

Corporal punishment of children in Malaysia: Briefing for the Universal Periodic Review, 17th session, 2013

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

Corporal punishment of children breaches their rights to respect for human dignity and physical integrity and to equal protection under the law. It is recognised by the Committee on the Rights of the Child and other treaty bodies, as well as by the UN Secretary General's Study on Violence against Children, as a highly significant issue, both for asserting children's status as rights holders and for the prevention of all forms of violence.

In June 2006, the Committee on the Rights of the Child adopted General Comment No. 8 on "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment", which emphasises the immediate obligation on states parties to prohibit all corporal punishment of children, including within the home. Other treaty bodies and also regional human rights mechanisms have condemned all corporal punishment. In October 2006, the report of the UN Secretary General's Study on Violence against Children was submitted to the General Assembly. It recommends universal prohibition of all corporal punishment as a matter of priority.

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. There is growing progress across all regions in challenging this common form of violence against children. But many States persist in ignoring treaty body recommendations to prohibit and eliminate all corporal punishment. We hope the Working Group of the UPR will give particular attention to states' response, or lack of response, to the concluding observations from treaty bodies on this issue, as well as to the recommendations made during the first cycle of the UPR.

Corporal punishment of children is lawful in Malaysia despite the recommendations made during the UPR in 2009 and by the Committee on the Rights of the Child.

We hope the Working Group will note with concern the legality of corporal punishment in Malaysia. We hope states will raise the issue during the review in 2013 and recommend to Malaysia that legislation is enacted to explicitly prohibit corporal punishment of children in all settings, including in the home and as a sentence of the courts, as a matter of priority.

1 The review of Malaysia in the first cycle (2009)

1.1 Malaysia was reviewed in the first cycle of the Universal Periodic Review in 2009 (session 5). The issue of corporal punishment of children was raised in the compilation of UN information¹ and in the summary of stakeholders' information.² The following recommendations were made:³

“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)”

1.2 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”⁴ 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.”⁵ We note that the Government had previously stated its intention to amend the provisions for caning of boys in the Child Act to the Committee on the Rights of the Child in 2007.⁶

1.3 Prohibiting and eliminating corporal punishment of children in all settings is an obligation on states under the Convention on the Rights of the Child and other international human rights treaties. But it is an obligation too often ignored or evaded by governments. In Malaysia, there has been no progress in prohibiting corporal punishment of children, even in the penal system where the Government expressed its positive intention to reform the law. It remains the case that corporal punishment of children in Malaysia is lawful in all settings – the home, schools, penal system and alternative care settings.

2 Legality and practice of corporal punishment in Malaysia

2.1 **Home (lawful):** 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

¹ 20 November 2008, A/HRC/WG.6/4/MYS/2, Compilation of UN information, para. 21

² 27 October 2008, A/HRC/WG.6/4/MYS/3, Summary of stakeholders' information, paras. 15 and 28

³ 5 October 2009, A/HRC/11/30, Report of the working group, para. 106(11)

⁴ 5 October 2009, A/HRC/11/30, Report of the Working Group, para. 56

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

⁶ 25 June 2007, CRC/C/MYS/CO/1, Concluding observations on initial report to the Committee on the Rights of the Child, para. 48

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.

- 2.2 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; 8% 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.⁷
- 2.3 **Schools (lawful):** Corporal punishment of boys is regulated by the Education Regulations (Student Discipline) 2006 under the Education Act 1996. Article 350 of the Penal Code confirms that caning of a scholar by a headteacher does not amount to criminal force (see above).
- 2.4 In 2003, research conducted by researchers from local universities assigned by the Human Rights Commission of Malaysia (Suhakam) found the cane being used regularly. In the survey of 5,754 students, 52% agreed that caning commonly happened in their schools, more often in rural schools than urban schools; around 80% of cases occurred at technical schools; 79.5% of teachers and 71.8% of administrators agreed that persistent offenders should be caned.⁸
- 2.5 **Penal system (lawful):** Corporal punishment is lawful as a sentence for crime. Article 91(g) of the Child Act 2001 authorises the court for children to “order the child, if a male, to be whipped with not more than ten strokes of a light cane – (i) within the Court premises; and (ii) in the presence, if he desires to be present, of the parent or guardian of the child”. Article 92 specifies how the whipping should be carried out: the child should first be certified fit for the punishment by a medical officer; the whipping should be with a light cane “with average force without lifting his hand over his head so that the child's skin is not cut”; and it should be inflicted on any part of the child's clothed body “except the face, head, stomach, chest or private parts”. 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” (article 288), and this may be ordered in cases normally punished by fine or imprisonment (article 293). Many offences in the Penal Code and other laws are punishable by whipping.
- 2.6 Corporal punishment is also lawful as a sentence under Islamic law for males and females. The Sharia Courts (Criminal Jurisdiction) Act 1965, which applies to Muslims in all the States of Peninsular Malaysia (articles 1 and 2), provides for Islamic courts to order whipping up to six strokes (article 2). The Sharia Criminal Offences (Federal Territories) Act 1997 applies to Muslims in the Federal Territories of Kuala Lumpur and Labuan (article 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 (articles 4, 20, 21, 22, 23, 25 and 26). The Act applies to children who have attained the age of puberty according to Islamic law (articles 2 and 51). The Sharia Criminal Procedure

⁷ 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

⁸ Reported in *New Straits Times*, 21 March 2004

(Federal Territories) Act 1997 specifies how whipping should be carried out (articles 125 and 126).

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

2.8 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.⁹

2.9 *Alternative care settings (lawful)*: There is no explicit prohibition of corporal punishment.

3 Recommendations by human rights treaty monitoring bodies

3.1 **CRC**: In 2007, the Committee on the Rights of the Child expressed concern about corporal punishment of children in Malaysia in the home, schools, penal institutions and as a sentence for crime; the Committee recommended that all corporal punishment be prohibited.¹⁰

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⁹ Information provided to the Global Initiative by the Prison Department of Malaysia, 27 April 2012

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