

Corporal punishment of children in the Bahamas: Briefing for the Universal Periodic Review, 29th session, 2018

From the Global Initiative to End All Corporal Punishment of Children, June 2017



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 the Bahamas, corporal punishment of children is lawful, despite recommendations to prohibit it by the Committee on the Rights of the Child and during the 2nd cycle UPR of the Bahamas in 2013.

We hope the Working Group will note with concern the legality of corporal punishment of children in the Bahamas. We hope states will raise the issue during the review in 2018 and make a specific recommendation that the Bahamas clearly prohibit all corporal punishment of children, however light, in every setting of their lives including the home and as a sentence of the courts.

1 Review of the Bahamas in the 2nd cycle UPR (2013) and progress since

1.1 The Bahamas was reviewed in the second cycle of the Universal Periodic Review in 2013 (session 15). The issue of corporal punishment of children was raised in the compilation of UN information¹ and the summary of stakeholders' information.² The Government accepted a recommendation to eliminate corporal punishment against minors from its domestic legislation, but rejected several recommendations to prohibit corporal punishment in all settings³ in contradiction with its international obligations.

1.2 Since the second cycle review in 2013, the Prisons Act 1943 that provided for corporal punishment as a disciplinary measure in penal institutions was repealed by the Correctional Services Act 2014, which did not however repeal other legislation authorising corporal punishment in this setting or explicitly prohibit its use. The Early Childhood Care (National Standards) Regulations were also enacted in 2015 and prohibited the use of corporal punishment in day care centres and pre-schools. Corporal punishment is still lawful in every other setting of children's lives.

¹ 9 November 2012, A/HRC/WG.6/15/BHS/2, Compilation of UN information, para. 14

² 29 October 2012, A/HRC/WG.6/15/BHS/3, Summary of stakeholders' views, paras. 3, 15, 16, 17, 18 and 19

³ 30 May 2013, A/HRC/23/8/Add.1, Report of the working group: Addendum, paras. 92(63), 92(64), 92(65), 92(66), 92(67), 92(68) and 92(69)

- 1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in the Bahamas. We hope states will raise the issue during the review in 2018 and make a specific recommendation that the Bahamas clearly prohibit all corporal punishment of children, however light, in every setting of their lives including in the home and as a sentence of the courts.**

2 Legality of corporal punishment in the Bahamas

Summary of current law and opportunities for achieving prohibition

In the Bahamas, corporal punishment appears to be unlawful in penal institutions, but it is not fully prohibited in the home, in all forms of alternative care and day care settings, in schools and as a sentence for a crime.

- 2.1 **Home (*lawful*):** Under provisions for “justifiable force”, article 110 of the Penal Code 1873 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”. The Child Protection Act 2006, which came into force in 2009, 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” (art. 4c). The Act does not repeal article 110 of the Penal Code and provisions in the Act against violence and abuse are not interpreted as prohibiting corporal punishment in childrearing.
- 2.2 The Constitution is under review. In July 2013, the Constitution Review Commission presented its report: it does not address the issue of corporal punishment.⁴
- 2.3 **Alternative care settings (*partially lawful*):** Corporal punishment is explicitly prohibited in residential institutions by article 27 of the Residential Care Establishments Act 2003: “(1) No person shall inflict corporal punishment on a resident in a residential care establishment. (2) No person shall physically restrain another person for the purposes of inflicting punishment on that person in a residential care establishment...” But corporal punishment is lawful in other alternative care settings, including foster care, under the provisions for “justifiable force” in article 110 of the Penal Code 1873.
- 2.4 **Day care (*partially lawful*):** Corporal punishment is prohibited in some but not all day care settings. It is unlawful in day care centres and pre-schools under the Early Childhood Care (National Standards) Regulations 2015, which are provided for by the Early Childhood Care Act 2004. The Regulations state that day-care centres and pre-schools must comply with the National Standards for Day-Care Centres and Pre-schools, according to which “staff members do not inflict any form of corporal punishment on children” and “physical restraint is not used for the purpose of inflicting punishment”. Corporal punishment is lawful in all other day care settings under the provisions for “justifiable force” in article 110 of the Penal Code 1873.

⁴ Government of the Bahamas (2013), *Report of the Constitutional Commission into a Review of The Bahamas Constitution*, July 2013, Nassau, Bahamas

- 2.5 **Schools (lawful)**: Corporal punishment is lawful in schools under article 110 of the Penal Code 1873. The Child Protection Act 2006 does not prohibit corporal punishment in schools. In defending the legality of such punishment during the Universal Periodic Review in 2008, the Government stated that corporal punishment may only be inflicted by a principal, vice-principal, or senior master/mistress, following guidelines set out by the Department of Education.⁵
- 2.6 **Penal institutions (?unlawful)**: Corporal punishment is unlawful in prisons; it appears to be unlawful in other institutions accommodating children in conflict with the law but some legislation is possibly still to be repealed.
- 2.7 Act No. 12 of 1984 inserted article 118 into the Penal Code 1873: “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.” However, we have yet to confirm that the abolition overrides all laws authorising such punishment. There is no explicit prohibition of corporal punishment in institutions in the Child Protection Act 2006. Rules enacted under the now repealed Children and Young Persons (Administration of Justice) Act 1947 possibly remain in force pending the construction of new rules, and these allow for disciplinary 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).
- 2.8 The Correctional Services Act 2014 makes no provision for corporal punishment as a disciplinary measure, though it does not explicitly prohibit it. The Act repeals the Prisons Act 1943 which had provided for corporal punishment as a disciplinary measure in prisons – up to 24 lashes with a cat or rod for males over 16 years of age, up to 18 lashes with a rod for males under 16 (arts. 14, 15 and 16).
- 2.9 **Sentence for crime (?lawful)**: Corporal punishment appears to be lawful as a sentence for crime but the law is unclear. Until 1984, corporal punishment was specified in the Penal Code as punishment for a number of crimes. Act No. 12 of 1984 repealed the corporal punishment provisions 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.” The Criminal Law (Measures) Act 1991 reintroduced corporal punishment for certain offences in the Penal Code 1873, the Sexual Offences and Domestic Violence Act 1991 and the Firearms Act 1969, stating in article 3(1): “Subject to the provisions of this Act, any offender on being convicted by a court of any of the offences mentioned in the First Schedule may be ordered by the court to undergo corporal punishment in addition to any other punishment to which the offender is liable.” The punishment 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 (arts. 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).
- 2.10 The Child Protection Act 2006 does not include corporal punishment among the measures that a juvenile court may order for juveniles convicted of an offence, but it does not explicitly prohibit it. The Act states in article 120(5) that where a child or young person is charged with certain

⁵ 7 January 2009, A/HRC/10/70, Report of the working group, para. 16

offences (including homicide, treason, causing harm, arson, use of explosives, and robbery) or where the charge relates to other indictable offences and the court or the young person does not agree to hold the trial in a juvenile court, then the case must be remitted to a magistrate and dealt with under the Magistrates Act 1896, the Penal Code 1873 and the Criminal Procedure Code Act 1968. In such cases, it seems that child offenders may be sentenced to be whipped.

3 Recommendations by human rights treaty bodies

3.1 **CRC:** 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.⁶

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.

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