

Corporal punishment of children in Dominica

LAST UPDATED August 2017

Also available online at

www.endcorporalpunishment.org

Child population 22,000 (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.

Article 5 of the Children and Young Persons Act 1970 confirms “the right of any parent, teacher or other person having the lawful control or charge of a juvenile to administer reasonable punishment to him”. This provision should be repealed and all corporal punishment prohibited in all settings, including the family home.

Alternative care settings – Corporal punishment should be prohibited in 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 (crèches, preschools, kindergartens, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc)

Schools – Article 49 of the Education Act should be repealed and corporal punishment prohibited in all schools, public and private.

Penal institutions – Provisions for “disciplinary” corporal punishment in the Prisons Act 1877 and Prison Rules 1956 should be repealed and corporal punishment prohibited in all institutions accommodating children in conflict with the law.

Sentence for crime – Provisions authorising corporal punishment as a sentence for crime in the Juvenile Offenders’ Punishment Act 1881, the Corporal Punishment Act 1987, the Magistrate’s Code of Procedure Act 1961 and the Offences Against the Person Act 1873 should be repealed and all judicial corporal punishment prohibited.

Current legality of corporal punishment

Home

Corporal punishment of children is lawful in the home. Article 5 of the Children and Young Persons Act 1970 confirms “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 and in the Protection Against Domestic Violence Act 2001, the Offences Against the Person Act 1873 and the Small Charges Act are not interpreted as prohibiting corporal punishment in childrearing. In reporting to the Committee on the Rights of the Child in 2003, the Government stated that a Families and Children Act and a Domestic Violence Act were being considered for adoption;¹ in 2004, the Government reported to the Committee that efforts were being made to harmonise national legislation with the Convention on the Rights of the Child and discussions were under way on the development of a Code on the Rights of the Child.² Neither of these laws appear to have been enacted.

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 Dominica. 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 [Dominica], the parent of a child has in relation to that child” (art. 2). In 2009, the Government reported to the Universal Periodic Review that it was participating in the OECS Family Law and Domestic Violence Legislative Reform Project, which seeks to bring family law into conformity with CEDAW and CRC, but made no reference to any proposals to prohibit corporal punishment.³

During the Universal Periodic Review of Dominica in 2014, the Government stated that its view “was that the country should move away from the use of corporal punishment as far as possible, and that it would continue to work towards that goal”.⁴ However, it did not respond clearly to recommendations made during the review to prohibit corporal punishment.⁵

Alternative care settings

Corporal punishment is lawful in alternative care settings under the right of persons with lawful control of a juvenile “to administer reasonable punishment” in article 5 of the Children and Young Persons Act 1970. It would not be explicitly prohibited by the OECS draft Children (Care and Adoption) Bill, which in its original draft stated that a person authorised to provide care for a child shall “correct and manage the behaviour of the child” (art. 29(c)) and authorised the Minister to make regulations for “the management and discipline of an approved child care service” (art. 140(2)(m)).

¹ 15 October 2003, CRC/C/8/Add.48, Initial state party report, para. 32

² 13 April 2004, DOM/1, Reply to list of issues, p. 8

³ 3 December 2009, A/HRC/WG.6/6/DMA/1, National report to the UPR, para. 31

⁴ 26 June 2014, A/HRC/27/9, Report of the working group, para. 63

⁵ 5 May 2014, A/HRC/WG.6/19/L.7 Advance Unedited Version, Draft report of the working group, paras. 94(31), 94(32) and 94(34); 26 September 2014, A/HRC/27/2, Advance Unedited Version, Report of the Human Rights Council on its twenty-seventh session, para. 381

Day care

Corporal punishment is prohibited in early childhood education facilities in the Education (Early Childhood Education) Regulations 2003, article 54 of which states: “A permit holder operating a facility shall ensure - ... (c) that no child while attending the facility is subjected to emotional, physical or sexual abuse or to physical or emotional neglect or to shaking, shoving, hitting, spanking or any other form of corporal punishment.”

Corporal punishment is lawful in other early childhood care (nurseries, crèches, children’s centres, etc) and in day care for older children (day centres, after-school childcare, childminding) under the right of persons with lawful control of a juvenile “to administer reasonable punishment” in article 5 of the Children and Young Persons Act 1970. It would not be explicitly prohibited by the OECS draft Children (Care and Adoption) Bill (see “Alternative care settings”).

Schools

Corporal punishment is lawful in schools under the right of teachers “to administer reasonable punishment” in article 5 of the Children and Young Persons Act 1970 and article 49 of the Education Act 1997, which states: “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 in writing by the principal for that purpose, in a manner which is in conformity with the guidelines issued in writing by the Chief Education Officer.” Article 50 provides for the Minister to abolish corporal punishment in public and private schools by Order, but no abolition order has been made.

The Education Regulations 2011 set out how corporal punishment should be provided for in schools. It states that a school’s student disciplinary policy should contain guidelines based on a number of principles, including “that corporal punishment, suspension and expulsion are acceptable components of discipline administered in the school” (art. 33(b)(iii)). Corporal punishment should be administered on the palms of the hands of a student, using “a leather strap eighteen (18) inches long, one and a quarter (1¼) inches wide and not more than a quarter (¼) inches thick” or “such instrument as the Chief Education Officer may recommend and describe in guidelines”; up to four strokes may be inflicted, where practicable by a person of the same gender as the student (art. 34).

During the Universal Periodic Review of Dominica in 2014, the Government reported that there are several guidelines which must be followed regarding corporal punishment in schools, that it has come under criticism by several associations in Dominica “for having such rigorous guidelines for corporal punishment” and that “the Government’s view is that the country should move away from the use of corporal punishment as far as possible, so that is something that the country will continue to work on”.⁶ According to Chief Education Officer Melena Fontaine, speaking in March 2016 on the Child-Friendly Schools Initiative, there is a need to reassess whether or not corporal punishment should be retained in statute.⁷

Penal institutions

Corporal punishment is lawful as a disciplinary measure in penal institutions. Under the Children and Young Persons Act 1970, a juvenile in conflict with the law may be detained in a government training

⁶ 5 May 2014, A/HRC/WG.6/19/L.7 Advance Unedited Version, Draft report of the working group, paras. 14 and 63

⁷ Reported in *Dominica News Online*, 18 March 2016,

<http://dominicanewsonline.com/news/homepage/news/educationyouth/ministry-of-education-discusses-future-of-corporal-punishment/>, accessed 23 March 2016

school or a prison: government training schools are governed by the Children and Young Persons Welfare Act 1972 and the Government Training School Act 1970, neither of which prohibits corporal punishment. Young people under 18 may also be sentenced to imprisonment: article 33 of the Prisons Act 1877 and articles 47 and 48 of the Prison Rules 1956 allow visiting justices to order corporal punishment for breaches of discipline. A Child Justice Bill drafted in 2007 by the OECS was sent to the attorney-general: as originally drafted it would not prohibit corporal punishment in penal institutions.

Sentence for crime

Corporal punishment is lawful as a sentence for crime. The Juvenile Offenders' Punishment Act 1881 provides for any High Court Judge to order a boy under 14 who has been convicted of any offence "to be as soon as practicable privately whipped", in lieu of or in addition to any other punishment (art. 2). The whipping shall be up to 12 strokes with a tamarind rod, in the presence of a police officer and, if desired, the boy's parent/guardian; a medical practitioner should certify the boy fit to receive the punishment but this requirement can be dispensed with if no medical practitioner is available within 24 hours (art. 3). Under the Corporal Punishment Act 1987, a court may sentence a boy under 16, convicted of any offence, to corporal punishment in lieu of or in addition to any other punishment; if the sentence is passed by a Magistrate's Court it must be confirmed in the High Court before being carried out (art. 3). The High Court may pass a sentence of corporal punishment on any male convicted of rape, sexual intercourse with a girl under 14, or attempting or aiding these offences (arts. 4 and 5). It should be inflicted as soon as possible, up to 12 strokes on the buttocks for a boy under 16, 24 for older males, using a tamarind rod for those under 18 (arts. 7 and 8). The flogging should be carried out in the prison; for boys under 16, it could be administered in a police station; a medical officer must certify that the person is fit to undergo the punishment (art. 9). On ratifying the American Convention on Human Rights, Dominica made a reservation on article 5 (the right to humane treatment), stating that it "should not be read as prohibiting corporal punishment administered in accordance with the Corporal Punishment Act of Dominica or the Juvenile Offenders Punishment Act".

The Children and Young Persons Act 1970 does not specifically mention corporal punishment as a way of dealing with juvenile offenders but refers to the Magistrate's Code of Procedure Act 1961, which allows a magistrate to order the "private whipping" of a male child or young person (art. 100). The Offences Against the Person Act 1873 also provides for "private whipping" (art. 71).

Under examination by the Committee on the Rights of the Child in 2004, the Government reported that Dominica was engaged in consultation on abolition of corporal punishment, but that this would be a long process and in the meantime imposition of corporal punishment was legally regulated.⁸ The Child Justice Bill drafted by the OECS in 2007 would not include corporal punishment among permitted sentences, though it would not explicitly prohibit it. As at April 2014, the Bill was under discussion in the context of the OECS Juvenile Justice Reform Project, with a view to revising it before presentation to Parliament.⁹ As at February 2016, the Bill had not been enacted.¹⁰

⁸ 10 August 2004, CRC/C/SR.963, Summary record of 963rd meeting, para. 36

⁹ UNICEF (2014), *Terms of Reference: Consultancy to Facilitate the adoption of the Juvenile Justice Bill for the Commonwealth of Dominica, Saint Lucia and St Vincent and the Grenadines*, OECS Juvenile Justice Reform Project

¹⁰ <http://www.opm.gov.dm/?p=1636>, accessed 19 February 2016

Universal Periodic Review of Dominica's human rights record

Dominica was examined in the first cycle of the Universal Periodic Review in 2009 (session 6). The following recommendations were made:¹¹

“Prohibit corporal punishment of children in all settings (Slovenia), to remove all provisions from laws that allow corporal punishment and explicitly prohibit corporal punishment by law in the family, schools and other institutions (Italy) as a method to discipline children (Chile)”

The Government rejected the recommendations, describing the law in relation to school corporal punishment and stating that there was no intention to reform the law: “Corporal punishment was therefore not applied arbitrarily, and was seen as a measure of last resort for serious offences in the school system. Those who applied corporal punishment were guided by the code developed by the Ministry of Education. Corporal punishment was also used in the family, while there had been a tremendous effort to assist parents in the parenting of children and the use of alternative measures of discipline. Fully aware of the risk of abuse, the Welfare Department of the Ministry of Social Services was constantly engaged with parents and children who had complained of abuse. While recognizing the position taken in the Working Group, Dominica was not prepared to remove corporal punishment from its statute books.”¹²

Examination in the second cycle took place in 2014 (session 19). During the review, the Government confirmed that corporal punishment is lawful in schools, within strict guidelines, but that efforts were being made to discourage its use.¹³ The following recommendations were made:¹⁴

“Take appropriate legislative and administrative measures to combat domestic violence and physical ill-treatment against children, including the prohibition of the practice of corporal punishment (Costa Rica);

“Continue its efforts to promote the rights of the child and work towards the elimination of the use of corporal punishment in school (Maldives);

“Prohibit sentences of corporal punishment for children and life imprisonment of children under the age of 14, under all systems of justice and without exception, to ensure full compliance with international standards (Germany)”

The Government did not clearly accept or reject these recommendations. Its response was to state that measures would be taken to address physical child abuse but no reference was made specifically to corporal punishment.¹⁵

¹¹ 4 January 2010, A/HRC/13/12, Report of the working group, para. 71(4)

¹² 8 February 2011, A/HRC/13/56, Report of the Human Rights Council on its thirteenth session, paras. 586 and 587

¹³ 5 May 2014, A/HRC/WG.6/19/L.7 Advance Unedited Version, Draft report of the working group, paras. 14 and 63

¹⁴ 5 May 2014, A/HRC/WG.6/19/L.7 Advance Unedited Version, Draft report of the working group, paras. 94(31), 94(32) and 94(34)

¹⁵ 26 September 2014, A/HRC/27/2, Advance Unedited Version, Report of the Human Rights Council on its twenty-seventh session, para. 381

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(30 June 2004, CRC/C/15/Add.238, Concluding observations on initial report, paras. 28, 29, 46 and 48)

“The Committee is deeply concerned at the wide use of corporal punishment in the State party. It also notes with concern that corporal punishment is mentioned in the Education Act of 1997 and that the Magistrate Code of Procedure allows the whipping of a male child or a young person.

“The Committee recommends that the State party:

- a) remove all provisions from laws that allow corporal punishment and explicitly prohibit corporal punishment by law in the family, schools and other institutions;
- b) continue the constructive dialogue with political leaders and the judiciary with the aim of abolishing corporal punishment;
- c) continue to strengthen public education campaigns among community leaders, school administrators and parents about the negative consequences of corporal punishment of children, and promote positive, non-violent forms of discipline as an alternative to corporal punishment;
- d) establish an effective mechanism, either separate or as a part of a mechanism that includes dealing with child abuse, to receive, monitor and investigate complaints, including intervening where necessary, and ensure that victims of corporal punishment have access to assistance for recovery....

“The Committee is concerned at the lack of juvenile courts and at the fact that children may be sentenced to a penalty at the ‘President’s pleasure’, to life imprisonment and to whipping in private.

“The Committee also recommends that the State party:

- b) abolish the sentences of whipping and life imprisonment....”

Prevalence/attitudinal research in the last ten years

A study which involved focus group discussions with 403 children aged 6-16 found that only 15% had never been physically punished at home; only 14% had never been physically punished by a teacher. In both homes and schools, the most common object used to hit children was a stick or cane, followed by a strap or belt and then a hand.

(Le Franc, E. R. M. et al (2009), *Violence Against Children: An Evaluation of the Protective Environment – Participant Assessment Methodology: A Case Study In Dominica*, UNICEF Office for Barbados and the Eastern Caribbean & Government of Dominica)