

Corporal punishment of children in Barbados

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Child population 66,000 (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, penal institutions and as a sentence for crime.

The Prevention of Cruelty to Children Act 1904 confirms “the right of any parent, teacher or other person having the lawful control or charge of a child to administer punishment to such child” (art. 4). This provision should be repealed, and the law should clearly state that all forms of corporal punishment and other cruel and degrading treatment are unacceptable, including by parents and others with parental authority.

Alternative care settings – Prohibition should be enacted in legislation applicable to all alternative care settings without exception, including foster care, institutions, children’s homes, places of safety, emergency care, etc.

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

Schools – Provisions in the Education Act and Education Regulations authorising corporal punishment in schools should be repealed and prohibition enacted in relation to all schools, public and private.

Penal institutions – Provisions for “disciplinary” corporal punishment in the Reformatory and Industrial Schools Act 1926 should be repealed and prohibition of corporal punishment enacted in relation to all institutions accommodating children in conflict with the law.

Sentence for crime – Provisions authorising corporal punishment in the Magistrate’s Courts Act 2001, the Juvenile Offenders Act 1932 and the Corporal Punishment Act 1899 should be repealed and all judicial corporal punishment prohibited.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. Article 4 of the Prevention of Cruelty to Children Act 1904 states: “Nothing in this Act shall be construed to take away or affect the right of any parent, teacher or other person having the lawful control or charge of a child to administer punishment to such child.” Provisions against violence and abuse in the Domestic Violence (Protection Orders) Act 1994 (amended 2016), the Protection of Children Act 1990, the Employment (Miscellaneous Provisions) Act 1977 and the Offences Against the Person Act 1994 are not interpreted as prohibiting corporal punishment in childrearing.

The Government rejected recommendations to prohibit corporal punishment made during the Universal Periodic Review (UPR) in 2008.¹ In its report to the second UPR in 2013, the Government referred to public support for the retention of corporal punishment particularly in homes and schools.² The Government accepted a recommendation concerning changing traditional attitudes towards corporal punishment but rejected recommendations to prohibit it.³ In 2018, the Government gave a mixed response to recommendations on the prohibition of corporal punishment: it accepted recommendations to expedite the prohibition of judicial corporal punishment in the Juvenile Justice Bill and to implement previous UPR recommendations and the Committee on the Rights of the Child’s 2017 recommendations, and noted other clearer recommendations on the explicit prohibition of all corporal punishment in legislation.⁴

In reporting to the Committee on the Rights of the Child in 2014, the Government drew attention to the 2004 report of the National Commission on Law and Order, which was established in 2002 and which looked at the issue of corporal punishment in the home, schools and prisons. The Government quotes the report of the National Commission on Law and Order as stating:⁵ “The fact that Barbados continues to use corporal punishment in school and not to outlaw it in the home is partly due to the strong cultural attitude in favour of corporal punishment. The matter is no longer seen as even debatable.” The Commission did not agree that corporal punishment in the home should be subject to legislative control.⁶

The Domestic Violence (Protection Orders) (Amendment) Act 2016 aimed to provide a comprehensive definition of domestic violence and to extend the persons considered to be victims of domestic violence. The Act defines child abuse as “any act of domestic violence perpetrated against a child” and domestic violence as “the wilful infliction or threat of infliction of harm by one person in a domestic relationship upon another person in that relationship and includes child abuse, emotional abuse, financial abuse, physical abuse and sexual abuse” (art. 2). It does not prohibit corporal punishment or repeal the right “to administer punishment”.

Proposed amendments to the Offences Against the Person Act and the Penal System Reform Act do not include prohibition of corporal punishment. In 2017, the Government reported to the Committee on the Rights of the Child that recommendations for law reform, including a unified Children’s Act,

¹ 16 March 2009, A/HRC/10/73/Add.1, Report of the working group: Addendum, paras. 21 and 22

² 5 December 2012, A/HRC/WG.6/15/BRB/1, National report to the UPR, paras. 85 and 86

³ 5 June 2013, A/HRC/23/11/Add.1, Report of the working group: Addendum, paras. 25 and 26

⁴ 14 June 2018, A/HRC/38/12/Add.1 Advance unedited version, Report of the working group: Addendum, paras. 3, 4 and 5

⁵ Quoted in 4 May 2015, CRC/C/BRB/2, Second state party report, para. 88

⁶ *ibid.*, para. 89

were “prioritised in 2016”.⁷ In April 2017 the draft Bill was submitted to the Cabinet for approval.⁸ We do not know whether prohibition of corporal punishment is being discussed in this context.

In July 2017, in response to Government statements that “corporal punishment was still generally accepted by Barbadian society” and that “the use of excessive discipline was not permitted under Barbadian law”, the Committee on the Elimination of Discrimination Against Women stated that “although corporal punishment had been, and continued to be, a widespread practice, its negative effects were well documented, and alternative methods of discipline should be considered. Furthermore, drawing a distinction between the use of corporal punishment in public settings, namely schools, and private settings, such as the home, served to reinforce the idea that violence was permissible as long as it was not publicly seen”.⁹

Alternative care settings

There is no explicit prohibition of corporal punishment in alternative care settings, where it is lawful under the right “to administer punishment” in article 4 of the Prevention of Cruelty to Children Act 1904 (see under “Home”).

Day care

Corporal punishment is prohibited in day nurseries under article 14 of the Child Care Board Regulations 1985: “Corporal punishment, severe or frightening measures must not be inflicted on a child of the day nursery.” There is no explicit prohibition of corporal punishment in other early childhood care or in day care for older children, where it is lawful under the right “to administer punishment” in article 4 of the Prevention of Cruelty to Children Act 1904 (see under “Home”).

Schools

Corporal punishment is lawful in schools under the right “to administer punishment” in article 4 of the Prevention of Cruelty to Children Act 1904 (see under “Home”) and the Education Regulations pursuant to article 59 of the Education Act 1983. Education Regulation 18(j) authorises principals to inflict corporal punishment and to delegate the authority to do so to the deputy principal and senior teachers. Ministerial “Guidelines for the Administration of Corporal Punishment” state that corporal punishment should be “a last resort”, “moderate and reasonable” and “administered with a proper instrument”; where possible, a female should administer it on female students, and all corporal punishment must be recorded in the punishment book; it “shall not be administered to a child whose parents or legal guardian has upon the day of enrolment of the pupil filed with the principal of the school a statement from a medical doctor saying that it is detrimental to the child’s mental or emotional stability”. The Ministry of Education is developing a Draft Behaviour Policy to provide “a broad set of guidelines for schools, with the structure necessary for the development and

⁷ 16 January 2017, CRC/C/BRB/Q/2/Add.1, Reply to the list of issues, para. 1

⁸ See <http://www.nationnews.com/nationnews/news/96050/children-act-coming>, accessed 22 May 2017

⁹ 25 July 2017, CEDAW/C/SR.1515, Summary records of 1515th meeting

implementation of school level discipline and procedures, as set out under the Education Act, Education Regulations and national policies”.¹⁰

In 2006, the Government reported to the Human Rights Committee that “the Government and people of Barbados did not view corporal punishment as torture, or inhumane or degrading in itself” and there were no plans to review its legality.¹¹ During the Universal Periodic Review of Barbados in 2008, the Government noted that the Minister of Education had publicly advocated for abolition of corporal punishment in schools but that this was not currently the official position, though “it may move in that direction in future”.¹² In reporting to the second UPR in 2013, the Government stated that alternatives to corporal punishment were being encouraged but support for corporal punishment remained strong; however, the Education Act and Regulations were being reviewed and the Code of Discipline in schools would be examined in relation to human rights.¹³ In June 2014, Minister of Education, Science, Technology and Innovation Ronald Jones spoke of his opposition to corporal punishment in schools.¹⁴ The Education (Amendment) Bill was passed in March 2015 and does not prohibit corporal punishment. In April 2015, it appeared that the Act was still under review.¹⁵

The 2014 report to the Committee on the Rights of the Child notes the conclusion of the National Commission on Law and Order in 2004 that corporal punishment should remain in the education system. The Government notes the “prolonged difficulty in changing the public’s attitude towards corporal punishment” and notes efforts to promote positive discipline in schools with the support of UNICEF, but makes no reference to the drafting of prohibiting legislation.¹⁶

Penal institutions

Corporal punishment is lawful as a disciplinary measure in penal institutions. On conviction of an offence, children and young people may be sent to a Reformatory and Industrial School (Juvenile Offenders Act, art. 16). The Reformatory and Industrial Schools Act 1926 authorises the infliction of corporal punishment as a disciplinary measure on boys (art. 31), and allows a magistrate to order whipping as a punishment for attempted escape (art. 34). The Government has reported that the Juvenile Justice Bill would repeal the Reformatory and Industrial Schools Act 1926.¹⁷

Young people aged 16 and above are tried as adults and may be sentenced to imprisonment. In reporting to the Committee on the Rights of the Child in 2014, the Government noted the findings of the National Commission on Law and Order that corporal punishment “no longer exists” in the penal system by virtue of a 1992 Court of Appeal decision which concluded that the use of the cat-o-nine tails (for flogging) as inhuman and degrading.¹⁸ The Prisons (Amendment) Act 2015 has now formally repealed the provisions in the Prisons Act 1964 which authorised the use of force for purposes of maintaining discipline (art. 20) and provided for corporal punishment for specific disciplinary offences, up to 12 strokes for persons below the age of 21 (art. 40).

¹⁰ 4 January 2018, A/HRC/WG.6/29/BRB/1, National report, para. 55

¹¹ 25 September 2006, CCPR/C/BRB/3, Third state party report, para. 244

¹² 16 March 2009, A/HRC/10/73/Add.1, Report of the working group: Addendum, para. 23

¹³ 5 December 2012, A/HRC/WG.6/15/BRB/1, National report to the UPR, paras. 85 and 86

¹⁴ Reported in *The Barbados Advocate*, 29 June 2014

(www.barbadosadvocate.com/newsitem.asp?more=local&NewsID=37229, accessed 3 July 2014)

¹⁵ UNICEF Office for the Eastern Caribbean Area, in correspondence with the Global Initiative, April 2015

¹⁶ 4 May 2015, CRC/C/BRB/2, Second state party report, paras. 91 and 94

¹⁷ 4 January 2018, A/HRC/WG.6/29/BRB/1, National report, para. 56

¹⁸ 4 May 2015, CRC/C/BRB/2, Second state party report, para. 64

Sentence for crime

Corporal punishment is lawful as a sentence for crime for males. The Magistrate's Courts Act 2001 provides for boys aged 8-15 to be "privately whipped" at a police station, up to 12 strokes with a "tamarind or other similar rod", in place of or in addition to any other punishment (art. 71). The Juvenile Offenders Act 1932 includes "ordering the offender to be whipped" among the list of available sanctions for children and young people (art. 16(f)). The Act also provides for a court to order a boy aged 12-15 to be "privately whipped" in lieu of or in addition to any other punishment (art. 9). The Corporal Punishment Act 1899 states that whipping or flogging should be administered on a single occasion, up to 12 strokes for persons under 16 or 24 for older persons (art. 2). Corporal punishment may be carried out only after medical examination and under the supervision of a prison official.

A Juvenile Justice Bill which would repeal the above provisions is being drafted.¹⁹ As at January 2018, the final draft, which would also repeal the Juvenile Offenders Rules 1933, was being examined by the Office of the Chief Parliamentary Counsel.²⁰ In June 2018, the Government accepted a UPR recommendation to expedite the adoption of the Bill to "outlaw the use of corporal punishment as a criminal sanction".²¹

Universal Periodic Review of Barbados' human rights record

Barbados was reviewed in the first cycle of the Universal Periodic Review in 2008 (session 3). The following recommendations were made:²²

"Eliminate all forms of corporal punishment from its legislation (Chile); abolish corporal punishment for children (Germany); address the concerns raised by the Human Rights Committee and the Committee on the Rights of the Child on corporal punishment (Turkey); take measures to eliminate corporal punishment as a legitimate sanction in the law and to discourage its use in schools with a view to its eventual and total abolition; conduct public awareness initiatives to change peoples' attitudes to corporal punishment (Slovenia)"

The Government rejected the recommendations to prohibit corporal punishment, stating that the laws of Barbados protect children from abuse and that corporal punishment in schools and prisons must be administered in compliance respectively with the Code of Discipline promulgated under the Education Act and the Prison Rules Act.²³ The Government also noted during the review that the Minister for Education's public advocacy of prohibition of corporal punishment in schools was not the official position, though "it may move in that direction in future".²⁴ However, the Government accepted the recommendation regarding public awareness initiatives to change people's attitudes to corporal punishment.²⁵

¹⁹ 16 January 2017, CRC/C/BRB/Q/2/Add.1, Reply to the list of issues, para. 39

²⁰ 4 January 2018, A/HRC/WG.6/29/BRB/1, National report, para. 56

²¹ 14 June 2018, A/HRC/38/12/Add.1 Advance unedited version, Report of the working group: Addendum, para. 3

²² 9 January 2009, A/HRC/10/73, Report of the working group, para. 77(14)

²³ 16 March 2009, A/HRC/10/73/Add.1, Report of the working group: Addendum, paras. 21 and 22

²⁴ 9 January 2009, A/HRC/10/73, Report of the working group, para. 49

²⁵ 16 March 2009, A/HRC/10/73/Add.1, Report of the working group: Addendum, para. 23

The following recommendations were also made, and were accepted by the Government:²⁶

“Give consideration to all international obligations in the field of human rights provisions in revision of the Constitution (Mexico); take and strengthen necessary legislative measures required to incorporate in its domestic law the provisions contained in international human rights instruments to which it is a party (Algeria); adopt further measures to ensure the incorporation of its international human right obligations into national legislation (Czech Republic); consolidate the process of updating its national legislation in accordance with its international commitments (Cuba)”

In accepting these recommendations, the Government confirmed that it was “actively looking at further revising the Constitution and updating its legislation to conform to its treaty obligations”.²⁷

The second cycle review took place in 2013 (session 15). In its national report, the Government noted that it is “cognisant of the call for the total abolition of corporal punishment” but that “there continues to be strong support for the retention of corporal punishment particularly within the school and home settings” and that while alternative disciplinary methods are being encouraged in schools “there is still a mammoth task of changing the national mindset in relation to corporal punishment”.²⁸ During the review, the Government stated that “greater public acceptance seems to be needed for Government to comfortably introduce this change into its legislation”.²⁹

The following recommendations were made:³⁰

“Prohibit the practice of corporal punishment (Norway);

“Explicitly prohibit corporal punishment in family and school (Italy);

“Adopt measures to eliminate corporal punishment (Slovenia);

“Repeal the provisions allowing for corporal punishment in public schools and strengthen national legislation to protect children against all forms of violence or ill-treatment (France);

“Abolish corporal punishment as a disciplinary measure for children in all areas (Germany);

“Adopt immediate measures to abolish corporal punishment as a disciplinary measure, and intensify efforts to educate the population on the negative effects of corporal punishment on the development of the child (Uruguay);

“Continue to request international assistance and advice on successful examples on ways to change traditional social attitudes that accept corporal punishment (Uruguay)”

The Government accepted the last of these recommendations, concerning changing traditional attitudes on corporal punishment, but rejected the recommendations to prohibit it.³¹

Third cycle examination took place in 2018 (session 29). Several recommendations on corporal punishment were made but the Government’s response was mixed. The Government supported the

²⁶ 9 January 2009, A/HRC/10/73, Report of the working group, para. 77(2)

²⁷ 16 March 2009, A/HRC/10/73/Add.1, Report of the working group: Addendum, para. 3

²⁸ 5 December 2012, A/HRC/WG.6/15/BRB/1, National report to the UPR, paras. 85 and 86

²⁹ 12 March 2013, A/HRC/23/11, Report of the working group, para. 39

³⁰ 12 March 2013, A/HRC/23/11, Report of the working group, paras. 102(80), 102(81), 102(82), 102(83), 102(84), 102(85) and 102(86)

³¹ 5 June 2013, A/HRC/23/11/Add.1, Report of the working group: Addendum, paras. 25 and 26

following recommendations, stating that it considered the second one to be “implemented or (...) in the process of implementation”:³²

“Expedite the adoption of a Juvenile Justice Bill in order to inter alia outlaw the use of corporal punishment as a criminal sanction (Belgium)”

“Take steps to address issues raised by the Committee on the Rights of the Child in 2017 with regards to the corporal punishment of children, and continue its efforts to educate the population on the negative impact of corporal punishment on children (New Zealand)”

“Call on international technical assistance to review the legal framework in respect of certain traditional social attitudes and in particular corporal punishment, with a view to follow up on the recommendation 14 of the first cycle and 102.80, 102.81, 102.82, 102.83, 102.84, 102.85 and 102.86 of the second cycle (Haiti)”

However, the Government noted the following recommendations:³³

“Adopt measures with a view to eliminate corporal punishment in all settings, in particular in schools (Slovenia);

“Implement measures to prohibit corporal punishment as a disciplinary sanction in schools and at home (Uruguay);

“Take steps to prohibit corporal punishment, especially at school (Italy);

“Take the necessary measures to repeal all legislation allowing corporal punishment (Argentina);

“Outlaw the use of corporal punishment, especially in criminal and educational settings, in accordance with international human rights standards (Brazil)”

“Abolish corporal punishment (Germany)”

“Prohibit corporal punishment of children in all settings (Montenegro)”

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(3 March 2017, CRC/C/BRB/CO/2, Concluding observations on second report, paras. 31 and 32)

“While welcoming the promotion of positive forms of discipline through awareness-raising and training programmes, in cooperation with UNICEF, the Committee remains deeply concerned that corporal punishment is lawful and widely used in homes and schools, and legally allowed in institutions as punishment in the case of children who commit criminal offences.

“In the light of its general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, the Committee urges the State party to:

³² 6 April 2018, A/HRC/38/12, Report of the working group, paras. 96(74), 96(120), and 96(128); and 14 June 2018, A/HRC/38/12/Add.1 Advance unedited version, Report of the working group: Addendum, paras. 3 and 4

³³ 6 April 2018, A/HRC/38/12, Report of the working group, paras. 96(121), 96(122), 96(123), 96(124), 96(125), 96(127), 96(129); and 14 June 2018, A/HRC/38/12/Add.1 Advance unedited version, Report of the working group: Addendum, para. 5

- (a) Explicitly prohibit in legislation corporal punishment in all settings, including at home, in schools and in the justice system, without any exception;
- (b) Ensure that the prohibition of corporal punishment is adequately monitored and enforced;
- (c) Continue promoting positive, non-violent and participatory forms of child-rearing and discipline, strengthen teacher training on positive discipline and ensure that behaviour management guidelines are part of teacher training programmes;
- (d) Establish a complaints mechanism in schools so that children can safely and confidentially report teachers who continue to use corporal punishment;
- (e) Ensure that offenders are brought before the competent administrative and judicial authorities;
- (f) Conduct awareness-raising programmes, including campaigns, training sessions and other activities to promote a change in the mindset on corporal punishment in all settings.”

Committee on the Rights of the Child

(24 June 1999, CRC/C/15/Add.103, Concluding observations on initial report, paras. 19 and 22)

“The Committee is concerned about legislation and policies that allow the use of flogging of children as a disciplinary measure in prisons and its use as a judicial sentence. In this respect, the Committee welcomes the commitment of the State party to give prompt consideration to the possibility of ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Committee encourages the State party to conduct a public awareness-raising campaign and to review its legislation and policies in order to eliminate flogging as a judicial sentence and as a disciplinary measure in the prison system.”

“The Committee is seriously concerned about the high proportion of children who appear to be victims of physical abuse, in most instances accompanied by psychological and emotional abuse. The Committee is highly concerned about the subjective element involved in legislation that permits a ‘reasonable degree’ of physical chastisement as a disciplinary method. The Committee is concerned that the tolerance of corporal punishment in schools will make it extremely difficult to educate parents about alternative forms of discipline, and wishes to point out that there is usually a connection between the social and legal acceptability of corporal punishment and the high level of child abuse which is of serious concern. The Committee encourages the State party to review its policies and legislation in order to eliminate corporal punishment as a method of discipline and to implement fully the provisions of articles 19 and 39 of the Convention; it recommends that the State party increase its efforts to educate the public about the negative impact of corporal punishment on the development of the child and on the effort to prevent child abuse; finally, the Committee encourages the State party to seek international assistance and advice on successful examples of how to overcome traditional social attitudes regarding corporal punishment.”

Human Rights Committee

(11 May 2007, CCPR/C/BRB/CO/3, Concluding observations on third report, para. 12)

“The Committee is concerned that corporal punishment is still available as part of judicial sentences and is permitted within the penal and education systems. (arts. 7 and 24)

The State party should take immediate measures to eliminate corporal punishment as a legitimate sanction in its law and to discourage its use in schools. The State party should also take all necessary measures towards the eventual total abolition of corporal punishment.”

Committee on the Elimination of Discrimination Against Women

(21 July 2017, CEDAW/C/BRB/CO/5-8, Concluding observations on fifth/eighth report, Advance unedited version, paras. 31 and 32)

“The Committee notes with appreciation the high literacy rate among women. It also welcomes the achievement of gender parity at the primary and secondary levels of education, as indicated in “Barbados: Education for All 2015 National Review”. However, the Committee notes with concern: ...

(b) That despite the information provided by the State party’s delegation on the ongoing initiatives led by the Ministry of Education, to end corporal punishment in schools, as well as the cooperation with UNICEF on the Schools’ Positive Behaviour Management Programme since 2010, corporal punishment is culturally accepted and widely practiced in schools...

“The Committee recommends that the State party: ...

(b) Explicitly prohibit corporal punishment at school and ensure that the prohibition of corporal punishment is adequately monitored and enforced and strengthen teacher training and practice on positive discipline...”

Prevalence/attitudinal research in the last ten years

According to surveys conducted by the Caribbean Development Research Services (CADRES) between 2004 and 2014, there has been a dramatic decline in support for corporal punishment in schools in Barbados over a ten-year period. In 2004, 80% of those surveyed supported corporal punishment in the home; 69% in schools. In 2009, support had dropped to 75% in the home and 54% in schools. A further study in 2014 found 77% support for corporal punishment in the home, but just 50% in schools. The figures suggest that those who continue to support this form of punishment at school will soon be in the minority.

(Reported in “Spare them! Waning appetite for flogging in schools – pollsters”, *Barbados Today*, 25 February 2016, <http://www.barbadostoday.bb/2016/02/25/spare-them/>)

In a survey conducted in 2012, three out of four children (75.1%) aged 2-14 years were found to have been subjected to at least one form of violent “discipline” (psychological aggression or physical punishment) by their parent or another household member in the month preceding the survey; this was slightly higher for boys (78.1%) compared to girls (72.1%); in urban areas (76.7%) compared to rural areas (72.3%), and for younger children compared to older children. Over 6% of children reported being subjected to severe physical punishment. In contrast to the actual prevalence of physical punishment (55.7%), 35.7% of respondents believed that children need to be physically punished; this belief appears to increase as the level of education of the respondent increases.

(Barbados Statistical Service (2014), *Barbados Multiple Indicator Cluster Survey 2012: Final Report*, Bridgetown, Barbados: Barbados Statistical Service)

A study carried out in 2009, which involved 800 adults and 350 children, found high levels of support among adults for “flogging” in homes and schools: 75% supported flogging in the home, 54% in schools. The figures had decreased slightly since a similar survey in 2004, when 80% supported flogging in the home and 69% in schools. Of children, 54% supported flogging in the home (76% in 2004). A large majority of children (74%) were opposed to flogging in schools (compared to 56% in 2004). Eighty-six per cent of children said they had been flogged at home, 56% at school; 63% of adults said they had flogged their child.

(Caribbean Development Research Services (2009), *Corporal Punishment and Other Major Educational Issues in Barbados*, UNICEF & Barbados Union of Teachers)