

Corporal punishment of children in Trinidad and Tobago

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Child population 334,000 (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.

Article 4 of the Children Act 2012 confirms the right of parents, teachers and other persons having lawful control of a child or young person under the age of 16 years to administer “reasonable punishment” and excludes corporal punishment from this only for persons other than parents or guardians. Children’s human rights under the Convention on the Rights of the Child require protection from corporal punishment by all persons and the explicitly repeal of all defences such as those allowing “reasonable punishment”. The law should clearly state that no degree or kind of corporal punishment is acceptable or lawful, including by parents in the family home, and prohibition should be enacted of all corporal punishment in all settings and by all persons with authority over children.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. Article 4 of the Children Act 2012, which came into force in May 2015, punishes cruelty to children but states in subsection 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 to administer reasonable punishment to such child.” Subsection 7 states that for persons other than parents this does not authorise the use of corporal punishment, implicitly confirming that parents may use corporal punishment: “Reasonable punishment referred to in subsection (6), in relation to any person other than a parent or guardian, shall not include corporal punishment.”

In 2011, the Government rejected recommendations to prohibit corporal punishment in all settings including the home made during the Universal Periodic Review of Trinidad and Tobago, stating that corporal punishment is traditionally accepted in disciplining children.¹ However, in June 2015 Minister of Gender, Youth and Child Development Minister of Gender, Youth and Child Development Clifton De Coteau spoke publicly against corporal punishment by parents, noting that it has a negative impact on children and he is no longer in favour of it.²

In 2016, during the second Universal Periodic Review of Trinidad and Tobago, the Government “noted” recommendations to prohibit corporal punishment in the home, stating “it has traditionally been accepted as a legitimate form of discipline for youngsters in the Caribbean and mainly inherited as a result of traditional lifestyles from the vast diaspora which constitutes the social and historical composition of most Caribbean countries.”³

In April 2018, a Miscellaneous Provisions (Supreme Court of Judicature and Children) Bill 2018 was introduced in the House of Representatives. Its article 10B would include in the Children Act 2012 a new article 4(7A) as follows: “Notwithstanding subsection (7), corporal punishment shall not be used in relation to (a) a child in a Nursery, Children’s Home or Foster Home; (b) a resident in a Rehabilitation Centre; or (c) a child in the custody, care and control of a fit person.” It appears this aims to clarify the existing prohibition of corporal punishment outside of the home – it is unclear however whether the prohibition of corporal punishment of children in the “custody, care and control of a fit person” would apply to all corporal punishment, including parental corporal punishment. As of September 2018, the House of Representatives was discussing Senate amendments on the Bill.⁴

Alternative care settings

Corporal punishment is unlawful in alternative care settings with effect from May 2015 under article 4(7) of the Children Act 2012 (see under “Home”). In addition, the Children’s Community Residences Regulations 2014, under the Children’s Community Residences, Foster Care and Nurseries Act 2000, explicitly prohibits corporal punishment in community residential care (art. 15): “A child placed in the care of a community residence shall not be subjected to (a) corporal punishment, (b) solitary

¹ 1 March 2012, A/HRC/19/7/Add.1, Report of the working group: Addendum, para. 22

² Reported in Daily Express, 24 June 2015, <http://www.trinidadexpress.com/20150624/news/de-coteau-find-other-ways-to-punish-children>, accessed 25 June 2015

³ 21 September 2016, A/HRC/33/15/Add.1, Report of the working group: Addendum, paras. 16, 17

⁴ See <http://www.ttparliament.org/publications.php?mid=28&id=791>, accessed 28 September 2018

confinement, (c) unreasonable immobilisation; or (d) unreasonable physical restraint.” The Foster Care Regulation 2014 and the Children’s Authority Regulations 2014 are silent on the issue.

Article 11N of the Miscellaneous Provisions (Supreme Court of Judicature and Children) Bill 2018 inserts a new article 17A in the Children’s Community Residences, Foster Care and Nurseries Act 2000, which would strengthen the existing prohibition in children’s homes by attaching specific sanctions to the use of corporal punishment: “17A. (1) A child placed at a Children’s Home shall not be subjected to (a) corporal punishment; (b) restraint or force as a form of punishment; (c) the reduction or change of diet as a form of punishment; or (d) the restriction or denial of contact with family as a form of punishment. (2) A person who contravenes subsection (1) commits an offence and is liable (a) on summary conviction to a fine five thousand dollars and imprisonment for six months; or (b) on indictment to a fine of fifty thousand dollars and to imprisonment for ten years. (3) Where a person alleges that a child in a Children’s Home has been the subject of any form of the prohibited methods of punishment referred to in subsection (1), the person shall report the matter forthwith to the Authority. (4) Where upon investigation the allegation referred to in subsection (3) is found to be true, the Authority may revoke the licence of the Manager or licensee.”

Day care

Corporal punishment is unlawful in early childhood care and in day care for older children, with effect from May 2015, under article 4(7) of the Children Act 2012 (see under “Home”).

Schools

Corporal punishment is unlawful in schools under article 4(7) of the Children Act 2012 (see under “Home”). Prohibition had previously been included in the Children (Amendment) Act 2000 but this had never been brought into force. The Education Act 1996 makes no reference to corporal punishment. The National School Code of Conduct (2009) of the Ministry of Education states that corporal punishment should not be used.

Penal institutions

Corporal punishment is unlawful as a disciplinary measure in penal institutions under article 4(7) of the Children Act 2012 (see under “Home”). It would appear that the provisions for corporal punishment in the Young Offenders (Male) Detention Regulations, pursuant to the Young Offenders Detention Act 1926, are still to be formally repealed.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. The Miscellaneous Provisions (Children) Act 2000 prohibited corporal punishment as a sentence for persons under 18 by repealing the Corporal Punishment (Offenders Not Over Sixteen) Act and amending the Corporal Punishment (Offenders Over Sixteen) Act to apply to offenders over the age of 18. But the Act did not repeal other laws which allowed under 18s to be sentenced to corporal punishment, including article 83(g) of the Children Act 1925 which provided for a child or young person found guilty of an offence to be ordered to be whipped: this provision would have been repealed in the Children (Amendment) Act 2000 (art. 24), but this Act was never brought into force. However, with the proclamation of article 4 of the Children Act 2012 in May 2015, all judicial corporal punishment of children is now prohibited.

Universal Periodic Review of Trinidad and Tobago's human rights record

Trinidad and Tobago was examined in the first cycle of the Universal Periodic Review in 2011 (session 12). The following recommendations were made:⁵

“Prohibit all corporal punishment of children in all settings and enact legislation to achieve this (Slovenia);

“Prohibit all forms of corporal punishment of children in any context (including in the home) (Uruguay);

“Adopt a legal definition of the crime of corporal punishment of children in all circumstances and places (Uruguay);

“As a matter of priority, review its criminal law provisions and enact legislation prohibiting all forms of corporal punishment of children in all settings (Hungary);

“Adopt legislation to prohibit corporal punishment in public and private schools (Costa Rica);

“Forbid the corporal punishment of children through the abolition of the laws that permit its use in the home, schools and detention centres for minors (Spain)”

The Government rejected the recommendations, stating that corporal punishment “has traditionally been accepted as a legitimate form of discipline for youngsters in the Caribbean and mainly inherited as a result of traditional lifestyles from the vast diaspora which constitutes the social and historical composition of most Caribbean countries” and that the Government “cannot accept in totality any recommendations which seek to criminalize the use of corporal punishment in Trinidad and Tobago as this is an issue which is the subject of much national debate”.⁶

During the plenary and formal adoption of the Report of the working group, the Government noted that corporal punishment “was currently maintained as part of the penal code, but was strictly forbidden in schools by a National Code of Conduct”, “it was a long accepted practice used to discipline children but] like many other aspects of Trinidad and Tobago’s societal development this too was subject to change” and “education [is] key in the necessary paradigm shift in relation to corporal punishment”.⁷

Examination in the second cycle took place in 2016 (session 25). Since its first universal periodic review, Trinidad and Tobago had passed the Children Act, 2012, which prohibited the use of corporal punishment in all settings outside the home – this was referred to in the dialogue and acknowledged by Slovenia and Ecuador.⁸ Brazil encouraged the State to take concrete steps to formally abolish corporal punishment.⁹ The following recommendations were made:¹⁰

“Repeal the right of parents to use corporal punishment (Slovenia);

“Prohibit corporal punishment of children at home and in schools (Honduras)”

The Government “noted” the recommendations, stating in relation to corporal punishment, “it has traditionally been accepted as a legitimate form of discipline for youngsters in the Caribbean and

⁵ 14 December 2011, A/HRC/19/7, Report of the working group, paras. 88(3), 88(40), 88(41), 88(42), 88(43) and 88(44)

⁶ 1 March 2012, A/HRC/19/7/Add.1, Report of the working group: Addendum, para. 22

⁷ 16 August 2012, A/HRC/19/2, Draft Report of the Human Rights Council on its nineteenth session, paras. 471 and 472

⁸ 15 July 2016, A/HRC/33/15, Report of the working group, paras. 22, 26, 45, 52, 75

⁹ 15 July 2016, A/HRC/33/15, Report of the working group, para. 95

¹⁰ 15 July 2016, A/HRC/33/15, Report of the working group, paras. 108(60), 108(61)

mainly inherited as a result of traditional lifestyles from the vast diaspora which constitutes the social and historical composition of most Caribbean countries.”¹¹

Examination in the third cycle is scheduled for 2021.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(17 March 2006, CRC/C/TTO/CO/2, Concluding observations on second report, paras 8, 9, 39, 40 and 47)

“The Committee regrets that some of the recommendations in its concluding observations (CRC/C/15/Add.82) adopted following consideration of the State party’s initial report (CRC/C/11/Add.10) have been given insufficient follow-up, particularly those relating to ... abuse, ill-treatment and domestic violence; corporal punishment.... Those recommendations are reiterated in the present document.

“The Committee urges the State party to make every effort to address the recommendations contained in the concluding observations on the initial report that have not yet been implemented and to implement the concerns contained in the present concluding observations.

“While welcoming the amendment to the Children Act (No. 46:01) prohibiting the use of corporal punishment as a penal sanction for persons aged under 18, the Committee remains concerned that corporal punishment is lawful in the home and institutions, and is widely practised.

“The Committee recommends that the State party:

- a) expressly prohibit by law corporal punishment in all settings and ensure the implementation of the law;
- b) conduct awareness-raising campaigns to inform the public about the negative impact of corporal punishment on children and actively involve children and the media in the process; and
- c) ensure that positive, participatory, non-violent 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) as an alternative to corporal punishment at all levels of society.

“The Committee recommends that the State party take the necessary measures to prevent child abuse and neglect, by, inter alia:

- a) carrying out public education campaigns that raise awareness of consequences of ill-treatment of children, alternative measures of discipline for children and address sociocultural barriers that inhibit victims from seeking assistance....”

Committee on the Rights of the Child

(10 October 1997, CRC/C/15/Add.82, Concluding observations on initial report, paras.17, 23, 32 and 39)

“The Committee is deeply concerned by the use of corporal punishment within the family, at school and in care institutions, as well as at the absence of a law that clearly prohibits the use of both

¹¹ 21 September 2016, A/HRC/33/15/Add.1, Report of the working group: Addendum, paras. 16, 17

mental and physical torture or other cruel, inhuman or degrading treatment or punishment against children.

“The situation in relation to the administration of juvenile justice, in particular its compatibility with articles 37, 39 and 40 of the Convention as well as other relevant standards such as the Beijing Rules, the Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, is a matter of concern to the Committee. In particular, the Committee is concerned ... that flogging is allowed by the law as a means of punishment and corporal punishment is allowed as a means of discipline in detention centre....

“In light of articles 3, 19 and 28.2, the Committee strongly recommends that corporal punishment within the family, at school and in care institutions be prohibited by law. It further recommends that the authorities develop and implement appropriate creative and socio-educational measures of discipline which respect all the rights of the child, as well as establish sensitization programmes for parents.

“... The Committee also recommends that corporal punishment in detention as a means of discipline, and flogging as a means of punishment, be abolished in the legislation and in practice.”

Committee on Economic, Social and Cultural Rights

(5 June 2002, E/C.12/1/Add.80, Concluding observations to the second report, paras. 29 and 52)

“While the Committee welcomes the abolition of corporal punishment in schools, it is concerned at the continued resort to corporal punishment at home and for adult males in the justice system.

“The Committee calls on the State party to prohibit effectively the use of corporal punishment in all areas of life.”

Human Rights Committee

(3 November 2000, CCPR/CO/70/TTO, Concluding observations on joint third and fourth reports, para. 13)

“The Committee is disturbed to learn that apart from prohibiting corporal punishment for persons under 18 years of age, the State party is still practising the punishments of flogging and whipping which are cruel and inhuman punishments prohibited by article 7.

Sentences of flogging or whipping should immediately be abolished.”

Prevalence/attitudinal research in the last ten years

None identified.