

Corporal punishment of children in the Dominican Republic: Briefing for the Universal Periodic Review, 32nd session, January 2019



GLOBAL INITIATIVE TO
**End All Corporal
Punishment of Children**

From the Global Initiative to End All Corporal Punishment of Children, July 2018

The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.

In the Dominican Republic, corporal punishment of children is still lawful, despite recommendations to prohibit it by the Committee on the Rights of the Child.

We hope the Working Group will note with concern the legality of corporal punishment of children in the Dominican Republic. We hope states will raise the issue during the review in 2019 and make a specific recommendation that the Dominican Republic fulfil its commitment and enact the legislation as a matter of priority to explicitly prohibit corporal punishment of children in all settings, including the home.

1 Review of the Dominican Republic in the 2nd cycle UPR (2014) and progress since

- 1.1 The Dominican Republic was reviewed in the second cycle of the Universal Periodic Review in 2014 (session 18). The issue of corporal punishment of children was raised in the summary of stakeholders' information,¹ and in its national report the Dominican Republic referred to "work under way on drafting a provision to combat child abuse that covers corporal or physical punishment based on the Guide on Comprehensive Health Care for Children and Adolescent Victims of Violence and Abuse."² No recommendations were made specifically on corporal punishment.
- 1.2 Since the review, there has been no change in the legality of parental corporal punishment. A Bill to prohibit all corporal punishment is currently being drafted.
- 1.3 **We hope the Working Group will note with concern the continued legality of corporal punishment of children in the Dominican Republic. We hope states will raise the issue during the review in 2019 and make a specific recommendation that the Dominican Republic enact the legislation as a matter of priority to explicitly prohibit corporal punishment of children in all settings, including the home.**

¹ 8 November 2013, A/HRC/WG.6/18/DOM/3, Summary of stakeholders' views, para. 27

² 8 November 2013, A/HRC/WG.6/18/DOM/1, National report to the UPR, para. 21

2 Legality of corporal punishment in the Dominican Republic

Summary of current law and reforms needed to achieve prohibition

Corporal punishment in the Dominican Republic is prohibited in schools and in the penal system but it is still lawful in the home, and in alternative and day care settings. Legislation should be enacted to explicitly prohibit all corporal punishment in all settings, including the home.

- 2.1 **Home (lawful):** Corporal punishment is lawful in the home. Article 12 of the Code for the Protection of the Rights of Children and Adolescents 2003 confirms the right of all children and adolescents to personal integrity and to respect for their dignity and states that it is the responsibility of the family, the state and society to protect children “against all forms of exploitation, maltreatment, torture, abuse or neglect that may affect their personal integrity” (unofficial translation) – but it does not explicitly prohibit all forms of corporal punishment in childrearing. The Code on Protection of Children and Adolescents 1994, which the 2003 Code repealed, included in its definition of maltreatment “personal injury caused by corporal punishment” (art. 126): this definition is not reiterated in the 2003 Code but there is nothing in the latter to suggest that it is intended to prohibit all corporal punishment of children, however light.
- 2.2 Article 303 of the Criminal Code states “Any act carried out as a method of criminal investigation, measure of intimidation, corporal punishment, preventive measure, criminal sanction or for any other purpose that causes injury or physical or mental suffering constitutes torture or an act of cruelty. Equally, the application of substances or methods designed to neutralize the personality or will of persons or to reduce their physical or mental capacity, even if such substances or methods do not cause physical pain or mental suffering, also constitutes torture or an act of cruelty.” But this is not interpreted as prohibiting all corporal punishment in childrearing, as indicated by article 303-1 which punishes acts of cruelty by 10-15 years. Provisions against violence and abuse in the Law Against Domestic Violence 1997 do not include prohibition of all corporal punishment.
- 2.3 Article 42 of the Constitution 2010 confirms the right of every person to personal integrity and “to live without violence”, stating also that “no one shall be subjected to punishment, torture or degrading treatment involving loss or decline in health or physical or mental integrity” and that “domestic and gender violence in any form is condemned”; article 56 confirms the right of children to protection from “all forms of abuse and violence” (art. 56). There is no evidence that these provisions are interpreted as prohibiting all corporal punishment of children by parents.
- 2.4 The Government has signalled its commitment to full prohibition of corporal punishment. In 2009, the Government accepted the recommendation to prohibit corporal punishment in all settings made during the Universal Periodic Review.³ In reporting to the UPR of the Dominican Republic in 2014, the Government stated that work was under way “on drafting a provision to combat child abuse that covers corporal or physical punishment based on the Guide on Comprehensive Health Care for Children and Adolescent Victims of Violence and Abuse”.⁴ The Government reported to the Committee on the Rights of the Child in 2015 that it had adopted a

³ 4 January 2010, A/HRC/13/3, Report of the working group, para. 87(14)

⁴ 8 November 2013, A/HRC/WG.6/18/DOM/1, National report to the UPR, para. 21

national roadmap on the prevention and elimination of violence against children;⁵ this was officially launched on 30 April 2015.⁶ This follows the adoption in 2011 of the Regional Roadmap on Violence against Children by the Central American Governments of Cuba, Mexico and the Dominican Republic, which includes a recommendation to adopt national legislation to explicitly prohibit all corporal punishment and to repeal provisions allowing for “moderate” punishment/correction.⁷

- 2.5 Current law reform includes the reform of the Penal and Civil Codes, including to ensure compliance with the new Constitution (see above). In 2016, the Government reported that a Family Code was being drafted in order to bring national legislation in line with the state’s international obligations.⁸ The Government reported in August 2017 that a workshop had been held by the Inter-Agency Commission for the 2015-2018 Road Map to End Violence against Children, where a consensus had emerged to draft a Bill entitled “Positive Parenting (Discipline) and Prohibition of Abuse Act” and that a commission had been set up to pursue political advocacy and a communications strategy regarding corporal punishment.⁹ As of May 2018, the Bill was still being prepared.¹⁰
- 2.6 **Alternative care settings (lawful):** There is no explicit prohibition of corporal punishment in alternative care settings (formal foster care, institutions, orphanages, children’s homes, places of safety, emergency care, etc). Legal provisions against violence and abuse, in the Constitution and other laws, protect children from some but not all corporal punishment.
- 2.7 **Day care (lawful):** There is no explicit prohibition of corporal punishment in formal early childhood care (nurseries, crèches, children’s centres, etc) and formal day care for older children (after-school childcare, childminding, day centres, etc). Legal provisions against violence and abuse, in the Constitution and other laws, protect children from some but not all corporal punishment.
- 2.8 **Schools (unlawful):** Corporal punishment is unlawful in schools under the Code on the Protection of the Rights of Children and Adolescents 2003, article 48 (unofficial translation): “School discipline should be administered in accordance with the rights, guarantees and duties of children and adolescents established in this Code.... In relation to official disciplinary regulations of schools and educational institutes, the following measures must be taken into account: ... prohibit corporal punishment and economic sanctions, as well as collective punishment, and corrections that might be considered to threaten or violate the rights of learners.” Article 49 states: “All children and adolescents have the right to be treated with respect and dignity by their educators.”
- 2.9 **Penal institutions (unlawful):** Corporal punishment is unlawful as a disciplinary measure in penal institutions. Article 246 of the Code for the Protection of the Rights of Children and Adolescents 2003 states that an adolescent in conflict with the law has the right “not to be subjected to

⁵ 15 January 2015, CRC/C/SR.1932, Summary record of 1932nd meeting, para. 31

⁶ NGO Coalition for Children, correspondence with the Global Initiative, 6 May 2015; see also <http://www.listindiario.com/la-republica/2015/5/5/366053/Castigar-a-adultos-que-les-den-pelas-a-los-ninos>, accessed 12 May 2015

⁷ Regional Road Map on Violence against Children, adopted in 2011, 1 and 2 December in Santo Domingo, as a follow-up to the recommendations of the UN Study on Violence against Children, available at http://srsg.violenceagainstchildren.org/sites/default/files/political_declarations/Hoja%20de%20Ruta%20Final%20EVCN%20Centroamericano%20Dic%202012.pdf, accessed 21 February 2015

⁸ 27 July 2016, CCPR/C/DOM/6, Sixth state report, paras. 125 and 126

⁹ 15 August 2017, CCPR/C/DOM/Q/6/Add.1, Reply to list of issues, para. 30

¹⁰ Information provided by Arigatou International, 24 May 2018; see also 15 August 2017, CCPR/C/DOM/Q/6/Add.1, Reply to list of issues, para. 16

torture or to cruel, inhuman or degrading treatment or methods or techniques that induce or affect his free will, his consciousness, or impairment of dignity” (unofficial translation). Article 349 states: “The adolescent has the right ... l) not to be subjected to incommunicado in any case, or to the imposition of corporal punishment....”

2.10 **Sentence for crime (unlawful)**: There is no provision for judicial corporal punishment in criminal law.

3 Recommendations by human rights treaty bodies

3.1 **CRC**: The Committee on the Rights of the Child has twice recommended to the Dominican Republic that legislation be enacted to explicitly prohibit corporal punishment in all settings, including the home – in its concluding observations on the state party’s second report in 2008¹¹ and on the third-fifth report in 2015.¹²

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, and since 2011 the Committee on the Rights of Persons with Disabilities.

¹¹ 11 February 2008, CRC/C/DOM/CO/2, Concluding observations on second report, paras. 45 and 46

¹² 4 February 2015, CRC/C/DOM/CO/3-5, Concluding observations on third-fifth report, paras. 31 and 32