



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

**BRIEFING ON JAMAICA FOR THE
COMMITTEE ON THE RIGHTS OF THE CHILD,
PRESESSIONAL WORKING GROUP – June 2014**

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This briefing describes the legality of corporal punishment of children in Jamaica. In light of the Committee’s General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”, the repeated recommendations to prohibit made by the Committee on the Rights of the Child and other treaty bodies, the achievement of prohibition in some settings in recent years and the importance of eradicating this form of violence given by the UN Secretary General’s Study on Violence against Children, we hope the Committee will:

- **in its List of Issues for Jamaica, raise the issue of corporal punishment of children, in particular asking what steps are being taken to ensure that all corporal punishment, without exception, is explicitly prohibited in the home and all other settings, including through repeal of the common law right to inflict “reasonable and moderate” punishment?**
- **in its concluding observations on Jamaica’s third/fourth report, recommend that legislation is enacted to explicitly prohibit all corporal punishment in all settings, including in the home and schools and including explicit repeal of the common law right to inflict “reasonable and moderate” punishment, and that prohibition is enforced through appropriate public education and professional training on positive, participatory and non-violent forms of education and childrearing.**

1 Jamaica’s report to the Committee on the Rights of the Child

- 1.1 The third/fourth report of Jamaica provides substantial reference to corporal punishment, including to legal opinion on flogging and the policy decision against corporal punishment in public institutions, the promotion of positive discipline, the achievement of prohibition in basic schools,

children's homes and other care settings, research revealing its continued use particularly in the home and in state care, and children's desire for it not to be used in schools.¹

- 1.2 We note that the report was submitted in 2011, and further law reform has been achieved since then. We are pleased to report that 2013 saw the formal repeal of all provisions for flogging in the penal system (see below, paras. 2.8 and 2.9). However, we regret that despite positive public statements by officials, education legislation which prohibits corporal punishment in schools is yet to be enacted, and corporal punishment remains lawful in the home and some forms of day care. **We hope the Committee will welcome the significant progress in enacting prohibiting legislation made since its previous examination of Jamaica in 2003 and urge the state party to complete the process of law reform by prohibiting corporal punishment in the home, schools and all forms of day care as a matter of priority.**

2 The legality of corporal punishment of children in Jamaica

- 2.1 **Summary:** Corporal punishment of children in Jamaica is unlawful in the penal system, alternative care settings and some forms of day care, but it is yet to be prohibited in the home, schools and other forms of day care.
- 2.2 **Home (lawful):** 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 1864, the Domestic Violence Act 1996 and the Constitution 1962 and its Charter of Fundamental Rights and Freedoms 2011 are not interpreted as prohibiting corporal punishment in childrearing. In 2012, Parliament passed the National Parenting Support Commission Act 2012, which aims to support implementation of the National Parenting Policy. The Act does not prohibit corporal punishment in childrearing: we have yet to establish whether or not the issue is addressed in the National Parenting Policy.
- 2.3 The Child Care and Protection Act 2004 is being reviewed. In December 2013, a draft "Policy to Amend the CCPA" was issued which includes an analysis of "gaps and anomalies" in the Act. The draft identifies article 9 as the key provision on cruelty to children but does not identify any shortcomings in this provision and makes no recommendations for its amendment.² Consultation is ongoing. **We hope the Committee will urge the state party to use this opportunity to explicitly repeal the common law defence of "reasonable and moderate" punishment and prohibit corporal punishment in the home and all settings.**
- 2.4 **Alternative care settings (unlawful):** Corporal punishment is unlawful in alternative care settings. It is prohibited in institutions and other forms of childcare in article 62 of the Child Care and Protection Act 2004: "A child in a place of safety, children's home or child in the care of a fit person shall have the following rights – ... (d) to be free from corporal punishment. ..." Permitted disciplinary measures in children's homes are prescribed by the Child Care and Protection (Children's Homes) Regulations No. 22 2005, which states in article 17: "(1) No licensee or member of staff of any children's home shall strike, cuff, slap or use any other form of physical violence towards any child who resides or is at the home. (2) No child at a children's home shall be permitted to administer any form of punishment upon any other child at the home."
- 2.5 **Day care (partial prohibition):** Corporal punishment is prohibited in early childhood institutions in the Act to Provide for the Regulation and Management of Early Childhood Institutions and for other Connected Matters 2005 (art. 16(1)): "Corporal punishment shall not be inflicted on a child in an early childhood institution." An early childhood institution is defined in the Act as "a setting

¹ 4 November 2013, CRC/C/JAM/3-4, Third/fourth state party report, paras. 36, 44, 89, 127, 157-161, 234 and box 19

² Ministry of Youth and Culture (2013), *A Policy to Amend the Child Care and Protection Act & Children's Homes Regulations*, Child Development Agency, Revised Draft dated 31 December 2013

that provides developmentally appropriate care, stimulation, education and socialisation, for children under the age of six years, including day care centres and basic schools” (art. 2). There appears to be no explicit prohibition in relation to other forms of day care, including day care for older children.

- 2.6 **Schools (lawful):** 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.³
- 2.7 The Government has stated its intention to abolish corporal punishment in schools and has informed all public schools not to use it.⁴ In 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.⁵ 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. It appears that no Bill which would prohibit corporal punishment in schools has yet been tabled in Parliament.
- 2.8 **Penal institutions (unlawful):** Corporal punishment is unlawful as a disciplinary measure in penal institutions under article 62 of the Child Care and Protection Act 2004 (see above, para. 2.4). The Flogging Regulation Act 1903, which provided for disciplinary corporal punishment, was repealed in the Law Reform (Flogging and Whipping) (Abolition) Act 2013.
- 2.9 **Sentence for crime (unlawful):** Corporal punishment 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 1978, the Corrections Act 1985 and the Child Care and Protection Act 2004. The Law Reform (Flogging and Whipping) (Abolition) Act 2013 states in article 2: “(1) The imposition of flogging or whipping as a penalty for any offence is abolished. (2) Every reference to flogging or whipping, as a penalty for an offence, appearing in any enactment, is declared to be of no effect....” The Act repeals the Flogging Regulation Act 1903 and the Crime (Prevention of) Act 1942. Provisions for whipping in the Obeah Act 1898 and the Larceny Act 1942 were repealed in the Obeah (Amendment) Act 2013 and the Larceny (Amendment) Act 2013 respectively.

3 Recommendations by human rights treaty bodies and during the UPR

- 3.1 **CRC:** The Committee on the Rights of the Child first raised the issue of protecting children from corporal punishment in Jamaica in 1995, in its concluding observations on the state party’s initial report.⁶ Following examination of the second report in 2003, the Committee again expressed its concerns, recommending that corporal punishment be prohibited “in all contexts in society” and with some emphasis on prohibiting its use in schools.⁷
- 3.2 **CESCR:** The Committee on Economic, Social and Cultural Rights expressed concern at children in Jamaica being flogged at home and in schools in its concluding observations on the state party’s initial report in 2001.⁸ In 2013, the Committee recommended that Jamaica “prohibit all forms of corporal punishment in all settings, including within the family”.⁹
- 3.3 **HRC:** In 1997, the Human Rights Committee recommended to Jamaica that the Flogging Regulation Act 1903 and the Crime (Prevention of) Act 1942, which provided for penal corporal

³ *Ryan v Fildes* [1983] 3 All E.R.517

⁴ Ministry of Education School Bulletin 94/08

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

⁶ 15 February 1995, CRC/C/15/Add.32, Concluding observations on initial report, para. 7

⁷ 4 July 2003, CRC/C/15/Add.210, Concluding observations on second report, paras. 33, 48 and 49

⁸ 30 November 2001, E/C.12/1/Add.75, Concluding observations on second report, para.14

⁹ 10 June 2013, E/C.12/JAM/CO/3-4, Concluding observations on third/fourth report, para. 20

punishment, be repealed.¹⁰ In 2011, the Committee reiterated this recommendation and also expressed concern at the legality of corporal punishment in schools and the home.¹¹ As noted above, the penal corporal punishment provisions were finally repealed in 2013 (see paras. 2.8 and 2.9).

3.4 **UPR:** Jamaica was examined in the first cycle of the UPR in 2010 (session 9). The Government accepted the recommendation to prohibit corporal punishment in detention centres.¹²

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¹⁰ 19 November 1997, CCPR/C/79/Add.83, Concluding observations on second report, para. 15

¹¹ 17 November 2011, CCPR/C/JAM/CO/3, Concluding observations on third report, para. 20

¹² 4 January 2011, A/HRC/16/14, Report of the working group, para. 99(10)