



Global Initiative to
**End All Corporal Punishment
of Children**

BAHAMAS

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 3rd session, 2008

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Corporal punishment of children breaches their rights to respect for human dignity and physical integrity and to equal protection under the law. It is recognised by the Committee on the Rights of the Child and other treaty bodies, as well as by the UN Secretary General's Study on Violence against Children, as a highly significant issue, both for asserting children's status as rights holders and for the prevention of all forms of violence.

The Global Initiative to End All Corporal Punishment of Children (www.endcorporalpunishment.org) has been regularly briefing the Committee on the Rights of the Child on this issue since 2002, and 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. There is growing progress now across all regions in challenging this very common form of violence against children. But we are concerned that many States persist in ignoring treaty body recommendations to prohibit and eliminate all corporal punishment. We hope that the UPR Process will give particular attention to states' response, or lack of response, to the concluding observations from treaty bodies, on this and other key issues.

In June 2006, the Committee on the Rights of the Child adopted General Comment No. 8 on "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment", which emphasises the immediate obligation on states parties to prohibit all corporal punishment of children, including within the home. Other treaty bodies, and regional human rights mechanisms, have condemned all corporal punishment. In October 2006, the report of the UN Secretary General's Study on Violence against Children was submitted to the General Assembly. It recommends universal prohibition of all corporal punishment, setting a goal of 2009.

Summary

This briefing describes the legality of corporal punishment of children in the Bahamas, and the failure to rectify this in proposed draft legislation, despite the recommendations of the Committee on the Rights of the Child. We hope the Review will highlight with concern the Bahamas' disregard for the Committee's recommendations, and strongly recommend that the Bahamas introduce legislation as a matter of urgency to prohibit corporal punishment of children in all settings, including the home.

1 Legality of corporal punishment in the Bahamas

1.1 Corporal punishment of children is lawful in the **home**. Under provisions for “justifiable force”, the Penal Code (article 110) allows a parent or guardian to “correct his or her legitimate or illegitimate child ... for misconduct or disobedience to any lawful command”, and states that “no correction can be justified which is unreasonable in kind or in degree”.

1.2 Corporal punishment is lawful in **schools**. The Penal Code states that delegation of a parent’s or guardian’s “authority for correction” is presumed in the case of teachers (article 110).

1.3 In the **penal system**, corporal punishment appears to be unlawful as a sentence for crime under an amendment to article 118 of the Penal Code. However, this information has not been confirmed. A court of Appeal ruling in March 2008 reportedly ruled that the flogging of a man convicted of raping a child was unconstitutional because this was not a punishment for this offence prior to the enactment of the Constitution, rather than because it breached the constitutional protection from inhuman and degrading treatment.¹ There is no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions.

1.4 Corporal punishment is lawful in **alternative care settings** under article 110 of the Penal Code.

1.5 A Child Protection Bill 2006 – intended to replace the Children and Young Persons (Administration of Justice) Act – recognises children’s right “to exercise, in addition to all the rights stated in this Act, all the rights set out in the United Nations Convention on the Rights of the Child” but this is “subject to any reservations that apply to The Bahamas and with appropriate modifications to suit the circumstances that exist in The Bahamas with due regard to its laws” (article 4c). The Bill does not include corporal punishment among permitted sanctions for juveniles convicted for crime, but it does not explicitly prohibit corporal punishment in any setting, and it does not repeal article 110 of the Penal Code which allows for “justifiable force” to “correct” a child.

2 Recommendations by human rights treaty monitoring bodies

2.1 In 2005, following examination of the state party’s initial report, the **Committee on the Rights of the Child** expressed concern “that corporal punishment is still widely practised in the family, in schools, and in institutions, and that domestic legislation does not explicitly prohibit its use” (CRC/C/15/Add.253, para. 35). The Committee recommended prohibition by law in the family, schools and other institutions (para. 36).

¹ *The Nassau Guardian*, March 2008