



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

JAMAICA

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 9th session, 2010

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Corporal punishment of children breaches their rights to respect for human dignity and physical integrity and to equal protection under the law. It is recognised by the Committee on the Rights of the Child and other treaty bodies, as well as by the UN Secretary General's Study on Violence against Children, as a highly significant issue, both for asserting children's status as rights holders and for the prevention of all forms of violence.

The Global Initiative to End All Corporal Punishment of Children (www.endcorporalpunishment.org) has been regularly briefing the Committee on the Rights of the Child on this issue since 2002, and 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. There is growing progress now across all regions in challenging this very common form of violence against children. But we are concerned that many States persist in ignoring treaty body recommendations to prohibit and eliminate all corporal punishment. We hope that the UPR Process will give particular attention to states' response, or lack of response, to the concluding observations from treaty bodies, on this and other key issues.

In June 2006, the Committee on the Rights of the Child adopted General Comment No. 8 on "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment", which emphasises the immediate obligation on states parties to prohibit all corporal punishment of children, including within the home. Other treaty bodies, and regional human rights mechanisms, have condemned all corporal punishment. In October 2006, the report of the UN Secretary General's Study on Violence against Children was submitted to the General Assembly. It recommends universal prohibition of all corporal punishment as a matter of priority.

Summary

This briefing describes the legality of corporal punishment of children in Jamaica despite the repeated recommendations of the Committee on the Rights of the Child and other human rights monitoring bodies. We hope the Review will highlight the importance of prohibition of corporal punishment of children, including within the family home, together with the repeal of common law defences for its use, and strongly recommend that the government enact and implement legislation to ensure complete prohibition.

1 Legality of corporal punishment in Jamaica

1.1 Corporal punishment is lawful in the **home** under the common law right to inflict “reasonable and moderate” punishment. The Child Care and Protection Act (2004) does not confirm a right to administer punishment or similar, but provisions against violence and abuse in that Act and in the Offences Against the Person Act, the Domestic Violence Act (1996) and the Constitution (1962, amended 2001) are not interpreted as prohibiting corporal punishment in childrearing.

1.2 Corporal punishment is lawful in **schools**. There is no provision for it in the Education Act 1965 or in the Education Regulations, but a teacher is justified in administering “moderate and reasonable” corporal punishment under common law (*Ryan v Fildes* [1983] 3 All E.R.517). The Government has stated its intention to abolish corporal punishment in schools and meanwhile has informed all public schools not to use it. Corporal punishment is already prohibited in “basic schools” (see below) and as at March 2010 legislation to prohibit in other schools is under discussion.

1.3 According to statistics from UNICEF on violence in the family, 87% of children aged 2-14 experienced physical punishment and/or psychological aggression in 2005-2006.¹ A questionnaire completed by almost 200 parents revealed that 47% used physical punishment in disciplining their children, including 13% beating with an object and 31% spanking; more than one in four admitted to spanking their child on 1-3 occasions during the previous week.² In research with more than 1,700 children, 87% reported experiencing minor violence at home, 85% severe violence. At school, 75% reported severe violence, 74% minor violence.³

1.4 In the **penal system**, corporal punishment is unlawful as a sentence for crime. It 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, the Corrections Act (1985, amended 1995) and the Child Care and Protection Act. As at July 2009, a bill had been drafted to repeal the Flogging Regulation Act (1903) and the Crime (Prevention of) Act (1942), both of which provide for flogging and whipping of persons under 18. Corporal punishment is unlawful as a disciplinary measure in penal institutions under article 62 of the Child Care and Protection Act, but provisions for disciplinary corporal punishment in the Flogging Regulation Act have yet to be repealed.

1.5 With regard to **alternative care settings**, corporal punishment of children up to the age of 6 in early childhood institutions (known as basic schools) is prohibited under the Act to Provide for the Regulation and Management of Early Childhood Institutions and for other Connected Matters (2005). It is prohibited in other institutions and forms of childcare (places of safety) under article 62 of the Child Care and Protection Act. Permitted disciplinary measures in children’s homes are prescribed by the Child Care and Protection (Children’s Homes) Regulations (No. 22 of 2005) and do not include corporal punishment.

¹ UNICEF (2009), *Progress for Children: A report card on child protection*, NY: UNICEF

² Samms-Vaughan, M., Williams, S. & Brown, J. (2004), *Disciplinary Practices among parents of six-year-olds in Jamaica*, University of the West Indies

³ Samms-Vaughan, M. et al. (2004), “Jamaican Children’s Experiences of Corporal Punishment at Home and School”, University of the West Indies/Ministry of Health, University of Missouri-Columbia

2 Recommendations by human rights treaty monitoring bodies

2.1 The **Committee on the Rights of the Child** has twice recommended that the Government of Jamaica enact legislation to prohibit corporal punishment of children – in 1995 in its concluding observations on the state party’s initial report (CRC/C/15/Add.32, para. 7) and more forcefully in 2003 on the second report (CRC/C/15/Add.210, paras. 33 and 49).

2.2 In 2001, the **Committee on Economic, Social and Cultural Rights** noted that the flogging of children and the use of corporal punishment in homes and schools constitutes “a serious violation by the State party of its Covenant obligations” (E/C.12/1/Add.75, Concluding observations on second report, para. 14).

2.3 The **Human Rights Committee** in 1997 expressed concern at the provisions for corporal punishment in the Flogging Regulation Act (1903) and the Crime (Prevention of) Act (1942), and recommended that both Acts be repealed (CCPR/C/79/Add.83, Concluding observations on second report, para. 15).