

Submission by the United Nations High Commissioner for Refugees

For the Office of the High Commissioner for Human Rights' Compilation Report –

Universal Periodic Review:

BRUNEI DARUSSALAM

I. BACKGROUND INFORMATION

Brunei Darussalam is not a State party to the *1951 Convention relating the Status of Refugees* and its *1967 Protocol* (“1951 Convention”), the *1954 Convention relating to the Status of Stateless Persons* (“1954 Convention”) nor the *1961 Convention on the Reduction of Statelessness* (“1961 Convention”). Brunei Darussalam has, however, acceded to two international human rights treaties; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC).

The Government reports that there are no asylum-seekers or refugees in the country. As of 30 December 2012, the Government reported a stateless population of 21,009 persons.

The Government of Brunei and UNHCR have recently strengthened cooperation relating to UNHCR’s statelessness mandate.¹ In particular, since 2012 the Government of Brunei Darussalam has shared statistics with UNHCR on the number of registered stateless people who are permanently resident in Brunei Darussalam, including the numbers of stateless people who have acquired Brunei Darussalam nationality. Brunei Darussalam has also participated in two joint workshops which examined relevant issues relating to birth registration and the right to a nationality held, respectively, by the ASEAN Intergovernmental Commission on Human Rights and UNHCR in December 2012² and the ASEAN Commission on the Promotion and Protection on the Rights of Women and Children in August 2013.³

¹ UNHCR was entrusted with responsibilities for stateless persons generally under UNHCR Executive Committee Conclusion 78, which was endorsed by the General Assembly in Resolution 50/152 of 1995. Subsequently, in Resolution 61/137 of 2006, the General Assembly endorsed Executive Committee Conclusion 106 which sets out four broad areas of responsibility for UNHCR: the identification, prevention and reduction of statelessness and the protection of stateless persons.

² Regional Workshop on Good Practices in Birth Registration.

³ Regional Workshop on Promoting the Right to a Nationality for Women and Children in the implementation of CEDAW and CRC in ASEAN.

II. ACHIEVEMENTS AND GOOD PRACTICES

1. Integration and Naturalisation of Stateless People

UNHCR welcomes the steps that the Government of Brunei Darussalam is taking to facilitate the integration and naturalization of stateless persons who are permanent residents. It has been reported that 2,420 stateless persons acquired Brunei Darussalam citizenship between the beginning of 2009 and the end of 2012 as a result.

2. Birth Registration

Birth registration can contribute 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.⁴ Further, in practice, this provision appears to be applied inclusively with the Government reporting that the births of stateless children are also being registered and that relevant statistics are kept.

The Government of Brunei Darussalam has also reported to UNHCR that although most births take place in hospitals and are quickly registered, it also travels throughout the country every year to make presentations on issues relating to birth registration, death registration, immigration and nationality matters. The Government of Brunei Darussalam has also reported that it aims to set up an online birth registration, using a web based portal for both the population in general and major hospitals.

3. Nationality Law and the prevention and reduction of statelessness

The provisions of the Brunei Nationality Act (cap.15) appear to provide a number of bases which could facilitate the reduction of statelessness. For example, minors can be registered as nationals in any circumstances that his Majesty thinks fit (Section 6) and non-nationals can naturalise subject to fulfilling certain eligibility criteria. In addition, foreign women who are married or have been married to a Brunei Darussalam national can acquire Brunei Darussalam citizenship by registration (Section 5(6)). Brunei Darussalam does not permit loss of nationality for persons born in the territory, if it would render them stateless (Section 9(3)).⁵

4. Developing areas of cooperation with UNHCR

Brunei Darussalam has recently strengthened cooperation with UNHCR in respect of UNHCR's statelessness mandate. UNHCR particularly welcomes the sharing of statistics relating to the number of stateless persons permanently resident in Brunei Darussalam and the number of such stateless person who acquire nationality. UNHCR also appreciates the participation and sharing

⁴ Section 12 therein provides "In the case of every child born alive it shall be the duty of the father and mother of the child, and the occupier of the house in which to his knowledge the child is born, and each person present at the birth, and of the person having charge of the child to report such birth within 14 days after the same has taken place to the Deputy Registrar of the registration area within which the birth shall have taken place and to comply with the provisions of section 5 [relating to the provisions on how to report births].

⁵ See Annex for relevant excerpts.

of information of the Government Brunei Darussalam at joint ASEAN bodies-UNHCR workshops.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Issue 1: Accession to the 1951 Refugee Convention and its 1967 Protocol

Accession to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* greatly facilitates UNHCR's task of mobilizing international support to address refugee situations that may arise in any country. UNHCR believes that it is necessary to broaden the base of State support for these international refugee instruments, ensuring that the protection provided to refugees is more universal in scope and the burdens and responsibilities of governments are equitably distributed and consistently applied.

Notwithstanding the fact that there are currently no asylum-seekers and refugees in the country, accession to the 1951 Refugee Convention and its 1967 Protocol as well as establishment of a national legal framework would establish a clearer basis for the Government of Brunei Darussalam to provide refugees with international protection should anyone seek asylum there in future.

Recommendations:

UNHCR recommends that the Government of Brunei Darussalam:

- Accede to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol*;
- Enact a national refugee law to establish refugee status determination procedures and spell out the rights of refugees in the country.

Issue 2: Accession to the 1954 and 1961 Statelessness Conventions

Brunei Darussalam is not a State party to the *1954* or *1961 Statelessness Conventions*. 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. Information from the Government is that there were 21,009 stateless persons at the end of 2012.

The *1954 Convention* ensures minimum standards of treatment for stateless persons in respect to a number of fundamental rights. These include, but are not limited to, the right to education, employment, housing and public relief. The *1954 Convention* also guarantees stateless persons a right to identity and travel documents and to administrative assistance.

The *1961 Convention* establishes an international framework to ensure the right of every person to a nationality by establishing safeguards to prevent statelessness at birth and later in life. This treaty is therefore complementary to standards contained in other human rights treaties that address the right to a nationality. An increase in the number of State parties to the two Statelessness Conventions is essential to strengthening international efforts to prevent and reduce statelessness and ensuring full enjoyment of a number of these rights.

Under the Brunei Nationality Act, mothers from Brunei Darussalam cannot confer their nationality on their children, only fathers can:

Article 4: (1) On and after the appointed day the following persons, and no others, shall be subjects of His Majesty by operation of law [...]

c. any person born outside Brunei Darussalam before, on or after the appointed day - (i) whose father was, at the time of birth of such person, a person born in Brunei Darussalam before, on or after the appointed day and was a person commonly, accepted as belonging to one of the following indigenous groups of the Malay race, namely, Belait, Bisayah, Brunei, Dusun, Kedayan, Murut or Tutong; [...]

d. any person born in Brunei Darussalam on or after the appointed day whose father was, at the time of the birth of such person, a subject of His Majesty

e. any person born outside Brunei Darussalam on or after the appointed day whose father was at the time of birth of such person a subject of His Majesty by registration under section 5 or 6 or by naturalization under section 8, if the birth was registered at a Brunei Darussalam Consulate or in Brunei Darussalam within 6 months of its occurrence, or such longer period as His Majesty may in any particular case allow.

(Brunei Nationality Act, 1961, last amended 2002)

The CRC Committee recommended that Brunei Darussalam ensure that all children within its jurisdiction enjoy all the rights set out in the Convention without discrimination, and that children who have a Bruneian parent acquire Brunei citizenship in an equal manner, regardless of whether the Bruneian parent is the father or the mother.⁶

Recommendations:

UNHCR recommends that the Government of Brunei Darussalam:

- *Accede to the 1954 and 1961 Conventions;*
- *Reform the Brunei Nationality Act to address the concern of the Committee of the Rights of the Child regarding equality between women and men in their ability to confer their Bruneian nationality to their children.*
- *Undertake a study of the Brunei Nationality Act's compliance with international human rights law as well as the standards set out in the 1954 and 1961 Conventions, with a view to revising the Act as needed.*

Issue 3: Access to Birth Registration

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. Failure to document a person's legal existence can prevent the effective enjoyment of a range of human rights, including access to education and health care. In 2012, the Human Rights Council adopted a resolution on birth registration and the right of everyone to recognition everywhere as a person before the law,

⁶ See the Committee on the Rights of the Child, CRC/C/15/Add.219, 34th session, 27 October 2003, paragraphs 35 and 36 "The Committee is concerned that under the Brunei Nationality Act (cap. 15), citizenship is not automatically granted to children of Brunei women married to non-nationals, while it is where the father is Brunei" and "recommends that the State party revise the Brunei Nationality Act (...)."

calling upon “State to ensure free birth registration, including free or low-free late birth registration, by means of universal, accessible, simple, expeditious and effective registration procedures without discrimination of any kind.”⁷

As noted above, Brunei Darussalam is taking steps to improve birth registration in the country. UNHCR notes that the Committee on the Rights of the Child encouraged Brunei to “continue its efforts to ensure the registration at birth of all children by carrying out awareness-raising campaigns about birth registration.”⁸

Recommendations:

UNHCR recommends that the Government of Brunei Darussalam:

- Continue its outreach programme under which it makes presentations related to birth registration, and evaluate if more areas of the country need to be covered, or more steps need to be taken to ensure access to universal birth registration.

Issue 4: Review of reservations

Brunei Darussalam is a State party to both the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. However, the State has made several broad reservations that may go against the object and purpose of these conventions. Several recommendations were made during the last UPR session regarding Brunei Darussalam.⁹ The disposal of both the reservation against the CRC and CEDAW Article 9 and 29 were recommended. In its country report to the CEDAW Committee in 2013, Brunei Darussalam indicated that it maintained a reservation to CEDAW, Article 9 “as it has a policy of single nationality and does not recognize dual nationality.”¹⁰ However, a large number of States globally have a policy of single nationality without maintaining such a reservation.¹¹

In addition, CEDAW, Article 9 and CRC, Article 3 and 7 make specific provisions which seek to ensure that all children enjoy the right to a nationality without discrimination and that there is gender equality in the acquisition and transmission of nationality. The full implementation of these provisions also helps to prevent statelessness, particularly amongst children at birth. The Brunei Nationality Act (cap.15), section 4 sets out the criteria under which individuals acquire

⁷ UN Human Rights Council Resolution A/HRC/RES/19/9, 3 April 2012, available at:

http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/19/9. The Human Rights Council adopted another resolution on this issue at its 22nd session in March 2013; UN Human Rights Council Resolution A/HRC/RES/22/1.14/Rev.1, 19 March 2013, available at:

<http://daccess-dds-ny.un.org/doc/RESOLUTION/LTD/G13/123/89/PDF/G1312389.pdf?OpenElement>

⁸ Committee on the Rights of the Child, 34th session, 27 October 2003, CRC/C/15 Add.219, para.34, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/446/76/PDF/G0344676.pdf?OpenElement>

⁹ UN Human Rights Council, Report of the Working Group on the Universal Periodic Review A/HRC/13/14 4 January 2010 available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BNsession6.aspx>

¹⁰ The Committee on the Elimination of Discrimination against Women ‘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’ CEDAW/C/BRN/1-2

¹¹ Amongst ASEAN Member States Lao PDR, Myanmar and Singapore have a policy of single nationality without maintaining such a reservation. Indonesia has a policy of dual nationality until a child reaches the age of majority, at which time citizenship needs to be elected. Viet Nam has in practice a policy of dual nationality for “Overseas Vietnamese”. In contrast, Cambodia, Philippines and Thailand all permit dual nationality.

nationality by operation of law.¹² The Act also provides for circumstances in which nationality can be acquired through registration or naturalization.

Recommendations:

UNHCR recommends that the Government of Brunei Darussalam:

- Review its broad reservations to the CRC and CEDAW, in order to improve its accountability towards international obligations; and
- Review national legislation in conformity with above mentioned conventions and international obligations.

**Human Rights Liaison Unit
Division of International Protection
UNHCR
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¹² See Annex for relevant excerpts.

ANNEX

Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies

Universal Periodic Review:

BRUNEI DARUSSALAM

We would like to bring your attention to the following excerpts from UN Treaty Monitoring Bodies' Concluding Observations and Recommendations relating to issues of interest and persons of concern to UNHCR with regards to Brunei Darussalam.

Committee on the Rights of the Child

CRC/C/15/Add.219, 34th session

27 October 2003

Data collection

18. The Committee is concerned at the existing lack of systematic and comprehensive collection of disaggregated data for all areas covered by the Convention and in relation to all groups of children in order to monitor and evaluate progress achieved and assess the impact of policies adopted with respect to children.

19. The Committee recommends that the State party develop a system of data collection and indicators consistent with the Convention and disaggregated by gender, age, and urban and rural area. This system should cover all children up to the age of 18 years with specific emphasis on those who are particularly vulnerable, including child victims of abuse, neglect, or ill-treatment; children with disabilities; children belonging to ethnic groups; refugee and asylum-seeking children; children in conflict with the law; working children; adopted children; street children; and children living in urban areas. It further encourages the State party to use these indicators and data to formulate policies and programmes for the effective implementation of the Convention.

Right to non-discrimination

24. The Committee is concerned that the principle of non-discrimination is not included in the legislation of the State party and that discrimination, contrary to article 2 of the Convention, still persists in the State party. In particular, the Committee is concerned about discrimination against girls and children born out of wedlock under existing personal status law (e.g. in inheritance, custody and guardianship).

25. The Committee recommends that the State party:

(a) Ensure full compatibility between national legislation and practices with the Convention;

(b) Take effective measures, including enacting or rescinding legislation where necessary, to prevent and eliminate discrimination on grounds of sex and birth in all fields of civil, economic, political, social and cultural life;

(c) Take all appropriate measures, such as comprehensive public education campaigns, to prevent and combat negative societal attitudes in this regard, particularly within the family;

(d) Train members of the legal profession, especially the judiciary, to be gender-sensitive. Religious leaders should be mobilized to support such efforts.

26. The Committee is concerned at the disparities in the enjoyment of all rights covered by the Convention by children practising religions other than Islam and by non-national children. The Committee is further concerned that race is indicated on identity cards, as this may lead to de facto discrimination.

27. The Committee recommends that the State party take all necessary measures to ensure that all children within its jurisdiction enjoy all the rights set out in the Convention without discrimination, in accordance with article 2.

28. The Committee requests that specific information be included in the next periodic report on the measures and programmes relevant to the Convention undertaken by the State party to follow up on the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and taking account of the Committee's general comment No. 1 on article 29, paragraph 1, of the Convention on the aims of education.

Birth registration

33. The Committee notes with appreciation the work done by the "Flying Doctors Team" to ensure registration of children in remote areas, but remains concerned that certain children, notably abandoned children, may still not be registered at birth.

34. The Committee recommends that the State party continue its efforts to ensure the registration at birth of all children, notably by carrying out awareness-raising campaigns about birth registration.

Nationality

35. The Committee is concerned that under the Brunei Nationality Act (cap. 15), citizenship is not automatically granted to children of Brunei women married to non-nationals, while it is where the father is Brunei.

36. The Committee recommends that the State party revise the Brunei Nationality Act in order to ensure that children who have a Brunei parent acquire Brunei citizenship in an equal manner, regardless of whether the Bruneian parent is the father or the mother.