UNHCR
United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

Submission by the United Nations High Commissioner for Refugees

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

Universal Periodic Review: *Fourth Cycle, 47th Session*

BRUNEI DARUSSALAM

I. BACKGROUND INFORMATION

Brunei Darussalam ("Brunei") is not a party to the *1951 Convention relating to the Status of Refugees* or its *1967 Protocol* (hereinafter jointly referred to as the *1951 Convention*), the *1954 Convention relating to the Status of Stateless Persons* (the *1954 Convention*) nor the *1961 Convention on the Reduction of Statelessness* (the *1961 Convention*). However, Brunei has ratified several international human rights instruments that are relevant to the protection of refugees, asylum-seekers and stateless persons[1]. Brunei maintains a reservation to Article 9(2) of the Convention on the Elimination of Discrimination against Women (*CEDAW)* which stipulates the equal right of men and women with respect to the nationality of their children. Brunei has also ratified the *United Nations Convention on the Law of the Sea (the UNCLOS)* and the *International Convention for the Safety of Life at Sea (the SOLAS)* which are relevant to ensure protection at sea.

UNHCR is not aware of the precise number of asylum-seekers in Brunei or whether there have been any incidents of asylum-seekers being deported or traveling onwards to other countries, as there is no established regular information sharing between UNHCR and the Government of Brunei.

As of end of 2022, the Government reported that there were 20,863 stateless permanent residents in Brunei.[2] This is a stable number of stateless persons, as reported by the Government, since 2018. According to the US State Department report, "Most stateless residents were native born, of Chinese heritage, and from families that have resided in the country for generations. Other stateless residents included members of Indigenous tribes, whose lands span Brunei and the neighbouring Malaysian state of Sarawak, and the foreign wives of Malay Muslim men." [3]

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Positive developments linked to 3rd cycle UPR recommendations

Linked to 3rd cycle UPR recommendation no. 121.180: "Take the necessary measures to guarantee that women enjoy the same rights as men to transmit nationality to their children and spouses." (Argentina)

UNHCR commends Brunei on the facilitation of the integration and naturalization of certain stateless persons who were permanent residents. In 2022, 442 persons were granted

[1] Including: the Convention on the Rights of Persons with Disabilities (the CRPD); and the Convention on the Rights of the Child (the CRC); and the Convention on the Elimination of All Forms of Discrimination against Women (the CEDAW).
[2] UNHCR, Global Trends report 2022, available at: https://www.unhcr.org/global-trends-report-2022
[3] US Department of State, Bureau of Democracy, Human Rights and Labor: Country Reports on Human Rights Practices for 2022: Brunei, 2022, available at: https://www.state.gov/wp-content/uploads/2023/02/415610_BRUNEI-2022-HUMAN-RIGHTS-REPORT.pdf

citizenship.[4] Although Brunei still retains its reservation to Article 9(2) of the *CEDAW*, the Government has initiated discussions reviewed other countries' policies and practices with a view to undertaking a comparative study on nationality.[5]

Linked to 3rd cycle UPR recommendation no. 121.10: "Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (Norway) (Slovenia) (Chile) (Czechia) (Belgium) (Australia) (Italy) (Afghanistan) (Bahamas) (Switzerland) (Ireland) (Greece) (France) (Ghana)

UNHCR commends Brunei's announcement that it would ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 3rd cycle UPR recommendations

Issue 1: Accession to the *1951 Refugee Convention*

Linked to 3rd cycle UPR recommendation no. 121.25 "Accede to the Convention relating to the Status of Refugees of 1951, and its 1967 Protocol." (Afghanistan) (Uruguay)

Brunei Darussalam is not a signatory to the *1951 Convention* nor 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.

The Government of Brunei Darussalam is also encouraged to routinely provide UNHCR with access to those individuals who may be in need of international protection so that UNHCR may assess their international protection needs.

Recommendations:
UNHCR recommends that the Government of Brunei Darussalam:

(a) Accedes to the *1951 Convention Relating to the Status of Refugees* and its *1967 Protocol*;
(b) Strengthens cooperation with UNHCR in respect of UNHCR's mandate for refugees and asylum-seekers, through the provision of statistics and acceptance of UNHCR's technical support for assessment of individuals' international protection needs; and
(c) Established 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

Linked to 3rd cycle UPR recommendation no. 121.180: "Take the necessary measures to guarantee that women enjoy the same rights as men to transmit nationality to their children and spouses." (Argentina); **no. 121.181:** "Respect the fundamental principle of equality between women and men, in particular by allowing Brunei women to transmit their nationality to their children and by removing reservations to Article 9 of CEDAW." (France); **no. 121.220:** "Continue its efforts to reduce the number of stateless persons, including by

[4] US Department of State, Bureau of Democracy, Human Rights and Labor: Country Reports on Human Rights Practices for 2022: Brunei, 2022, available at: https://www.state.gov/wp-content/uploads/2023/02/415610_BRUNEI-2022-HUMAN-RIGHTS-REPORT.pdf
[5] 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.

reviewing its Nationality Act." (Republic of Korea); **and no. 121.28** "Lift its reservations to Article 9 of the Convention on the Elimination of All Forms of Discrimination Against Women." (Canada)

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. UNHCR urges the revocation of this reservation. In fact, the Government cited its national policy of single nationality recognition as justification for the *CEDAW* reservation. It noted that children born to Brunei women citizens may either be registered as Brunei nationals or as nationals of their father's country.[6] They may not have dual nationality. 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, practice policies of single nationality without maintaining any reservations.

Gender inequality remains in the acquisition of nationality, however. The *Brunei Nationality Act* (cap.15) provides that children of a Brunei mother and a non-national father born in Brunei must 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.[7] It is not considered a right. 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 Women[8] and the Committee on the Rights of the Child[9] 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.[10]

Recommendations:
UNHCR recommends that the Government of Brunei Darussalam:
(a) Withdraws its reservation to Article 9(2) of the *CEDAW*; and
(b) Amends the *Brunei Nationality Act* to ensure that Brunei women have the equal right to confer Brunei citizenship automatically to their children as Brunei men, and for this amendment to be made retroactive in effect.

Issue 3: Prevention of trafficking in persons

Linked to 3rd cycle UPR recommendation no. 121.27: "Strengthen efforts to identify and protect victims of labour and sex trafficking and hold traffickers accountable, including by acceding to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons and the ASEAN Convention against Trafficking in Persons." (United States of America); **and no. 121.115:** "Continue the efforts to end trafficking in persons." (Islamic Republic of Iran).

According to the United States Department of State *2023 Trafficking in Persons Report* ("US TIP Report")[11], In the past five years, Brunei has seen human traffickers exploit foreign victims, particularly among its over 65,000 registered foreign workers, who predominantly hail from Indonesia, the Philippines, Bangladesh, and China. Many foreigners, drawn to Brunei for domestic service, retail, and construction work, face exploitation due to debts

[6] 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.
[7] Brunei Nationality Act 1982 (cap.15), Section 6.
[8] CEDAW Committee, CEDAW/C/BRN/CO/1-2, Concluding Observations on Brunei Darussalam, paras. 28-29.
[9] CRC Committee, CRC/C/BRN/CO/2-3, Concluding Observations on Brunei Darussalam, paras. 33-34.
[10] See UNHCR, Global Action Plan to End Statelessness, 4 November 2014, Action 4, available at: http://www.refworld.org/docid/545b47d64.html.
[11] United States Department of State, *2020 Trafficking in Persons Report - Singapore*, June 2020, available at: https://www.state.gov/reports/2023-trafficking-in-persons-report/brunei

incurred from recruiters. Some foreigners, unable to secure jobs upon arrival, fall prey to traffickers or resort to illegal "freelancing." Concerns over labour abuses and trafficking persist, exacerbated by the retention of workers' passports and illegal wage withholding by employers. Anti-LGBTQIA+ laws further compound risks for vulnerable individuals, while Brunei also serves as a transit point for traffickers operating in neighbouring countries. Efforts by anti-trafficking advocates face threats from traffickers, highlighting ongoing challenges in combating human trafficking in Brunei.

The US TIP Report upgraded Brunei to Tier 2 status in 2023 as "The Government of Brunei does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so."[12] Key achievements include prosecuting alleged traffickers, identifying and supporting 14 trafficking victims, establishing shelters, regulating recruitment fees, and signing a bilateral agreement with Bangladesh on migrant worker recruitment. These efforts demonstrate Brunei's commitment to addressing trafficking, particularly amid challenges posed by the COVID-19 pandemic. However, the Report noted that despite notable achievements, the Brunei Government's screening for trafficking among foreign nationals in commercial sex and foreign workers who left their employers was ineffective. Consequently, potential trafficking cases were often handled administratively or overlooked, leading to inappropriate detention, prosecution, and deportation of unidentified victims. Furthermore, no traffickers were convicted under anti-trafficking laws for the sixth consecutive year, and existing legislation lacked stringent penalties. Worker-paid recruitment fees for non-domestic workers remained unaddressed, perpetuating vulnerabilities among Brunei's migrant worker population.

Refugees and asylum-seekers, especially those in protracted situations of displacement, are particularly vulnerable to being trafficked. Victims or potential victims of trafficking who are at risk of persecution, if returned to their countries of origin, may qualify as refugees within the meaning of the *1951 Convention*.[13] However, Brunei does not have a refugee status determination system or any referral mechanisms for victims of trafficking with possible international protection needs to access it. Therefore, trafficking victims with international protection needs who do not have proper documentation to remain in a country may be reluctant to seek assistance from State authorities to escape their situation, as they fear being detained and/or deported to a country where they would face persecution.

Recommendations:
UNHCR recommends that the Government of Brunei:

(a) Continues and improves efforts to ensure proper investigation, prosecution and adequate sanctions in all cases of human trafficking, including through training of Government officials, such as law enforcement and the judiciary;
(b) Allocates resources to provide for adequate protection and other forms of assistance to victims and witnesses of human trafficking, including through the establishment and running of safe shelters;
(c) Establishes within domestic legislation and practice a referral mechanism for victims of trafficking who may be in need of international protection to access a refugee status determination procedure; and
(d) Accedes to the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*, and the *Association of Southeast Asian Nations (ASEAN) Convention against Trafficking in Persons, Especially Women and Children*.

Additional protection challenges

[12] Ibid.
[13] See, in particular, UNHCR, *Guidelines on International Protection No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons At Risk of Being Trafficked*, 7 April 2006, HCR/GIP/06/07, available at: http://www.refworld.org/docid/443679fa4.html.

Issue 4: 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:
UNHCR recommends that the Government of Brunei Darussalam:

(a) Amends the Brunei *Nationality Act* to remove the racially discriminatory provisions and for this amendment to be made retroactive in effect;
(b) Accedes to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*; and
(c) Identifies and rectifies the statelessness situation of those affected by legislation currently in place.

Issue 5: 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 evidence 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.[14]

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.[15] Children born in Brunei to non-citizen parents 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) Conducts 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 6: Ratification of the Statelessness Conventions and prevention of statelessness

Brunei is not a 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) Accedes to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*;

[14] Birth and Deaths Registration Law (cap.79), Section 12.
[15] CRC Committee, CRC/C/BRN/CO/2-3, Concluding Observations on Brunei Darussalam, paras. 31-32.

(b) Provides public statistics on the number and profile of stateless persons residing in Brunei and statistics on the number of stateless persons who are able to acquire nationality, disaggregated by age, gender, ethnic origin and other relevant characteristics;
(c) Strengthens cooperation with UNHCR in respect of UNHCR's statelessness mandate through the provision of statistics and acceptance of UNHCR's technical support on statelessness; and
(d) Ensures that legal safeguards against statelessness are in place, especially the right of every child born in the country and otherwise stateless to acquire the nationality of Brunei Darussalam.

UNHCR
April 2024