



HUMAN RIGHTS
RESOURCE CENTRE

Violence, Exploitation, and Abuse and
Discrimination in Migration

Affecting Women and Children in ASEAN: A Baseline Study



Brunei Darussalam

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A Baseline Study**

BRUNEI DARUSSALAM

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Formal Name : Negara Brunei Darussalam**Capital City : Bandar Seri Begawan**

Population	Male: 219,100 Female: 195,300 Both sexes: 414,400 ¹
Life expectancy	Male: 77.1 years Female: 78.3 years Both sexes: 77.7 years ²
Age Structure	0-14 years: 25.7% (male 57,500/female 49,000) 15-64 years: 70.8% (male 154,700/female 138,800) 65-over: 3.5% (male 6,900/female 7,500) ³
Sex ratio	At birth: 1.047 male(s)/female Under 15: 1.06 male(s)/female 15-64 years: 0.99 male(s)/female 65-over: 0.94 male(s)/female Total: 1 male(s)/ female (2010 est.) ⁴
Religion	Muslim (official): 67% Buddhist: 13% Christian: 10% Other (includes indigenous beliefs): 10% ⁵
Ethnic groups	Malay: 66.3%, Chinese: 11.2%, indigenous: 3.4%, other: 19.1 % (2004 est.) ⁶
Functional Literacy rate	Male: 96.82 (age of 15 and above) Female: 93.67 (age of 15 and above) Both sexes: 95.24 ⁷
Net enrolment ratio in secondary schools	Male: 20,849 Female: 18,995
Migration rate	2.64 migrant(s)/1,000 populations (2010 est.) ⁸
Number of citizens working overseas	Male: No data Female: No data
Percentage of female-headed households	No data
Labour force participation rate	Male: 76.4 Female: 58.0 ⁹

1 Brunei Darussalam Statistical Yearbook, 2010.

2 US Department of State, Brunei Darussalam, 28 October 2011.

3 Brunei Darussalam Statistical Yearbook, 2010

4 Central Intelligence Agency (CIA), *the World Factbook* – Brunei Darussalam.

5 *Ibid.*

6 “Brunei Darussalam Ethnic Groups-Demographics,” accessed January 3, 2012, www.indexmundi.com/Brunei_Darussalam/ethnic_groups.html.

7 “Brunei Darussalam-literacy rate,” www.indexmundi.com/facts/Brunei_Darussalam/literacy-rate.

8 Central Intelligence Agency (CIA), *the World Factbook* – Brunei Darussalam, available at: http://www.theodora.com/wbfcurent/Brunei_Darussalam/Brunei_Darussalam_people.html, accessed January 3, 2012.

9 Brunei Darussalam Statistical Yearbook, 2010.

Unemployment rate	Male: 2.0 Female: 3.7 ¹⁰
Proportion of unpaid family workers	Male: No data Female: No data
Fertility rate	1.85 children born/woman (2012 est.) ¹¹
Maternal mortality rate	21 deaths/100,000 live births ¹²
Infant mortality rate	6.1 (39 deaths/1,000 live births) ¹³
Legal definition of 'child'	'Child' means a person who has not attained the age of 14 years 'Juvenile' means a person who has attained the age of 7 years of age but who has not attained the age of 18 years 'Young person' means a person who has attained the age of 14 years of age but who has not attained the age of 18 years. [Part I, Section 2, Children and Young Persons Order, 2006] ¹⁴
Age of majority	18 years old ¹⁵
Marriageable age	14 years old ¹⁶
Age of consent	16 years old Any person who has or attempts to have carnal knowledge of a girl under the age of 16 years except by way of marriage shall be guilty of an offence [Section 2, Unlawful Carnal Knowledge Act, Cap 29: An Act to render unlawful the having of carnal knowledge of a girl under 16 years of age] ¹⁷ 14 years old No two persons shall be capable of contracting a valid marriage unless the following conditions are fulfilled, namely: (a) That both parties to the intended marriage have reached the age of 14 years [Section 3, A, Marriage Act Cap 76: An act to provide for the solemnization and registration of church and civil marriage] ¹⁸
Age of criminal responsibility	7 years old 'Youthful offender' includes any child convicted of an offence punishable by fine or imprisonment who in the absence of legal proof to the contrary is above the age of 7 and under the age of 18 years in the opinion of the Court before which such child is convicted. [Part 1, Chapter 1 of the Chapter 7 of the Criminal Procedure Code, Cap 7: An Act to establish a Code of Criminal Procedure] ¹⁹

10 *Ibid.*

11 "Central Intelligence Agency, *the World Factbook* - Brunei Darussalam," accessed May 30, 2012, <https://www.cia.gov/library/publications/the-world-factbook/fields/2127.html>

12 "Brunei Darussalam Demographics Profile 2011," accessed January 3, 2012, http://www.indexmundi.com/Brunei_Darussalam/demographics_profile.html.

13 Brunei Darussalam Statistical Yearbook, 2010.

14 Children and Young Persons Order, 2006.

15 "Brunei Darussalam: Age of Sexual Consent," accessed January 16, 2012, available at: www.ageofconsent.com/Brunei_Darussalam.html.

16 The Marriage Act (Cap 76).

17 Unlawful Carnal Knowledge (1984).

18 *Ibid.*

19 Criminal Procedure Code (Cap 7): An Act to establish a Code of Criminal Procedure.

Minimum age of employment	<p>16 years old²⁰</p> <p>Section 48. Persons under the age of 16 years shall not be recruited: Provided that young persons under that age may be recruited with the consent of their parents or guardians for employment upon light work in an occupation approved by the Commissioner.</p> <p>Section 24. (1) A person whose apparent age is less than 16 years shall not be capable of entering into contract.</p> <p>(2) Notwithstanding anything contained in any written law a person whose apparent age exceeds 16 years but is less than 18 years shall be capable of entering into a contract for employment in an occupation approved by the Commissioner as not being injurious to the moral and physical development of non-adults. [Laws of Brunei Darussalam, Chapter 93 Labour]</p>
Minimum age for military recruitment and participation	<p>17 ½ years²¹</p> <p>‘Eligible young person’ means an eligible person who has attained the age of 17 ½ years [Part 1, Section 2, Laws of Brunei Darussalam, Chapter 149, Royal Brunei Darussalam Armed Forces]</p>



Map of Brunei Darussalam
(Source: Millennium Development Goals)

Brunei Darussalam GDP

<i>Recent economic indicators:</i>	2006	2007	2008	2009	2010(a)	2011(b)
GDP (US\$bn) (current prices):	11.5	12.2	14.4	10.7	12.4	15.6
GDP PPP (US\$bn) (c):	18.9	19.5	19.5	19.4	20.1	21.2
GDP per capita (US\$):	29,929	31,404	36,223	26,423	29,675	36,521
GDP per capita PPP (US\$) (c):	49,431	50,029	49,139	47,797	48,333	49,518
Real GDP growth (% change yoy):	4.4	0.2	-1.9	-1.8	2.6	2.8
Current account balance (US\$m):	6,472	6,254	7,835	4,318	5,573	7,560
Current account balance (% GDP):	56.4	51.1	54.3	40.2	45.0	48.5
Good exports (% GDP):	73.0	69.4	80.2	75.3	81.4	na
Inflation (% change yoy):	0.2	1.0	2.1	1.0	0.4	1.8

Source: Brunei Darussalam Factsheet Compiled by the Market Information and Research Section, DFAT, using the latest data from the ABS, the IMF and various international sources.³

²⁰ Labour Act (Cap 93).

²¹ Royal Brunei Armed Forces, Chapter 149, 19.

²² Available at: <http://www.dfat.gov.au/geo/fs/brun.pdf>.

A. OVERVIEW

Brunei Darussalam is an independent Sultanate, founded on a written constitution promulgated in 1959 and amended later in 1984 and 2004. His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam is the executive authority and Head of State; governance is facilitated by a Council of Cabinet Ministers, Religious Council, Privy Council, a Council of Succession, and a Legislative Council.²³ The Millennium Development Goals, a government publication, states that:

Brunei Darussalam has practiced an integrated and systematic socio-economic planning since the early 1950s, realized through eight series of five-year National Development Plan or *Rancangan Kemajuan Negara* (RKN). The development strategies pursued over these RKN had been the keys to the successful creation of wealth in the economy, improvement in the quality of life of the people, political stability, and maintaining a clean and healthy environment.²⁴

One of Brunei Darussalam's eight strategies is its Social Security Strategy which seeks to 'ensure that, as the nation prospers, all citizens are properly cared for.' During the 13th session of the Human Rights Council on 4 Jan 2010, the Brunei Darussalam delegation highlighted this fact and in 2007/2008 the country scored 0.894 on the Human Development Index, ranking 30th out of 177 nations. Brunei Darussalam attributed this to its national efforts to achieve national harmony, unity, stability and prosperity by guaranteeing equitable socio-economic development, an approach to promote respect towards human rights.²⁵

Baseline Study on Violence, Exploitation, and Abuses in Migration Affecting Women and Children

The baseline information utilized in this report are reports from the United Nations Human Rights Council, the Committee on the Rights of the Child, International Labour Organization,²⁶ human rights reports from non-state organizations, statistics from the World Bank,²⁷

UNICEF,²⁸ International Human Development Indicators,²⁹ information from Brunei Darussalam media, and data from various government agencies. The information gathered is substantiated by relevant orders, acts and laws provided for in the Attorney General's Chamber.³⁰

For the 13th session of the Human Rights Council on 4 January 2010, in the Report of the Working Group on the Universal Periodic Review for Brunei Darussalam, the Brunei Darussalam delegation emphasized the efforts of its government to ensure the welfare of their people, including the provision of a peaceful environment, a first-class health system, a top class educational system, adequate housing, providing for people in need, addressing poverty, ensuring food security, and jobs for the people. Education remains a top priority, taking up 12% of the national budget. This important policy of providing free education to all has led to Brunei Darussalam having one of the highest literacy rates of 94.9% in Asia. The percentage of women's participation in education has also increased, with 73% of the total graduates in 2007 being female. The provision of a comprehensive free health-care system for the people is another priority, in urban and rural areas. Its target was to attain 'Health for All'. Emphasis is placed on the development of a healthcare system based on primary healthcare, aimed at providing a wide range of preventive, promotion, curative and rehabilitative healthcare and support services.³¹

While Brunei Darussalam has done much to better the welfare of its people, it has not acceded to a number of international treaties and has maintained reservations to the CRC and CEDAW. Based on the 6th Session of the Human Rights Council Working Group on the Universal Periodic Review held in Geneva from 30 November to 11 December 2009, the scope of Brunei Darussalam's international obligations are as follows:³²

23 Available at: <http://www.dfat.gov.au/geo/fs/brun.pdf>.

24 *Ibid.*, 3.

25 UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review on Brunei Darussalam*, A/HRC/13/14, (UN Human Rights Council: 2010), accessed March 4, 2012, <http://www.unhcr.org/refworld/docid/4be279482.html>, 5.

26 International Labor Organization, *Brunei Darussalam*, accessed March 3, 2012, <http://www.ilo.org/asia/countries/brunei-darussalam/lang-en/index.htm>.

27 World Databank, accessed 3 March, 2012, <http://databank.worldbank.org/ddp/home.do>.

28 UNICEF, "At a glance: Brunei Darussalam," accessed March 3, 2012, http://www.unicef.org/infobycountry/Brunei_Darussalamdarussalam.html.

29 International Human Development Indicators, accessed March 3, 2012, <http://hdrstats.undp.org/en/indicators/68606.html>.

30 Attorney General's Chamber, accessed March 3, 2012, <http://www.agc.gov.bn/>.

31 UN Human Rights Council, Report of the Working Group on Brunei Darussalam, 4-5.

32 UN Human Rights Council, Compilation Prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(b) of the Annex to Human Rights Council Resolution 5/1 - Brunei Darussalam, A/HRC/WG.6/6/BRN/2, (UN Human Rights Council: 2009), accessed March 6, 2012, <http://www.unhcr.org/refworld/docid/4ac9fede0.html>, 2.

A. Scope of international obligations¹			
<i>Core universal human rights treaties²</i>	<i>Date of ratification, accession or succession</i>	<i>Declarations /reservations</i>	<i>Recognition of specific competences of treaty bodies</i>
CEDAW	24 May 2006	Yes (general, including arts. 9(2), 29(1))	-
CRC	27 Dec. 1995	Yes (general, including arts. 14, 20, 21)	-
OP-CRC-SC	21 Nov. 2006	-	-
Core treaties to which Brunei Darussalam is not a party: ICERD, ICESCR, OP-ICESCR, ³ ICCPR, ICCPR-OP 1, ICCPR-OP 2, OP-CEDAW, CAT, OP-CAT, OP-CRC-AC, ICRMW, CRPD (signature 18 Dec. 2007) CRPD-OP, CED.			
<i>Other main relevant international instruments</i>			<i>Ratification, accession or succession</i>
Convention on the Prevention and Punishment of the Crime of Genocide			No
Rome Statute of the International Criminal Court			No
Palermo Protocol ⁴			No
Refugees and stateless persons ⁵			No
Geneva Conventions of 12 August 1949 and Additional Protocols thereto ⁶			Yes, except Additional Protocol III
ILO fundamental conventions ⁷			No, except No. 182
UNESCO Convention against Discrimination in Education			Yes

Figure 1.
Brunei Darussalam Scope of International Obligations

The most recent development on the Universal Periodic Review of Brunei Darussalam is the 8 February 2011 Report of the Human Rights Council. The Council adopted decision 13/113 without a vote during the 32nd meeting of its thirteenth session, held on 19 March 2010. This refers to the Outcome of the Universal Periodic Review for Brunei Darussalam.³³

Universal Periodic Review Info, the Geneva-based non-profit NGO states that as of 3 Jan 2012, Brunei Darussalam has accepted 33 recommendations, rejected 27, while there is no clear position on 25 issues.³⁴ The recommendations that did not enjoy the support of

Brunei Darussalam, particularly those that may have a direct effect on the protection of women and children against violence, exploitation, and abuses in migration, are cited below:

- 1) R-1: Take early action to become a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) (New Zealand); become a party to other treaties, such as ICCPR and ICESCR, as soon as possible (Republic of Korea);
- 2) R-2: Sign and ratify ICCPR (Sweden);
- 3) R-3: Ratify ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (France);
- 4) R-4: Ratify ICCPR, ICESCR and CAT (Netherlands);
- 5) R-5: Ratify core international human rights

33 UN Human Rights Council, *Report of the Human Rights Council on its thirteenth session*, A/HRC/13/56, (UN Human Rights Council: 2011), accessed March 8, 2012, <http://www2.ohchr.org/english/bodies/hrcouncil/13session/>, 79.

34 Universal Periodic Review, *Reponses to Recommendations - Brunei Darussalam*, http://www.upr-info.org/IMG/pdf/recommendations_to_brunei_darussalam_2009.pdf, accessed March 2, 2012

- instruments, such as the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), ICESCR, ICCPR and CAT, within the context of Council resolution 9/12 (Brazil); take the necessary steps for the ratification of ICESCR, ICCPR, ICERD and CAT (Germany);
- 6) R-6: Sign and ratify the main ILO conventions, and the main international human rights instruments, particularly ICCPR, ICESCR, CAT and the International Convention for the Protection of All Persons from Enforced Disappearance (CED) (Spain);
 - 7) R-7: Consider signing or ratifying, as appropriate, the following international human rights instruments: the Optional Protocols to ICCPR, CAT, the Rome Statute of the International Criminal Court and the Convention on the Prevention and Punishment of the Crime of Genocide (Chile);
 - 8) R-8: Consider an early ratification of the Optional Protocols to ICCPR and ICESCR, CAT and the Rome Statute (Slovakia);
 - 9) R-9: Sign the Second Optional Protocol to ICCPR, Aiming at the Abolition of the Death Penalty (Portugal);
 - 10) R-10: Adhere to principles of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) and consider favourably possibly ratifying it (Mexico);
 - 11) R-11: Consider the possibility of ratifying CED (Argentina);
 - 12) R-16: Revise its Penal Code so as to criminalize all acts of rape without exception and irrespective of the marital status and the gender of the victim (Netherlands); revise section 375 of the Penal Code so as to criminalize all acts of rape without exception and irrespective of the marital status and gender of the victim (Slovenia); review section 375 of the Penal Code in order to criminalize all acts of sexual violence, regardless of matrimonial status or the victim's gender (Spain); strengthen the protection of women and children by modifying section 375 of the Penal Code, which does not recognize marital rape even when the spouse is a minor (France);
 - 13) R-17: Repeal or amend all provisions in domestic laws which provide for caning for administrative offences involving immigration law (Canada);
 - 14) R-18: Specifically prohibit corporal punishment in institutions (Germany); prohibit corporal punishment in other public institutions and abolish whipping as a form of punishment (Italy); abolish the practice of corporal punishment (France); legally prohibit any form of corporal punishment of children and adolescents (Chile);
 - 15) R-19: Repeal or amend the Internal Security Act so as to abolish all forms of administrative detention (Canada); abrogate or amend the Internal Security Act and all legislation allowing for detention without trial (Spain); review the Internal Security Act of 1982 in order to bring it into line with international standards (Slovakia);³⁵
- The scheduled Human Rights Council Universal Periodic Review (Second Cycle) places Brunei Darussalam in the 19th session on 2014.³⁶

B. VIOLENCE

1. Description of the Problem

a. Prevalence of Violence

It is observed that aside from the fact that the statistics reported do not include a definition of their indicators nor provide the scope of the survey, there are also significant inconsistencies in the figures provided by various agencies in Brunei Darussalam. For instance, the Department of Community Development or *Jabatan Pembangunan Masyarakat* (JAPEM) reported 21 domestic violence and 41 child abuse occurrences from 2004 to 2006; it also reported a total of 563 domestic violence cases for the same period. These indications may be a result of an absence of a well-defined methodology in the collection of data. Further, the reports do not contain information as to the profile, location, educational attainment, income, age, sex of the persons violated and the person inflicting violence. The type of violence, circumstance, degree, and duration are also not included in the agency reports.

³⁵ *Ibid.*

³⁶ Universal Periodic Review, *Human Rights Council Universal Periodic Review Second Cycle*, accessed March 4, 2012, http://www.upr-info.org/IMG/pdf/UPR-FullCycleCalendar_2nd.pdf.

During the Domestic Violence Symposium held in Brunei Darussalam in 2008, the statistics provided pertaining to the occurrence of domestic violence are as follows: 81 in 2000; 102 in 2001; 102 in 2001; 160 in 2003; 173 in 2004; 193 in 2005; and 197 in 2006. These statistics referring to domestic violence include abuses towards wives, husbands, ex-wife, ex-husband, maids and children.³⁷ According to statistics from the Community Development Department, cases of domestic violence in the country increased, citing an increase of 81 cases to 214 from 2000 to 2007, which totals to 264 per cent increase in seven years.³⁸

The Department of Community Development (JAPEM) recorded 53 family related cases from 2004 to 2006 which were classified as: 21 domestic violence cases, 6 child custody cases, 4 family conflicts cases, 4 on housing problems concerning wives, 4 on financial problems, 4 for begging, 2 cases of poverty stricken families, 2 for neglecting the elderly, 2 cases of alimony and 4 others. Also between 2004 and 2006, there were 105 child related cases recorded by JAPEM, classified as: 41 child abuse, 36 for youth beyond parental control, 14 for neglecting children, six abandoned babies, six over schooling of children and two others.³⁹

The Community Development Statistics recorded from June to October 2010 no cases of violence against women. However, there are a total of 7 cases found in November and December 2010. From January 2011 to September 2011, there are a total of 17 cases. The information did not indicate the type of injuries or type of violence incurred.⁴⁰

In a report by the Department of Criminal Intelligence, the number of domestic violence cases from 2005 to 2009 is as follows: 175 (2005), 142 (2006), 155 (2007), 158 (2008) and 122 (as of August 2009). Among these, marital abuse involves 160 (2005), 123 (2006), 137 (2007), 132 (2008) and 100 (as of August 2009).⁴¹

37 Womensphere, "Brunei Darussalam Lacks Legislation on Domestic Violence", accessed March 6, 2012, <https://womensphere.wordpress.com/2008/04/25/BruneiDarussalam-lacks-legislation-on-domestic-violence/>.

38 "Domestic violence cases on the rise in Brunei: Sermon," *The Brunei Times*, 5 July 2008, accessed March 8, 2012, http://www.bruneitimes.com.bn/home_news/2008/07/05/domestic_violence_cases_on_the_rise_in_brunei_sermon.

39 Womensphere, "Brunei Darussalam Lacks Legislation On Domestic Violence."

40 Department of Community Development, Brunei Darussalam.

41 Azaraimy HH, "Police Urge Abused Wives to Speak Up", *Borneo Bulletin Weekend*, 26 September 2009, accessed March 15, 2012, <http://www.brusearch.com/news/51417>.

The table below shows the number of cases that were reported to the Royal Brunei Darussalam Police Force over the last three years. As the data presented are only those cases that were actually reported to the police, the actual occurrence may be higher than what is reflected in the report.⁴²

Violence Cases Reported to RBPF

Offence ⁴³	2009	2010	2011
Wife Abuse	119	117	85
Husband Abuse	6	3	2
Child Assault	26	24	16
Maid Abuse	5	9	7
Family Abuse	13	12	4
Rape	31	27	15
Incest	8	4	4
Outrage of Modesty	8	7	5
Underage Sex	22	29	22
Abandoned Babies (Alive)	2	1	2
Abandoned Babies (Dead)	2	5	2
Problematic Teenagers	13	9	7
Total	255	247	171

Violence Affecting Women

Senior Investigating Officer of the Criminal Investigating Unit for Women and Child Abuse P/ASP Mariyani bte Abd Wahab observes that the decline of reported cases should increase concern as it may indicate that more victims are not disclosing their situation. She added that as more cases are reported and recorded, it indicates that more women are aware of their rights. For cases of withdrawn complaints, Brunei Darussalam police issues a stern warning to the offender. However, according to ASP Mariyani, the main problem is that most abused wives are either embarrassed or reluctant to report their husbands and most women in Brunei Darussalam are still financially dependent on their husbands. In Brunei Darussalam, domestic violence is viewed as a community problem where both the abused and the abuser are considered to require counselling. It was stressed, however, that for abuse involving the 'protected group', consisting of children or young persons below 18, the abuser is

42 ASP Mariyani Abdul Wahab, Letter to Editor: "Awareness, Prevention and Intervention," *The Brunei Times*, December 2, 2011, accessed January 4, 2012, <http://www.bt.com.bn/letters-editor/2011/12/02/awareness-prevention-intervention>.

43 *Ibid.*

immediately arrested and charged correspondingly.⁴⁴

On 25 June 2008, Dayang Hajah Saemah, head of the NDP women's Assembly highlighted the increasing number of educated women in Brunei Darussalam and stressed that women's participation in the workforce was more than 40%. However, in the most vulnerable communities, women are constantly exposed to the problems of torture, abuse and neglect, while some are even the breadwinner in the household. Despite the support of established institutions such as the Domestic Violence Unit at the Royal Brunei Darussalam Police, Medical Welfare Unit in the hospitals, and the Family Advisory Services, not all cases faced by women can be solved immediately. As some of the cases have to be resolved in court, many of the women complainants are unable to defend themselves for the reason that they cannot pay for the legal services. The procedure is said to entail at least 16 stages from the filing of the complaint, which usually takes years to resolve.⁴⁵

The 2010 US Department of State Human Rights Report on Brunei Darussalam mentions that 'during the year, 23 rape cases were reported; at year's end Police were investigating 11 and had forwarded 10 cases to the Attorney General Chambers'⁴⁶ and 'there were a total of 62 cases of spousal dispute abuse reported; at year's end, 55 cases were under investigation, and eight had been forwarded to the Attorney General Chambers.'⁴⁷

Violence Affecting Children

On the issue of corporal punishment of children, the CRC Committee is concerned that 'corporal punishment is not prohibited at home, in schools or institutions and remains acceptable in the society. The Committee also notes that the new book of discipline for schools does not specifically prohibit corporal punishment nor does it even refer to it as a form of discipline.'⁴⁸

On the issue of rape, ASP Mariyani Abdul Wahab from the Women and Child Abuse Investigation Unit of the Royal Brunei Darussalam Police Force (RBPF), in her letter to the editor of *Brunei Darussalam Times* newspaper on 2 December 2011, states that in 2009, her office investigated 31 cases of rape: seven were against women below 14 and five were against women between 14-16 years of age. Among the seven cases involving women below 14 years, five met the perpetrator through online chat. Of the five cases involving women between the ages of 14-16 years, four women also met the perpetrator though on-line chat. Eight cases violating the Unlawful Carnal Knowledge Act were investigated by the WCAIU in 2009, seven of which met their perpetrator in an online chat while one case involved the victim's boyfriend. The perpetrators' ages ranged between 15-33 years old.⁴⁹

In 2010, the Women and Children Abuse Investigation Unit (WCAIU) investigated 27 cases classified as rape, six of which were against women below the age of 14 years old and four who were between the ages of 14-16 years old. Seven out of the reported 10 cases show that the victims knew the perpetrators from online chat. There were seven cases under the Unlawful Carnal Knowledge Act; all of the perpetrators in these cases, who are between ages 15-19 years, were met by the victims in an online chat. In Brunei Darussalam, a girl under the age of 14 who consents to a sexual act with a man is considered as rape, while a girl under the age of 16 who consented to a sexual act with another man is punishable under the Unlawful Carnal Knowledge Act.⁵⁰

In addition to these incidents, the relevant statistics recorded by the Community Development Department are as follows:

CHILD ABUSE CASES REGISTERED BY COMMUNITY DEVELOPMENT DEPARTMENT FOR THE YEAR 2004-2010⁵¹

CASE	2005	2006	2007	2008	2009	2010
Child abuse	10	5	8	12	12	4

Source: Community Development Department, Ministry of Culture, Youth and Sports

44 Azaraimy HH, 'Police Urge Abused Wives to Speak Up.'

45 Berita, 'Diskriminasi terhadap wanita masih wujud di Brunei,' accessed March 9, 2012, <http://www.aspirasi-ndp.com/arkib/JUN08/DiskriminasiterhadapwanitamasihwujuddiBrunei.html>

46 US Department of State, *2010 Human Rights Report: Brunei Darussalam*, accessed March 9, 2012, <http://www.state.gov/j/drl/rls/hrrpt/2010/eap/154379.htm> 11.

47 *Ibid.*

48 UN Convention on the Rights of the Child, Committee on the Rights of the Child, *Consideration of Reports submitted by States Parties under Article 44 of the Convention*, CRC/C/15/ADD.219, (Committee on the Rights of the Child: 2003), accessed March 9, 2012, [http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/39be9d499b7a0157c1256df00031b980/\\$FILE/G0344676.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/39be9d499b7a0157c1256df00031b980/$FILE/G0344676.pdf).

49 ASP Mariyani Abdul Wahab, Letter to Editor: 'Awareness, Prevention and Intervention.'

50 *Ibid.*

51 Department of Community Development, Brunei Darussalam.

**CASES RELATED TO CHILDREN REGISTERED BY
COMMUNITY DEVELOPMENT DEPARTMENT
FOR THE YEAR 2004-2010**

No.	CASE	2005	2006	2007	2008	2009	2010
1.	Abandoned baby	2	2	2	-	1	1
2.	Custody rights battle (children)	8	2	3	4	2	-
3.	Beyond Parental Control	13	5	13	12	17	25
4.	Neglect Case	3	5	10	12	9	7
5.	Attempted Rape on young girls	2	1	2	2	1	-
6.	Rape Case	1	-	-	-	-	-
7.	Incest	2	3	-	5	2	-
8.	Teenage Random Sex Activities	-	1	1	1	6	2
9.	Application from Rehabilitation Program	-	-	7	8	-	2
10.	Temporary Custody of children	-	-	-	1	-	-
11.	Juvenile Cases (Referred Cases)	-	-	1	-	3	12
12.	Housing Problem	-	-	-	-	1	-
TOTAL		31	19	47	57	54	49

Source: Community Development Department, Ministry of Culture, Youth and Sports

b. Root Causes of Violence and Aggravating Practices

General Recommendation No. 19 of the Committee on the Elimination of Discrimination against Women, defines violence against women and children as follows:

... gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.

Article 19 of the Convention of the Rights of the Child cites that:

State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal

guardian(s) or any other person who has the care of the child.⁵²

Legal definitions of violence are provided in the Married Women Act (Amended) 2010, the Islamic Family Law (Amendment) Order 2010 and the Children and Young Persons Order of 2006. The Married Women Act (Amended) 2010 and the Islamic Family Law (Amendment) Order 2010 are not explicit on sexual and psychological violence. The Children and Young Persons Order of 2006 is explicit in its definition of physical, emotional and sexual violence against children.

In the case of Brunei Darussalam, little research has been conducted on the root causes of violence against women and children. The available resources do not employ quantitative and qualitative analysis to support their findings.

Violence in the Family

The exact incidence of domestic violence in Brunei Darussalam is difficult to determine due to social and religious considerations. Senior Investigating Officer from the Criminal Investigating Unit for Women and Child Abuse P/ASP Mariyani bte Abd Wahab states that the statistics available do not represent the full extent of the problem because not all victims report the abuse to the police.⁵³ In the family, the reported cause of domestic violence is stress, as the aggressor's feeling of despair, rage and discontent are often directed towards his wife, children and other family members.⁵⁴

As corporal punishment is not prohibited in the home, violence against children may occur. Article 89 of the Penal Code states that, with certain exceptions,

... nothing which is done in good faith for the benefit of a person under 12 years of age ... by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person.⁵⁵

⁵² Article 19 (1) UN Convention of the Rights of the Child.

⁵³ Azaraimy HH, 'Police Urge Abused Wives to Speak Up.'

⁵⁴ 'Domestic violence cases on the rise in Brunei Darussalam: Sermon.'

⁵⁵ Peter Newell, Brunei Darussalam Briefing for the Human Rights Council Universal Periodic Review - 6th Session, 2009, accessed March 13, 2012, http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/BN/GIEACPC_BRN_UPR_S06_2009.pdf.

Moreover, the Children and Young Persons Order of 2006 states that:

A child or young person is physically injured if there is substantial and observable injury to any part of his body as a result of the non-accidental application of force or an agent to the child's or young person's body that is evidenced by, amongst other things, a laceration, contusion, abrasion, scar, fracture or other bone injury, dislocation or sprain, haemorrhaging, the rupture of a viscous, a burn or scald, the loss or alteration of consciousness or physiological functioning or the loss of the hair or any teeth;⁵⁶

Hence, corporal punishment not resulting to physical injury as defined in Children and Young Persons Order of 2006 is not punishable under the law. The absence of a prohibition of corporal punishment may be seen as a contributing factor to the occurrence of physical violence against children.

Violence in the Community

The increase of crimes against women is said to be an indication of an increase in social problems in the country. The National Committee for Handling Social Issues identified three major social problems in Brunei Darussalam: free sex, domestic violence, and drug abuse.⁵⁷

The causes of violence against women, mentioned in the book *Penderitaan wanita di Negara Brunei Darussalam: Kes Kajian di Daerah Brunei Darussalam Muara (Torture of Women In Brunei Darussalam: Case Study in Brunei Muara District)* by Rogayah Abdullah (2005), are said to be the following: drug and alcohol addiction, pornographic movies, submissive girlfriends/ spouses and involvement in illegal crimes.⁵⁸

Vulnerability of women, including children below the age of 14, to sexual violence in the community is said to be heightened by the Internet. Cases investigated by the Women and Children Abuse Investigation Unit (WCAIU) shows that the victims of violence, classified as rape,⁵⁹ met

the perpetrators through on-line chat.⁶⁰

Women and Children Abuse Investigation Unit (WCAIU), which was established on 1 Apr 1997, aims to augment and support investigations concerning rape, sexual harassment, and violence against women in Brunei Darussalam. As of May 2010, WCAIU disclosed that there have been 300 reported cases per year; the reported number involving adolescents is expected to double from 10 in the past years, to 20 incidents. WCAIU viewed the following factors as greatly contributing to violence against adolescents: (a) the media's strong influence on the younger generation; (b) availability of internet, access to online content and networking thus making them prone to recruitment by gangs who are involved in engaging in casual sex; (c) globalisation of media resulting to the 'glamorization of sex' thus conveying negative influences; and (d) the vulnerability of young people who are easily victimized by strangers in a chat room.⁶¹

Another factor that may induce physical violence towards children, particularly youth offenders, is the use of corporal punishment as a mode of discipline. Corporal punishment is lawful as a disciplinary measure in penal institutions. Under sections 51-55 of the Youthful Offenders (Places of Detention) Rules (2001), males under the age of 14 may be given up to six strokes with a light cane; older children may be given up to 10 strokes. The medical officer must certify that the person is able to sustain the punishment. Section 76 of the Children and Young Persons Order would permit the use of 'such force as is reasonable and necessary' in order to 'ensure good order and discipline'.⁶² There is no prohibition of corporal punishment in alternative care settings, where article 89 of the Penal Code provides a legal defence for its use.⁶³

c. Impact of Violence

The available reports do not include a thorough study on the physical, psychological and social impact of violence against women and children. Rogayah Abdullah's 2005 book *Penderitaan wanita di Negara Brunei Darussalam: kes kajian di Daerah Brunei Muara (Torture of Women In*

56 Children and Young Persons Order 2006, *loc.cit.*

57 NIEW, The Inaugural Course On Gender And Development: A Report (Malaysia: NAM Institute for the Empowerment of Women (NIEW) and Ministry of Women, Family and Community Development:2007).

58 Rogayah Abdullah, *Penderitaan wanita di negara Brunei Darussalam: kes kajian di daerah Brunei Muara (Torture of Women In Brunei Darussalam: Case Study in Brunei-Muara District)*, (Brunei Darussalam: Dewan Bahasa dan Pustaka, 2005).

59 In Brunei Darussalam, any sexual act with a girl under the age of 16 is illegal under the Unlawful Carnal Act except by way of mar-

riage. Under the Penal Code, rape is defined as 'any man who has intercourse with a woman with or without her consent when she is under 14 years of age.'

60 ASP Mariyani Abdul Wahab, 'Awareness, Prevention and Intervention.'

61 Syazwan Sadikin, 'Speak Out to Stop The Abuse of Children,' *The Brunei Times*, May 1, 2010, accessed March 13, 2012, <http://www.bt.com.bn/features/2010/05/01/speak-out-stop-abuse-children>.

62 Newell, Brunei Darussalam Briefing for the Human Rights Council Universal Periodic Review.

63 *Ibid.*

Brunei Darussalam: Case Study in Brunei Muara District) included a survey conducted among female respondents. The following results were gathered:⁶⁴

- 1) 92% agree that domestic violence can cause divorce and broken families
- 2) 83% agree that domestic violence can affect children's education
- 3) 79% agree that work is disrupted due to the necessity to go to the police and the court
- 4) 79% agree that this incident will bring a negative effect on the family's reputation
- 5) 63% agree that domestic violence would incur more expenses due to frequent visits of the husband to hospital
- 6) 83% agree that violence against women brings a lot of misery, psychological effect and physical injury
- 7) 79% agree that the husband will lose many opportunities if imprisoned
- 8) 50% agree that they would murder their husband due to the injury inflicted upon them

2. De Jure State Responses

a. Bases of State Responsibility

Brunei Darussalam accepts the principles of the United Nations Charter and supports the work of the organization in addressing various international threats, issues, and challenges. It has signed/ acceded to the following Human Rights treaties related to women and children:⁶⁵

- a. 27 December 1995: Convention on the Rights of the Child with reservations to Articles 14⁶⁶, 20⁶⁷, and 21;⁶⁸
- b. 24 May 2006: Convention on the Elimination of all Forms of Discrimination against Women with reservations to Article 9(2) and Article 29 (1);^{69,70}

64 Rogayah Abdullah, *Torture of Women In Brunei Darussalam Darussalam: Case Study in Brunei-Muara District*.

65 UN Human Rights Council, National Report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1 - Brunei Darussalam, A/HRC/WG.6/6/BRN/1, September 9, 2009, accessed March 6, 2012, <http://www.unhcr.org/refworld/docid/4ac9f9dfd.html>, 10.

66 UN Convention of the Rights of the Child, Adopted and Opened for Signature, Art. 14.

67 *Ibid.*, Art. 20.

68 *Ibid.*, Art. 21; see also UN Human Rights Council, *National Report*, 10.

69 Article 9(2) CEDAW.

70 UN Human Rights Council, National Report, 10.

- c. 21 November 2006: Optional Protocol to the Convention on the Rights of Child on the Sale of Children, Child Prostitution and Child Pornography;
- d. As signatory on December 18, 2007: Convention on the Rights of Persons with Disabilities; and
- e. June 9, 2008: C182 ILO Worst Forms of Child Labour Convention, 1999.⁷¹

Brunei Darussalam ratified the UN Convention on the Rights of the Child and the UN Convention on the Elimination of All Forms of Discrimination against Women, both of which are considered as the fundamental bases of upholding the protection of women and children against violence and exploitation.

In the CRC, it made reservations to articles 14, 20 and 21. The reservations were made on the basis that these articles may conflict with the Constitution of Brunei Darussalam and the teaching of Islam.⁷² Article 3(1) of the Constitution of Brunei Darussalam provides that: 'The official religion of Brunei Darussalam shall be the Islamic Religion: Provided that all other religions may be practised in peace and harmony by the persons professing them.'

Below are the reservations of Brunei Darussalam made to the CRC:

Article 14: States Parties shall respect the right of the child to freedom of thought, conscience and religion; 2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child; 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 20: 1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State; 2. States Parties shall in accordance with their national laws ensure alternative care for such a child; 3. Such care could include, inter alia, foster placement, *kafalah* of Islamic law, adoption or if necessary placement in

71 *Ibid.*

72 Amnesty International, Brunei Darussalam: Submission to the UN Universal Periodic Review, April 13, 2009, accessed March 8, 2012, <http://www.amnesty.org/en/library/asset/ASA15/001/2009/en/1f0f2a30-8919-4abb-8e20-d263499cf3d0/asa150012009en.pdf>, 4.

suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21: States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall: (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary; (b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin; (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption; (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it; (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Similarly, Brunei Darussalam also made reservations to Articles 9(2) and 29(1) of CEDAW on the basis that the said articles can possibly be in conflict with the Constitution of Brunei Darussalam and the teaching of Islam.⁷³ As part of its regional commitment as a member of the ASEAN, the following regional agreements were signed/ adopted by Brunei Darussalam:

- 1) 5 July 1988 – Declaration on the Advancement of Women in the ASEAN Region;
- 2) 2 August 2011 – Declaration on the Commitments for Children in ASEAN;
- 3) 30 June 2004 – Declaration on the Elimination of Violence Against Women in the ASEAN Region;
- 4) 29 November 2004 – ASEAN against the

trafficking in Persons Particularly Women and Children

- 5) 13 January 2007– Cebu Declaration Towards One Caring and Sharing Community⁷⁴

b. National Policies against Violence

Various legal provisions are in place to uphold the welfare of women and children in Brunei Darussalam. As acknowledged by Rogayah Abdullah in a report presented during the Inaugural Course on Gender and Development in 2006, that although there is no specific policy on the protection of women, Brunei Darussalam had nevertheless established various domestic legislations that can protect women and children from violence.⁷⁵

The following are domestic laws protecting women and children from violence:

The Women and Girls Protection Act (Cap 120) provides protection for women and girls through provisions that criminalize any act that may harm and threaten, such as: 'selling or hiring women and girls for the purpose of prostitution; harbouring women and girls by false pretences of fraudulent means; setting up of brothels; detaining women and girls in a brothel or in any place for prostitution; trafficking in women and girls; and living in or trading in prostitution.'⁷⁶

The Unlawful Carnal Knowledge Act (Cap 29) penalizes sexual intercourse with a girl below the age of 16 years.⁷⁷

The Penal Code (Cap 22) provides for various offences which may be used for the protection of basic human rights such as offences affecting the human body, offences relating to religion, offences against property, defamation. It also contains provisions to protect children involved in criminal cases. The Penal Code protects the child under the age of 12 years by not considering any act done by him as an offence, and thus that child is exempted from any criminal liability due to his insufficient maturity and lack of understanding of the nature and consequences of the act. The Penal Code also penalises criminal acts against children, including:

- 1) Infanticide, exposure and abandonment of children;
- 2) Procreation of minor girl and importation of girl from foreign country for the purpose of forceful

73 *Ibid.*

74 UN Human Rights Council, National Report, 11.

75 NIEW, The Inaugural Course On Gender And Development.

76 *Brunei Darussalam: Millennium Development Goals*, 44.

77 *Ibid.*, 45.

- illicit intercourse;
- 3) Kidnapping or abducting children;
- 4) Selling and buying children for prostitution purposes; and
- 5) Rape and incest of children.⁷⁸

In abuse cases, the Penal Code (Cap 22) also provides protection for women generally, by criminalising acts that cause hurt and grievous hurt to any person, rape, incest, insult to the modesty of women and voluntarily causing a woman with a child to miscarry.⁷⁹

Married Women Act (order) of 1999, now Married Women Act (Amended) 2010 'governs the rights of married women as well as provides for matters incidental thereto such as rights to maintenance, respect of property, remedy, civil actions and legal representation and protection of a spouse physically injured. This Act however, does not apply in any matter where any of the parties professes the Islamic religion.'⁸⁰

In the absence of a special law penalizing domestic violence, the Married Women Act (Amended) 2010 defines domestic violence as the commission of any of the following acts:

- (a) wilfully or knowingly causing, or attempting to cause, a family member to be in fear or hurt;
- (b) causing hurt to a family member by such act which is known or ought to have been known would result in hurt;
- (c) compelling the family member by force or threat to engage in any conduct or act which he has the right to abstain;
- (d) wrongfully confining or restraining a family member against his will;
- (e) continual harassment with intent to cause distress, annoyance or humiliation, or knowing that it is likely to cause distress, annoyance or humiliation, to a family member; or
- (f) causing destruction, damage, or loss to property of a family member or causing financial loss to a family member.⁸¹

Other amendments include protection order, expedited order, compensation, procedure, and power of arrest.⁸² Further, the *Married Women Act (Amended) 2010* (as also contained in the *Married Women Act of 1999*) provides for the promotion of women's equality. It provides that the husband and the wife have the right to engage in their own chosen profession, including social activities. The wife has the right to use her own surname and the husband and wife have equal rights in the management of the household. This law, however, provides no particular protection with respect to the property of the wife, any effort to secure her property must be done through civil or criminal action. This law does not apply to Muslim marriages.⁸³

The *Islamic Family Law* of 1999, now the *Islamic Family Law (Amendment) Order 2010*, provides guidelines and rules to an Islamic family in terms of 'marriage, divorce, maintenance, guardianship and other matters. It provides protection for women and children by preserving and safeguarding their interests and rights in order to guarantee and promote their welfare, such as: maintenance and accommodation of married women; division of and partaken in matrimonial property for women after divorce; ill treatment of wife or husband; maintenance of dependants; and guardianship of children.'⁸⁴ The 2010 amendments include provisions pertaining to '*dharar Syar'ie*' or domestic violence with the same definitions as that of the *Married Women Act (Amended) 2010*.⁸⁵

Marital rape can fall under the definitions of 'domestic violence' and '*dharar Syar'ie*' in the preceding two orders. These orders state that causing hurt to a family member by such act that would result in injury or compel the family member by force or threat to engage in any act, from which he or she has a right to abstain, falls under the definition of '*dharar Syar'ie*' and 'domestic violence'.⁸⁶

The Criminal Procedure Code prohibits the imposition of a death sentence on a pregnant woman convicted of a capital offence, prohibition of whipping of women, and that body searches on a woman must be done by another

⁸² *Ibid.*

⁸³ Datin Hajah Adina Bte Othman, Director of Department of Community Development, Brunei Darussalam, to United Nations, High Commission for Human Rights, October 15, 2005, Brunei Darussalam Report on Violence against Women, accessed March 12, 2012, www.japem.gov.bn.

⁸⁴ *Brunei Darussalam: Millennium Development Goals*, 44.

⁸⁵ Married Woman Act Amendment Order 2010.

⁸⁶ Zareena Amiruddin, "Marital Rape: Are Women In Brunei Darussalam Protected From It?," *The Brunei Times*, August 13, 2010, accessed March 8, 2012, <http://www.bt.com.bn/news-nation-al/2010/08/13/marital-rape-are-women-brunei-protected-it>.

⁷⁸ UN Human Rights Council, National Report, 6-7.

⁷⁹ *Ibid.*

⁸⁰ *Brunei Darussalam: Millennium Development Goals*, 45.

⁸¹ Woman Act Amendment Order 2010, Article 83(3), June 28, 2010, accessed March 12, 2012, http://www.agc.gov.bn/agc1/images/LAWS/Gazette_PDF/2010/EN/s063.pdf.

woman; the *Prisons Act* contains provisions for the protection of a woman prisoner's welfare.⁸⁷

One significant development after CRC is the issuance of the Children and Young Persons Order, 2006.⁸⁸ Under this Order, several legal actions can be executed to protect the children and young persons in Brunei Darussalam. The Children and Young Persons Order 2006 includes:

- 1) Protectors, Registrar and Register (Part II)
- 2) Juvenile Courts (Part III)
- 3) Action Teams on Child Protection (Part IV)
- 4) Temporary Custody, Medical Examination and Treatment (Part V)
- 5) Offences in relation to Health and Welfare of Children and Young Persons (Part VI)
- 6) Notification on taking Child or Young Persons into Care, Custody or Control (Part VII)
- 7) Trafficking in Children and Young Persons (Part VIII)
- 8) Procedure in Juvenile Courts (Part IX)
- 9) Remand Homes (Part X)
- 10) Places of Detention (Part XI)
- 11) Approved Schools and Proved Homes (Part XII)
- 12) Provisions Applicable to persons Being Detained in Approved Schools, Approved Homes,
- 13) Remand Homes and Places of Detention (Part XIII)⁸⁹

Section 3(a) of the Children and Young Persons Order, 2006 also contains the definition of violence against children:

- (a) a child or young person is physically injured if – there is substantial and observable injury to any part of his body as a result of the non-accidental application of force or an agent to the child's or young person's body that is evidenced by, amongst other things, a laceration, contusion, abrasion, scar, fracture or other bone injury, dislocation or sprain, haemorrhaging, the rupture of a viscus, a burn or scald, the loss or alteration of consciousness or physiological functioning or the loss of the hair or any teeth;
- (b) a child or young person is emotionally injured if there is substantial and observable impairment of his mental or emotional functioning that is

evidenced by, amongst other things, a mental or behavioural disorder, including anxiety, depression, withdrawal, aggression or delayed development;

- (c) a child or young person is sexually abused if he has taken part, whether as a participant or an observer, in any activity which is sexual in nature for the purposes of any pornographic, obscene or indecent material, photograph, recording, film, videotape or performance or for the purpose of sexual exploitation by any person for that person's or another person's sexual gratification.⁹⁰

The *Childcare Centres Order 2006* 'regulates the registration, supervision and inspection of Childcare Centres, to ensure that the well-being, health and safety of every child under the childcare centres are given the utmost priority. The Department of Community Development is the licensing authority for Childcare Centres and coordinates the registration process with all relevant government agencies.'⁹¹

To address the issues of adoption in Brunei Darussalam, the *Islamic Adoption of Children Order of 2001 as revised in 2010*⁹² is being utilized to enforce the conditions and limitations prior to the grant of an adoption order, taking into consideration the welfare and protection of the child. For non-Muslims, the Adoption of Children Order of 2011 and the Guardianship of Infants Act are enforced.⁹³

c. Assessment of State Policies

During the 13th session of the Human Rights Council on 4 January 2010, the Brunei Darussalam delegation highlighted its high Human Development Index, with Brunei Darussalam ranking 30th out of 177 nations, attributing this to its national efforts to achieve national harmony, unity, stability and prosperity by guaranteeing equitable socio-economic development, an approach to promote respect towards human rights.⁹⁴

Brunei Darussalam's Long-term Development Plan (*Wawasan Brunei Darussalam 2035*) or the National Vision

87 *Brunei Darussalam: Millennium Development Goals*, 45.

88 Children and Young Persons Order 2006.

89 *Ibid.*

90 *Ibid.*

91 UN Human Rights Council, National Report, 6.

92 Islamic Adoption of Children, 2010, accessed March 9, 2012, <http://www.agc.gov.bn/agc1/images/LOB/PDF/Cap206.pdf>.

93 UN Human Rights Council, National Report, 8.

94 UN Human Rights Council, Report of the Working Group on Brunei Darussalam, 5.

2035 is contained in the report Millennium Development Goals. This report cites various developmental plans for women and children. It also includes its commitment to gender development and empowerment; and states that between 2004 and 2008, there is a recorded increase from 63,500 to 70,600 of women in employment, an 11% increase in women's participation to the labour force.⁹⁵

The institutionalization of women's support through the creation of the Women's Unit under the Department of Community Development is part of Brunei Darussalam's National machinery for Women Development. The objective of the Unit is to:

[U]ndertake and coordinate programmes and activities pertaining to women affairs; undertake research/studies on women in development; collect and disseminate information on women; implement awareness programmes on women issues including the rights and responsibilities of women as agents of development including their responsibilities in strengthening the family unit in order to achieve harmonious living in family life, society and the nation; undertake awareness programmes designed to eliminate discrimination against women, such as violence against women, legislation, trafficking etc.; and encourage the participation of women in national development without compromising the stability of their marriage/family life.⁹⁶

That said, a number of suggestions were made by other member countries of the Human Rights Council regarding the improvement of Brunei Darussalam's policies on the protection of women and children.⁹⁷

Protection of Women and Children from Violence

The US State Departments 2010 Human Rights Report on Brunei Darussalam states:

... there is no specific domestic violence law, but arrests have been made in domestic violence cases under the Women and Girls Protection Act. A special unit staffed by female officers existed within the police department to investigate domestic abuse and child abuse complaints. A hotline was available for persons to report domestic violence.⁹⁸

During the 13th session of the Human Rights Council held on 8 February 2011, it was recorded that 'the delegation cited various laws regarding the protection of women's rights, including the Women and Girls Protection Act (chapter 120), the Married Women Act (chapter 190), the Islamic Family Law Order 1999, the Penal Code (chapter 22) and the Criminal Procedure Code (chapter 7)'⁹⁹ However, it must be noted that both the Married Woman Act of 1999 and Islamic Family Order of 1999 had been amended on 28 June 2010.¹⁰⁰ The amendment included provisions pertaining to '*dharar Syar'ie*' or domestic violence.

During the 34th session of the Committee on the Rights of the Child held on 27 October 2003, part of its concluding observations for Brunei Darussalam with regard to violence, abuse and maltreatment are as follows:

The Committee notes the adoption of the Children's Order 2000 and welcomes the special unit of the police established in 1997 to deal with child victims of abuse and violence, but remains concerned that there is insufficient information and awareness in the State party of the ill-treatment and abuse of children within the family and institutions. The Committee recommends that the State party:

- (a) Conduct a study to assess the nature and extent of ill-treatment and abuse of children, and design policies and programmes to address these practices;
- (b) Take legislative measures to prohibit all forms of physical and mental violence, including corporal punishment and sexual abuse of children, in the family and in institutions;
- (c) Carry out public education campaigns about the negative consequences of ill-treatment of children, and promote positive, non-violent forms of discipline as an alternative to corporal punishment;
- (d) Establish effective child-sensitive procedures and mechanisms to receive, monitor, and investigate complaints, including intervening where necessary;
- (e) Investigate and prosecute cases of ill-treatment, ensuring that the abused child is not victimized in legal proceedings and that his/her privacy is protected;
- (f) Provide care, recovery and reintegration for

⁹⁵ *Brunei Darussalam: Millennium Development Goals*, 43.

⁹⁶ *Ibid.*, 44.

⁹⁷ UN Human Rights Council, Report of the Working Group on Brunei Darussalam, 7.

⁹⁸ US Department of State, 2010 Human Rights Report.

⁹⁹ UN Human Rights Council, Report of the Human Rights Council on its thirteenth session, 177.

¹⁰⁰ Attorney General's Chamber, accessed on March 3, 2012, <http://www.agc.gov.bn/>

- child victims;
- (g) Train teachers, law enforcement officials, care workers, judges and health professionals in the identification, reporting and management of cases of ill-treatment;
 - (h) Rehabilitate offenders;
 - (i) Seek assistance from, among others, the World Health Organization (WHO).¹⁰¹

Also during the 34th session of the Committee on the Rights of the Child held on October 27, 2003, the Committee expressed its concern that:

[T]he minimum age for marriage is 14 years, which the Committee considers as being far too low. The Committee is further concerned that even younger children may marry under Islamic law. The Committee recommends that the State party:

- (a) Review and, accordingly, take steps to amend its legislation so that the minimum-age requirements are gender neutral and explicit and ensure that they are enforced by law;
- (b) In particular, increase the minimum age for marriage and make it the same for boys and girls.¹⁰²

Protection of Women and Children from Rape

In the Report of the Working Group on the Universal Periodic Review during the 13th session of the Human Rights Council on 4 January 2010, the Netherlands observed that Brunei Darussalam had made broad reservations on CEDAW and CRC, and that its 'Penal Code does not criminalize marital rape if the wife is not under 13 years of age, and the rape of men and boys'. Along with this, the Netherlands made its recommendations.¹⁰³ Similarly, the 2010 Human Rights Report: Brunei Darussalam of the US State Department cites that:

[T]he law does not criminalize spousal rape; it explicitly states that sexual intercourse by a man with his wife, as long as she is not under 13 years of age, is not rape. Protections against sexual assault by a spouse are provided under the amended Islamic Family Law Order 2010 and Married Women Act Order 2010, and the penalty for breaching a protection order is a fine not exceeding BN\$2,000 (\$1,538) or imprisonment not exceeding six months.¹⁰⁴

101 UN Convention on the Rights of the Child, Consideration of Reports, 8.

102 *Ibid.*, 5.

103 UN Human Rights Council, Report of the Working Group on Brunei Darussalam, 7.

104 US Department of State, 2010 Human Rights Report.

As stated in the Human Rights Council Working Group on the Universal Periodic Review, 6th session held in Geneva from 30 November to 11 December 2009, Amnesty International also expressed a similar observation, noting that Brunei Darussalam's Penal Code with regards to rape stipulates that 'sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape.' Amnesty International said this amounts to legalisation and legitimization of marital rape, including the rape of children, in flagrant violation of international human rights law. It added that the offence of rape is limited to acts against women and girls, thus providing no protection for men and boy victims of rape.¹⁰⁵

As mentioned above, marital rape can fall under the definitions of 'domestic violence' and *dharar Syar'ie* in the Married Women Act (Amended) 2010 and Islamic Family Law (Amendment) Order 2010, respectively. These orders state that causing hurt to a family member by such act that would result in injury or compel the family member by force or threat to engage in any act, from which he or she has a right to abstain, falls under the definition of *dharar Syar'ie* and 'domestic violence'.¹⁰⁶ In Brunei Darussalam, any sexual act with a girl under the age of 16 is illegal under the Unlawful Carnal Knowledge Act (Cap 29), while its Penal Code defines rape as 'any man who has intercourse with a woman with or without her consent when she is under 14 years of age.'¹⁰⁷

On Corporal Punishment and Juvenile Justice

In the 34th session of the Committee on the Rights of a Child held on 27 October 2003, the committee expressed concern that corporal punishment is not prohibited at home, in schools or institutions and remains acceptable in the society. The Committee noted that the new book of discipline for schools does not specifically prohibit corporal punishment nor does it even refer to it as a form of discipline.¹⁰⁸ The CRC Committee 'strongly recommend[ed] that the State party prohibit corporal punishment at home, in schools and institutions and

105 UN Human Rights Council, Summary prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1 - Brunei Darussalam, A/HRC/WG.6/6/BRN/3, July 21, 2009, accessed March 6, 2012, <<http://www.unhcr.org/refworld/docid/4acc63f7d.html>>, 3.

106 Zareena Amiruddin, "Marital Rape: Are Women in Brunei Darussalam Protected from It?"

107 ASP Mariyani Abdul Wahab, 'Awareness, Prevention and Intervention.'

108 UN Convention on the Rights of the Child, Consideration of Report, 7.

undertake education campaigns to educate families on alternative forms of discipline.¹⁰⁹ The same report states that:

The Committee is concerned that the minimum age of criminal responsibility is set at 7 years, which is far too low. The Committee is further concerned that there is no juvenile justice system although it is foreseen in law, that children are detained with adults and that whipping is used as a form of punishment for boys.

The Committee recommended as follows:

- (a) ensure that its legislation and practice concerning juvenile justice fully reflect the provisions of the Convention, in particular articles 37, 39 and 40, as well as other relevant international standards in this area, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, and the Vienna Guidelines for Action on Children in the Criminal Justice System;
- (b) raise the minimum age of criminal responsibility to an age which is internationally acceptable;
- (c) ensure that deprivation of liberty is used only as a measure of last resort, for the shortest possible time, and that persons under 18 are not detained with adults;
- (d) abolish the sentence of whipping for boys¹¹⁰

During the Human Rights Council Working Group on the Universal Periodic Review, 6th session, held in Geneva from 30 November to 11 December 2009, the Global Initiative to End All Corporal Punishment of Children (GIEACPC) noted that corporal punishment is lawful in the home, in schools, and in penal institutions as a disciplinary measure. It is not prohibited in alternative care settings. GIEACPC further noted that corporal punishment can be used in the penal system as a sentence for a crime. For instance, males aged 7-17 may be sentenced to be whipped up to 18 strokes for a range of offences under the Penal Code and other laws. The Children and Young Persons Order would allow such a sentence to be passed only by the High Court. GIEACPC highlighted the concerns of the Committee on the Rights of the Child on corporal punishment and its recommendations for explicit prohibition in the home,

schools and institutions, and as a sentence of the courts. Amnesty International also recommended that Brunei Darussalam repeal or amend all provisions in domestic laws providing for caning, whipping or any other cruel, inhuman or degrading punishment.¹¹¹

Further, during the 13th session of the Human Rights Council on 4 January 2010, the Report of the Working Group on the Universal periodic Review cited the following recommendations from the member countries:

- (a) Specifically prohibit corporal punishment at home and in schools and undertake appropriate campaigns to educate families on alternative forms of discipline (Germany);
- (b) Prohibit corporal punishment at home and in schools and sensitize families in this respect (Italy);
- (c) Establish an appropriate system of juvenile justice in conformity with international standards and its international commitments (Argentina);
- (d) Take further practical steps to enhance the administration of juvenile justice (Belarus);
- (e) Continue efforts to combat ill-treatment of children and design policies and programmes to address these practices (Brazil);¹¹²
- (f) Specifically prohibit corporal punishment in institutions (Germany); prohibit corporal punishment in other public institutions and abolish whipping as a form of punishment (Italy); abolish the practice of corporal punishment (France); legally prohibit any form of corporal punishment of children and adolescents (Chile);¹¹³

During the same session, the delegation of Brunei Darussalam explained as follows:

In relation to questions on corporal punishment and sexual violence, Brunei Darussalam explained that its society was underpinned by the family system, but that there were also specific laws that sought to address all forms of physical and psychological violence and sexual abuse against children. These laws were generally in conformity with the principles and articles of CRC. Furthermore, regular and systematic awareness programmes were undertaken by the Department of Community Development to

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*, 11-12.

¹¹¹ UN Human Rights Council, Summary prepared by the Office of the High Commissioner for Human Rights, 3.

¹¹² UN Human Rights Council, Report of the Working Group on Brunei Darussalam, 14-17.

¹¹³ *Ibid.*, 18.

publicize and sensitize society on the rights of the child, for instance, by having weekly road shows in schools and weekly media programmes. On corporal punishment in schools, the delegation indicated that it had been prohibited since 1984.¹¹⁴

In the Report of the Human Rights Council on its Thirteenth session held on 8 February 2011, the delegation of Brunei Darussalam cited an important development since its review in December 2009: the entry into force of the Children and Young Persons Order on 1 March 2010 and its replacement of the Children Order 2000. The new Order included the establishment of juvenile courts and action teams on child protection. It further enhanced the rights of children and safeguarded their welfare, and also provided for approved homes and approved schools for children in need of protection, and proper remand homes and places of detention for children admitted to legal custody. There were also provisions ensuring the recovery and social reintegration of child victims of crimes. In response to questions raised during the interactive dialogue, the delegation informed the Council that, with regard to articles 37, 39 and 40 of the CRC, those provisions had been included in chapter 22 of the Penal Code, chapter 7 of the Criminal Procedure Code and in the recently enforced Children and Young Persons Order 2006.¹¹⁵

Other Concerns

Also during the 13th session of the Human Rights Council on 4 January 2010, several recommendations from the member countries were acknowledged by Brunei Darussalam. Suggestions concerning the welfare of women and children are as follows:¹¹⁶

- (a) Consider acceding to the remaining major international human rights law instruments (Egypt, Azerbaijan, Jordan, Japan, Argentina, Algeria, Slovenia, Bangladesh);
- (b) Undertake, as recommended by the Committee on the Rights of the Child, a comprehensive review of existing legislation from a rights-based perspective, to ensure its conformity with the principles and provisions of CRC (Turkey);
- (c) Continue efforts aimed at strengthening the roles, functions and capacities of national institutions and mechanisms responsible for the

promotion and protection of human rights and fundamental freedoms, including the sharia legal system (Malaysia);

- (d) Consider potential areas of expansion for the National Council on Social Issues to enable it to further promote respect for fundamental rights and freedoms for all Brunei Darussalam Darussalam's citizens (Australia);
- (e) Continue its efforts to further strengthen its human rights infrastructure (Pakistan); continue its efforts to develop its legal and institutional framework with respect to the promotion and protection of human rights (Jordan);
- (f) Continue on-going efforts for the betterment of the rights of children and women and other vulnerable groups (Vietnam); continue to strengthen the promotion and protection of the rights of vulnerable groups, such as women, children, persons with disabilities and the elderly (Thailand); continue its efforts in strengthening, promoting and protecting the rights of women (Bahrain);
- (g) Intensify efforts to eliminate all forms of discrimination against women, inter alia through advocating and promoting women's empowerment, capacity building, gender sensitivity training and public awareness-raising activities (Malaysia);
- (h) Take concrete measures to increase the proportion of women in senior management positions in the civil service (Norway);
- (i) Further promote the proper use of technologies, with particular attention to the Internet, based on human values, respect for self and others and children's rights (Islamic Republic of Iran);
- (j) Continue to carry out its excellent effort to ensure nine years' compulsory education for all children from the age of six (Bhutan);
- (k) Continue to strengthen economic, political and social development with full participation of the population of all strata (Lao People's Democratic Republic);¹¹⁷

3. Implementation, Monitoring and Prevention

a. Implementing and Monitoring Mechanism

The agencies involved in the implementation of the national policies to protect women and children and

¹¹⁴ *Ibid.*, 13.

¹¹⁵ UN Human Rights Council, Report of the Human Rights Council on its 13th Session, 176-177.

¹¹⁶ UN Human Rights Council, Report of the Working Group on Brunei Darussalam, 14-17.

¹¹⁷ *Ibid.*

the monitoring of its operation are the Royal Brunei Darussalam Police Force, the Community Development Department, the National Children's Council and the Courts.

Royal Brunei Darussalam Police Force

The forefront in the implementation of the mechanisms for the protection of women and children is the Women and Children Abuse Investigation Unit, formerly Domestic Violence and Child Abuse Unit. This Special Unit is composed of female officers and tasked to investigate domestic violence complaints.¹¹⁸ The Domestic Violence and Child Abuse Unit was established in 1997. 'This unit was incorporated under the Anti-Vice Unit in 1999. The main focus of the unit is to protect women and children from domestic violence whether physical or mental, and its work also covers cases involving injury or abuse, neglect, maltreatment or exploitation including sexual abuse.'¹¹⁹ The unit was then renamed the Women & Children Abuse Investigation Unit (WCAIU) in 2009, still under the supervision of the Royal Brunei Darussalam Police Force. It works closely with the Medical Social Workers and the Social Affairs Services Unit, the latter being the responsible agency to provide shelter for the victims.¹²⁰

Department of Community Development

Under the Department of Community Development is the Women's Unit, which performs the following functions:

- (a) provide protection, counselling and advice to women and girls who are victimized by marital abuse, sexual abuse, drug abuse and other social ills; to provide welfare benefits, emergency relief, educational guidance, training and temporary shelter to women who are destitute, elderly, widowed, divorced, disabled or victims of natural disaster;
- (b) organize and implement self-reliant/entrepreneurial programmes in helping women become economically-independent; and
- (c) monitor the activities of women's associations in the country in order to ensure that they are in line with national development objectives.¹²¹

118 US Department of State, 2010 Human Rights Report.

119 UN Committee on the Rights of the Child (CRC), UN Committee on the Rights of the Child: State Party report: Brunei Darussalam, CRC/C/61/Add.5, accessed March 7, 2012, <http://www.unhcr.org/refworld/docid/3f25933f2.html>, 137

120 *Ibid.*

121 *Brunei Darussalam: Millennium Development Goals*, 44.

Ministry of Culture Youth and Sports

The Social Affairs Services Unit, Ministry of Culture Youth and Sports is the coordinating body for the implementation of the CRC. For abused children, a shelter home under the supervision of the Social Affairs Services Unit, Ministry of Culture Youth and Sports, is provided. This shelter home provides the abused children counselling services, skills training, Islamic teachings and an educational facility.¹²²

National Children's Council

The National Children's Council, which was established in 2001, is responsible for formulating and monitoring the implementation of legislation related to children.¹²³ However, the CRC Committee 'notes that the National Children's Council is entrusted with the coordination of the activities of the various bodies with regard to children, while the Social Affairs Services Unit of the Ministry of Culture, Youth and Sports is the coordinating body for the implementation of the Convention. The Committee is therefore concerned that this may lead to duplication and lack of effectiveness in the implementation of the Convention.'¹²⁴ The CRC Committee also 'recommends that the State party establish a clear mandate for the National Children's Council enabling it to perform an effective coordination of the activities of government ministries and NGOs for the implementation of the Convention with adequate power, a legal framework and a general secretariat with sufficient human, financial and other resources.'¹²⁵

Attorney General's Chambers

The Islamic Family Law (Amendment) Order and the Married Women Act (Amendment) Order were promulgated on 28 June 2010. To promote the awareness and understanding of the provisions of these Orders, the Chambers has continuously made these orders known to the public with the collaboration of the Department of Community Development, Royal Brunei Darussalam Police Force, the Syariah Affairs Department, Islamic

122 UN Committee on the Rights of the Child (CRC), UN CRC: State Party Report: Brunei Darussalam, 37.

123 Representing Children Worldwide, 'Brunei Darussalam', accessed March 9, 2012 <http://www.law.yale.edu/rcw/rcw/jurisdictions/asse/bruneidarussalam/frontpage.htm>

124 UN Convention on the Rights of the Child, Consideration of Reports, 3.

125 *Ibid.*

Legal Unit of the Ministry of Religious Affairs, the Ministry of Health and the relevant enforcement agencies.

b. Complaints Process

The Women & Children Abuse Investigation Unit (WCAIU) is responsible for receiving complaints and investigation of abuse cases against women and children.¹²⁶ This special unit is staffed by female officers who investigate domestic abuse and child abuse complaints.¹²⁷ A hotline, which was initiated in 1995, is in service for abused spouses and for the public to report domestic violence.¹²⁸

The Married Women (Amended) Order 2010 and Islamic Family Law (Amendment) Order 2010 defines the power of arrest of a police officer and duties of the enforcement officer, respectively:

18H (1) Where a police officer believes on reasonable grounds that domestic violence has been committed or is likely to be committed by a person against a family member and that it is necessary for the protection of the family member for the person to be detained until a protection order or expedited order is obtained, the police officer may without warrant arrest such person and every person so arrested shall be taken to a police station; (2) Such person shall thereafter be dealt with under section 33 of the Criminal Procedure Code.

18J. (1) The duties of an enforcement officer include:

- (a) Assisting a victim to file a complaint regarding the domestic violence;
- (b) Providing or arranging transportation for the victim to an alternative residence or to a place of protection if such transportation is required
- (c) Providing or arranging transportation for the victim to the nearest hospital of medical facility for treatment of injuries if such treatment is needed
- (d) Explaining to the victim his rights to protection against domestic violence;
- (e) Accompanying the victim to his residence or previous residence to collect his personal belongings;

- (f) Such other duties as are necessary or expedient for giving effect to and carrying out the provisions of this Part

60F. (1) Where a police officer believes on reasonable grounds that *dharar Syar'ie* has been committed or is likely to be committed by a person against a family member and that it is necessary for the protection of the family member for the person to be detained until a protection order or expedited order is obtained, the police officer may without warrant arrest such person and every person so arrested shall be taken to a police station; (2) Such person shall thereafter be dealt with under section 33 of the Criminal Procedure Code (Chapter 7).

60H. (1) The duties of an enforcement officer include:

- (a) Assisting a victim to file a complaint regarding the domestic violence;
- (b) Providing or arranging transportation for the victim to an alternative residence or to a place of protection if such transportation is required
- (c) Providing or arranging transportation for the victim to the nearest hospital of medical facility for treatment of injuries if such treatment is needed
- (d) Explaining to the victim his rights to protection against domestic violence;
- (e) Accompanying the victim to his residence or previous residence to collect his personal belongings;
- (f) Such other duties as are necessary or expedient for giving effect to and carrying out the provisions of this part

c. Protection and Rehabilitation

The Women's Unit of the Department of Community Development provides the following services:

- (a) protection, counselling and advice to women and girls who are victimized by marital abuse, sexual abuse, drug abuse and other social ills;
- (b) provide welfare benefits, emergency relief, educational guidance, training and temporary shelter to women who are destitute, elderly, widowed, divorced, disabled or victims of natural disaster;
- (c) organize and implement self-reliant/entrepreneurial programmes in helping women

¹²⁶ UN Committee on the Rights of the Child (CRC), UN CRC: State Party report: Brunei Darussalam

¹²⁷ US Department of State, 2010 Human Rights Report.

¹²⁸ Online Women, 'Women's Rights Situation in Brunei Darussalam,' accessed March 10, 2012, <http://www.onlinewomeninpolitics.org/womensit/brun.pdf>.

- become economically-independent; and
- (d) monitor the activities of women's associations in the country in order to ensure that they are in line with national development objectives.¹²⁹

For abused children, a shelter home under the supervision of the Social Affairs Services Unit, Ministry of Culture Youth and Sports, is provided. This shelter home provides the abused children counselling services, skills training, Islamic teachings and an educational facility.¹³⁰ According to Datin Hj Adina Othman, Director of Jabatan Pembangunan Masyarakat (JAPEM) or the Community Development Department, a department under the Ministry of Culture, Youth and Sports 'the government has programmes such as counselling and family conferencing that can help these victims of abuse.'¹³¹

Based on individual circumstances, some female and minor victims were placed in protective custody while waiting for their cases to be brought to court.¹³² The court may also, upon being satisfied that domestic violence has been committed or is likely to be committed by any person against a family member and that is necessary for the protection of that family member, make a protection order restraining that person from using domestic violence against that family member.¹³³

Under the Children and Young Persons Order 2006, action teams on child protection shall be created. The established groups of persons known as Action Team on Child Protection, has the purpose of coordinating locally-based services to families, children and young persons who are or suspected being in need of protection. Each Action Team on Child Protection shall be co-ordinated by the Department of Community Development.¹³⁴ This Order also provides protection and rehabilitation of children and young persons.¹³⁵

129 *Brunei Darussalam: Millennium Development Goals*, 44.

130 UN Committee on the Rights of the Child (CRC), UN CRC: State Party Report: Brunei Darussalam

131 Rachel Thien, 'Govt ready to help victims of domestic violence,' *The Brunei Times*, November 28, 2009, accessed January 12, 2012, <http://news.brunei.fm/2009/11/27/govt-ready-to-help-victims-of-domestic-violence/>

132 US Department of State, 2010 Human Rights Report.

133 Mohammad Yusree Junaidi and Zuraini Sharbawi, "The Protection of Victims, Particularly Women and Children, Against Domestic Violence, Sexual Offences and Human Trafficking - The Brunei Experience," ASEAN Law Association, accessed January 4, 2012, http://www.aseanlawassociation.org/9GAdocs/w5_Brunei.pdf, 7-8.

134 Children and Young Persons Order 2006.

135 *Ibid.*, See especially, section 56, 57, 58, 61-63.

d. Prevention Strategy

The National Machinery for Women Development, as specified in Brunei Darussalam's Millennium Development Goals, identifies the Department of Community Development as the national focal point for all matters pertaining to women issues. Under the DCD is the Women's Unit, which is responsible to:

- (a) undertake and coordinate programmes and activities pertaining to women affairs;
- (b) undertake research/studies on women in development;
- (c) collect and disseminate information on women;
- (d) implement awareness programmes on women issues including the rights and responsibilities of women as agents of development including their responsibilities in strengthening the family unit in order to achieve harmonious living in family life, society and the nation;
- (e) undertake awareness programmes designed to eliminate discrimination against women, such as violence against women, legislation, trafficking etc.; and
- (f) encourage the participation of women in national development without compromising the stability of their marriage/family life.¹³⁶

ASP Mariyani Abdul Wahab, from the Women and Child Abuse Investigation Unit of the Royal Brunei Darussalam Police Force (RBPF), shares that their awareness campaigns are strongly directed to secondary school children 'to empower them with knowledge by sharing about the modus operandi of the perpetrator, the offence of violence against women, what they can do if they themselves were victim or know of someone who is a victim and discuss on how they can avoid to be victimized.'¹³⁷

4. Role of Non-State Actors

a. Assistance to Victims

The Department of Community Development works closely with the Council of Women of Brunei Darussalam (CWBD), an NGO established on 6th April 1985. It is an umbrella NGO for 13 women's organizations that

136 *Brunei Darussalam: Millennium Development Goals*, 44.

137 ASP MARIYANI Abdul Wahab, 'Awareness, Prevention and Intervention.'

represent the views and aspirations of women in the country. CWBD's main objective is to improve the status of women in areas like education, economy, welfare, culture and society. It aims for gender equality and the promotion of women's role in national development. Its agenda includes the pursuit of gender equality and gender mainstreaming in national development plans including gender budgeting. CWBD is engaged in providing inputs and decision making in implementing national, regional and international commitments by partnering with various government agencies. It is also a member of the ASEAN Confederation of Women's Organisations (ACWO).¹³⁸ CWBD has established its own counselling unit, which is open every Friday and Saturday to women in need of someone to confide in on issues such as domestic violence.¹³⁹

The Women's Business Council of Brunei Darussalam (WBC) is an NGO that represents the interests and concerns of women in the area of business. It empowers women by creating an avenue for the exchange of ideas and developing entrepreneurship skills, and provides support for quality businesses for women. Among its activities are trade fairs, business matching and networking and training at local, regional and international levels.¹⁴⁰

Aside from government support, non-governmental organizations such as Sultan Haji Hassanal Bolkiah Foundation and associations such as the Rotary Club and Lions Club are main contributors to the operation of the medical social work services. The medical social work services, which is under the Ministry of Health, is tasked to work on the following concerns: management of suspected child abuse cases, child protection work in relation to suspected at risk children, management of crisis in relation to family violence, assessment of the socioeconomic status of children with disabilities as well as family psychodynamics welfare advocacy work, family counselling and community service.¹⁴¹

138 *Brunei Darussalam: Millennium Development Goals*, 47.

139 Hana Roslan and Ubaidillah Masli, 'Women's Counselling Unit Created,' *The Brunei Times*, 9 April 2011, accessed March 12, 2012, <http://www.bt.com.bn/news-national/2011/04/09/womens-counselling-unit-created>.

140 *Brunei Darussalam: Millennium Development Goals*, 47.

141 7th Asean and Japan High Level Officials, 'Towards an Inclusive Society Strengthening Collaboration Between Social Welfare, Health And Medical Systems,' August 31 – September 3, 2009, The 7th Asean and Japan High Level Officials Meeting on Caring Societies in Japan, Brunei Darussalam Country Report, accessed March 11, 2012, http://www.jicwels.or.jp/about_jicwels/ASEAN&JapanHighLevelOfficialsMeeting/7th_2009_pdf/Brunei_Country_Report.pdf.

b. Prevention Programs

There are few recorded prevention programs initiated by the non-state actors in Brunei Darussalam. However, NGOs such as the Child Rights International Network (CRIN) and the End All Corporal Punishment of Children provide reviews on protection of children's rights in Brunei Darussalam. On women concerns, the Council of Women of Brunei Darussalam (CWBD) organized a Training Workshop on Handling Violence Against Women on 5-7 July 2010.¹⁴²

c. Monitoring and Cooperation

The 34th Session of the Committee on the Rights of the Child held on 27 October 2003, in its Concluding Observations on Brunei Darussalam cites its concern that insufficient efforts have been made to involve civil society in the full implementation of the Convention and in the reporting process.¹⁴³ In addition, the Committee expressed concern on the absence of an independent monitoring mechanism with a mandate to receive individual complaints from children.¹⁴⁴

The CRC Committee then 'recommend[ed] that the State party involve systematically non-governmental organizations (NGOs) and other civil society groups, including children's associations, throughout all stages of the implementation of the Convention, including the formulation of the national plan of action, policies and programmes, and in the drafting of the next report to the Committee.'¹⁴⁵

As stated in the Millennium Development Goals, the Ministry of Culture, Youth and Sports now works closely with the NGOs on issues concerned with women's rights. The collaboration is maintained through an umbrella NGO, the Council of Women of Brunei Darussalam (CWBD), to improve the status of women in different areas like education, health, welfare, culture and society.¹⁴⁶ The reports, however, do not provide details on how the local non-state actors monitor the State in the implementation of laws and policies against violence.

142 Berita, Women's Business Council, No. 4 July-Dec 2010, accessed March 11, 2012 <http://issuu.com/bruneilibraryassociation/docs/140.berita-jul10-dec10>.

143 UN Convention on the Rights of the Child, Consideration of Reports, 3.

144 *Ibid.*

145 *Ibid.*

146 *Brunei Darussalam: Millennium Development Goals*, 40.

5. Progress Indicators and Challenges

With reference to the CEDAW, notwithstanding the reservations of Brunei Darussalam to Articles Article 9(2) and Article 29 (1), the efforts of Brunei Darussalam to address the issue of domestic violence include the promulgation of the Married Women Act (Amended) 2010, the Islamic Family Law (Amendment) Order 2010. These laws provide not only women, but also the rest of the household members' protection from violence. However, the above-mentioned laws are observed to be ambiguous in their treatment of marital rape. Another concern that remains unaddressed is the recommendation to criminalize all acts of rape without exception, irrespective of the marital status and gender of the victim.

To date, Brunei Darussalam does not have a law against discrimination or harassment in workplace for the women.¹⁴⁷ The lack of express and explicit prohibition of corporal punishment remains a concern, as this renders children vulnerable to abuse.

On the establishment of a national human rights institution, the following are recommendations from the member countries and the response of Brunei Darussalam during the Report of the Working Group on Brunei Darussalam's Universal Periodic Review:

Undertake a comprehensive study on the feasibility and relevance of establishing a national human rights institution in conformity with the Paris Principles (Malaysia); consider the establishment of an independent national human rights institution in conformity with the Paris Principles (Egypt).

The response of Brunei Darussalam to this recommendation is as follows:

The existence of an inter-agency consultative mechanism, which works closely with NGOs and civil society, has ensured human rights in the country are well promoted and protected. At the regional level, the ASEAN Intergovernmental Commission on Human Rights (AICHR), where Brunei Darussalam was involved intensively in its establishment, sets the stage for further understanding the roles and functions of a human rights institution.¹⁴⁸

¹⁴⁷ Zohari, Maryani, 'Ensuring Equal Rights for Women', The Brunei Times, June 29, 2011, accessed May 17, 2012, <http://www.bt.com.bn/opinion/2011/06/29/ensuring-equal-rights-women>.

¹⁴⁸ UN Human Rights Council, Report of the Working Group on the Universal Periodic Review on Brunei Darussalam – Addendum, A/HRC/13/14/Add.1, March 19, 2010, accessed March 5, 2012 www.upr-info.org/IMG/pdf/A_HRC_13_14_Add-1_E.pdf, 3.

As mentioned above, there are significant inconsistencies in the statistics provided by various agencies. Further, these statistics do not provide the definition of its indicators and scope of its research. As there is no particular agency designated to collect and monitor statistics on the occurrence of violence against women and children, the available data may not be a reliable representation of the actual prevalence of violence. Academic research on the matter of violence against women and children are very limited, mostly presenting only case studies but not the causative elements of violence.

In the absence of a holistic database, quantitative and qualitative research, and policy assessment analysis, it will be difficult to monitor the progress indicators. As the incidents of violence are increasing every year, it is important that a comprehensive study of the occurrence of this type of violence in the society be conducted.

C. EXPLOITATION

1. Description of the Problem

a. Prevalence of Exploitation

Sex Trafficking of Children in Brunei Darussalam, a publication of ECPAT International, states that there is insufficient reliable data in Brunei Darussalam, making the number of trafficking victims in distinguishable. The report observes that the presence of large numbers of young migrant workers in the country poses the possibility that some may encounter conditions of involuntary labour. The same publication presents its concerns that there may be child trafficking in Brunei Darussalam. Further, as there are numerous men and women from Indonesia, Philippines, Bangladesh, China and Thailand who migrate legally to Brunei Darussalam as domestic or low skilled workers, a marginal group may be subjected to involuntary labour after their arrival.¹⁴⁹

It also raised concern that Brunei Darussalam has been used as a transit point to transmit smuggled persons to another country. The case of four trafficked women who were rescued by a foreign mission with the assistance of local migration officials on 24 September 2008, is an example. These women were being exploited in another country, but were in Brunei Darussalam to obtain work visa re-entry permits.¹⁵⁰

¹⁴⁹ *Ibid.*

¹⁵⁰ *Ibid.*

Forced Labour

The 2011 Trafficking in Persons report by the US Department of State describes Brunei Darussalam as a destination and to a lesser extent, a source and transit country for men and women who are subjected to forced labour and forced prostitution. It elaborates as follows:

Men and women from Indonesia, Malaysia, the Philippines, Pakistan, India, Bangladesh, China, and Thailand migrate to Brunei Darussalam for domestic work or other low-skilled employment, but sometimes face conditions of involuntary servitude after arrival. There are over 87,500 migrant workers in Brunei Darussalam, some of whom face debt bondage, non-payment of wages, passport confiscation, confinement to the home, and contract switching – conditions widely recognized as key indicators of human trafficking. There were credible reports of South Asian nationals in Brunei Darussalam who are subjected to non-payment of wages and debt bondage of up to a year's wages in order to pay off fees owed to labour recruitment agencies. Some of the 25,000 female domestic workers in Brunei Darussalam were required to work exceptionally long hours without being granted a day for rest, creating an environment consistent with involuntary servitude.¹⁵¹

Also in the 2011 Trafficking in Persons report by the US Department of State, it is reported that:

Although it is illegal for employers in Brunei Darussalam to withhold wages of their domestic workers for more than 10 days, some families are known to withhold wages to compensate for labour broker or recruitment fees they are charged and as a tool with which to maintain the service of the workers. Although government regulations prohibit wage deductions by agencies or sponsors and mandate that employees receive their full salaries, some foreign workers continued to pay high fees to overseas recruitment agents to obtain work in Brunei Darussalam, leaving them vulnerable to debt bondage.¹⁵²

Forced Prostitution

It is also reported that while Asian children and women are being smuggled to Brunei Darussalam, there are also young people from Brunei Darussalam and other countries in Southeast Asia who are trafficked to Australia using student visas. They are said to be forced by their

traffickers to sell drugs or engage in prostitution. It is reported that Brunei Darussalam has limited capacity to protect foreign victims of trafficking and there are no NGOs to assist these victims, they were subjected to prosecution for violations of immigration and labour laws. In addition, it is cited that there is no formal system of protection or assistance to victims of foreign trafficking. However, in cases where the government recognizes that the victim is a material witness in the prosecution of the human smugglers, the former is to be provided with temporary shelter and protection.¹⁵³

There are also some incidents of women forced into prostitution in Brunei Darussalam. Some Asian children and women who are initially promised employment as house helpers may end up sexually exploited as in the case of two Filipina victims who were promised jobs as guest relations officers or restaurant helpers, but were forced into prostitution upon their arrival. In 2007, it was reported that the Brunei Darussalam police conducted investigation and made arrests on 10 cases concerning foreign women engaged in prostitution. These women were from Thailand, Indonesia, the Philippines, and China and had entered the country as tourists; of which in one case, two women asserted that they were trafficked by their handlers. These women later declined to cooperate with police investigation and were repatriated. Also in 2007, two Thai nationals were arrested 'for living, in part, on the earnings of prostitution from three Thai nationals who were possible trafficking victims. However, due to lack of evidence of trafficking and non-cooperation of the victims, the suspected human smugglers were prosecuted under another criminal law.'¹⁵⁴

According to the 2011 Trafficking in Persons report by the US Department of State, there are reports of women forced into prostitution in Brunei Darussalam, and that women arrested for prostitution attest to having been victims of trafficking. Many of these victims enter the country on social visit passes or tourist visas. Brunei Darussalam is said to be a transit country for trafficking victims in Malaysia, including Filipinas, who are brought to Brunei Darussalam for visa renewals before being returned to Malaysia.¹⁵⁵

151 US Department of State, 'Country Narratives – Brunei Darussalam,' in Trafficking in Person Report 2011, <http://www.state.gov/documents/organization/164453.pdf>, 100.

152 *Ibid.*

153 The Body Shop and ECPAT, 'Stop Sex Trafficking of Children and Young People.'

154 *Ibid.*

155 US Department of State, 'Country Narratives – Brunei Darussalam,' 100.

b. Root Causes of Exploitation and Aggravating Practices

There is no available study that examines the root causes of exploitation. However, the United Nations Office for the Coordination of Humanitarian Affairs equates the incidence of human trafficking to the law of supply and demand, it cites that, like most global trade flows, supply and demand conditions drives trafficking in persons. Supply is provided by vulnerable persons seeking a better life and who correspondingly meet the demand for cheap labour and prostitutes.¹⁵⁶

In addition to this, the UN Office for the Coordination of Humanitarian Affairs also cites the influence of the global and financial crisis to human trafficking, stating that with an estimated 50 million jobs cut globally by the end of 2009, the global financial and economic crisis may make more people and communities vulnerable to human trafficking. The global financial and economic crisis has also fuelled the demand for trafficking in persons. Economic hardship in destination countries has increased the desire for cheap goods and services. Moreover, as profits fall, a greater number of businesses move their operations underground to avoid taxes and to produce cheaper goods under conditions that are unacceptable under unionized labour laws in destination countries.¹⁵⁷

Brunei Darussalam has not adopted an aggressive stance against trafficking. As 2011 US Department of State's Trafficking in Persons Report noted:

The Government of Brunei Darussalam does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. Despite these efforts and ample resources, the government has not shown evidence of increasing efforts to address human trafficking over the previous year; therefore, Brunei Darussalam is placed on Tier 2 Watch List. The government has yet to prosecute a human trafficking case using its 2004 anti-trafficking law. In November 2010, authorities announced plans to create an anti-trafficking unit within the Royal Brunei Darussalam Police Force, though the unit has yet to begin operations. During the year, the government did not identify or assist any trafficking victims. The government has yet to develop or implement formal procedures to identify victims of trafficking.¹⁵⁸

¹⁵⁶ UN Office for the Coordination of Humanitarian Affairs, 'Trafficking in Persons.'

¹⁵⁷ *Ibid.*

¹⁵⁸ US Department of State, 'Country Narratives – Brunei Darussalam.'

c. Impact of Exploitation

There is no in-depth study on the impact of exploitation in Brunei Darussalam. The information provided by the United Nations Office for the Coordination of Humanitarian Affairs however states that trafficked persons suffer atrocious living and working conditions that physically injure, psychologically traumatize and, in some cases, cost their lives.¹⁵⁹

2. De Jure State Responses

a. Bases of State Responsibility

The CRC obliges Brunei Darussalam to take all necessary actions to prevent the commercial exploitation of children, including through trafficking, and to ensure that the best interests of the child are the primary consideration in relation to all aspects of Brunei Darussalam's response. The CEDAW obliges Brunei Darussalam to take all appropriate measures to suppress the traffic in women and the exploitation of women through prostitution.¹⁶⁰

Brunei Darussalam has signed or acceded to the following human rights related treaties that are considered to aid in the prevention of exploitation of children and women:

- (a) Convention on the Rights of the Child (27 December 1995);
- (b) Convention on the Elimination of All Forms of Discrimination against Women (24 May 2006);
- (c) Optional Protocol to the Convention on the Rights of the Child on the sale of Children, Child Prostitution and Child Pornography (21 November 2006);
- (d) Convention on the Rights of Persons with Disabilities (as a signatory on 18 December 2007)
- (e) United Nations Convention against Transnational Organised Crime (25 March 2008);
- (f) C182 ILO Worst Forms of Child Labour Convention, 1999 (9 June 2008); and
- (g) UN Convention against Corruption (2 December 2008).

However, it must be noted that Brunei Darussalam is not a party to the UN Trafficking Protocol or the Migrant Smuggling Protocol, and has not concluded any bilateral treaties concerning mutual legal assistance to recover

¹⁵⁹ UN Office for the Coordination of Humanitarian Affairs, 'Trafficking in Persons.'

¹⁶⁰ Junaidi and Sharbawi, *The Protection of Victims*, 12.

proceeds of crime. Brunei Darussalam, on the other hand, is a party to United Nations Convention against Transnational Organized Crime (UNTOC), United Nations Convention against Corruption (UNCAC) and to the ASEAN Mutual Legal Assistance Treaty (MLAT).¹⁶¹

In the absence of any bilateral extradition arrangement between Brunei Darussalam and any other country, there is an existing 'simplified extradition' in the domestic laws of Brunei Darussalam, similar to that of Malaysia and Singapore. Notably, the Extradition Act of Singapore (sections 33-39) and Malaysia (Part V) allows endorsements of warrants issued by Malaysia, Singapore and Brunei Darussalam.^{162,163}

b. State Policies against Exploitation

Brunei Darussalam employs the following domestic legislation as its legal response to trafficking in persons: the Trafficking and Smuggling of Persons Order (2004), Mutual Assistance in Criminal Matters Order (2005), Criminal Conduct (Recovery of Proceeds) Order (2000) and Extradition Order of 2005.

A specific legislation in Brunei Darussalam that addresses exploitation is the Trafficking and Smuggling of Persons Order (2004):

Under Trafficking and Smuggling Persons Order, a person convicted of trafficking persons, harbouring smuggled persons or endangering the lives or safety of trafficked or smuggled persons can be fined up to B\$1 million (\$700,000), imprisoned for up to 30 years and caned. A person convicted of facilitating trafficking or smuggling persons can be fined up to B\$50,000 (\$35,000) and imprisoned for up to 10 years. Immigration and other law enforcement officials received training to investigate and prosecute suspected offenders and to deal with trafficked victims. In 2008, there were no reported cases of prosecutions for human trafficking, nor were there any reports of government officials involved in trafficking. A national committee coordinates government-wide strategies for combating transnational crime, including trafficking.¹⁶⁴

The Mutual Assistance in Criminal Matters Order of 2005 is a national law that defines the requirements and limitations for mutual legal assistance requests made by and to Brunei Darussalam. Under this Order, assistance may be provided for criminal offenses, which includes criminal investigation, proceedings and other matters relating to a trafficking offense. The following are the requirements:

- (a) Evidentiary Test: Where there is a request for the taking of evidence or production of documents, articles or other things in Brunei Darussalam, the Attorney General is to be satisfied that: the request relates to a criminal matter in that country; and there are reasonable grounds for believing that the evidence can be taken or the documents, articles or other things can be produced in Brunei Darussalam - Sec. 27. Further, where a production order is sought, the Court is to be satisfied that the requested production of the document, article or other thing is necessary or desirable for the purposes of the criminal matter to which the request relates - Sec. 29.
- (b) Dual Criminality: A request may be refused if the relevant act or omission would not have constituted an offence in Brunei Darussalam - Sec. 24(2)(c).
- (c) Reciprocity: There is no reciprocity provision.
- (d) Specialty: A request shall be refused if the Requesting State has failed to undertake that the article or thing requested will not be used, except with the consent of the Attorney General, for a matter other than the criminal matter in respect of which the request was made - Sec. 24(1)(g)

Restrictions and exceptions of this Order are as follows:

- (a) Double Jeopardy / Ongoing Proceedings: A request shall be refused if the provision of assistance could prejudice a criminal matter in Brunei Darussalam - Sec. 24(1)(j).
- (b) Human Rights: A request shall be refused if there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to the person on account of his/her colour, race, ethnic origin, sex, religion, nationality or political opinions - Sec. 24(1)(c).

161 David et al., *ASEAN Handbook*, 157-159.

162 *Ibid.*, 117.

163 *Ibid.*, 120.

164 The Body Shop and ECPAT, 'Stop Sex Trafficking of Children and Young People.'

- (c) Death Penalty: There is no death penalty exception.
- (d) Political / Military Offence: There is no political or military offence exception.
- (e) National / Public Interest: A request for assistance shall be refused if it would be contrary to the interests of the public and prejudicial to the sovereignty, security or national interests - Sec. 24(1)(e).
- (f) Bank Secrecy / Fiscal Measures: There is no bank secrecy or fiscal measures exception.¹⁶⁵

The request form is prescribed in Section 23 of the Order and must be submitted in English. For urgent matters, requests may be verbally made but be subsequently confirmed in writing, as provided for in section 23.b of the Order. There is no provision as to the attendance of officials during the submission of the form. For requests under ASEAN MLAT and UNCAC, the Attorney General is the designated Central Authority. Similarly, requests under the Mutual Assistance in Criminal Matters Order of 2005 are to be coursed through the Attorney General.¹⁶⁶ The Criminal Conduct (Recovery of Proceeds) Order of 2000 or the CCRPO and the MACMO provide mutual legal assistance in the recovery of proceeds of crime.¹⁶⁷

The Extradition Order (2005) provides for repatriation procedures to and from Brunei Darussalam. For arrest warrants issued in Singapore and Malaysia, chapter 154 of the Extradition (Malaysia and Singapore) Act provides that these warrants be endorsed and executed as if these were arrest warrants issued in Brunei Darussalam and renders the person in custody to be transferred to the relevant court in either Singapore or Malaysia. The Extradition Order (2005) considers the crime of people or child trafficking referred to in Section 4 or 5 of the Trafficking and Smuggling of Persons Order (2004) as an extradition offence as the latter has a maximum penalty of more than one year imprisonment.¹⁶⁸

The Extradition Order (2005) entails the following requirements:

- (a) Evidentiary Test: There is no evidence test in most cases, though supporting documentation must be provided in accordance with Sec. 15. However in the case of extradition to Commonwealth countries a 'prima facie' test may be applied and a 'record of the case' may be required.

- (b) Dual Criminality: Dual criminality is required under Sec. 3.
- (c) Specialty: The Attorney General may refuse to surrender the person under Sec. 17 if the requesting country has not given a specialty undertaking.¹⁶⁹

Restrictions and Exceptions of the Extradition Order (2005)

- (a) Double Jeopardy / Ongoing Proceedings: There is an extradition objection under Sec. 4(g) if the person has already been acquitted or punished for the offence in either Brunei Darussalam or in the requesting country. Surrender may also be refused under Sec. 17(e) if a prosecution is pending in Brunei Darussalam for the offence for which extradition is sought.
- (b) Citizen: The Attorney General may refuse the surrender of a citizen - Sec. 17(d).
- (c) Political / Military Offence: There is an extradition objection under Sec. 4(a) if the offence is of a political nature, and under Sec. 4(d) if it is purely a military offence.
- (d) Human Rights: There is also an extradition objection if there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to the person on account of his / her race, religion, nationality, political opinions, sex or status, or if his / her trial would be prejudiced for these reasons. Surrender may also be refused under Sec. 17(i) if the person has been tortured or subjected to cruel, inhuman or degrading treatment or punishment in the requesting country.
- (e) Death Penalty: There is no death penalty exception.
- (f) Jurisdiction: Surrender may be refused under Sec. 17(g) on the basis that the offence was committed wholly or partly within the territory of Brunei Darussalam.¹⁷⁰

Other Domestic Laws Protecting Women and Children from Exploitation

In addition, the Women and Girls Protection Act, Cap 120 provides for the protection of women and young girls by, inter alia, penalising the act of:

- (a) Selling, letting, hiring, buying or obtaining

¹⁶⁵ David et al., *ASEAN Handbook*, 157-158.

¹⁶⁶ *Ibid.*, 158.

¹⁶⁷ *Ibid.*, 158-159.

¹⁶⁸ *Ibid.*, 159.

¹⁶⁹ *Ibid.*

¹⁷⁰ *Ibid.*, 160.

- woman or girl for the purposes of prostitution, whether in Brunei Darussalam or elsewhere
- (b) Selling, buying, procuring, trafficking in or importing into Brunei Darussalam woman or girl, whether or not for present or subsequent prostitution,
 - (c) By threat or intimidation procures any woman or girl to have carnal connection within Brunei Darussalam or elsewhere
 - (d) Procuring by or under false pretence, false representation, or fraudulent or deceitful means within or without Brunei Darussalam, bringing or assisting in bringing into Brunei Darussalam any woman or girl with intent that such woman or girl shall be employed or used for the purpose of prostitution either within or without Brunei Darussalam, or knowing or having reason to believe that such woman or girl will be employed or used
 - (e) Bringing into Brunei Darussalam, receiving or harbouring any woman or girl under the age of 21 years or any woman or girl of or above that age not being a prostitute or of a known immoral character knowing or having reason to believe that such woman or girl has been procured for the purpose of carnal connection except by way of marriage, with any other person or for purpose of prostitution either within or without Brunei Darussalam and with intent to aid such purpose
 - (f) Detaining any woman or girl in a brothel against her will
 - (g) Detaining any woman or girl in any place against her will with intent that she be used or employed for the purpose of prostitution or any unlawful or immoral purposes
 - (h) Living wholly or in part on the earnings of prostitution of any other person
 - (i) Persistently soliciting or importunes on behalf of any woman or girl in a public place, for immoral purposes

The Penal Code (Cap 22) provides for various offences which may be used for the protection of basic human rights such as offences affecting the human body, offences relating to religion, offences against property, defamation, etc. It also contains provisions to protect children involved in criminal cases. The Penal Code protects the child under the age of 12 years by not considering any act done by him as an offence, and thus that child is exempted from any

criminal liability due to his insufficient maturity and lack of understanding of the nature and consequences of the act. The Penal Code also penalises criminal acts against children, including:

- (a) Infanticide, exposure and abandonment of children;
- (b) Procreation of minor girl and importation of girl from foreign country for the purpose of forceful illicit intercourse;
- (c) Kidnapping or abducting children;
- (d) Selling and buying children for prostitution purposes; and
- (e) Rape and incest of children.¹⁷¹

c. Assessment of State Policies

Brunei Darussalam is not a party to the UN Trafficking Protocol of the Migrant Smuggling Protocol and to the Protocol to Prevent, Suppress, and Punish Trafficking in persons, especially Women and Children. It has also not concluded any bilateral treaties concerning mutual legal assistance in criminal matters, or mutual legal assistance to recover proceeds of crime and bilateral extradition.¹⁷²

However, it is a party to UNTOC, UNAC and the ASEAN Mutual Legal Assistance Treaty (MLAT).¹⁷³ It also acceded to the Convention on the Rights of a Child on 27 December 1995, the Optional protocol on the sale of children, child prostitution and child pornography on 21 November 2006 and the ILO Convention no. 182 on Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour on 9 June 2008.¹⁷⁴

The Committee on the Rights of Child (CRC) was concerned that the minimum age for marriage is 14, which it considered far too low, and that even younger children may marry under Islamic law.¹⁷⁵ Hence it is suggested that the minimum age for marriage be increased and should be the same for both boys and girls, to prevent the threat to children being trafficked for early marriage.¹⁷⁶

According to the compilation of UPRs to OHCHR, which was prepared by the Office of the High Commissioner

171 UN Human Rights Council, National Report, 18, 6-7.

172 David et al., ASEAN Handbook, op.cit., 157-159.

173 *Ibid.*, 157.

174 The Body Shop and ECPAT, 'Stop Sex Trafficking of Children and Young People.'

175 UN Convention on the Rights of the Child, Consideration of Reports, op.cit., 5.

176 The Body Shop and ECPAT, 'Stop Sex Trafficking of Children and Young People.'

for Human Rights, the CRC expressed concern that the minimum age for employment is not clear. It recommended that the State party establish a clear minimum age for employment in line with the existing international standards such as those enshrined in ILO Conventions No. 138 concerning the Minimum Age for Admission to Employment of 1973 and No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour of 1999.¹⁷⁷

The 2011 Trafficking in Persons report by the US Department of State cites that while Brunei Darussalam prohibits both sex and labour trafficking through its Trafficking and Smuggling Persons Order of 2004, and that the government used its 2004 law to prosecute a smuggling case during the year, it has yet to use the law to prosecute or convict a human trafficking offender. The 2004 Order prescribes punishments of up to 30 years' imprisonment, which is sufficiently stringent and commensurate with penalties prescribed for other serious offenses, such as rape.¹⁷⁸

In November 2010, the government announced its plans to create an anti-trafficking unit within the Royal Brunei Darussalam Police Force, but the unit has not yet begun operations, and no date has been set for the unit to begin work, as it has not yet received budgetary approval.¹⁷⁹

Authorities continued to rely on victims coming forward or being identified by foreign embassies to begin investigations, and did not make efforts to proactively identify suspected trafficking victims among vulnerable groups, such as women in prostitution. During the year, there continued to be complaints by foreign workers, some of whom may have been trafficking victims, against employers who failed to pay salaries; however, authorities did not investigate these cases for potential trafficking.¹⁸⁰

The government often relied on mediation or administrative rather than criminal penalties in labour-related offenses. Two employers received a punishment of a fine or imprisonment for failure to pay wages to their employees, but authorities did not report investigating these cases to see if there was any further evidence of trafficking.¹⁸¹ Further, it was observed that

the government did not provide legal alternatives to the removal of foreign trafficking victims to countries where they may face hardship or retribution.¹⁸²

3. Implementation, Monitoring and Enforcement

a. Monitoring Mechanisms

Under the Trafficking and Smuggling of Persons Order, 2004, the Royal Brunei Darussalam Police Force, the Immigration Department and the Royal Customs and Excise are empowered to carry out investigations (including the powers of search) into any alleged offences committed under the Order and to arrest without warrant any persons reasonably believed to have committed such offences. Although currently, there is no specialist unit within the Immigration Department, this department takes the lead role in trafficking investigations.¹⁸³

The National Committee on Transnational Crime (NCTC) is established to combat transnational crimes such as trafficking and smuggling of persons. The NCTC is chaired by the Permanent Secretary of the Prime Minister's Office and includes Attorney-General's Chambers, Ministry of Finance, Royal Brunei Darussalam Police Force, Ministry of Foreign Affairs and Trade, Ministry of Defence, the Internal Security Department, Immigration and Customs.¹⁸⁴ The Committee acts as a coordinating body between these agencies and acts as a focal point for combating transnational crimes. The Committee is also responsible to initiate and coordinate national action plans and programmes in this area.¹⁸⁵

b. Complaints Process

In the Progress Report on Criminal Justice Responses to Trafficking in Persons, it states that Brunei Darussalam does not, at this time, have a specialist unit. This situation, however, is said to be likely remedied in the near future. The Immigration and National Registration and Royal Customs and Excise Departments are currently mandated to investigate TIP. In addition to obstacles caused by competing demands, immigration and customs officials are rarely trained to deal with complex crimes such as trafficking. These factors lessen the likelihood that cases of trafficking are quickly and accurately identified and

177 UN Human Rights Council, Compilation Prepared by the Office of the High Commissioner for Human Rights, 7.

178 US Department of State, 'Country Narratives – Brunei Darussalam,' 100.

179 *Ibid.*

180 *Ibid.*

181 *Ibid.*

182 *Ibid.*, 101.

183 Junaidi and Sharbawi, *The Protection of Victims*, 22.

184 *Ibid.*, 12.

185 'Statement of H.E. Dato Haji Kifrawi Dato Haji Kifli, Attorney General Of Brunei Darussalam,' The Eleventh United Nations Congress On Crime Prevention And Criminal Justice, United Nations, http://www.un.org/webcast/crime2005/statements/25brunei_eng.pdf.

investigated.¹⁸⁶

The Trafficking and Smuggling of Persons Order 2004 provides the guidelines for the powers of arrest and investigation as follows:

15. (1) Any police officer, Immigration Officer or officer of customs may arrest without warrant any person who he reasonably believes has committed an offence under this Order or any regulations made thereunder. (2) When any person is arrested by an Immigration Officer or officer of customs, such officer shall comply with the provisions of section 33 of the Criminal Procedure Code [Chapter 7) as if he were a police officer. (3) In any case relating to the commission of any offence against this Order or any regulations made thereunder, any Immigration Officer or any officer of customs shall have the same powers of investigation of a police officer under Chapter XIII of the Criminal Procedure Code (Chapter 7).¹⁸⁷

The powers of search under the Trafficking and Smuggling of Persons Order 2004 are as follows:

16. (1) Any police officer, Immigration Officer or officer of customs may without a warrant -

- (a) enter and search any premises; and
- (b) stop and search any ship, vehicle and person, whether in public place or not, if he has reason to believe that any evidence of the commission of an offence against this Order or any regulations made hereunder is likely to be found on such premises or person or in such ship or vehicle and may seize any evidence so found.

(2) No woman shall be searched under this section except by a woman.¹⁸⁸

The offences under the Trafficking and Smuggling of Persons Order 2004 are non-bailable. No prosecution for any offence under this Order shall be instituted except with the consent in writing of the Public Prosecutor.¹⁸⁹

186 Fiona David et al., Progress Report on Criminal Justice Responses to Trafficking in Persons in the ASEAN Region, (Association of Southeast Asian Nations, 2011), accessed March 13, 2012, http://www.artipproject.org/progress-report/Progress%20Report_Criminal%20Justice%20Responses%20to%20TIP%20in%20the%20ASEAN%20Region_2011.pdf, 36.

187 Trafficking and Smuggling of Persons Order 2004, Article 83(3), <http://www.protectionproject.org/wp-content/uploads/2010/09/BRUNEI.pdf>, Sec 15.

188 *Ibid.*, Sec 16.

189 *Ibid.*, Sec 17- 18.

The offences created by this Order shall be –

- (a) offences to which the Criminal Conduct (Recovery of Proceeds) Order, 2000 (S 52/00) apply;
- (b) deemed to be included in the list of extradition crimes described in the First Schedule to the Extradition Act (Chapter 8);
- (c) offences in respect of which mutual legal assistance may be granted under any law relating to mutual legal assistance in criminal matters.¹⁹⁰

c. Protection and Rehabilitation

The 2011 Trafficking in Persons Country Narrative Report of the US Department cites that there are insufficient efforts on the part of Brunei Darussalam to identify and protect victims of human trafficking. It further cites that Brunei Darussalam does not have in position a pre-emptive system to formally identify victims of trafficking among susceptible groups such as foreign workers and foreign women and children that may be engaged in prostitution. The Brunei Darussalam government officials are not equipped with the proper training on how to identify trafficking victims.

In 2011, its authorities reportedly identified and deported one trafficking victim but the person turned out to be a smuggled migrant instead. As to the provision of assistance to the victim, the government did not classify or assist any victim of trafficking. On the other hand, its immigration authorities identified and charged violators of immigration law; none of these were classified as trafficking victims during the reporting period. Those foreign females in prostitution are often arrested and deported without proper screening or determination if these women were exposed to involuntary prostitution. During the reporting period, two Chinese women were indicted and imprisoned for three months for the crime of prostitution; the TIP report accentuates that some women may have been penalized for illegal acts which may have been the result of they were being trafficked and that the victims of trafficking may even be imprisoned with their traffickers, in close proximity, while the legal proceedings are on-going. In the same report, it is also noted that while Brunei Darussalam government reported the funding of three shelters that may be used to assist victims of trafficking, none of these shelters had actually been used.¹⁹¹

190 *Ibid.*, Sec 24.

191 US Department of State, 'Country Narratives – Brunei Darus-

The Attorney-General's Chambers had established a victim response unit within the Criminal Justice Division to explain to the victims the criminal justice process and inform them of the current status of their cases.¹⁹² The Ministry for Culture's Social Affairs Services Unit, on the other hand, operates shelters known as Taman Nur Hidayah, Darussya'faah and Darussakinah.¹⁹³

The trafficking law in Brunei Darussalam does not specify an obligation on the State to provide victims with immediate protection and support. However, under the Women and Girls Protection Act, women and girls who may be considered in 'moral danger' or who are believed to have been ill-treated and in need of protection may be detained in a 'place of safety'. The Act also authorises the competent authority to make rules for the care, detention, maintenance, and education of women and children detained. It is, however, unclear whether this Act has been used in trafficking cases.¹⁹⁴

d. Prevention Strategy

It has been observed that Brunei Darussalam has shown limited efforts in preventing trafficking in persons. It is reported that there had been efforts by the government to prompt the publication of articles in the newspapers on problems experienced by foreign workers, such as non-payment of salaries but there were no efforts on the part of the government to conduct any public awareness campaigns on trafficking. The actions of Brunei Darussalam towards the prevention of trafficking in persons include: hosting of regional anti-trafficking training organized with the French government, provision of arrival orientation for foreign workers and provision of hotline for worker complaints. The government also convicted two employers for failing to pay wages to their domestic workers while a Vietnamese national was indicted for hiring women in prostitution.¹⁹⁵ In 2008, the Brunei Darussalam police ran an internal workshop for members of the anti-vice unit on how to identify trafficking victims. Law enforcement officials participate in several regional training programs on trafficking.¹⁹⁶

salam', 100-101.

192 Junaidi and Sharbawi, *The Protection of Victims*, 23.

193 *Ibid.*

194 David et al., *Progress Report on Criminal Justice Responses*, 23.

195 US Department of State, 'Country Narratives – Brunei Darussalam', 101.

196 US Department of State, 'Country Narratives – Brunei Darus-

4. Role of Non-State Actors

a. Assistance to Victims

To date, there are no NGOs or international organizations in Brunei Darussalam providing support to victims of human trafficking. However, several embassies, in coordination with the Brunei Darussalam government, provide shelter, mediation, and immigration assistance to its own nationals. There are also no recorded funding provided by Brunei Darussalam to the civil society sector to provide assistance to victims of trafficking.¹⁹⁷

b. Prevention Programs

In the absence of non-state actors in the prevention of the occurrence of exploitation, particularly human trafficking, in Brunei Darussalam, there are no recorded prevention programs undertaken by NGOs. However, non-government groups such as the ECPAT International and UNODC have released information that can aid in the prevention of exploitation in Brunei Darussalam.

c. Monitoring and Cooperation

The Annual Trafficking in Persons Report of the US State Department, and other non-government groups such as the ECPAT International and UNODC monitor the efforts towards the elimination of human trafficking.

5. Progress Indicators and Challenges

The limited information on the area of exploitation in Brunei Darussalam cannot result to a reliable assessment of the current situation. The information gathered from both the local and the independent agencies indicate that there is lack of statistics and, as mentioned earlier, government officials are not equipped with the proper training on how to identify trafficking victims.¹⁹⁸ Despite the existence of the Trafficking and Smuggling of Persons Order 2004, which defines trafficking and smuggling of persons, there is indication that there is no proper method

salam', in *Trafficking in Person Report 2009*, accessed January 15, 2012 <http://www.state.gov/j/tip/rls/tiprpt/2009/123135.html>.

197 US Department of State, 'Country Narratives – Brunei Darussalam', 101.

198 *Ibid.*, 100-101.

in the identification of trafficking victims. Hence, success indicators and progress reports that are made available may not be a reliable indicator. However, the reports utilized in this review have discussed the weaknesses of the state agencies, citing in detail vulnerabilities that may induce the occurrence of the exploitation.

In the country narrative report of the 2011 TIP, it reflects that the Brunei Darussalam government does not fully comply with the minimum standards for the elimination of trafficking but it is undertaking significant efforts to do so. It is recommended that Brunei Darussalam utilize the 2004 Anti-trafficking in Persons law to increase its number of investigations and prosecutions of human trafficking.¹⁹⁹

In its concluding observations for Brunei Darussalam during the 34th Session of the Committee on the Rights of the Child, the CRC Committee recommended that the State party:

- 1) Carry out public education campaigns about the negative consequences of ill-treatment of children;²⁰⁰
- 2) Establish effective child-sensitive procedures and mechanisms to receive, monitor, and investigate complaints, including intervening where necessary;²⁰¹
- 3) Ensure the protection of child victims during legal proceedings, recovery and reintegration;²⁰²
- 4) Train teachers, law enforcement officials, care workers, judges and health professionals in the identification, reporting and management of cases of ill-treatment of children;²⁰³
- 5) Rehabilitate offenders.²⁰⁴

Further, the CRC 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.²⁰⁵ Thus, 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.²⁰⁶

D. ABUSE AND DISCRIMINATION IN MIGRATION

Migration Situation in Brunei Darussalam

The Situation Report on International Migration in East and South-East Asia shows that in Brunei Darussalam, the local population is a mix of several ethnic groups (with Malays as the dominant group), comprising seven ethnic sub-groups, which make up two-thirds of the population. The largest minority group is Chinese (11%). Indian migrants make up a small portion of the population and are engaged mainly in trade and commerce. The remainder of the population (nearly 15%) are foreign nationals. The Government is the largest employer (37.5% of the working population, 91% of whom are citizens or permanent residents).²⁰⁷

Also in the same report, the Labour Department's survey in 2005 found that, of the 106,820 persons employed in all industries in the Private Sector, 69.3% were foreign nationals. Local workers dominate only in the oil and gas industry (73.1 per cent) and financial, insurance and business services (65.4 per cent).²⁰⁸

¹⁹⁹ *Ibid.*, 100.

²⁰⁰ UN Convention on the Rights of the Child, Consideration of Reports, 8.

²⁰¹ *Ibid.*

²⁰² *Ibid.*

²⁰³ *Ibid.*

²⁰⁴ *Ibid.*

²⁰⁵ *Ibid.*, 4.

²⁰⁶ *Ibid*

²⁰⁷ Regional Thematic Working Group on International Migration including Human Trafficking, Situation Report on International Migration in East and South-East Asia Brunei Darussalam, (Bangkok: International Organization for Migration, 2008), accessed March 13, 2012, http://www.unicef.org/eapro/IOM_Situation_Report_-_Final.pdf, 6.

²⁰⁸ *Ibid.*

Table 1. Percentage of local and foreign workers in major industries by gender, Brunei Darussalam, 2005.

Industry	Local (%)			Foreign (%)		
	Male	Female	Total	Male	Female	Total
Agriculture, forestry and fisheries	22.6	71.6	29.8	77.4	28.4	70.2
Oil and liquefied natural gas	68.2	96.6	73.1	31.8	3.4	26.9
Sawmilling and timber processing	10.1	63.2	14.6	89.9	36.8	85.4
Mining, quarrying and manufacturing	12.3	18.7	15.2	87.7	81.3	84.8
Construction	9.2	74.0	13.4	90.8	26.0	86.6
Wholesale and retail trade	29.7	55.1	40.0	70.3	44.9	60.0
Coffee shops, restaurants and hotels	26.6	35.0	30.8	73.4	65.0	69.2
Transport, storage and communications	40.1	81.4	50.1	59.9	18.6	49.9
Services: financial, insurance, business	51.9	84.8	65.4	48.1	15.2	34.6
Services: community, social, personal	24.6	53.6	35.8	75.4	46.4	64.2

Source: Labour Department, Ministry of Home Affairs, Brunei Darussalam, no date.

It was also shown in the Situation Report on International Migration in East and South-East Asia that locals tend to have the larger share of high-wage jobs and of low-wage clerical employment. Migrant workers are mainly employed as craftsmen, labourers, cleaners, machine operators, and in sales and commercial services. Expatriate professionals and executives made up 11-22% of those respective occupational groups.²⁰⁹

Table 2. Local and foreign workers in occupational groups by gender, Brunei Darussalam, 2005

Major occupational group	Local (%)			Foreign (%)		
	Total	Male	Female	Total	Male	Female
Administration, executive	77.7	74.0	88.3	22.3	26.0	11.7
Professionals	70.7	65.7	78.6	29.3	34.3	21.4
Technical	82.5	77.9	87.5	17.5	22.1	12.5
Clerical	88.7	85.3	90.4	11.3	14.7	9.6
Sales and services	67.2	70.8	58.2	32.8	29.2	41.8
Skilled agriculture, fisheries	45.3	39.0	80.7	54.7	61.0	19.3
Crafts, trade	26.3	29.2	16.9	73.7	70.8	83.1
Factory and machine operators	44.7	44.6	47.0	55.3	55.4	53.0
Cleaners, labourers	23.9	31.6	18.2	76.1	68.4	81.8
Unclassified	85.9	85.6	86.5	14.1	14.4	13.5
All groups	53.7	54.7	52.3	46.3	45.3	47.7

Source: Department of Statistics, Brunei Darussalam, 2005

Immigration has contributed significantly to Brunei Darussalam's population growth, particularly since the mid-1970s. Foreign-born residents increased by nearly 80% between 1981 and 2001.²¹⁰ Brunei Darussalam is a receiving country for migrant workers, especially domestic workers or maids. The sources for this labour are mainly Malaysia, the Philippines, Indonesia and Thailand. The demand for migrant domestic workers is on the rise because local workers increasingly seek employment outside of the domestic sphere.²¹¹

²⁰⁹ *Ibid.*

²¹⁰ *Ibid.*

²¹¹ United Nations Development Fund for Women (UNIFEM), Good

As of February 2007, the Department of Immigration and National Registration had issued 94,258 passes to migrant workers and their families. Migrants from Indonesia (42.7% of all migrants), Malaysia and the Philippines make up 78.4% of the migrant population. Nearly half of the migrants from Indonesia and a third from the Philippines are domestic workers. Nearly half (45.9%) of dependent migrants, mostly females, are from Malaysia.²¹²

As of 2010, there were 148,123 immigrants representing 36.4% of the population; 45.5% of these immigrants are female. The top source countries are: Malaysia, the Philippines, Thailand, Nepal, Indonesia, India, the United Kingdom, China, Singapore and Sri Lanka.²¹³ Below is the bilateral remittance estimate for 2010, with Nepal, Malaysia and the Philippines as the highest remittance sending countries:

Bilateral Remittance Estimates for 2010 using Migrant Stocks and Host Country Incomes (millions of US\$), BRUNEI DARUSSALAM ²¹⁴	
Australia	4
Bangladesh	9
China	15
India	28
Indonesia	35
Malaysia	62
Nepal	75
Netherlands	1
Pakistan	2
Philippines	61
Sri Lanka	3
Thailand	26
United Kingdom	4

1. Description of the Problem

a. Prevalence of Abuse and Discrimination in Migration

In a report for the WTO General Council Review of the Trade Policies of Brunei Darussalam, women migrant

Practices to Protect Women Migrant Workers, High Level Government Meeting of Countries of Employment, (Bangkok: UNIFEM, 2005), 32.

²¹² Regional Thematic Working Group on International Migration including Human Trafficking, Situation Report.

²¹³ WorldBank, 'Brunei Darussalam', Migration and Remittances Factbook 2011, accessed March 10, 2012, <http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1199807908806/BruneiDarussalam.pdf>.

²¹⁴ *Ibid*

domestic workers reportedly complain of beatings, long working hours and withholding of wages. Female domestic workers have been subjected to abuse, but are said to be incapable or reluctant to complain to the authorities, as they are highly dependent on their employers.²¹⁵ Statistics at the Labour Department show that 273 complaints of unpaid wages were registered with the Department in 2008. The records show a drastic drop to 81 complaints in 2009 and 30 in 2010.

The figures, however, do not include complaints made by domestic workers, only migrant workers employed in private sector companies. The sharp decline can be attributed to the stricter enforcement of the laws contained within the Employment Order 2009, which allows enforcement agencies to exercise greater authority in monitoring and curbing labour offences. In the past year, the Labour Department has stepped up its crackdown on errant employers by increasing the number of enforcement operations from 15 in 2009 to 79 in 2010 — a four-fold increase.²¹⁶

TYPE OF WORKER COMPLAINTS (COMPANIES)			
	2010	2009	2008
> Salary not paid	30	81	273
> Claim for return passage	6	11	21
> Salary not paid and claim for return passage	43	34	137

Source: labour Department
Graphic: Gillbert | THE BRUNEI TIMES

Source: The Brunei Darussalam Times, 'Migrant workers' Complaint drop', 20th August 2011

b. Root causes of Abuse and Discrimination in Migration

Brunei Darussalam, despite being an attractive destination for migrant workers as its national workforce is still too small to sustain the economy and to develop the country, does not have an immigration programme and never adopted an open door policy because of concerns that immigrants would easily overwhelm the local population.²¹⁷ It should be noted, however, even

though Brunei Darussalam does not have an immigration program, the Employment Order 2009 now provides protection to workers.

The difficulties in the local economy result to smaller profit margins, thus placing employers and entrepreneurs under pressure. As a result, wages given to the workers are less than the contractual agreements and employees' benefits have been reduced to the bare minimum. Irregular migrant workers, who are not entitled to any protection under the law, are the most exploited.²¹⁸

In the Situation Report on International Migration in East and South-East Asia, it was reported that in 2000, there were 4,320,660 crossings through the 10 immigration posts in Brunei Darussalam. By 2006, the number had increased to 5,651,267.²¹⁹ Further, cheaper air travel has further increased migration rates over the past three to five years. The opening up of borders through bilateral or multilateral agreements, allowing nationals to enter countries without a visa, coupled with increasing human mobility has also opened up the opportunity for irregular migration. Many foreign nationals, mainly from the Asia-Pacific region, enter the country as visitors but are actually seeking employment. They take advantage of the above said immigration agreements by exiting and returning, usually on the same day, to extend their stay in the country without a visa. Once employed (illegally), visitors continue to extend their stay in this way. Some buy 'employment passes' from local service providers in order to remain in the country. Such misuse of an employment pass is punishable by a jail term, a fine or whipping.²²⁰

c. Impact of Abuse and Discrimination in Migration

At present, no specific and in-depth study to determine the impact of abuse and discrimination on women and children migrants in Brunei Darussalam can be found. There is no reported abuse against migrant children.

2. De Jure State Responses

a. Bases of State Responsibility

Brunei Darussalam has been a member State of the ILO since January 2007. Discussions with ILO are being conducted to establish the priorities in the Decent Work

215 International Trade Union Confederation (ITUC), Internationally – Recognized Core Labour Standards in Brunei Darussalam, accessed March 13, 2012 http://www.ituc-csi.org/IMG/pdf/Brunei.final_1_.pdf, 6.

216 Quratul-Ain Bandial, 'Migrant workers' complaints drop', The Brunei Times, August 20, 2011, accessed March 14, 2012, <http://www.bt.com.bn/news-national/2011/08/20/migrant-workers-complaints-drop>.

217 Regional Thematic Working Group on International Migration including Human Trafficking, Situation Report, 8.

218 *Ibid.*

219 *Ibid.*

220 *Ibid.*

Country Programme, of which will be influenced by Brunei Darussalam's obligations under the International Labour Conventions, as well as by the capacity of the workers' and employers' organizations to engage in dialogue with the Government.

Brunei Darussalam also ratified the following ILO Conventions:

- (a) International Labour Organization Convention No. 138 (1973) – Concerning Minimum Age for Admission to Employment (17 June 2011)
- (b) International Labour Organisation Convention No. 182 – Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (09 June 2008)

In the 2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, Brunei Darussalam, along with the other ASEAN Member States committed to protect and promote the rights of migrant workers.²²¹

b. National Policies

In Brunei Darussalam, several laws are in place to aid the protection of migrant workers. These include:

- (a) The Labour Act, 1954 (amended in 1984, revised in 2002) which defines the rights and responsibilities of employers and employees.
- (b) Supplementary legislation, such as the Workmen's Compensation Act, 1957 (amended in 1984), places the responsibility for the safety of workers with the employers.
- (c) The Trade Union Act, 1961 (amended in 1972) and the Trade Dispute Act, 1961 were enacted to resolve conflicts that arise between employer and employee.
- (d) The Employment Information Act, 1974 (amended in 1978) was enacted to improve governance through better monitoring and data management. Other regulations provide for maternity benefits, protection of children against exploitation, safety of workplaces, rules on public holidays, protecting the rights of domestic helpers and the payment of wages.²²²

221 'ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers,' January 13, 2007, 12th ASEAN Summit in Philippines, Association of the Southeast Asian Nations, accessed March 13, 2012 <http://www.aseansec.org/19264.htm>.

222 Regional Thematic Working Group on International Migration including Human Trafficking, *Situation Report*, 3.

(e) The Employment Agencies Order of 2004 was introduced to control the activities of employment agencies relating to employment in the private sector, such as domestic workers. This Order was introduced to control the activities of employment agencies relating to employment in the private sector, such as domestic workers. Previously, there was no law to regulate the activities of employment agents who bring foreign workers into Brunei Darussalam. Before the enforcement of this Order, employers who had licenses to bring in foreign workers normally used the services of agents to recruit them based on the quota approved. Such activities raised many complaints from employers about instances of misuse and abuse of their licenses. There are also instances where domestic workers have been brought into the country without the knowledge of the actual employer. Many have been brought in without confirmed employment; Thus, forcing them to look for jobs or work as 'freelancers.' This practice has consequently tarnished the good name of the country, with reports published by foreign media of alleged human trafficking in Brunei Darussalam. With the enforcement of the new Order, entry of foreign workers has been controlled and the welfare of the foreign workers is protected from irresponsible employers. At the same time, employment agencies must operate according to regulations established under the Order and the Department of Labour takes firm legal action against those who violate it.²²³

(f) To indemnify the Government against any costs incurred during the recruitment of foreign workers such as repatriation, the payment of a deposit was introduced in 1986. This deposit is usually used either in cash or in the form of a 'Banker's Guarantee' to settle any dispute between a worker and his employer. The deposit serves to cover the airfare for the worker's return home. In cases where salaries are unpaid, the deposit is crucial to send the worker back to her home country because the employer often fails to pay for the ticket.²²⁴

(g) Migrants can be granted permanent resident status after 15 years of residence and under the fulfilment of other conditions. However, Brunei Darussalam has resisted international pressure to accept asylum seekers or refugees on political or humanitarian grounds.²²⁵

223 UNIFEM (now UN Women), *Good Practices to Protect Women Migrant Workers*, 33.

224 *Ibid.*, 34.

225 Regional Thematic Working Group on International Migration including Human Trafficking, *Situation Report*, 25.

(h) The Employment Order 2009, which was passed in September 2009 and its Employment (Domestic Workers) Regulations 2009, provided comprehensive measures to further stabilize security, welfare, safety and the protection of workers' rights by taking into account the standards of the International Labour Organizations. This Order incorporated aspects such as legal action in the event of non-payment of salary, worker health, accommodation and medical care standards as well as responsibility for repatriation expenses. It covered all employees with no differentiation between local and foreign employees.²²⁶

c. Assessment of State Policies

As the majority of labour laws only apply to citizens of Brunei Darussalam, skilled and unskilled migrant workers are often unprotected from violations. Further, migrant workers do not enjoy freedom of association. Brunei Darussalam became a member of the ILO on 17 January 2007, but has not yet ratified the conventions on freedom of association and collective bargaining.²²⁷ With the promulgation of the Employment Order 2009, migrant workers, including domestic workers, are given more protection. Further, the Employment Order of 2009 may partly, albeit inadequately, compensate for the absence of a clear compliance to CEDAW Recommendations No. 26 on Women Migrant Workers.

During the 13th Session of the Human Rights Council on January 4, 2010, Brunei Darussalam addressed its issues on migrant workers. It stated that it welcomes workers of other nationalities provided that the established labour and immigration requirements are fulfilled to ensure that their rights and welfare are protected. Also during this session, member countries of the Human Rights Council stated their recommendations concerning Brunei Darussalam's migration policies:

- 1) Take effective measures to guarantee respect for the rights of migrant workers (Algeria);
- 2) Seek to better enforce statutes protecting immigrant workers from exploitation and mistreatment (United States);

²²⁶ UN Human Rights Council, Report of the Working Group on Brunei Darussalam, 13.

²²⁷ International Trade Union Confederation, *2009 Annual Survey of violations of trade union rights - Brunei Darussalam*, 11 Jun 2009, accessed March 12, 2012 <http://www.unhcr.org/refworld/docid/4c52cafdc.html>.

- 3) Reconsider the practice of confiscating the passports of migrants who bring to the courts a dispute with their employers, or consider an emergency judicial procedure which makes it possible to fully guarantee the rights of migrant workers on its territory (France).²²⁸

However the recommendation of Mexico for Brunei Darussalam to 'adhere to principles of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) and consider favourably possibly ratifying it; and that of Canada to repeal or amend all provisions in domestic laws which provide for caning for administrative offences involving immigration law' did not enjoy the support of Brunei Darussalam.²²⁹

3. Implementation, Monitoring and Enforcement

a. Monitoring Mechanisms

The Labour Department is the agency responsible for monitoring compliance with labour regulations; the Enforcement Unit of the Labour Department is responsible for discrepancies made by employers. On the other hand, migration issues are handled by Immigration and National Registration Department.

b. Complaints Process

The Labour Department has a unit on addressing complaints of abuse of migrant workers in Brunei Darussalam. Most of the complaints that occurred are related to non-payment of salaries as indicated above whereas female domestic helpers tend to be sexually abused or exploited by the employers. The Labour Department also has enforcement officers available to assist the problems faced by migrant workers.

The embassies of Indonesia and Philippines have established Units especially to address issues on abuses or exploitation of their respective citizens. Under the Section 126 of the Employment Order 2009, the complainant should present a written statement or in person make a statement, to the Labour Commissioner, of his complaint and of the remedy that he seeks. The Commissioner shall then, as soon as practicable, examine the complainant

²²⁸ UN Human Rights Council, Report of the Working Group on Brunei Darussalam, 21.

²²⁹ *Ibid.*

on oath and record the substance of the complainant's statement in his casebook. The Commissioner may make such inquiry as he thinks necessary and may summon the person complained against. Part VII- Sections 123 to 136 states in detail the compliant process that the offended may undergo.²³⁰

c. Protection and Rehabilitation

Aside from the protection provided for in Employment Order 2006 and Employment Agencies Order of 2004, there are no provisions for the rehabilitation of abused migrant workers. In practice, the migrant workers are repatriated, as provided for in section 114(1) of the Employment Order 2009, which states that:

Every immigrant employee who is a party to a contract of service under this Order and who has been brought to Brunei Darussalam by an employer or by any person acting on behalf of the employer shall have the right to be repatriated at the expense of the employer to his place of origin or to the place of engagement ...²³¹

The embassies of the Philippines and Indonesia provide shelter to their nationals. The Labour Department of Brunei Darussalam aids the migrant workers to claim any unpaid wages. Under Section 39(1) of the Employment Order 2009, employers are required to settle all wages owed to their employees by the seventh day of the working month. Those who fail to comply with these regulations can be fined up to \$3,000 and jailed for one year. Some of the other chief complaints filed by migrant workers include employers terminating contracts without notice, illegal deduction of wages, unpaid overtime and failure to provide return passage at the end of a contract. Statistics reveal that in 2010, 43 foreign workers filed complaints stating their salaries had not been paid and no return passage was provided to their home country. This is a sharp decrease from 2008, when 137 complaints of the same nature were made. The overall number of complaints received by the Labour Department from migrant workers in private companies also fell from 468 in 2008 to 99 in 2010 — a 78-per cent decrease.²³²

²³⁰ *Employment Order 2009, Article 83(3)*, September 5, 2009, accessed March 14, 2012, http://www.agc.gov.bn/agc1/images/LAWS/Gazette_PDF/2009/EN/s037.pdf.

²³¹ *Ibid.*

²³² Quratul-Ain Bandial, 'Migrant workers' complaints drop.'

The Employment Order 2009 also promises better protection of employees' welfare and rights. Under the Order, the entry of foreign workers is controlled by the Labour Department and their welfare is protected from irresponsible employers. They are also accorded the same rights as Bruneian citizens under civil and criminal laws. All new employers are briefed on labour laws and regulations and are encouraged to adopt 'good employment practices, harmonious working relationships and mutual respect'. Domestic workers are also required to be present during the signing of employment contracts so that Labour officers can brief them on their rights and obligations. They are also given the department's hotline number if they need to report any abuse or complaints.²³³

d. Prevention Measures

The measures taken by Brunei Darussalam to prevent abuse and exploitation of migrant workers, as cited in publication Good Practices for Migrant Workers in Brunei Darussalam, are:

- 1) Conduct of Pre-Employment Briefing: when signing the Contract of Agreement, domestic workers are required to be present at a briefing session that is conducted by Labour Officers. The meeting briefs them regarding their rights, the do's and do not's. They are also given the Labour Hotline Number for their access to report any abuse or complaints.
- 2) Promotion through the Media: all court cases are publicized through the media as a reminder to employers of the need to comply with prevailing laws and regulations.²³⁴

4. Role of Non-State Actors

To date, there are no non-government organizations established to assist migrant workers in Brunei Darussalam.

- a. **Assistance to Victims**
There is no available information.
- b. **Prevention Programs**
There is no available information.
- c. **Monitoring and Cooperation**
There is no available information.

²³³ *Ibid.*

²³⁴ UNIFEM, (now UN Women) Good Practices to Protect Women Migrant Workers, 34.

5. Progress Indicators and Challenges

There is limited information on the situation of migrants and migrant workers in Brunei Darussalam. The absence of such information renders it difficult to determine the progress in the provision of protection to women migrants and women migrant workers. A report published in the *Brunei Times* on August 20, 2011 cites that the number of complaints from migrant workers in Brunei Darussalam over unpaid wages has dropped by 89 per cent over the past three years; this was attributed to stricter law enforcement.²³⁵

6. Recommendations for Further Study

With reference to all the three sections: violence, exploitation and, abuses and discrimination in migration, the primary concern should be the generation of baseline statistics. The efforts of Brunei Darussalam in protecting the welfare of its people is commendable. However, it is observed that there is inadequate data available in databases provided by UNICEF,²³⁶ World Databank,²³⁷ and UN Secretary-General's database on violence against women,²³⁸ which may be an indicator that national statistics are unavailable. The statistics may serve as the basis for the subsequent researches such as quantitative and qualitative analysis; cause, effect and impact of these occurrences; profiling of victims and perpetrators; assessment of national policies; and progress indicators, among others.

Meanwhile, in the absence of adequate statistics, more case studies may be conducted so as to ascertain the situation of women and children who are victims of violence and exploitation, or who have been abused or discriminated in the course of their migration. Academic institutions, on the other hand, can encourage the members of the academe to conduct and publish more researches on the plight of women and children, both nationals and migrants, in Brunei Darussalam. It has been observed that there is a significant lack of academic journals, books and other publications that discuss the situation of children and women and Brunei Darussalam.

235 Quratul-Ain Bandial, 'Migrant workers' complaints drop.'

236 UNICEF, 'At a glance: Brunei Darussalam.'

237 World Databank

238 UN Secretary-General's database on violence against women, accessed March 13, 2012, <http://sgdatabase.unwomen.org/country-Ind.action?countryId=269>.

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For further information about HRRC:

Human Rights Resource Centre

University of Indonesia - Depok Campus
Guest House Complex (next to Gedung Vokasi)
Depok Indonesia 16424
Phone/Fax : (62 21) 786 6720
Email: info@hrrca.org
Web: www.hrrca.org