

Corporal punishment of children in Jamaica

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Child population 821,000 (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, some day care and schools.

The right to inflict “reasonable and moderate” punishment on children is recognised in common law. It does not appear to be confirmed in written law, but legal provisions against violence and abuse are not interpreted as prohibiting corporal punishment in childrearing. The near universal acceptance of violence in childrearing necessitates clarity in law that no degree or kind of corporal punishment is acceptable or lawful. Prohibition should be enacted of all corporal punishment in all settings, including the family home and all settings where adults have authority over children, together with explicit repeal of the common law defence.

Day care – Corporal punishment is prohibited in early childhood institutions and “basic schools”. Legislation should now be enacted to prohibit corporal punishment in all early childhood care and in day care for older children, including crèches, after-school childcare, childminding, etc.

Schools – Prohibition should be enacted in relation to all schools, public and private, in addition to repeal of the common law defence.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home under the common law right to inflict “reasonable and moderate” punishment. Article 9 of the Child Care and Protection Act 2004 punishes “cruelty to children”, including assault and physical or mental ill-treatment “in a manner likely to cause that child unnecessary suffering or injury to health”, but it does not prohibit all corporal punishment and allows by inference the infliction of “necessary” suffering. Provisions against violence and abuse in the Offences Against the Person Act 1864, the Domestic Violence Act 1996 and the Constitution 1962 and its Charter of Fundamental Rights and Freedoms 2011 are not interpreted as prohibiting corporal punishment in childrearing. In 2012, Parliament passed the National Parenting Support Commission Act 2012, which aims to support implementation of the National Parenting Policy. The Act does not prohibit corporal punishment in childrearing: we have yet to establish whether or not the issue is addressed in the National Parenting Policy.

The Child Care and Protection Act 2004 is being reviewed. In December 2013, a draft “Policy to Amend the CCPA” was issued which includes an analysis of “gaps and anomalies” in the Act. The draft identifies article 9 as the key provision on cruelty to children but does not identify any shortcomings in this provision and makes no recommendations for its amendment.¹ A Parliamentary Joint Select Committee has been appointed to review the Act (and other laws): it commenced work in September 2014 and received a detailed submission from the Office of the Children’s Advocate which included the issue of prohibition of corporal punishment in all settings; the Ministry of Youth and Culture, together with the Child Development Agency, has also reviewed the Act.² Following national consultation on amendments to the Child Care and Protection Act, it has been recommended that corporal punishment is prohibited in all education settings before being prohibited in the home.³ As at January 2015, the proposed recommendations to the Act were before the Cabinet.⁴ The Offences Against the Person Act and the Domestic Violence Act are also under review.⁵ But in May 2015 Youth and Culture Minister Lisa Hanna reportedly stated that despite calls from the UN Committee on the Rights of the Child to prohibit all corporal punishment, no action would be taken until the issue “is completely ventilated through public discourse”.⁶

In reporting to the Universal Periodic Review of Jamaica in 2015, the Government stated that prohibition of corporal punishment “is a culturally sensitive issue that is under consideration, and no definitive position has been taken on that matter”.⁷ The Government went on to reject recommendations to prohibit corporal punishment in all settings including the home (see below).⁸ In November 2017, Prime Minister Andrew Holness gave a speech to the House of Representatives in which he highlighted his stance against all forms of corporal punishment and called for a debate in Parliament on prohibition in all settings.⁹ A report published in December 2018 by a Joint Select

¹ Ministry of Youth and Culture (2013), *A Policy to Amend the Child Care and Protection Act & Children’s Homes Regulations*, Child Development Agency, Revised Draft dated 31 December 2013

² 11 December 2014, CRC/C/JAM/Q/3-4/Add.1, Reply to list of issues, paras. 1 and 2

³ *ibid.*, para. 22

⁴ 27 January 2015, CRC/C/SR.1951, Summary record of 1951st meeting, para. 3

⁵ www.japarliament.gov.jm/index.php?option=com_content&view=article&id=1338&Itemid=55, accessed 7 May 2015

⁶ jamaica-gleaner.com/article/lead-stories/20150511/youth-ministry-not-ready-ban-corporal-punishment, accessed 14 May 2015

⁷ 27 April 2015, A/HRC/WG.6/22/JAM/1, National report to the UPR, para. 94

⁸ 20 July 2015, A/HRC/30/15, Report of the working group, paras. 120(6), 121(53) and 121(54); 25 September 2015, A/HRC/30/15/Add.1, Report of the working group: Addendum

⁹ See http://www.jamaicaobserver.com/news/holness-wants-end-to-corporal-punishment-calls-for-debate_116413?profile=1373, accessed 8 November 2017

Committee appointed to review various pieces of legislation, including the Child Care and Protection Act 2004, recommended that corporal punishment of children is prohibited in “all schools, public institutions for the care, instruction or guidance of children who were in the care of the State, and in all public places”. The report also stated that while some members of the Committee had advocated for a full ban, they had conceded that “a policy position would have to be developed on that issue before that approach could be taken”.

Jamaica is a Pathfinder country with the Global Partnership to End Violence Against Children, which was established in 2016. This commits the Government to three to five years of accelerated action towards the achievement of Target 16.2 of the Sustainable Development Goals.

Alternative care settings

Corporal punishment is unlawful in alternative care settings. It is prohibited in institutions and other forms of childcare in article 62 of the Child Care and Protection Act 2004: “A child in a place of safety, children’s home or child in the care of a fit person shall have the following rights – ... (d) to be free from corporal punishment...” Permitted disciplinary measures in children’s homes are prescribed by the Child Care and Protection (Children’s Homes) Regulations No. 22 2005, which states in article 17: “(1) No licensee or member of staff of any children’s home shall strike, cuff, slap or use any other form of physical violence towards any child who resides or is at the home. (2) No child at a children’s home shall be permitted to administer any form of punishment upon any other child at the home.”

Day care

Corporal punishment appears to be prohibited in some but not all day care. It is prohibited in early childhood institutions in the Act to Provide for the Regulation and Management of Early Childhood Institutions and for other Connected Matters 2005 (art. 16(1)): “Corporal punishment shall not be inflicted on a child in an early childhood institution.” An early childhood institution is defined in the Act as “a setting that provides developmentally appropriate care, stimulation, education and socialisation, for children under the age of six years, including day care centres and basic schools” (art. 2). There appears to be no explicit prohibition in relation to other forms of day care, including day care for older children.

Schools

Corporal punishment is lawful in schools, with the exception of “basic schools” (see under “Day care”). There is no provision for it in the Education Act 1965 or in the Education Regulations 1980, but a teacher is justified in administering “moderate and reasonable” corporal punishment under common law.¹⁰

The Government has stated its intention to abolish corporal punishment in schools and has informed all public schools not to use it.¹¹ In 2011, the Government stated it was seeking law reform to abolish corporal punishment through the development of a safe school policy to be tabled in Parliament for

¹⁰ *Ryan v Fildes* [1983] 3 All E.R.517

¹¹ Ministry of Education School Bulletin 94/08

approval.¹² It appears that no Bill which would prohibit corporal punishment in schools has yet been tabled in Parliament.¹³ In February 2016, Minister of Education Ronald Thwaites reportedly urged teachers not to beat children because of not doing homework or getting something wrong in class, but maintained that there is a place for corporal punishment under some circumstances.¹⁴

In October 2016, the Government reported to the Human Rights Committee that the Safe Schools Policy was under review and that one of the recommendation examined was the “removal” of corporal punishment from all public schools.¹⁵ The Prime Minister Andrew Holness declared during his presentation of the Budget in March 2017 that a Bill to amend the Education Act and explicitly prohibit corporal punishment in schools would be prepared.¹⁶

Penal institutions

Corporal punishment is unlawful as a disciplinary measure in penal institutions under article 62 of the Child Care and Protection Act 2004 (see under “Alternative care settings”). The Flogging Regulation Act 1903, which provided for disciplinary corporal punishment, was repealed in the Law Reform (Flogging and Whipping) (Abolition) Act 2013.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. It was ruled unconstitutional by the Jamaican Court of Appeal in December 1998 and there is no provision for it in the Criminal Justice (Reform) Act 1978, the Corrections Act 1985 and the Child Care and Protection Act 2004. The Law Reform (Flogging and Whipping) (Abolition) Act 2013 states in article 2: “(1) The imposition of flogging or whipping as a penalty for any offence is abolished. (2) Every reference to flogging or whipping, as a penalty for an offence, appearing in any enactment, is declared to be of no effect....” The Act repeals the Flogging Regulation Act 1903 and the Crime (Prevention of) Act 1942. Provisions for whipping in the Obeah Act 1898 and the Larceny Act 1942 were repealed in the Obeah (Amendment) Act 2013 and the Larceny (Amendment) Act 2013 respectively.

Universal Periodic Review of Jamaica’s human rights record

Jamaica was examined in the first cycle of the Universal Periodic Review in 2010 (session 9). During the review, the Government stated that corporal punishment was forbidden in the education system and in state childcare facilities.¹⁷ The following recommendation was made and was accepted by the Government, stating that it considered it already implemented or in the process of implementation:¹⁸

“Ensure that the new detention centres, which will be established in accordance with the auditing mentioned in the national report, comply with international standards, in particular

¹² 11 July 2011, CCPR/C/JAM/Q/3/Add.1, Written reply to Human Rights Committee list of issues, para. 83

¹³ <http://www.japarliament.gov.jm>, accessed 7 May 2015

¹⁴ *The Jamaican Gleaner*, 14 February 2016, <http://jamaica-gleaner.com/article/news/20160214/short-sharp-shock-education-minister-not-opposed-some-corporal-punishment>, accessed 15 February 2016

¹⁵ 18 October 2016, CCPR/C/JAM/Q/4/Add.1, Reply to the list of issues on fourth report, para. 122

¹⁶ See <http://linkis.com/rjrnewsonline.com/lo/KkqY6>, accessed 22 March 2017

¹⁷ 4 January 2011, A/HRC/16/14, Report of the working group, para. 35

¹⁸ 4 January 2011, A/HRC/16/14, Report of the working group, para. 99(10)

regarding separation of minors from adults and the prohibition of corporal punishment (Mexico)”

Examination in the second cycle took place in 2015 (session 22). The following recommendations were made:¹⁹

“Ratify the Convention against Torture and prohibit corporal punishment and other cruel treatment of girls and boys (Chile);

“Ensure the revised Child Care and Protection Act prohibits all corporal punishment of children, including in the home, and explicitly repeals the right to administer reasonable and moderate punishment (Sweden);

“Explicitly prohibit corporal punishment in all settings, including the family, schools and institutions (Estonia)”

The Government accepted the part of the first recommendation concerning ratification of the Convention Against Torture but rejected the part concerning prohibition of corporal punishment and all of the other recommendations on corporal punishment.²⁰ In doing so the Government confirmed prohibition of corporal punishment in some settings: “*Corporal punishment* has been abolished in early childhood institutions, children’s homes and other arranged alternate living spaces such as Foster Care. Appropriate measures are being taken to ensure that the use of corporal punishment is discontinued in Jamaican schools. The *Child Care and Protection Act* affords protection for all children from abuse.”²¹ A similar statement was subsequently made to the Human Rights Council when the formal UPR Government responses to recommendations were adopted.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(4 February 2015, CRC/C/JAM/CO/3-4 Advance Unedited Version, Concluding observations on third-fourth report, paras. 30 and 31)

“The Committee notes the significant progress in enacting legislation prohibiting corporal punishment in the penal system, alternative care settings and early childhood institutions, in particular, the Early Childhood Act, Child Care and Protection Act and the Act to Provide for the Regulation and Management of Early Childhood Institutions. The Committee, however, is concerned that corporal punishment remains lawful in the home and schools, is widely accepted in society, and continues to be practised in the State party.

“In line with its general comment No. 8 (2006) on the right of the child to protection from corporal punishment, and general comment No. 13 (2011) on the right of the child to freedom from all forms of violence, the Committee recommends that the State party:

a) amend its legislation to explicitly prohibit corporal punishment in all settings, including the family, schools and institutions, and explicitly repeal the common law right to inflict ‘reasonable and moderate’ punishment;

b) finalize and approve the draft National Safe Schools Policy which addresses the use of corporal

¹⁹ 20 July 2015, A/HRC/30/15, Report of the working group, paras. 120(6), 121(53) and 121(54)

²⁰ 20 July 2015, A/HRC/30/15, Report of the working group, para. 120 and 121; 25 September 2015, A/HRC/30/15/Add.1, Report of the working group: Addendum

²¹ 25 September 2015, A/HRC/30/15/Add.1, Report of the working group: Addendum

punishment in schools;

c) promote positive, non-violent and participatory forms of child-rearing and discipline as an alternative to corporal punishment, and expand parenting education programmes and training for principals, teachers, and other professionals working with and for children; and

d) strengthen and expand its efforts through awareness-raising campaigns to inform the public in general about the negative impact of corporal punishment on children and actively involve children and the media in the process.”

Committee on the Rights of the Child

(4 July 2003, CRC/C/15/Add.210, Concluding observations on second report, paras. 33, 48 and 49)

“The Committee urges the State party to considerably strengthen its efforts to address and condemn violence in society, including violence against women and children, particularly in the context of the family, as well as in schools and other environments. Further, it recommends that the State party take steps to monitor and address any incidents of violence and sexual or other abuse against children and take measures to ensure the rehabilitation of traumatized and victimized children by, inter alia:

a) carrying out public education campaigns about the negative consequences of violence and ill-treatment of children and promoting positive, non-violent forms of conflict resolution and discipline, especially within the family and in the educational system;

b) taking all legislative measures to prohibit all forms of physical and mental violence, including corporal punishment and sexual abuse, against children in all contexts in society as well as taking effective measures for the prevention of violent acts committed within the family, in schools and by the police and other State agents, making sure that perpetrators of these violent acts are brought to justice, putting an end to the practise of impunity;

c) providing care, recovery and reintegration for child victims of direct or indirect violence and ensuring that the child victim is not revictimized in legal proceedings and that his/her privacy is protected;

d) taking into consideration the recommendations of the Committee adopted on its days of general discussion on children and violence (CRC/C/100, para.866 and CRC/C/111, paras.701-745);

“The Committee welcomes the State party’s progress in the field of education, but remains concerned about:

e) the use of corporal punishment in schools.

“The Committee recommends that the State party, in the light of the Committee’s general comment on article 29 (1) of the Convention (aims of education):

e) adopt appropriate legislative measures to combat the use of corporal punishment in the schools....”

Committee on the Rights of the Child

(15 February 1995, CRC/C/15/Add.32, Concluding observations on initial report, para. 7)

“The Committee is concerned that in the framework of the legislative reform under way, a number of areas remain where national legislation has not yet been brought into full conformity with the provisions of the Convention, including its general principles, as reflected in articles 2, 3, 6 and 12. In

this regard, the Committee's concerns relate in particular to the definition of the child, the need to protect children against corporal punishment....”

Committee on Economic, Social and Cultural Rights

(10 June 2013, E/C.12/JAM/CO/3-4, Concluding observations on third/fourth report, para. 20)

“While noting the establishment of various State agencies to ensure the protection of children, including the Child Development Agency, the Office of the Children’s Advocate and the Office of the Children’s Registry, as well as the adoption of the Child Care and Protection Act, the Committee remains deeply concerned at high levels of violence, use of corporal punishment in the home and in schools, abuse, neglect and sexual exploitation of children, as well as child victims’ lack of access to psychosocial support. It is also deeply concerned at reports of sexual, physical and mental abuse of children at the hands of caregivers in the State party’s children’s homes and places of safety supervised by the Child Development Agency (art. 10).

The Committee strongly urges the State party to eradicate all forms of violence against children, including through the assistance of relevant United Nations agencies operating in the State party, in particular the United Nations Children’s Fund (UNICEF), by adopting concrete measures to: ...

b) prohibit all forms of corporal punishment in all settings, including within the family....”

Committee on Economic, Social and Cultural Rights

(30 November 2001, E/C.12/1/Add.75, Concluding observations on second report, para. 14)

“The Committee is profoundly concerned about the violence that has apparently become widespread in the State party. It is reported that over 1,000 people have been murdered in the year 2001 alone and that ‘tribal’ politics is such that warlords rule large sections of the capital city where they are involved in extortion, drugs and prostitution. The Committee is particularly concerned that violence – including domestic and sexual violence – is committed against women of all ages and against children. According to reports from non-governmental organizations, children are regularly flogged and even threatened with weapons and child-rearing practices include corporal punishment of children in the home and in schools. The fact that these acts are committed with impunity constitutes a serious violation by the State party of its Covenant obligations.”

Human Rights Committee

(22 November 2016, CCPR/C/JAM/CO/4, Concluding observations on fourth report, paras. 45 and 46)

“The Committee is concerned that corporal punishment remains lawful in the home and in schools, and that it continues to be practised in the State party and is widely accepted in society (arts. 7 and 24).

“The State party should take practical steps, including legislative measures, where appropriate, to put an end to corporal punishment in all settings. It should encourage non-violent forms of discipline as alternatives to corporal punishment and conduct public information campaigns to raise awareness about the harmful effects of such punishment.”

Human Rights Committee

(17 November 2011, CCPR/C/JAM/CO/3, Concluding observations on third report, para. 20)

“While recognizing that corporal punishment as a penalty for crime has been abolished by judicial decision, the Committee expresses its regret that it remains legal in the State party, which permits its use in the education system and the home, where it traditionally continues to be accepted and practised as a form of discipline by teachers, parents and guardians (arts. 7 and 24).

The State party should take practical steps to put an end to corporal punishment in all settings by passing the bill that seeks to repeal the Flogging Regulations Act and the relevant provisions of the Crime (Prevention of) Act. The State party should promote non-violent forms of discipline as alternatives to corporal punishment, and should conduct public information campaigns to raise awareness about its harmful effects.”

Human Rights Committee

(19 November 1997, CCPR/C/79/Add.83, Concluding observations on second report, para. 15)

“The Committee is deeply concerned about the fact that the Flogging Regulation Act, 1903 and the Crime (Prevention of) Act, 1942 are still in force, which provide for and regulate corporal punishment both as a penalty for certain crimes and as a penalty for breach of prison rules of other regulations. In this regard:

The Committee recommends that both Acts be repealed, as they are contrary to article 7 of the Covenant.”

Prevalence/attitudinal research in the last ten years

A mobile survey conducted in 2015 with over 3,000 respondents found 60% do not think corporal punishment is necessary to discipline children; 36% think it is necessary and 4% don't know. There were no significant differences in opinion between males and females, but younger respondents were less likely to feel corporal punishment is necessary (32% of 14-19 year olds) than older respondents (43% of 26-40 year olds).

(Respect Jamaica (2015), *Respect Jamaica/UNICEF Youth Survey*, Kingston, Jamaica: Respect Jamaica)

A cross-sectional study of 1,300 children in grade 5 from 29 government primary schools in urban areas of Kingston and St. Andrew found 58% of the children experienced moderate or high levels of physical punishment at school (as well as exposure to aggression among peers at school and community violence).

(Baker-Henningham, H. et al (2009), “Experiences of violence and deficits in academic achievement among urban primary school children in Jamaica”, *Child Abuse & Neglect*, 33, 296-306)

According to statistics collected in 2010-2011 under round 4 of the UNICEF Multiple Indicator Cluster Survey programme (MICS4), 84.5% of children aged 2-14 experienced violent “discipline” (physical punishment and/or psychological aggression) in the home in the month prior to the survey. More than two thirds (68.4%) experienced physical punishment, while a smaller percentage (27%) of mothers and caregivers thought physical punishment was necessary in childrearing. More than one child in 20 (5.7%) was severely physically punished (hit or slapped on the face, head or ears or hit over and over with an implement); 71.9% experienced psychological aggression (being shouted at, yelled at, screamed at or insulted).

In consultations involving 279 children aged 6-12, carried out by the Office of the Children’s Advocate in 2007, corporal punishment in homes and schools was one of three main concerns raised by children.

(4 November 2013, CRC/C/JAM/3-4, Third and fourth periodic report of the State party to the Committee on the Rights of the Child)

In a 2010 government sponsored attitudinal survey of 1,000 adults, carried out by Market Research Services Limited, the majority – regardless of socio-economic status – believed beating a child is necessary in correcting bad behaviour; 30% supported ending the beating of children. More than half (51.8%) did not agree that acts such as pinching, hitting the head, biting, kicking and thumping a child constituted corporal punishment; 51% said they had physically punished a child. However, 80% of those surveyed agreed that parents could use other forms of discipline that are just as effective.

(Reported in *The Gleaner*, 17 February 2010, www.jamaica-gleaner.com/gleaner/20100217/lead/lead4.html)

In a 2008-2009 study involving 6,435 women aged 15-49 with children, 53.3% reported that children in their home were punished by being hit, beaten, spanked or slapped. Women who had experienced partner violence were more likely to report that children in their home were physically punished (64.5% of women who had experienced partner violence compared to 52.1% of women who had not).

(Bott, S. et al (2012), *Violence Against Women In Latin America And The Caribbean: A Comparative Analysis Of Population-based Data From 12 Countries*, Washington DC: Pan American Health Organisation & Centers for Disease Control and Prevention)

In a study involving six focus groups with 60 children aged 7-12 and eight parent focus groups with 44 adults, all groups of children described experiencing harsh disciplinary measures, including beatings with objects such as belts, rulers, garden hose and boards. Many of the children said they felt angry and hurt by physical punishments, and recommended discussion and withdrawal of privileges as alternatives. Some children said that when they became parents they would use more democratic or flexible discipline, while others said they wanted to hurt their own children as much as they had been hurt. Almost all parents defended the use of corporal punishment (“beating”) as a justified method of disciplining children.

(Brown, J. & Johnson, S. (2008), “Childrearing and child participation in Jamaican families”, *International Journal of Early Years Education*, 16 (1), 31–40)

According to a study reported in *The Gleaner* in 2007, in a survey of teachers from all types of primary educational settings, one in four admitted to flogging students often and one in three to pinching and thumping them. Boys were more likely to be flogged. Less than a quarter of teachers believed beating was effective, and almost half identified negative effects they had seen, including students becoming oppositional, aggressive, destructive towards school property, gathering peer support against teachers, and becoming “disconnected” from school activities.

(Reported in *Jamaica Gleaner Online*, 21 March 2007)

Focus group research with parents, children aged 5-8 years and practitioners in 2007 found that young children were still receiving corporal punishment despite the prohibition in the Early Childhood Act passed in 2005.

(Reported in *The Jamaica Observer*, 6 June 2007)