

## National Laws

Legislation of Interpol member states on sexual offences against children

# Brunei

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The information on this page is up to date as of spring 2006

## I. Ages for legal purposes

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### Age of simple majority

The legal age of majority is eighteen (18) years.

### Age of consent for sexual activity

*The legal age of consent for sexual activity is sixteen (16) years.*

### Age of consent for marriage

*The legal age of consent for marriage is eighteen (18) years.*

**The relevant laws that deal with sexual offences against minors are the Penal Code, the Women and Girls protection act, the Children Act and the Undesirable Publications Act**

## II. Rape

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### Article 375 of the Penal Code, 'Rape'

'A man is said to commit 'rape', who , except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the 5 following descriptions:

- a) against her will;
- b) without her consent;
- c) with her consent, when her consent has been obtained by putting her in fear of death or of hurt;

d) with her consent, when the man knows that he is not her husband, and that the consent is given because she believes that he is another man to whom she is, or believes herself to be, lawfully married;

e) with or without her consent when she is under fourteen (14) year of age.'

Explanation:

Penetration is sufficient to constitute the act of sexual intercourse necessary to the offence of rape.

Sexual intercourse by a man with his own wife, the wife not being under thirteen (13) years of age, is not rape.

#### **'Punishment for rape', Article 376 of the Penal Code**

'Whoever commits rape shall be punished with imprisonment of either description for a term which may extend to 30 years and shall also be liable to fine and whipping.'

(2) Whoever, in order to commit or facilitate the commission of an offence of rape against any woman-

- a. Voluntarily causes hurt to her or to any other person; or
- b. Puts her fear of death or hurt to herself or any other person;

and whom commits rape by having sexual intercourse with a woman under 14 years age without her consent, shall be punished with imprisonment for a term of not less than 8 years and not more than 30 years and shall also be punished with whipping with not less than 12 strokes.

***Unlawful Carnal Knowledge is also punishable under Chapter 29.***

### **III. Other forms of child sex abuse**

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#### **Unnatural Offences', Article 377 of the Penal Code, Chapter 22**

'Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment of either description for a term which may extend to 10 years, and shall also be liable to fine.'

Explanation:

Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

'Incest', Article 377 A of the Penal Code, Chapter 22

(1) Whoever-

- a. being a male, has sexual intercourse with a female who to his knowledge is his grandmother, granddaughter, daughter, sister, half-sister, or mother; or
- b. being a female, has sexual intercourse with a male who to her knowledge is her grandfather, grandson, son, brother, half-brother or father;

-is said to commit incest and shall be punished with imprisonment of either description for a term which may extend to 10 years and a fine'

Explanation:

It is immaterial whether the relationship between the persons charged is or is not traced though lawful wedlock.

(2) This section shall not apply to Malays and other races indigenous to Brunei who by their own law or custom are punishable for having sexual intercourse within prohibited degrees of relationship.'

The 'Unlawful Carnal Knowledge Act' makes it unlawful the having of carnal knowledge of a girl less than sixteen (16) years of age.

**Article 2 of this Act determines the offence as follows**

'Any person who has or attempts to have carnal knowledge of a girl under the age of sixteen (16) years except by way of marriage, shall be guilty of an offence: Penalty, imprisonment for a term which shall not be less than 2 years and not more than 7 years and to whipping not exceeding 24 strokes of the rattan in the case of an adult or 12 strokes of the rattan in the case of a youthful offender.'

**Article 3 of the Act**

'It shall be a sufficient defense to any charge under this Act that the person charged had reasonable cause to believe that the girl was of or above the age of sixteen (16) years.'

***Under Chapter 22 of the Penal Code, the offence of 'outraging modesty' is criminalized under Section 354.***

## **IV. Child prostitution**

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**'Procuration of a minor girl', Article 366 A of the Penal Code**

'Whoever, by any means whatsoever, induces any minor girl under the age of eighteen (18) years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit

intercourse with another person, shall be punishable with imprisonment which may extend to 30 years and with whipping with not less than 12 strokes'

**'Importation of a girl from a foreign country', Article 366 B of the Penal Code**

'Whoever imports into Brunei from any country outside Brunei any girl under the age of twenty-one (21) years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment of either description for a term which may extend to 30 years and with whipping with not less than 12 strokes.'

**'Kidnapping or abducting in order to subject a person to grievous hurt, slavery, etc.', Article 367 of the Penal Code**

'Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected to grievous hurt or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to 30 years, and with whipping with not less than 12 strokes.'

**'Wrongfully concealing or keeping in confinement a kidnapped or abducted person', Article 368 of the Penal Code**

'Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge or for the same purpose as that with or for which he conceals or detains such person in confinement.'

**'Buying or disposing of any person as a slave', Article 370 of the Penal Code**

'Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives, or detains against his will an person as a slave, shall be punished with imprisonment of either description for a term which may extend to 30 years and with whopping with not less than 12 strokes.'

**'Selling a minor for purposes of prostitution', Article 372 of the Penal Code**

'Whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen (18) years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for such purpose, shall be punished with imprisonment of either description for a term which may extend to 30 years and with whipping with not less than 12 strokes.'

Explanation 1:

When a female under the age of eighteen (18) years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

Explanation 2:

For the purpose of this section 'illicit intercourse' means sexual intercourse between persons not united by marriage or by any union or tie which, though not amounting to a marriage, is recognized by the personal law or custom of the community to which they belong or where they belong to different communities, of both such communities, as constituting between them a quasi-marital relation.

### **'Buying a minor for purposes of prostitution', Article 373 of the Penal Code**

'Whoever buys, hires or otherwise obtains possession of any person under the age of eighteen (18) years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to 30 years and with whipping with not less than 12 strokes'

Explanation 1:

Any prostitute, or any person keeping or managing a brothel, who buys, hires, or otherwise obtains possession of a female under the age of eighteen (18) years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

Explanation 2:

'Illicit intercourse' has the same meaning as in section 372.

### **'Importing for purposes of prostitution', Article 373 A of the Penal Code**

'Whoever, by any false pretence, false representation, or fraudulent or deceitful means, brings, or assists in bringing, into Brunei any woman with intent that such woman may be employed or used for the purpose of prostitution ; and whoever brings, or assists in bringing, into Brunei any woman with intent that such woman may be sold or bought for the purpose of prostitution ; and whoever sells or buys any woman for the purpose of prostitution, shall be punished with imprisonment of either description for a term not exceeding 30 years and with whipping with not less than 12 strokes.'

**We must also mention the 'Woman and Girls Protection Act', which constitutes an Act for the protection of women and girls and makes provisions for the suppression of brothels.**

**Article 3 of the 'Woman and Girls Protection Act', 'Selling or hiring for purpose of prostitution'**

'1) Any person who-

- a. sells, lets to hire or otherwise disposes of or buys or hires or otherwise obtains possession of 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, or knowing or having reason to believe that such woman or girl will be so employed or used; or
- b. procures any woman or girl under the age of twenty-one (21) years, or any woman or girl of or above that age being a prostitute or of known immoral character to have either within or without Brunei carnal connection except by way of marriage with any other person or for the purpose of prostitution either within or without Brunei; or
- c. by threats or intimidation procures any woman or girl to have carnal connection either within or without Brunei except by way of marriage with any male person;
- d. by or under any false pretence, false representation, or fraudulent or deceitful means made or used either within or without Brunei, brings or assists in bringing into Brunei 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, or knowing or having reason to believe that such woman or girl will be employed or used; or
- e. brings into Brunei, receives or harbours any woman or girl under the age of twenty-one (21) years or any woman or girl of or above that age not being a prostitute or of known immoral character, knowing or having reason to believe that such woman or girl has been procured for the purpose of having carnal connection, except by way of marriage, with any other person or for the purpose of prostitution either within or without Brunei and with intent to aid such purpose; or
- f. knowing or having reason to believe that any woman or girl has been procured by threats or intimidation for the purpose of having carnal connection, except by way of marriage, either within or without Brunei, receives or harbours such woman or girl with intent to aid such purpose ; or
- g. knowing or having reason to believe that any woman or girl has been brought into Brunei in breach of paragraph (d), or has been sold or purchased in breach of paragraph (a), receives or harbours such woman or girl with intent that she shall be employed or used for the purpose of prostitution either within or without Brunei; or
- h. detains any woman or girl in a brothel against her will; or
- i. detains any woman or girl in any place against her will with intent that she may be employed or used for the purpose of prostitution or for any unlawful or immoral purpose; or
- j. (...)
- k. attempts to do any act in contravention of this section,

-shall be guilty of an offence: Penalty, imprisonment for 5 years and a fine of \$ 20,000.'

**Traffic in Women and girls', Article 4 of the 'Woman and Girls Protection Act'**

'(1) Any person who buys, sells, procures, traffics in, or imports into Brunei for the purpose of such traffic, and whether or not for the purpose of present or subsequent prostitution, any woman or girl, shall be liable to imprisonment of either description for 5 years and to a fine of \$ 20.000.

(2) No person shall be charged with an offence under this section if he satisfies the Commissioner that the woman or girl brought into or taken out of Brunei by him or intended to be brought into or taken out of Brunei by him was so brought into or taken out of Brunei or is intended to be so brought into or taken out of Brunei for the purpose of her marriage or adoption and that such marriage or adoption can be solemnized or made and has been or will be solemnized or made under the laws and customs for the time being in force in Brunei.'

Living on or trading in prostitution', Article 5 of the 'Woman and Girls Protection Act'

'(1) Any person who-

- a. knowingly lives wholly or in part on the earnings of prostitution of any other person; or
- b. in any public place persistently solicits or importunes on behalf of a woman or girl, for immoral purposes,

-shall be liable to imprisonment of either description for 5 years and to a fine of \$20.000.

(2) (...)

(3) Where any person is proved to live with or to be habitually in the company of a prostitute or is proved to have exercised control, direction or influence over the movements of a prostitute in such manner as to show that he is aiding, abetting or compelling he prostitution with any other person or generally, he shall, unless he can satisfy the Court to the contrary, be deemed to be knowingly living on the earnings of prostitution.

(4) (...)'

*The Children Order, 2000 also aims to punish such offences.*

## **V. Child pornography**

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**There is no separate legal provision concerning Child Pornography, but we mention the 'Undesirable Publications Act ', which constitutes an Act to prevent the importation, distribution or reproduction of undesirable publications and for purposes connected therewith.**

**Article 4 defines the offence as following :**

'(1) Any person who imports, publishes, sells, offers for sale, distributes or reproduces any prohibited publication or any extract therefrom shall be guilty of an offence.

Penalty, for a first offence imprisonment for 3 years and a fine of \$ 3.000, and for a subsequent offence imprisonment for 4 years and a fine of \$ 5.000.

(2) Any person who without reasonable excuse has in his possession any prohibited publication or any extract therefrom shall be guilty of an offence.

Penalty, for a first offence imprisonment for one year and a fine of \$ 2.000, and for a subsequent offence imprisonment for 2 years and a fine of \$ 3.000.

In any proceedings against any person for an offence under subsection (2) such person shall be presumed, until the contrary is proved, to have known the contents and the nature of the contents of any publication immediately after such publication came into possession.'

#### **'Sale, etc of obscene articles, Section 292 of the Penal Code**

(1) For the purpose of this section and section 293 an article shall be deemed to be obscene if its effect or (where the article comprises 2 or more distinct items) the effect of any one of its items it, taken as a whole such as to tend to deprave and corrupt persons who, having regard to all relevant circumstances, are likely (or would have been likely but for the lawful seizure of the article) to read, see or hear the matter contained or embodied in it.

(2) In this section 'article' means any description of article embodying matter to be read or looked at or both, any sound record, and any film, video cassette, photographic negative or other record of a picture.

(3) Whoever-

- a. Sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation makes, produces or has in his possession any obscene article; or
- b. Imports, exports or conveys any obscene article for any of the purposes aforesaid, or knowing or having reasons to believe that such article will be sold, let to hire, distributed or publicly exhibited or in any matter put into circulation; or
- c. Takes part in or receives profits from any business in the course of which he knows or has reasons to believe that any such obscene articles are, for any purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation; or
- d. Advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section or that any such obscene article can be produced from or through any person
- e. Offers or attempts to do any act which is an offence under this section

Shall be guilty of an offence and shall be punished with a fine of not less than \$500 and not more than \$5000 and imprisonment, which may extend to 2 years; and in the case of a second subsequent conviction, a fine of not less than \$1000 and not more than \$30000, and imprisonment which may extend to 5 years.

## **VI. Internet**

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There is no specific law which covers crimes against children using the Internet.