



Global Initiative to
**End All Corporal Punishment
of Children**

BRIEFING ON BRUNEI DARUSSALAM FOR THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, PRESESSIONAL WORKING GROUP – Mar 2014

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The human rights obligation to prohibit corporal punishment – a key strategy in eliminating all forms of violence

The legality and practice of corporal punishment of girls breaches their fundamental rights to respect for their human dignity and physical integrity, to equality under the law and to protection from all forms of violence – rights guaranteed in the Convention on the Elimination of All Forms of Discrimination Against Women and other international human rights instruments. There are strong links between corporal punishment of children – girls and boys – and all other forms of violence, including gender-based violence. As the Committee on the Rights of the Child emphasised in its General Comment No. 8 (2006), addressing corporal punishment is “a key strategy for reducing and preventing all form of violence in societies”.

The near universal acceptance of a degree of violent punishment in childhood and deeply held views that parents and other adults have a “right” to physically punish children can challenge efforts to achieve prohibition. This situation also means that corporal punishment – at least to some degree – is typically not readily perceived as a violent act in the same way as, for example, sexual and other socially unacceptable forms of violence. Physical violence against girls and boys in their own home is typically assumed not to be domestic violence because it is inflicted under the guise of “discipline” or “correction” – a rationale totally unacceptable when the victim is an adult woman. **It is for these reasons that we respectfully urge the Committee on the Elimination of Discrimination Against Women to specifically recommend that corporal punishment be prohibited in the home and all settings.**

This briefing describes the legality of corporal punishment of children in Brunei Darussalam. In light of General Recommendation No. 19 on Violence against women (1992), the links between corporal punishment of children and all other forms of violence including gender-based violence, the recommendations to prohibit by the Committee on the Rights of the Child and during the UPR, we hope the Committee on the Elimination of Discrimination Against Women will:

- **raise the issue of corporal punishment of girls in its List of Issues for Brunei Darussalam, asking what steps are being taken to prohibit and eliminate all corporal punishment of children, including the home and all other settings, and**
- **recommend to Brunei Darussalam, in the concluding observations on the initial/second state party report, that corporal punishment is explicitly prohibited in all settings, including the home and as a sentence of all courts, as a matter of priority.**

1 The state party's report to CEDAW

- 1.1 The initial/second state party report of Brunei Darussalam describes legal and other measures against domestic violence but mentions nothing about the physical punishment which may lawfully be imposed on girls and boys in the home in the guise of “discipline”.¹ The sole reference in the report to corporal punishment is to the prohibition on judicial whipping of women in the Criminal Procedure Code.² No hint is given of the imminent enactment of legislation under which girls and women may be sentenced to a number of forms of corporal punishment for a range of criminal offences (see para. 2.7, below).³
- 1.2 **We hope the Committee will, during the review of Brunei Darussalam, emphasise the importance of prohibiting and eliminating physical punishment of children within the family when taking measures against family violence. We hope the Committee will also challenge the Government's acceptance of corporal punishment of both girls and boys as a sentence of the Shari'a courts.**

2 The legality of corporal punishment of children in Brunei Darussalam

- 2.1 **Summary:** Corporal punishment of children in Brunei Darussalam is prohibited in some forms of day care but it is lawful in all other settings, including in the home, alternative care settings, schools, penal institutions and as a sentence for crime.
- 2.2 **Home (lawful):** 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 Shari'a Penal Code Order enacted in 2013 includes a similar provision (art. 18). 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.
- 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 article 89 of the Penal Code 1951 and article 18 of the Shari'a Penal Code Order 2013.
- 2.4 **Day care (partially prohibited):** 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 article 18 of the Shari'a Penal Code Order 2013.
- 2.5 **Schools (lawful):** Corporal punishment is lawful in schools, for boys only. During the Universal Periodic Review of Brunei Darussalam in 2009, the Government misleadingly stated that corporal

¹ 27 May 2013, CEDAW/C/BRN/1-2 Advance Unedited Version, Initial/second state party report

² *ibid.*, section 4.1, para. viii

³ The report to CEDAW was submitted in April 2013; the Shari'a Penal Code Order was enacted in October 2013.

punishment has been prohibited in schools since 1984.⁴ In fact, the Education (School Discipline) Regulations 2004 provide for corporal punishment for boys (art. 5).

2.6 **Penal institutions (lawful):** 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.

2.7 **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. The Children and Young Persons Act 2006 confirms that a child⁵ can be sentenced to corporal punishment by the High Court (art. 44(3)). We acknowledge that this may be of little relevance to the Committee on the Elimination of Discrimination Against Women because article 258 states that females may not be sentenced to corporal punishment. However, in October 2013, a new criminal law was enacted to punish Shari’a crimes and related offences. The Shari’a Penal Code Order 2013 – which for the most part applies to Muslims and non-Muslims – provides for both males and females to be sentenced to whipping, amputation, mutilation and stoning to death from the age of 15 if they have achieved puberty. Children under 15 years of age and children who have not attained puberty may be sentenced to whipping. This law does not prohibit whipping of females.

4 Recommendations by human rights treaty bodies and during the UPR

4.1 **CRC:** In its concluding observations on the state party’s initial report in 2003, the Committee on the Rights of the Child expressed concern at corporal punishment of children in Brunei Darussalam and recommended that it be prohibited in the family and all other settings and that the sentence of whipping of boys be abolished.⁶

4.2 **UPR:** Brunei Darussalam was examined in the first cycle of the Universal Periodic Review in 2009 (session 6). The Government both accepted and rejected recommendation to prohibit corporal punishment of children.⁷

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

⁵ A child is defined in the Act as under 14, a young person aged 14-17 (art. 2)

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

⁷ *ibid.*, paras. 89(18) and 89(19)