

Corporal punishment of children in Jamaica: Briefing for the Universal Periodic Review, 22nd session, 2015

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

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 Jamaica, corporal punishment of children is lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee. A recommendation made during the 1st cycle UPR to prohibit corporal punishment in detention centres has been fulfilled.

We hope the Working Group will welcome the prohibition of corporal punishment in the penal system but note with concern that it remains lawful in the home and other settings in Jamaica. We hope states will raise the issue during the review in 2015 and make a specific recommendation to Jamaica to ensure that forthcoming amendments to the Child Care and Protection Act include clear prohibition of corporal punishment of children in the home, schools and all other settings and explicit repeal of the right to administer “reasonable and moderate” punishment.

1 Review of Jamaica in the 1st cycle UPR (2010) and progress since then

1.1 Jamaica was reviewed in the first cycle of the Universal Periodic Review in 2010 (session 9). The issue of corporal punishment was raised in the compilation of UN information,¹ the summary of stakeholders’ information² and in an advanced question by Germany. During the review, the Government stated that corporal punishment was forbidden in the education system and in state childcare facilities.³ The following recommendation was made and was accepted by the Government:⁴

“Ensure that the new detention centres, which will be established in accordance with the auditing mentioned in the national report, comply with international standards, in particular regarding separation of minors from adults and the prohibition of corporal punishment (Mexico)”

1.2 We are pleased to report that in 2013, all provisions for flogging in the penal system were formally repealed (see below, paras. 2.8 and 2.9). However, we regret that despite positive public

¹ 12 August 2010, A/HRC/WG.6/9/JAM/2, Compilation of UN information, paras. 4 and 22

² 10 August 2010, A/HRC/WG.6/9/JAM/3, Summary of stakeholders’ information, para. 21

³ 4 January 2011, A/HRC/16/14, Report of the working group, para. 35

⁴ 4 January 2011, A/HRC/16/14, Report of the working group, para. 99(10)

statements by officials (see para. 2.7), education legislation which prohibits corporal punishment in schools is yet to be enacted, and corporal punishment remains lawful in the home and some forms of day care.

- 1.3 The Child Care and Protection Act 2004 is being reviewed. In December 2013, a draft “Policy to Amend the CCPA” was issued which includes an analysis of “gaps and anomalies” in the Act. The draft identified article 9 as the key provision on cruelty to children but did not identify any shortcomings in this provision and made no recommendations for its amendment.⁵ Consultation is ongoing.
- 1.4 **We hope members of the Working Group will welcome the prohibition of corporal punishment in the penal system and urge Jamaica to ensure forthcoming amendments to the Child Care and Protection Act include clear prohibition of corporal punishment of children in the home, schools and all other settings and explicit repeal of the right to administer “reasonable and moderate” punishment.**

2 Legality and practice of corporal punishment in Jamaica

- 2.1 **Summary:** Corporal punishment of children in Jamaica is unlawful in the penal system, alternative care settings and some forms of day care, but it is yet to be prohibited in the home, schools and other forms of day care.
- 2.2 **Home (lawful):** Corporal punishment is lawful under the common law right to inflict “reasonable and moderate” punishment. The Child Care and Protection Act 2004 does not specifically confirm this right but provisions against violence and abuse in that Act and in the Offences Against the Person Act 1864, the Domestic Violence Act 1996 and the Constitution 1962 and its Charter of Fundamental Rights and Freedoms 2011 are not interpreted as prohibiting corporal punishment in childrearing. In 2012, Parliament passed the National Parenting Support Commission Act 2012, which aims to support implementation of the National Parenting Policy. The Act does not prohibit corporal punishment in childrearing: we have yet to establish whether or not the issue is addressed in the National Parenting Policy.
- 2.3 Many research studies have documented the prevalence and nature of corporal punishment of children in Jamaica. For example, according to statistics collected in 2010-2011 under round 4 of the UNICEF Multiple Indicator Cluster Survey programme (MICS4), 84.5% of children aged 2-14 experienced violent “discipline” (physical punishment and/or psychological aggression) in the home in the month prior to the survey; 5.7% were severely physically punished (hit or slapped on the face, head or ears or hit over and over with an implement), 71.9% experienced psychological aggression (being shouted at, yelled at, screamed at or insulted).⁶ UNICEF’s major 2010 analysis of data from 2005-2006 found that 89% of 2-14 year olds had been violently “disciplined” in the month before the survey, 9% severely physically punished.⁷
- 2.4 **Alternative care settings (unlawful):** Corporal punishment is prohibited in institutions and other forms of childcare in article 62 of the Child Care and Protection Act 2004: “A child in a place of safety, children’s home or child in the care of a fit person shall have the following rights – ... (d) to be free from corporal punishment...” Permitted disciplinary measures in children’s homes are prescribed by the Child Care and Protection (Children’s Homes) Regulations No. 22 2005, which state in article 17: “(1) No licensee or member of staff of any children’s home shall strike, cuff, slap or use any other form of physical violence towards any child who resides or is at the home.

⁵ Ministry of Youth and Culture (2013), *A Policy to Amend the Child Care and Protection Act & Children’s Homes Regulations*, Child Development Agency, Revised Draft dated 31 December 2013

⁶ Statistical Institute of Jamaica (STATIN) & United Nations Children’s Fund (UNICEF) (2013), *Jamaica Multiple Indicator Cluster Survey 2011: Final Report*, Kingston: STATIN & UNICEF

⁷ UNICEF (2010), *Child Disciplinary Practices at Home: Evidence from a Range of Low- and Middle-Income Countries*, NY: UNICEF

(2) No child at a children's home shall be permitted to administer any form of punishment upon any other child at the home."

- 2.5 **Day care (*partially prohibited*)**: Corporal punishment is prohibited in early childhood institutions in the Act to Provide for the Regulation and Management of Early Childhood Institutions and for other Connected Matters 2005 (art. 16(1)): "Corporal punishment shall not be inflicted on a child in an early childhood institution." An early childhood institution is defined in the Act as "a setting that provides developmentally appropriate care, stimulation, education and socialisation, for children under the age of six years, including day care centres and basic schools" (art. 2). There appears to be no explicit prohibition in relation to other forms of day care, including day care for older children.
- 2.6 **Schools (*lawful*)**: There is no provision for corporal punishment in the Education Act 1965 or in the Education Regulations 1980, but a teacher is justified in administering "moderate and reasonable" corporal punishment under common law.⁸ In a survey in 2007, one in four primary school teachers admitted to flogging students often and one in three to pinching and thumping them.⁹
- 2.7 The Government has stated its intention to abolish corporal punishment in schools and has informed all public schools not to use it.¹⁰ In 2011, the Government stated it was seeking law reform to abolish corporal punishment through the development of a safe school policy to be tabled in Parliament for approval.¹¹ It is not clear whether this would lead to prohibition in law, including repeal of the common law defence, or remain at the level of policy. It appears that no Bill which would prohibit corporal punishment in schools has yet been tabled in Parliament.
- 2.8 **Penal institutions (*unlawful*)**: Corporal punishment is unlawful as a disciplinary measure in penal institutions under article 62 of the Child Care and Protection Act 2004 (see above, para. 2.4). The Flogging Regulation Act 1903, which provided for disciplinary corporal punishment, was repealed in the Law Reform (Flogging and Whipping) (Abolition) Act 2013.
- 2.9 **Sentence for crime (*unlawful*)**: Corporal punishment was ruled unconstitutional by the Jamaican Court of Appeal in December 1998 and there is no provision for it in the Criminal Justice (Reform) Act 1978, the Corrections Act 1985 and the Child Care and Protection Act 2004. The Law Reform (Flogging and Whipping) (Abolition) Act 2013 states in article 2: "(1) The imposition of flogging or whipping as a penalty for any offence is abolished. (2) Every reference to flogging or whipping, as a penalty for an offence, appearing in any enactment, is declared to be of no effect...." The Act repeals the Flogging Regulation Act 1903 and the Crime (Prevention of) Act 1942. Provisions for whipping in the Obeah Act 1898 and the Larceny Act 1942 were repealed in the Obeah (Amendment) Act 2013 and the Larceny (Amendment) Act 2013 respectively.

3 Recommendations by human rights treaty monitoring bodies

- 3.1 **CRC**: The Committee on the Rights of the Child first raised the issue of protecting children from corporal punishment in Jamaica in 1995, in its concluding observations on the state party's initial report.¹² Following examination of the second report in 2003, the Committee again expressed its concerns, recommending that corporal punishment be prohibited "in all contexts in society" and with some emphasis on prohibiting its use in schools.¹³

⁸ *Ryan v Fildes* [1983] 3 All E.R.517

⁹ Reported in *Jamaica Gleaner Online*, 21 March 2007

¹⁰ Ministry of Education School Bulletin 94/08

¹¹ 11 July 2011, CCPR/C/JAM/Q/3/Add.1, Written reply to Human Rights Committee list of issues, para. 83

¹² 15 February 1995, CRC/C/15/Add.32, Concluding observations on initial report, para. 7

¹³ 4 July 2003, CRC/C/15/Add.210, Concluding observations on second report, paras. 33, 48 and 49

- 3.2 **CESCR:** The Committee on Economic, Social and Cultural Rights expressed concern at children in Jamaica being flogged at home and in schools in its concluding observations on the state party's initial report in 2001.¹⁴ In 2013, the Committee recommended that Jamaica “prohibit all forms of corporal punishment in all settings, including within the family”.¹⁵
- 3.3 **HRC:** In 1997, the Human Rights Committee recommended to Jamaica that the Flogging Regulation Act 1903 and the Crime (Prevention of) Act 1942, which provided for penal corporal punishment, be repealed.¹⁶ In 2011, the Committee reiterated this recommendation and also expressed concern at the legality of corporal punishment in schools and the home.¹⁷ As noted above (paras. 2.8 and 2.9), the penal corporal punishment provisions were finally repealed in 2013.

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 in 2011 began briefing the Committee on the Rights of Persons with Disabilities.

¹⁴ 30 November 2001, E/C.12/1/Add.75, Concluding observations on second report, para. 14

¹⁵ 10 June 2013, E/C.12/JAM/CO/3-4, Concluding observations on third/fourth report, para. 20

¹⁶ 19 November 1997, CCPR/C/79/Add.83, Concluding observations on second report, para. 15

¹⁷ 17 November 2011, CCPR/C/JAM/CO/3, Concluding observations on third report, para. 20