

# Corporal punishment of children in the Bahamas: Briefing for the Universal Periodic Review, 43rd session, April/May 2023



*From the Global Partnership to End Violence Against Children,  
September 2022*

This submission provides an update on the legality of corporal punishment of children in the Bahamas since its review in the third cycle UPR in 2018. Corporal punishment prohibition is still to be fully achieved in the home, alternative care settings, day care, schools, as a sentence for crime and possibly in penal institutions.

**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 the Bahamas, corporal punishment of children is lawful, despite recommendations to prohibit it by the Committee on the Rights of the Child, other human rights treaty bodies, and during the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> cycle UPR of the Bahamas, respectively in 2008, 2013 and 2018, all rejected by the Government of the Bahamas.**

**We hope the Working Group will note with concern the legality of corporal punishment of children in the Bahamas. We hope states will raise the issue during the review next year and make a specific recommendation that the Bahamas enact a legislation to clearly prohibit all corporal punishment of children in every setting of their lives and repeal any legal defence allowing its use, as a matter of priority.**

## **1 Review of the Bahamas in the 3<sup>rd</sup> cycle UPR (2018) and progress since**

1.1 The Bahamas was reviewed in the third cycle of the Universal Periodic Review in 2018 (session 29). Recommendations to prohibit corporal punishment in all settings were

<sup>1</sup> 3 April 2018, A/HRC/38/9, Report of the working group, paras. 105(108) and 105(112)

made<sup>1</sup> and noted by the Government without comment.<sup>2</sup>

1.2 Following the review, no legislation to explicitly prohibit corporal punishment of children in all settings seems to have been adopted.

1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in the Bahamas. We hope states will raise the issue during the review in 2023 and make a specific recommendation that the Bahamas intensify its efforts to enact a law 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 the Bahamas

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

Corporal punishment of children in the Bahamas is lawful in the home, alternative care settings, day care, schools, as a sentence for crime and possibly in penal institutions.

The Penal Code 1873 (art. 110) allows a parent or guardian to “correct his or her legitimate or illegitimate child ... for misconduct or disobedience to any lawful command”. The near universal acceptance of corporal punishment in childrearing necessitates a clear statement in law that all forms of corporal punishment and other cruel and degrading treatment are unacceptable, however light, whatever the relationship between the child and adult, and whatever the setting.

2.1 **Home (lawful):** Corporal punishment is lawful in the home. Under provisions for “justifiable force”, article 110 of the Penal Code 1873 allows a parent or guardian to “correct his or her legitimate or illegitimate child ... for misconduct or disobedience to any lawful command”, and states that “no correction can be justified which is unreasonable in kind or in degree”. The Child Protection Act 2006, which came into force in 2009, recognises children’s right “to exercise, in addition to all the rights stated in this Act, all the rights set out in the United Nations Convention on the Rights of the Child”, but this is “subject to any reservations that apply to The Bahamas and with appropriate modifications to suit the circumstances that exist in The Bahamas with due regard to its laws” (art. 4c). The Act does not repeal article 110 of the Penal Code and provisions in the Act against violence and abuse are not interpreted as prohibiting corporal punishment in childrearing.

2.2 During the Universal Periodic Review of the Bahamas in 2008, the Government rejected recommendations to prohibit corporal punishment and strongly defended legislation allowing corporal punishment of children in the home and in schools.<sup>3</sup> Recommendations to prohibit corporal punishment were again made during the second cycle UPR in 2013 and again

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<sup>1</sup> 3 April 2018, A/HRC/38/9, Report of the working group, paras. 105(108) and 105(112)

<sup>2</sup> 18 June 2018, A/HRC/38/9/Add.1 Advance unedited version, Report of the working group: Addendum

<sup>3</sup> 7 January 2009, A/HRC/10/70, Report of the working group, paras. 16, 34 and 54(5)

rejected by the Government.<sup>4</sup> The Government noted recommendations to prohibit in all settings made in 2018.<sup>5</sup> Also in 2018, the Government stated that “Discussions on the appropriateness of the use of corporal punishment were still ongoing”.<sup>6</sup>

2.3 The Constitution is under review. In July 2013, the Constitution Review Commission presented its report: it does not address the issue of corporal punishment.<sup>7</sup> A constitutional referendum on provisions relating to gender equality was held in 2016 but failed. It is unclear whether the revision process is still ongoing. The Government also reported that legislation relating to family law was under review and a draft Gender Based Violence Bill was being discussed.<sup>8</sup>

2.4 **Alternative care settings (lawful):** Corporal punishment is explicitly prohibited in residential institutions by article 27 of the Residential Care Establishments Act 2003: “(1) No person shall inflict corporal punishment on a resident in a residential care establishment. (2) No person shall physically restrain another person for the purposes of inflicting punishment on that person in a residential care establishment....” But corporal punishment is lawful in other alternative care settings, including foster care, under the provisions for “justifiable force” in article 110 of the Penal Code 1873 (see under “Home”).

2.5 **Day care (lawful):** Corporal punishment is prohibited in some but not all day care settings. It is unlawful in day care centres and pre-schools under the Early Childhood Care (National Standards) Regulations 2015, which are provided for by the Early Childhood Care Act 2004. The Regulations state that day-care centres and pre-schools must comply with the National Standards for Day-Care Centres and Pre-schools, according to which “staff members do not inflict any form of corporal punishment on children” and “physical restraint is not used for the purpose of inflicting punishment”. Corporal punishment is lawful in all other day care settings under the provisions for “justifiable force” in article 110 of the Penal Code 1873 (see under “Home”).

2.6 **Schools (lawful):** Corporal punishment is lawful in schools under article 110 of the Penal Code 1873 (see under “Home”). The Child Protection Act 2006 does not prohibit corporal punishment in schools. In defending the legality of such punishment during the Universal Periodic Review in 2008, the Government stated that corporal punishment may only be inflicted by a principal, vice-principal, or senior master/mistress, following guidelines set out by the Department of Education.<sup>9</sup> The Education Act is under review.<sup>10</sup>

2.7 **Penal institutions (?lawful):** Corporal punishment is unlawful in prisons; it appears to be unlawful in other institutions accommodating children in conflict with the law but some legislation is possibly still to be repealed.

Act No. 12 of 1984 inserted article 118 into the Penal Code 1873: “Notwithstanding anything to the contrary in this, or any other law, no form of corporal punishment shall be imposed as a penalty under any law in respect to the commission of a criminal or disciplinary offence.” However, we have yet to confirm that the abolition overrides all laws authorising such punishment. There is no explicit prohibition of corporal punishment in institutions in the Child

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<sup>4</sup> 30 May 2013, A/HRC/23/8/Add.1, Report of the working group: Addendum, paras. 92(64), 92(65), 92(66), 92(67) and 92(68)

<sup>5</sup> 18 June 2018, A/HRC/38/9/Add.1 Advance unedited version, Report of the working group: Addendum

<sup>6</sup> 1 November 2018, CEDAW/C/SR.1636, Summary records of 1636<sup>th</sup> meeting, para. 27

<sup>7</sup> Government of the Bahamas (2013), *Report of the Constitutional Commission into a Review of The Bahamas Constitution*, July 2013, Nassau, Bahamas

<sup>8</sup> 18 December 2017, A/HRC/WG.6/29/BHS/1, National report, paras. 44 and 63

<sup>9</sup> 7 January 2009, A/HRC/10/70, Report of the working group, para. 16

<sup>10</sup> 9 July 2018, CEDAW/C/BHS/Q/6/Add.1, Reply to list of issues, para. 72

Protection Act 2006. Rules enacted under the now repealed Children and Young Persons (Administration of Justice) Act 1947 possibly remain in force pending the construction of new rules, and these allow for disciplinary corporal punishment in penal institutions for girls and boys, including under the Children and Young Persons (Industrial School for Girls) Rules 1961 (Rule 18) and the Children and Young Persons (Industrial School for Boys) Rules 1947 (Rule 44).

The Correctional Services Act 2014 makes no provision for corporal punishment as a disciplinary measure, though it does not explicitly prohibit it. The Act repeals the Prisons Act 1943 which had provided for corporal punishment as a disciplinary measure in prisons – up to 24 lashes with a cat or rod for males over 16 years of age, up to 18 lashes with a rod for males under 16 (arts. 14, 15 and 16).

2.8 **Sentence for crime (lawful):** Corporal punishment appears to be lawful as a sentence for crime but the law is unclear. Until 1984, corporal punishment was specified in the Penal Code as punishment for a number of crimes. Act No. 12 of 1984 repealed the corporal punishment provisions and inserted article 118 which states: “Notwithstanding anything to the contrary in this, or any other law, no form of corporal punishment shall be imposed as a penalty under any law in respect to the commission of a criminal or disciplinary offence.”

2.9 The Child Protection Act 2006 does not include corporal punishment among the measures that a juvenile court may order for juveniles convicted of an offence, but it does not explicitly prohibit it. The Act states in article 120(5) that where a child or young person is charged with certain offences (including homicide, treason, causing harm, arson, use of explosives, and robbery) or where the charge relates to other indictable offences and the court or the young person does not agree to hold the trial in a juvenile court, then the case must be remitted to a magistrate and dealt with under the Magistrates Act 1896, the Penal Code 1873 and the Criminal Procedure Code Act 1968. In such cases, it seems that child offenders may be sentenced to be whipped. During the Universal Periodic Review of the Bahamas in 2008, the Government stated its intention to repeal legislation authorising judicial corporal punishment.<sup>11</sup> This has not yet been achieved.

### 3 Recommendations by human rights treaty bodies

3.1 **CRC:** In 2005, in its concluding observations on the state party’s initial report,<sup>12</sup> the Committee on the Rights of the Child recommended that the Bahamas expressly prohibit corporal punishment by law in the family, schools and other institutions.

3.2 **CEDAW:** In its concluding observations on the state party’s sixth report in 2018,<sup>13</sup> the Committee on the Elimination of Discrimination Against Women recommended that the Government “prohibit, in law and practice, the use of corporal punishment of girls in schools and at home and strengthen awareness-raising programmes, to promote non-violent forms of child-rearing and discipline”.

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<sup>11</sup> 7 January 2009, A/HRC/10/70, Report of the working group, paras. 16 and 34

<sup>12</sup> 31 March 2005, CRC/C/15/Add.253, Concluding observations on initial report, paras. 35 and 36

<sup>13</sup> 9 November 2018, CEDAW/C/BHS/CO/6 Advance unedited version, Concluding observations on sixth report, paras. 23 and

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