

Corporal punishment of children in Brunei Darussalam: Briefing for the Universal Periodic Review, 47th session, Oct./Nov. 2024

From End Corporal Punishment, March 2024

This submission provides an update on the legality of corporal punishment of children in Brunei Darussalam since its review in the third cycle UPR in 2019. Corporal punishment prohibition is still to be fully achieved in the home, alternative care settings, day care, schools, penal institutions and as a sentence for crime.

The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.

In Brunei Darussalam, corporal punishment of children is lawful, despite recommendations to prohibit it by the Committee on the Rights of the Child and other human rights treaty bodies.

We hope the Working Group will note with concern the legality of corporal punishment of children in Brunei Darussalam. We hope states will raise the issue during the review in 2024 and make a specific recommendation that Brunei Darussalam accelerates its efforts to clearly prohibit all corporal punishment of children in every setting of their lives and repeal any legal defence allowing its use, as a matter of priority.

1 Review of Brunei Darussalam in the 3rd cycle UPR (2019) and progress since

1.1 Brunei Darussalam was reviewed in the third cycle of the Universal Periodic Review in 2019 (session 33). Several recommendations to prohibit corporal punishment in all settings



were extended.” The Government did not accept any of the recommendations, stating “The promulgation of the Syariah Penal Code Order, 2013 (SPCO) is to preserve and protect religion, life, intellect, lineage and property. It is applied uniformly regardless of gender and in line with Brunei Darussalam’s religious and cultural norms that are highly valued in our society...”²

1.2 Following the review, no legislation to explicitly prohibit corporal punishment of children in all settings has been adopted.

1.3 We hope the Working Group will note with concern the legality of corporal punishment of children in Brunei Darussalam. We hope states will raise the issue during the review in 2024 and make a specific recommendation that Brunei Darussalam intensify its efforts to enact a law to clearly prohibit all corporal punishment of children, however light, in every setting of their lives, as a matter of urgency.

2 Legality of corporal punishment in Brunei Darussalam

Summary of current law and opportunities for achieving prohibition

Prohibition is still to be achieved in the home, alternative care settings, day care, schools, penal institutions and as a sentence for crime.

There is no explicit confirmation in the Children and Young Persons Act 2006 of a “right” to administer “reasonable punishment” or similar, but articles 18 and 24 of the *Syariah* Penal Code 2013 allow for acts “done in good faith for the benefit of a person who is not *baligh* [attained puberty]” by guardians or others having lawful charge of the child. The near universal acceptance of corporal punishment in childrearing means that legal provisions against abuse and violence are not interpreted as prohibiting corporal punishment. The law should clearly state that all corporal punishment is unacceptable, and prohibition should be enacted of all forms of corporal punishment, however light.

2.1 **Home (lawful):** Corporal punishment is lawful in the home. The *Syariah* Penal Code 2013 states in article 18: “Nothing which is done in good faith for the benefit of a person who is not *baligh* [attained puberty], or of unsound mind, by or with consent of, either express or implied, 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

¹ 25 June 2019, A/HRC/42/11, Report of the Working Group, paras. 121(37), 121(39), 121(40), 121(110), 121(113), 121(114), 121(196) and 121(202)

² 3 September 2019, A/HRC/42/11/Add.1 Advance version, Report of the Working Group: Addendum



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be likely to cause, to that person: Provided that this exception shall not extend to – (a) the intentional causing of death or the attempting to cause death; (b) the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or hurt or the curing of any disease or infirmity; (c) the voluntary causing of hurt or the attempting to cause hurt, unless it be for the purpose of preventing death or hurt, or the curing of any disease or infirmity; (d) the abetment of any offence, to the committing of which offence it would not extend.” Article 24 states: “Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.”

2.2 Article 28 of the Children and Young Persons Act 2006 (in force 2010) punishes child abuse which causes injury, which under article 2 must be “substantial and observable”: it does not prohibit all corporal punishment. Protection from violence under the Married Women Act 1999 is not interpreted as prohibiting all corporal punishment in the home.

2.3 **Alternative care settings (lawful):** There is no explicit prohibition of corporal punishment in alternative care settings: it is lawful, as for parents, under articles 18 and 24 of the *Syariah* Penal Code 2013 (see under “Home”).

2.4 **Day care (lawful):** Corporal punishment is prohibited in child care centres in article 17 of the Child Care Centres Act 2006: “Every operator shall cause to ensure that the staff shall not administer the following disciplinary measures – (a) any form of corporal punishment, including the following – (i) striking a child, directly or with any physical objects; (ii) shaking, pushing, spanking or other forms of aggressive contact; and (iii) requiring or forcing the child to repeat physical movements; (b) harsh, humiliating, belittling or degrading responses of any kind, including verbal, emotional and physical....” Child care centres are defined in the Act as “any premises at which five or more children who are under the age of 3 years are habitually received for the purposes of care and supervision during part of the day or for longer periods” (art. 2).

2.5 Corporal punishment is lawful in other day care (preschools, family centres, after-school childcare, day centres, childminding, etc) under articles 18 and 24 of the *Syariah* Penal Code 2013 (see under “Home”).

2.6 **Schools (lawful):** Corporal punishment is lawful in schools, for boys only. During the Universal Periodic Review of Brunei Darussalam in 2009, the Government stated that corporal punishment has been prohibited in schools since 1984.³ This assertion was also made in the second/third report to the Committee on the Rights of the Child in 2011, which also noted that the Teacher’s Handbook provided for the Ministry of Education directs schools not to use physical force to reprimand children.⁴

2.7 However, the Education (School Discipline) Regulations 2004, under the Education Act 2003, provide for corporal punishment in article 5: “(1) For the purposes of maintaining discipline among pupils the head teacher or principal shall have the power to impose any disciplinary

³ 4 January 2010, A/HRC/13/14, Report of the working group, para. 80

⁴ CRC/C/BRN/2-3 Unedited Version, Second/third state party report, paras, 88 and 90



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punishment provided for in the school rules or under these Regulations and any other such ordinary school punishments as may be necessary or expedient: Provided that – (a) corporal punishment of female pupils is prohibited; and (b) corporal punishment of male pupils by a teacher or other member of the staff shall be in accordance with and subject to a directive on corporal punishment issued by the Ministry. (2) A record of all punishments imposed or meted out under sub-regulation (1) shall be kept confidential in a form approved by the Registrar General.” According to article 6, “the power of inflicting corporal punishment shall not be delegated to any person other than a registered teacher”. The Compulsory Education Act 2007 and the Compulsory Religious Education Act 2012 are silent on the issue.

- 2.8 **Penal institutions (lawful):** Corporal punishment is lawful as a disciplinary measure in penal institutions. Under articles 51-55 of the Youthful Offenders (Places of Detention) Rules 2001, boys under 14 may be given up to 6 strokes with a light cane, older children up to 10 strokes. The medical officer must certify that an inmate is able to sustain the punishment. Article 76 of the Children and Young Persons Act 2006 permits the use of “such force as is reasonable and necessary” in order “to compel a person being detained to obey any order or requirement given or made by him under this section; and (ii) to restrain any such person who is attempting or preparing to commit or is committing any offence or any breach of discipline” in approved schools, approved homes, remand homes and places of detention. The Intoxicating Substances Act 1992 provides for the use of corporal punishment in approved institutions under the Act (arts. 8 and 29).
- 2.9 **Sentence for crime (lawful):** Corporal punishment – whipping – is lawful as a sentence for crime, for a wide range of offences under the Syariah Penal Code 2013 and other laws, under article 179 of the Syariah Courts Criminal Procedure Code Order 2018: “The sentence of whipping shall be executed in accordance with the following procedures - (a) the whipping rod, excluding its holder, shall be of the same type and made either from rattan or small branch of a tree without segment or joint and its length shall not exceed 1.22 metres and its diameter shall not exceed 1.25 centimetres as prescribed in the Fifth Schedule; (b) the diameter of the whipping rod for female or non-mukallaf offenders shall be less than as specified in paragraph (a); (c) before the execution of the sentence, the offender shall be examined by the medical officer to certify that the offender is in a fit state of health to undergo the sentence; (d) the whipping sentence shall be executed by an officer of the same gender as the offender with strict regard to decency...” The new *Syariah* Penal Code 2013 fully entered into force in April 2019.
- 2.10 The Children and Young Persons Act 2006 confirms that a child can be sentenced to corporal punishment (art. 44(3)): “Notwithstanding the provisions of any other written law, no child or young person shall be sentenced by any court other than the High Court to corporal punishment.” A child is defined in the Act as under 14, a young person aged 14-17 (art. 2).
- 2.11 Other laws also provide for the punishment of whipping, including the Women and Girls Protection Act 1973, the Misuse of Drugs Act 1978, the Arms and Explosives Act 1927 and Rules 1928, the Public Order Act 1983, the Kidnapping Act 1992 and the Unlawful Carnal Knowledge Act 1938. For example, the Common Gaming Houses Act 1920 states in article 22: “Any male person appearing to be of such tender years as to require punishment rather in the way of school discipline than of ordinary criminal justice convicted of an offence under this Act may in lieu of any other punishment hereby provided be sentenced to corporal punishment



3 Recommendations by human rights treaty bodies

3.1 **CRC**: The Committee on the Rights of the Child has twice expressed concern at corporal punishment of children in Brunei Darussalam and recommended it be explicitly prohibited in all settings – in its concluding observations on the state party’s initial report in 2003,⁵ and on the second- third report in 2016.⁶

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⁵ 27 October 2003, CRC/C/15/Add.219, Concluding observations on initial report, paras. 37, 38, 43, 44, 55 and 56

⁶ 29 January 2016, CRC/C/BRN/CO/2-3 Advance Unedited Version, Concluding observations on second/third report, paras. 6, 9, 10, 39, 40, 69 and 70