

Corporal punishment of children in Brunei Darussalam: Briefing for the Universal Periodic Review, 33rd session, May 2019



GLOBAL INITIATIVE TO
**End All Corporal
Punishment of Children**

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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 still lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child.

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 2019 and make a specific recommendation that Brunei Darussalam enact legislation as a matter of priority to explicitly prohibit corporal punishment of children in all settings, including the home, as a sentence for a crime and under traditional and religious law, and repeal all legal defences for its use.

1 Review of Brunei Darussalam in the 2nd cycle UPR (2014) and progress since

- 1.1 Brunei Darussalam was reviewed in the second cycle of the Universal Periodic Review in 2014 (session 19). The issue of corporal punishment of children was raised in the summary of stakeholders' information.¹ Several recommendations were made on corporal punishment² but the Government rejected them, stating that in practice, schools are directed not to use corporal punishment, parents are educated on alternative forms of discipline and children in conflict with the law are rarely brought before the courts.³
- 1.2 Since the review, there has been no change in the legality of corporal punishment. The Sharia Penal Code 2013, which repeats provisions authorising and regulating judicial corporal punishment, is yet to come into force but the Government is seemingly not considering the outright repeal of all judicial corporal punishment.
- 1.3 **We hope the Working Group will note with concern the continued legality of corporal punishment of children in Brunei Darussalam. We hope states will raise the issue during the**

¹ 29 January 2014, A/HRC/WG.6/19/BRN/3, Summary of stakeholders' views, paras. 1, 2, 5, 6, 7, 8, 9 and 10

² 6 May 2014, A/HRC/WG.6/19/L.9 Advance Unedited Version, Draft report of the working group, paras. 113(41), 113(66), 113(75), 113(78), 113(136), 113(137) and 113(139)

³ 10 September 2014, A/HRC/27/11/Add.1, Report of the working group: Addendum, paras. 113(41), 113(66), 113(74), 113(75), 113(78), 113(136) and 113(139)

review in 2019 and make a specific recommendation that Brunei Darussalam enact legislation as a matter of priority to explicitly prohibit corporal punishment of children in all settings, including the home, as a sentence for a crime and under traditional and religious law, and repeal all legal defences for its use.

2 Legality of corporal punishment in Brunei Darussalam

Summary of current law and reforms needed to achieve prohibition

Corporal punishment in Brunei Darussalam is prohibited in child care centres but it is still lawful in all other settings: in the home, alternative and day care settings, schools, penal institutions and as a sentence for a crime. Legislation should be enacted to explicitly prohibit all corporal punishment in all settings, including the home, as a sentence for a crime and under traditional and religious law, and all legal defences for its use, including in the Penal Code 1951 and the Sharia Penal Code 2013, should be repealed.

- 2.1 **Home (lawful):** Corporal punishment is lawful in the home. Article 89 of the Penal Code 1951 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”.
- 2.2 The Sharia 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 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.”
- 2.3 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.
- 2.4 **Alternative care settings (lawful):** There is no explicit prohibition of corporal punishment in alternative care settings: it is lawful, as for parents, under article 89 of the Penal Code 1951 and articles 18 and 24 of the Sharia Penal Code 2013.

- 2.5 **Day care (*partially 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).
- 2.6 Corporal punishment is lawful in other day care (preschools, family centres, after-school childcare, day centres, childminding, etc) under article 89 of the Penal Code 1951 and articles 18 and 24 of the Sharia Penal Code 2013. The Government rejected recommendations to prohibit in the home and all settings made during the Universal Periodic Review of Brunei Darussalam in 2014, stating that alternative methods of discipline are promoted among parents.⁴
- 2.7 **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 1984.⁵ 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.⁶
- 2.8 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 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.
- 2.9 The Government rejected recommendations to prohibit corporal punishment in schools made during the Universal Periodic Review in 2014, stating that educational institutions are directed not to use corporal punishment.⁷
- 2.10 **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

⁴ 10 September 2014, A/HRC/27/11/Add.1, Report of the working group: Addendum, para. 113(41)

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

⁶ CRC/C/BRN/2-3 Unedited Version, Second/third state party report, paras, 88 and 90

⁷ 10 September 2014, A/HRC/27/11/Add.1, Report of the working group: Addendum, para. 113(41)

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).

- 2.11 **Sentence for crime (*lawful*)**: Corporal punishment – whipping – is lawful as a sentence for crime, for a wide range of offences under the Penal Code 1951 and other laws, under article 257 of the Criminal Procedure Code 1951: “(1) When the accused is sentenced to whipping the instrument to be used and the number of strokes shall be specified in the sentence. In no case shall the whipping exceed 24 strokes in the case of an adult or 18 strokes in the case of a youthful offender, anything in any written law to the contrary notwithstanding. (2) Whipping shall be inflicted on such part of the person as the Minister from time to time generally directs. (3) The rattan shall be not more than half an inch in diameter. (4) In the case of a youthful offender, whipping shall be inflicted in the way of school discipline with a light rattan. (5) When a person is convicted at one trial of any 2 or more distinct offences any 2 or more of which are legally punishable by whipping, the combined sentences of whipping awarded by the Court for any such offences shall not, anything in any written law to the contrary notwithstanding, exceed a total number of 24 strokes in the case of adults and 18 strokes in the case of youthful offenders.” Article 258 states that females may not be sentenced to corporal punishment. 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).
- 2.12 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 with a light rattan or cane not exceeding 10 strokes on the bare buttocks.”
- 2.13 The new Sharia Penal Code 2013⁸ coexists with the 1951 Penal Code and came into force in part in April 2013: the corporal punishment provisions will come into force in a second stage of implementation. The Code authorises the imposition of corporal punishment on males and females, including children, on conviction of Sharia and related offences. Article 12 of the Code states that nothing is an offence which is done by a child who is not *mumaiyiz* – i.e. a child who is able to “differentiate a matter”.⁹ Article 13 prohibits the imposition of *hadd* and *qisas* punishments on a *mumaiyiz* child who is not *baligh* – i.e. a child who is able to differentiate a matter but who has not reached puberty¹⁰ – stating instead that other punishments may be

⁸ Implementation of the Code is being phased in. The law on offences punishable by fine or imprisonment will be enforced from April 2014; that on offences punishable by corporal punishment will be enforced 12 months after the Sharia Courts Criminal Procedure Code (as at March 2014 being finalised by the authorities) is gazetted, and full implementation including offences punishable by death from 24 months after the Sharia Courts Criminal Procedure Code is gazetted (<http://www.gmanetwork.com/news/story/351308/pinoyabroad/news/pinoys-in-brunei-urged-to-study-new-penal-code-before-it-takes-effect-in-april>, accessed 6 March 2014)

⁹ *Mumaiyiz* is defined in the Sharia Courts Evidence Order 2001 as “a child who has attained the age of being capable to differentiate a matter” (s3(1)).

¹⁰ *Baligh* is defined in the Sharia Courts Evidence Order 2001 (s3(1)) as “a person who has attained the age of puberty in accordance with *Hukum Syara'*”; *hadd* is defined as “any criminal punishment or penalty as ordained by *Al-Quran* or *Sunnah Rasullullah Sallallahu Alaihi Wassalam*, and *qisas* as “retaliation or similar penalty to punish offences of murder or causing bodily harm to anybody”.

imposed. Articles 55 and 56 authorise amputation of the hand and foot as a punishment for *sariqah* (theft), including for a child who is *mukallaf* (from age 15).¹¹ Article 63 similarly authorises amputation for *hirabah* (piracy), including on children from age 15. The punishment of whipping is authorised in a number of articles, including for children under 15 (arts. 63, 65, 66 and 69). The Code punishes *zina* (sexual intercourse outside marriage) variously with stoning and whipping (art. 70); children under 15 or who have not reached puberty are punished with whipping and detention in a rehabilitation centre (arts. 70, 72, 74 and 79).

2.14 The Government rejected recommendations to abolish corporal punishment made during the Universal Periodic Review in 2014, stating that cases involving children are rarely brought before the courts.¹²

3 Recommendations by human rights treaty bodies

3.1 **CRC:** In 2003, in its concluding observations on the state party's initial report, the Committee on the Rights of the Child expressed concern at corporal punishment of children in the home, schools, institutions and as a sentence for crime for boys, and recommended its prohibition in all settings.¹³ Examining Brunei Darussalam in 2016, the Committee renewed its call for prohibition in all settings and expressed concern at the provisions authorising judicial corporal punishment of children in the Sharia Penal Code 2013, recommending its review as a matter of urgency.¹⁴

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children

www.endcorporalpunishment.org; info@encorporalpunishment.org

The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, and since 2011 the Committee on the Rights of Persons with Disabilities.

¹¹ *Mukallaf* is defined in the Sharia Penal Code 2013 as “a person who has attained the age of 15 years *qamariah* and of sound mind” (art. 2).

¹² 10 September 2014, A/HRC/27/11/Add.1, Report of the working group: Addendum, para. 113(74)

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

¹⁴ 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