

Submission by the United Nations High Commissioner for Refugees
For the Office of the High Commissioner for Human Rights' Compilation Report
Universal Periodic Review: 3rd Cycle, 33rd Session

BRUNEI DARUSSALAM

I. BACKGROUND INFORMATION

Brunei Darussalam (“Brunei”) is not a party to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (hereinafter jointly referred to as the *1951 Convention*), the *1954 Convention relating to the Status of Stateless Persons* (the *1954 Convention*) and the *1961 Convention on the Reduction of Statelessness* (the *1961 Convention*). However, Brunei has ratified international human rights instruments that are relevant to the protection of refugees, asylum-seekers and stateless persons, including: the *Convention on the Elimination of All Forms of Discrimination against Women* (the *CEDAW*); the *Convention on the Rights of Persons with Disabilities* (the *CRPD*); and the *Convention on the Rights of the Child* (the *CRC*). Brunei maintains a reservation to Article 9(2) *CEDAW* which stipulates the equal right of men and women with respect to the nationality of their children.

The Government of Brunei reports that it has no asylum-seekers or refugees. However, the Government stated during its Universal Periodic Review in 2014 that “[d]espite not being a party to the *1951 Convention Relating to the Status of Refugees* and the *1967 Protocol Relating to the Status of Refugees*, Brunei Darussalam supports the fundamental nature of the role of the United Nations High Commissioner for Refugees and its Office to provide international protection including refugees and displaced persons, and the need for the Government to cooperate fully to facilitate the effective exercise of the High Commissioner’s Office.”¹

As of December 2013, the Government reported that there were 20,524 stateless permanent residents in Brunei. According to the US State Department report, a “significant number of stateless persons were of Chinese or aboriginal descent” with persons of Chinese descent the largest non-Malay minority group.²

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Positive developments linked to 2nd cycle UPR recommendations

Statelessness and nationality

¹ Human Rights Council, Report of the Working Group on the Universal Periodic Review - Brunei Darussalam – Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies by the State under Review, A/HRC/27/11/Add.1, 10 September 2014, available at: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Pages/ListReports.aspx>

² US Department of State, Bureau of Democracy, Human Rights and Labor: Country Reports on Human Rights Practices for 2017: Brunei, 2017, available at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2017&dliid=277067>

Linked to 2nd cycle UPR recommendation no.113.79: “Adopt reforms allowing women the transmission of citizenship as a measure in favour of gender equality and the reduction of cases of statelessness” (Mexico); and **recommendation no.113.80:** “Facilitate the integration and naturalization of stateless persons who are permanent residents” (Islamic Republic of Iran).

UNHCR commends Brunei on the facilitation of the integration and naturalization of stateless persons who are permanent residents. Although Brunei still retains its reservation to Article 9(2) of the *CEDAW*, the Government has initiated discussions on this issue and reviewed other countries’ policies and practices with a view to undertaking a comparative study on nationality.³

Additional achievements and positive developments

Brunei Darussalam is an ASEAN Member State actively engaged in a project of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (“ACWC”) on ‘promoting inclusion and sustainable development in building the ASEAN Community through ensuring the recognition of the legal identity of all women and children in ASEAN’. The project aims at contributing to the enhancement of the ACWC’s capacity in areas of legal identity, including through birth registration, issuing documentation and establishing nationality, and to promote the implementation of relevant provisions in the *CEDAW* and *CRC*. In addition, the project aims to leverage regional good practices that countries in the region could learn from others’ experiences in addressing statelessness.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 2nd cycle UPR recommendations

Issue 1: Accession to the 1951 Refugee Conventions

Linked to 2nd cycle UPR recommendation no.113.36: “Consider acceding to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.” (Uruguay)

Brunei Darussalam is not a signatory to the *1951 Convention* or its *1967 Protocol*. Accession to these instruments would establish a clearer basis for the Government of Brunei Darussalam to provide refugees with international protection should anyone seek asylum in the country. In addition, it would be a proof of Brunei’s commitment to protect the rights of refugees as stated during its Universal Periodic Review in 2014.

Recommendations:

UNHCR recommends that the Government of Brunei Darussalam:

- (a) Accede to the *1951 Convention Relating to the Status of Refugees* and its *1967 Protocol*; and
- (b) Establish domestic legal framework and administrative policies that will ensure the country is in full compliance with international standards of treatment and protection of refugees and asylum-seekers.

Issue 2: Recognition of gender equality regarding nationality with a view to preventing statelessness

³ CEDAW Committee, CEDAW/C/BRN/Q/1-2/Add.1, List of issues and questions in relation to the combined initial and second periodic reports of Brunei Darussalam: Replies of Brunei Darussalam, paras. 41-43.

Linked to 2nd cycle UPR recommendation no.113.53: “Take the necessary measures to amend the legislation on nationality in order to establish equality between men and women regarding the transmission of nationality to their children” (Argentina); and **recommendation no.113.80:** “Respect the fundamental principle of equality between men and women, in particular by allowing women from Brunei Darussalam to transmit their nationality to their children and by raising the age of marriage for women.” (France)

Brunei Darussalam entered a reservation to Article 9 paragraph 2 of the CEDAW - regarding equal rights of men and women with respect to the nationality of their children. The Government invoked its national policy of single nationality recognition as justification for the CEDAW reservation. It noted that children to Brunei women citizens may either be registered as Brunei nationals or as nationals of their father’s country.⁴ However, retaining a policy of single nationality is not incompatible with CEDAW and does not require a reservation to Article 9 of this treaty. A large number of States, for example Lao PDR, Myanmar, Singapore or Viet Nam, practise policies of single nationality without maintaining any reservations.

The *Brunei Nationality Act* (cap.15) provides that children of a Brunei mother and a non-national father born in Brunei have to submit applications to register as nationals of Brunei. The applications will be considered at the discretion of His Majesty the Sultan and Yang Di-Pertuan.⁵ In contrast, a child born in Brunei to a Brunei father and a non-national mother will acquire Brunei nationality automatically. Due to this position, the Committee on the Elimination of Discrimination against Women⁶ and the Committee on the Rights of the Child⁷ have recommended that Brunei review its *Nationality Act* and other relevant legislation relating to nationality to ensure that Bruneian women can transfer nationality automatically to their children. Implementing these recommendations would mark a significant step forward in realizing gender equality and addressing statelessness.⁸

Recommendations:

UNHCR recommends that the Government of Brunei Darussalam:

- (a) Withdraw its reservation to Article 9 paragraph two of the CEDAW; and
- (b) Amend the *Brunei Nationality Act* to ensure that Brunei women and men have the equal right to confer Brunei citizenship automatically to their children and for this amendment to be made retroactive in effect.

Additional protection challenges

Issue 3: Prevention of racial discrimination in the context of nationality

The *Brunei Nationality Act* grants nationality to persons born in or outside of Brunei on the basis of race, either as members of “indigenous groups of the Malay race” or “members of any of the groups specified in the First Schedule to the Act”. Therefore, race becomes the primary criterion by which nationality is acquired by operation of law, contributing to the creation of conditions for statelessness in Brunei. The affected populations are predominantly of Chinese origin as they are not considered as an “indigenous group of the Malay race” and are not listed in the First Schedule of the Nationality Act.

Recommendations:

⁴ CEDAW Committee, CEDAW/C/BRN/1-2, Consideration of reports submitted by States parties under article 18 of the Convention, Initial and second periodic reports of States parties due in 2011, Brunei Darussalam, para. 9.3.

⁵ Brunei Nationality Act 1982 (cap.15), Section 6.

⁶ CEDAW Committee, CEDAW/C/BRN/CO/1-2, Concluding Observations on Brunei Darussalam, paras. 28-29.

⁷ CRC Committee, CRC/C/BRN/CO/2-3, Concluding Observations on Brunei Darussalam, paras. 33-34.

⁸ See UNHCR, Global Action Plan to End Statelessness, 4 November 2014, Action 4, available at: <http://www.refworld.org/docid/545b47d64.html>.

UNHCR recommends that the Government of Brunei Darussalam:

- (a) Amend the Brunei *Nationality Act* to remove the racially discriminatory provisions and for this amendment to be made retroactive in effect; and
- (b) Accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Issue 4: Ensuring birth registration for all

Birth registration contributes to the realization of the right of every child to a nationality. Birth registration helps to prevent statelessness by establishing a legal record of where a child was born and who his or her parents are. As such, it serves as a key form of proof of whether a person has acquired nationality by birth or by descent. UNHCR notes that the *Birth and Deaths Registration Law* (cap.79) of Brunei Darussalam provides that all children who are born on the territory should have their births registered.⁹

The Committee on the Rights of the Child has recognized Brunei's efforts in ensuring the registration at birth of all children. However, disparities in birth registration remain in practice amongst children in migration circumstances.¹⁰ Children born in Brunei from migrant parents such circumstances could be rendered stateless or at risk of statelessness owing to gaps in their registration.

Recommendations:

UNHCR recommends that the Government of Brunei Darussalam:

- (a) Conduct a comparative review of regional good practices regarding birth registration and implement policies that ensure that the births of all children are registered without discrimination.

Issue 5: Ratification of the Statelessness Conventions and prevention of statelessness

Brunei is also not signatory to the *1954 Convention Relating to the Status of Stateless Persons* or the *1961 Convention on the Reduction of Statelessness*. Accession to the *Statelessness Conventions* would establish a stronger framework to prevent and reduce statelessness as well as to avoid the detrimental effects of statelessness on individuals and society by ensuring minimum standards of treatment for stateless persons.

Recommendations:

UNHCR recommends that the Government of Brunei Darussalam:

- (a) Accede to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*; and
- (b) Strengthen cooperation with UNHCR in respect of UNHCR's statelessness mandate through the provision of statistics and acceptance of UNHCR's technical support on statelessness.

**UNHCR
October 2018**

⁹ Birth and Deaths Registration Law (cap.79), Section 12.

¹⁰ CRC Committee, CRC/C/BRN/CO/2-3, Concluding Observations on Brunei Darussalam, paras. 31-32.

ANNEX

Excerpts of relevant Recommendations from the 2nd cycle Universal Periodic Review, Concluding Observations from UN Treaty Bodies and Recommendations of Special Procedures mandate holders

BRUNEI DARUSSALAM

We would like to bring your attention to the following excerpts from the 2nd cycle UPR recommendations and UN Treaty Monitoring Bodies' Concluding Observations relating to issues of interest and persons of concern to UNHCR with regards to BRUNEI DARUSSALAM.

I. Universal Periodic Review (Second Cycle – 2018)

Recommendation ¹¹	Recommending State/s	Position ¹²
Ratification of international instruments		
113.4 Accede to all core international human rights instruments, in particular to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights;	Germany	Noted
113.12 Ratify or accede to CAT, OP-CAT, ICCPR, and lift its broad reservations to CEDAW and CRC;	Czech Republic	Noted
113.18 Abolish the death penalty and sign and ratify both Optional Protocols to the ICCPR;	Portugal	Noted
113.33 Ratify the Convention for the Protection of All Persons from Enforced Disappearance;	Argentina	Noted
113.35 Consider the ratification of the Palermo Protocol on Trafficking in Persons;	Philippines	Noted
113.36 Consider acceding to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol;	Uruguay	Noted
113.38 Consider ratifying the International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families and ILO Convention No. 189;	Philippines	Noted
Freedom of expression and of association		
113.48 Revise the Penal Code Order of 2013 to prohibit torture or other cruel, inhuman or degrading treatment or punishment and to bring Brunei's domestic legislation into line with its international human rights commitments on the freedoms of religion and of expression;	United States of America	Noted
113.49 Repeal the emergency powers and the Sedition Act to bring Brunei's domestic legislation into line with its international human rights commitments on the freedoms of expression, of peaceful assembly and of association;	United States of America	Noted
113.50 Review and amend all legislation placing undue and arbitrary restrictions on the right to freedom of expression, in particular the Sedition Act, the Undesirable Publication Act and the Local Newspapers Order, and	Czech Republic	Noted

¹¹ All recommendations made to Brunei Darussalam during its 2nd cycle UPR can be found in: "Report of the Working Group on the Universal Periodic Review of Brunei Darussalam" (7 July 2014), A/HRC/27/11, available at:

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/075/30/PDF/G1407530.pdf?OpenElement>.

¹² The views and replies of Brunei Darussalam, in English, can be found in: *Addendum* (10 September 2014), A/HRC/27/11/Add.1, available at:

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/160/29/PDF/G1416029.pdf?OpenElement>.

put an end to censorship of the media and decriminalize defamation;		
Statelessness and nationality		
113.53 Take the necessary measures to amend the legislation on nationality in order to establish equality between men and women regarding the transmission of nationality to their children;	Argentina	Partially supported
113.79 Adopt reforms allowing women the transmission of citizenship as a measure in favour of gender equality and the reduction of cases of statelessness;	Mexico	Supported
113.80 Facilitate the integration and naturalization of stateless persons who are permanent residents;	Islamic Republic of Iran	Supported
113.125 Respect the fundamental principle of equality between men and women, in particular by allowing women from Brunei Darussalam to transmit their nationality to their children and by raising the age of marriage for women;	France	Partially supported
Children's rights		
113.78 Bring into line the definition of minor in all legal domains, especially the penal, and prohibit life sentences and corporal punishment for crimes committed by minors;	Mexico	Noted
Death penalty		
113.126 Maintain the moratorium on executions with a view to abolishing the death penalty and provide statistics, including sex and age, on persons sentenced to the death penalty or executed;	France	Noted
Trafficking and exploitation		
113.140 Strengthen the measures adopted to ensure the effective prohibition of prostitution by minors under 18 years, paying particular attention to the prohibition of the use of this type of prostitution or of the offer of it;	Spain	Supported
113.141 Implement article 3 (b) of ILO Convention No. 182, which requires States parties to establish strict prohibition of the use, recruitment or offering of a child for prostitution, production of pornography or pornographic performances;	Belgium	Supported
113.142 Take further measures to ensure sufficient data on the prevalence of the worst forms of child labour in the country and particularly with regard to child trafficking;	Albania	Supported
113.143 Redouble its efforts to ensure effective control in the fight against the sale and trafficking of children, including by raising awareness and by providing agents at the border with the necessary tools to identify victims and vulnerable populations so as to combat trafficking effectively;	Belgium	Supported
113.144 Take effective and time-bound measures to ensure that children, with particular attention to children of migrant workers, are protected from trafficking and prostitution;	Slovenia	Supported
113.148 Step up efforts in the area of combating human trafficking, including training of officials on identifying victims of human trafficking as well as measures for the protection and rehabilitation of victims;	Belarus	Supported

II. Treaty Bodies

Committee on the Rights of the Child

Concluding Observations, (24 February 2016), [CRC/C/BRN/CO/2-3](#)

Birth registration

31. The Committee remains concerned that, despite measures taken by the State party to ensure the registration at birth of all children, there are considerable disparities in birth registration in rural and urban areas, and that children in migration circumstances, including irregular migration, as well as children in Kampong Ayer (the “water village”), are not always registered at birth.

32. The Committee reiterates its previous recommendation (see CRC/C/15/Add.219, para. 34) and urges the State party to intensify its efforts in taking all the measures necessary to ensure the registration at birth of all children in both rural and urban areas; children in migration circumstances, including irregular migration; and children in Kampong Ayer.

Nationality

33. The Committee remains concerned that, according to the Brunei Nationality Act (Cap. 15), children of Bruneian women married to foreign nationals may be accorded Brunei nationality only upon application, while the children of Bruneian fathers are granted Brunei citizenship automatically. While welcoming the steps taken by the State party to naturalize a number of stateless children between 2009 and 2012, the Committee is concerned at the lack of awareness among the parents and guardians of stateless children with regard to the need to register their children as citizens, according to the Brunei Nationality Act.

34. The Committee urges the State party to:

- (a) Review the Brunei Nationality Act and other relevant legislation relating to nationality to ensure that Bruneian women can transfer nationality automatically to their children;**
- (b) Strengthen measures to naturalize stateless children and conduct awareness-raising campaigns among parents and guardians of stateless children.**

Stateless and unaccompanied children

63. The Committee notes with appreciation the State party's efforts towards the naturalization and assimilation of a large number of stateless permanent residents. It is, however, concerned at the lack of disaggregated data available on the number of stateless persons, including the number of stateless children. The Committee is also concerned that barriers remain for the naturalization of the majority of stateless persons, in particular stateless children, in the State party.

64. In line with its general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, the Committee recommends that the State party:

- (a) Provide birth registration and access to basic rights, such as health and education, to all stateless children and their families on the State party's territory, irrespective of their legal status;**
- (b) Establish a comprehensive and systematic mechanism for the collection of data on stateless children and ensure that the data are disaggregated by, inter alia, sex, age, national and ethnic origin, geographical location, rural or urban residence and minority or socioeconomic status;**
- (c) Consider acceding to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.**

Sale, trafficking and abduction

67. The Committee is concerned at the lack of a proactive system for the identification of victims of trafficking, especially among vulnerable groups such as children in prostitution. The Committee is also concerned that the use of children for prostitution and the procurement or offering of a child for pornography are not explicitly criminalized.

68. The Committee recommends that the State party:

- (a) Establish a comprehensive and systematic mechanism for the collection of data on the sale, trafficking and abduction of children, and ensure that the data are disaggregated by, inter alia, sex, age, national and ethnic origin, geographical location, rural or urban residence, minority and socioeconomic status, with particular attention to children in the most vulnerable situations;**
- (b) Explicitly prohibit the use of children in prostitution, procurement and pornography and prosecute and punish perpetrators;**
- (c) Conduct awareness-raising activities to make parents and children aware of the dangers of both internal and external trafficking;**
- (d) Further strengthen its cooperation with South Asian countries to combat trafficking in children across States, including through the conclusion of bilateral and multilateral agreements.**

Committee on the Elimination of Discrimination against Women

Concluding Observations, (14 November 2014), [CEDAW/C/BRN/CO/1-2](#)

Visibility of the Convention and the Committee's general recommendations

10. The Committee notes with concern the inadequate knowledge among all branches of the Government of the rights of women under the Convention, the concept of the substantive equality of women and men and the Committee's general recommendations.

11. The Committee recommends that the State party:

- (a) Enhance women's awareness of their rights and the remedies available to them to claim violations of their rights under the Convention, and ensure that information on the Convention and the Committee's general recommendations is provided to all women, including women migrant workers, women domestic workers and stateless women;**
- (b) Ensure that the Convention is sufficiently known and applied by all branches of the Government, including the judiciary, as a framework for laws, court decisions and policies on gender equality and the advancement of women.**

Violence against women

22. The Committee is concerned:

- (a) At the absence of specific legislation on violence against women or on domestic violence;
- (b) That women rarely report cases of violence against them, and that marital rape is not criminalized;
- (c) At the lack of statistical data, disaggregated by sex, and research and documentation on the incidence of violence against women, including women migrant workers, women domestic workers and stateless women;
- (d) At the low number of investigations, prosecutions and convictions of perpetrators.

23. Recalling its general recommendation No. 19 on violence against women, the Committee urges the State party:

- (a) To adopt specific legislation to criminalize all forms of violence against women, including domestic violence and marital rape, within a clear time**

frame, and provide appropriate redress to all women, including women migrant workers, women domestic workers and stateless women, and ensure that perpetrators are prosecuted and adequately punished;

- (b) To amend the penal code with a view to criminalizing marital rape;
- (c) To strengthen such support services for women who are victims of violence as shelters, medical treatment, psychological counselling, legal assistance and rehabilitation throughout the territory of the State party;
- (d) To provide gender-sensitive training for the judiciary, law enforcement officers and health professionals;
- (e) To ratify the Domestic Workers Convention, 2011 (No. 189), of the International Labour Organization and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Trafficking and exploitation of prostitution

24. The Committee notes with concern that there are three different laws on trafficking in women and girls that do not address the issue systematically, as well as a lack of information on the number of complaints, investigations, prosecutions and convictions relating to trafficking in women and girls and on support and rehabilitation programmes for victims. It also notes with concern the criminalization of women in prostitution in the State party and the heavy prison sentences and fines imposed on women involved in prostitution, as well as the absence of any measures taken to address the demand side of prostitution.

25. The Committee recommends that the State party:

- (a) Review the relevant legislation on trafficking with a view to harmonizing it with the Convention by adopting a comprehensive law on trafficking;
- (b) Increase international, regional and bilateral cooperation with countries of origin, transit and destination to prevent trafficking through the exchange of information and the harmonization of legal procedures for prosecuting and punishing traffickers;
- (c) Conduct comparative studies on trafficking in women and exploitation of prostitution, including collecting data, disaggregated by sex, ethnicity and age, to identify and address the root causes of the phenomena, and include such data in its next periodic report;
- (d) Ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and other relevant international instruments;
- (e) Amend existing laws and regulations to decriminalize women in prostitution, adopt a comprehensive approach to address the phenomenon of prostitution, provide exit programmes for women who wish to leave prostitution and take measures against the demand side of prostitution.

Nationality

28. The Committee notes with concern that a Bruneian woman who is married to a foreign national is required to submit an application under the Nationality Act in order to transmit her Bruneian citizenship to her children, while the children of a Bruneian father and a non-Bruneian mother automatically acquire such nationality. The Committee is also concerned that the foreign husband of a Bruneian woman and the foreign wife of a Bruneian man do not enjoy equal status when applying for permanent residence status.

29. The Committee encourages the State party:

- (a) To withdraw its reservation to article 9 (2) of the Convention;

- (b) To amend its Nationality Act with a view to bringing it into full compliance with the Convention and enabling Bruneian women to transmit their nationality to their children and foreign spouses on a basis of equality with Bruneian men.**

Disadvantaged groups of women

36. The Committee is concerned at the situation of women who face multiple and intersecting forms of discrimination, in particular women with disabilities, women migrant workers, women domestic workers and stateless women.

37. The Committee recommends that the State party:

- (a) Adopt measures, including temporary special measures within the meaning of article 4 (1) of the Convention and the Committee's general recommendation No. 25, to ensure equal rights and opportunities for women who face multiple and intersecting forms of discrimination, including women with disabilities, women migrant workers, women domestic workers and stateless women;**
- (b) Take measures to improve access to education, employment and health care for such women and to protect them from violence, abuse and exploitation;**
- (c) Adopt targeted policies to promote the integration of such groups of women into society.**