

**BRIEFING FROM THE GLOBAL INITIATIVE
TO END ALL CORPORAL PUNISHMENT OF CHILDREN**

**BRIEFING ON JAMAICA FOR THE COMMITTEE ON THE ELIMINATION OF
DISCRIMINATION AGAINST WOMEN
PRESESSIONAL WORKING GROUP – October 2012**

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The human rights obligation to prohibit corporal punishment of girls and boys

The legality and practice of corporal punishment of girls breaches their fundamental rights to respect for their human dignity and physical integrity, to equality under the law and to protection from all forms of violence – rights guaranteed in the Convention on the Elimination of All Forms of Discrimination Against Women and other international human rights instruments. There are strong links between corporal punishment of children – girls and boys – and all other forms of violence, including gender-based violence: as the Committee on the Rights of the Child emphasised in its General Comment No. 8 (2006),¹ addressing corporal punishment is “a key strategy for reducing and preventing all form of violence in societies”. This briefing describes the legality of corporal punishment of children in Jamaica and urges the Committee on the Elimination of Discrimination Against Women to include the issue in its examination of the state party’s implementation of the Convention.

Corporal punishment of children in Jamaica

In Jamaica, corporal punishment is lawful in the home, schools and penal system; it is unlawful in alternative care settings. The sixth-seventh state party report to the Committee on the Elimination of Discrimination Against Women (CEDAW/C/JAM/6-7) describes efforts to address violence against women and states that awareness raising has been carried out with respect to the Child Care and Protection Act in order to eliminate violence against the girl child (para. 82). However, the report makes no mention of the violence that may lawfully be inflicted on the girl child both within and outside the home.

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 the Act and in the Offences Against the Person Act (1864), the Domestic Violence Act (1996) and the Constitution (1962) are not interpreted as prohibiting corporal punishment in childrearing.

Similarly in schools, there is no provision for corporal punishment in the Education Act (1965) or in the Education Regulations (1980), but a teacher is justified in administering “moderate and reasonable” corporal punishment under common law (*Ryan v Fildes* [1983] 3 All E.R.517). In May 2011, the Government stated it was seeking law reform to abolish corporal punishment through the development of a safe school policy to be tabled in Parliament for approval.² It is not clear whether this would lead to prohibition in law, including repeal of the common law defence, or remain at the level of policy.

In the penal system, corporal punishment is unlawful as a sentence for crime and as a disciplinary measure in penal institutions, though some legislation is still to be repealed.

¹ General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment” is available at www2.ohchr.org/english/bodies/crc/comments.htm.

² 11 July 2011, CCPR/C/JAM/Q/3/Add.1, *Written reply to Human Rights Committee list of issues*, para. 83

With regard to alternative care, corporal punishment in early childhood institutions (“basic schools”) for children under 6 is prohibited under the Act to Provide for the Regulation and Management of Early Childhood Institutions and for other Connected Matters, passed in January 2005. It is prohibited in other institutions and forms of childcare (places of safety) under article 62 of the Child Care and Protection Act and in children’s homes under article 17 of the Child Care and Protection (Children’s Homes) Regulations (No. 22 of 2005).

A great deal of research has been carried out on corporal punishment of children in Jamaica, and the issue is a popular choice for media polls. For example, UNICEF’s 2010 analysis reports that in 2005-2006, 89% of children aged 2-14 experienced violent discipline (physical punishment and/or psychological aggression) in the home.³ A 2010 Government-sponsored attitudinal survey of 1,000 adults, carried out by Market Research Services Limited, revealed that the majority – regardless of socio-economic status – believe beating a child is necessary in correcting bad behaviour: 52% did not agree that acts such as pinching, hitting the head, biting, kicking and thumping a child constituted corporal punishment; 51% said they had physically punished a child.⁴ In a survey of primary school teachers reported in 2007, one in four admitted to flogging students often and one in three to pinching and thumping them.⁵ A 2006 survey for *The Gleaner* found that 60% of respondents were in favour of spanking and caning in schools.⁶ In a focus group with twenty children aged 10-18 and living in children’s homes and “places of safety” in Jamaica, a common thread that ran through their conversations was the beatings given by Housemothers and “Aunties”.⁷

Recommendations by human rights treaty monitoring bodies

The Committee on the Rights of the Child first expressed concern at corporal punishment of children in Jamaica in 1995, in its concluding observations on the initial report (CRC/C/15/Add.32, para. 7). In 2003, following examination of the second report, the Committee again expressed concern and recommended prohibition in all settings (CRC/C/15/Add.210, paras. 33, 48 and 49). In 2001, the Committee on Economic, Social and Cultural Rights stated that corporal punishment of children in homes and schools constituted a serious violation by Jamaica of its obligations under the Covenant (E/C.12/1/Add.75, Concluding observations on second report, para. 14). In 1997, the Human Rights Committee addressed corporal punishment in the penal system (CCPR/C/79/Add.83, Concluding observations on second report, para. 15).

Jamaica was examined in the first cycle of the Universal Periodic Review process in 2010. The Government supported the recommendation to prohibit corporal punishment of children in detention centres.⁸

³ UNICEF (2010), *Child Disciplinary Practices at Home: Evidence from a Range of Low- and Middle-Income Countries*, NY: UNICEF

⁴ Reported in *The Gleaner*, 17 February 2010

⁵ Reported in *Jamaica Gleaner Online*, 21 March 2007

⁶ Reported in *Jamaica Gleaner Online*, 19 August 2006

⁷ Keating, S. (2003), *A Review of Children’s Homes*

⁸ 12 November 2010, A/HRC/WG.6/9/L.12, Report of the Working Group on the Universal Periodic Review : Jamaica, para. 99(10) :

35. Regarding corporal punishment, Jamaica stated that it was forbidden in the education system and in State child-care facilities. With the support of the United Nations Children’s Fund, the Ministry of Education had begun an anti-corporal-punishment education campaign, which was also aimed at the domestic level.

99. The following recommendations enjoy the support of Jamaica, which considers that they have already been implemented or are in the process of implementation:

99.10. Ensure that the new detention centres, which will be established in accordance with the auditing mentioned in the national report, comply with international standards, in particular regarding separation of minors from adults and the prohibition of corporal punishment (Mexico);

We hope the Committee on the Elimination of Discrimination Against Women will raise the issue of corporal punishment of girls in its List of Issues for Jamaica, in particular asking what legislative and other measures have been taken by the state party to prohibit and eliminate corporal punishment, to ensure girls enjoy their rights as human beings to respect for their human dignity and physical integrity and to equal protection under the law, including in homes and schools.

In light of General Recommendation No. 19 on Violence against women adopted by the Committee on the Elimination of Discrimination Against Women in 1992, of the links between corporal punishment of children and all other forms of violence including gender-based violence, and of the Committee on the Rights of the Child's General Comment No. 8 (2006), we hope the Committee will subsequently recommend to the state party that explicit prohibition of all corporal punishment of children be enacted in relation to all settings, including the home, as a matter of urgency.

*Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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