

Corporal punishment of children in the Dominican Republic

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Child population 3,744,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

The Dominican Republic's commitment to prohibiting corporal punishment

The Dominican Republic expressed its commitment to prohibiting corporal punishment in all settings in accepting clearly a recommendation to do so made during the Universal Periodic Review in 2009. The commitment was confirmed in 2011 when the Government adopted the Regional Roadmap on Violence against Children, which recommends prohibition. The drafting of prohibiting legislation is under way.

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings and day care.

There appears to be no confirmation in written law of a “right” of parents to inflict “reasonable” or “moderate” punishment on their children (unconfirmed), but legal provisions against violence and abuse are not interpreted as prohibiting all corporal punishment. The near universal acceptance of a certain degree of violence in childrearing necessitates clarity in law that no degree or type of corporal punishment is acceptable or lawful. Prohibition of all corporal punishment, however light, should be enacted, together with the repeal of any legal defences for its use.

Alternative care – Prohibition should be enacted in legislation applicable to all forms of alternative care (formal foster care, institutions, orphanages, children’s homes, places of safety, emergency care, etc).

Day care – Prohibition should be enacted in legislation applicable to all formal early childhood care (nurseries, crèches, family centres, etc) and all formal day care for older children (after-school childcare, childminding, day centres, etc).

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. Article 12 of the Code for the Protection of the Rights of Children and Adolescents 2003 confirms the right of all children and adolescents to personal integrity and to respect for their dignity and states that it is the responsibility of the family, the state and society to protect children “against all forms of exploitation, maltreatment, torture, abuse or neglect that may affect their personal integrity” (unofficial translation) – but it does not explicitly prohibit all forms of corporal punishment in childrearing. The Code on Protection of Children and Adolescents 1994, which the 2003 Code repealed, included in its definition of maltreatment “personal injury caused by corporal punishment” (art. 126): this definition is not reiterated in the 2003 Code but there is nothing in the latter to suggest that it is intended to prohibit all corporal punishment of children, however light.

Article 303 of the Criminal Code states “Any act carried out as a method of criminal investigation, measure of intimidation, corporal punishment, preventive measure, criminal sanction or for any other purpose that causes injury or physical or mental suffering constitutes torture or an act of cruelty. Equally, the application of substances or methods designed to neutralize the personality or will of persons or to reduce their physical or mental capacity, even if such substances or methods do not cause physical pain or mental suffering, also constitutes torture or an act of cruelty.” But this is not interpreted as prohibiting all corporal punishment in childrearing, as indicated by article 303-1 which punishes acts of cruelty by 10-15 years. Provisions against violence and abuse in the Law Against Domestic Violence 1997 do not include prohibition of all corporal punishment.

Article 42 of the Constitution 2010 confirms the right of every person to personal integrity and “to live without violence”, stating also that “no one shall be subjected to punishment, torture or degrading treatment involving loss or decline in health or physical or mental integrity” and that “domestic and gender violence in any form is condemned”; article 56 confirms the right of children to protection from “all forms of abuse and violence” (art. 56). There is no evidence that these provisions are interpreted as prohibiting all corporal punishment of children by parents.

The Government has signalled its commitment to full prohibition of corporal punishment. In 2009, the Government accepted the recommendation to prohibit corporal punishment in all settings made during the Universal Periodic Review.¹ In reporting to the UPR of the Dominican Republic in 2014, the Government stated that work was under way “on drafting a provision to combat child abuse that covers corporal or physical punishment based on the Guide on Comprehensive Health Care for Children and Adolescent Victims of Violence and Abuse”.² The Government reported to the Committee on the Rights of the Child in 2015 that it had adopted a national roadmap on the prevention and elimination of violence against children;³ this was officially launched on 30 April 2015.⁴ This follows the adoption in 2011 of the Regional Roadmap on Violence against Children by the Central American Governments of Cuba, Mexico and the Dominican Republic, which includes a

¹ 4 January 2010, A/HRC/13/3, Report of the working group, para. 87(14)

² 8 November 2013, A/HRC/WG.6/18/DOM/1, National report to the UPR, para. 21

³ 15 January 2015, CRC/C/SR.1932, Summary record of 1932nd meeting, para. 31

⁴ NGO Coalition for Children, correspondence with the Global Initiative, 6 May 2015; see also

<http://www.listindiario.com/la-republica/2015/5/5/366053/Castigaran-a-adultos-que-les-den-pelas-a-los-ninos>, accessed 12 May 2015

recommendation to adopt national legislation to explicitly prohibit all corporal punishment and to repeal provisions allowing for “moderate” punishment/correction.⁵

Current law reform includes the reform of the Penal and Civil Codes, including to ensure compliance with the new Constitution (see above). In 2016, the Government reported that a Family Code was being drafted in order to bring national legislation in line with the state’s international obligations.⁶ The Government reported in August 2017 that a workshop had been held by the Inter-Agency Commission for the 2015-2018 Road Map to End Violence against Children where a consensus had emerged to draft a Bill entitled “Positive Parenting (Discipline) and Prohibition of Abuse Act” and that a commission was set up to pursue political advocacy and a communications strategy regarding corporal punishment.⁷ As of May 2018, the Bill was still being prepared.⁸

Alternative care settings

There is no explicit prohibition of corporal punishment in alternative care settings (formal foster care, institutions, orphanages, children’s homes, places of safety, emergency care, etc). Legal provisions against violence and abuse, in the Constitution and other laws (see under “Home”), protect children from some but not all corporal punishment.

Day care

There is no explicit prohibition of corporal punishment in formal early childhood care (nurseries, crèches, children’s centres, etc) and formal day care for older children (after-school childcare, childminding, day centres, etc). Legal provisions against violence and abuse, in the Constitution and other laws (see under “Home”), protect children from some but not all corporal punishment.

Schools

Corporal punishment is unlawful in schools under the Code on the Protection of the Rights of Children and Adolescents 2003, article 48 (unofficial translation): “School discipline should be administered in accordance with the rights, guarantees and duties of children and adolescents established in this Code.... In relation to official disciplinary regulations of schools and educational institutes, the following measures must be taken into account: ... prohibit corporal punishment and economic sanctions, as well as collective punishment, and corrections that might be considered to threaten or violate the rights of learners.” Article 49 states: “All children and adolescents have the right to be treated with respect and dignity by their educators.”

⁵ Regional Road Map on Violence against Children, adopted in 2011, 1 and 2 December in Santo Domingo, as a follow-up to the recommendations of the UN Study on Violence against Children, available at http://srsg.violenceagainstchildren.org/sites/default/files/political_declarations/Hoja%20de%20Ruta%20Final%20EVCN%20Centroamericano%20Dic%202012.pdf, accessed 21 February 2015

⁶ 27 July 2016, CCPR/C/DOM/6, Sixth state report, paras. 125 and 126

⁷ 15 August 2017, CCPR/C/DOM/Q/6/Add.1, Reply to list of issues, para. 30

⁸ Information provided to the Global Initiative, May 2018; see also 15 August 2017, CCPR/C/DOM/Q/6/Add.1, Reply to list of issues, para. 16

Penal institutions

Corporal punishment is unlawful as a disciplinary measure in penal institutions. Article 246 of the Code for the Protection of the Rights of Children and Adolescents 2003 states that an adolescent in conflict with the law has the right “not to be subjected to torture or to cruel, inhuman or degrading treatment or methods or techniques that induce or affect his free will, his consciousness, or impairment of dignity” (unofficial translation). Article 349 states: “The adolescent has the right ... l) not to be subjected to incommunicado in any case, or to the imposition of corporal punishment....”

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in criminal law.

Universal Periodic Review of the Dominican Republic’s human rights record

The Dominican Republic was examined in the first cycle of the Universal Periodic Review in 2009 (session 6). The following recommendation was made and was accepted by the Government:⁹

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

The Government later indicated that prohibition had been achieved:¹⁰ “With regard to the recommendations made on children and adolescents, the Dominican Republic indicated that, with a view to eradicate corporal punishment of children, Law 136-03 had been adopted.”

The second cycle of the Dominican Republic took place in 2014 (session 18). In its national report, the Government stated: “Progress made in helping children and adolescents includes work under way on drafting a provision to combat child abuse that covers corporal or physical punishment based on the Guide on Comprehensive Health Care for Children and Adolescent Victims of Violence and Abuse.”¹¹ No recommendations were made specifically on corporal punishment.

Third cycle examination took place in 2019 (session 32). No recommendations were made specifically on corporal punishment but the Government received the following recommendation:

“Take effective measures to reduce violence against children, especially domestic violence, and ensure their access to education (Germany)”

The Dominican Republic will examine the recommendation and respond by the 41st session of the Human Rights Council in June 2019.¹²

⁹ 4 January 2010, A/HRC/13/3, Report of the working group, para. 87(14)

¹⁰ 8 February 2011, A/HRC/13/56, Report of the Human Rights Council on its thirteenth session, para. 327

¹¹ 8 November 2013, A/HRC/WG.6/18/DOM/1, National report to the UPR, para. 21

¹² 6 February 2019, A/HRC/WG.6/32/L.13 Unedited version, Draft report of the Working Group, para. 94(167)

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(4 February 2015, CRC/C/DOM/CO/3-5, Concluding observations on third-fifth report, paras. 31 and 32)

“The Committee notes the adoption of a National Roadmap for the elimination of violence against children as well as the statement made by the delegation of the State party that a special law to prohibit corporal punishment will be adopted. However, the Committee is concerned about the lack of a comprehensive law that addresses all forms of violence against children. It is also deeply concerned about: ...

b) the high prevalence of corporal punishment of children and the lack of an explicit prohibition of corporal punishment in all settings....

“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:

a) adopt a comprehensive law that addresses all forms of violence, explicitly prohibits corporal punishment in all settings and includes measures to raise awareness on positive, non-violent and participatory forms of child-rearing....”

Committee on the Rights of the Child

(11 February 2008, CRC/C/DOM/CO/2, Concluding observations on second report, paras. 45 and 46)

“The Committee notes the clear definition of physical abuse established in Law No. 136-03 and welcomes that corporal punishment has been made unlawful in schools and abolished as a sentence in the justice system. The Committee is concerned that no explicit prohibition for corporal punishment exists for all other settings, including in the educational setting, in institutions of alternative care and in the family environment.

“The Committee recommends that the State party explicitly prohibit corporal punishment in all settings by law as a matter of priority and provide training for parents and all professionals involved with children on alternative forms of discipline, in line with the Committee’s general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (CRC/C/GC/8).”

Prevalence/attitudinal research in the last ten years

This study was conducted among 74 caregiver-child pairs attending a growth-monitoring clinic in 2015 found most caregivers used scolding (43%) or spanking (44%) for child discipline, with children who were disciplined by spanking and scolding more likely to have a language delays (55%) than children who were not spanked (22%). In response to good behaviour, less than half of caregivers reported using positive reinforcement, such as hugging or kissing the child (45%). Gross motor delays were more often found in children whose parents did not use milder discipline techniques, such as withholding an item, and did not reward pleasing behaviour.

(Uwemedimo *et al.* (2017), “Parenting Practices and Associations with Development Delays among Young Children in Dominican Republic” 83(3-4) *Annals of Global Health*, 568-576)

Research conducted in 2014 as part of UNICEF’s Multiple Indicator Cluster Surveys (MICS) programme, found on average 63% of 1-14 year-old children experienced some form of violent

discipline (psychological aggression and/or physical punishment) in the month prior to the survey. On average 54% of children experienced psychological aggression, 42% physical punishment and 3% severe physical punishment (hit or slapped on the face, head or ears, or hit repeatedly). Physical punishment of children was most common in the poorest households (45%) and least in the richest (37%), and more common for children aged 1-9 (47%) than those aged 10-14 (35%). Only 20% of children experienced only non-violent forms of discipline.

(Oficina Nacional de Estadística & UNICEF (2016), *Encuesta Nacional de Hogares de Propósitos Múltiples - Encuesta de Indicadores Múltiples por Conglomerados 2014*, Informe Final, Santo Domingo, República Dominicana: Oficina Nacional de Estadística)

According to UNICEF statistics collected between 2005 and 2013, 67% of children aged 2-14 experienced violent “discipline” (physical punishment and/or psychological aggression) in the home in the month prior to the survey. Forty-five per cent experienced physical punishment and 50% experienced psychological aggression (being shouted at, yelled at, screamed at or insulted). A smaller percentage (8%) of mothers and caregivers thought physical punishment was necessary in childrearing.

(UNICEF (2014), *Hidden in Plain Sight: A statistical analysis of violence against children*, NY: UNICEF)