



Terms Of Reference

Study and Analysis on the Sociocultural Approach of Corporal Punishment in Educational Settings in Malaysia

Project: Research to Support Legal and Policy Reform in Compliance with the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)

Research Title: Study and Analysis on the Sociocultural Approach of Corporal Punishment in Educational Institutions in Malaysia

Post Title: Research Consultant

Project Duration: 6 months from the date on the letter of appointment

Expected Start Date: June 2024

1. Background

On 22 September 2023, the Office of the Children's Commissioner of SUHAKAM released a press statement with regards to an incident of a student suffering from an eye injury resulting from caning by his assistant discipline teacher.¹ Civil Society Organisations such as The Parent Action Group for Action (PAGE) and Malaysia Educational Psychology Society (Meps) have called upon the authorities to take swift action against the teacher and called for an urgent review of corporal punishment in school settings.²

Additionally, SUHAKAM has published a Practical Briefing and Action Paper on the '*SUHAKAM Project to Study and Analyse the Compatibility of Malaysian Law with the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or*

¹ SUHAKAM Press Statement No.34 – 2024, 'Incident of a student suffering an eye injury resulting from caning' [https://suhakam.org.my/2023/09/press-statement-no-34-2023/#:~:text=KUALA%20LUMPUR%20\(22%20SEPTEMBER%202023,caning%20to%20address%20his%20misbehaviour.](https://suhakam.org.my/2023/09/press-statement-no-34-2023/#:~:text=KUALA%20LUMPUR%20(22%20SEPTEMBER%202023,caning%20to%20address%20his%20misbehaviour.)

² New Straits Time, 'Student's eye injury sparks debate on corporal punishment in Malaysian school', (20 September 2023) < <https://www.nst.com.my/news/nation/2023/09/957461/students-eye-injury-sparks-debate-corporal-punishment-malaysian-schools>>

Punishment (UNCAT)” in February 2021.³ The research study recommended that SUHAKAM to look beyond legal constructs to tackle the issues of UNCAT empirically for effective advocacy on human rights policymaking. The study called for a sustained effort to understand how corporal punishment is viewed and understood by different communities in a multicultural society.

The Education (School Discipline) Regulations 1959 provides a basis and guideline to cane or whip students as a disciplinary measure for Principals and Disciplinary teachers of educational institutions under the purview of the Ministry of Education (MOE). Nonetheless, this does not include other educational institutions that are not registered with MOE such as Tahfiz Schools in the states. Meanwhile, educational institutions such as MARA (*Maktab Rendah Sains*) Junior Science College are not bound to observe the guidelines as well as they are under the Ministry of Rural and Regional Development. Nonetheless, we learned that MARA’s disciplinary guidelines are complying with the MOE guidelines.

To date, there is a dearth of adequate data, information, and knowledge on the sociocultural approach towards providing insight into the embeddedness of religious and cultural practices within the diverse Malaysian Community of the adoption of corporal punishment to discipline students to address their misbehaviour considering the prevalence and mass support from parents.

Taking on the baton from the last study in 2021, the Commission wishes to engage a Research Consultant (henceforth referred to as the Consultant) who will conduct a study and analysis on the sociocultural and religious basis of corporal punishment as a necessity or tool in educating students. The Consultant shall identify existing religious and cultural barriers that may hinder the legal reform of domestic laws and policies governing corporal punishment in Malaysia. The Consultant shall also identify and recommend alternative modes of disciplinary measures considering the context of the locality.

The project “Research to Support Legal and Policy Reform in Compliance with United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)” is just funded by the European Union.

2. Overall Objective

To create and produce evidence-based materials that may be used as a basis to engage with and strengthen policy strategy through the lens of children’s rights among the public, lawmakers, senior government officers and Parliamentarians on the removal of corporal punishment as a disciplinary measure in educational settings.

3. Expected Outputs and Deliverables

Specifically, the Consultant is expected to produce the following in English:

- a) **Output 1:** A final report on the study and analysis of:
 - (a) the identification of existing legislation, laws, policies, guidelines, and government circulars relating to the use of corporal punishment as a legal disciplinary measure from different types of educational institutions In Peninsular Malaysia;
 - (b) the identification of sociocultural and religious basis in the use of corporal punishment as a disciplinary measure from stipulated type educational institution as found below;

³ SUHAKAM < https://suhakam.org.my/wp-content/uploads/simple-file-list/UNCAT_compressed.pdf >

- (c) the identification of existing religious and cultural barriers that may hinder the legal reform of domestic laws and policies governing corporal punishment in Malaysia.
- b) **Output 2:** Possible alternative modes of punishment to replace corporal punishment as a disciplinary measure for students in the Malaysian context.
- c) **Deliverables:** Three (3) progress reports
 - a) Conduct interviews or field research in different types of educational institutions under MOE as below:
 - i) *Sekolah Menengah (Harian)*;
 - ii) *Sekolah Berasrama Penuh*;
 - iii) *Sekolah Menengah Kebangsaan Agama (SMKA)*; and
 - iv) *Sekolah Agama Bantuan Kerajaan*.
 - v) *Sekolah Tahfiz*
 - b) Interviewees:
 - (i) Principal or Disciplinary Teacher;
 - (ii) Students; and
 - (iii) Parents
 - c) Roundtable Discussion or engagement with government and relevant stakeholders

Methodology: Desk review and in-depth, semi-structured interviews.

Target location: Three different states in Peninsular.

- a) **Scope of Work:**
 - The scope of work to be undertaken by the Consultant includes the following:
 - a) To conduct primary and secondary research on the sociocultural approach in adopting caning or whipping as a disciplinary measure in different types of educational institutions; and
 - b) To collect and analyse information and data on possible alternative modes of punishment to replace corporal punishment as a disciplinary measure for students in the Malaysian context.
 - c) To produce Research paper, Executive Summary and Infographic based on the findings of the research in English and Malay language.
 - d) To proofread all the documents produced.

Duties and Responsibilities

The Consultant will have the following duties and responsibilities:

- i. Conduct evidence-based, law and policy-oriented and publication-quality research in any documents relevant to this assignment;
- ii. The Consultant is expected to conduct primary research. This may include, but is not limited to, conducted surveys or questionnaires, and interviews with relevant stakeholders and experts on the subject matter;
- iii. Conduct secondary research; this should include but not be limited to literature reviews on the subject, government data, journals, and reports, including other

- relevant national and foreign materials/research as well as applicable international instruments;
- iv. Undertake to obtain all necessary consents and/or approval from third parties applicable to the carrying out of this assignment and the Consultant shall indemnify the Commission against all liability, claim of loss and damage of whatsoever nature incurred/suffered by or against the Commission as a result of lack of consent and/or approval;
 - v. Undertakes not to infringe any intellectual property rights and all other rights that may be relevant in the conduct of research and its report. The Consultant is responsible for obtaining all necessary consent, license and/or approvals from third parties concerning the intellectual property rights. The Consultant shall indemnify the Commission against all liability and claims of loss and damage of whatsoever nature incurred/suffered by or against the Commission as a result of any breach of intellectual property rights or by such lack of consent and/or approval.
 - vi. Conduct the research and complete the draft and finalised paper following the timeframe as stipulated on the page.

Deliverables	Timeframe (from date of contract signing)
Submission of first progress report	25 days
Submission of draft output 1 and output 2 including the second progress report	2 nd month
Review by SUHAKAM	3 rd month for a period of 2 weeks
Submission of the third progress report	5 th month
Submission of final report and research paper	6 th month
Presentation of findings	8 th month
Submission of final report incorporating inputs and amendments	10 th month
Publish the executive summary in BM and English	12 th month

- vii. Time wherever and wherever stipulated herein for the performance of the Consultant's duties is of the essence. The Commission shall not entertain any request for an extension of time unless such extension is needed due to unforeseen circumstances to which approval is at the discretion of the Commission or due to the delays caused or contributed to by the Commission. This is a strict requirement, failure of which may result in unilateral termination of the Consultant's appointment;
- viii. The Consultant is obliged to incorporate all comments and feedback provided by the Commission into final submissions following the review period;
- ix. The Consultant shall hand over a soft copy of the draft and final submissions to the Commission on the specified date in the table above;
- x. The copyright of the report shall belong to the Commission exclusively, nevertheless, the Commission will acknowledge the Consultant's and Co-consultants' (where applicable) contribution;
- xi. The Consultant shall be directly responsible to the Commission;

- xii. Without limitation the Commission may by notice in writing terminate the appointment of the Consultant if the Consultant is:
 - a) Found to be in breach of any of the terms and conditions of appointment contained in the contract. If the breach is capable of remedy and is not remedied by the Consultant within fourteen (14) days of receipt by the Consultant of a notice from the Commission specifying the breach and requiring its remedy;
 - b) Incompetent, guilty, or gross misconduct and/ serious or persistent negligence in the provision of services hereunder; or
 - c) Fails or refuses after written requirement to provide the services reasonable and properly required hereunder.

b) Schedule of Payments

The Consultant shall provide a budget breakdown in accordance with the budget template as provided in Section C of the Research Application for undertaking the tasks abovementioned in Para 4 (i) – (iv) and in accordance with Para 5 (i) – (xii). Payment to the successful candidate shall be made according to the following schedule:

Payment	Percentage (%)
First Payment	Thirty per cent (30%) upon contract signing.
Second Payment	Thirty per cent (30%) upon delivery and/or presentation of the duly completed draft of output 1, 2 and second progress report to the Commission.
Final Payment	The balance is forty per cent (40%) upon final submission of the final report to the Commission without further amendment.

- I. All costs associated with the performance of the Consultant’s duties under this appointment which include but are not limited to, travel and rental of venue for purposes of conducting meetings or interviews and those incurred from the salary of co-consultants or assistants shall be listed in the budget template as provided in Section X of the Research Application.
- II. The Commission may assist the Consultant with certain logistical aspects such as the engagement of vendors and booking arrangements.

c) Co-consultants and Assistants

- I. The consultancy may comprise several Consultants and the team of co-consultants must be led by one lead consultant known as the Research Supervisor who shall be the point person with whom the Commission shall communicate at all times about all aspects of the research. The Commission shall have no communication with the co-consultants throughout the consultancy.
- II. The Consultant may engage assistants so long as their tasks do not cover core deliverables. The Commission shall have no affiliation in all aspects with the assistant and as such, the Commission shall have no communication with the assistant throughout the consultancy.

Sub-contracting the research is impermissible. This is a strict requirement, failure of which may result in unilateral termination of the Consultant's appointment.

d) Competencies and Qualifications

Legal experts or academics who are interested in the assignment should meet the following requirements:

Skills:

Demonstrated track record in conducting human rights research, conducting legal analysis, producing publication-quality research papers, and formulating strategies.

Academic Qualifications and Professional Experience:

1. Ph.D. or Masters preferred in social science/sociology/policy / law or other relevant field of study and at least four years of working experience OR equivalent combination of education, training, and experience in
2. Experienced in on-the-ground research.

Language:

Fluency in English and Bahasa Malaysia