

Inhuman sentencing of children in Brunei Darussalam

Briefing for the 18th session of the Human Rights Council Universal Periodic Review in January 2014, submitted by the Child Rights International Network (www.crin.org), June 2013.

Inhuman sentencing of child offenders in Brunei Darussalam

1. In Brunei Darussalam, children may be lawfully sentenced to life imprisonment and corporal punishment for offences committed while under the age of 18.
2. The main laws governing juvenile justice are the Penal Code 1952, the Criminal Procedure Code 1951 and the Children and Young Persons Order 2006.
3. The Children and Young Persons Order defines a child as under 14, a juvenile as aged 7–17 and a young person as 14–17.¹ The Criminal Procedure Code defines a youthful offender as 8–17.² The minimum age of criminal responsibility is 7.³

Legality of inhuman sentencing

Corporal punishment

4. Corporal punishment in the form of whipping is lawful as a sentence for males convicted of a criminal offence. For boys below the age of 18, only the High Court is empowered to order the penalty.⁴
5. The Penal Code provides for the sentence of whipping for a wide range of offences.⁵ Whipping is also permitted as a criminal penalty under the Children Order 2000, the intoxicating Substances Act

1 Children and Young Persons Order, Section 2

2 Criminal Procedure Code, Section 2

3 Penal Code, Section 82

4 Syariah Courts Act, Sections 15 and 16

5 Sections 53, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, , 344, 347, 348, 354, 355, 356, 357, 365, 366, 366A, 366B, 367, 369, 370, 371, 372, 373, 376, 382, 384, 385, 386, 387, 388, 389, 392, 393, 394, 395, 397, 398, 399, 400, 401, 402, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 437, 439, 440, 450, 452, 453, 454, 455, 456, 457, 458, 459, 461, 462 and 511

1992, the Arms and Explosives Act 1927 and Rules 1928, the Misuse of Drugs Act 1978, the Public Order Act 1983, the Kidnapping Act 1992 and the Women and Girls Protection Act 1972.

6. The Common Gaming Houses Act 1920 makes specific provision for the whipping of young boys, stating in Section 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 with a light rattan or cane not exceeding 10 strokes on the bare buttocks”.

7. The Unlawful Carnal Knowledge Act 1938 punishes extra-marital carnal knowledge of a girl under 16 by whipping up to 12 strokes of the rattan for a youthful offender.⁶

8. Persons aged 8 to 17 may be whipped up to 18 strokes under the Criminal Procedure Code⁷. The whipping must be inflicted on the part of the body directed by the Permanent Secretary, Office of the Prime Minister, and, for a youthful offender, with a light rattan “in the way of school discipline”.⁸ Whipping should not be imposed on females.⁹ A medical officer or hospital assistant must be present and must certify that the offender is fit to receive the punishment.¹⁰

Life imprisonment

9. There is no explicit prohibition on life imprisonment for persons under the age of 18 in Brunei Darussalam and children can be sentenced to detention at the pleasure of His Majesty the Sultan and Yang di-Pertuan, an indeterminate sentence that may extend for the rest of a person’s life.

10. A child may only be imprisoned where “he is of so unruly a character that he cannot be detained in a place of detention or an approved school”.¹¹ Where a person under the age of 18 is convicted of an offence punishable by imprisonment, he or she may be subject to other measures, including discharge, probation and/or custody in a place of detention for up to five years.¹² Substitution of imprisonment for other penal measures is not, however, compulsory.

11. Where a child or young person is convicted of murder, culpable homicide not amounting to murder, attempted murder or of voluntarily causing grievous hurt, and the court considers that none

6 The Unlawful Carnal Knowledge Act 1938, Section 2
7 Criminal Procedure Code, Section 257(1)
8 Criminal Procedure Code, Section 257(4)
9 Criminal Procedure Code, Section 258
10 Criminal Procedure Code, Section 259
11 Children and Young Persons Order, Section 44
12 Criminal Procedure Code, Section 262

of the other measures by which the case may legally be dealt with is suitable, it may sentence him or her to detention “in such place and on such conditions as His Majesty the Sultan and Yang Di-Pertuan may direct”.¹³ Such sentences must be reviewed at least once a year, when “His Majesty the Sultan and Yang Di-Pertuan may thereupon order him to be released or further detained, as the case may be”.¹⁴

12. In prohibiting the death penalty for all persons under the age of 18 at the time an offence was committed, the Criminal Procedure Code requires courts to sentence children to be detained during the Pleasure of His Majesty where they have been convicted of an offence that would otherwise carry the death penalty.¹⁵ A person detained in this way may at any time be discharged on licence by His Majesty.¹⁶

Inhuman sentencing in practice

13. We have been unable to obtain statistical information on the sentencing of children to corporal punishment and life imprisonment.

International human rights mechanisms

14. In its Concluding Observations of 2003, the Committee on the Rights of the Child explicitly called on the State to abolish the sentence of whipping for boys and to address the use of detention within the justice system.¹⁷

15. During the first cycle of the Universal Periodic Review in 2009 (session 6), the Government of Brunei rejected the following recommendations:

“Abolish the death penalty definitively and commute all such sentences to periods of imprisonment; and put an end to caning and flogging” (Spain)

“Specifically prohibit corporal punishment in institutions (German); prohibit corporal punishment in other public institutions and abolish whipping as a form of punishment (Italy); abolish the practice of

13 Children and Young Persons Order, Section 45(2)

14 Children and Young Persons order, Section 45(5)

15 Criminal Procedure Code, Section 238(1)

16 Criminal Procedure Code, Section 238(2)

17 Concluding Observations on the initial report to the UN Committee on the Rights of the Child, CRC/C/15/Add.219, 27 October 2003, paras. 55 and 56

corporal punishment (France); legally prohibit any form of corporal punishment of children and adolescents (Chile)”¹⁸

The review of Brunei Darussalam by the members of the Human Rights Council

16. In light of the clear international human rights consensus against the imposition of life imprisonment and corporal punishment of child offenders and the specific recommendations made to Brunei Darussalam by the UN Committee on the Rights of the Child and during the first cycle of the Universal Periodic Review, we hope that the members of the Human Rights Council will urge the government of Brunei Darussalam to:

- Explicitly prohibit sentences of corporal punishment and life imprisonment in Brunei Darussalam, including detention at the Pleasure of His Majesty the Sultan and Yang Di-Pertuan, under all systems of justice and without exception to ensure full compliance with international standards.
- Raise the minimum age of criminal responsibility.
- Provide disaggregated data about sentences handed down to children by offence committed and date, as well as information about children in detention, including gender, age and length of time spent in pre-trial detention in each case.

17. To read CRIN’s detailed report on inhuman sentencing in Brunei Darussalam, visit:
<http://www.crin.org/violence/search/closeup.asp?infoID=23606>

18 Report of the Working Group, A/HRC/13/14, paras. 90(15) and 90(18)