

Corporal punishment of children in St Kitts and Nevis

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Child population 17,000 (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, alternative care settings, day care, schools, penal institutions and as a sentence for crime.

Parents have a right to inflict “reasonable chastisement” on their children under English common law. This defence should be explicitly repealed and prohibition enacted of all corporal punishment in all settings, including the family home and all settings where adults have authority over children.

Alternative care settings – Corporal punishment should be prohibited in all alternative care settings, including foster care, institutions, children’s homes, places of safety, emergency care, etc.

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

Schools – Provisions in the Education Act 2005 authorising corporal punishment in schools, together with the Corporal Punishment Act 1967, should be repealed, and prohibition enacted in relation to all schools, public and private.

Penal institutions – Corporal punishment should be prohibited as a disciplinary measure in all institutions accommodating children in conflict with the law and provisions for it in the Corporal Punishment Act 1967 and the Prison Act repealed.

Sentence for crime – Provisions authorising corporal punishment as a sentence for crime in the Magistrate’s Code of Procedure 1961, the Corporal Punishment Act 1967 and the Offences Against the Person Act 1861 should be repealed.

Note: The legal system of St Kitts and Nevis was inherited from the UK during the colonial period.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. Common assault/battery and assault causing bodily injury is punished under the Offences Against the Person Act 1873 (arts. 40 and 45) but the law is not interpreted as protecting children from corporal punishment: parents have a right to inflict “reasonable chastisement” on their children under English common law. In 2012, the Offences Against the Person Act was amended to increase the legislative framework for child protection, but prohibition of corporal punishment was not enacted.¹

Provisions against violence and abuse under the Probation and Child Welfare Board Act 1994, the Child Justice Act 2013 and the Children (Care and Adoption) Act 2013 are not interpreted as prohibiting corporal punishment in childrearing. The Children (Care and Adoption) Act 2013 protects children from abuse and from harm from exposure to domestic violence (art. 12) but it does not prohibit all corporal punishment in childrearing. The Domestic Violence Act 2000, as amended 2005, defines domestic violence as including violence that results in or is likely to result in physical harm, threats of violence and conduct which amounts to psychological abuse, intimidation or persecution, but it does not prohibit corporal punishment in childrearing. We have yet to see the new Domestic Violence Act 2014, which reportedly increases protection for children, but indications are that it does not prohibit corporal punishment in childrearing.²

In 2015, the Government rejected recommendations made during the Universal Periodic Review of St Kitts and Nevis to prohibit corporal punishment in all settings.³

Alternative care settings

Corporal punishment is lawful in alternative care settings under the common law right to inflict “reasonable chastisement”. The Children (Care and Adoption) Act 2013 protects children from abuse and provides for the Minister to make regulations “regulating the management and discipline of an approved out of home placement”, but it does not prohibit all corporal punishment.

Day care

Corporal punishment is lawful in early childhood care and in day care for older children under the common law right to inflict “reasonable chastisement”.

Schools

Corporal punishment is lawful in schools under the Education Act 2005, the Corporal Punishment Act 1967 and the common law disciplinary power of teachers. Article 49 of the Education Act 2005 states: “(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

¹ 6 August 2015, A/HRC/WG.6/23/KNA/1, National report to the UPR, paras. 101, 102 and 103

² 6 August 2015, A/HRC/WG.6/23/KNA/1, National report to the UPR, paras. 92, 93 and 94

³ 15 December 2015, A/HRC/31/16, Report of the working group, paras. 6(69), 6(71) and 6(72)

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 Chief Education Officer. (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 is liable, on summary conviction, to a fine not exceeding one thousand dollars.” Article 50 states: “(1) Notwithstanding section 49, the Minister may, by Order, suspend or abolish corporal punishment in public schools and assisted private schools. (2) An Order made under subsection (1) shall be laid before Parliament within three months of the date of the issue of such Order and shall cease to have effect, without prejudice to the making of a further Order, on its annulment by a resolution of Parliament supported by the votes of a majority of the members present and voting.”

During the Universal Periodic Review of St Kitts and Nevis in 2015, the Government stated that it was implementing measures to end corporal punishment in schools through adopting the UNICEF framework on child-friendly schools and through drafting a behavioural policy which stated that corporal punishment should not be used. But no reference was made to efforts towards prohibiting corporal punishment through law reform.⁴

Penal institutions

Corporal punishment is lawful as a disciplinary measure in penal institutions. The Corporal Punishment Act 1967 provides for corporal punishment for certain offences against prison discipline, up to 24 strokes, by a cat-o'-nine tails on the back or a rod of tamarind on the buttocks.⁵ The Prison Act authorises up to 12 strokes of a tamarind rod for persons under 18 (art. 11).⁶

Sentence for crime

Reform in 2013 appears to have abolished corporal punishment as a judicial sentence for children, though further reform is necessary in order to entirely remove judicial whipping from the statute books. The Child Justice Act 2013 states that children found guilty of an offence must be sentenced according to that Act – and the Act does not provide for sentencing to corporal punishment. However, the Act does not explicitly prohibit corporal punishment and it does not repeal all other laws which provide for judicial corporal punishment. The Magistrate’s Code of Procedure 1961 allows a magistrate to order the private whipping of a child (under 14) or young person (under 16) by a policeman, in the presence of certain officials and the child’s parent or guardian (art. 100). As enacted in England, the Offences Against the Person Act 1861 provides for whipping as a punishment for males under the age of sixteen (arts. 15, 28, 30, 32 and 64). The Corporal Punishment Act 1967 provides for corporal punishment of a juvenile (under 16) – whipping up to 12 strokes by “a rod of tamarind”, attended by a medical practitioner (art. 3).⁷

⁴ 15 December 2015, A/HRC/31/16, Report of the working group, para. 27

⁵ MacClure, E. (2013), *Register of Laws: Saint Kitts and Nevis*, USAID

⁶ MacClure, E. (2013), *Register of Laws: Saint Kitts and Nevis*, USAID

⁷ MacClure, E. (2013), *Register of Laws: Saint Kitts and Nevis*, USAID

Universal Periodic Review of St Kitts and Nevis' human rights record

St Kitts and Nevis was examined in the first cycle of the Universal Periodic Review in 2011 (session 10). During the review, the Government stated that discipline is important in society and that corporal punishment is regulated under the Education Act to ensure it does not cross the line into abuse.⁸ The following recommendations were made:⁹

“Continue adopting measures to put an end to corporal punishment (Chile);

“Outlaw corporal punishment in the context of juvenile justice, school education and at home (Germany)”

The Government neither accepted nor rejected the recommendations.

Examination in the second cycle took place in 2015 (session 23). The following recommendations were made and were rejected by the Government:¹⁰

“Take legal and practical steps to protect women and children from domestic violence, for example by prohibiting corporal punishment of children and marital rape (Germany);

“Explicitly prohibit corporal punishment of children in all settings, including the home (Estonia);

“Take active measures to abolish corporal punishment of children in all settings (Namibia)”

Brazil also encouraged St Kitts and Nevis to ban corporal punishment but this was not formally recorded as a recommendation.¹¹

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(24 August 1999, CRC/C/15/Add.104, Concluding observations on initial report, paras. 20 and 32)

“The Committee remains gravely concerned that corporal punishment is still widely practised within the State party and that domestic legislation does not prohibit its use. In this regard, the Committee recommends that the State party take all appropriate measures, including of a legislative nature, to prohibit corporal punishment within school, the family, the juvenile justice and alternative care systems and generally within the society. It further suggests that awareness-raising campaigns be conducted to 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 article 28.2.

“While the Committee notes the establishment of a national committee to regulate the use of corporal punishment within the juvenile justice system, it remains gravely concerned that the Corporal Punishment Act (1967) continues to allow the corporal punishment of a male juvenile convicted of an offence and to empower the magistrate’s court to order a juvenile convicted of an offence to be ‘whipped’. The Committee recommends that the State party take all necessary measures to prohibit the use of corporal punishment within the juvenile justice system, including the repeal of the Corporal Punishment Act (1967).”

⁸ 15 March 2011, A/HRC/17/12, Report of the working group, para. 13

⁹ 15 March 2011, A/HRC/17/12, Report of the working group, paras. 76(42) and 76(43)

¹⁰ 15 December 2015, A/HRC/31/16, Report of the working group, paras. 6(69), 6(71) and 6(72); see also 23 February 2016, A/HRC/31/16/Add.1, Report of the working group: Addendum

¹¹ 15 December 2015, A/HRC/31/16, Report of the working group, para. 33

Prevalence/attitudinal research in the last ten years

None identified.