

# Corporal punishment of children in Malaysia

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Child population 9,080,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal  
Punishment of Children**

## Summary of necessary legal reform to achieve full prohibition

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

Article 89 of the Penal Code 1936 states: “Nothing, which is done in good faith for the benefit of a person under twelve 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...”, and an illustration to article 350 confirms that caning of schoolchildren does not amount to criminal force under that article. These provisions should be repealed and prohibition enacted of all corporal punishment and other cruel and degrading punishment of children by parents, teachers and all adults with lawful authority over children.

*Alternative care settings* – Prohibition should be enacted of all corporal punishment in all alternative care settings (foster care, institutions, children’s homes, places of safety, emergency care, etc.).

*Day care* – Corporal punishment should be prohibited in all early childhood care (nurseries, preschools, crèches, family centres, etc) and day care for older children (day centres, after-school childcare, childminding, etc).

*Schools* – Provisions for corporal punishment in the Education Regulations (Student Discipline) 2006 and the exemption of caning of students from article 350 on criminal force in the Penal Code 1936 should be repealed and explicit prohibition of corporal punishment enacted in relation to all education settings, public and private.

*Penal institutions* – Provisions allowing corporal punishment as a disciplinary measure in penal institutions in the Child Act 2001, the Penal Code 1936, the Criminal Procedure Code 1976, the Prison Act 1995, and any other laws relating to juvenile detention should be repealed, and explicit prohibition enacted in legislation applicable to disciplinary measures in all institutions accommodating children in conflict with the law.

*Sentence for crime* – Provisions allowing for corporal punishment of children and young people found guilty of a criminal offence in the Penal Code 1936, the Criminal Procedure Code 1976 and the Shari’a Criminal Offences Acts should be repealed and judicial corporal punishment prohibited.

## **Current legality of corporal punishment**

### **Home**

Corporal punishment is lawful in the home. Article 89 of the Penal Code 1936 states: “Nothing, which is done in good faith for the benefit of a person under twelve 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: Provided that this exception shall not extend to (a) the intentional causing of death, or to 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 grievous hurt, or the curing of any grievous disease or infirmity; (c) the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity; (d) the abetment of any offence, to the committing of which offence it would not extend.” Article 350 prohibits criminal force but states by way of illustration that caning of a scholar by a headteacher does not amount to criminal force. Article 499 confirms that a schoolmaster’s authority is derived from a parent.

Children have limited protection from violence and abuse under the Child Act 2001, the Penal Code 1936, the Guardianship of Infants Act 1961, the Domestic Violence Act 1994 (amended 2017) and the Islamic Family Law (Federal Territories) 1984.

The Government did not clearly accept or reject the recommendation to prohibit all corporal punishment of children made during the Universal Periodic Review (UPR) in 2009.<sup>1</sup> In 2013, the Government reported that several universities had been commissioned to conduct reviews of Malaysian laws in the context of promotion and protection of human rights.<sup>2</sup> The Government rejected recommendations to prohibit all corporal punishment of children, including in the home, made during the UPR of Malaysia in 2013.<sup>3</sup>

### **Alternative care settings**

Corporal punishment is lawful under articles 89 and 350 of the Penal Code 1936, as in the home (see under “Home”). The Child Care Centre Act 1984 is silent on the issue.

### **Day care**

Corporal punishment is lawful under articles 89 and 350 of the Penal Code 1936 (see under “Home”).

### **Schools**

Corporal punishment of boys is lawful in schools, regulated by the Education Regulations (Student Discipline) 2006 under the Education Act 1996. Article 350 of the Penal Code 1936 confirms that caning of a scholar by a headteacher does not amount to criminal force (see under “Home”).

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<sup>1</sup> 5 October 2009, A/HRC/11/30, Report of the working group, para. 106(11)

<sup>2</sup> 6 May 2013, A/HRC/WG.6/17/MYS/1, National report to the UPR, para. 73

<sup>3</sup> 4 March 2014, A/HRC/25/10/Add.1, Report of the working group: Addendum

## Penal institutions

Corporal punishment is lawful as a disciplinary measure in penal institutions. The Prison Act 1995 allows for punishment with a rattan for disciplinary offences (art. 50).

## Sentence for crime

Malaysia has a dual system of secular and Islamic law. The main laws governing juvenile justice are the Child Act 2001 (as amended in 2016), the Penal Code 1936 and the Criminal Procedure Code 1976. For Muslim children, Islamic laws are also applicable – the Sharia Courts (Criminal Jurisdiction) Act 1965, the Sharia Criminal Offences (Federal Territories) Act 1997 and the Sharia Criminal Procedure (Federal Territories) Act 1997. There is no prohibition of cruel, inhuman or degrading treatment or punishment in the Federal Constitution 1957.

Corporal punishment is lawful as a sentence for crime. The Criminal Procedure Code 1976 provides for whipping of a youthful offender up to 10 strokes with a light rattan, “in the way of school discipline” (art. 288), and this may be ordered in cases normally punished by fine or imprisonment (art. 293). No sentence of whipping shall be passed on women or on males sentenced to death (art. 289). Many offences in the Penal Code and other laws are punishable by whipping.

Corporal punishment is also lawful as a sentence under Islamic law, and there is no exemption for females. The Sharia Courts (Criminal Jurisdiction) Act 1965, which applies to Muslims in all the States of Peninsular Malaysia (arts. 1 and 2), provides for Islamic courts to order whipping up to six strokes (art. 2). The Sharia Criminal Offences (Federal Territories) Act 1997 applies to Muslims in the Federal Territories of Kuala Lumpur and Labuan (art. 2), and provides for the punishment of whipping up to six strokes for the offences of false doctrine, incest, prostitution, homosexual acts and other sex offences (arts. 4, 20, 21, 22, 23, 25 and 26). The Act applies to children who have attained the age of puberty according to Islamic law (arts. 2 and 51). The Sharia Criminal Procedure (Federal Territories) Act 1997 specifies how whipping should be carried out (arts. 125 and 126).

The Government stated its intention to amend the provisions for caning of boys in the Child Act in 2007.<sup>4</sup> During the Universal Periodic Review in 2009, the Government stated that abolition of judicial caning and capital punishment for persons under 18 at the time of the offence was an “immediate concern”; it reported that the Child Act was under review and that the Ministry of Women, Family and Community Development was planning to recommend the withdrawal of the sentence of caning for children.<sup>5</sup> Amendments to the Child Act 2001 passed in 2016 removed the references to whipping previously contained in article 91(g), article 92 and article 95, but it did not amend the Criminal Procedure Code 1976.

There have been no indications of any intention to prohibit corporal punishment under Islamic law. The Government rejected recommendations made during the UPR in 2013 to prohibit corporal punishment of children as a sentence for crime and defended judicial corporal punishment as “a valid and legal form of punishment”.<sup>6</sup> The Federal Government has declared its readiness to allow implementation of Islamic (*hudud*) punishments, including corporal punishment, at state level. In April 2014, it was reported that the Government in Kelantan state was planning to introduce two

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<sup>4</sup> 25 June 2007, CRC/C/MYS/CO/1, Concluding observations on initial report, para. 48

<sup>5</sup> 5 October 2009, A/HRC/11/30, Report of the working group, paras. 56 and 59

<sup>6</sup> 4 March 2014, A/HRC/25/10/Add.1, Report of the working group: Addendum

private members bills which would allow this by June 2015.<sup>7</sup> The state Government in Kota Baru stated its intention to enforce its Hudud Syariah Criminal Code.<sup>8</sup> The 2016 amendments to the Child Act did not prohibit corporal punishment under Islamic law.

## **Universal Periodic Review of Malaysia's human rights record**

Malaysia was examined in the first cycle of the Universal Periodic Review in 2009 (session 4). The following recommendations were made:<sup>9</sup>

“Outlaw corporal punishment at home; and provide victims of domestic violence with access to legal remedies and protection from potential perpetrators (Germany); Set in place effective campaigns to inform and sensitize the population on this matter (Germany)”

The Government did not clearly accept or reject the recommendations. It stated that abolition of caning of children as a sentence of the courts was an “immediate concern”<sup>10</sup> and, later: “The Government was in the process of amending the Child Act 2001 in order to implement the recommendations of the Committee on the Rights of the Child. The proposed amendments included the ... repeal of corporal punishment sentences for children, replacing them with community service orders.”<sup>11</sup>

Examination in the second cycle took place in 2013 (session 17). The following recommendations were made:<sup>12</sup>

“Eliminate all forms of cruel, inhuman or degrading treatments, particularly judicial beatings that should immediately be subjected to a moratorium (Belgium);

“Prohibit explicitly corporal punishment in all settings, including in the home and as a sentence of the courts (Liechtenstein);

“Ensure the implementation of laws against corporal punishment by undertaking awareness raising campaigns, encouraging the report of cases and ensuring effective investigation and prosecution of perpetrators (Liechtenstein)”

The Government rejected the recommendations.<sup>13</sup> In relation to the first of them, it stated: “Corporal punishment is a form of punishment provided for under existing laws in Malaysia. It is only imposed on serious offences and is only carried pursuant to the order of the courts. Malaysia is unable to support this recommendation as it equates torture, cruel, inhuman or degrading treatment and punishment with corporal punishment which is a valid and legal form of punishment in Malaysia.”<sup>14</sup> In relation to other recommendations, regarding the death penalty, the Government stated: “... Malaysia rejects the assertion that seeks to equate torture, inhuman, cruel or degrading treatment or punishment with corporal punishment including whipping and other forms of punishment as prescribed under existing laws which are carried out only upon direction by the Courts and which

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<sup>7</sup> Reported in *The Star Online*, 10 April 2014

<sup>8</sup> Reported in *The Star Online*, 10 April 2014

<sup>9</sup> 5 October 2009, A/HRC/11/30, Report of the working group, para. 106(11)

<sup>10</sup> 5 October 2009, A/HRC/11/30, Report of the working group, para. 56

<sup>11</sup> 16 October 2009, A/HRC/11/37, Report of the Human Rights Council on its eleventh session, para. 695

<sup>12</sup> 4 December 2013, A/HRC/25/10, Report of the working group, paras. 146(126), 146(145) and 146(146)

<sup>13</sup> 4 March 2014, A/HRC/25/10/Add.1, Report of the working group: Addendum, para. 9

<sup>14</sup> 4 March 2014, A/HRC/25/10/Add.1, Report of the working group: Addendum

remain valid and legal forms of punishment in the country.”<sup>15</sup> However, the Government also stated that “regarding the recommendations that do not enjoy Malaysia’s support, Malaysia does not completely reject the possibility of revisiting those recommendations as appropriate” and that it “remained steadfast in its commitment to continue improving the protection and promotion of human rights”.<sup>16</sup>

Third cycle examination took place in 2018 (session 31). The following recommendations were made:<sup>17</sup>

“Review and repeal laws that directly or indirectly criminalise consensual same-sex sexual activity and take action to prevent violence, discrimination or corporal punishment on the basis of sexual orientation or gender identity (Canada)”

“Take further steps to eliminate all forms of cruel, inhuman or degrading treatments or punishment, including the practice of whipping and caning (Brazil);

“Strengthen its national legislation with respect to the prevention of torture and ill-treatment and the elimination of practice of whipping and caning (Czechia);

“Abolish physical punishment, including caning, judicial beatings, in the legal system, both civil and Sharia (Denmark);

“Abolish all forms of corporate punishment in the legal system and withdraw its reservations to the Convention on the Rights of the Child, in particular article 37 on torture and deprivation of liberty (Sweden)”

“Eliminate all forms of discrimination and violence against women, including by criminalizing all forms of female genital mutilation and marital rape and prohibiting whipping of women as a form of punishment, as well as child marriages (Portugal)”

“Continue efforts to combat child abuse, including through elimination of caning in education facilities (Ukraine)”

“Abolish corporal punishment in the legal system (Germany)”

The Government will examine the recommendations and respond before the 40<sup>th</sup> session of the Human Rights Council in March 2019.

## **Recommendations by human rights treaty bodies**

### ***Committee on the Rights of the Child***

(25 June 2007, CRC/C/MYS/CO/1, Concluding observations on initial report, paras. 48, 49, 57, 58, 77 and 78)

“The Committee, while welcoming the State party’s statement that it will amend the provisions of the Child Act 2001 (Act 611) which provide for caning of male children, expresses its deep concern that caning is still a lawful penal sanction provided by the Child Act and that it is also used as a disciplinary measure in penal institutions.

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<sup>15</sup> 4 March 2014, A/HRC/25/10/Add.1, Report of the working group: Addendum

<sup>16</sup> 27 March 2014, A/HRC/25/2 Advance Unedited Version, Draft report of the Human Rights Council on its twenty-fifth session, para. 447 and 488

<sup>17</sup> 13 November 2018, A/HRC/WG.6/31/L.8 Unedited version, Draft report of the Working Group, paras. 6(79), 6(109), 6(110), 6(111), 6(112), 6(212), 6(225) and 6(228)

“The Committee urges the State party to immediately abolish all forms of cruel, inhuman or degrading punishments, including caning and other forms of corporal punishment imposed on persons having committed a crime when under the age of 18 and as a disciplinary measure in penal institutions, taking into account the Committee’s General Comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (CRC/C/GC/8).

“The Committee notes with appreciation that violence against children, such as physical, sexual, mental and emotional violence, as well as abandonment and neglect, are addressed in the Child Act 2001 (Act 611), and that since August 2002 incest has been criminalized by the Penal Code (Act 574). It also notes with appreciation that the Domestic Violence Act 1994 (Act 521) protects the child against violence within the family. It also notes with appreciation the State party’s willingness to establish a toll-free helpline for children. However, despite the measures taken to provide protection against violence, abuse and neglect, the Committee notes with grave concern that domestic violence, including violence against children in the family, remains a serious human rights problem in the State party. The Committee notes with concern that, owing to the strong social and cultural taboos, victims and witnesses rarely report these cases, although there exist established mechanisms to receive reports on child abuse and neglect, including a tollfree helpline “*Teledera*” which is, however, limited to reporting on child-abuse cases. It also notes with concern that corporal punishment in the home is lawful.

“In the light of article 19 and other relevant provisions of the Convention, and taking into account the recommendations of the Committee adopted on its Day of general discussion on violence against children within the family and in schools held on 28 September 2001 (CRC/C/111, paras. 701-745), the Committee urges the State party to: ...

c) prohibit by law all forms of corporal punishment in the home and conduct a comprehensive study to assess the nature and extent of this phenomenon;

d) continue to sensitize and educate parents, guardians and professionals working with and for children by carrying out public education campaigns about the harmful impact of violent forms of ‘discipline’ and promote positive, non-violent, participatory methods of child-rearing....

“In this respect, the Committee recommends that the State party seek cooperation with, among others, the United Nations Educational, Scientific and Cultural Organization (UNESCO) and UNICEF, to further improve the education sector.

“The Committee notes with concern that the corporal punishment of boys is still a lawful disciplinary measure and used in secondary schools.”

### ***Committee on the Elimination of Discrimination Against Women***

(9 March 2018, CEDAW/C/MYS/CO/3-5 Advance unedited version, Concluding observations on third-fifth report, paras. 23, 24 and 36)

“The Committee welcomes the measures taken by the State party to enhance the legal protection of women from gender-based violence, including by amending the Domestic Violence Act in 2017. Nevertheless, the Committee remains concerned about: ...

(e) The use of whipping by Syariah [sic] courts as a form of punishment, whereas whipping of women is prohibited under the Criminal Procedural Code.

“Recalling its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, the Committee recommends that the State party: ...

(e) Harmonize Syariah [sic] law with Section 289 of the Criminal Procedural Code to prohibit the use of whipping of women as a form of punishment.”

“Recalling its general recommendation No. 36 (2017) on the right of girls and women to education, the Committee recommends that the State party: ...

(e) Adopt anti-bullying policies based on alternative strategies to address bullying, such as counselling services and positive discipline, and undertake awareness-raising measures to foster equal rights for LGBTI students.”

## **Prevalence/attitudinal research in the last ten years**

According to official figures, 31 sentences of whipping were passed on Malaysian boys under section 91(g) of the Child Act and section 288 of the Criminal Procedure Code in the ten years up to April 2012; 31 sentences of whipping were carried out on boys during that time. In the same period, 19 sentences of whipping were passed on Malaysian children (boys and girls), and 19 carried out, under Sharia legislation.

(Information provided to the Global Initiative by the Prison Department of Malaysia, 27 April 2012)

In research on corporal punishment conducted in 2011 in nine primary and 10 secondary schools in six Malaysian states, students reported being slapped in the face, pinched, hit on the back of the head and verbally abused; having their hair, eyebrows, ears, and sideburns pulled, and being forced to do repetitive physical activity such as “squats” while crossing their arms and holding their earlobes.

*(Qualitative Research on the Prevalence and Impact of Corporal Punishment in Primary and Secondary National and National-Type Schools, Draft as of August 2010, from ongoing UNICEF project research program on corporal punishment, supported by HELP University College, cited in Child Rights Coalition Malaysia (2012), Status Report on Children’s Rights in Malaysia, Child Rights Coalition Malaysia)*

A study of 120 parents in Malaysia found that 40% had inflicted “moderate” physical punishment (hitting with an object, spanking, pinching, pulling hair, twisting a child’s ear, “knuckling” the back of a child’s head, forcing a child to kneel or stand painfully, putting chilli pepper in a child’s mouth and/or shaking a child aged over 2) on their child. Eight per cent had inflicted severe physical punishment, including shaking a child aged under 2, kicking, choking, smothering, burning, beating up, threatening with a knife or gun and/or giving a child drugs or alcohol.

*(Runyan, D. K. et al (2009), Child Abuse & Neglect 33: 826-832, cited in UNICEF East Asia and Pacific Regional Office (2012), Child Maltreatment: Prevalence, Incidence and Consequences: A Systematic Review of Research, Bangkok: UNICEF)*