His Majesty the Sultan of Brunei Darussalam to its international obligations in promoting and protecting human rights as enshrined in the Charter of the United Nations and the Universal Declaration of Human Rights (UDHR). As a responsible member of the international community, Brunei Darussalam will continue to uphold its obligations and adhere to international covenants on human rights to which Brunei Darussalam is a party including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Brunei Darussalam's signature to the United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (UNCAT) in 2015 testifies our strong rejection to acts of torture.

Brunei Darussalam has undergone two cycles of the Universal Periodic Review (UPR), in 2009 and 2014 respectively which reflects our strong commitment to the UN human rights mechanisms. This is a continuing commitment in which we will participate in the third cycle in May this year.

For several centuries, Islam has been the official religion of Brunei Darussalam and the way of life of its people. Brunei is a small country, with a small population. Strong religious values with rich heritage of tradition and culture, form the very foundation of the unique Bruneian identity – loving, peaceful and respectful community – which are important to be preserved, and hence the country is fondly known as the *Abode of Peace*.

Brunei Darussalam takes pride in its own sovereignty, and like all other independent countries, enforces its own rule of laws reflecting our own cultural and religious values. Accordingly, the realisation of international human rights must be considered in the national context bearing in mind the diversity and different political, economic, legal, social, cultural, historical and religious backgrounds of the world we share.

It must be appreciated that the diversities in cultural, traditional and religious values in the world means that there is no one standard that fits all. This necessitates tolerance, respect, understanding and the giving of policy space, especially for small states like Brunei Darussalam which strive to preserve their own traditional, religious and cultural values.

We reaffirm our belief and trust that the United Nations embraces and continue to uphold the sovereign equality of all its Members as stipulated in Article 2 of the UN Charter.

Allow me to address the Joint Communication as follows:

1. Having read the Joint Communication, there appears to be a misconception as to the application and/or interpretation of the provisions of the SPCO, Syariah Courts Evidence Order, 2001 and Syariah Courts Criminal Procedure Code Order, 2018 which we would like to clarify.

2. Our Constitution provides that Islam shall be the official religion, but also explicitly recognises the right of non-Muslims to practise their religions in peace and harmony.

3. Brunei Darussalam practises a dual legal system which is based on the Syariah law and the common law. With the implementation of the SPCO, both systems will continue to run in parallel to maintain peace and order and preserve our religion, life, family and individuals regardless of gender, nationality, race and faith.

4. The objective of Syariah is to create a society where religion, life, intellect, property and lineage are preserved and protected. The SPCO aims to respect and protect the legitimate rights of all individuals, society or nationality of any faiths and race.

5. As we have clarified in our response to your Joint Communication in March 2015, we reaffirm that the Syariah criminal law system focuses more on prevention than punishment. Its aim is to educate, deter, rehabilitate and nurture rather than to punish. It seeks to strike the right balance between protecting the rights of the accused person and the rights of the victims and their families. Similar to the common law system, the presumption of innocence and due process are strictly adhered to in ensuring a just and

fair trial. Offenders are tried before a proper court which is presided by qualified and trained judges not only in Syariah law but also trained in the principles of the common law.

Allow me to now address the specific misconceptions in the Joint Communication:

6. The SPCO does not criminalise nor has any intention to victimise a person's status based on sexual orientation or belief, including same-sex relations. The criminalisation of adultery and sodomy is to safeguard the sanctity of family lineage and marriage of individual Muslims particularly women. The offences, therefore will not apply to non-Muslims unless the act of adultery or sodomy is committed with a Muslim.

7. The Government of Brunei Darussalam continuously protect the rights of women. Women in Brunei Darussalam are given equal opportunities among others in education, training, healthcare, and employment, ownership of assets, benefits and citizenship. The SPCO also protects women from slanderous accusations of adultery as such accusations are considered a serious criminal offence. It must be noted that women in Brunei Darussalam made significant achievements not only in education and business but also professions.

8. The penal sentences of *hadd* – stoning to death and amputation, imposed for offences of theft, robbery, adultery and sodomy have extremely high evidentiary threshold, requiring no less than two or four men of high moral standing and piety as witnesses – to the exclusion of every form of circumstantial evidence, coupled with very high standard of proof of 'no doubt at all' for all aspects, which goes further than the common law standard of 'beyond reasonable doubt'. The standards of piety[1] of the male witness is extremely high that it is extremely difficult to find one in this day and age, to the extent that convictions of *hadd* may solely rest on confessions of the offender. Unlike the common law principle, confessions[2] are encouraged to be withdrawn and can be withdrawn[3] at any time even during execution of sentence.

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[1] Section 3(1), Syariah Courts Evidence Order, 2001 provides that *"adil"* means a Muslim who performs the prescribed religious duties, abstains from committing capital sins and is not perpetually committing minor sins. It is to be noted that the failure to perform a single prayer in the life of the male witness will disqualify him from meeting the strict requirement of *adil*.

[2] Section 24, Syariah Courts Evidence Order 2001, provides that confessions *(Ikrar)* in a case of the offence of adultery *(zina)* punishable on conviction by *hadd* penalty shall only be admissible if – (a) made before the Court; (b) made orally; (c) it is clear in stating the commission of the offence; and (d) made on four separate occasions.

[3] Section 25, Syariah Courts Evidence Order, 2001, provides that (1) Confessions in a case of *zina* may be withdrawn (a) before conviction; (b) after conviction but before implementation of punishment; or (c) during implementation of punishment. (2) In a case of *zina* which may be punishable with *hadd* penalty, if the confession is withdrawn – (a) at any stage as in subsection (1) the withdrawal of the *ikrar* shall be admitted; (b) before the implementation of punishment on the person making the confession, he/she shall no longer be inflicted with the punishment; (c) in the course of serving the punishment, the implementation of the punishment shall cease forthwith.

9. Under the SPCO the punishment of whipping[4] is to be executed by the same gender of the offender, the offender must be clothed, whipping must be with moderate force without lifting his hand over his head, shall not result in the laceration of the skin nor the breaking of bones and shall not be inflicted on the face, head, stomach, chest or private parts.

10. The imposition of death penalty for murder upon the satisfaction of extremely high evidential threshold can be avoided by a pardon from the next of kin of the victim or upon payment of *diyat* (blood money) if requested by the next of kin.

11. The punishment of *hadd* and *qisas* in the SPCO are not man-made laws but are ordained by Allah in the Al-Quran and in the Hadiths of the Prophet Muhammad (Peace Be Upon Him), and not to be misunderstood as any kind of radicalisation.

12. We would like to reiterate our commitment to international obligations in promoting and protecting human rights as enshrined in the Charter of the United Nations and the Universal Declaration of Human Rights and will continue to uphold our obligations to international covenants on human rights including the CEDAW. Brunei Darussalam rejects all forms of torture, inhuman, or degrading treatment or punishment. Finally, in our efforts to demonstrate further our commitment Brunei Darussalam is currently working towards advancing the necessary steps for early ratification of UNCAT.

Should there be further enquiries on the aspects of the SPCO, Brunei Darussalam stands ready to work closely with the Special Procedures Branch.

**DATO ERYWAN PEHIN YUSOF**
Minister of Foreign Affairs II

[4] Section 179, Syariah Courts Criminal Procedure Code Order, 2018, provides that the whipping rod, excluding its holder, shall be of the same type and made either from rattan or small branch of a tree without segment or joint and its length shall not exceed 1.22 metres and its diameter shall not exceed 1.25 centimetres.