

Corporal punishment of children in Gibraltar

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Child population (0-19) 7,830 (Government of Gibraltar, 2012)



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 and penal institutions.

The right of parents to administer “reasonable chastisement” is recognised under English common law; article 82 of the Criminal Offences Act 1960 and article 172 of the Crimes Act 2011 confirm “the right of any parent, teacher or other person having the lawful control or charge of a child or young person to administer punishment to him.” These defences should be repealed and prohibition enacted of all corporal punishment by all persons with authority over children.

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

Day care – Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, kindergartens, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Schools – Prohibition of corporal punishment should be enacted in relation to all educational settings – including private schools.

Penal institutions – Prohibition of corporal punishment should be enacted in relation to disciplinary measures in all institutions accommodating children in conflict with the law.

Note: Gibraltar is a British Overseas Territory. As such, it has its own constitution and domestic laws and substantial responsibility for its internal affairs, including responsibility for the protection and promotion of human rights and a duty to ensure that local law complies with the relevant convention and court judgments and is non-discriminatory. The UK Government has responsibility for international relations, internal security, defence, good governance and the wellbeing of the people.¹

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. The English common law defence of “reasonable chastisement” applies and is confirmed in legislation. Article 82 of the Criminal Offences Act 1960 punishes cruelty to children but states: “(6) Nothing in this section shall be construed as affecting the right of any parent, teacher or other person having the lawful control or charge of a child or young person to administer punishment to him.” This provision is reiterated as article 172(6) in the Crimes Act 2011 (in force 2012): “Nothing in this section affects the right of any parent, teacher or other person having the lawful control or charge of a child or young person to administer punishment to him.” The Children Act 2009 states that a parent has the right “to control, direct or guide, in a manner appropriate to the stage of development of the child, the child’s upbringing” (art. 10(1)(b)).

In its 2014 state party report to the Committee on the Rights of the Child, the UK Government states that it “does not condone any violence towards children and has clear laws to deal with it” but “our view is that a mild smack does not constitute violence”.² A similar statement was made to the Human Rights Committee in 2015.³ The UK Government has on three occasions rejected recommendations to prohibit all corporal punishment of children made during the Universal Periodic Review of the UK (see below).

Alternative care settings

Corporal punishment is lawful in alternative care settings under articles 82(6) of the Criminal Offences Act 1960 and 172(6) of the Crimes Act 2011 (see under “Home”). It is not prohibited in the Children Act 2009. The Government has reported that the Gibraltar Care Agency’s instructions to residential services for children in public care and the Agency’s foster care manual state that corporal punishment should not be used⁴ but there is no prohibition in law.

Day care

Corporal punishment is lawful in early childhood care and in day care for older children under articles 82(6) of the Criminal Offences Act 1960 and 172(6) of the Crimes Act 2011 (see under “Home”). It is not prohibited in the Children Act 2009.

¹ [2014], CRC/C/GBR/5, Fifth state party report, annex, para. 2

² [2014], CRC/C/GBR/5, Fifth state party report, annex, para. 11

³ [n.d.], CCPR/C/GBR/Q/7/Add.1, Advance Unedited Version, Reply to list of issues, para. 161

⁴ 27 March 2013, Reply to list of issues, para. 43.31

Schools

Corporal punishment is lawful in schools under articles 82(6) of the Criminal Offences Act 1960 and 172(6) of the Crimes Act 2011 (see under “Home”). According to the Education and Training Act 1974, the Minister may make regulations for “the maintenance of discipline in Government schools, including the punishment of pupils therein and the suspension and expulsion of pupils therefrom” (art. 82(xxviii)) and “discipline in schools and the methods of enforcement thereof and the conduct and dress of teachers and pupils” (art. 82(xxxviii), but it does not state that these should exclude corporal punishment. The Government has reported that “departmental policy instructions” state that corporal punishment is not to be used in schools,⁵ but there is no prohibition in law.

Penal institutions

Corporal punishment appears to be unlawful as a disciplinary measure in penal institutions. There is no provision for it in the Prison Act 2011 or the Prison Regulations 2011. We have yet to establish its legality in other institutions accommodating children in conflict with the law.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in criminal law, including the Criminal Procedure Act 1961, the Criminal Offences Act 1960 and the Crimes Act 2011. Article 5 of the Constitution 2006 states: “No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment.”

Universal Periodic Review of the UK’s human rights record

The UK was examined in the first cycle of the Universal Periodic Review in 2008 (session 1). The following recommendations were made:⁶

“To consider further measures in order to address the problem of violence against children, including corporal punishment. (Italy)

“To reconsider its position about the continued legality of corporal punishment against children. (Sweden)

“To consider going beyond current legislation and to ban corporal punishment, also in the private sector and in its Overseas Territories. (France)”

The Government rejected the recommendations, stating that it sees no need for law reform since it believes the current law is working well, parents should be allowed to discipline children and surveys show that the use of corporal punishment in childrearing has declined.⁷ It accepted the recognition to consider going beyond current legislation in relation to protecting children from violence but rejected

⁵ 27 March 2013, Reply to list of issues, para. 43.29

⁶ 23 May 2008, A/HRC/8/25, Report of the working group, paras. 56(2), 56(3), 56(4) and 56(5)

⁷ 23 May 2008, A/HRC/8/25, Report of the working group, para. 25

“the implication that it is failing in this regard through the application of its policy on corporal punishment”.⁸

Examination in the second cycle of the UPR took place in 2012 (session 13). The following recommendations were made:⁹

“Reconsider its position about the continued legality of corporal punishment of children (Sweden);

“Take measures to ensure the freedom of children from physical punishment in accordance with the Convention on the Rights of the Child (Norway);

“Introduce a ban on all corporal punishment of children as recommended by the CRC and other treaty bodies (Finland)”

The Government rejected the recommendations.¹⁰

The UK’s third cycle examination took place in 2017 (session 27). The following recommendations were made:¹¹

“In all devolved administrations, overseas territories and Crown dependencies, prohibit all corporal punishment in the family, including through the repeal of all legal defences, such as “reasonable chastisement” (Liechtenstein);

“Ensure that corporal punishment is explicitly prohibited in all schools and educational institutions and all other institutions and forms of alternative care (Liechtenstein);

“Prohibit corporal punishment in all settings, including the family (Ireland);

“Reconsider its position on the legality of corporal punishment of children (Mongolia);

“Ban corporal punishment of children to ensure the full protection and freedom from violence for all children (Sweden);

“Consider prohibiting corporal punishment against children and ensure that it is explicitly prohibited in all schools and educational institutions, and all other institutions and forms of alternative care (Croatia);

“Take further actions in protecting the rights of the child by prohibiting all corporal punishment of children as required by the convention of the Rights of Child (Estonia)”

The Government rejected all seven recommendations, stating: “the UK does not condone any violence towards children and has clear laws to deal with it. The ‘reasonable chastisement’ defence in s.58 Children Act 2004 cannot be used when someone is charged with assault causing actual or grievous bodily harm, or with child cruelty. Parents should not be criminalised for giving a child a mild smack in order to control their behaviour. The Crown Dependencies currently follow a similar approach to the UK. The decision on whether to prohibit corporal punishment and in what settings in the Overseas Territories is a decision, ultimately, for Territory governments. The UK Government is keen to support those Territories who wish to move away from the use of corporal punishment and

⁸ 25 August 2008, A/HRC/8/25/Add.1, Report of the working group: Addendum, paras. 28, 29 and 30

⁹ 6 July 2012, A/HRC/21/9, Report of the working group, paras. 110(78), 10(79) and 110(80)

¹⁰ 17 September 2012, A/HRC/21/9/Add.1, Report of the working group: Addendum, annex

¹¹ 8 May 2017, A/HRC/WG.6/27/L.7, Draft report of the working group, unedited version, paras. 6(193), 6(194), 6(195), 6(196), 6(197), 6(198) and 6(199)

explore alternative measures, including the development of positive parenting strategies and effective behaviour management techniques.”¹²

Recommendations by human rights treaty bodies

Note: According to the UK’s 2014 Common Core Document¹³, the following treaties apply in the Gibraltar: the European Convention on Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the UN Convention against Torture. The European Social Charter does not apply.

Committee on Economic, Social and Cultural Rights

(12 June 2009, E/C.12/GBR/CO/5, Concluding observations on fourth/fifth report, para. 24)

“The Committee ... also remains concerned that corporal punishment of children in the home is not yet prohibited by law.

The Committee ... reiterates its recommendation that physical punishment of children in the home be prohibited by law.”

Committee on Economic, Social and Cultural Rights

(5 June 2002, E/C.12/1/Add.79, Concluding observations on fourth report, para. 36)

“Given the principle of the dignity of the individual, which provides the foundation for international human rights law (see paragraph 41 of the Committee’s General Comment No.13) and in the light of article 10.1 and 10.3 of the Covenant, the Committee recommends that the physical punishment of children in families be prohibited, in line with the recommendation of the Committee on the Rights of the Child (see paragraph 31 of the 1995 concluding observations of that Committee (CRC/C/15/Add.34)).”

Committee on Economic, Social and Cultural Rights

(4 December 1997, CESCR/E/C.12/1/Add.19, Concluding observations on third report, paras. 16 and 28)

“The Committee is alarmed by the fact that corporal punishment continues to be practised in schools which are privately financed, and at the statement by the delegation that the Government does not intend to eliminate this practice.

“The Committee recommends that the State party take appropriate measures to eliminate corporal punishment in those schools in which this practice is still permitted, i.e. privately financed schools.”

¹² 7 September 2017, A/HRC/36/9/Add.1, Report of the working group: addendum, para. 3; see also 29 August 2017, Annex to the response to the recommendations received on 4 May 2017

¹³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418207/human-rights-common-core-document.pdf, accessed 19 June 2017

Committee Against Torture

(24 June 2013, CAT/C/GBR/CO/5, Concluding observations on fifth report, para. 29)

“The Committee takes note of amendments to legislation in England, Wales, Scotland and Northern Ireland, which limit the application of the defence of “reasonable punishment” (or “justifiable assault” in Scotland), but remains concerned that some forms of corporal punishment are still legally permissible in the home by parents and those in *loco parentis*. In addition, it is concerned that some forms of corporal punishment are lawful in the home, schools and alternative care settings in almost all overseas territories and Crown dependencies.

The Committee recommends that the State party prohibits corporal punishment of children in all settings in the Metropolitan territory, Crown dependencies and overseas territories, repealing all legal defences currently in place, and further promote positive non-violent forms of discipline via public campaigns as an alternative to corporal punishment.”

Committee Against Torture

(17 November 1998, A/54/44, Concluding observations on third report, para. 74)

“Positive aspects:

d) the removal of corporal punishment as a penalty in several of the Dependent Territories.”

Committee Against Torture

(9 July 1996, A/51/44, Concluding observations on second report, para. 65)

“The Committee recommends that the Government of the United Kingdom take the following measures:

i) reconsidering corporal punishment with a view to determining if it should be abolished in those dependencies that still retain it.”

Committee Against Torture

(26 June 1993, A/48/44, Concluding observations on initial report, para. 283)

“... The territories appeared to be governed in accordance with the obligations on the Convention and the Committee congratulated the Government of the United Kingdom in this respect. The Committee was, however, interested in receiving more detail pertaining to cases of corporal punishment in the territories retaining it. The nature and incidence of such punishment, together with details of the crime and the characteristics of the offender, should be forwarded to the Committee when the information is gathered....”

Human Rights Committee

([July 2015], CCPR/C/GBR/CO/7 Advance Unedited Version, Concluding observations on seventh report, para. 20)

“The Committee remains concerned that corporal punishment is still not fully outlawed in the home and certain educational and alternative care facilities in the United Kingdom and in almost all British Crown Dependencies and Overseas Territories. It is further concerned about the lack of explicit prohibition of corporal punishment in the home and the existing legal defences of ‘reasonable

punishment' in England, Wales and Northern Ireland or 'justifiable assault' in Scotland (arts. 7 and 24).

The State party should take practical steps, including through legislative measures where appropriate, to put an end to corporal punishment in all settings, including the home, throughout United Kingdom and all Crown Dependencies and Overseas Territories, and repeal all existing legal defences across the State party's jurisdiction. It should encourage non-violent forms of discipline as alternatives to corporal punishment, and conduct public information campaigns to raise awareness about its harmful effects."

Human Rights Committee

(30 July 2008, CCPR/C/GBR/CO/6, Concluding observations on sixth report, para. 27)

"The Committee notes with concern that corporal punishment of children is not prohibited in schools in Bermuda, the British Virgin Islands, Gibraltar, Montserrat and the Crown Dependencies. (arts. 7 and 24)

The State party should expressly prohibit corporal punishment of children in all schools in all British Overseas Territories and Crown Dependencies."

Human Rights Committee

(27 July 1995, CCPR/C/79/Add.55, Concluding observations on fourth report, para. 8)

"The Committee recommends that corporal punishment administered to privately funded pupils in independent schools be abolished."

Prevalence/attitudinal research in the last ten years

None identified.