



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

JAMAICA – COUNTRY REPORT

Child population: 961,000 (UNICEF, 2010)

Summary of necessary legal reform to achieve full prohibition

Settings where explicit prohibition is necessary

home, schools, penal system, alternative care settings

Is there a legal defence for corporal punishment which must be repealed?

Yes – The right to inflict “reasonable and moderate” punishment on children is recognised in common law. It does not appear to be confirmed in written law, but legal provisions against violence and abuse are not interpreted as prohibiting corporal punishment in childrearing. The near universal acceptance of violence in childrearing necessitates clarity in law that no degree or kind of corporal punishment is acceptable or lawful. Explicit prohibition should be enacted of all corporal punishment in all settings, including the family home and all settings where adults have authority over children, together with explicit repeal of the common law defence.

Other legislative measures necessary

Schools – Explicit prohibition should be enacted in relation to all schools, public and private, in addition to repeal of the common law defence.

Penal system – All provisions authorising corporal punishment as a sentence for crime and as a disciplinary measure in penal institutions should be repealed, including the Flogging Regulation Act (1903), the Crime (Prevention of) Act (1942) and the Obeah Act (1898).

Alternative care – Corporal punishment should be explicitly prohibited legislation relating to all forms of alternative care, including institutional and non-institutional and government provided and non-government care settings.

DETAILED COUNTRY REPORT

Legality of corporal punishment

Home

Corporal punishment is lawful in the home under the common law right to inflict “reasonable and moderate” punishment. The Child Care and Protection Act (2004) does not confirm a right to administer punishment or similar, but provisions against violence and abuse in that Act and in the Offences Against the Person Act (1864), the Domestic Violence Act (1996) and the Constitution (1962) and its Charter of Fundamental Rights and Freedoms (2011) are not interpreted as prohibiting corporal punishment in childrearing.

Schools

Corporal punishment is lawful in schools. There is no provision for it in the Education Act (1965) or in the Education Regulations (1980), but a teacher is justified in administering “moderate and reasonable” corporal punishment under common law (*Ryan v Fildes* [1983] 3 All E.R.517). The Government has stated its intention to abolish corporal punishment in schools and has informed all public schools not to use it (Ministry of Education School Bulletin 94/08). Corporal punishment is already prohibited in “basic schools” (see below). In May 2011, the Government stated it was seeking law reform to abolish corporal punishment through the development of a safe school policy to be tabled in Parliament for approval (CCPR/C/JAM/Q/3/Add.1, Written reply to Human Rights Committee list of issues, para. 83). It is not clear whether this would lead to prohibition in law, including repeal of the common law defence, or remain at the level of policy.

Penal system

Corporal punishment is unlawful as a **sentence for crime**. It was ruled unconstitutional by the Jamaican Court of Appeal in December 1998 and there is no provision for it in the Criminal Justice (Reform) Act (1978), the Corrections Act (1985) and the Child Care and Protection Act. Two private members’ bills were tabled in Parliament in October 2010 to repeal the Flogging Regulation Act (1903), the Crime (Prevention of) Act (1942) and provisions in the Obeah Act (1898) which provide for judicial corporal punishment. These Bills were withdrawn in June 2011.

Corporal punishment is unlawful as a **disciplinary measure** in penal institutions under article 62 of the Child Care and Protection Act, but provisions for disciplinary corporal punishment in the Flogging Regulation Act have yet to be repealed (see above).

Alternative care

Corporal punishment of children up to 6 years old in early childhood institutions (known as basic schools) is prohibited under the Act to Provide for the Regulation and Management of Early Childhood Institutions and for other Connected Matters, passed in January 2005. It is prohibited in other institutions and forms of childcare (places of safety) under article 62 of the Child Care and Protection Act. Permitted disciplinary measures in children’s homes are prescribed by the Child Care and Protection (Children’s Homes) Regulations (No. 22 of 2005), which states in article 17: “(1) No licensee or member of staff of any children’s home shall strike, cuff, slap or use any other form of physical violence towards any child who resides or is at the home. (2) No child at a children’s home shall be permitted to administer any form of punishment upon any other child at the home.”

Prevalence research

In a study involving six focus groups with 60 children aged 7-12 and eight parent focus groups with 44 adults, all groups of children described experiencing harsh disciplinary measures, including beatings with objects such as belts, rulers, garden hose and boards. Many of the children said they felt angry and hurt by physical punishments, and recommended discussion and withdrawal of privileges as alternatives. Some children said that when they were parents they would use more democratic or flexible discipline, while others said they wanted to hurt their own children as much as they had been hurt. Almost all parents defended the use of corporal punishment (“beating”) as a justified mode of disciplining children. (Brown, J. & Johnson, S. (2008), “Childrearing and child participation in Jamaican families”, *International Journal of Early Years Education*: 16 (1), 31–40)

According to a 2010 UNICEF report, 89% of children aged 2-14 experienced violent discipline (physical punishment and/or psychological aggression) in 2005-2006. Over three quarters experienced physical punishment, while a smaller percentage (33%) of mothers and caregivers thought physical punishment was necessary in childrearing; non-violent discipline was also widely used, experienced by 89% of children. Nine per cent of children experienced severe physical punishment (being hit or slapped on the face, head or ears or being hit over and over with an implement) and 77% experienced psychological aggression (being shouted at, yelled at, screamed at or insulted). Children aged 5-9 were more likely to experience violent discipline than those of other ages: 92% of children aged 5-9 compared with 90% of children aged 2-4 and 86% of children aged 10-14. Children living in households with adults with a higher average level of education were less likely to experience violent discipline than those living with less educated adults. Children engaged in child labour experienced violent discipline more than those not engaged in child labour: 95% compared with 89%. No significant differences in children’s experience of violent discipline were found according to sex or household size. (UNICEF (2010), *Child Disciplinary Practices at Home: Evidence from a Range of Low- and Middle-Income Countries*, NY: UNICEF)

UNICEF analysis of data in 2009 found that 6% of disabled children and 6% of non-disabled children were hit or slapped on the face, head or ears or hit over and over as hard as possible with an implement in 2005-2006; 6% of girls and women aged 15-49 thought that a husband is justified in hitting or beating his wife under certain circumstances. (UNICEF (2009), *Progress for Children: A report card on child protection*, NY: UNICEF)

A 2010 Government-sponsored attitudinal survey of 1,000 adults, carried out by Market Research Services Limited, revealed that the majority – regardless of socio-economic status – believe beating a child is necessary in correcting bad behaviour; 30% supported ending the beating of children. More than half (51.8%) did not agree that acts such as pinching, hitting the head, biting, kicking and thumping a child constituted corporal punishment; 51% said they had physically punished a child. However, 80% of those surveyed agreed that parents could use other forms of discipline which are just as effective. (Reported in *The Gleaner*, 17 February 2010)

In a survey of teachers from all types of primary educational settings, reported in 2007, one in four admitted to flogging students often and one in three to pinching and thumping them. Boys were more likely to be flogged. Less than a quarter of teachers believed beating was effective, and almost half identified negative effects they had seen, including students becoming oppositional, aggressive, destructive towards school property, gathering peer support against teachers, and becoming “disconnected” from school activities. (Reported in *Jamaica Gleaner Online*, 21 March 2007)

Focus group research with parents, children aged 5-8 years and practitioners in 2007 found that young children were still receiving corporal punishment despite the prohibition in the Early Childhood Act passed in 2005. (Reported in *The Jamaica Observer*, 6 June 2007)

A 2006 survey for *The Gleaner* found that 60% of respondents were in favour of spanking and caning in schools, with 28% feeling strongly that teachers should be given the right to physically punish

students. Over a third (37%) opposed corporal punishment, including 13% who were strongly against it. (Reported in *Jamaica Gleaner Online*, 19 August 2006)

Over 200 parents (71.3% mothers, 6.4% fathers, and other caregivers) from across six parishes, of 100 boys and 103 girls aged between 5 and 7, completed questionnaires which were administered by trained interviewers, followed by an investigation into the frequency of use of specific disciplinary methods. Of the 193 parents who responded to questionnaires about the disciplinary methods they used in their homes, 28% reported that non-violent methods were most commonly used; 25.4% reported psychological aggression and 46.6% physical assault. Of those reporting physical assault, 1% reported pinching, 31.1% spanking, 13% beating with an object, 1% shaking, and 0.5% tying of hands. In the week prior to the interview, 1% reported spanking more than 7 times, 3.1% 4-6 times, and 27.4% 1-3 times. Beating with a strap was reported as occurring 1-3 times over the same period by 14.6% of respondents. (Samms-Vaughan, M., Williams, S. & Brown, J. (2004), *Disciplinary Practices among parents of six-year-olds in Jamaica*, University of the West Indies)

Research was undertaken into the experiences of 1,720 children aged 11-12 (51.5% girls, 48.4% boys; 68.7% in primary schools, 32.3% in secondary schools) on conflict resolution measures between themselves and adults at home and school (the schools were in two urban parishes). Overall, 97.2% of children reported a lifetime experience of verbal aggression or violence resulting from conflict with adults in the home, with 82.3% reporting verbal aggression, 87.4% minor violence, and 84.8% severe violence. The preferred methods of resolving conflict between adults and children in the home were pushing, grabbing and slapping (86%) or beating with an object (84.2%). The main cause of conflict was reported as disobedience (reported by 73.5% of children). The mother was most frequently reported as responsible for administering discipline (73.7%, cf. fathers 30.5%, uncles and aunts 9.2%, grandparents 7.6%, siblings 4.6% and step-parents 2.7%). With regard to conflict resolution between teachers and children, a total of 86.2% of children reported a lifetime prevalence of verbal aggression or physical violence, with verbal aggression reported by 49.3%, minor violence by 74% and severe violence by 75.4%. The most common forms of resolving conflict were reported as pushing, grabbing or slapping (with a lifetime prevalence of 70.8%) and beating with an object (75.3%). For 64% of children there were no incidents in the four weeks prior to the survey, but for some such incidents occurred daily. Most physical punishment was administered by the class teacher (83.3%), followed by the principal (9.1%), the vice principal (3.9%) and subject teachers (1.7%). (Samms-Vaughan, M. et al. (2004), "Jamaican Children's Experiences of Corporal Punishment at Home and School", University of the West Indies/Ministry of Health, University of Missouri-Columbia)

In a focus group with twenty children aged 10-18 and living in children's homes and "places of safety" in Jamaica, a common thread that ran through their conversations was the beatings given by Housemothers and "Aunties". Corporal punishment was also raised as a concern in a focus group with workers for NGOs and in written submissions from members of the public. (Keating, S. (2003), *A Review of Children's Homes*)

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(4 July 2003, CRC/C/15/Add.210, Concluding observations on second report, paras. 33, 48 and 49)

"The Committee urges the State party to considerably strengthen its efforts to address and condemn violence in society, including violence against women and children, particularly in the context of the family, as well as in schools and other environments. Further, it recommends that the State party take steps to monitor and address any incidents of violence and sexual or other abuse against children and take measures to ensure the rehabilitation of traumatized and victimized children by, inter alia:

a) carrying out public education campaigns about the negative consequences of violence and ill-treatment of children and promoting positive, non-violent forms of conflict resolution and discipline, especially within the family and in the educational system;

b) taking all legislative measures to prohibit all forms of physical and mental violence, including corporal punishment and sexual abuse, against children in all contexts in society as well as taking effective measures for the prevention of violent acts committed within the family, in schools and by the police and other State agents, making sure that perpetrators of these violent acts are brought to justice, putting an end to the practise of impunity;

c) providing care, recovery and reintegration for child victims of direct or indirect violence and ensuring that the child victim is not revictimized in legal proceedings and that his/her privacy is protected;

d) taking into consideration the recommendations of the Committee adopted on its days of general discussion on children and violence (CRC/C/100, para.866 and CRC/C/111, paras.701-745);

“The Committee welcomes the State party’s progress in the field of education, but remains concerned about:

e) the use of corporal punishment in schools.

“The Committee recommends that the State party, in the light of the Committee’s general comment on article 29 (1) of the Convention (aims of education):

e) adopt appropriate legislative measures to combat the use of corporal punishment in the schools....”

Committee on the Rights of the Child

(15 February 1995, CRC/C/15/Add.32, Concluding observations on initial report, para. 7)

“The Committee is concerned that in the framework of the legislative reform under way, a number of areas remain where national legislation has not yet been brought into full conformity with the provisions of the Convention, including its general principles, as reflected in articles 2, 3, 6 and 12. In this regard, the Committee’s concerns relate in particular to the definition of the child, the need to protect children against corporal punishment....”

Committee on Economic, Social and Cultural Rights

(30 November 2001, E/C.12/1/Add.75, Concluding observations on second report, para.14)

“The Committee is profoundly concerned about the violence that has apparently become widespread in the State party. It is reported that over 1,000 people have been murdered in the year 2001 alone and that ‘tribal’ politics is such that warlords rule large sections of the capital city where they are involved in extortion, drugs and prostitution. The Committee is particularly concerned that violence – including domestic and sexual violence – is committed against women of all ages and against children. According to reports from non-governmental organizations, children are regularly flogged and even threatened with weapons and child-rearing practices include corporal punishment of children in the home and in schools. The fact that these acts are committed with impunity constitutes a serious violation by the State party of its Covenant obligations.”

Human Rights Committee

(17 November 2011, CCPR/C/JAM/CO/3, Concluding observations on third report, para. 20)

“While recognizing that corporal punishment as a penalty for crime has been abolished by judicial decision, the Committee expresses its regret that it remains legal in the State party, which permits its use in the education system and the home, where it traditionally continues to be accepted and practised as a form of discipline by teachers, parents and guardians (arts. 7 and 24).

The State party should take practical steps to put an end to corporal punishment in all settings by passing the bill that seeks to repeal the Flogging Regulations Act and the relevant provisions of the Crime (Prevention of) Act. The State party should promote non-violent forms of discipline as alternatives to corporal punishment, and should conduct public information campaigns to raise awareness about its harmful effects.”

Human Rights Committee

(19 November 1997, CCPR/C/79/Add.83, Concluding observations on second report, para. 15)

“The Committee is deeply concerned about the fact that the Flogging Regulation Act, 1903 and the Crime (Prevention of) Act, 1942 are still in force, which provide for and regulate corporal punishment both as a penalty for certain crimes and as a penalty for breach of prison rules of other regulations. In this regard:

The Committee recommends that both Acts be repealed, as they are contrary to article 7 of the Covenant.”

Universal Periodic Review

Jamaica was examined in the first cycle of the Universal Periodic Review in 2010. The Government accepted the recommendation to prohibit corporal punishment of children in detention centres (A/HRC/WG.6/9/L.12, Report of the Working Group, para. 99(10)). Examination in the second cycle is scheduled for 2015.

Report prepared by the Global Initiative to End All Corporal Punishment of Children

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