

Corporal punishment of children in St Lucia

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Child population 52,000 (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 and penal institutions.

Article 5 of the Children and Young Persons Act 1972 confirms “the right of any parent, teacher or other person having the lawful control or charge of a child to administer reasonable punishment to him”. This provision should be repealed. 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.

Alternative care settings – Provisions allowing “disciplinary” corporal punishment in the Statutory Rules and Orders No. 23 applicable to the Boys Training Centre should be repealed and prohibition enacted in legislation applicable to all alternative care settings (foster care, institutions, children’s homes, places of safety, emergency care, etc).

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

Schools – Provisions in the Education Act authorising corporal punishment in schools should be repealed, and prohibition enacted in relation to all schools, public and private.

Penal institutions – Provisions authorising “disciplinary” corporal punishment in the Statutory Rules and Orders No. 23 applicable to the Boys Training Centre and the Prison Rules and Orders 1964. Prohibition should be enacted of 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. Article 5 of the Children and Young Persons Act 1972 addresses cruelty to juveniles (under 16) 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 juvenile to administer reasonable punishment to him.” Provisions against violence and abuse in that Act, the Domestic Violence Act 1995 and the Criminal Code 2005 are not interpreted as prohibiting corporal punishment in childrearing.

As part of an initiative to reform child laws in the region, the Organisation of Eastern Caribbean States (OECS) circulated a number of draft laws for consideration by member states, including St Lucia. As originally drafted, the Children (Care and Adoption) Bill 2007 would protect children from “abuse” but not prohibit corporal punishment. It would define parental responsibility with reference to the duties, authority, rights and obligations “which by any law in force in [Saint Lucia], the parent of a child has in relation to that child” (art. 2). No new child legislation has yet been enacted.

The Constitution is under review. The final report of the Constitutional Reform Commission, published in 2011, included a recommendation that “Parliament should consider examining the Convention on the Rights of the Child with a view to incorporation into domestic law” (recommendation 27).¹

In reporting to the Universal Periodic Review (UPR) in 2015, the Government identified corporal punishment as a “taboo area” and acknowledged that it had not been adequately addressed.² It noted that the current debate in the context of the Constitutional Reform Project does at least indicate a willingness to consider change. In its report on St Lucia to the UPR, the UN Subregional Team for Barbados and the OECS noted that the Government had committed to the Domestic Violence Bill and the Child Justice Bill drafted under the above mentioned OECS initiative and that these bills were with the office of the Attorney General Chambers for final review and submission to Cabinet approval: they would result in repeal of the Children and Young Persons Act and the Domestic Violence (Summary Proceedings) Act 1994.³ But there is no indication that prohibition of corporal punishment in childrearing has been proposed in the context of these reforms.

In responding in 2016 to recommendations made during the 2015 UPR, the Government accepted the majority of recommendations to prohibit corporal punishment of children and indicated that this might be achieved in the next four and a half years.⁴ We are seeking to establish if this is a definite commitment by the Government to prohibit all corporal punishment of children in all settings.

Alternative care settings

Corporal punishment is lawful in alternative care settings under the right of persons having lawful control or charge of a juvenile “to administer reasonable punishment” in article 5 of the Children and Young Persons Act 1972. The Boys Training Centre houses boys in need of care and protection, as well as those in conflict with the law and the use of the cane is permitted (see under “Penal institutions”). Corporal punishment would not be explicitly prohibited by the OECS draft Children

¹ Constitutional Reform Commission (2011), *Final report*

² 29 September 2015, A/HRC/WG.6/23/LCA/1, National report to the UPR, para. 112

³ *St Lucia 2015 UPR: Joint Submission from the United Nations Subregional Team for Barbados and the OECS*

⁴ 14 March 2016, A/HRC/31/10/Add.1, Report of the working group: Addendum; 23 March 2016, A/HRC/31/2 Advance unedited version, Draft report of the Human Rights Council on its 31st session, paras. 710 and 711

(Care and Adoption) Bill, which in its original form stated that a person authorised to provide care for a child shall “correct and manage the behaviour of the child” (art. 29(c)) and authorises the Minister to make regulations for “the management and discipline of an approved child care service” (art. 140(2)(m)).

Day care

Corporal punishment is lawful in day care under the right of persons having lawful control or charge of a juvenile “to administer reasonable punishment” in article 5 of the Children and Young Persons Act 1972. It would not be prohibited in the OECS draft Children (Care and Adoption) Bill (see “Alternative care settings”).

Schools

Some schools are part of the UNICEF child friendly schools initiative and do not use corporal punishment.⁵ However, corporal punishment is lawful in these and all schools under the right of teachers “to administer reasonable punishment” in article 5(6) of the Children and Young Persons Act 1972 (see under “Home”) and article 50 of the Education Act 1999: “(1) In the enforcement of discipline in public schools, assisted 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 Chief Education Officer. (3) Whenever corporal punishment is administered an entry must 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 51 gives the Minister the power to suspend or abolish corporal punishment in public schools and assisted schools.

It appears from the 2014 review of St Lucia by the Committee on the Rights of the Child that a national consultation on abolition of corporal punishment has been carried out.⁶ In December 2014, discussions began on the development of a discipline policy for schools.⁷ A Private Member’s Bill to amend the Education Act was submitted to the Senate in 2016 to amend article 50 as follows: “(1) In the enforcement of discipline in public schools, assisted schools and private educational institutions, degrading or injurious punishment shall not be administered. (2) A person who administers corporal punishment to a student on school premises commits an offence and is liable on summary conviction to a fine not exceeding \$1,000.” The Bill also repealed article 51. The Bill was adopted in the Senate but was never brought to the House of Assembly.

An Order on the “suspension and ultimate abolition of corporal punishment in schools” was adopted by the Cabinet in January 2019, on the basis of article 51 of the Education Act 1999. It “suspends” the

⁵ <http://www.stlucianewsonline.com/st-lucia-to-create-national-policy-on-discipline-in-schools/#sthash.1yKi1Rno.dpuf>, accessed 16 February 2015; see also 15 December 2015, A/HRC/31/10, Report of the working group, para. 14

⁶ 13 June 2014, CRC/C/LCA/CO/2-4 Advance Unedited Version, Concluding observations on second-fourth report, para. 28. See also *St Lucia 2015 UPR: Joint Submission from the United Nations Subregional Team for Barbados and the OECS*

⁷ <http://www.stlucianewsonline.com/st-lucia-to-create-national-policy-on-discipline-in-schools/#sthash.1yKi1Rno.dpuf>, accessed 16 February 2015. See also *St Lucia 2015 UPR: Joint Submission from the United Nations Subregional Team for Barbados and the OECS*

use of corporal punishment from 1 May 2019 and "abolishes" it from 1 May 2020. The Order must still be put to Parliament within three months of its adoption by Cabinet and does not apply to private or denominational schools.

Penal institutions

Corporal punishment is lawful as a disciplinary measure in penal institutions. Boys convicted of an offence may be sent to the Boys Training Centre, where "for minor offences committed in the schoolroom" they may be given "not more than 2 strokes with the cane on each hand" (Statutory Rules and Orders No. 23 1976, s13). The Prison Rules and Orders 1964 also provide for the administration of corporal punishment (s54), though this is reportedly no longer used and in 2006 the provision was under review. The Correctional Services Act 2003 and the Correctional Services Code of Conduct Regulations 2005 provide for the establishment and management of correctional facilities and the treatment of persons and make no provision for corporal punishment. A Child Justice Bill, drafted in 2007 by the OECS, was sent to the Attorney-General. In its original draft it would not prohibit corporal punishment in penal institutions. The Government reported to the Universal Periodic Review in 2015 that the reform of the juvenile justice system was still under way.⁸

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. It is not a permitted sentence under the Criminal Code 2005 and the Children and Young Persons Act 1972. As originally drafted by the OECS, the Child Justice Bill would not include corporal punishment among permitted sentences, though it would not explicitly prohibit it. As at 2015, the Bill was with the office of the Attorney General Chambers for final review and submission to Cabinet approval.⁹ The Government confirmed during the Universal Periodic Review of St Lucia in 2015 that the issue of corporal punishment would be considered in the context of the ongoing reform of the juvenile justice system but did not specify that corporal punishment would be prohibited.¹⁰

Universal Periodic Review of St Lucia's human rights record

St Lucia was examined in the first cycle of the Universal Periodic Review in 2011 (session 10). In its national report to the UPR, the Government stated that corporal punishment is part of the culture and that prohibiting it in schools and eradicating it in the family is a "formidable challenge", but that there had been progress in phasing out its use in schools.¹¹ The following recommendations were made:¹²

"Review its existing legislation to fully reflect the principles and provisions of CRC, especially in relation to non-discrimination, corporal punishment and juvenile justice (Guatemala);

"Take all necessary steps to eliminate corporal punishment (Germany);

"Increase efforts to ban corporal punishment from schools (Costa Rica);

⁸ 29 September 2015, A/HRC/WG.6/23/LCA/1, National report to the UPR, para. 91

⁹ *St Lucia 2015 UPR: Joint Submission from the United Nations Subregional Team for Barbados and the OECS*

¹⁰ 15 December 2015, A/HRC/31/10, Report of the working group, para. 17

¹¹ 12 November 2010, A/HRC/WG.6/10/LCA/1, National report to the UPR, para. 121

¹² 11 March 2011, A/HRC/17/6, Report of the working group, paras. 89(30), 89 (81), 89(82), 89(83) and 89(84)

“Prohibit all forms of corporal punishment of children in all settings (Slovenia);

“Amend the legislation to explicitly prohibit corporal punishment in families, schools and institutions, to conduct awareness-raising campaigns on this issue and to ensure that the existing legislation related to children fully reflects the principles and provisions contained in CRC (Italy)”

The Government rejected these recommendations, stating: “Saint Lucia is unable to accept these recommendations at this time. Saint Lucia recognizes the need to pursue alternative forms of discipline to corporal punishment. Amending the legislation which allows the use of corporal punishment remains a formidable challenge as non-violent corporal punishment is rooted in our tradition and culture. The government will continue efforts to promote positive, participatory and alternative forms of discipline in a manner consistent with the CRC (while respecting the right of parents to choose how to discipline their children, in conformance with human rights standards). The Government supports, and will continue to implement a gradual phasing out of corporal punishment and has already commenced this program within schools. The Government will intensify efforts to raise public awareness on this issue.”¹³

Examination in the second cycle took place in 2015 (session 23). During the review, a recommendation on corporal punishment was made by Sierra Leone but it was not formally recorded as such.¹⁴ The following recommendations were made to which the Government was required to formally respond:¹⁵

“Remove, in the process of legal and constitutional reform, any legal distinction between children born in and outside of marriage; amend its law to ensure that no person may be sentenced to the death penalty for a crime alleged to have been committed as a child; and prohibit corporal punishment in school and care settings as well as in detention (Ireland);

“Take legal and practical steps to protect women and children from domestic violence, for example by prohibiting corporal punishment of children in all settings, including the home (Germany);

“Take all necessary measures to eliminate, in law and in practice, violence against women and corporal punishment of boys and girls (Mexico);

“Adopt legislation explicitly prohibiting corporal punishment of children, as previously recommended (Slovenia);

“Implement measures to prohibit corporal punishment of children in schools (Costa Rica)”

The Government “noted” the first of the above-listed recommendations, drawing attention to the current revision of family law and stating “with the introduction of the Child Friendly Schools Programme into our nation’s school system this has led to a dramatic reduction in the use of corporal punishment in classroom”, and clearly accepted the other four recommendations.¹⁶ Concerning the recommendations accepted, the Government emphasised that it believed these could be achieved

¹³ 1 June 2011, A/HRC/17/6/Add.1, Report of the working group: Addendum

¹⁴ 15 December 2015, A/HRC/31/10, Report of the working group, para. 37

¹⁵ 15 December 2015, A/HRC/31/10, Report of the working group, paras. 88(34), 88(85), 88(86), 88(94) and 88(95)

¹⁶ 14 March 2016, A/HRC/31/10/Add.1, Report of the working group: Addendum

within the next four and a half years (before the next UPR of St Lucia).¹⁷ It explained that the recommendations “noted” were not necessarily unachievable but may not be achievable within this time frame and “a definitive stance could not be taken on them at the moment of the adoption of [this] report by the Council”.¹⁸

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(13 June 2014, CRC/C/LCA/CO/2-4 Advance Unedited Version, Concluding observations on second-fourth report, paras. 6, 7, 28 and 29)

“The Committee, while welcoming the State party’s efforts to implement the Committee’s concluding observations of 2005 (CRC/C/15/Add.258) on the State party’s initial report (CRC/C/28/Add.23), notes with regret that many of the recommendations contained therein have not been fully addressed.

“The Committee urges the State party to take all necessary measures to address those recommendations from the concluding observations of the initial report (CRC/C/15/Add.258) under the Convention that have not been implemented or sufficiently implemented, particularly those related to training/dissemination of the Convention, corporal punishment, parental guidance and responsibilities, children deprived of a family environment, abuse and neglect, adolescent health, economic exploitation of children, including child labour, sexual exploitation and abuse and juvenile justice.

“The Committee notes efforts to address the issue of corporal punishment, such as the recent national consultations on the abolition of corporal punishment, and the project ‘Fostering the positive behavioural management of children in inclusive child-friendly classrooms in Saint Lucia’, which includes parenting skills training and training for principals and teachers. The Committee, however, reiterates its concern that corporal punishment is still seen as a lawful way of disciplining children, both under the 1972 Children and Young Persons Act and the 1999 Education Act, that corporal punishment continues to be practised within the family, schools and in institutions and is widely accepted in society (CRC/C/15/Add.158, para. 34).

“In line with its general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of 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) 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;
- b) 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 especially the Child Friendly School project; and

¹⁷ 23 March 2016, A/HRC/31/2 Advance unedited version, Draft report of the Human Rights Council on its 31st session, para. 710

¹⁸ 23 March 2016, A/HRC/31/2 Advance unedited version, Draft report of the Human Rights Council on its 31st session, para. 711

c) finally amend its legislation to explicitly prohibit corporal punishment in the family, schools and institutions.”

Committee on the Rights of the Child

(21 September 2005, CRC/C/15/Add.258, Concluding observations on initial report, paras. 9, 34 and 35)

“While the Committee appreciates that the State party has made various amendments to existing legislation as well as adopted the Family Court Act in 1994 and the Domestic Violence Act in 1995, it is nevertheless concerned that existing legislation does not fully reflect the principles and provisions of the Convention, for example regarding non-discrimination, corporal punishment and juvenile justice. “The Committee is concerned at the fact that corporal punishment is a lawful way of disciplining children, both under the Children and Young Persons Act and the Education Act. The Committee is further concerned that corporal punishment is widely practiced as a highly favoured method of punishment.

“The Committee recommends that the State party:

- a) amend its legislation to explicitly prohibit corporal punishment in the family, schools and institutions;
- b) conduct 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;
- c) ensure that positive, participatory, non-violent forms of discipline are administered in a manner consistent with the Convention, especially article 28 (2) as an alternative to corporal punishment at all levels of society.”

Prevalence/attitudinal research in the last ten years

According to UNICEF statistics collected in 2012, 68% of children aged 2-14 experienced “violent discipline” (physical punishment and/or psychological aggression) in the home in the month prior to the survey. Forty-four per cent experienced physical punishment and 60% experienced psychological aggression (being shouted at, yelled at, screamed at or insulted). A smaller percentage (21%) of mothers and caregivers thought that physical punishment was necessary in childrearing.

(UNICEF (2014), *Hidden in Plain Sight: A statistical analysis of violence against children*, NY: UNICEF)

In a study involving 580 11-17 year olds, carried out by young people as part of St Lucia’s first NGO report to the Committee on the Rights of the Child, 86% said physical punishment was used on students at their school: 39.1% “always”, 40.2% “sometimes”, 6.9% “rarely”. The report recommends banning corporal punishment.

(Road to Geneva Child Rights Research & Advocacy project team (2011), *Who Feels it Knows it: Children’s Rights in St. Lucia Through The Eyes of Children & Youth*)