

Asia Pacific Labour Law Review

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Workers' Rights for the New Century

Asia Monitor Resource Centre

2003

Asia Monitor Resource Centre Ltd.

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Published by

Asia Monitor Resource Centre Ltd (AMRC), 444 Nathan Road, 8-B, Kowloon, Hong Kong, China SAR
Tel: (852) 2332 1346 Fax: (852) 2385 5319 E-mail: admin@amrc.org.hk URL: www.amrc.org.hk
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ISBN 962-7145-18-1

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Acknowledgements

AMRC expresses sincere thanks to the following people and organisations for their gratefully received
contributions to this book.

Suchada Boonchoo (Pun) is co-ordinator for the Asian Network for the Rights of Occupational Accident
Victims. We thank her for all the help in organising our conference of authors in Bangkok.

Thanks to the American Center for International Labor Solidarity, Bangkok, Thailand for a financial con-
tribution towards printing the book.

We are indebted to Oxfam Hong Kong for their financial contribution towards the production costs.

Thanks to the International Labour Organisation for allowing us to use photographs from their library free
of charge.

Eugene Kuo, a freelance photographer and designer, a big thank you for contributing photographs and de-
signing the cover free of charge. Look at www.226-design.com for some of Eugene's stunning work and
ideas.

To Tom Fenton, co-founder (with Mary Heffron) of AMRC – thanks a lot for advice, maps, and all the time
devoted to the layout of the book, free of charge. E-mail: tfenton@igc.org.

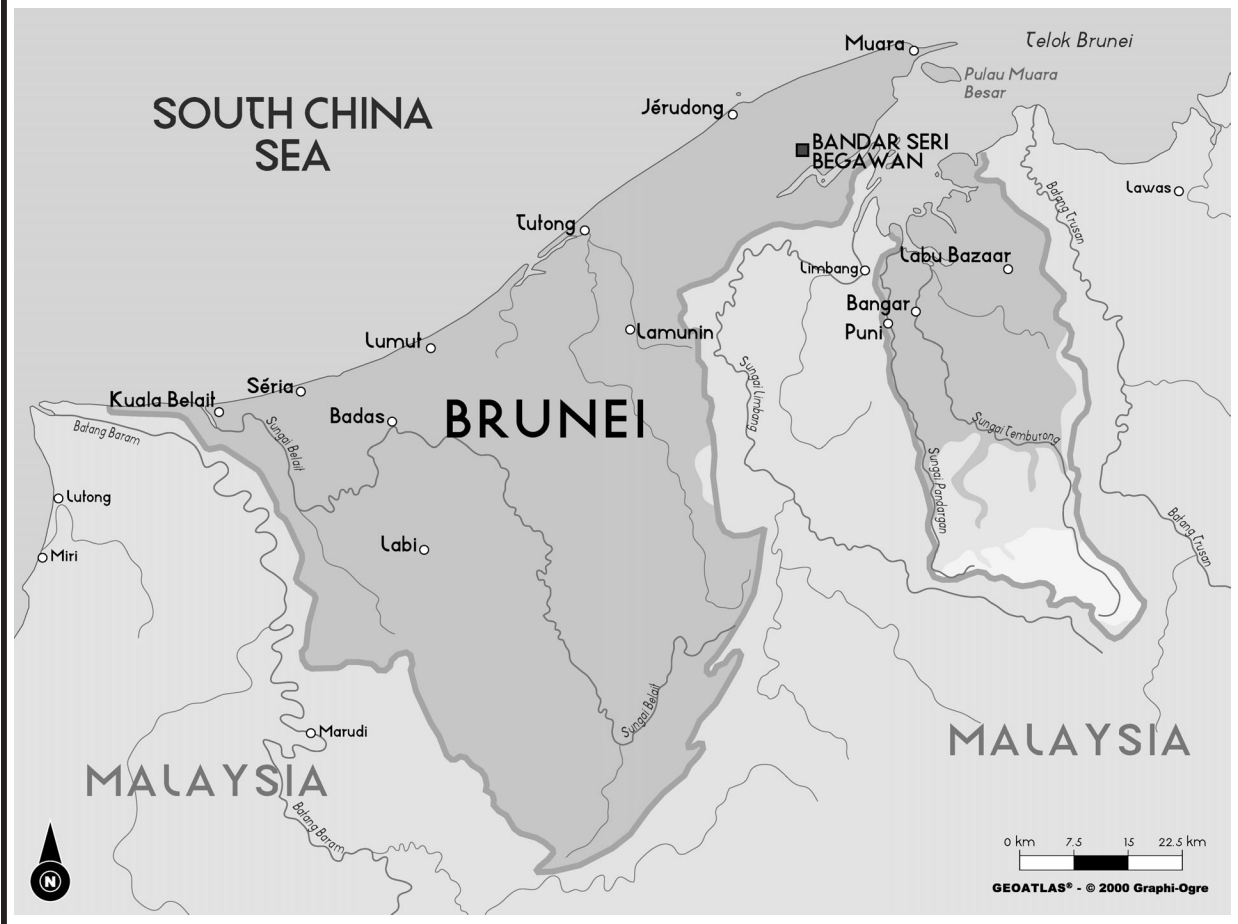
Finally, we would like to thank the International Centre for Human Rights and Democratic Development,
Canada, for an extremely generous contribution that covered much of the publishing costs of this book.
Without their last-minute financial assistance, it is possible that this book would never have proceeded be-
yond the editing stage. E-mail: ichrdd@ichrdd.ca; URL: www.ichrdd.ca.

Labour Rights in Negara Brunei Darussalam

Basu Sharma

Introduction

A general consensus has been building in the global community that labour rights are fundamental human rights (Adams, 2002; Adams and Friedman, 1998). The International Labour Organisation issued a declaration of core labour standards in 1998—rights of association, the right to organise, and to bargain collectively. These core labour standards are supposed to be fundamental labour rights similar to fundamental human rights, and many international and regional organisations have begun to look at them as such. Some World Trade Organisation (WTO) members seek to establish a link between labour rights and trade disciplines. At the regional level, the Organisation for Economic Co-operation and Development (OECD), the North American Free Trade Agreement, and the Mercosur have specific guidelines to address labour rights (Bellace, 2001; Howse, 1999).



Against this backdrop of emerging international consensus, the purpose of this paper is to assess the situation pertaining to workers' rights in Negara Brunei Darussalam. Since the evolution of labour rights is tied to the evolution of economic and political institutions, this essay briefly sketches historical, political and economic background of Brunei. It will then discuss major laws and regulations related to workers' rights, followed by observations on enforcement and effectiveness of these laws and regulations. Policy implications of these observations for the government are outlined in the concluding section. This chapter will also record significant recent events pertaining to some of these themes.

Historical, political, and economic background

Brunei, officially called Negara Brunei Darussalam (Brunei), is one of the oldest kingdoms in the region. It existed as a Hindu-Buddha city-state since the year 414. During the middle of the 14th century, the first Sultan of Brunei, Muhammad Shah, became a Muslim and declared Brunei an Islamic state. Brunei rose to become a dominant power; it had sovereignty over the island Borneo and the present Philippines during the fifteenth and the first half of the sixteenth centuries. However, beginning in 1571 the Spaniards first and then the British invaded the Kingdom, which not only eroded its territory, but also caused Brunei itself to become a British protectorate in 1888. Brunei secured self-government in 1959, and regained full independence as a sovereign nation on 1 January 1984.

Brunei occupies 5,765 square kilometres, and has a population of 340,000. It is one of the richest countries in South East Asia today. The estimated per capita income in 2000 was B\$23,627 (US\$13,800). The country is blessed with natural resources, mainly gas and petroleum. These two resources accounted for 35 percent of the gross domestic product in 1999 (World Trade Organisation, 2001). Free health care and no personal income taxes have become possible due to the revenues generated through these resources. The country is environmentally pollution-free so far.

Close to 70 percent of the population of Brunei is Malay and about 20 percent Chinese. Brunei's political system is known as 'Melaya Islam Beraja', the Malay Islam Monarchy. This system has become the pervading state ideology, which accords unchallenged authority to the Sultan. According to Brunei's Constitution, the Sultan is the Head of the State and the Executive. The Sultan exercises a wide range of executive powers, and is Prime Minister and Defence Minister. The Sultan is also the Supreme Commander of the Royal Brunei Armed Forces. He appoints a Council of Ministers to assist in the administration of the government. Even though the country adheres to the rule of law (based primarily on English Common Law and the independence of the judiciary), constitutional provisions pertaining to fundamental rights 'remain suspended' under the 1962 state of emergency declaration (Amnesty International Report 2002). The emergency declaration was the result of 'Partai Rakyat' an opposition political party's armed uprising, which the government ended with the help of British forces.

At present, there is only one political party in Brunei—the Brunei Solidarity National Party (PPKB). It has existed for some time. However, it supports government policies and seeks blessings from the Sultan. For example, the assemblies of the PPKB held over the years (February 1995, April 1998, February 2000, October 2001) reportedly had government consent.

There is no civil society (non-governmental organisations etc.). Everyone, including nouveau riche peasant farmers and fishermen, seems to be happy with the system. Thus there are no functioning political parties or opposition groups in a real sense.

The labour market has a dual structure with the government and Brunei Shell Petroleum representing the primary sector and a number of small enterprises together with other independent employers and their employees representing the secondary sector. The Brunei Shell Petroleum is a joint venture owned by the government and the Royal Dutch/Shell group. The primary sector is where all the good jobs are located; the secondary sector has less desirable jobs, which lack protection and where exploitation pervades. Brunei has a significant number of foreign workers, in both sectors.

Organised labour

Trade unions

Although the law allows for establishment of trade unions, the situation is not very encouraging in Brunei. A total of five trade unions in 1978 declined to four in 1980 and then to three in 1988. Of the three, two were unions for office workers and the other the union of labourers. The unions of office workers are inactive. The labourer's union, the Brunei Oil Field Workers Union (BOWU), is confined to representing manual workers within Brunei Shell Petroleum Co. (BSP), and is the only active trade union in the Sultanate. There are less than 1,500 union members altogether. Trade union density (proportion of workers in trade unions) is only five percent. This is probably one of the lowest trade union densities in the region.

Collective bargaining

While there is no legislative framework for collective bargaining as such, the government regulates union activities, including collective bargaining.

The law requires an individual contract between an employer and each employee. The individual contract system greatly undermines the role of collective bargaining because "trade union activities must not violate these individual contracts" (ICFTU, 2001). There are

few cases of collective bargaining. The only publicised case is the BOWU and BSP negotiate collective agreements every four years. The agreement includes a ban on the victimisation and intimidation of employees and an outline of procedures for resolution of individual and collective grievances.

Strike

There is no law banning strikes. However, the government does not tolerate such activities. In fact there have been no strikes so far in the history of Brunei. However, work stoppages and protests have been on the rise in recent years, especially in the garment industry. Poor working conditions, poor living conditions, payroll deductions, and non-payment of overtime pay are some of the reasons for protests. (See May 2001 reference in the section headed 'Significant Events').

Legislation

Brunei has five major Acts and eight minor Regulations pertaining to workers' rights and protection.

Key acts and regulations:

i) the Labour Act 1954 (amended in 1984) defines employers and employees' rights and responsibilities. It also regulates entry of immigrant workers;

Table 1. Brunei's performance against ILO conventions on core labour standards

Convention	Brunei's Performance
Convention No. 29 on forced labour	Legislation prohibits forced labour. But there is indirect evidence to indicate that employers sometimes force workers to work overtime or long hours, especially foreign labour.
Convention No. 87 on freedom of association and the right to organise	On paper, the right on freedom of association and the right to organise are granted. However, the reality is different, resulting in a low number of trade union organisations.
Convention No. 98 on the right to organise and bargain collectively	Only members of the police force and army cannot join unions, but labour market conditions are not conducive to collective bargaining.
Convention No. 100 on equal pay	There is pay discrimination based on sex, with indirect evidence for the private sector and direct evidence for the public sector.
Convention No. 105 on abolition of forced labour	There is legal prohibition of forced or compulsory labour, but employers often force foreign workers to work against their will.
Convention No. 111 on discrimination in employment	Discrimination against female and foreign workers.
Convention No. 138 on minimum age of employment	There is legislation restricting child labour to a minimum age limit of 16.

ii) the Trade Union Act 1961 (Amended in 1972) provides a legislative framework to establish trade unions, which must register with the government. The law allows all workers except those serving in the military and police to form or join trade unions. In fact, the law prohibits employers from discriminating against an employee on the basis of union status. The Act also allows trade unions to form union federations. However it forbids trade unions from affiliating with international labour organisations;

iii) the Trade Disputes Act of 1961 outlines mechanisms to resolve disputes between management and unions through conciliation and arbitration. This Act also accords to trade unions immunities and protection to further trade union interests;

iv) the Labour Enactment Law (Child Employment Restriction Act) 1955 prohibits employment of child labour, defined as someone below the age of 16. The Labour Commission requires parental consent for employment of those below the age of 18;

v) the Workmen's Compensation Act 1957 (amended in 1984) identifies employers' responsibilities towards employees and regulates compensation payment.

Labour standards and protection

The following minor Regulations are related to labour standards and protections in a variety of areas:

- i) Labour Regulations - Maternity Benefits 1955;
- ii) Labour Statement - Special Workplace 1956;
- iii) Labour Regulations - Public Holidays 1956;
- iv) Labour Regulations - Domestic Helpers 1971;
- v) Labour Regulations - General Contracts 1971;
- vi) Labour Regulations - Foreign Employment License 1971;
- vii) Labour Regulations - Limitations of Duties and Powers 1971; and
- viii) Labour Regulations - Salary Payment in Cheque 1975.

These regulations provide for mandatory public holidays, special workplace requirements, termination of employment, medical care, maternity leave, and compensation for disablement.

The maternity benefit period is four weeks both before and after confinement. Workers on maternity leave are entitled for full pay for the benefit period. The regulation on Special Workplaces stipulates that an employer

must provide employees with a safe workplace, adequate housing, water supply, sanitation, and facilities for medical care and treatment.

Workers cannot be required to work on public holidays, which are prescribed in line with religion and custom of workers. Working on a public holiday, entitles workers to not less than double the ordinary rate of pay. Workers working more than 48 hours per week are entitled to overtime payment at a rate not less than one and half times the ordinary rate of pay.

There is no minimum wage legislation. Hence market forces play a significant role in determining wages. However, there is a regulation requiring employers to pay the wages and salaries earned by their employees within the first 10 days of a month.

To employ foreign labour, employers apply for licences to the Labour Department. The Immigration Department gives permission on the recommendation of the Labour Department. The Labour Department requires a cash deposit or a banker's guarantee to cover migrants' airfares back home. These workers are less protected than the native workers, most of who migrate to Brunei under false promises of well-paying jobs. However, many are made to accept jobs such as labouring upon arrival.

Enforcement and effectiveness

Under the Ministry of Home Affairs, the Labour Department is responsible for administration and enforcement of labour laws and regulation in both organised and unorganised sectors (Sharma, 1996).

The Commissioner of Labour heads the Department, which has eight sections with specific jurisdiction and responsibility - statistics, labour licences and work permits, law enforcement, domestic helper, workmen's compensation, health and safety, and industrial relations and employment.

The Labour Department is vested with a lot of power. It enforces Labour Acts to maintain satisfactory employment standards, conciliates trade disputes between employer and employees, settles workmen's compensation, and promotes collective bargaining and joint consultation in industry. It also acts as registrar of and advisor to trade unions. The Department inspects employment places on a regular basis. It can order the closure of any workplace where health and safety conditions are unsatisfactory.

Reasonable protective and workers' rights legislation exists in Brunei; enforcement of such legislation is generally reasonable but at times questionable. Nevertheless, the law has significant gaps in its framework and in labour policies pertaining to workers' rights.

International labour standards

Brunei is not a member of the International Labour Organisation (ILO). Consequently, it has not adopted ILO conventions related to the core labour standards. Brunei has not endorsed international conventions such as Elimination of Discrimination Against Women, and Convention on Elimination of Racial Discrimination. Yet there have been cases of flagrant violations of some of these standards.

Core labour standards and Brunei's performance

One way of examining Brunei's performance on adoption and enforcement of core labour standards is to evaluate the extent to which its Acts and Regulations correspond to the thrust of ILO core labour standards. From information so far in this chapter, the following table summarises evidence in a crude form.

The information in the table indicates that Brunei has still a long way to go in protecting workers' rights. All legislation pertaining to labour protection and industrial relations was promulgated either in the 1950s or the 1970s, and is more reflective of colonial days. Hence many of the provisions in existing Acts and Regulations are out of line with international developments in labour laws and labour policies.

Cheap labour

Foreign workers

As mentioned earlier, Brunei has a significant number of foreign workers who face two sets of constraints. First, conditions of stay, visa status, and the right to enjoy social benefits are determined by immigration laws. Employers must agree to take several protective measures to acquire a licence to employ immigrant workers. However, the Commissioner of Labour can exempt any employer from any or all of the conditions. Second, most labour laws apply only to Brunei citizens. This means that over 33 percent of workers in the Sultanate are excluded from labour protection laws. It is also important

to note that there is a difference in the treatment of foreign workers who are professionals compared to treatment of low-skilled foreign workers. The latter perform dirty, dangerous and demeaning jobs. These workers have little legal protection and security.

Living conditions for foreign workers vary according to nationalities. For example, Bangladeshi workers live in units with no air conditioning facilities, whereas Indonesian workers are provided with them. Overall Filipino workers get the best treatment and the Bangladeshi workers, the worst.

Domestic servants

Most of the domestic servants are foreign workers; most of them are also females. Cases of corporal punishment of servants, refusing them the right to leave house on days off, and not providing them adequate amount of food are occasionally reported to concerned authorities. However, many of those cases go unreported because the domestic servants, especially the foreign workers are dependent on their employers. Their ability to stay and work in Brunei depends on getting visa which, in turn, depends on employers' sponsorship. Nevertheless, it is reported that once such allegations of abuse are reported, the Government investigates the cases and imposes fines and punishments as necessary (U.S. Department of State, 2001).

Women labour

There is no employment equity legislation in Brunei. Brunei is an Islamic country; it follows Koranic precepts. Women are denied equal status with men under these precepts. Important areas where this inequality pervades are divorce, inheritance, custody of children, and also transcends to employment. For example, men are eligible for permanent civil service positions regardless of holding university degrees, whereas women without university degrees can only hold government positions on a temporary month-by-month basis, and enjoy less annual leave and fewer allowances compared to men and women counterparts in permanent positions.

Conclusion

Many nation states have opted for globalisation and open economic borders, eager to seek integration of na-

tional economies into the world economy. Thus they are interested in global convergence of policies in trade and commerce. However, the participation in the world economy comes with international obligations for implementation of policies for social development as well. But many of the same nations and their governments shy away from these international obligations. Brunei is one that has shied away from international obligations relating to workers rights.

Core labour rights are cardinal aspects of fundamental human rights. The extent of state actions for recognition and protection of such rights indicates how open, tolerant, and equitable a society is. When judged against this criterion, Brunei falls short on one important count – existing labour legislation is not up to many core labour standards; because it is not a member of the ILO, Brunei can be lax on core labour rights (ICFTU, 2001). It is time for Brunei to match the environmentally pollution-free physical landscape with a just labour regime where workers' rights are fully protected. Let this regime be free of pollution from discrimination, exploitation, and arbitrariness.

Significant events

May 2001 - Several Filipino workers employed by the Seri Azhima Jaya Garments and Textiles went on strike over issues of overtime payment (employer allegedly did not pay overtime) and wage increases on 14 May 2001. An increase of monthly salary from B\$260 to B\$300 and revision of overtime pay rates were the key demands. The employer responded to these demands negatively, resulting in a strike. Intimidation and threats accompanied the strike. Workers found the situation so threatening to their safety that 269 workers decided to terminate their contracts early and successfully asked to be repatriated.

May 2002 - The Sunday edition of Borneo Bulletin reported that 900 cases of mistreatment of Indonesian workers working in Brunei were lodged at the Indonesian Embassy (Othman, 2002). There are approximately

30,000 Indonesian workers in Brunei. These cases covering a period of one year were categorised as follows:

Unpaid salary	40.0 percent
Pressure to work 24 hours straight	25.0 percent
Breach of contract	13.0 percent
Abandonment	4.5 percent
Deceived by agents	4.0 percent
Immigration offences	3.0 percent
Abuse	2.9 percent
Rape	0.3 percent
Sexual harassment	0.3 percent

June 2002 - A restaurant female worker contacted the Borneo Bulletin to report sexual abuse of four Indonesian females by their manager and co-workers. The caller said that one of her friends had recently committed suicide after being subject to such an ordeal, which had resulted in pregnancy (Yahya, 2002).

June 2002: The problem of unpaid salary is so common in Brunei that it is a key factor for high labour turnover. A regulation requires employers to pay wages by the 10th day of a month. However, some employers do not pay wages and salaries for months, but many workers are afraid to ask for their pay. They quit instead. Mindful of this situation, the Labour Department urged workers, through Radio Television Brunei, to report cases of non-payment of salaries and unfair dismissal to the Labour Department.

24 June 2002 - in a dispute between a male worker and the manager of a Gadong restaurant that broke out over a wrong computation, the manager hit and slapped the worker for his computational mistakes. The manager of the restaurant became enraged and “kept hitting and slapping the backside” of the worker in front of the customers who were enjoying their breakfasts. Some customers became so concerned that they even tried to stop the manager from further kicking and punching the worker but without success. The worker finally managed to run away in tears to the back of the restaurant (Yahya, 2002).

References

- Roy Adams, 'Implications of the International Human Rights Consensus for Canadian Labour and Management,' *Canadian Labour and Employment Law Journal*, Vol. 9, No. 1 (2002, pp. 119-139).
- Roy Adams and S Friedman, 'Industrial Relations Implications of the New International Consensus on Human Rights in Employment,' *Perspective on Work*, Vol. 2, No. 2 (1998, pp. 24-27).
- Amnesty International, 'Amnesty International Report 2002' (New York: Amnesty International Publications, 2002, pp. 57-58).
- Janet Bellace, 'The ILO Declaration of Fundamental Principles and Rights at Work,' *International Journal of Comparative Labour Law and Industrial Relations*, Vol. 17, No. 3 (2001, pp. 269-288).
- Robert Howse, 'The World Trade Organisation and the Protection of Workers' Rights,' *The Journal of Small and Emerging Business Law*, Vol. 3 (Summer 1999, pp. 131-172).
- International Confederation of Free Trade Union, 'Internationally-recognised core labour standards in Brunei' at http://www.fiet.ch/unisite/In_Depth/Human_Rights/Human_rights.htm
- Othman, Azlam, 'Unpaid Salary, Breach of Contract Top Grouses,' (2002) at <http://www.Brunei-online.com/Sunday/news/May12h6.htm>
- Basu Sharma, 'Industrial Relations in ASEAN: A Comparative Study', (Fredericton, New Brunswick: Management Futures, 1996).
- 'Trade Policy Review: Brunei Darussalam 2001', (Geneva, WTO Publications, 2001).
- Rosli Abidin Yahya, 'Action called to address sexual abuse,' (2002) at <http://www.Brunei-online.com/weekend/news/jun8h18.htm>
- U.S Department of State, Bureau of Democracy, Human Rights, and Labour, 'Brunei: Country Report on Human Rights Practices 2001' at <http://www.state.gov/g/drl/rls/hrrpt/2001/eap/8255.htm>