

Corporal punishment of children in Grenada: Briefing for the Universal Periodic Review, 35th session, January 2020



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

From the Global Initiative to End All Corporal Punishment of Children, July 2019

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 Grenada, corporal punishment of children is still lawful despite repeated recommendations to prohibit it by the Committee on the Rights of the Child and the Human Rights Committee.

We hope the Working Group will note with concern the legality of corporal punishment of children in Grenada. We hope states will raise the issue during the review in 2020 and make a specific recommendation that Grenada draft and enact legislation as a matter of priority to explicitly prohibit all corporal punishment of children, however light, in all settings including the home and as a sentence for a crime.

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings, day care, schools, penal institutions and as a sentence for crime.

Articles 54, 55 and 65 of the Criminal Code 1958 provide for “justifiable force” for the purpose of “correction” of a child. These provisions should be repealed and prohibition enacted of all corporal punishment in all settings, including the family home and all settings where adults have authority over children.

Alternative care – Corporal punishment should be prohibited in all alternative care settings, including foster care, places of safety, emergency care, etc.

Day care – Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, children’s centres, etc) and all formal day care for older children (after-school childcare, childminding, day centres, etc).

Schools – Provisions for corporal punishment in the Education Act 2002 should be repealed, in addition to repeal of articles 54, 55 and 65 of the Criminal Code, and prohibition should be enacted in relation to all schools, public and private.

Penal institutions – Corporal punishment should be prohibited as a disciplinary measure in all institutions accommodating children in conflict with the law.

Sentence for crime – The Juvenile Justice Act 2012 should be brought into force.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. Article 54 of the Criminal Code 1958 states: “Force may be justified in the cases and manner, and subject to the conditions, hereafter in this Title mentioned, on the ground of either of the following matters, namely – ... (i) authority to correct a child, servant or other similar person, for misconduct....” Article 55 provides for the limits of “justifiable force or harm”: “Notwithstanding the existence of any matter of justification for force, force cannot be justified as having been used in pursuance of that matter – (a) which is in excess of the limits hereinafter prescribed in the section of this Title relating to that matter; or (b) which in any case extends beyond the amount and kind of force reasonably necessary for the purpose for which force is permitted to be used.” Article 65 sets out the limits for use of force for correction by parents and others with parental authority: “A blow or other force, not in any case extending to a wound, or grievous harm, may be justified for the purpose of correction as follows – (a) a parent may correct his or her legitimate child, being under sixteen years of age, or any guardian acting as a guardian, his ward, being under sixteen years of age, for misconduct or disobedience to any lawful command; (b) a master may correct his servant or apprentice, being under sixteen years of age, for misconduct or default in his or her duty as such servant or apprentice; ... (d) a parent or guardian, or a person acting as a guardian, may delegate to any person whom he or she entrusts permanently or temporarily with the governance or custody of his or her child or ward all his or her own authority for correction including the power to determine in what cases correction ought to be inflicted; and such a delegation shall be presumed, except in so far as it may be expressly withheld, in the case of a schoolmaster or a person acting as a schoolmaster, in respect of a child or ward; (e) a person who is

authorised to inflict correction as in this section mentioned may, in any particular case, delegate to any fit person the infliction of such correction; and (f) no correction can be justified which is unreasonable in kind or in degree, regard being had to the age and physical and mental condition of the person on whom it is inflicted; and no correction can be justified in the case of a person who, by reason of tender years or otherwise, is incapable of understanding the purpose for which it is inflicted.”

The Domestic Violence Act 2010 defines domestic violence as “any controlling or abusive behaviour that harms the health, safety or well-being of a person or any child” (art. 2) but this is not interpreted as prohibiting all violent punishment in childrearing. The Act places an obligation on relevant professionals to report reasonable suspicions of domestic violence against or witnessed by a child but only “as a result of which the child suffers from injury” (art. 34). There is no prohibition of corporal punishment in the Child Protection Act 1998 or the Child (Protection and Adoption) Act 2010 (in force 2011).

A draft new Constitution is under discussion which states that every citizen has the right “not to be tortured or to suffer cruel, inhuman or degrading punishment or treatment” (arts. 6 and 11). There are no proposals to include prohibition of corporal punishment of children.¹ Following the Universal Periodic Review of Grenada in 2015, the Government stated that it could not accept the recommendations to prohibit all corporal punishment because legislation permits it.²

Alternative care settings

Corporal punishment is lawful in alternative care settings with the possible exception of child care homes. The Requirements of the Approval and Licensing of Child Care Homes, Grenada Bureau of Standards GDS 654:2002 prohibit corporal punishment of children in care institutions, but this is undermined by articles 54, 55 and 65 of the Criminal Code 1958 providing for “justifiable force” by way of “correction” (see under “Home”). The Child Protection Act 1998 is silent on the issue. The Child (Protection and Adoption) Act 2010 states that a person authorised to care for a child shall “correct and manage the behaviour of the child” and that the Minister may make regulations “regulating the management and discipline of an approved child care service” (art. 148(2)).

Day care

There is no explicit prohibition of corporal punishment in formal early childhood care or formal day care for older children, where it is lawful under the “authority to correct a child” and provisions for “justifiable force” in the Criminal Code 1958 (see under “Home”).

Schools

Corporal punishment is lawful in schools. The Education Act 2002 authorises the use of corporal punishment and punishes its infliction contrary to the specified regulations. Article 53 states: “(1) Subject to subsections (7) and (9), corporal punishment may be administered to a pupil at a school but only – (a) in accordance with section (2); and (b) if no other punishment is considered suitable or effective in the particular case. (2) Corporal punishment must only be administered – (a) by the principal or deputy principal or a teacher specifically designated by the principal for the purpose; (b)

¹ Grenada Constitution Reform Advisory Committee (2014), *Recommendations for Reform of the Constitution of Grenada*, approved in principle by the cabinet

² 5 June 2015, A/HRC/29/14/Add.1, Report of the working group: Addendum

in the principal's office or other private room in the school; (c) using an instrument prescribed by the regulations; and (d) in conformity with any written guidelines issued by the Chief Education Officer. (3) Whenever corporal punishment is administered an entry must be made in a punishment book, which is to be kept in each school for the purpose of indicating the nature and extent of the punishment and the reasons for administering it. (4) A person other than one mentioned in subsection (2)(a) who administers corporal punishment to a pupil on school premises commits an offence. Penalty: A fine of two thousand dollars. (5) A person who administers corporal punishment to a pupil on school premises contrary to subsection (2)(b), (c) or (d) commits an offence. Penalty: A fine of two thousand dollars. (6) A person other than a female who administers corporal punishment to a girl commits an offence. Penalty: A fine of two thousand dollars. (7) The Minister may by order published in the Gazette suspend or abolish corporal punishment in any type of school or in all types of schools and a person who administers corporal punishment contrary to such an order commits an offence. Penalty: A fine of two thousand dollars. (8) An order made under subsection (7) must be laid before Parliament within three months of the date of its making and is subject to annulment by a resolution of Parliament supported by the votes of a majority of the members present and voting. (9) The parent or guardian of a pupil at a school may in writing to the principal of the school state that he or she objects to corporal punishment being administered to the pupil by the school and a person who knowingly administers corporal punishment contrary to such a written objection commits an offence. Penalty: A fine of two thousand dollars."

Articles 54, 55 and 65 of the Criminal Code 1958 provide for the use of "justifiable force" by teachers for the purpose of "correction" (see under "Home").

During the Universal Periodic Review of Grenada in 2015, the Government drew attention to the piloting of the UNICEF "Child-Friendly Schools Programme" in several schools and its intention to extend this to all schools, with the aim of removing the need for corporal punishment, but gave no indication that this would be supported by law reform to prohibit corporal punishment.³

Penal institutions

Corporal punishment is lawful as a disciplinary measure in penal institutions. Article 54, 55 and 65 of the Criminal Code 1958 provide for the use of "justifiable force" for the purpose of "correction" (see under "Home"). Article 35 of the Prisons Act 1980 states that a prisoner found guilty of "mutiny or incitement to mutiny", "taking part in any assault or attack on a member of the prison staff or on a medical officer" or "aggravated or repeated assault or attack on any other prisoner" is punished by "lawful corporal punishment not exceeding twelve strokes – provided that corporal punishment shall not be imposed without the approval of the Minister". According to the Prisons Rules 1980 the prisoner must be certified medically fit to undergo the punishment (art. 89).

The Juvenile Justice Act 2012 does not explicitly prohibit corporal punishment in penal institutions. The Act has been assented to by His Excellency the Governor-General but has not yet been brought into force.⁴ In October 2014, the Governor-General announced that the Government would commence implementation of the Act,⁵ but as at February this has not happened.⁶

³ 26 January 2015, A/HRC/WG.6/21/GRD/1, National report to the UPR, para. 41

⁴ Confirmed in correspondence from Ministry of Legal Affairs, 8 May 2015

⁵ Throne Speech 2014, http://www.gov.gd/egov/news/2014/oct14/16_10_14/item_2/throne-speech-2014.html, accessed 30 November 2014

⁶ For example, see http://www.ilo.org/dyn/natlex/country_profiles.nationalLaw?p_lang=en&p_country=GRD, accessed 19 February 2016

Sentence for crime

Corporal punishment – flogging and whipping – is lawful as a sentence for crime for males under article 70 of the Criminal Code 1958. Article 75 sets out the rules for administering corporal punishment: “(1) A juvenile offender shall not be sentenced to flogging, but in lieu thereof he may be sentenced to be whipped. (2) No sentence of flogging or whipping shall be passed upon a female of any age; but, in lieu of any such sentence, the Court may sentence a female to solitary confinement or any other such additional punishment as the law for the time being permits to be inflicted on a female for an offence against the rules of the prison. (3) Flogging shall be with a cat of a pattern approved by the Governor-General and a sentence of flogging shall specify the number of strokes, which shall not exceed twelve. (4) Whipping shall be with a light rod or cane or birch of tamarind or other twigs, and a sentence of whipping shall specify the number of strokes, which shall not exceed twelve. (5) No person shall be sentenced to be flogged or whipped more than once for the same offence.” Article 78 additionally provides for the imposition of whipping on juvenile offenders in lieu of fine or imprisonment. We have yet to confirm that the Corporal Punishment (Caning) Ordinance 1960 is still in force and to see the full text.

The Juvenile Justice Act 2012 – not yet in force – explicitly prohibits corporal punishment, stating in article 64(2): “A sentence of flogging or whipping shall not be imposed on a child.” The Act defines a child as a person under 18 years of age (art. 2).

Universal Periodic Review of Grenada’s human rights record

Grenada was examined under the Universal Periodic Review process in 2010 (session 8). During the review, the Government stated that the use of corporal punishment was lawful but restricted under the Education Act 2002.⁷ The following recommendations were made:⁸

“Abolish provisions in its domestic legislation that authorize the corporal punishment of children in all places, in particular in detention facilities and in schools (France);

“Adopt a law that prohibits corporal punishment against children in all areas of life (Uruguay);

“Amend the Criminal Code to ensure equal protection of boys and girls from all forms of sexual abuse and exploitation as well as to eliminate corporal punishment provisions from existing laws and to prohibit the use of corporal punishment in places of detention and in schools (Germany)”

The Government rejected the recommendations, stating that “it could not accept them since the use of corporal punishment was permitted under the local laws of Grenada in some instances” and adding that “awareness is being raised regarding the issue and in order to encourage its non-application”.⁹

The second cycle review took place in 2015 (session 21). In its national report, the Government stated:¹⁰ “Grenada is cognisant of the call for the total abolition of corporal punishment. Currently there exists a pilot project in several schools called the ‘Child Friendly Schools Programme’ which

⁷ 16 June 2010, A/HRC/15/12, Report of the working group, para. 25

⁸ 16 June 2010, A/HRC/15/12, Report of the working group, paras. 71(61), 71(62) and 71(64)

⁹ 1 October 2010, A/HRC/15/L.10, Report of the Human Rights Council on its fifteenth session, para. 510

¹⁰ 26 January 2015, A/HRC/WG.6/21/GRD/1, National report to the UPR, para. 41

facilitates the use of positive behavior management strategies, thereby removing the need for the use of corporal punishment. The feedback from this project has been positive and it is the intention of the Ministry of Education to extend the programme to all of the schools in Grenada.” During the review, the following recommendations were made:¹¹

“Pass and implement a comprehensive law banning all corporal punishment against children (Germany);

“Take effective measures to prohibit the use of corporal punishment for minors in schools (Italy);

“Eliminate corporal punishment of children both in public and private life (Netherlands)”

The Government rejected the recommendations, stating:¹² “Grenada cannot yet accept this recommendation because the local laws in some instances permit corporal punishment. However government continues to raise awareness of the issue and to encourage its non-application.”

Recommendations by human rights treaty bodies

The Committee on the Rights of the Child has twice expressed concern at corporal punishment of children in Grenada and recommended its prohibition in all settings – in its concluding observations on the initial report in 2000¹³ and the second report in 2010.¹⁴

In 2009, the Human Rights Committee expressed concern at flogging and whipping of children in Grenada and recommended prohibition of corporal punishment in places of detention, schools and all institutions.¹⁵

Prevalence/attitudinal research in the last ten years

None identified.

¹¹ 28 January 2015, A/HRC/WG.6/21/L.11, Draft report of the working group, paras. 72(98), 72(99) and 72(100)

¹² 5 June 2015, A/HRC/29/14/Add.1, Report of the working group: Addendum

¹³ 28 February 2000, CRC/C/15/Add.121, Concluding observations on initial report, paras. 21 and 28

¹⁴ 22 June 2010, CRC/C/GRD/CO/2, Concluding observations on second report, paras. 5, 6, 32, 33, 59 and 60

¹⁵ 14 August 2009, CCPR/C/GRD/CO/1, Concluding observations in the absence of a report, para. 11