

# **Corporal punishment of children in Trinidad and Tobago: Briefing for the Universal Periodic Review, 39<sup>th</sup> session, 2021**

*From the Global Partnership to End Violence Against Children, March 2021*



This submission provides an update on the legality of corporal punishment of children in Suriname since its review in the second cycle UPR in 2016. Corporal punishment prohibition is still to be achieved in the home setting.

**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 Trinidad and Tobago, corporal punishment of children is lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child, other human rights treaty bodies and during the 2<sup>nd</sup> cycle UPR of Trinidad and Tobago in 2016.**

**We hope the Working Group will note with concern the legality of corporal punishment of children in Trinidad and Tobago. We hope states will raise the issue during the review in 2021 and make a specific recommendation that Trinidad and Tobago enact a legislation to clearly prohibit all corporal punishment of children in every setting of their lives and repeal Article 4 of the Children Act 2012, as a matter of priority.**

## **1 Review of Trinidad and Tobago in the 2<sup>nd</sup> cycle UPR (2016) and progress since**

1.1 Trinidad and Tobago was reviewed in the second cycle of the Universal Periodic Review in 2016 (session 25). The issue of corporal punishment of children was raised in the compilation of UN information and the summary of stakeholders' information.<sup>1</sup> Recommendations to prohibit corporal punishment were made.<sup>2</sup> The Government "noted" the recommendations, stating in relation to corporal punishment, "it has traditionally been accepted as a legitimate form of discipline for youngsters in the Caribbean and mainly inherited as a result of traditional lifestyles from the vast diaspora which constitutes the social and historical composition of most Caribbean countries."<sup>3</sup>

<sup>1</sup> 15 July 2016, A/HRC/33/15, Report of the working group, paras. 22, 26, 45, 52, 75

<sup>2</sup> 15 July 2016, A/HRC/33/15, Report of the working group, paras. 108(60), 108(61)

<sup>3</sup> 21 September 2016, A/HRC/33/15/Add.1, Report of the working group: Addendum, paras. 16, 17

- 1.2 Since the review, the Miscellaneous Provisions (Supreme Court of Judicature and Children) Act 2018 was enacted in October 2018. Its article 10B includes in the Children Act 2012 a new article 4(7A) which notably prohibits the use of corporal punishment on “child in the custody, care and control of a fit person.” It is unclear however whether the prohibition of corporal punishment of children in the “custody, care and control of a fit person” would apply to all corporal punishment, including parental corporal punishment.
- 1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in Trinidad and Tobago. We hope states will raise the issue during the review in 2021 and make a specific recommendation that Trinidad and Tobago enact a legislation to clearly prohibit all corporal punishment of children, however light, in every setting of their lives, as a matter of urgency.**

## 2 Legality of corporal punishment in Trinidad and Tobago

### ***Summary of current law and opportunities for achieving prohibition***

Corporal punishment of children in Trinidad and Tobago is lawful in the home. Article 4 of the Children Act 2012 confirms the right of parents, teachers and other persons having lawful control of a child or young person under the age of 16 years to administer “reasonable punishment” and excludes corporal punishment from this only for persons other than parents or guardians. Children’s human rights under the Convention on the Rights of the Child require protection from corporal punishment by all persons and the explicitly repeal of all defences such as those allowing “reasonable punishment”. The law should clearly state that no degree or kind of corporal punishment is acceptable or lawful, including by parents in the family home, and prohibition should be enacted of all corporal punishment in all settings and by all persons with authority over children.

- 2.1 **Home (lawful):** Corporal punishment is lawful in the home. Article 4 of the Children Act 2012, which came into force in May 2015, punishes cruelty to children but states in subsection 6: “Nothing in this section shall be construed as affecting the right of any parent, teacher or other person having the lawful control or charge of a child to administer reasonable punishment to such child.” Subsection 7 states that for persons other than parents this does not authorise the use of corporal punishment, implicitly confirming that parents may use corporal punishment: “Reasonable punishment referred to in subsection (6), in relation to any person other than a parent or guardian, shall not include corporal punishment.”
- 2.2 In April 2018, a Miscellaneous Provisions (Supreme Court of Judicature and Children) Bill 2018 was introduced in the House of Representatives and gazetted in October 2018. Its article 10B includes in the Children Act 2012 a new article 4(7A) as follows: “Notwithstanding subsection (7), corporal punishment shall not be used in relation to (a) a child in a Nursery, Children’s Home or Foster Home; (b) a resident in a Rehabilitation Centre; or (c) a child in the custody, care and control of a fit person.” It appears this aims to clarify the existing prohibition of corporal punishment outside of the home – it is unclear however whether the prohibition of corporal punishment of children in the “custody, care and control of a fit person” would apply to all corporal punishment, including parental corporal punishment.

**2.3 *Alternative care settings (unlawful)*:** Corporal punishment is unlawful in alternative care settings. Article 10B of the Miscellaneous Provisions (Supreme Court of Judicature and Children) Act 2018 in the Children Act 2012 a new article 4(7A) as follows: “Notwithstanding subsection (7), corporal punishment shall not be used in relation to (a) a child in a Nursery, Children’s Home or Foster Home; (b) a resident in a Rehabilitation Centre; or (c) a child in the custody, care and control of a fit person.” Article 17A of the 2018 provides that (1) A child placed at a Children’s Home shall not be subjected to (a) corporal punishment; (b) restraint or force as a form of punishment; (c) the reduction or change of diet as a form of punishment; or (d) the restriction or denial of contact with family as a form of punishment. (2) A person who contravenes subsection (1) commits an offence and is liable (a) on summary conviction to a fine five thousand dollars and imprisonment for six months; or (b) on indictment to a fine of fifty thousand dollars and to imprisonment for ten years. (3) Where a person alleges that a child in a Children’s Home has been the subject of any form of the prohibited methods of punishment referred to in subsection (1), the person shall report the matter forthwith to the Authority. (4) Where upon investigation the allegation referred to in subsection (3) is found to be true, the Authority may revoke the licence of the Manager or licensee.”

In addition, the Children’s Community Residences Regulations 2014, under the Children’s Community Residences, Foster Care and Nurseries Act 2000, explicitly prohibits corporal punishment in community residential care (art. 15): “A child placed in the care of a community residence shall not be subjected to (a) corporal punishment, (b) solitary confinement, (c) unreasonable immobilisation; or (d) unreasonable physical restraint.”

**2.4 *Day care (lawful)*:** Corporal punishment is unlawful in early childhood care and in day care for older children, under article 10B of the Miscellaneous Provisions (Supreme Court of Judicature and Children) Act 2018 which includes a new article 4(7A) in the Children Act 2012 (see under “Home”).

**2.5 *Schools (unlawful)*:** Corporal punishment is unlawful in schools under the new article 4(7A) of the revised Children Act 2012 the Children Act 2012 (see under “Home”). Prohibition had previously been included in the Children (Amendment) Act 2000 but this had never been brought into force. The Education Act 1996 makes no reference to corporal punishment. The National School Code of Conduct (2009) of the Ministry of Education states that corporal punishment should not be used.

**2.6 *Penal institutions (unlawful)*:** Corporal punishment is unlawful as a disciplinary measure in penal institutions under the new article 4(7A) of the revised Children Act 2012 (see under “Home”). It would appear that the provisions for corporal punishment in the Young Offenders (Male) Detention Regulations, pursuant to the Young Offenders Detention Act 1926, are still to be formally repealed.

**2.7 *Sentence for crime (unlawful)*:** Corporal punishment is unlawful as a sentence for crime. The Miscellaneous Provisions (Children) Act 2000 prohibited corporal punishment as a sentence for persons under 18 by repealing the Corporal Punishment (Offenders Not Over Sixteen) Act and amending the Corporal Punishment (Offenders Over Sixteen) Act to apply to offenders over the age of 18. But the Act did not repeal other laws which allowed under 18s to be sentenced to corporal punishment, including article 83(g) of the Children Act 1925 which provided for a child or young person found guilty of an offence to be ordered to be whipped: this provision would have been repealed in the Children (Amendment) Act 2000 (art. 24), but this Act was never brought into force. However, with the proclamation of article 4 (7A) of the revised Children Act 2012, all judicial corporal punishment of children is now prohibited.

### 3 Recommendations by human rights treaty bodies

- 3.1 **CRC:** The Committee on the Rights of the Child has twice expressed concern at corporal punishment of children in Trinidad and Tobago, and recommended it be explicitly prohibited in all settings – in its concluding observations on the state party’s initial report in 1997, <sup>4</sup> on the state party’s second report on 2006. <sup>5</sup>
- 3.2 **CESCR:** The Committee on Economic, Social and Cultural Rights has expressed concern at corporal punishment of children in Trinidad and Tobago, and recommended it be explicitly prohibited in all settings – in its concluding observations on the state party’s second report in 2002. <sup>6</sup>
- 3.3 **HRC:** The Human Rights Committee has three times expressed concern at corporal punishment of children in Trinidad and Tobago, and recommended it be explicitly prohibited as sentence for crime - in its concluding observations on the state party’s joint third and fourth reports in 2000. <sup>7</sup>

*Briefing prepared by End Corporal Punishment on behalf of the Global Partnership to End Violence Against Children*

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<sup>4</sup> 10 October 1997, CRC/C/15/Add.82, Concluding observations on initial report, paras.17, 23, 32 and 39

<sup>5</sup> 17 March 2006, CRC/C/TTO/CO/2, Concluding observations on second report, paras 8, 9, 39, 40 and 47

<sup>6</sup> 5 June 2002, E/C.12/1/Add.80, Concluding observations to the second report, paras. 29 and 52

<sup>7</sup> 3 November 2000, CCPR/CO/70/TTO, Concluding observations on joint third and fourth reports, para. 13