

Corporal punishment of children in Bahamas

LAST UPDATED December 2018

Also available online at

www.endcorporalpunishment.org

Child population 99,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings, day care, schools, as a sentence for crime and possibly in penal institutions.

The Penal Code 1873 (art. 110) allows a parent or guardian to “correct his or her legitimate or illegitimate child ... for misconduct or disobedience to any lawful command”. The near universal acceptance of corporal punishment in childrearing necessitates a clear statement in law that all forms of corporal punishment and other cruel and degrading treatment are unacceptable, however light, whatever the relationship between the child and adult, and whatever the setting.

Alternative care settings – Prohibition should be enacted in legislation applicable to all alternative care settings, including foster care, emergency care, places of safety, etc.

Day care – Legislation should prohibit corporal punishment in all early childhood care (nurseries, crèches, etc) and all day care for older children (after-school childcare, childminding, etc).

Schools – Prohibition of corporal punishment should be enacted in legislation applicable to all educational settings, public and private.

Penal institutions – All provisions authorising “disciplinary” corporal punishment should be repealed.

Sentence for crime – Provisions authorising corporal punishment in the Criminal Law (Measures) Act 1991 should be repealed and all judicial corporal punishment prohibited.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. Under provisions for “justifiable force”, article 110 of the Penal Code 1873 allows a parent or guardian to “correct his or her legitimate or illegitimate child ... for misconduct or disobedience to any lawful command”, and states that “no correction can be justified which is unreasonable in kind or in degree”. The Child Protection Act 2006, which came into force in 2009, recognises children’s right “to exercise, in addition to all the rights stated in this Act, all the rights set out in the United Nations Convention on the Rights of the Child”, but this is “subject to any reservations that apply to The Bahamas and with appropriate modifications to suit the circumstances that exist in The Bahamas with due regard to its laws” (art. 4c). The Act does not repeal article 110 of the Penal Code and provisions in the Act against violence and abuse are not interpreted as prohibiting corporal punishment in childrearing.

During the Universal Periodic Review of the Bahamas in 2008, the Government rejected recommendations to prohibit corporal punishment and strongly defended legislation allowing corporal punishment of children in the home and in schools.¹ Recommendations to prohibit corporal punishment were again made during the second cycle UPR in 2013 and again rejected by the Government.² The Government noted recommendations to prohibit in all settings made in 2018.³ Also in 2018, the Government stated that “Discussions on the appropriateness of the use of corporal punishment were still ongoing”.⁴

The Constitution is under review. In July 2013, the Constitution Review Commission presented its report: it does not address the issue of corporal punishment.⁵ A constitutional referendum on provisions relating to gender equality was held in 2016 but failed. It is unclear whether the revision process is still ongoing. The Government also reported that legislation relating to family law was under review and a draft Gender Based Violence Bill was being discussed.⁶

Alternative care settings

Corporal punishment is explicitly prohibited in residential institutions by article 27 of the Residential Care Establishments Act 2003: “(1) No person shall inflict corporal punishment on a resident in a residential care establishment. (2) No person shall physically restrain another person for the purposes of inflicting punishment on that person in a residential care establishment....” But corporal punishment is lawful in other alternative care settings, including foster care, under the provisions for “justifiable force” in article 110 of the Penal Code 1873 (see under “Home”).

Day care

Corporal punishment is prohibited in some but not all day care settings. It is unlawful in day care centres and pre-schools under the Early Childhood Care (National Standards) Regulations 2015, which are provided for by the Early Childhood Care Act 2004. The Regulations state that day-care centres

¹ 7 January 2009, A/HRC/10/70, Report of the working group, paras. 16, 34 and 54(5)

² 30 May 2013, A/HRC/23/8/Add.1, Report of the working group: Addendum, paras. 92(64), 92(65), 92(66), 92(67) and 92(68)

³ 18 June 2018, A/HRC/38/9/Add.1 Advance unedited version, Report of the working group: Addendum

⁴ 1 November 2018, CEDAW/C/SR.1636, Summary records of 1636th meeting, para. 27

⁵ Government of the Bahamas (2013), *Report of the Constitutional Commission into a Review of The Bahamas Constitution*, July 2013, Nassau, Bahamas

⁶ 18 December 2017, A/HRC/WG.6/29/BHS/1, National report, paras. 44 and 63

and pre-schools must comply with the National Standards for Day-Care Centres and Pre-schools, according to which “staff members do not inflict any form of corporal punishment on children” and “physical restraint is not used for the purpose of inflicting punishment”. Corporal punishment is lawful in all other day care settings under the provisions for “justifiable force” in article 110 of the Penal Code 1873 (see under “Home”).

Schools

Corporal punishment is lawful in schools under article 110 of the Penal Code 1873 (see under “Home”). The Child Protection Act 2006 does not prohibit corporal punishment in schools. In defending the legality of such punishment during the Universal Periodic Review in 2008, the Government stated that corporal punishment may only be inflicted by a principal, vice-principal, or senior master/mistress, following guidelines set out by the Department of Education.⁷

The Education Act is under review.⁸

Penal institutions

Corporal punishment is unlawful in prisons; it appears to be unlawful in other institutions accommodating children in conflict with the law but some legislation is possibly still to be repealed.

Act No. 12 of 1984 inserted article 118 into the Penal Code 1873: “Notwithstanding anything to the contrary in this, or any other law, no form of corporal punishment shall be imposed as a penalty under any law in respect to the commission of a criminal or disciplinary offence.” However, we have yet to confirm that the abolition overrides all laws authorising such punishment. There is no explicit prohibition of corporal punishment in institutions in the Child Protection Act 2006. Rules enacted under the now repealed Children and Young Persons (Administration of Justice) Act 1947 possibly remain in force pending the construction of new rules, and these allow for disciplinary corporal punishment in penal institutions for girls and boys, including under the Children and Young Persons (Industrial School for Girls) Rules 1961 (Rule 18) and the Children and Young Persons (Industrial School for Boys) Rules 1947 (Rule 44).

The Correctional Services Act 2014 makes no provision for corporal punishment as a disciplinary measure, though it does not explicitly prohibit it. The Act repeals the Prisons Act 1943 which had provided for corporal punishment as a disciplinary measure in prisons – up to 24 lashes with a cat or rod for males over 16 years of age, up to 18 lashes with a rod for males under 16 (arts. 14, 15 and 16).

Sentence for crime

Corporal punishment appears to be lawful as a sentence for crime but the law is unclear. Until 1984, corporal punishment was specified in the Penal Code as punishment for a number of crimes. Act No. 12 of 1984 repealed the corporal punishment provisions and inserted article 118 which states: “Notwithstanding anything to the contrary in this, or any other law, no form of corporal punishment shall be imposed as a penalty under any law in respect to the commission of a criminal or disciplinary offence.” The Criminal Law (Measures) Act 1991 reintroduced corporal punishment for certain offences in the Penal Code 1873, the Sexual Offences and Domestic Violence Act 1991 and the Firearms Act 1969, stating in article 3(1): “Subject to the provisions of this Act, any offender on being

⁷ 7 January 2009, A/HRC/10/70, Report of the working group, para. 16

⁸ 9 July 2018, CEDAW/C/BHS/Q/6/Add.1, Reply to list of issues, para. 72

convicted by a court of any of the offences mentioned in the First Schedule may be ordered by the court to undergo corporal punishment in addition to any other punishment to which the offender is liable." The punishment may be inflicted on males only: for a child (under 14) or young person (aged 14-17) it takes the form of whipping up to 12 strokes on the buttocks with a light cane in the presence of a parent or guardian or other approved person (arts. 4 and 5). However, the 1991 Act did not repeal article 118 of the Penal Code, and the two laws are in conflict. Case law in the Privy Council and the Supreme Court has ruled that judicial corporal punishment as reintroduced is constitutional and lawful only for offences for which the law had previously and explicitly prescribed corporal punishment, and is unconstitutional for offences which were not previously punished in this way (sexual offences).

The Child Protection Act 2006 does not include corporal punishment among the measures that a juvenile court may order for juveniles convicted of an offence, but it does not explicitly prohibit it. The Act states in article 120(5) that where a child or young person is charged with certain offences (including homicide, treason, causing harm, arson, use of explosives, and robbery) or where the charge relates to other indictable offences and the court or the young person does not agree to hold the trial in a juvenile court, then the case must be remitted to a magistrate and dealt with under the Magistrates Act 1896, the Penal Code 1873 and the Criminal Procedure Code Act 1968. In such cases, it seems that child offenders may be sentenced to be whipped.

During the Universal Periodic Review of the Bahamas in 2008, the Government stated its intention to repeal legislation authorising judicial corporal punishment.⁹ This has not yet been achieved.

Universal Periodic Review of the Bahamas' human rights record

The Bahamas was reviewed in the first cycle of the Universal Periodic Review in 2008 (session 3). The following recommendations were made and were rejected by the Government:¹⁰

"To eliminate corporal punishment from Bahamas legislation in accordance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child (Chile); to continue, as a matter of priority, efforts to prohibit corporal punishment, of children as well as of adults, and to allocate necessary resources to allow the full implementation of the Convention of the Rights of the Child (Sweden); to put an end to corporal punishment in schools and in the home, and to revise article 1.10 of the Criminal Code (Haiti)"

However, the following recommendations were accepted:¹¹

"To consider specifically with regard to the prevention of physical abuse of children the implementation of the recommendations of the Committee on the Rights of the Child (Netherlands); to take necessary measures, as recommended by the Committee on the Rights of the Child, to prevent child abuse and neglect and increase efforts to ensure the registration of all children at birth (Italy); to undertake a comprehensive study on child abuse in order to understand its scope and to suggest ways to prevent it (Canada, Australia); to take the necessary measures to implement article 23 of the Convention on the Rights of the Child (Argentina)."

⁹ 7 January 2009, A/HRC/10/70, Report of the working group, paras. 16 and 34

¹⁰ 7 January 2009, A/HRC/10/70, Report of the working group, para. 54(5)

¹¹ 7 January 2009, A/HRC/10/70, Report of the working group, para. 52(7)

During the review, the Government defended the legality of corporal punishment and made a distinction between it and child abuse, which it did not condone. The Government stated that “corporal punishment of a minor allowable by law does not amount to the sanctioning of child abuse” and that “corporal punishment is a reasonable act of discipline”; nevertheless, the Government stated its intention to repeal corporal punishment as a sentence of the courts, though it is unclear whether this was in relation to all persons or only for adults.¹²

The second cycle review took place in 2013 (session 15). During the review the Government acknowledged that corporal punishment is practiced in the Bahamas as a “legal rights of parents or guardians [and] as punishment for criminal or prison disciplinary offences”; alternatives to corporal punishment of children were encouraged and there is a desire to undertake a study on the effects of corporal punishment.¹³ The following recommendations were made:¹⁴

“Take legal and educative measures in order to change the population’s attitude to corporal punishment of children (Norway);

“Enact legislation to prohibit corporal punishment of children in all settings (Portugal);

“Prohibit corporal punishment of children (Slovenia);

“Delete all references to corporal punishment from its legislation and prohibit corporal punishment of children in all settings before the next UPR cycle (Hungary);

“Amend its legislation to prohibit and punish corporal punishment inflicted on children in the home and school, and increase the efforts to raise awareness of the negative effects of this practice (Mexico);

“Repeal all legislation providing for corporal punishment as a method of education in schools and sign the Optional Protocols to the Convention on the Rights of the Child (Spain 2);

“Raise the age for criminal responsibility of boys and girls and eliminate corporal punishment against minors from the domestic legislation of the Bahamas (Ecuador)”

The Government accepted the last of these recommendations, stating that the matter was under review.¹⁵ It said it would consider the recommendation on changing attitudes to corporal punishment, stating: “While corporal punishment remains legalized, the Government is actively reviewing the merit of its domestic use; the Government, through the Department of Social Services and relevant NGOs promotes awareness of abuses of corporal punishment and encourages alternative methods of discipline.”¹⁶ The Government rejected without comment the recommendations to prohibit corporal punishment.¹⁷

Third cycle examination took place in 2018 (session 29). During the dialogue, the delegation stated: “at present, the Bahamas still allowed corporal punishment in elementary, secondary and senior

¹² 7 January 2009, A/HRC/10/70, Report of the working group, paras. 16 and 34

¹³ 22 March 2013, A/HRC/23/8, Report of the working group, paras. 21 and 22

¹⁴ 22 March 2013, A/HRC/23/8, Report of the working group, paras. 92(63), 92(64), 92(65), 92(66), 92(67), 92(68) and 92(69)

¹⁵ 30 May 2013, A/HRC/23/8/Add.1, Report of the working group: Addendum, para. 92(69)

¹⁶ 30 May 2013, A/HRC/23/8/Add.1, Report of the working group: Addendum, para. 92(63)

¹⁷ 30 May 2013, A/HRC/23/8/Add.1, Report of the working group: Addendum, paras. 92(64), 92(65), 92(66), 92(67) and 92(68)

school, but only when administered by the Principal or Administrator and subject to stringent rules".¹⁸ The following recommendations were made:¹⁹

"Prohibit corporal punishment for children in all settings (Namibia)"

"Explicitly prohibit, in any environment, corporal punishment of children and carry out awareness-raising campaigns in this area (Chile)"

The Government noted the recommendations without comments.²⁰

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(31 March 2005, CRC/C/15/Add.253, Concluding observations on initial report, paras. 35 and 36)

"The Committee expresses its concern at the fact that corporal punishment is still widely practised in the family, in schools, and in institutions, and that domestic legislation does not explicitly prohibit its use.

"The Committee recommends that the State party:

- a) expressly prohibit corporal punishment by law in the family, schools and other institutions; and
- b) conduct awareness-raising campaigns to ensure that alternative forms of discipline are administered in a manner consistent with the child's human dignity and in conformity with the Convention, especially article 28, paragraph 2."

Committee on the Elimination of Discrimination Against Women

(9 November 2019, CEDAW/C/BHS/CO/6 Advance unedited version, Concluding observations on sixth report, paras. 23 and 24)

"The Committee ... is, however, concerned about:

(e) The prevalence of corporal punishment that is widely acceptable as means to discipline children at school and at home;

"Recalling its General Recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, and in line with target 5.2 of the Sustainable Development Goals, to eliminate all forms of violence against all women and girls in the public and private spheres, the Committee recommends that the State party:

(d) Prohibit, in law and practice, the use of corporal punishment of girls in schools and at home and strengthen awareness-raising programmes, to promote non-violent forms of child-rearing and discipline"

Prevalence/attitudinal research in the last ten years

A 2010 study involving a survey of 933 adults and 12 semi-structured interviews with adults examined the coexistence in homes in the Bahamas of corporal punishment of children and other

¹⁸ 3 April 2018, A/HRC/38/9, Report of the working group, para. 8

¹⁹ 3 April 2018, A/HRC/38/9, Report of the working group, paras. 105(108) and 105(112)

²⁰ 18 June 2018, A/HRC/38/9/Add.1 Advance unedited version, Report of the working group: Addendum

behaviours including sexual abuse, illegal drug use, violence among adults in the home and hitting of pets. 77% of respondents from households with children reported that “spanking” was sometimes used to discipline them; 37% said children were spanked only when “very naughty”, 28% that they were spanked “sometimes”, 26% “rarely” and 9.7% “often”. Of respondents in households where children were spanked, 4.1% considered the spanking to be abuse. Violence between adults occurred more in households where children were spanked “often” than where they were not spanked “often”.

(Brennen, S. et al (2010), “A Preliminary Investigation of the Prevalence of Corporal Punishment of Children and Selected Co-occurring Behaviours in Households on New Providence, The Bahamas”, *The International Journal of Bahamian Studies*, 16, 1-18)