

BAHAMAS

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 15th session, 2013

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

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.

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 also 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 as a matter of priority.

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 in 2011 began briefing the Committee on the Rights of Persons with Disabilities. There is growing progress across all regions in challenging this common form of violence against children. But many States persist in ignoring treaty body recommendations to prohibit and eliminate all corporal punishment. We hope the Working Group of the UPR will give particular attention to states’ response, or lack of response, to the concluding observations from treaty bodies on this issue, as well as to the recommendations made during the first cycle of the UPR.

Corporal punishment of children is lawful in the Bahamas, despite recommendations to prohibit it by the Committee on the Rights of the Child and during the initial UPR in 2008.

We hope the Human Rights Council will note with concern the legality of corporal punishment in the Bahamas and the Government’s continued defence of it. We hope states will raise the issue during the review in 2013 and recommend to the Bahamas that legislation is enacted to explicitly prohibit corporal punishment of children in the home as a matter of priority.

1 The initial review of the Bahamas by the Human Rights Council (2008)

1.1 The Bahamas was reviewed in the first cycle of the Universal Periodic Review in 2008 (session 3). The issue of corporal punishment of children was raised in an advance question by Germany and was included in the compilation of UN information¹ and the summary of stakeholders' information.² The following recommendations were made:

“To eliminate corporal punishment from Bahamas legislation in accordance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child (Chile); to continue, as a matter of priority, efforts to prohibit corporal punishment, of children as well as of adults, and to allocate necessary resources to allow the full implementation of the Convention on the Rights of the Child (Sweden); to put an end to corporal punishment in schools and in the home, and to revise article 1.10 of the Criminal Code (Haiti)”³

1.2 The Government rejected these recommendations. However, the following recommendations were accepted:

“To consider specifically with regard to the prevention of physical abuse of children the implementation of the recommendations of the Committee on the Rights of the Child (Netherlands); to take necessary measures, as recommended by the Committee on the Rights of the Child, to prevent child abuse and neglect and increase efforts to ensure the registration of all children at birth (Italy); to undertake a comprehensive study on child abuse in order to understand its scope and to suggest ways to prevent it (Canada, Australia); to take the necessary measures to implement article 23 of the Convention on the Rights of the Child (Argentina).”⁴

1.3 During the review, the Government defended the legality of corporal punishment and made a distinction between it and child abuse, which it did not condone. The Government stated that “corporal punishment of a minor allowable by law does not amount to the sanctioning of child abuse” and that “corporal punishment is a reasonable act of discipline”.⁵ Nevertheless, the Government stated its intention to repeal corporal punishment as a sentence of the courts, though it is unclear whether this was in relation to all persons or only for adults.⁶

1.4 Prohibiting corporal punishment is a key obligation under the Convention on the Rights of the Child and other international human rights instruments, though it is an obligation frequently ignored or evaded by governments. Recent law reform in the Bahamas – the enactment of the Child Protection Act (2006) which came into force in 2009 – failed to prohibit corporal punishment in any setting, and there has been no change in its legality since the initial UPR in 2008: it is lawful in the home, schools, penal system and most care settings (see below).

2 Legality of corporal punishment in the Bahamas

2.1 Corporal punishment is lawful in the **home**. Under provisions for “justifiable force”, article 110 of the Penal Code (1873) allows a parent or guardian to “correct his or her legitimate or

¹ 29 September 2008, A/HRC/WG.6/3/BHS/2, Compilation of UN information, paras. 24 and 25

² 15 September 2008, A/HRC/WG.6/3/BHS/3, Summary of stakeholders' information, paras. 4 and 5

³ 7 January 2009, A/HRC/10/70, Report of the Working Group, para. 54(5)

⁴ 7 January 2009, A/HRC/10/70, Report of the Working Group, para. 52(7)

⁵ 7 January 2009, A/HRC/10/70, Report of the Working Group, paras. 16 and 34

⁶ *ibid.*

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”. The Child Protection Act (2006) 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 Act does not explicitly prohibit corporal punishment and does not repeal article 110 of the Penal Code; its provisions against violence and abuse are not interpreted as prohibiting corporal punishment in childrearing. In research published in 2010, 77% of adults reported that children in their homes were spanked as a means to “discipline” them.⁷

2.2 Corporal punishment is lawful in **schools** under article 110 of the Penal Code. It may be inflicted by a principal, vice-principal, or senior master/mistress, following guidelines set out by the Department of Education.

2.3 In the **penal system**, corporal punishment appears to be lawful as a sentence for crime but the law is unclear. In 1984, Act No. 12 repealed the corporal punishment provisions in the Penal Code and inserted article 118 which states: “Notwithstanding anything to the contrary in this, or any other law, no form of corporal punishment shall be imposed as a penalty under any law in respect to the commission of a criminal or disciplinary offence.” In 1991, the Criminal Law (Measures) Act reintroduced corporal punishment for certain offences. It may be inflicted on males only: for a child (under 14) or young person (aged 14-17) it takes the form of whipping up to 12 strokes on the buttocks with a light cane in the presence of a parent or guardian or other approved person (articles 4 and 5). However, the 1991 Act did not repeal article 118 of the Penal Code, and the two laws are in conflict. Case law in the Privy Council and the Supreme Court has ruled that judicial corporal punishment as reintroduced is constitutional and lawful only for offences for which the law had previously and explicitly prescribed corporal punishment, and is unconstitutional for offences which were not previously punished in this way (sexual offences).

2.4 Corporal punishment is possibly unlawful as a disciplinary measure in penal institutions under article 118 of the Penal Code, but we have yet to confirm that the abolition overrides all laws authorising such punishment. Rules enacted under the now repealed Children and Young Persons (Administration of Justice) Act are possibly still in force: these allow for corporal punishment in penal institutions for girls and boys, including under the Children and Young Persons (Industrial School for Girls) Rules (1961) (Rule 18) and the Children and Young Persons (Industrial School for Boys) Rules (1947) (Rule 44).

2.5 With regard to **alternative care settings**, corporal punishment is explicitly prohibited in residential institutions by article 27(1) of the Residential Care Establishments Act (2003). However, it is lawful in non-residential institutions and non-institutional forms of care under article 110 of the Penal Code.

⁷ Brennen, S. et al. (2010), “A Preliminary Investigation of the Prevalence of Corporal Punishment of Children and Selected Co-occurring Behaviours in Households on New Providence, The Bahamas”, *The International Journal of Bahamian Studies*, 16, 1-18

3 Recommendations by human rights treaty monitoring bodies

3.1 In 2005, the **Committee on the Rights of the Child** recommended that corporal punishment of children be explicitly prohibited in all settings in the Bahamas, including in the family, schools and other institutions.⁸

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⁸ 31 March 2005, CRC/C/15/Add.253, Concluding observations on initial report, paras.35 and 36