



**Statelessness Network Asia Pacific,  
Global Campaign for Equal Nationality Rights,  
The Brunei Project and  
Institute on Statelessness and Inclusion**

Joint Submission to the Human Rights Council at the 33<sup>rd</sup> Session of  
the Universal Periodic Review

**(Third Cycle, April - May 2019)**

**Brunei Darussalam**

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# **Statelessness Network Asia Pacific, The Brunei Project, Global Campaign for Equal Nationality Rights and Institute on Statelessness and Inclusion**

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## **Brunei Darussalam**

### **Introduction**

1. The Statelessness Network Asia Pacific, The Brunei Project, the Global Campaign for Equal Nationality Rights, and the Institute on Statelessness and Inclusion make this joint submission to the Human Rights Council at the 33<sup>rd</sup> Session of the Universal Periodic Review on the challenges pertaining to citizenship, statelessness and the enjoyment of fundamental human rights in Brunei Darussalam.<sup>1</sup>
2. The Statelessness Network Asia Pacific<sup>2</sup> is a civil society coalition with the goal of promoting collaboration and information sharing on addressing statelessness in Asia and the Pacific. SNAP is driven by a diverse membership and through direct engagement and contribution from its members and stakeholders, particularly formerly stateless persons, stateless persons and persons at risk of statelessness.
3. The Brunei Project<sup>3</sup> is an independent human rights initiative that has been monitoring and raising awareness about human rights in Brunei since May 2015. It's primary method of engagement is through social media, actively seeking out opportunities to increase awareness about human rights through independent projects and in collaboration with like-minded organisations regionally and internationally.
4. The Global Campaign for Equal Nationality Rights<sup>4</sup> mobilizes international action for the removal of gender discriminatory provisions from all nationality laws through its coalition of national and international organizations and activists.
5. The Institute on Statelessness and Inclusion<sup>5</sup> is an independent non-profit organisation committed to an integrated, human rights based response to the injustice of statelessness and exclusion through a combination of research, education, partnerships and advocacy. Established in August 2014, it is the first and only global centre committed to promoting the human rights of stateless persons and ending statelessness. The Institute has made over 35 country specific UPR submissions on the human rights of stateless persons, and also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23<sup>rd</sup> to the 31<sup>st</sup> UPR Sessions.

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<sup>1</sup> The authors wish to thank Xylie Tran of Fisher Dore Lawyers for her excellent research assistance in preparing this submission.

<sup>2</sup> For more information, see <https://www.statelessnessnetworkasiapacific.org/>

<sup>3</sup> For more information, see [www.facebook.com/thebruneprojct](https://www.facebook.com/thebruneprojct)

<sup>4</sup> For more information, see <https://www.equalnationalityrights.org/>

<sup>5</sup> For more information, see [www.institutesi.org](http://www.institutesi.org). For more information on the Institute's UPR advocacy, see <http://www.statelessnessandhumanrights.org/upr-universal-periodic-review/resources-database>.

6. This submission focuses on:

- I. Brunei Darussalam's gender discriminatory laws and policies that prevent women from conferring nationality on their children and spouses;
- II. the specific barriers that ethnic Chinese face in acquiring and confirming citizenship;
- III. statelessness risks amongst indigenous populations;
- IV. discriminatory aspects of the naturalisation process; and
- V. the linkages between human trafficking and statelessness in Brunei Darussalam.

## **Brunei Darussalam's Universal Periodic Review Under the Second Cycle 2014**

7. Brunei Darussalam, in its review under the Second UPR Cycle in 2014, received recommendations from The Czech Republic, France, Sweden, Burkina Faso, Portugal, Slovenia, Canada and Russia to review or withdraw its reservations to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) – specifically its reservations to Article 9 (which enshrines women's equal nationality rights) and article 29 of CEDAW.<sup>6</sup>
8. After stating that it would examine these recommendations, Brunei Darussalam rejected each, noting its intention to maintain its reservation to CEDAW Article 9. Without referencing women's inability to confer nationality on children on an equal basis with men and resulting statelessness risks, the State declared that “[p]rocedures are available for children of women citizens married to foreign nationals to be accorded Brunei citizenship through an application process...”<sup>7</sup>
9. Brunei Darussalam received a recommendation from Mexico that the State “adopt reforms allowing women the transmission of citizenship as a measure in favour of gender equality and the reduction of cases of statelessness”.<sup>8</sup>
10. Though Brunei Darussalam accepted this recommendation,<sup>9</sup> it has not taken steps to eliminate gender discriminatory provisions in its nationality law. Further, its rejection of recommendations pertaining to the removal of the State's reservations to CEDAW Article 9, demonstrates a lack of commitment to ensuring that women have equal nationality rights with men.
11. Iran recommended that Brunei Darussalam facilitate the “integration and naturalization of stateless persons who are permanent residents”.<sup>10</sup>
12. Brunei Darussalam accepted this recommendation,<sup>11</sup> though, as this submission will outline, has yet to take meaningful steps to implement this commitment, which would include ensuring the children of Brunei women are granted nationality.

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<sup>6</sup> Report of the Working Group on the Universal Periodic Review: Brunei Darussalam, UN GAOR, 27<sup>th</sup> sess, Agenda Item 6, UN Doc A/HRC/27/11 (7 July 2014) [113.12], [113.14] and [113.22-7].

<sup>7</sup> Report of the Working Group on the Universal Periodic Review: Brunei Darussalam, UN GAOR, 27<sup>th</sup> sess, Agenda Item 6, UN Doc A/HRC/27/11/Add.1 (10 September 2014) [113.26, and see 113.12].

<sup>8</sup> Report of the Working Group on the Universal Periodic Review: Brunei Darussalam, UN GAOR, 27<sup>th</sup> sess, Agenda Item 6, UN Doc A/HRC/27/11 (7 July 2014) [113.79].

<sup>9</sup> Report of the Working Group on the Universal Periodic Review: Brunei Darussalam, UN GAOR, 27<sup>th</sup> sess, Agenda Item 6, UN Doc A/HRC/27/11/Add.1 (10 September 2014) [113.79].

<sup>10</sup> Report of the Working Group on the Universal Periodic Review: Brunei Darussalam, UN GAOR, 27<sup>th</sup> sess, Agenda Item 6, UN Doc A/HRC/27/11 (7 July 2014) [113.80].

<sup>11</sup> Report of the Working Group on the Universal Periodic Review: Brunei Darussalam, UN GAOR, 27<sup>th</sup> sess, Agenda Item 6, UN Doc A/HRC/27/11/Add.1 (10 September 2014) [113.80].

## Brunei Darussalam's International Obligations

13. Brunei Darussalam, as a member State of the UN, is obliged by the UN Charter to promote 'universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion'.<sup>12</sup> These human rights and fundamental freedoms are specified in the Universal Declaration of Human Rights (UDHR), many of which are also recognised as principles of customary international law.<sup>13</sup>
14. Brunei Darussalam has only acceded to three of the core UN human rights instruments:<sup>14</sup> CEDAW, the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention on the Rights of the Child (CRC).<sup>15</sup> Of the treaties ratified, Article 9 of CEDAW, Article 18 of the CRPD and Articles 7 and 8 of the CRC provide for the universal right to a nationality without discrimination. Additionally, Article 7 of the CRC, enshrines every child's right to be registered immediately after a birth – a key protection against statelessness. However, it must be noted that Brunei Darussalam currently maintains a reservation to article 9 of CEDAW.<sup>16</sup>
15. Brunei Darussalam is yet to ratify the Convention Against Torture (CAT), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMRW).<sup>17</sup>
16. 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) or the 1961 Convention on the Reduction of Statelessness (1961 Convention).
17. As a member State of the Association of South East Asian Nations (ASEAN), Brunei Darussalam is a signatory to the 2012 ASEAN Human Rights Declaration.<sup>18</sup> In fact, Brunei Darussalam initiated the implementation of the Declaration as the Chair of the ASEAN in 2013.<sup>19</sup> Although this declaration is a non-binding document, it nonetheless reflects consensus as to the right to a nationality and the importance of human rights in the region (see, article 18 of the 2012 ASEAN Human Rights Declaration).

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<sup>12</sup> *Charter of the United Nations*, art 55(c). According to Article 56 of the Charter, it is the obligation of all member states of the UN to take "joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55".

<sup>13</sup> Draft Articles on Diplomatic Protection with commentaries' (2006) II(2) *Yearbook of the International Law Commission* 49.

<sup>14</sup> OHCHR, *The Core International Human Rights Instruments and their Monitoring Bodies* <<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>>.

<sup>15</sup> OHCHR, *Ratification Status for Brunei Darussalam* <[https://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=25&Lang=EN](https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=25&Lang=EN)>.

<sup>16</sup> OHCHR, *Background Note on Gender Equality, Nationality Laws and Statelessness 2018* (8 March 2018) Refworld, 6 <<http://www.refworld.org/country,,,BRN,,5aa10fd94,0.html>>.

<sup>17</sup> OHCHR, *Ratification Status for Brunei Darussalam* <[https://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=25&Lang=EN](https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=25&Lang=EN)>.

<sup>18</sup> ASEAN, *ASEAN Human Rights Declaration* (18 November 2012) <<https://asean.org/asean-human-rights-declaration/>>.

<sup>19</sup> *Report of the Working Group on the Universal Periodic Review: Brunei Darussalam*, UN GAOR, 27<sup>th</sup> sess, Agenda Item 6, UN Doc A/HRC/27/11 (7 July 2014) 5-6 [21].

## Size of the Stateless Population

18. As at 2017, based on data provided by the Government of Brunei Darussalam to UNHCR, there were 20,524 stateless persons in the country.<sup>20</sup> This is a significant proportion of Brunei Darussalam's recorded population in 2017 of 421,300.<sup>21</sup>
19. UNHCR has reported similar figures of stateless persons in Brunei Darussalam since 2012, when it first started receiving such data from the Government of Brunei Darussalam.<sup>22</sup> This suggests that there has been little effort to address statelessness in the country over the review period.
20. The profiles and characteristics of the populations included within the reported 20,524 stateless persons is not publicly available. The lack of transparency and information on how this figure was arrived at and the different profiles of persons affected by statelessness in the country is of concern. Without better information, it would be difficult to develop policies to address statelessness in the country, or to monitor progress in this regard.
21. When considering the potential size of the stateless population in the country, it must be noted that there are also significantly larger estimates that have been put forward by other groups. For example, according to the U.S. Government's 2012 Country Report on Human Rights Practices in Brunei Darussalam, "unofficial sources counted" the size of the stateless population to be closer to 150,000 people.<sup>23</sup>
22. The significant discrepancy between these two estimates – particularly when set against the size of the total population of Brunei Darussalam – is indicative of why accurate statistical information on this issue is so important.
23. Notwithstanding these gaps in information, the remainder of this submission explores the publicly available information as to the profiles of the populations that are known to be stateless or at risk of statelessness in Brunei Darussalam. However, due to the paucity of available data and analysis as to statelessness in Brunei Darussalam, there may indeed be additional populations and additional causes of statelessness that are not considered in this submission.
24. Additionally, limited civil society engagement as to the issue of statelessness is a barrier to further understanding the causes and consequences of statelessness and cross-referencing the accuracy of the publicly available information. Limitations on the right to freedom of information, opinion and expression in Brunei Darussalam is likely to contribute to limited engagement by civil society in this issue.

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<sup>20</sup> UNHCR, Global Trends: Forced Displacement in 2017 (25 June 2018), Annex Table 1 <<http://www.unhcr.org/5b27be547.pdf>>.

<sup>21</sup> Brunei Darussalam Department of Economic Planning and Development (2017) <<http://www.depd.gov.bn/SitePages/Population.aspx>>.

<sup>22</sup> See UNHCR, Global Trends 2012-2017, <<http://www.unhcr.org/search?comid=56b079c44&cid=49aea93aba&tags=globaltrends>>; UNHCR, 'Universal Periodic Review : Brunei Darussalam', Submission for the OHCHR's Compilation Report – Universal Periodic Review : Brunei Darussalam, September 2013, 1 [2] <<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=country&docid=528346844&skip=0&coi=BRN&querysi=stateless&searchin=fulltext&sort=date>>..

<sup>23</sup> U.S. Department of State, *2012 Country Report on Human Rights Practices: Brunei Darussalam* (19 April 2013), 9 <<https://www.state.gov/j/drl/rls/hrrpt/2012/eap/204188.htm>>.

## Nationality Law Framework

25. The *Brunei Nationality Act 1961*<sup>24</sup> provides the primary legal framework for the acquisition, confirmation and loss of Bruneian nationality. It contains discriminatory provisions on the basis of both race and gender.
26. To acquire Brunei Darussalam citizenship by operation of law, various criteria must be met, depending on whether the person is born in or outside of Brunei Darussalam and whether they were born before, on or after 1 January 1962.
27. Such criteria can include that the person:
- I. is “commonly accepted as belonging” to one of seven “indigenous groups of the Malay race” (this includes the Belait, Bisayah, Brunei, Dusun, Kedayan, Murut or Tutong),
  - II. has a father who is a Brunei Darussalam citizen, or
  - III. has a father who was born in Brunei Darussalam and is “commonly accepted as belonging” to one of seven “indigenous groups of the Malay race”
28. Additionally, a person born either outside or inside Brunei Darussalam, irrespective of when the person was born, is a citizen by operation of law if:
- both their father and mother were born in Brunei Darussalam and “were members of groups specified in the First Schedule” of the *Brunei Nationality Act 1961* (this includes 15 additional groups to those listed as seven of the “indigenous groups of the Malay race”).
29. All other persons, irrespective of their links to Brunei Darussalam and regardless of whether their mother alone is a citizen, must apply for citizenship by registration or naturalisation. It must be noted that there are a number of populations in Brunei Darussalam that do not fall within the seven “indigenous groups of the Malay race” or “members of groups specified in the First Schedule” of the *Brunei Nationality Act 1961*. Such populations include, amongst others, the indigenous Iban population and the ethnic Chinese.

## Brunei Darussalam’s Gender Discriminatory Nationality Laws and Related Statelessness Risks

30. As detailed above, the *Brunei Nationality Act 1961* does not allow female citizens to confer nationality on their children on an equal basis as male citizens.<sup>25</sup> Specifically, citizenship is automatically conferred only to children born to male citizens.<sup>26</sup> However, children born to a married female citizen and male non-citizen must complete a registration process to confirm the child’s citizenship.<sup>27</sup>

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<sup>24</sup> *Brunei Nationality Act (Cap. 15) (No. 4 of 1961)* (Brunei Darussalam) <[http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap015.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap015.pdf)>.

<sup>25</sup> OHCHR, *Background Note on Gender Equality, Nationality Laws and Statelessness 2018* (8 March 2018) Refworld, 10 <<http://www.refworld.org/country,,,BRN,,5aa10fd94,0.html>>.

<sup>26</sup> *Brunei Nationality Act (Cap. 15) (No. 4 of 1961)* (Brunei Darussalam) art 4 <[http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap015.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap015.pdf)>.

<sup>27</sup> *Brunei Nationality Act (Cap. 15) (No. 4 of 1961)* (Brunei Darussalam) art 6 <[http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap015.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap015.pdf)>.

31. In Brunei Darussalam statelessness can result amongst children born to a union between a Bruneian mother and a foreign father when:
- I. the child's parents and/or guardians are not aware of the requirement to register the child in order to confirm the child's Brunei Darussalam citizenship,
  - II. the child is born out of a legally recognised marriage,
  - III. the father of the child denies parentage,
  - IV. the father of the child is himself stateless, or
  - V. the child's parents and/or guardians refuse to register the child in order to confirm the child's citizenship.
32. Additionally, the *Brunei Nationality Act 1961* does not allow female citizens to confer nationality on their foreign husbands. However, a foreign woman married to a citizen male can acquire Brunei Darussalam citizenship through naturalisation.<sup>28</sup> Such gender discriminatory nationality provisions can perpetuate statelessness in circumstances when the husband is himself stateless or at risk of statelessness. This is particularly of concern in a country like Brunei Darussalam where such a large percentage of the population is stateless.
33. Brunei Darussalam has implied justification for women's inability to confer nationality on children on an equal basis with men due to its policy of single nationality. However, this ignores the fact that children of male citizens automatically confer nationality on children, regardless of whether a foreign mother's country also automatically confers nationality on the child. The desire to maintain a policy of single nationality is not a legitimate justification for denying citizens equal nationality rights due to their gender. Such gender discriminatory nationality laws implicitly establish women to be second-class citizens and promote an understanding of children's identity as primarily derived from the male line, further exacerbating a sexist and discriminatory framework for women's role in the family and society. Women in Brunei Darussalam's unequal ability to confer nationality on children and spouses also negatively impacts women's ability to freely choose a spouse and to form a family.

## Ethnic Chinese

34. As discussed above, Brunei Darussalam, as a member State of the UN is obliged by the UN Charter to promote 'universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion'.<sup>29</sup> Nevertheless, racial discrimination in Brunei Darussalam's nationality laws and policies continues to be a barrier for ethnic Chinese to enjoy both permanent residency and citizenship in Brunei Darussalam.
35. Ethnic Chinese are the largest non-Malay minority population in Brunei Darussalam and are likely to comprise a sizeable proportion of Brunei Darussalam's stateless population.<sup>30</sup>

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<sup>28</sup> *Brunei Nationality Act (Cap. 15) (No. 4 of 1961)* (Brunei Darussalam) art 5(6)  
<[http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap015.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap015.pdf)>.

<sup>29</sup> *Charter of the United Nations*, art 55(c). According to Article 56 of the Charter, it is the obligation of all member states of the UN to take "joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55".

<sup>30</sup> U.S. Department of State, *2012 Country Report on Human Rights Practices: Brunei Darussalam* (19 April 2013), 9  
<<https://www.state.gov/j/drl/rls/hrrpt/2012/eap/204188.htm>>.

36. Following independence, only a small number of ethnic Chinese acquired Brunei Darussalam citizenship - around 9,000 people.<sup>31</sup> Currently, at least half of the ethnic Chinese population in Brunei Darussalam have not obtained citizenship to Brunei Darussalam and are likely to be stateless.<sup>32</sup>

37. The main causes of statelessness for this population are that ethnic Chinese:

- I. are not included in the specific ethnicities provided for in the *Brunei Nationality Act 1961*,
- II. may not be able to provide the required evidence to establish their legal residence in Brunei Darussalam, and/or
- III. meet the language criteria for citizenship.<sup>33</sup>

38. This is despite ethnic Chinese populations often having intergenerational links to the territory of Brunei Darussalam.<sup>34</sup>

## Stateless Persons' Access to Permanent Residency and Citizenship

39. Stateless populations in Brunei Darussalam have differing access to rights, depending on whether or not they are registered by the Government of Brunei Darussalam as "permanent residents".<sup>35</sup>

40. Stateless permanent residents in Brunei Darussalam can access some but not all of rights enjoyed by Brunei Darussalam citizens.<sup>36</sup> For example, stateless permanent residents do not have access to fully subsidized health care or higher education.<sup>37</sup> Additionally, they cannot own property, land or a business in their own right but rather must be sponsored by a Brunei citizen.<sup>38</sup> Testimony from stateless individuals compiled by The Brunei Project throughout September 2018 demonstrates the impacts of such restrictions:

*"My parents purchased land in Belait District more than 30 years ago with their hard-earned money and built a house for our family. Yet none of us are able to legally put our names on the paper work. We were required to ask one of my father's relatives to put their name on the*

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<sup>31</sup> Zhao Shengnan, 'Stateless residents fight for sense of belonging in Brunei', *China Daily USA* (online), 19 December 2013 <[http://usa.chinadaily.com.cn/epaper/2013-12/19/content\\_17184934.htm](http://usa.chinadaily.com.cn/epaper/2013-12/19/content_17184934.htm); Minority Rights Group International, *Brunei Darussalam: Chinese* <<https://minorityrights.org/minorities/chinese/>>;

<sup>32</sup> Minority Rights Group International, *Brunei Darussalam: Chinese* <<https://minorityrights.org/minorities/chinese/>>;

<sup>33</sup> Minority Rights Group International, *Brunei Darussalam: Chinese* <<https://minorityrights.org/minorities/chinese/>>; Alana Tolman, *Brunei's stateless left in a state of confusion* (8 April 2016) *New Mandala* <<http://www.newmandala.org/bruneis-stateless-left-in-a-state-of-confusion/>>; Interviews conducted by The Brunei Project in September 2018 with stateless persons residing in Brunei.

<sup>34</sup> Amanda Cheong, *Citizenship as a Link Between the Individual and the State: The Case of Stateless Chinese-Bruneian Immigrants* (5 November 2012) *Voice of the Children* <http://voc.org.my/blog/blog/2012/11/05/citizenship-as-a-link-between-the-individual-and-the-state-the-case-of-stateless-chinese-bruneian-immigrants/>; Minority Rights Group International, *Brunei Darussalam: Chinese* <<https://minorityrights.org/minorities/chinese/>>.

<sup>35</sup> U.S. Department of State, *2012 Country Report on Human Rights Practices: Brunei Darussalam* (19 April 2013), 9 <<https://www.state.gov/j/drl/rls/hrrpt/2012/eap/204188.htm>>.

<sup>36</sup> U.S. Department of State, *2012 Country Report on Human Rights Practices: Brunei Darussalam* (19 April 2013), 9 <<https://www.state.gov/j/drl/rls/hrrpt/2012/eap/204188.htm>>.

<sup>37</sup> U.S. Department of State, *2012 Country Report on Human Rights Practices: Brunei Darussalam* (19 April 2013), 9 <<https://www.state.gov/j/drl/rls/hrrpt/2012/eap/204188.htm>>; Alana Tolman, *Brunei's stateless left in a state of confusion* (8 April 2016) *New Mandala* <<http://www.newmandala.org/bruneis-stateless-left-in-a-state-of-confusion/>>.

<sup>38</sup> U.S. Department of State, *2012 Country Report on Human Rights Practices: Brunei Darussalam* (19 April 2013), 9 <<https://www.state.gov/j/drl/rls/hrrpt/2012/eap/204188.htm>>; Alana Tolman, *Brunei's stateless left in a state of confusion* (8 April 2016) *New Mandala* <<http://www.newmandala.org/bruneis-stateless-left-in-a-state-of-confusion/>>.

*paper work instead. It's ridiculous that we couldn't add my father's name to the land he purchased and on the house he built - and calls "home."*<sup>39</sup>

41. Stateless permanent residents are also not entitled to passports, but are instead entitled to a "Certificate of Identity".<sup>40</sup> The "Certificate of Identity" allows for international travel and reentry to Brunei Darussalam.<sup>41</sup> However, "Certificates of Identity" are often viewed with suspicion by immigration officials at foreign ports of entry.<sup>42</sup> This can result in "Certificate of Identity" holders being questioned at length and, in some cases, being refused entry into the foreign country.<sup>43</sup> For example, as this stateless person said:

*"When I first travelled to Thailand with my parents (my father is stateless and my mother is a Malaysian citizen), I was stopped at the Thailand airport because the officers didn't recognise the "Certificate of Identity" as a travel document. .... While my mother swiftly went through Thai customs, my father and I were stopped for more than 30 minutes."*<sup>44</sup>

42. When travelling abroad, holders of the "Certificate of Identity" are also not entitled to all of the visa exemptions that Brunei Darussalam citizens enjoy.<sup>45</sup>
43. In contrast to stateless permanent residents, stateless persons who are not registered as permanent residents in Brunei Darussalam have no access to government services (such as education)<sup>46</sup> and are not entitled to Government-issued identity documentation.<sup>47</sup> Lack of identity documentation is a barrier for such populations in accessing health care and education, as well as access to employment in the formal economy.<sup>48</sup> As long as Brunei denies identity documentation to a part of its population, it will be unable to meet Sustainable Development Goal 16, specifically target 16.9 to achieve 'legal identity for all' by 2030.<sup>49</sup>

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<sup>39</sup> The Brunei Project, Interview with a stateless woman, September 2018.

<sup>40</sup> U.S. Department of State, *2012 Country Report on Human Rights Practices: Brunei Darussalam* (19 April 2013), 9 <<https://www.state.gov/j/drl/rls/hrrpt/2012/eap/204188.htm>>; Alana Tolman, *Brunei's stateless left in a state of confusion* (8 April 2016) New Mandala <<http://www.newmandala.org/bruneis-stateless-left-in-a-state-of-confusion/>>.

<sup>41</sup> U.S. Department of State, *2012 Country Report on Human Rights Practices: Brunei Darussalam* (19 April 2013), 9 <<https://www.state.gov/j/drl/rls/hrrpt/2012/eap/204188.htm>>; Alana Tolman, *Brunei's stateless left in a state of confusion* (8 April 2016) New Mandala <<http://www.newmandala.org/bruneis-stateless-left-in-a-state-of-confusion/>>.

<sup>42</sup> Alana Tolman, *Brunei's stateless left in a state of confusion* (8 April 2016) New Mandala <<http://www.newmandala.org/bruneis-stateless-left-in-a-state-of-confusion/>>; Interviews conducted by The Brunei Project in September 2018 with stateless persons residing in Brunei.

<sup>43</sup> Alana Tolman, *Brunei's stateless left in a state of confusion* (8 April 2016) New Mandala <<http://www.newmandala.org/bruneis-stateless-left-in-a-state-of-confusion/>>; Interviews conducted by The Brunei Project in September 2018 with stateless persons residing in Brunei.

<sup>44</sup> The Brunei Project, Interview with a stateless woman, September 2018.

<sup>45</sup> Alana Tolman, *Brunei's stateless left in a state of confusion* (8 April 2016) New Mandala <<http://www.newmandala.org/bruneis-stateless-left-in-a-state-of-confusion/>>.

<sup>46</sup> Amnesty International, *Amnesty International Report 2017/18: The State of the World's Human Rights* (2018), 103 <<https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF>>.

<sup>47</sup> U.S. Department of State, *2012 Country Report on Human Rights Practices: Brunei Darussalam* (19 April 2013), 9 <<https://www.state.gov/j/drl/rls/hrrpt/2012/eap/204188.htm>>.

<sup>48</sup> U.S. Department of State, *2012 Country Report on Human Rights Practices: Brunei Darussalam* (19 April 2013), 9 <<https://www.state.gov/j/drl/rls/hrrpt/2012/eap/204188.htm>>.

<sup>49</sup> UN Sustainable Development Goals, <https://sustainabledevelopment.un.org/sdg16>

44. Stateless persons can apply to become permanent residents and stateless permanent residents can also apply to become Brunei Darussalam citizens.<sup>50</sup> However, the onerous application requirements continue to be a barrier to stateless persons in obtaining either status.<sup>51</sup>
45. For example, proficiency in the Malay language is one of the criterion for citizenship.<sup>52</sup> Applicants are required to be proficient in both the standard of Malay that is taught in public schools and the dialect of Malay that is spoken colloquially in Brunei Darussalam.<sup>53</sup> Since stateless people in Brunei Darussalam usually face barriers in accessing public education, they are not likely to have learned the dialect of the Malay language that is required for citizenship.
46. There are also reports of stateless permanent residents who have passed the citizenship exam and meet all of the criteria for citizenship but are still waiting to acquire citizenship five to ten years after the fact.<sup>54</sup>
47. As at 2014, Brunei Darussalam reported to UNHCR that 2,420 stateless persons acquired Brunei Darussalam citizenship via naturalisation between the beginning of 2009 and the end of 2012.<sup>55</sup> More recent data is not publicly available. Although such steps are positive, as the above analysis and testimony demonstrates, efforts must be significantly increased to guarantee the right to nationality for stateless persons in the country and ensure the nationality law and related policies and practices uphold non-discrimination on the basis of sex, religion, ethnicity, disability and other protected characteristics.

## Birth Registration as a Tool for Preventing Statelessness

48. Birth registration is an important tool for the prevention of statelessness because it establishes a legal record of where a child was born and to whom.<sup>56</sup> That is, birth registration (and birth certificates) often provide essential proof as to whether a person has acquired nationality by birth or descent, or of their eligibility to acquire nationality by birth or descent.<sup>57</sup>

<sup>50</sup> U.S. Department of State, *2012 Country Report on Human Rights Practices: Brunei Darussalam* (19 April 2013), 9 <<https://www.state.gov/j/drl/rls/hrrpt/2012/eap/204188.htm>>.

<sup>51</sup> Alana Tolman, *Brunei's stateless left in a state of confusion* (8 April 2016) New Mandala <<http://www.newmandala.org/bruneis-stateless-left-in-a-state-of-confusion/>>; Zhao Shengnan, 'Stateless residents fight for sense of belonging in Brunei', *China Daily USA* (online), 19 December 2013 <[http://usa.chinadaily.com.cn/epaper/2013-12/19/content\\_17184934.htm](http://usa.chinadaily.com.cn/epaper/2013-12/19/content_17184934.htm)>; Minority Rights Group International, *Brunei Darussalam: Chinese* <<https://minorityrights.org/minorities/chinese>>.

<sup>52</sup> Alana Tolman, *Brunei's stateless left in a state of confusion* (8 April 2016) New Mandala <<http://www.newmandala.org/bruneis-stateless-left-in-a-state-of-confusion/>>; *Brunei Nationality Act 1961 (Cap. 15)* (Brunei Darussalam) art 8 <[http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap015.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap015.pdf)>.

<sup>53</sup> Alana Tolman, *Brunei's stateless left in a state of confusion* (8 April 2016) New Mandala <<http://www.newmandala.org/bruneis-stateless-left-in-a-state-of-confusion/>>; Minority Rights Group International, *Brunei Darussalam: Chinese* <<https://minorityrights.org/minorities/chinese>>.

<sup>54</sup> Alana Tolman, *Brunei's stateless left in a state of confusion* (8 April 2016) New Mandala <<http://www.newmandala.org/bruneis-stateless-left-in-a-state-of-confusion/>>; Interviews conducted by The Brunei Project in September 2018 with stateless persons residing in Brunei.

<sup>55</sup> UNHCR, 'Universal Periodic Review : Brunei Darussalam', Submission for the OHCHR's Compilation Report – Universal Periodic Review : Brunei Darussalam, September 2013, 2 [2] <<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=country&docid=528346844&skip=0&coi=BRN&querysi=stateless&searchin=fulltext&sort=date>>.

<sup>56</sup> UNHCR, *Birth Registration – Child Protection Brief* (August 2013) Refworld <<http://www.refworld.org/docid/523fe9214.html>>; *Guidelines on Statelessness No 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1–4 of the 1961 Convention on the Reduction of Statelessness*, UN Doc HCR/GS/12/04 (21 December 2012) 12 [55].

<sup>57</sup> UNHCR, *Birth Registration – Child Protection Brief* (August 2013) Refworld <

49. As a signatory to the Convention on the Rights of the Child, Brunei Darussalam has committed to registering all births immediately.<sup>58</sup> Additionally, as stated above, 16.9 of the Sustainable Development Goals provides the target that all States “by 2030, provide legal identity for all, including birth registration”.<sup>59</sup>
50. Importantly, Article 12 of the *Birth and Deaths Registration Act 2013*<sup>60</sup> requires universal birth registration for all children born in Brunei Darussalam. UNHCR’s submission in relation to the last UPR of Brunei Darussalam in 2014 details that “*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*”.<sup>61</sup>
51. However, indigenous populations in rural areas such as the Dusun and Iban (also known as Sea Dayaks) continue to experience significant barriers in accessing birth registration.<sup>62</sup> This creates issues with proving their identity and links to the State, in turn creating barriers to acquiring or confirming Brunei Darussalam citizenship and also in accessing education, healthcare, employment, and land rights and protection from exploitation.<sup>63</sup>

## Survivors of Human Trafficking and Exploitation

52. Typically, stateless persons and those at risk of statelessness are at heightened risk of human trafficking and exploitation because they often have difficulty proving their identity or links to a State.<sup>64</sup> Similarly, survivors of human trafficking and exploitation can also be at a heightened risk of statelessness.
53. Brunei Darussalam is not a party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (“2000 UN Trafficking in Persons Protocol”).<sup>65</sup>
54. According to the U.S. Government’s 2018 Trafficking in Persons Report, the Government of Brunei Darussalam “does not fully meet the minimum standards for the elimination of trafficking;

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<http://www.refworld.org/docid/523fe9214.html>>; *Guidelines on Statelessness No 4: Ensuring Every Child’s Right to Acquire a Nationality through Articles 1–4 of the 1961 Convention on the Reduction of Statelessness*, UN Doc HCR/GS/12/04 (21 December 2012) 12 [55].

<sup>58</sup> *Convention on the Rights of a Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 7.

<sup>59</sup> UN Sustainable Development Goals, <https://sustainabledevelopment.un.org/sdg16>

<sup>60</sup> *Births and Deaths Registration Act 1984 (Cap. 79)* (Brunei Darussalam)

<[http://www.agc.gov.bn/AGC%20Images/LAWS/ACT\\_PDF/cap079.pdf](http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap079.pdf)>.

<sup>61</sup> UNHCR, ‘Universal Periodic Review : Brunei Darussalam’, Submission for the OHCHR’s Compilation Report – Universal Periodic Review : Brunei Darussalam, September 2013, 2 [2] <<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=country&docid=528346844&skip=0&coi=BRN&querysi=stateless&searchin=fulltext&sort=date>>.

<sup>62</sup> U.S. Department of State, *Brunei 2017 Human Rights Report* (2017) 16

<<https://www.state.gov/documents/organization/277311.pdf>> ; U.S. Department of State, *2012 Country Report on Human Rights Practices: Brunei Darussalam* (19 April 2013), 9 <<https://www.state.gov/j/drl/rls/hrrpt/2012/eap/204188.htm>>.

<sup>63</sup> U.S. Department of State, *2012 Country Report on Human Rights Practices: Brunei Darussalam* (19 April 2013), 9

<<https://www.state.gov/j/drl/rls/hrrpt/2012/eap/204188.htm>>.

<sup>64</sup> U.S. Department of State, *Trafficking in Persons Report* (June 2016) 23

<<https://www.state.gov/documents/organization/258876.pdf>>.

<sup>65</sup> U.S. Department of State, *Trafficking in Persons Report* (June 2018) 110

<<https://www.state.gov/documents/organization/282798.pdf>>.

however, it is making significant efforts to do so”.<sup>66</sup> Such efforts have included “expanding measures to prevent trafficking through migrant worker outreach, accommodating more victims at its shelter, and carrying out victim screening procedures while strengthening investigation.”<sup>67</sup>

55. The effective implementation of the recommendations in the U.S. Government’s 2018 Trafficking in Persons Report with respect to Brunei Darussalam is imperative to ending human trafficking. These recommendations include:

- I. increasing “efforts to investigate, prosecute, convict, and punish both sex and labour traffickers, including complicit government officials, with strong penalties”;
- II. ceasing “the arrest, deportation, and punishment of trafficking victims for crimes committed as a direct result of their being subjected to trafficking”;
- III. increasing “protective services to provide incentives for victims to participate in investigations and prosecutions, including by allowing adult victims in government shelters to move freely and by issuing work permits to all victims”;
- IV. allocating “resources for the completion of the pending dedicated trafficking victims’ shelter and expand existing shelter services to accommodate adult male trafficking victims”;
- V. training “officials on implementation of proactive procedures to identify trafficking victims among vulnerable groups”;
- VI. training “judges on accurate and effective implementation of trafficking laws; allocate government resources to the victims’ fund established under the 2004 law and allow those funds to be paid directly to victims as restitution”;
- VII. strengthening “efforts to enforce laws prohibiting acts that facilitate trafficking, such as retention or confiscation of migrant workers’ identity documents”;
- VIII. offering “foreign victims long-term alternatives to removal from the country”;
- IX. expanding “comprehensive and visible anti-trafficking awareness campaigns directed at employers of foreign workers and clients of commercial sex”;
- X. approving and implementing the “national action plan”; and
- XI. acceding to the 2000 UN Trafficking in Persons Protocol.<sup>68</sup>

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<sup>66</sup> U.S. Department of State, *Trafficking in Persons Report* (June 2018) 110 <<https://www.state.gov/documents/organization/282798.pdf>>.

<sup>67</sup> U.S. Department of State, *Trafficking in Persons Report* (June 2018) 110 <<https://www.state.gov/documents/organization/282798.pdf>>.

<sup>68</sup> U.S. Department of State, *Trafficking in Persons Report* (June 2018) 111 <<https://www.state.gov/documents/organization/282798.pdf>>.

## Recommendations

56. Based on the above analysis, the co-submitting organisations urge reviewing States to make the following recommendations to Brunei Darussalam:

- I. Reform the *Brunei Nationality Act 1961* to remove provisions that discriminate on the basis of gender and race, and in particular, to allow women to enjoy equal rights as men in conferring citizenship to their children and spouses;
- II. Address the discriminatory denial of the right to a nationality, which has resulted in a large stateless population in the country - including members of the ethnic Chinese population. Ensure that all persons denied the right to nationality and who are stateless, have their right to a nationality restored;
- III. Fully promote, respect, protect and fulfil its obligations towards stateless persons under international human rights law, including access to education, health, employment, and land rights and protection from exploitation, and protection of the right to a nationality for all;
- IV. Withdraw its reservation to Article 9 of the Convention on the Elimination of All Forms of Discrimination Against Women;
- V. Ratify and fully implement the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Stateless and the 1951 Convention relating to the Status of Refugees and its 1967 Protocol;
- VI. Publish accurate, up-to-date and disaggregated data and information on the size and profiles of the stateless populations in Brunei Darussalam and the barriers these populations face in acquiring or confirming citizenship;
- VII. Provide for unrestricted freedom of information, opinion and expression and foster and support civil society engagement in the issue of statelessness;
- VIII. Remove discriminatory barriers to citizenship including the Malay language proficiency test, and ensure that those who lack documentation are not denied citizenship on that basis;
- IX. Ensure that all stateless persons have equal access government-issued identity documentation and to passports;
- X. Facilitate universal birth registration by addressing barriers faced by indigenous populations in rural areas including the Dasun and Iban populations; and
- XI. Collaborate with civil society actors and UN agencies to ensure that reforms aimed at addressing statelessness are effectively implemented. In making this recommendation, we note that at Brunei Darussalam's last UPR in 2014 Brunei acknowledged that due to its small population it has very limited human resources and welcomed any capacity building and assistance from international organisations.<sup>69</sup>

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<sup>69</sup> Report of the Human Rights Council on its twenty-seventh session, UN GAOR, 27<sup>th</sup> sess, Agenda Item 1, UN Doc A/HRC/27/2 (22 December 2014) 103 [675].