

Corporal punishment of children in Netherlands

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Child population 3,390,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Law reform has been achieved. Corporal punishment is unlawful in all settings, including the home.

Note: The Netherlands (European Netherlands) is one of four constituent countries in the Kingdom of the Netherlands, each of which has its own laws. The other countries are Aruba, Curaçao and Sint Maarten (see separate country reports). While the countries participate equally in the Kingdom, in practice most affairs of the Kingdom are administered by the Netherlands. The Netherlands itself has three Special Municipalities in which the laws of the Netherlands apply (see separate reports for Bonaire, Saba and Sint Eustatius).

Prohibition of corporal punishment

Home

Corporal punishment is prohibited in the home. In 2007, article 1:247 of the Civil Code, on parental authority, was amended to state (unofficial translation): “(1) Parental authority includes the duty and the right of the parent to care for and raise his or her minor child. (2) Caring for and raising one’s child includes the care and the responsibility for the emotional and physical wellbeing of the child and for his or her safety as well as for the promotion of the development of his or her personality. In the care and upbringing of the child the parents will not use emotional or physical violence or any other humiliating treatment.” Article 1:248 applies article 1:247 to other persons acting *in loco parentis*.

With regard to the non-European parts of the Kingdom of the Netherlands, prohibition has been achieved in all settings in Aruba, Curaçao and in Sint Maarten, but has not yet been achieved in the Caribbean Special Municipalities of Bonaire, Saba and Sint Eustatius.

Alternative care settings

Corporal punishment is prohibited in alternative care settings under the 2007 amendments to the Civil Code (see under “Home”).

Day care

Corporal punishment is prohibited in early childhood care and in day care for older children under the 2007 amendments to the Civil Code (see under “Home”).

Schools

Corporal punishment is unlawful in schools. The right to punish was abolished for school teachers in 1920 by verdict of the Court in The Hague (Nederlands Juristenblad 496, March 20 1920). Articles 1:247 and 1:248 of the Civil Code apply (see under “Home”).

Penal institutions

Corporal punishment is unlawful as a disciplinary measure in penal institutions, but we have no details of prohibiting legislation other than the Civil Code provision (see under “Home”).

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. It is not available as a sanction under the Criminal Code.

Universal Periodic Review of the Netherlands’ human rights record

The Netherlands was examined in the first cycle of the Universal Periodic Review in 2008 (session 1). No recommendation was made specifically concerning corporal punishment of children.

Examination in the second cycle of the UPR took place in 2012 (session 13). The following recommendations were made:¹

“Prohibit corporal punishment in all settings through the Kingdom of the Netherlands (Slovenia);

“Build on this success (achieving a total prohibition of corporal punishment of children in all settings in the European part of the Dutch territory) and ensure that this prohibition is also duly implemented in Aruba and the Netherland Antilles by enacting the necessary legislation in this regard (Hungary)”

The Government responded to the recommendations by stating: “Violence in parenting has been formally prohibited in the Netherlands for several years. In Aruba corporal punishment is prohibited by law in schools, and legislation to extend the prohibition to the family setting is expected in 2012. In Curaçao, the Civil Code was amended to define parents’ role as that of caregivers and educators, prohibiting them from employing emotional or physical violence or any other form of humiliating treatment in parenting their children. The same goes for Sint Maarten since passing of the National Ordinance on Parental Authority in 2011 amending the Civil Code.”²

The Netherlands’ third cycle examination took place in 2017 (session 27). The following recommendations were made:³

¹ 9 July 2012, A/HRC/21/15, Report of the working group, paras. 98(18) and 98(75)

² 12 October 2012, A/HRC/21/15/Add.1/Rev.1, Report of the working group: Addendum, page 3

³ 18 May 2017, A/HRC/WG.6/27/L.13, Draft report of the Working Group, paras. 5(117) and 5(154)

“Ensure that its legislation addresses all forms of violence, explicitly prohibits corporal punishment in all settings and includes measures to raise awareness of positive, non-violent and participatory forms of child-rearing throughout the Kingdom, in particular in Aruba as well as in the Caribbean Netherlands (Liechtenstein)”

“Intensify its efforts in relation to children’s rights including particularly the Caribbean countries forming part of the State, including to prohibit corporal punishment in all settings; to develop and implement public awareness programmes; to reduce the rate of school drop-out and intensify efforts to eradicate child labour; to raise the minimum age of recruitment in the military to 18 years and to ratify the Optional protocol to the CRC on a communications procedure without reservations (Ireland)”

The Government accepted both recommendations, stating in regards to the first one: “Violence has already been made punishable by law in the Penal Code of Bonaire, St Eustatius, and Saba. In addition, the punishment can be increased by one-third if the offender committed the criminal offence against his or her child (among other parties). Corporal punishment in schools is prohibited by Aruban law. The New Civil Code includes a prohibition of corporal punishment in the family setting. In Curaçao, legislation addressing corporal punishment already exists.”⁴

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(8 June 2015, CRC/C/NDL/CO/4 Advance Unedited Version, Concluding observations on fourth report, paras. 36 and 37)

“The Committee welcomes the State party’s efforts aimed at combatting child violence and abuse, but is concerned about: ...

e) absence of legal provisions expressly prohibiting corporal punishment in all settings, including at home, in Aruba; and

f) absence of legal provisions prohibiting corporal punishment of children in the home, alternative care settings, day care and schools in the Caribbean Netherlands.

“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: ...

e) ensure that the State party’s legislation addresses all forms of violence, explicitly prohibits corporal punishment in all settings and includes measures to raise awareness of positive, non-violent and participatory forms of child-rearing throughout the Kingdom, in particular in Aruba as well as in the Caribbean Netherlands.”

⁴ 14 September 2017, A/HRC/36/15/Add.1, Report of the working group: Addendum, page 6

Committee on the Rights of the Child

(27 March 2009, CRC/C/NLD/CO/3, Concluding observations on the third report, paras. 36 and 37)

“The Committee is concerned that corporal punishment in the home is not prohibited in Aruba, and that it is still being used at schools, day-care centres and in the home in the Netherlands Antilles.

“The Committee recommends that the State party prohibit corporal punishment by law and enforce the prohibition in all settings, including in the family, the schools and out of home placements. It also recommends that the State party conduct awareness-raising campaigns and parenting education programmes to ensure that alternative forms of discipline are used, in a manner consistent with the child’s human dignity and in conformity with the Convention, especially article 28, paragraph 2, while taking due account of general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment.”

Committee on the Rights of the Child

(26 February 2004, CRC/C/15/Add.227, Concluding observations on second report, paras. 43 and 44)

“... The Committee is also concerned that there is no legal prohibition on corporal punishment in the family.

“The Committee recommends that the State party:

d) explicitly prohibit corporal punishment in law throughout the State party and carry out public education campaigns about the negative consequences of ill-treatment of children, and promote positive, non-violent forms of discipline as an alternative to corporal punishment.”

Committee on the Rights of the Child

(26 October 1999, CRC/C/15/Add.114, Concluding observations on initial report, para. 17)

“The Committee welcomes the recent efforts to establish a network of child abuse reporting and counselling centres and the plans to strengthen child abuse monitoring and reporting systems. However, the Committee remains concerned about the growth in reported cases of child abuse and about the level of protection available to children. The Committee urges the State party to give increased priority to the prompt implementation and support of monitoring and reporting systems based on the position paper of the Ministries of Justice, and Health, Welfare and Sport concerning the prevention of child abuse and the protection and rehabilitation offered to victims of child abuse. Furthermore, the Committee recommends that the State party, in line with developments in other European countries, take legislative measures to prohibit the use of all forms of mental and physical violence against children, including corporal punishment, within the family.”

Committee on Economic, Social and Cultural Rights

(9 December 2010, E/C.12/NLD/CO/4-5, Concluding observations on fourth/fifth report, para. 22)

“The Committee regrets that corporal punishment is not prohibited in Aruba (arts. 10 and 13).

The Committee urges the State party to introduce a statutory prohibition of corporal punishment in the home and in all educational settings in Aruba, in line with article 10 of the Covenant and the Committee’s general comment No. 13 (1999) on the right to education, which refers to the fact that corporal punishment is inconsistent with the fundamental principle of dignity of the individual.”

Committee Against Torture

(3 August 2007, CAT/C/NET/CO/4, Concluding observations on fourth report, para. 3)

“The Committee notes with satisfaction the ongoing efforts undertaken by the State party to combat torture and to guarantee the rights of persons not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment in the Kingdom of the Netherlands, in particular: ...

b) the entry into force of an amendment of the Dutch Civil Code in April 2007 which prohibits physical and mental violence ‘for educational purposes,’ including in the family environment”

European Committee of Social Rights

(January 2016, Conclusions 2015)

“The Committee notes that there have been no changes to the situation which it has previously found to be in conformity with the Charter.”

European Committee of Social Rights

(January 2012, Conclusions 2011)

“In its previous conclusion (Conclusions XVII-2) the Committee held that the situation in the Netherlands was not in conformity with Article 17 of the Charter as all forms of violence against children were not prohibited. In this connection it notes from the report that on 25 April 2007 an amendment to the Civil Code prohibiting the use of all forms of violence, including for educational purposes, entered into force, which explicitly imposes a duty on parents to refrain from using any form of mental or physical violence in raising their children. The Committee notes from another source that following this amendment, corporal punishment is as well prohibited in alternative care settings.

“The Committee notes that the situation has been brought into conformity in this regard.”

European Committee of Social Rights

(July 2005, Conclusions XVII-2)

“The report states that an amendment to the Civil Code is in preparation banning all forms of violence of children. Meanwhile it notes that not all forms of violence of children are prohibited. The Committee recalls that Article 17 requires a prohibition in legislation against any form of violence against children, whether at school, in other institutions, in their home or elsewhere. It considers that any other form of degrading punishment or treatment of children must be prohibited in legislation and combined with adequate sanctions in penal or civil law. Therefore, it considers that since there is no prohibition in legislation of all forms of corporal punishment of children, the situation cannot be considered to be in conformity with Article 17 of the Charter.”

European Committee of Social Rights

(1 January 2001, Conclusions XV-2 vol. 2, pages 367-369)

“The Committee wishes to know whether legislation prohibits all forms of corporal punishment of children, in schools, in institutions, in the home and elsewhere....”

Prevalence/attitudinal research in the last ten years

A study involving focus groups and face to face interviews with 104 13-22 year olds with experience of youth custody in Austria, Cyprus, England, the Netherlands and Romania found that young people experienced physical violence and solitary confinement lasting up to two months as a punishment, as well as group punishments including being confined to their rooms and forbidden to attend school.

(Children's Rights Alliance for England (2013), *Speaking Freely: Children and Young People in Europe Talk about Ending Violence Against Children in Custody – Research Report*, London: CRAE)