

## Brunei Darussalam<sup>1</sup>

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### Summary and Analysis

When Brunei Darussalam acceded to the Convention on the Rights of the Child (CRC) in December of 1995, it did so with the reservation, “The Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam expresses its reservations on the provisions of the said Convention which may be contrary to the Constitution of Brunei Darussalam and to the beliefs and to the generality of the said reservations, in particular expresses its reservations on Articles 14, 20 and 21 of the Convention”<sup>2</sup> Brunei Darussalam has a complex legal system with separate courts and separate legislation for Islamic and non-Islamic citizens. Though the Constitution establishes a Legislative Council to approve legislation, the Council has not met for the past few years. The Sultan, using his power to legislate during a state of emergency, has established laws through Royal proclamations.

Brunei Darussalam has a formal child protection system which was formed very recently under the Children Order of 2000. Besides the Children Order, the Guardianship of Infants Act of 1999 governs some child protection issues, however the Guardianship of Infants Act does not apply to Islamic children. The Children Order created the Action Teams for Child Protection as subdivisions of the Social Affairs Services Unit in order to coordinate local services for children in need of protection. Also established by the Children Order were “protectors,” appointed public officers responsible for investigating child protection cases, and a Registrar of Children to keep a confidential Register of Children in Need of Protection. Child protection cases are resolved before district courts; there are no specialized family or children’s courts in Brunei Darussalam. In 2001, the government of Brunei Darussalam established the National Children’s Council, responsible for formulating and monitoring the implementation of legislation related to children.

Neither the Children Order nor the Guardianship of Infants Act contains provisions reflecting the principles of Article 12 of the CRC. Nor is there a general provision in the Constitution stating that children have the right to express their opinions in all matters affecting them. According to legislation, it is possible that protectors and Judges do consult the child in the course of protective proceedings, but by no means must they hear the wishes of the child or take them into account when making a decision affecting the child. The Guardianship of Infants Act contains a section providing for the Judge’s right to require the child to be produced before the court, and the Children Order mandates that a child removed from the home must appear before a court within 24 hours. Still, the legislation does not state that the purpose of the child’s appearance is for a consultation with the child.

Though children are not given the right to express an opinion in child protection proceedings in Brunei Darussalam, children are given that right in adoption cases. Adoption in Brunei Darussalam is governed by the Islamic Adoption of Children Order and the Adoption of Children Order. Both are clearly influenced by the CRC. The Adoption of Children Order imitates the language of Article 12 when it provides that the judge must be satisfied that, “the order if made will be for the welfare of the child, due consideration being for this purpose given to the wishes of the child having regard to his age and understanding.”<sup>3</sup> The Islamic Adoption of Children Order expresses the involvement of the wishes of the child slightly differently, stating that the Syar’ie judge must make a decision for the *maslahah* (interest) of the child, having regard for, “the wishes of the child, if he is in the age capable of expressing his own opinion.”<sup>4</sup>

## **Related Sources of Law (In Order of Authority)**

### *International Law*

**Convention on the Rights of the Child,**<sup>5</sup> ratified Dec. 5, 1995.

#### Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

### *Royal Proclamations*

#### **Children Order**<sup>6</sup>

Taking a child into custody.

13. (1) Any protector or police officer who is satisfied on reasonable grounds that a child is in need of protection may take the child into temporary custody, unless such protector or police officer is satisfied that the taking of proceedings in relation to such child is undesirable in the best interests of such child or that proceedings are about to be taken by some other person.

(2) Subject to section 14, every child taken into temporary custody under subsection (1) shall be placed in a place of safety until such time as he can be brought before a Court.

(3) If a child is placed in a place of safety under subsection (2), the person in charge of the place of safety shall have the like control of the child as the parent of the child and shall be responsible for the maintenance of the child, and the child shall continue in the care of such person notwithstanding that the child is claimed by his guardian or any other person.

(4) Any person who takes a child into temporary custody under this section shall forthwith upon such taking —

(a) cause the guardian of the child to be notified of such taking; and

(b) if such person is a police officer, notify a protector of such taking.

#### Production of children before Court

21. (1) Subject to subsections (2) and (3), every child who is taken into custody under section 13(1) shall within twenty-four hours of being so taken into custody, be brought before a Court.

(2) Notwithstanding subsection (1), a child who is taken into custody under section 13(1) and is medically examined or treated under Part IV shall be produced before a Court within twenty-four hours of the completion of such examination or treatment or, if such child is hospitalised, upon his discharge from the hospital.

### *Statutes*

#### **Guardian of Infants Act**<sup>7</sup>

Production of infant.

14. A judge may, for the purpose of any application under this Act, direct that any person appearing to have the custody of an infant shall produce the infant in the judge's chambers or at such other place as the judge may appoint. The judge may make such order for the temporary custody and protection of the infant as he thinks fit.

(3) Notwithstanding subsections (1) and (2), where it is not possible to bring a child who is taken into custody under section 13(1) before a Court within the time prescribed in subsections (1) and (2), such child shall be brought before a Magistrate who may direct that he be placed in a place of safety or, notwithstanding section 13(2), be committed to the care of a fit person until such time as he can be brought before a Court.

Powers of a Court.

22. (1) If a Court is satisfied that any child brought before it under section 21 is a child in need of protection, the Court may —

- (a) order his guardian to enter into a bond to exercise proper care and guardianship for a period specified by the Court, but that period shall not extend beyond the date on which the child attains the age of eighteen years;
- (b) make an order placing the child in the custody of a fit person for a period specified by the Court but that period shall not extend beyond the date on which the child attains the age of eighteen years;
- (c) without making any other order or in addition to an order under paragraphs (a) or (b), make an order placing the child under the supervision of a protector, or some other person appointed for the purpose by the Court, for a period specified by the Court, but that period shall not extend beyond the date on which the child attains the age of eighteen years;
- (d) make an order placing the child in a place of safety for a period of three years from the date of the order or until he attains the age of eighteen years, whichever is the longer; or
- (e) make an order placing the child in the custody of a foster parent found to be suitable by the Permanent Secretary and pending such time, place the child in a place of safety.

(2) A Court may, in making any order under subsection (1), impose such conditions or give such directions as it may deem fit for the purpose of ensuring the safety and well being of the child in respect of whom such order is made, and every person upon whom such conditions are imposed or to whom such directions are given shall comply with such conditions or directions.

(3) No order subsection (1) shall be made without giving the guardian of the child an opportunity to attend and be heard.

(4) Notwithstanding subsection (3), an order under subsection (1) may be made if the guardian of the child, having been required to attend, has failed to do so or cannot be found within a reasonable time.

(5) Before making an order under subsection (1), the Court shall endeavour to obtain such information as to the family background, religion, general conduct, home surroundings, school records and medical history of the child as may enable it to deal with the case in the best interests of the child, may, for the purpose of obtaining such information or for any special medical examination or observation, from time to time adjourn the case for a period or periods not exceeding two months at a time and may make in respect of the child, as an *interim* order having effect only during the period of the adjournment, any order which it could have made under subsection (1).

(6) In determining what order is to be made under subsection (1), the Court shall treat the welfare and best interests of the child as the paramount considerations.

(7) If the Court is not satisfied that the child brought before it under section 21 is in need of protection, the Court may order that the child be returned to the care and custody of his guardian.

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#### Endnotes

<sup>1</sup> This page is also available as a [.pdf Document](#), and [Word Document](#).

<sup>2</sup> Instrument of Accession to the Convention on the Rights of the Child, Dec. 23, 1995, *available at* [http://www.agc.gov.bn/instrument%20of%20ratifications/search\\_form.htm](http://www.agc.gov.bn/instrument%20of%20ratifications/search_form.htm).

<sup>3</sup> Adoption of Children Order, Feb. 12, 2001, S 16/01, § 6(b), *available at* <http://www.agc.gov.bn/gazette/Gazette01.pdf>.

<sup>4</sup> Islamic Adoption of Children Order, Feb. 12, 2001, S 14/01, § 7(4)(b), *available at* <http://www.agc.gov.bn/gazette/Gazette01.pdf>.

<sup>5</sup> United Nations Convention on the Rights of the Child art. 12, Dec. 12, 1989, UN General Assembly Document A/RES/44/25, *available at* <http://www.ohchr.org/english/law/crc.htm>.

<sup>6</sup> Children Order, Jun. 5, 2000, S 64/00, § 13, 21, 22, *available at* <http://www.agc.gov.bn/gazette/Gazette00.pdf> and also as [.pdf Document](#). (Children Order begins on pg. 191)

<sup>7</sup> Guardianship of Infants Act, S 31/99, BLRO 2/2000, CAP. 191, § 14, 22 (2000) *available at* <http://www.agc.gov.bn/pdf/Cap191.pdf> and also as [.pdf Document](#).