

## BRUNEI DARUSSALAM

International Instrument	Signature	Ratification, Acceptance (A), Approval (AA), Accession (a), Succession (d)	Entry Into Force
UN Convention on the Rights of the Child		27 Dec 1995 a <sup>1</sup>	
UN Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography		21 Nov 2006 a	
Protocol to Prevent, Suppress and Punish Trafficking in Persons			
UN Optional Protocol on the Involvement of Children in Armed Conflict			
UN Convention for the Protection of All Persons from Enforced Disappearance			
Hague Convention on International Child Abduction			

In Brunei Darussalam, there are six laws that refer directly or indirectly to missing children:

1. 1951 Penal Code, as amended in 2001;
2. Women and Girls Protection Act of 1973;
3. Kidnapping Act of 1999;
4. The Guardianship of Infants Act of 1999;
5. Trafficking and Smuggling of Persons Order of 2004; and
6. Children and Young Persons Order of 2006.

### Definition of “Missing Child”

The Children and Young Persons Order of 2006 (hereafter referred to as the “Children Order”) encompasses a broad array of child protection issues by covering juvenile courts, temporary custody arrangements, trafficking in children, abandonment, neglect, physical and sexual abuse by a guardian, assisting a child or young person in escaping from custody, and forced begging. While there is no specific definition of “missing child” in Brunei Darussalam’s legislation, Section 2(2) of the Children Order defines a “child or young person in need of protection” to include children who have been neglected, exposed to moral danger, fallen into bad association, or been abandoned. The Children Order does not only protect those children who have been physically or emotionally harmed, but also those who are at substantial risk of such harm.

<sup>1</sup> Brunei Reservation upon signature: “[The Government of Brunei Darussalam] expresses its reservations on the provisions of the said Convention which may be contrary to the Constitution of Brunei Darussalam and to the beliefs and principles of Islam, the State, religion, and without prejudice to the generality of the said reservations, in particular expresses its reservation on articles 14, 20 and 21 of the Convention.”

### Kidnapping and Abduction

The 1951 Penal Code, as amended in 2001, as well as the Children Order, have specific provisions that may be applied to the kidnapping of children or young persons across borders. Section 360 of the Penal Code states:

Whoever conveys any person beyond the limits of Brunei Darussalam, without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from Brunei Darussalam.<sup>2</sup>

In addition, the Kidnapping Act of 1999 provides punishments for abduction, wrongful restraint, and wrongful confinement, regardless of age.<sup>3</sup>

The 1951 Penal Code, as amended in 2001, criminalizes abandoning a child under the age of 12 years, kidnapping a minor from lawful guardianship (under the age of 14 if a male and 16 if a female), and the importation of a girl below 21 years of age knowing that she may be forced or seduced into illicit intercourse with another person.<sup>4</sup>

### Parental Abduction

Brunei Darussalam does not appear to criminalize parental abduction as Section 361 of the Penal Code, "Kidnapping from lawful guardianship," includes an exception clause for fathers who in good faith believe they have parental rights absent a custody order.<sup>5</sup> Brunei Darussalam is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

The Department of Immigration and National Registration under the Ministry of Home Affairs is responsible for issuing passports for Bruneian citizens, but it is unclear whether there are special requirements for parents who want to take their child out of the country.

In questions related to custody and/or the administration of any property belonging to or held in a trust for an infant, the Guardianship of Infants Act of 1999 ensures the welfare of the infant is the paramount consideration. Sections 4 and 5 of this Act guarantee that the mother and the father will have equal rights to apply to the court and the father will not be given preference over the mother in cases of custody or administration.<sup>6</sup> This Act only applies to those families who do not profess the Islamic faith; Sharia Courts handle all cases of custody and domestic disputes for the Muslim population.

### Reporting Mechanism

The Woman and Child Abuse Crime Investigation Unit is responsible for all issues involving women and children, however the Unit does not have a dedicated hotline for the public to report missing children. The Royal Brunei Police refers the public to the general police number 993 to report any crime and

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<sup>2</sup> The Penal Code of Brunei Revised Edition 2001, Section 360 Kidnapping from Brunei Darussalam (on file with the International Centre for Missing & Exploited Children).

<sup>3</sup> The Kidnapping Act of 1999, Section 3 states "whoever, with intent to hold any person for ransom, abducts or wrongfully restrains or wrongfully confines such person shall be guilty of an offence and shall be punished on conviction with death."

<sup>4</sup> The Penal Code of Brunei, *supra* note 91, at Sections 317 - Exposure and abandonment of child under 12 years by parent or person having care of it; 361 - Kidnapping from lawful guardianship; 366B - Importation of girl from foreign country; 372 - Selling minor for purposes of prostitution etc., and 373 - Buying minor for purposes of prostitution (on file with the International Centre for Missing & Exploited Children).

<sup>5</sup> The Penal Code of Brunei, *supra* note 91, at Section 361.

<sup>6</sup> The Guardianship of Infants Act of 1999, Section 4 - Welfare of infant to be paramount consideration; Section 5 - Equal right of mother to apply to court (on file with the International Centre for Missing & Exploited Children).

missing persons.<sup>7</sup> The Community Development Department (Japem) within the Ministry of Culture, Youth, and Sports manages the Welfare Helpline 141 and provides shelter to victims of child abuse and abandonment when necessary.<sup>8</sup>

The Welfare Helpline 141, created in 2006, was expanded in December 2010 to include a 24-hour hotline.<sup>9</sup> Helpline 141 handles reports involving women and children, receiving calls specifically in cases of abuse, neglect, protection, exploitation, and family problems.<sup>10</sup> In order to increase awareness, a number of Brunei government agencies have partnered to conduct roadshows to schools, speaking to both students and teachers, about children's rights and how children can protect themselves.<sup>11</sup> It is unknown whether Helpline 141 receives calls regarding missing or abducted children, or if the Helpline is well-known within the community.

Aside from the various departments within the Royal Brunei Police investigating crimes against children, the Children and Young Persons Act Part IV establishes specific Action Teams on Child Protection that are responsible for coordinating locally-based services focused on protecting children.<sup>12</sup> The Action Teams are overseen by the Department of Community Development.<sup>13</sup>

### Investigation of Missing Child Cases

Currently, there is no legislation mandating the immediate investigation of missing children's cases. The Children and Young Persons Order does acknowledge the need for immediate protection when there is physical and emotional harm, neglect, or abandonment of a child, but it is unclear how this is implemented in practice or how "immediate" is defined.<sup>14</sup> The Woman and Child Abuse Crime Investigation Unit of the Royal Brunei Police conducts awareness campaigns throughout the nation to highlight the issues of child exploitation and domestic violence.<sup>15</sup> Additionally, the Royal Brunei Police have a Human Trafficking Unit (HTU) that recently was expanded to include more officers.<sup>16</sup> As many missing child cases are classified under associated crimes such as abduction, kidnapping, human

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<sup>7</sup> Bandar Seri Begawan, *Police Seek Two Missing Persons*, THE BRUNEI TIMES, June 22, 2014, at <http://www.bt.com.bn/news-national/2014/06/22/police-seek-two-missing-persons>; Abdul Akim Kassim & Bandar Seri Begawan, *Missing Persons' Belongings Found*, THE BRUNEI TIMES, at <http://www.bt.com.bn/frontpage-news-national/2014/01/15/missing-person%E2%80%99s-belongings-found> (last visited Feb. 21, 2016) (on file with the International Centre for Missing & Exploited Children).

<sup>8</sup> U.S. DEP'T OF STATE, BRUNEI HUMAN RIGHTS REPORT (2012) 16, at <http://www.state.gov/documents/organization/204398.pdf> (last visited Apr. 23, 2016) (on file with the International Centre for Missing & Exploited Children).

<sup>9</sup> Wardi Buntar, *Japem's 141 helpline now a 24-hour hotline*, THE BRUNEI TIMES, Jan. 3, 2011, at <http://www.bt.com.bn/news-national/2011/01/03/japems-141-helpline-now-24-hour-hotline> (last visited Feb. 21, 2016) (on file with the International Centre for Missing & Exploited Children).

<sup>10</sup> *Id.*

<sup>11</sup> Quratul-ain Bandial, *MKM proposes roadshow to raise awareness on child rights*, THE BRUNEI TIMES, Nov. 11, 2015, at <http://bt.com.bn/news-national/2015/11/11/mkm-proposes-roadshow-raise-awareness-child-rights> (last visited Feb. 21, 2016) (on file with the International Centre for Missing & Exploited Children).

<sup>12</sup> Children and Young Persons Order of 2006 of Brunei, Section 13 – Establishment of Action Teams on Child Protection; Section 14 – Membership of Action Teams on Child Protection; Section 15 – Proceedings on Action Teams on Child Protection; Section 16 – Coordination (on file with the International Centre for Missing & Exploited Children).

<sup>13</sup> *Id.*

<sup>14</sup> The Children and Young Persons Order of 2006 of Brunei, *supra* note 101, at Article 25 (1) – Duty of member of the family; Article 26 (1) – Duty of child care centre.

<sup>15</sup> Diyana Ibrahim, *90% of teenage abuse cases stem from Internet misuse*, THE BRUNEI TIMES, Nov. 25, 2011, at <http://www.bt.com.bn/news-national/2011/11/25/90-teenage-abuse-cases-stem-internet-misuse> (last visited Feb. 21, 2016) (on file with the International Centre for Missing & Exploited Children).

<sup>16</sup> U.S. DEP'T OF STATE, *Trafficking in Persons Report 2013 – Brunei* (June 19, 2013) 106, at <http://www.state.gov/documents/organization/210738.pdf> (last visited Apr. 23, 2016) (on file with the International Centre for Missing & Exploited Children).

trafficking, forced labor, or forced begging, HTU or the Woman and Child Abuse Crime Investigation Unit may be responsible for investigating these cases.

### Alert Mechanism

Despite the Government of Brunei's work to establish a helpline and Action Teams on Child Protection, there remains very little data on cases of missing children and no indication was found of a national missing child database or a case management system. The Royal Brunei Police notifies the public about missing children by posting missing persons' pictures and descriptions on its website and issuing press releases that are often published in local and national newspapers such as the Brunei Times.<sup>17</sup> However, the process and requirements for determining which cases are posted or distributed to the media are unclear.

### Trafficking

The Women and Girls Protection Act of 1973 focuses on the protection of women and girls and the suppression of brothels. This legislation specifically criminalizes the importation of women and girls into Brunei Darussalam for buying, selling, procuring, or trafficking purposes.<sup>18</sup> This legislation focuses on women and girls, and does not address men or boys.

The Trafficking and Smuggling of Persons Order of 2004 (hereafter referred to as the "Trafficking Order") defines human trafficking and specifically addresses child trafficking and exploitation, as well as people smuggling more generally.<sup>19</sup>

Although Brunei Darussalam has made considerable efforts to implement the Trafficking Order and recently expanded its anti-trafficking police force unit, forming an *ad hoc* interagency committee to coordinate all anti-trafficking efforts, the nation has not ratified or acceded to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons. It has, however, acceded to the UN Convention on the Rights of the Child in 1995 and the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography in 2006.

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<sup>17</sup> Bandar Seri Begawan, *Police Seeking Missing Woman*, THE BRUNEI TIMES, Feb. 12, 2016, at <http://www.bt.com.bn/news-national/2016/02/12/police-seeking-missing-woman> (last visited Apr. 22, 2016) (on file with the International Centre for Missing & Exploited Children).

<sup>18</sup> The Women and Girls Protection Act of 1973, Section 4 (1) states that, "any person who buys, sells, procures, traffics in, or imports into Brunei for the purpose of such traffic, and whether or not for the purpose of present or subsequent prostitution, any woman or girls, shall be liable to imprisonment of either description for 5 years and to a fine of \$20,000."

<sup>19</sup> Trafficking and Smuggling of Persons Order of 2004, Dec. 22, 2004, Section 4 - Offence of people trafficking; Section 5 - Offence of children trafficking; Section 7 (1) - Offence of people smuggling (on file with the International Centre for Missing & Exploited Children).