

Corporal punishment of children in Montserrat

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Child population (0-14) 1,382 (CIA World Factbook, 2011 est.)



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.

Article 37 of the Juveniles Act 1982 and article 193(6) of the Penal Code 1983 confirm the right of any parent, teacher or other person having the lawful control or charge of a juvenile to administer “reasonable” punishment in the course of parental or school discipline. These provisions should be repealed and prohibition enacted of all corporal punishment by all persons with authority over children.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 settings (nurseries, crèches, kindergartens, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Schools – Article 49 of the Education Act should be repealed and prohibition enacted in relation to all education settings, including public and private.

Penal institutions – Legislation should prohibit corporal punishment in all institutions accommodating children in conflict with the law.

Note: Montserrat 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. Article 193 of the Penal Code 1983 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.” Article 37 of the Juveniles Act 1982 states: “Nothing in this Act or the Penal Code shall be construed as affecting the right of any parent, teacher or other person having the lawful control or charge of a juvenile to administer reasonable punishment to him in the course of normal parental or school discipline.”

In 2007 a number of draft laws had been prepared and were being reviewed by the Legal Department, including a draft Child Welfare and Protection Bill, draft Juvenile Justice Bill and draft Domestic Violence Bill. By February 2016, the Child Care and Protection Bill and the Child Justice Bill had not been enacted.² We are seeking further information on the Domestic Violence Bill.

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”.³ A similar statement was made to the Human Rights Committee in 2015.⁴ 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 the right “to administer punishment” in article 193(6) of the Penal Code 1983 and “to administer reasonable punishment” in article 37 of the Juveniles Act 1982 (see under “Home”).

Day care

Corporal punishment is lawful in early childhood care and in day care for older children under the right “to administer punishment” in article 193(6) of the Penal Code 1983 and “to administer reasonable punishment” in article 37 of the Juveniles Act 1982 (see under “Home”).

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

² <http://www.themontserratreporter.com/children-remanded-to-prison/>, accessed 6 July 2016; see also <http://www.themontserratreporter.com/child-safeguarding-gets-funding-to-move-into-effect/>, accessed 6 July 2016

³ [2014], CRC/C/GBR/5, Fifth state party report, annex, para. 11

⁴ [n.d.], CCPR/C/GBR/Q/7/Add.1, Advance Unedited Version, Reply to list of issues, para. 161

Schools

In reporting to the Committee on the Rights of the Child in 2014, the Government stated that there is policy against corporal punishment in public (not private) schools.⁵ However, this is not confirmed through prohibition in law. On the contrary, the Education Act 2003 (2013 Revision) expressly authorises corporal punishment, stating in article 49: “(1) In the enforcement of discipline in public schools, assisted private schools and private educational institutions degrading or injurious punishment shall not be administered. (2) Corporal punishment may be administered where no other punishment is considered suitable or effective, and only by the principal, deputy principal or any teacher appointed by the principal for that purpose, in a manner which is in conformity with the guidelines issued in writing by the Director. (3) Whenever corporal punishment is administered an entry shall be made in a punishment book which shall be kept in each school for such purpose indicating the nature and extent of the punishment and the reasons for administering it. (4) A person other than those mentioned in subsection (2) who administers corporal punishment to a student on school premises commits an offence and shall be liable on summary conviction to a fine not exceeding \$1,000.” Article 193(6) of the Penal Code 1983 and article 37 of the Juveniles Act 1982 also apply (see under “Home”).

Penal institutions

There is no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions. The Prison Act 1955 does not refer to corporal punishment but provides for the making of rules “for the regulation and management of prisons, the conduct, discipline and duties of the officers employed therein, and the classification, treatment, employment, discipline and control of prisoners” (art. 21). The Prison Rules 2000 do not provide for corporal punishment; the Constitution states that all persons deprived of their liberty “have the right to be treated with humanity and with respect for the inherent dignity of the human person” and that juvenile prisoners “shall be treated in a manner appropriate to his or her age” (art. 8). We have been unable to confirm that this is interpreted as prohibiting corporal punishment in all institutions accommodating children in conflict with the law, although the Government has stated that it is not used in these settings.⁶

Sentence for crime

According to the Government, corporal punishment was abolished as a sentence for crime in 1991.⁷ There is no provision for judicial corporal punishment in the Penal Code 1983, the Criminal Procedure Code 2010, the Magistrate’s Court Act 1984 or the Juveniles Act 1982. Article 4 of the Constitution 2010 states: “No person shall be subjected to torture or to inhuman or degrading treatment or punishment.”

⁵ [2014], CRC/C/GBR/5, Fifth state party report, annex

⁶ Parliamentary answer to question asked by Baroness Walmsley, 19 December 2011

⁷ 20 July 1998, CAT/C/44/Add.1, Third report to the Committee Against Torture, para. 199

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:⁸

“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.⁹ It accepted the recognition to consider going beyond current legislation in relation to protecting children from violence but rejected “the implication that it is failing in this regard through the application of its policy on corporal punishment”.¹⁰

Examination in the second cycle of the UPR took place in 2012 (session 13). The following recommendations were made:¹¹

“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.¹²

The UK's third cycle examination took place in 2017 (session 27). The following recommendations were made:¹³

“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);

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

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

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

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

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

¹³ 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)

“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 explore alternative measures, including the development of positive parenting strategies and effective behaviour management techniques.”¹⁴

Recommendations by human rights treaty bodies

Note: According to the UK’s 2014 Common Core Document¹⁵, the following treaties apply in Montserrat: the European Convention on Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the UN Convention against Torture and the UN Convention on the Rights of the Child. The European Social Charter does not apply.

Committee on the Rights of the Child

(3 June 2016, CRC/C/GBR/CO/5, Concluding observations on fifth report, para. 40)

“With reference to its general comment No. 8 and its previous recommendations, the Committee urges the State party, in all devolved administrations, Overseas Territories and Crown Dependencies, to:

- a) prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences, such as “reasonable chastisement”;
- b) ensure that corporal punishment is explicitly prohibited in all schools and educational institutions and all other institutions and forms of alternative care;
- c) strengthen its efforts to promote positive and non-violent forms of discipline and respect for children’s equal right to human dignity and physical integrity, with a view to eliminating the general acceptance of the use of corporal punishment in child-rearing.”

¹⁴ 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

¹⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418207/human-rights-common-core-document.pdf, accessed 19 June 2017

Committee on the Rights of the Child

(20 October 2008, CRC/C/GBR/CO/4, Concluding observations on third/fourth report, paras. 40, 41 and 42)

“The Committee, while noting amendments to legislation in England, Wales, Scotland and Northern Ireland which restrict the application of the defence of ‘reasonable chastisement’, is concerned that this defence has not been removed. The Committee welcomes the commitment of the National Assembly in Wales to prohibiting all corporal punishment in the home, but notes that under the terms of devolution it is not possible for the Assembly to enact the necessary legislation. The Committee is concerned at the failure of State party to explicitly prohibit all corporal punishment in the home and emphasizes its view that the existence of any defence in cases of corporal punishment of children does not comply with the principles and provisions of the Convention, since it would suggest that some forms of corporal punishment are acceptable.

“The Committee is further concerned that corporal punishment is lawful in the home, schools and alternative care settings in virtually all overseas territories and crown dependencies.

“The Committee, reiterating its previous recommendations (CRC/C/15/Add.188, para. 35), in the light of its general comment No. 8 on ‘the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment’, as well as noting similar recommendations made by the Human Rights Committee; the Committee on the Elimination of Discrimination Against Women; and the Committee on Economic, Social and Cultural Rights, recommends that the State party:

- a) prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences, in England and Wales, Scotland, and Northern Ireland, and in all Overseas Territories and Crown Dependencies;
- b) ensure that corporal punishment is explicitly prohibited in schools and all other institutions and forms of alternative care throughout the United Kingdom and in the overseas territories and crown dependencies;
- c) actively promote positive and non-violent forms of discipline and respect for children’s equal right to human dignity and physical integrity, with a view to raising public awareness of children’s right to protection from all corporal punishment and to decreasing public acceptance of its use in childrearing;
- d) provide parental education and professional training in positive child-rearing.”

Committee on the Rights of the Child

(16 October 2000, CRC/C/15/Add.135, Concluding observations on initial report on Overseas Territories and Crown Dependencies, paras. 35, 36, 55 and 57)

“The Committee expresses grave concern that corporal punishment is still widely practised in many of the Overseas Territories and that domestic legislation generally does not prohibit and eliminate its use in schools, care institutions and homes. It also notes with concern that the British Virgin Islands is the only remaining Territory that has not yet prohibited by law the use of judicial corporal punishment.

“The Committee recommends that all appropriate measures, including of a legislative nature, be taken to prohibit and eliminate all forms of corporal punishment within the school, juvenile justice and alternative care systems and in the home. The Committee further suggests that awareness raising and education campaigns be conducted to change public attitudes and 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 articles 19 and 28.2.

"The Committee notes that legislation relating to juvenile justice has been enacted in all of the Overseas Territories. While the Committee appreciates that the legal abolition of judicial corporal punishment in most of the Overseas Territories, it is concerned that the bill to abolish it in the British Virgin Islands has not yet been enacted....

"The Committee further recommends that the British Virgin Islands reinforce efforts to enact the bill introduced into the Legislative Council to abolish the use of judicial corporal punishment in the islands."

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."

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.