

Corporal punishment of children in Brunei Darussalam

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Child population 119,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Summary of necessary legal reform to achieve full prohibition

Prohibition 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 article 89 of the Penal Code 1951 allows for acts “done in good faith for the benefit of a person under 12 years of age” by guardians or others having lawful charge of the child and similar provision is made in the Sharia Penal Code 2013 (articles 18 and 24). 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.

Alternative care settings – Corporal punishment should be prohibited in all alternative care settings (foster care, institutions, orphanages, places of safety, emergency care, etc).

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

Schools – Provisions authorising corporal punishment in the Education (School Discipline) Regulations 2004 should be repealed and prohibition enacted in relation to all educational settings, including public and private, full and part time, and including religious institutions.

Penal institutions – Provision authorising “disciplinary” corporal punishment in the Youthful Offenders (Places of Detention) Rules 2001 and for the use of force for purposes of “discipline” in the Children and Young Persons Act 2006 should be repealed and corporal punishment should be prohibited as a disciplinary measure in all institutions accommodating children in conflict with the law.

Sentence for crime – Provisions authorising judicial corporal punishment of children in the Criminal Procedure Code 1951, the Children and Young Persons Act 2006, the Sharia Penal Code 2013 and other laws should be repealed, and judicial corporal punishment of children prohibited.

Current legality of corporal punishment

Home

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”.

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.”

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.

Alternative care settings

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 (see under “Home”).

Day care

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).

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 (see under “Home”).

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.¹

Schools

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 1984.² 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.³

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.

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.⁴

Penal institutions

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).

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

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

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

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

Sentence for crime

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).

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.”

The new Sharia Penal Code 2013⁵ 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”.⁶ 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 puberty⁷ – stating instead that other punishments may be imposed. Articles 55 and 56

⁵ 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)

⁶ *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)).

⁷ *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”.

authorise amputation of the hand and foot as a punishment for *sariqah* (theft), including for a child who is *mukallaf* (from age 15).⁸ 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).

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.⁹

Universal Periodic Review of Brunei Darussalam’s human rights record

Brunei Darussalam was examined in the first cycle of the Universal Periodic Review in 2009 (session 6). The following recommendations were made and were accepted by the Government:¹⁰

“Specifically prohibit corporal punishment at home and in schools and undertake appropriate campaigns to educate families on alternative forms of discipline (Germany);

“Prohibit corporal punishment at home and in schools and sensitize families in this respect (Italy)”

However, the Government rejected the following recommendations:¹¹

“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 (Germany); prohibit corporal punishment in other public institutions and abolish whipping as a form of punishment (Italy); abolish the practice of corporal punishment (France); legally prohibit any form of corporal punishment of children and adolescents (Chile)”

Examination in the second cycle took place in 2014 (session 19). The following recommendations were made:¹²

“Enact legislation to prohibit explicit corporal punishment of children in all settings, including the home, schools and alternative care facilities (Montenegro);

“Reconsider the use of corporal and capital punishment under the Syariah Penal Code (Australia);

“Raise the minimum age of criminal responsibility and prohibit sentences of corporal punishment and life imprisonment for children under the age of 18 (Czech Republic);

“Bring into line the definition of minor in all legal domains, especially the penal, and prohibit life sentences and corporal punishment for crimes committed by minors (Mexico);

⁸ *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).

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

¹⁰ 4 January 2010, A/HRC/13/14, Report of the working group, paras. 89(18) and 89(19)

¹¹ 4 January 2010, A/HRC/13/14, Report of the working group, paras. 90(15) and 90(18)

¹² 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)

“Prohibiting corporal punishment sentences, in all settings, including in the home (Uruguay);

“Ban corporal punishment sentences and life sentences, in particular those imposed on children (Costa Rica);

“Strengthen and widen the scope of the awareness campaigns against child abuse, as well as the establishment of the Action Team on Child Protection to oversee cases of abuse, including corporal punishment (Brazil)”

The Government rejected the recommendations, 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.¹³

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(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)

“The Committee recommends that the State party take all measures necessary to address its previous recommendations of 2003 (CRC/C/15/Add.219) which have not been implemented or not sufficiently implemented and, in particular, those related to independent monitoring structures (para.17), data collection (para.19), definition of the child (para.23), birth registration (para.34), nationality (para.36), corporal punishment (para.38), and children in conflict with the law (para.56).

“The Committee is deeply concerned about the State party’s restrictive interpretation of Sharia law and about the adverse impact on human rights in general, and on children’s rights in particular, of the recently adopted Syariah Penal Code Order 2013, which under its second and third phases of implementation will impose capital punishment, hand cutting and whipping of children for several crimes.

“The Committee urges the State party to:

- a) review without delay the new Syariah Penal Code Order 2013 with a view to repealing its direct and indirect discriminatory provisions affecting children;
- b) compile information on best practices of States parties with similar legal systems and cultural and religious backgrounds, where more progressive interpretations of Islamic law have been codified in legislative reforms;
- c) undertake law reform to eliminate all discrimination against children, including through partnerships and collaboration with Islamic legal research institutions, children’s non-governmental organizations and community leaders;
- d) allocate sufficient human, technical and financial resources for the full dissemination of child-related laws and develop institutional capacity for their effective implementation.

“The Committee notes the information provided by the State party that corporal punishment of children has been prohibited in schools. However, the Committee remains concerned about the persistence of this practice in families, schools and institutions, in particular by school headmasters and principles, in alternative care settings and penal institutions and as a sentence for crime.

¹³ 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)

“In the light of its general comment No. 8 (2006) on the right of the child to protection from corporal punishment, in which the Committee underlined that all forms of violence against children, however light, are unacceptable and that the prerogatives of parents should in no way undermine the rights of children to be protected from corporal punishment, the Committee urges the State party to:

- a) explicitly prohibit corporal punishment in all settings;
- b) ensure that laws prohibiting corporal punishment in schools are implemented effectively and that legal proceedings are systematically initiated against those who inflict corporal punishment;
- c) introduce sustained public education, awareness-raising and social mobilization programmes, involving children, families, communities and religious leaders, on the harmful physical and psychological effects of corporal punishment with a view to changing the general attitude towards that practice, and promote positive, non-violent and participatory forms of children rearing and discipline as an alternative to corporal punishment;
- d) ensure the involvement and participation of the whole society, including children, in the design and implementation of preventive strategies with regard to corporal punishment of children.

“The Committee reiterates its previous concern (CRC/C/15/Add.219, para.56) that the minimum age of criminal responsibility is very low (7 years). The Committee also remains deeply concerned that no progress has been made towards the abolishment of the sentence of whipping of boys. The Committee is further concerned at the lack of adequate training to probation officers working with children.

“In the light of its general comment No. 10 (2007) on children’s rights in juvenile justice, the Committee urges the State party to bring its juvenile justice system fully into line with the Convention and other relevant standards. In particular, the Committee urges the State party to:

- a) raise without delay the minimum age of criminal responsibility to an internationally acceptable standard;
- b) abolish the sentence of whipping/flogging for boys;
- c) ensure that staff working with children, in particular probation officers, specialized judges, legal representatives and social workers, are provided with appropriate training;
- d) make use of the technical assistance tools developed by the Interagency Panel on Juvenile Justice and its members, including the United Nations Office of Drugs and Crime, UNICEF, OHCHR and NGOs, and seek technical assistance in the area of juvenile justice from the members of the Panel.”

Committee on the Rights of the Child

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

“The Committee is concerned that corporal punishment is not prohibited at home, in schools or institutions and remains acceptable in the society. The Committee also notes that the new book of discipline for schools does not specifically prohibit corporal punishment nor does it even refer to it as a form of discipline.

“The Committee strongly recommends that the State party prohibit corporal punishment at home, in schools and institutions and undertake education campaigns to educate families on alternative forms of discipline.

“The Committee notes the adoption of the Children’s Order 2000 and welcomes the special unit of the police established in 1997 to deal with child victims of abuse and violence, but remains

concerned that there is insufficient information and awareness in the State party of the ill-treatment and abuse of children within the family and institutions.

“The Committee recommends that the State party:

- b) take legislative measures to prohibit all forms of physical and mental violence, including corporal punishment and sexual abuse of children, in the family and in institutions;
- c) carry out public education campaigns about the negative consequences of ill-treatment of children, and promote positive, non-violent forms of discipline as an alternative to corporal punishment....

“The Committee is concerned that the minimum age of criminal responsibility is set at 7 years, which is far too low. The Committee is further concerned that there is no juvenile justice system although it is foreseen in law, that children are detained with adults and that whipping is used as a form of punishment for boys.

“The Committee recommends that the State party:

- g) abolish the sentence of whipping for boys....”

Prevalence/attitudinal research in the last ten years

None identified.