

# Corporal punishment of children in Aruba

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**Child population** 27,376 (Government of Aruba, 2006)



GLOBAL INITIATIVE TO

**End All Corporal  
Punishment of Children**

**Law reform has been achieved. Corporal punishment is unlawful in all settings, including the home.**

**Note:** Aruba is a country within the Kingdom of the Netherlands.

## Prohibition of corporal punishment

### Home

Corporal punishment is prohibited in the home. The Aruba Civil Code 2001 (in force 2002, amended 2016) states that parents and others with parental authority have “the duty and right to care for and educate the minor child” and that this includes “responsibility for the emotional and physical wellbeing and safety of the child and promoting the development of his/her personality” (art. 1:247, unofficial translation). The 2016 Law amending the Civil Code modified the article to include: “In the care and upbringing of the child, there is no neglect and the parents do not apply mental or physical violence or any other degrading treatment” (unofficial translation). The new provisions mirror those in the Civil Code in the Netherlands (Europe), where prohibition in all settings was achieved in 2007.

Previously, the Government had stated that the Aruban Criminal Code 1991 (amended 2006) prohibits corporal punishment in all settings in articles 313-318.<sup>1</sup> But these articles punish abuse and mistreatment, with increased penalties if the victim is the perpetrator’s child: they did not explicitly prohibit all corporal punishment in the home or any other setting.

In May 2012, the Joint Court of Justice of Aruba, Curaçao and St Maarten, in a case in which a crèche employee had been summarily dismissed after striking a child with the permission of the mother, ruled that hitting children will not be tolerated, and that anyone who does so will be punished.<sup>2</sup>

### Alternative care settings

Corporal punishment is prohibited in alternative care settings under the 2016 amendments to the Civil Code (see under “Home”).

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<sup>1</sup> Sixth report to the Committee Against Torture, as received on 3 January 2012, para. 36

<sup>2</sup> BW8379, Joint Court of Justice of Aruba, Curaçao and St Maarten, and of Bonaire, St Eustatius and Saba, EJ 50447/11 – H 24/12

## **Day care**

Corporal punishment is prohibited in early childhood care and in day care for older children under the 2016 amendments to the Civil Code (see under “Home”). In 2008, the Government was reportedly introducing legislation on quality standards for childcare centres<sup>3</sup> but we have no further information. The Kindergarten Ordinance is silent on the issue.

## **Schools**

Corporal punishment is unlawful under the 2016 amendments to the Civil Code (see under “Home”). Previously, the Government had repeatedly stated that corporal punishment is prohibited by law in schools.<sup>4</sup> Most recently, the Minister of the Interior and Kingdom Relations, Dr Plasterk, confirmed this.<sup>5</sup> There is no explicit prohibition in the Primary Education Ordinance, the Secondary Education Ordinance or the National Ordinance on Compulsory Education 2011.

## **Penal institutions**

Corporal punishment is unlawful as a disciplinary measure in penal institutions, but we have no details of prohibiting legislation other than the Civil Code provision (see under “Home”). Explicit prohibition is possibly also included in the National Custodial Institutions Ordinance.<sup>6</sup>

## **Sentence for crime**

Corporal punishment is unlawful as a sentence for crime. It is not a permitted sanction for crime under the Criminal Code 1991 or the Code of Criminal Procedure (in force 1997).

## **Universal Periodic Review of the Netherlands’ human rights record**

The Kingdom of the Netherlands was examined in the first cycle of the Universal Periodic Review in 2008 (session 1). No recommendation was made concerning corporal punishment of children.

Examination in the second cycle of the UPR took place in 2012 (session 13). The following recommendations were made:<sup>7</sup>

“Prohibit corporal punishment in all settings through the Kingdom of the Netherlands (Slovenia);

“Build on this success (achieving a total prohibition of corporal punishment of children in all settings in the European part of the Dutch territory) and ensure that this prohibition is also

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<sup>3</sup> 23 July 2008, CRC/C/NLD/3, Third state party report (Netherlands) to the Committee on the Rights of the Child

<sup>4</sup> 9 July 2012, A/HRC/21/5, Report of the working group, para. 77; [2013], CRC/C/NDL/4 Unedited Version, Fourth state party report, para. 598

<sup>5</sup> Correspondence with the Global Initiative, 16 December 2015

<sup>6</sup> Official Bulletin 2005 no. 75

<sup>7</sup> 9 July 2012, A/HRC/21/15, Report of the working group, paras. 98(18) and 98(75)

duly implemented in Aruba and the Netherland Antilles by enacting the necessary legislation in this regard (Hungary)”

The Government responded to the recommendations by stating: “Violence in parenting has been formally prohibited in the Netherlands for several years. In Aruba corporal punishment is prohibited by law in schools, and legislation to extend the prohibition to the family setting is expected in 2012. In Curaçao, the Civil Code was amended to define parents’ role as that of caregivers and educators, prohibiting them from employing emotional or physical violence or any other form of humiliating treatment in parenting their children. The same goes for Sint Maarten since passing of the National Ordinance on Parental Authority in 2011 amending the Civil Code.”<sup>8</sup>

The Netherlands’ third cycle examination took place in 2017 (session 27). The following recommendations were made:<sup>9</sup>

“Ensure that its legislation addresses all forms of violence, explicitly prohibits corporal punishment in all settings and includes measures to raise awareness of positive, non-violent and participatory forms of child-rearing throughout the Kingdom, in particular in Aruba as well as in the Caribbean Netherlands (Liechtenstein)”

“Intensify its efforts in relation to children’s rights including particularly the Caribbean countries forming part of the State, including to prohibit corporal punishment in all settings; to develop and implement public awareness programmes; to reduce the rate of school drop-out and intensify efforts to eradicate child labour; to raise the minimum age of recruitment in the military to 18 years and to ratify the Optional protocol to the CRC on a communications procedure without reservations (Ireland)”

The Government accepted both recommendations, stating in regards to the first one: “Violence has already been made punishable by law in the Penal Code of Bonaire, St Eustatius, and Saba. In addition, the punishment can be increased by one-third if the offender committed the criminal offence against his or her child (among other parties). Corporal punishment in schools is prohibited by Aruban law. The New Civil Code includes a prohibition of corporal punishment in the family setting. In Curaçao, legislation addressing corporal punishment already exists.”<sup>10</sup>

## **Recommendations by human rights treaty bodies**

**Note:** It appears the Convention on the Rights of the Child, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Convention on the Rights of Persons with Disabilities all apply in Aruba, as they do in the Netherlands. Article 17 of the European Social Charter, on which states’ obligation to prohibit is based, does not apply.

### ***Committee on the Rights of the Child***

(8 June 2015, CRC/C/NDL/CO/4 Advance Unedited Version, Concluding observations on fourth report, paras. 36 and 37)

“The Committee welcomes the State party’s efforts aimed at combatting child violence and abuse,

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<sup>8</sup> 12 October 2012, A/HRC/21/15/Add.1/Rev.1, Report of the working group: Addendum, page 3

<sup>9</sup> 18 May 2017, A/HRC/WG.6/27/L.13, Draft report of the Working Group, paras. 5(117) and 5(154)

<sup>10</sup> 14 September 2017, A/HRC/36/15/Add.1, Report of the working group: Addendum, page 6

but is concerned about: ...

e) absence of legal provisions expressly prohibiting corporal punishment in all settings, including at home, in Aruba; and

f) absence of legal provisions prohibiting corporal punishment of children in the home, alternative care settings, day care and schools in the Caribbean Netherlands.

“In the light of its General comments No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment and No. 13 (2011) on the right of the child to freedom from all forms of violence, the Committee recommends that the State party: ...

e) ensure that the State party’s legislation addresses all forms of violence, explicitly prohibits corporal punishment in all settings and includes measures to raise awareness of positive, non-violent and participatory forms of child-rearing throughout the Kingdom, in particular in Aruba as well as in the Caribbean Netherlands.”

### ***Committee on the Rights of the Child***

(27 March 2009, CRC/C/NLD/CO/3, Concluding observations on the third report of the Netherlands, paras. 36 and 37)

“The Committee is concerned that corporal punishment in the home is not prohibited in Aruba, and that it is still being used at schools, day-care centres and in the home in the Netherlands Antilles.

“The Committee recommends that the State party prohibit corporal punishment by law and enforce the prohibition in all settings, including in the family, the schools and out of home placements. It also recommends that the State party conduct awareness-raising campaigns and parenting education programmes to ensure that alternative forms of discipline are used, in a manner consistent with the child’s human dignity and in conformity with the Convention, especially article 28, paragraph 2, while taking due account of general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment.”

### ***Committee on the Rights of the Child***

(26 February 2004, CRC/C/15/Add.227, Concluding observations on initial report of Aruba and second report of Netherlands, paras. 43 and 44)

“... The Committee is also concerned that there is no legal prohibition on corporal punishment in the family.

“The Committee recommends that the State party:

d) explicitly prohibit corporal punishment in law throughout the State party and carry out public education campaigns about the negative consequences of ill-treatment of children, and promote positive, non-violent forms of discipline as an alternative to corporal punishment.”

### ***Committee on Economic, Social and Cultural Rights***

(9 December 2010, E/C.12/NL/CO/4-5, Concluding observations on fourth/fifth report, para. 22)

“The Committee regrets that corporal punishment is not prohibited in Aruba (arts. 10 and 13).

The Committee urges the State party to introduce a statutory prohibition of corporal punishment in the home and in all educational settings in Aruba, in line with article 10 of the Covenant and the Committee's general comment No. 13 (1999) on the right to education, which refers to the fact that corporal punishment is inconsistent with the fundamental principle of dignity of the individual."

### **Prevalence/attitudinal research in the last ten years**

None identified.