**BRIEFING ON KINGDOM OF THE NETHERLANDS FOR THE
COMMITTEE ON THE RIGHTS OF THE CHILD,
PRESESSIONAL WORKING GROUP – September 2014**

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**This briefing describes the legality of corporal punishment of children in the Kingdom of the Netherlands. 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 and the achievement of prohibition in the majority of the Kingdom, we hope the Committee will:**

* **in its List of Issues for the Netherlands, 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 in Aruba and in the special municipalities of Bonaire, Saba and St Eustatius?**
* **in its concluding observations on the Netherlands’ fourth report, welcome the prohibition of corporal punishment in the European Netherlands, Curaçao and St Maarten and recommend that legislation is enacted as a matter of urgency to prohibit all corporal punishment in the home and all other settings in Aruba and the special municipalities.**

**1 The report of the Kingdom of the Netherlands to the Committee on the Rights of the Child**

1.1 The Netherlands’ fourth report describes the achievement of prohibition of corporal punishment of children in all settings in Curaçao and states that prohibition is being considered in Aruba.[[1]](#footnote-1)

1.2 The prohibition in Curaçao reflects the prohibition in all settings in the European Netherlands in 2007. We are pleased to report that prohibition has now also been achieved in St Maarten, with the enactment of the Joint Custody Ordinance 2013 amending the Civil Code. This briefing focuses on Aruba and on the special municipalities (Dutch Caribbean), where law reform has not yet been achieved.

**2 The legality of corporal punishment of children in Aruba**

2.1 ***Summary:*** Corporal punishment of children in Aruba is unlawful as a sentence for crime and is reportedly unlawful in schools, but it is not prohibited in the home, alternative care settings, day care and penal institutions.

2.2 ***Home (lawful):***The Aruba Civil Code 2001 states that parents and others with parental authority have “the duty and right to care for and educate the minor child” and that this includes “responsibility for the emotional and physical wellbeing of the child and promoting the development of his/her personality” (art. 1:247, unofficial translation) but it does not prohibit all forms of corporal punishment. The Code is being revised but proposals early in 2012 did not include explicit prohibition of corporal punishment.

2.3 Under examination by the Committee on the Rights of the Child in 2009, the Government stated that there were “no plans for the prohibition in the foreseeable future of corporal punishment in Aruba”.[[2]](#footnote-2) However, the Government also reported that while the efforts of NGOs to advocate for prohibition in the new Criminal Code had failed, discussions were ongoing about other opportunities for adopting prohibition.[[3]](#footnote-3) In its report to the Committee Against Torture, the Government stated that the Aruban Criminal Code 1991 (amended 2006) prohibits corporal punishment in all settings in articles 313-318[[4]](#footnote-4) – but these articles punish abuse and mistreatment, with increased penalties if the victim is the perpetrator’s child: they do not explicitly prohibit all corporal punishment in the home or any other setting.

2.4 During the Universal Periodic Review of the Kingdom of the Netherlands in 2012, the Government stated that legislation to prohibit corporal punishment in the family was expected to be enacted in 2012.[[5]](#footnote-5) In its report to the Committee on the Rights of the Child in 2013, the Government states that it is currently “looking into the possibility of incorporating a ban in the Civil Code”.[[6]](#footnote-6) As at June 2014, law reform has not been achieved.

2.5 ***Alternative care settings (lawful):***Corporal punishment is lawful as for parents (see para. 2.2).

2.6 ***Day care (lawful):***Corporal punishment is lawful as for parents (see para 2.2). In 2008, the Government was reportedly introducing legislation on quality standards for childcare centres[[7]](#footnote-7) but we have no further information. The Kindergarten Ordinance is silent on the issue.

2.7 ***Schools (?unlawful):***The Government has repeatedly stated that corporal punishment is prohibited by law in schools,[[8]](#footnote-8) but we have been unable to verify this information. There is no explicit prohibition in the Primary Education Ordinance, the Secondary Education Ordinance or the National Ordinance on Compulsory Education 2011.

2.8 ***Penal institutions (lawful):***There appears to be no explicit prohibition of corporal punishment, though it is possibly included in the National Custodial Institutions Ordinance.[[9]](#footnote-9)

2.9 ***Sentence for crime (unlawful):***There is no provision for judicial corporal punishment in criminal law.

**3 The legality of corporal punishment of children in the special municipalities**

3.1 ***Summary:*** Corporal punishment of children in Bonaire, Saba and St Eustatius is unlawful in the penal system but it is not prohibited in the home, alternative care settings, day care and schools. It is envisaged that the special municipalities will eventually adopt the laws of the European Netherlands, which prohibit corporal punishment in all settings, but in the meantime the legislation of the former Netherlands Antilles is applicable.

3.2 ***Home (lawful):***The new Civil Code of the Netherlands Antilles replaced the term “parental authority” with “parental responsibility”, but did not prohibit corporal punishment. Article 247 states: “Parental responsibility encompasses the duty and the right of the parent to care for and raise his or her child. The terms ‘care for’ and ‘raise’ include care and responsibility for the psychological and physical well-being of the child and efforts to promote the development of his or her personality” (unofficial translation). Legal provisions against violence and abuse are not interpreted as prohibiting all corporal punishment in childrearing.

3.3 ***Alternative care settings (lawful):***There is no explicit prohibition of corporal punishment in alternative care settings under Netherlands Antilles.

3.4 ***Day care (lawful):***There is no explicit prohibition of corporal punishment in early childhood and in day care for older children under Netherlands Antilles.

3.5 ***Schools (lawful):***Corporal punishment has been discouraged in schools for some years as a matter of policy but there appears to be no explicit prohibition in law: prohibition is not included in the National Ordinance on Compulsory Education 2008, the National Ordinance on Secondary Education 2008, the National Ordinance on Secondary Vocational Education and Training 2008, the National Ordinance on Primary Education 2001 or the National Ordinance on Nursery Education 2004.

3.6 ***Penal institutions (lawful):***Corporal punishment is considered unlawful as a disciplinary measure in penal institutions, but there is no explicit prohibition under Netherlands Antilles law.

3.7 ***Sentence for crime (unlawful):***There is no provision for judicial corporal punishment in criminal law.

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

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1. [2013], CRC/C/NDL/4 Unedited Version, Fourth state party report, paras. 597-598, and 734-747 [↑](#footnote-ref-1)
2. 23 January 2009, CRC/C/SR.1377, Summary record of examination by the Committee on the Rights of the Child, para. 79 [↑](#footnote-ref-2)
3. 23 January 2009, CRC/C/SR.1377, Summary record of examination by the Committee on the Rights of the Child, para. 80 [↑](#footnote-ref-3)
4. Sixth report to the Committee Against Torture, as received on 3 January 2012, para. 36 [↑](#footnote-ref-4)
5. 9 July 2012, A/HRC/21/15, Report of the working group, para. 77 [↑](#footnote-ref-5)
6. [2013], CRC/C/NDL/4 Unedited Version, Fourth state party report, para. 598 [↑](#footnote-ref-6)
7. 23 July 2008, CRC/C/NLD/3, Third state party report (Netherlands) to the Committee on the Rights of the Child [↑](#footnote-ref-7)
8. 9 July 2012, A/HRC/21/5, Report of the working group, para. 77; [2013], CRC/C/NDL/4 Unedited Version, Fourth state party report, para. 598 [↑](#footnote-ref-8)
9. Official Bulletin 2005 no. 75 [↑](#footnote-ref-9)