

Corporal punishment of children in Dominica: Briefing for the Universal Periodic Review, 33rd session, May 2019



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

From the Global Initiative to End All Corporal Punishment of Children, October 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 Dominica, 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 Dominica. We hope states will raise the issue during the review in 2019 and make a specific recommendation that Dominica enact legislation as a matter of priority to explicitly prohibit corporal punishment of children in all settings, including the home and as a sentence for a crime, and repeal all legal defences for its use.

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

- 1.1 Dominica was reviewed in the second cycle of the Universal Periodic Review in 2014 (session 19). The issue of corporal punishment of children was raised in the summary of stakeholders' information.¹ During the review, the Government confirmed that corporal punishment was lawful in schools, within strict guidelines, but that efforts were being made to discourage its use.² Several recommendations were extended on the issue of corporal punishment of children³ but the Government did not clearly accept or reject them, instead stating that measures would be taken to address physical child abuse without referencing specifically corporal punishment.⁴
- 1.2 Since the review, there has been no change in the legality of corporal punishment and no progress has been made on the Child Justice Bill, which would not have included corporal punishment in permitted judicial sentences.
- 1.3 **We hope the Working Group will note with concern the continued legality of corporal punishment of children in Dominica. We hope states will raise the issue during the review in 2019 and make a specific recommendation that Dominica enact legislation as a matter of**

¹ 14 January 2014, A/HRC/WG.6/19/DMA/3, Summary of stakeholders' views, paras. 3, 15, 16, 19 and 20

² 5 May 2014, A/HRC/WG.6/19/L.7 Advance Unedited Version, Draft report of the working group, paras. 14 and 63

³ 5 May 2014, A/HRC/WG.6/19/L.7 Advance Unedited Version, Draft report of the working group, paras. 94(31), 94(32) and 94(34)

⁴ 26 September 2014, A/HRC/27/2, Advance Unedited Version, Report of the Human Rights Council on its twenty-seventh session, para. 381

priority to explicitly prohibit corporal punishment of children in all settings, including the home and as a sentence for a crime, and repeal all legal defences for its use.

2 Legality of corporal punishment in Dominica

Summary of current law and reforms needed to achieve prohibition

Corporal punishment in Dominica is prohibited in early childhood education facilities but it is still lawful in all other settings, including the home, alternative and day care settings, schools, penal institutions, and as a sentence for a crime. Legislation should be enacted to explicitly prohibit all corporal punishment in all settings, including the home and as a sentence for a crime, and all legal defences for its use, including in the Children and Young Persons Act 1970, should be repealed.

- 2.1 **Home (*lawful*):** Corporal punishment of children is lawful in the home. Article 5 of the Children and Young Persons Act 1970 confirms “the right of any parent, teacher or other person having the lawful control or charge of a juvenile to administer reasonable punishment to him”. Provisions against violence and abuse in that Act and in the Protection Against Domestic Violence Act 2001, the Offences Against the Person Act 1873 and the Small Charges Act are not interpreted as prohibiting corporal punishment in childrearing. In reporting to the Committee on the Rights of the Child in 2003, the Government stated that a Families and Children Act and a Domestic Violence Act were being considered for adoption;⁵ in 2004, the Government reported to the Committee that efforts were being made to harmonise national legislation with the Convention on the Rights of the Child and discussions were under way on the development of a Code on the Rights of the Child.⁶ Neither of these laws appear to have been enacted.
- 2.2 As part of an initiative to reform child laws in the region, the Organisation of Eastern Caribbean States (OECS) circulated a number of draft laws for consideration by member states, including Dominica. As originally drafted, the Children (Care and Adoption) Bill 2007 would protect children from “abuse” but not prohibit corporal punishment. It would define parental responsibility with reference to the duties, authority, rights and obligations “which by any law in force in [Dominica], the parent of a child has in relation to that child” (art. 2). In 2009, the Government reported to the Universal Periodic Review that it was participating in the OECS Family Law and Domestic Violence Legislative Reform Project, which seeks to bring family law into conformity with CEDAW and CRC, but made no reference to any proposals to prohibit corporal punishment.⁷
- 2.3 During the Universal Periodic Review of Dominica in 2014, the Government stated that its view “was that the country should move away from the use of corporal punishment as far as possible, and that it would continue to work towards that goal”.⁸ However, it did not respond clearly to recommendations made during the review to prohibit corporal punishment.⁹

⁵ 15 October 2003, CRC/C/8/Add.48, Initial state party report, para. 32

⁶ 13 April 2004, DOM/1, Reply to list of issues, p. 8

⁷ 3 December 2009, A/HRC/WG.6/6/DMA/1, National report to the UPR, para. 31

⁸ 26 June 2014, A/HRC/27/9, Report of the working group, para. 63

⁹ 5 May 2014, A/HRC/WG.6/19/L.7 Advance Unedited Version, Draft report of the working group, paras. 94(31), 94(32) and 94(34); 26 September 2014, A/HRC/27/2, Advance Unedited Version, Report of the Human Rights Council on its twenty-seventh session, para. 381

- 2.4 **Alternative care settings (*lawful*):** Corporal punishment is lawful in alternative care settings under the right of persons with lawful control of a juvenile “to administer reasonable punishment” in article 5 of the Children and Young Persons Act 1970. It would not be explicitly prohibited by the OECS draft Children (Care and Adoption) Bill, which in its original draft stated that a person authorised to provide care for a child shall “correct and manage the behaviour of the child” (art. 29(c)) and authorised the Minister to make regulations for “the management and discipline of an approved child care service” (art. 140(2)(m)).
- 2.5 **Day care (*partially lawful*):** Corporal punishment is prohibited in early childhood education facilities in the Education (Early Childhood Education) Regulations 2003, article 54 of which states: “A permit holder operating a facility shall ensure - ... (c) that no child while attending the facility is subjected to emotional, physical or sexual abuse or to physical or emotional neglect or to shaking, shoving, hitting, spanking or any other form of corporal punishment.”
- 2.6 Corporal punishment is lawful in other early childhood care (nurseries, crèches, children’s centres, etc) and in day care for older children (day centres, after-school childcare, childminding) under the right of persons with lawful control of a juvenile “to administer reasonable punishment” in article 5 of the Children and Young Persons Act 1970. It would not be explicitly prohibited by the OECS draft Children (Care and Adoption) Bill.
- 2.7 **Schools (*lawful*):** Corporal punishment is lawful in schools under the right of teachers “to administer reasonable punishment” in article 5 of the Children and Young Persons Act 1970 and article 49 of the Education Act 1997, which states: “Corporal punishment may be administered where no other punishment is considered suitable or effective, and only by the principal, deputy principal or any teacher appointed in writing by the principal for that purpose, in a manner which is in conformity with the guidelines issued in writing by the Chief Education Officer.” Article 50 provides for the Minister to abolish corporal punishment in public and private schools by Order, but no abolition order has been made.
- 2.8 The Education Regulations 2011 set out how corporal punishment should be provided for in schools. It states that a school’s student disciplinary policy should contain guidelines based on a number of principles, including “that corporal punishment, suspension and expulsion are acceptable components of discipline administered in the school” (art. 33(b)(iii)). Corporal punishment should be administered on the palms of the hands of a student, using “a leather strap eighteen (18) inches long, one and a quarter (1¼) inches wide and not more than a quarter (¼) inches thick” or “such instrument as the Chief Education Officer may recommend and describe in guidelines”; up to four strokes may be inflicted, where practicable by a person of the same gender as the student (art. 34).
- 2.9 During the Universal Periodic Review of Dominica in 2014, the Government reported that there are several guidelines which must be followed regarding corporal punishment in schools, that it has come under criticism by several associations in Dominica “for having such rigorous guidelines for corporal punishment” and that “the Government’s view is that the country should move away from the use of corporal punishment as far as possible, so that is something that the country will continue to work on”.¹⁰ According to Chief Education Officer Melena Fontaine, speaking in March 2016 on the Child-Friendly Schools Initiative, there is a need to reassess whether or not corporal punishment should be retained in statute.¹¹

¹⁰ 5 May 2014, A/HRC/WG.6/19/L.7 Advance Unedited Version, Draft report of the working group, paras. 14 and 63

¹¹ Reported in *Dominica News Online*, 18 March 2016,

<http://dominicanewsonline.com/news/homepage/news/educationyouth/ministry-of-education-discusses-future-of-corporal-punishment/>, accessed 23 March 2016

- 2.10 **Penal institutions (lawful):** Corporal punishment is lawful as a disciplinary measure in penal institutions. Under the Children and Young Persons Act 1970, a juvenile in conflict with the law may be detained in a government training school or a prison: government training schools are governed by the Children and Young Persons Welfare Act 1972 and the Government Training School Act 1970, neither of which prohibits corporal punishment. Young people under 18 may also be sentenced to imprisonment: article 33 of the Prisons Act 1877 and articles 47 and 48 of the Prison Rules 1956 allow visiting justices to order corporal punishment for breaches of discipline. A Child Justice Bill drafted in 2007 by the OECS was sent to the attorney-general: as originally drafted it would not prohibit corporal punishment in penal institutions.
- 2.11 **Sentence for crime (lawful):** Corporal punishment is lawful as a sentence for crime. The Juvenile Offenders' Punishment Act 1881 provides for any High Court Judge to order a boy under 14 who has been convicted of any offence "to be as soon as practicable privately whipped", in lieu of or in addition to any other punishment (art. 2). The whipping shall be up to 12 strokes with a tamarind rod, in the presence of a police officer and, if desired, the boy's parent/guardian; a medical practitioner should certify the boy fit to receive the punishment but this requirement can be dispensed with if no medical practitioner is available within 24 hours (art. 3). Under the Corporal Punishment Act 1987, a court may sentence a boy under 16, convicted of any offence, to corporal punishment in lieu of or in addition to any other punishment; if the sentence is passed by a Magistrate's Court it must be confirmed in the High Court before being carried out (art. 3). The High Court may pass a sentence of corporal punishment on any male convicted of rape, sexual intercourse with a girl under 14, or attempting or aiding these offences (arts. 4 and 5). It should be inflicted as soon as possible, up to 12 strokes on the buttocks for a boy under 16, 24 for older males, using a tamarind rod for those under 18 (arts. 7 and 8). The flogging should be carried out in the prison; for boys under 16, it could be administered in a police station; a medical officer must certify that the person is fit to undergo the punishment (art. 9). On ratifying the American Convention on Human Rights, Dominica made a reservation on article 5 (the right to humane treatment), stating that it "should not be read as prohibiting corporal punishment administered in accordance with the Corporal Punishment Act of Dominica or the Juvenile Offenders Punishment Act".
- 2.12 The Children and Young Persons Act 1970 does not specifically mention corporal punishment as a way of dealing with juvenile offenders but refers to the Magistrate's Code of Procedure Act 1961, which allows a magistrate to order the "private whipping" of a male child or young person (art. 100). The Offences Against the Person Act 1873 also provides for "private whipping" (art. 71).
- 2.13 Under examination by the Committee on the Rights of the Child in 2004, the Government reported that Dominica was engaged in consultation on abolition of corporal punishment, but that this would be a long process and in the meantime imposition of corporal punishment was legally regulated.¹² The Child Justice Bill drafted by the OECS in 2007 would not include corporal punishment among permitted sentences, though it would not explicitly prohibit it. As at April 2014, the Bill was under discussion in the context of the OECS Juvenile Justice Reform Project, with a view to revising it before presentation to Parliament.¹³ As at February 2016, the Bill had not been enacted.¹⁴

¹² 10 August 2004, CRC/C/SR.963, Summary record of 963rd meeting, para. 36

¹³ UNICEF (2014), *Terms of Reference: Consultancy to Facilitate the adoption of the Juvenile Justice Bill for the Commonwealth of Dominica, Saint Lucia and St Vincent and the Grenadines*, OECS Juvenile Justice Reform Project

¹⁴ <http://www.opm.gov.dm/?p=1636>, accessed 19 February 2016

3 Recommendations by human rights treaty bodies

3.1 **CRC:** In 2004, the Committee on the Rights of the Child recommended the repeal of all laws authorising corporal punishment of children in Dominica together with explicit prohibition of corporal punishment in the family, schools and institutions and abolition of whipping as a sentence for crime.¹⁵

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.

¹⁵ 30 June 2004, CRC/C/15/Add.238, Concluding observations on initial report, paras. 28, 29, 46 and 48