

# Ending family violence in Malaysia – challenging physical punishment of girls and boys



Information for the Committee on the Elimination of Discrimination Against Women, Pre-Sessional Working Group for the 69<sup>th</sup> session, from the Global Initiative to End All Corporal Punishment of Children ([www.endcorporalpunishment.org](http://www.endcorporalpunishment.org)), June 2017

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## **Introduction: family violence in Malaysia and CEDAW's examination of the third/fifth state party report**

Legal protection from domestic violence is provided for in the Domestic Violence Act 1994. There is no clear legal prohibition of all violent punishment of children; in fact the Penal Code contains provisions providing a legal defence to the use of corporal punishment on children. The widespread social acceptance of the use of violence in childrearing undermines efforts to eliminate family violence – the legal defences must be repealed and an explicit prohibition of violent punishment must be enacted.

**We hope the Committee on the Elimination of Discrimination Against Women will raise the issue of violent punishment of girls and boys in its examination of Malaysia. In particular, we hope the Committee will:**

- **in its list of issues for Malaysia, ask what progress is being made towards ensuring that legal protection from domestic violence includes explicit prohibition of violent punishment in childrearing so that children as well as adults have legal protection from violent assault, and**
- **in its concluding observations on the third/fifth state party report, recommend that Malaysia ensure that *no* form of violence within the domestic sphere is condoned, including by parents against their children, and that legislation is enacted to prohibit domestic violence against all family members and repeal any legal defences for the use of violent punishment of girls and boys.**

The remainder of this briefing provides the following further details:

1. The current law relating to family violence and corporal punishment of children in Malaysia
  2. Treaty body and UPR recommendations on the issue made to Malaysia to date.
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## **1 Laws on domestic violence and corporal punishment of children in Malaysia**

### **Summary**

1.1 Protection from domestic violence in Malaysia is provided for in the Domestic Violence Act 1994. However, the Penal Code contains provisions providing a legal defence to the use of violent punishment, and the laws do not include clear prohibition of all corporal punishment.

### **Detail**

1.2 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.

1.3 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 and the Islamic Family Law (Federal Territories) 1984.

**1.4 Prohibition of all violent punishment of children – which is critical in laying the legal foundations for efforts to reduce child abuse and domestic violence – requires an explicit ban in legislation. We hope the Committee will urge the Government of Malaysia to enact legislation as a matter of priority to clearly prohibit all corporal punishment of girls and boys and repeal any legal defence for its use.**

## **2 Recommendations by human right treaty monitoring bodies and during the Universal Periodic Review**

2.1 The Committee on the Rights of the Child has recommended to Malaysia that legislation be enacted to explicitly prohibit corporal punishment in all settings in 2007.<sup>1</sup>

2.2 Malaysia was examined in the first cycle of the Universal Periodic Review in 2009 (session 4) and received a recommendation to outlaw corporal punishment in the home.<sup>2</sup> The Government did not clearly accept or reject the recommendations, but declared that abolition of caning of children as a sentence of the courts was an “immediate concern”.<sup>3</sup> The Government rejected recommendations to prohibit made in 2013,<sup>4</sup> stating “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>5</sup>

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

<sup>2</sup> 5 October 2009, A/HRC/11/30, Report of the working group, para. 106(11)

<sup>3</sup> 5 October 2009, A/HRC/11/30, Report of the working group, para. 56

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

<sup>5</sup> 4 March 2014, A/HRC/25/10/Add.1, Report of the working group: Addendum

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