

# Corporal punishment of children in Seychelles

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Child population 27,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal  
Punishment of Children**

## Seychelles' commitment to prohibiting corporal punishment

The Seychelles expressed its commitment to prohibiting all corporal punishment of children by accepting the recommendations to do so made during the Universal Periodic Review of Seychelles in 2016.

## Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings, day care, and penal institutions; further reform is still required in relation to schools.

The right of parents to administer “reasonable chastisement” is recognised in common law, and article 70(7) of the Children Act 1982 confirms the right of parents and other adults with lawful control of a child “to administer proper punishment”. Legal provisions against violence and abuse are not interpreted as prohibiting all corporal punishment in childrearing. The near universal acceptance of a certain degree of violence in disciplining children necessitates clarity in law that no amount or kind of corporal punishment is acceptable or lawful. The common law defence of “reasonable chastisement” and article 70(7) of the Children Act should be explicitly repealed and prohibition enacted of all corporal punishment and other cruel or degrading forms of punishment, in the home and all other settings where adults have authority over children.

*Alternative care settings* – The law should prohibit corporal punishment in relation 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, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

*Schools* – The provision in the Children Act 1982 allowing teachers to “administer proper punishment” should be repealed.

*Penal institutions* – The law should prohibit corporal punishment in relation to disciplinary measures in all institutions accommodating children in conflict with the law.

## **Current legality of corporal punishment**

### **Home**

Corporal punishment is lawful in the home under the common law right to inflict “reasonable chastisement” on children. Article 70 of the Children Act 1982 prohibits cruelty to children, but states: “(7) Nothing in this section affects the right of a parent, guardian, teacher or other person having the lawful control or charge of a child to administer proper punishment to him if that punishment does not contravene subsection (1).” Subsection (1) prohibits assault and ill-treatment which causes or is likely to cause “unnecessary suffering, moral danger or injury to health” but does not prohibit all corporal punishment in childrearing. Provisions against violence and abuse in the Family Violence (Protection of Victims) Act 2000, the Penal Code 1955 and the Constitution 1993 are not interpreted as prohibiting corporal punishment in childrearing.

The Civil Code and the Penal Code are being reviewed, and the Ministry of Social Affairs has drafted a Domestic Violence Bill and amendments to the Children Act 1982 which are pending in the Attorney General’s office.<sup>1</sup>

In 2016, the Government accepted recommendations made during the Universal Periodic Review of the Seychelles to prohibit corporal punishment of children, including through repealing the right “to administer proper punishment” in the Children Act 1982.<sup>2</sup> In accepting the recommendations, the Government stated that the rights of the child is the highest priority in the national agenda and it is in this light that the recommendations on corporal punishment were accepted.<sup>3</sup> During its examination by the Committee on the Rights of the Child in 2018, the Government reiterated its commitment to banning corporal punishment of children in all settings.<sup>4</sup>

### **Alternative care settings**

Corporal punishment is lawful in alternative care settings under the right “to administer proper punishment” in the Children Act 1982 (art. 70). Establishments provided and maintained under the Children Act include children’s homes for initial or temporary care of children under 16 and children’s homes for children who are orphaned or abandoned (art. 100). The Act provides for the Minister to make regulations for “the conduct of residential and other establishments and for securing the welfare of persons residing or accommodated in them, including ... (iii) specifying the occasions on which corporal punishment may be given to children in those establishments and the persons who may give it” (art. 107). We do not know if such regulations have been adopted.

The Children (Adoption) Rules and the Children Act (Foster Care) Regulations do not provide for corporal punishment, but they do not explicitly prohibit it.

### **Day care**

Corporal punishment is prohibited in preschool education (for children over 3) under the Education (Amendment) Act 2017 (see under “Schools”) but it is still lawful in all other early childhood care and

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<sup>1</sup> National Council for Children, correspondence with the Global Initiative, 1 September 2015; see also 1 September 2015; see also 16 December 2015, A/HRC/WG.6/24/SYC/1, National report to the UPR, paras. 41 and 158

<sup>2</sup> 8 April 2016, A/HRC/32/13, Report of the working group, paras. 120(42) and 120(43); 9 June 2016, A/HRC/32/13/Add.1, Report of the working group: Addendum

<sup>3</sup> 8 April 2016, A/HRC/32/13, Report of the working group, paras. 29, 64, 82, 108, 120(42) and 120(43)

<sup>4</sup> See “Committee on the Rights of the Child examines report of Seychelles”, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22597&LangID=E>, accessed 30 January 2018

in day care for older children under the right “to administer proper punishment” in the Children Act 1982 (art. 70). Establishments provided and maintained under the Children Act include day care for children under 4 (art. 100). The Act provides for the Minister to make regulations on corporal punishment (art. 107). We do not know if such regulations have been adopted.

## **Schools**

Corporal punishment is prohibited in schools but the prohibition is undermined by the existence of a legal defence in the Children Act 1982 which is still to be formally repealed.

The Education (Amendment) Act 2017 amends article 68 to state: “(1) All schools and educational institutions shall, in consultation with the Principal Secretary and in accordance with the relevant regulations, formulate and enforce rules of conduct and discipline of the students. (...) (3) A teacher or headteacher or a person employed by a school, whether on a part-time or full-time basis, shall not administer corporal punishment as a disciplinary measure.”

The Government had previously stated that corporal punishment was prohibited in schools in the Children Act 1982.<sup>5</sup> However, the Act does not explicitly prohibit corporal punishment; rather it provides for the right of teachers “to administer proper punishment” (art. 70). In 2018, the Government stated that its department of Social Affairs was pushing “to remove corporal punishment from the Children Act”,<sup>6</sup> and that the Government was committed to banning it in all settings.<sup>7</sup>

## **Penal institutions**

Corporal punishment is lawful as a disciplinary measure in penal institutions under the right “to administer proper punishment” in the Children Act 1982 (art. 70). Establishments provided and maintained under the Children Act include juvenile centres (residential training establishments, attendance centres, residential re-orientation centres and youth residential treatment centres) (art. 100). Article 107 of the Act as amended in 1998 states that the Minister may make regulations for “the conduct of residential and other establishments and for securing the welfare of persons residing or accommodated in them, including ... (iii) specifying the occasions on which corporal punishment may be given to children in those establishments and the persons who may give it”. The Children Act (Juvenile Court) Rules do not provide for corporal punishment, but they do not prohibit it. There is no prohibition of corporal punishment in the Prisons Act 1991, which is under revision.<sup>8</sup>

## **Sentence for crime**

Corporal punishment is unlawful as a sentence for crime. It is not among the permitted sanctions in the Children Act 1982 (art. 95) or the Penal Code 1955 (art. 25), though it is not explicitly prohibited.

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<sup>5</sup> 2 March 2011, A/HRC/WG.6/11/SYC/1, National report to the UPR, para. 59

<sup>6</sup> 15 January 2018, CRC/C/SYC/Q/5-6/Add.1, Reply to list of issues, para. 15

<sup>7</sup> See “Committee on the Rights of the Child examines report of Seychelles”, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22597&LangID=E>, accessed 30 January 2018

<sup>8</sup> [July 2018], CAT/C/SYC/1 Advance unedited version, Initial report, para. 23

The Constitution 1993 prohibits torture and cruel, inhuman or degrading treatment or punishment (art. 16).

## **Universal Periodic Review of Seychelles' human rights record**

Seychelles was examined in the first cycle of the Universal Periodic Review in 2011 (session 11). In its national report submitted to the review the Government stated that corporal punishment is prohibited in schools under the Children Act 1982.<sup>9</sup> During the review the Government reiterated this assertion and also stated that corporal punishment was explicitly prohibited by the 1993 Constitution.<sup>10</sup> As noted above, research by the Global Initiative finds no explicit prohibition of corporal punishment in the Children Act or the Constitution. The following recommendation was made to the Seychelles:<sup>11</sup>

“Establish a de jure moratorium on the use of corporal punishment (Hungary)”

The Government appears to have accepted the recommendation in its general acceptance of recommendations concerning protection of children.<sup>12</sup>

Examination in the second cycle took place in 2016 (session 24). The following recommendations were made:<sup>13</sup>

“Expressly prohibit the corporal punishment of children in all settings including the home, penal institutions, schools and day care centres and also take steps to explicitly repeal the right ‘to administer proper punishment’ in the Children’s Act (Ghana);

“Ensure the explicit inclusion in the national legislation, of the prohibition of all forms of corporal punishment of minors, whether in the home, child care facilities, schools and education centres in general (Uruguay)”

The Government accepted the recommendations, stating: “The ‘Education Act, 2004’ is being amended to explicitly prohibit corporal punishment in schools. Consideration is also being given to amend the ‘Children Act, 1982’ for this purpose. It is to be noted however that cases of corporal punishment are already being prosecuted under assault provisions of the ‘Penal Code, 1955’.”<sup>14</sup> The Government also stated that the rights of the child is the highest priority in the national agenda and it is in this light that the recommendations on corporal punishment were accepted.<sup>15</sup>

## **Recommendations by human rights treaty bodies**

### ***Committee on the Rights of the Child***

(2 February 2018, CRC/C/SYC/CO/5-6 Unedited advance version, Concluding observations on fifth/sixth report, paras. 4, 22 and 23)

“The Committee reminds the State party of the indivisibility and interdependence of all the rights enshrined in the Convention and emphasizes the importance of all the recommendations contained

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<sup>9</sup> 2 March 2011, A/HRC/WG.6/11/SYC/1, National report to the UPR, para. 59

<sup>10</sup> 11 July 2011, A/HRC/18/7, Report of the working group, paras. 17 and 65

<sup>11</sup> 11 July 2011, A/HRC/18/7, Report of the working group, para. 100(49)

<sup>12</sup> 18 November 2011, A/HRC/18/2, Report of the Human Rights Council on its eighteenth session, para. 339

<sup>13</sup> 8 April 2016, A/HRC/32/13, Report of the working group, paras. 120(42) and 120(43)

<sup>14</sup> 9 June 2016, A/HRC/32/13/Add.1, Report of the working group: Addendum

<sup>15</sup> 8 April 2016, A/HRC/32/13, Report of the working group, paras. 29, 64, 82, 108, 120(42) and 120(43)

in the present concluding observations. The Committee would like to draw the State party's attention to the recommendations concerning the following areas, in respect of which urgent measures must be taken: to ensure greater visibility to children's rights in the new national action plan on families 2018-2022 (para. 8); the rights to a name and nationality, to know and be cared for by their parents, and to identity (para. 21); all forms of violence against children, including corporal punishment (para. 23); sexual exploitation and abuse (para. 25); and juvenile justice, in particular as regards the minimum age of criminal responsibility (para. 39)."

"The Committee welcomes that the Education (Amendment) Bill 2017 has been passed by the National Assembly in December 2017, prohibiting corporal punishment in schools. However, the Committee is concerned that its other relevant previous recommendations have not been implemented, namely explicitly prohibiting corporal punishment in all settings.

"Reiterating its concluding observations (CRC/C/15/Add.189, paras. 32 and 33, and CRC/C/SYC/CO/2-4, para. 43), and, with reference to its general comment No. 13 (2011) on the right of the child to freedom from all forms of violence, and No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, the Committee urges the State party to: (a) Expedite the amendments to the Children Act to repeal article 70 (7) allowing for corporal punishment and to explicitly prohibit it at all settings, including at home, in alternative care settings, day care institutions and penal institutions; (b) Strengthen public education and awareness-raising and social mobilization programmes involving children, families and communities on the harmful effects of corporal punishment with a view to changing attitudes and promoting alternative, positive and non-violent forms of child-rearing and discipline."

### ***Committee on the Rights of the Child***

(23 January 2012, CRC/C/SYC/CO/2-4, Concluding observations on second to fourth report, paras. 42 and 43)

"The Committee remains concerned that various forms of violence against children occur in the State party. In particular, corporal punishment is allowed under the common law in Seychelles as a right to inflict 'reasonable chastisement' on children, thus making it lawful at home, and there is no explicit prohibition of corporal punishment in schools and alternative care institutions.

"The Committee reiterates its previous concerns and concluding observations (CRC/C/15/Add.189, paras. 32 and 33) and encourages the State Party to take into account its general comments No. 13 (2011) on the right of the child to freedom from all forms of violence, and No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, and adopt measures to combat all forms of violence against children.

The Committee recommends that the State party:

- a) prohibit explicitly by law corporal punishment and so-called "reasonable chastisement" of children in the family, schools, alternative care settings and penal institutions;
- b) introduce sustained public education and awareness-raising and social mobilization programmes involving children, families and communities on the harmful effects of corporal punishment with a view to changing attitudes and promoting alternative, positive and non-violent forms of child-rearing and discipline...."

### ***Committee on the Rights of the Child***

(30 October 2002, CRC/C/15/Add.189, Concluding observations on initial report, paras. 5, 32 and 33)

“The Committee notes the State party’s prohibition of corporal punishment in the home, schools and all other institutions involved in the care or protection of children.

“While noting that the State party has prohibited corporal punishment, the Committee remains concerned that children may still be subject to violence in the home, schools or institutions, and that corporal punishment may be reintroduced in schools.

“The Committee recommends that the State party:

- a) 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;
- b) provide further training for all professional groups working with or for children, including police and detention officials, on alternative forms of discipline and on how to detect and address signs of ill-treatment in a child-sensitive manner....”

### ***Committee Against Torture***

([August 2018], CAT/C/SYC/CO/1 Advance unedited version, Concluding observations on initial report, paras. 34 and 35)

“The Committee is concerned that corporal punishment of children is not explicitly and unequivocally prohibited in alternative care, in all day care settings, and in penal institutions and in the home, since the Children Act 1982 allows for “reasonable chastisement” (arts. 2 and 16).

“The Committee recommends that the State party amend its legislation to expressly prohibit corporal punishment of children in all settings, in particular in public institutions, through acts or omissions by State agents and others who engage the State’s responsibility under the Convention, and explicitly repeal the right to inflict “reasonable chastisement” under the Children Act 1982.”

### ***Committee on the Rights of Persons with Disabilities***

(1 March 2018, CRPD/C/SYC/CO/1 Advance unedited version, Concluding observations on initial report, paras. 16 and 17)

“The Committee notes with concern:

- (a) Delays in the review of the Children Act and other child related laws and that corporal punishment has not been prohibited in all settings; ...

“The Committee recommends that the State party:

- (a) Expedite the revision of the Children Act and ensure the inclusion of a disability perspective in line with the Convention and a ban on corporal punishment in all settings; ...”

### **Prevalence/attitudinal research in the last ten years**

None identified.