

BRUNEI DARUSSALAM

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 19th session, 2014

*From Dr Sharon Owen, Research Coordinator, Global Initiative,
info@endcorporalpunishment.org*



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

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 lawful, despite the recommendations to prohibit it by the Committee on the Rights of the Child and during the first cycle UPR in 2009 (which the Government accepted).

We hope the Working Group will note with concern the legality of corporal punishment in Brunei Darussalam. We hope states will raise the issue during the review in 2014 and make a specific recommendation that legislation is enacted in Brunei Darussalam to explicitly prohibit corporal punishment of children in all settings, including the home, as a matter of priority.

1 The initial review of Brunei Darussalam by the Human Rights Council (2009)

1.1 Brunei Darussalam was reviewed in the first cycle of the Universal Periodic Review in 2009 (session 6). The issue of corporal punishment was not included in the compilation of UN information or in the summary of stakeholders' information, despite the fact that the Committee on the Rights of the Child has made recommendations to Brunei Darussalam on the issue and additional information was submitted to the UPR. However, the obligation to prohibit corporal punishment was raised in an advance question.¹ During the review, the following recommendations were made and were accepted by the Government:²

“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)”

¹ Advance Questions by Argentina, Czech Republic and UK

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

- 1.2 Inconsistently, the Government rejected other similar recommendations.³ The Government also provided misleading information on the legality of corporal punishment in schools (see below).
- 1.3 Since the review in 2009, there has been no change in the legality of corporal punishment of children: it remains lawful in the home, in schools, in the penal system – as a sentence for crime and as a disciplinary measure in penal institutions – and in alternative care settings.
- 1.4 The obligation under the Convention on the Rights of the Child and other human rights treaties to reform the law to prohibit corporal punishment, including in the home, is one frequently ignored or evaded by governments. 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. **It is for these reasons that we respectfully urge members of the Working Group to specifically recommend prohibition of corporal punishment in the review of Brunei Darussalam.**

2 Legality of corporal punishment in Brunei Darussalam

- 2.1 ***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”. 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.
- 2.2 ***Schools (lawful)***: Corporal punishment is lawful for boys. During the UPR in 2009, the Government stated that corporal punishment has been prohibited in schools since 1984.⁴ However, the Education (School Discipline) Regulations 2004, under the Education Act 2003, prohibit corporal punishment for girls but state that “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” and “a record of all punishments imposed or meted out 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.
- 2.3 ***Penal system – sentence for crime (lawful)***: Corporal punishment – whipping – is lawful 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

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

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

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.” The Children and Young Persons Act 2006 confirms that a child can be sentenced to corporal punishment by the High Court (article 44(3)). A child is defined in the Act as under 14, a young person aged 14-17 (article 2).

2.4 Penal system – disciplinary measure in penal institutions (lawful): Under articles 51-55 of the Youthful Offenders (Places of Detention) Rules 2001, males 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.

2.5 Alternative care settings (lawful): Corporal punishment is explicitly prohibited in child care centres in article 17 of the Child Care Centres Act 2006. But there is no prohibition of corporal punishment in other forms of care.

3 Recommendations by human rights treaty monitoring bodies

3.1 CRC: Following examination of the state party’s initial report in 2003, the Committee on the Rights of the Child recommended that corporal punishment of children in Brunei Darussalam be prohibited in the home, schools and institutions and that the sentence of whipping for boys be abolished.⁵

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
www.endcorporalpunishment.org; info@encorporalpunishment.org
September 2013

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 in 2011 began briefing the Committee on the Rights of Persons with Disabilities.

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