

# **DOMINICA**

## **BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 19<sup>th</sup> session, 2014**

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

**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 Dominica, corporal punishment of children is lawful, despite the recommendations to prohibit it by the Committee on the Rights of the Child and during the first cycle UPR in 2009 (which the Government rejected).**

**We hope the Working Group will note with concern the legality of corporal punishment in Dominica. We hope states will raise the issue during the review in 2014 and make a specific recommendation that legislation is enacted in Dominica to explicitly prohibit corporal punishment of children in all settings, including the home, as a matter of priority.**

### **1 The initial review of Dominica by the Human Rights Council (2009)**

1.1 Dominica was reviewed in the first cycle of the Universal Periodic Review in 2009 (session 6). The issue of corporal punishment was included in the compilation of UN information<sup>1</sup> and in the summary of stakeholders' information<sup>2</sup> and was raised in advance questions.<sup>3</sup> The following recommendations were made:<sup>4</sup>

“Prohibit corporal punishment of children in all settings (Slovenia), to remove all provisions from laws that allow corporal punishment and explicitly prohibit corporal punishment by law in the family, schools and other institutions (Italy) as a method to discipline children (Chile)”

1.2 The Government rejected the recommendations, describing the law in relation to school corporal punishment and stating that there was no intention to reform the law: “While

<sup>1</sup> 6 August 2009, A/HRC/WG.6/6/DMA/2, Compilation of UN information, paras. 19 and 42

<sup>2</sup> 21 July 2009, A/HRC/WG.6/6/DMA/3, Summary of stakeholders' information, paras. 6, 7 and 8

<sup>3</sup> Advance Questions by Argentina and Denmark.

<sup>4</sup> 4 January 2010, A/HRC/13/12, Report of the working group, para. 71(4)

recognizing the position taken in the Working Group, Dominica was not prepared to remove corporal punishment from its statute books.”<sup>5</sup>

- 1.3 The obligation under the Convention on the Rights of the Child and other human rights instruments to prohibit and eliminate all corporal punishment is one that is frequently ignored or evaded by governments. In a minority of states, governments openly resist law reform in the face of growing pressure from human rights bodies and the UPR to meet their obligations in this respect, as Dominica has done to date. But prohibiting all corporal punishment of children is not an optional task that states can adopt or reject at will; it is an immediate and unqualified obligation under human rights law. The persisting legality of corporal punishment of children in Dominica – in the home, schools, penal system and care settings – is a serious violation of children’s rights.
- 1.4 The near universal acceptance of a degree of violent punishment in childhood and deeply held views that parents and other adults have a “right” to physically punish children can challenge efforts to achieve prohibition. This situation also means that corporal punishment – at least to some degree – is typically not readily perceived as a violent act in the same way as, for example, sexual and other socially unacceptable forms of violence. **It is for these reasons that we respectfully urge members of the Working Group to specifically recommend prohibition of corporal punishment in the review of Dominica.**

## **2 Legality of corporal punishment in Dominica**

- 2.1 **Home (lawful):** Article 5 of the Children and Young Persons Act 1970 confirms “the right of any parent, teacher or other person having the lawful control or charge of a juvenile to administer reasonable punishment to him”. Provisions against violence and abuse in that Act and in the Protection Against Domestic Violence Act 2001, the Offences Against the Person Act 1873 and the Small Charges Act are not interpreted as prohibiting corporal punishment in childrearing. In 2009, the Government reported to the UPR that it was participating in the OECS Family Law and Domestic Violence Legislative Reform Project, which seeks to bring family law into conformity with CEDAW and CRC.<sup>6</sup> There are no indications that the Government intends to use this opportunity to enact prohibition of corporal punishment.
- 2.2 **Schools (lawful):** Corporal punishment is lawful in schools under the right of teachers “to administer reasonable punishment” in article 5 of the Children and Young Persons Act 1970 and article 49 of the Education Act 1997: “Corporal punishment may be administered where no other punishment is considered suitable or effective, and only by the principal, deputy principal or any teacher appointed in writing by the principal for that purpose, in a manner which is in conformity with the guidelines issued in writing by the Chief Education Officer.”
- 2.3 **Penal system – sentence for crime (lawful):** The Juvenile Offenders’ Punishment Act 1881 provides for any High Court Judge to order a boy under 14 who has been convicted of any offence “to be as soon as practicable privately whipped”, in lieu of or in addition to any other punishment (article 2). The whipping shall be up to 12 strokes with a tamarind rod, in the presence of a police officer and, if desired, the boy’s parent/guardian; a medical practitioner should certify the boy fit to receive the punishment but this requirement can

<sup>5</sup> 8 February 2011, A/HRC/13/56, Report of the Human Rights Council on its thirteenth session, paras. 586 and 587

<sup>6</sup> 3 December 2009, A/HRC/WG.6/6/DMA/1, National report to the UPR, para. 31

be dispensed with if no medical practitioner is available within 24 hours (article 3). Under the Corporal Punishment Act 1987, a court may sentence a boy under 16, convicted of any offence, to corporal punishment in lieu of or in addition to any other punishment; if the sentence is passed by a Magistrate's Court it must be confirmed in the High Court before being carried out (article 3). The High Court may pass a sentence of corporal punishment on any male convicted of rape, sexual intercourse with a girl under 14, or attempting or aiding these offences (articles 4 and 5). It should be inflicted as soon as possible, up to 12 strokes on the buttocks for a boy under 16, 24 for older males, using a tamarind rod for those under 18 (articles 7 and 8). The flogging should be carried out in the prison; for boys under 16, it could be administered in a police station; a medical officer must certify that the person is fit to undergo the punishment (article 9). On ratifying the American Convention on Human Rights, Dominica made a reservation on article 5 (the right to humane treatment), stating that it "should not be read as prohibiting corporal punishment administered in accordance with the Corporal Punishment Act of Dominica or the Juvenile Offenders Punishment Act".

- 2.4 The Children and Young Persons Act 1970 does not specifically mention corporal punishment as a sanction for juvenile offenders but refers to the Magistrate's Code of Procedure Act 1961, which allows a magistrate to order the "private whipping" of a male child or young person (article 100). The Offences Against the Person Act 1873 also provides for "private whipping" (article 71).
- 2.5 Under examination by the Committee on the Rights of the Child in 2004, the Government reported that Dominica was engaged in consultation on abolition of corporal punishment, but that this would be a long process and in the meantime imposition of corporal punishment was legally regulated.<sup>7</sup> It appears that judicial whipping remains on the statute book.
- 2.6 ***Penal system – disciplinary measure in penal institutions (lawful)***: Under the Children and Young Persons Act 1970, a juvenile in conflict with the law may be detained in a government training school or a prison: government training schools are governed by the Children and Young Persons Welfare Act 1972 and the Government Training School Act 1970, neither of which prohibits corporal punishment. Young people under 18 may also be sentenced to imprisonment: article 33 of the Prisons Act 1877 and articles 47 and 48 of the Prison Rules 1956 allow visiting justices to order corporal punishment for breaches of discipline.
- 2.7 ***Alternative care settings (partial prohibition)***: The Education (Early Childhood Education) Regulations 2003 explicitly prohibit corporal punishment in early childhood education facilities (article 54). However, corporal punishment is lawful in other care settings under the right of persons with lawful control of a juvenile "to administer reasonable punishment" in article 5 of the Children and Young Persons Act 1970.

### **3 Recommendations by human rights treaty monitoring bodies**

- 3.1 **CRC**: In 2004, the Committee on the Rights of the Child recommended the repeal of all laws authorising corporal punishment of children in Dominica together with explicit

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<sup>7</sup> 10 August 2004, CRC/C/SR.963, Summary record of 963<sup>rd</sup> meeting, para. 36

prohibition of corporal punishment in the family, schools and institutions and abolition of whipping as a sentence for crime.<sup>8</sup>

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*The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, 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, and in 2011 began briefing the Committee on the Rights of Persons with Disabilities.*

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<sup>8</sup> 30 June 2004, CRC/C/15/Add.238, Concluding observations on initial report, paras. 28, 29, 46 and 48