

Corporal punishment of children in Guyana: Briefing for the Universal Periodic Review, 35th session, January 2020



GLOBAL INITIATIVE TO
**End All Corporal
Punishment of Children**

From the Global Initiative to End All Corporal Punishment of Children, July 2019

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 Guyana, corporal punishment of children is still lawful despite repeated recommendations to prohibit it by the Committee on the Rights of the Child, the Committee Against Torture, the Human Rights Committee and the Committee on the Elimination of Discrimination against Women.

We hope the Working Group will note with concern the legality of corporal punishment of children in Guyana. We hope states will raise the issue during the review in 2020 and make a specific recommendation that Guyana draft and enact legislation as a matter of priority to explicitly prohibit all corporal punishment of children, however light, in all settings including the home.

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, some alternative care settings, some day care, and schools.

Section 9(a) of the Criminal Law (Offences) Act 1894 and section 7 of the Summary Jurisdiction (Offences) Act 1894 confirm the right of guardians and teachers “to administer reasonable and proper punishment”. These provisions should be repealed, and prohibition enacted of all corporal punishment in all settings, including the family home and all settings where adults have authority over children.

Alternative care settings – Corporal punishment by caregivers is prohibited in childcare provision for children under 12 except for parents/guardians, persons with parental responsibility, persons with de facto custody and babysitters. Legislation should be enacted to prohibit corporal punishment of children by these persons and to protect children over the age of 12.

Day care – Corporal punishment is prohibited in some day care for children under 12, except for babysitters. Prohibition should be enacted in relation to all providers of day care for young children and for children over 12.

Schools – Prohibition of corporal punishment should be enacted in relation to all schools, public and private.

Penal institutions – Corporal punishment is unlawful in penal institutions for juveniles but clarification is required that children under 18 cannot be sent to adult facilities.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. Section 9(a) of the Criminal Law (Offences) Act 1894 confirms “the right of the guardian or teacher of a child to administer reasonable and proper punishment to the child”. A similar provision is made in section 7 of the Summary Jurisdiction (Offences) Act 1894. Provisions against violence and abuse in domestic legislation do not prohibit all corporal punishment in childrearing.

In reporting to the Committee on the Rights of the Child in January 2013, the Government stated that debate on the abolition of corporal punishment in Guyana is ongoing: corporal punishment “remains culturally acceptable in many settings such as the home, schools and alternative care settings”.¹ In January 2016, the President of Guyana David Granger reportedly spoke out against corporal punishment of children, including in the home, stating that the notion of “spare the rod and spoil the child” is “ancient and backward” and that “we need to remove all forms of corporal punishment from the school and in the home”.²

Alternative care settings

Corporal punishment is prohibited in childcare provision for children under 12 in section 15 of the

¹ January 2013, CRC/C/GUY/Q/2-4/Add.2, Reply to list of issues, para. 95

² Quoted in *Kaieteur News Online*, 24 January 2016, www.kaieteurnews.com/2016/01/24/no-place-for-corporal-punishment-in-guyana-president-granger/, accessed 10 February 2016

Childcare and Development Services Act 2011: “Notwithstanding anything contained in any written law, a caregiver or sponsor shall ensure that no child being cared for by the caregiver or sponsor or any person authorised or employed by them is subjected to (a) any form of corporal punishment, (b) any abuse of any nature whatsoever.” A “childcare service” is defined as “pre-school care or a service providing care, development and education assistance including early stimulation, such as, play group, home care, day care or night care services or a combination of both or a safe home, to one or more children under twelve years by a caregiver or sponsor, in the absence of any parent or guardian (i) for a fee or reward; or (ii) if any parent or guardian uses the services or residential care facility provided by any sponsor, that service or facility” (s. 2). The Act defines a “caregiver” as a person offering childcare services “to one or more children under the age of twelve, for a fee or reward” and “for a period, or the total of the periods, exceeding two hours during a day or a night” (s. 4(1)); parents/guardians, persons with parental responsibility, persons with de facto custody and babysitters are not regarded as caregivers for the purposes of the Act (s. 4(2)). For these persons, and in alternative care settings for children aged 12 and over, corporal punishment is lawful under the right “to administer reasonable and proper punishment” in section 9(a) of the Criminal Law (Offences) Act 1894 and section 7 of the Summary Jurisdiction (Offences) Act 1894.

Day care

Corporal punishment is prohibited in some day care for children under 12 by section 15 of the Child Care and Development Services Act 2011 (see under “Alternative care settings”); the prohibition does not apply to babysitters (s. 4), and there is no prohibition in relation to day care for older children. In the absence of prohibition, corporal punishment is lawful under the right “to administer reasonable and proper punishment” in section 9(a) of the Criminal Law (Offences) Act 1894 and section 7 of the Summary Jurisdiction (Offences) Act 1894.

Schools

Corporal punishment is lawful in schools under section 9(a) of the Criminal Law (Offences) Act 1894 and section 7 of the Summary Jurisdiction (Offences) Act 1894. The Education Act 1877 makes no reference to corporal punishment. Ministerial Guidelines (2002) state that corporal punishment must be administered only by the head teacher, deputy head teacher or designated senior teacher and only for certain offences (including fighting and use of indecent language); boys should be punished on their hands or buttocks, girls on their hands; the punishments should be inflicted with a cane or strap no longer than 24 inches and not in the presence of other learners, and all punishments should be recorded in the Misdemeanours Book.

In 2012, the Ministry of Education completed a National Consultation on the draft Education Bill 2008, including the issue of prohibiting corporal punishment in schools. But the Education Bill as tabled in the National Assembly in June 2014 does not prohibit corporal punishment in schools. Schedule III of the Bill – Manual of Guidelines for the Maintenance of Order and Discipline in Schools – does not include corporal punishment among the disciplinary measures addressed, and section 49 of the Bill states that “the principal and staff of a public school shall ensure that order and discipline prevail in accordance with the Manual”. However, the Manual does not explicitly prohibit corporal punishment, and section 123 of the Bill provides for the Minister to make regulations in relation to corporal punishment for public and private schools: “(1) The Minister may, on the advice of the Advisory Committee and subject to negative resolution of the National Assembly, make regulations for the proper carrying out of the objectives under this Act. (2) Without limiting the generality of subsection (1), the Minister may, on the advice of the Advisory Committee make regulations – (a) in respect of public educational institutions – ... (ii) concerning the discipline of students, including the

instrument, if any, that may be used for corporal punishment.... (b) in respect of the management of private educational institutions and in particular in respect of – ... (v) the discipline of students and instruments that may be used for corporal punishment....” The Bill passed its first reading in Parliament on 19 June 2014, but as at June 2019 had not progressed further.³

The Government reported to the Universal Periodic Review in 2015 that during consultation on the issue by the Parliamentary Special Select Committee (PSSC) “it became evident ... that the abolition of corporal punishment in schools remains an issue on which sections of society are staunchly and equally divided; there has been no general consensus in civil society or in the PSSC on the way forward thus far”.⁴ Further consultations were to be held.⁵ In January 2016, then Minister of Education Dr Rupert Roopnaraine was reported as stating that the abolition of corporal punishment in schools was “high on his agenda”.⁶

Penal institutions

Corporal punishment is unlawful as a disciplinary measure in penal institutions. Section 41 of the Juvenile Justice Act 2018 prohibits the imprisonment of children or juveniles. Section 92 includes prohibition of corporal punishment in facilities for the custody, education and rehabilitation of juvenile offenders – including open residential facilities, secure residential facilities, temporary holding facilities and half-way houses: “(1) Any juvenile who breaches the rules of a facility may be disciplined on the instruction of the Principal of the facility in a way that is both reasonable and within the prescribed limits ... (3) The following forms of discipline are prohibited – (a) corporal punishment or any other form of physical violence; (b) deprivation of food or drink; (c) treatment that is cruel, inhuman or degrading; (d) treatment that could reasonably be expected to be detrimental to the physical, psychological or emotional wellbeing of the juvenile; or (e) deprivation of access to educational instruction.”

Section 61 regulates juveniles’ transfer to adult facilities, stating that, on application of the Director of Juvenile Justice made before the juvenile turns 18, the court may order that the juvenile serve “the remainder of the sentence in a correctional facility for adults” if that remainder is twelve months or more and it is considered to be “in the best interests of the juvenile or in the public interest”. Laws applicable to adult prisoners and offenders – including section 37 of the Prison Act 1957 which allows flogging – would then apply. Clarification is required to confirm that juveniles cannot be transferred before they turn 18.

Sentence for crime

Corporal punishment is unlawful as a sentence for a crime. The Juvenile Justice Act 2018, which repeals the Juvenile Offenders Act 1931 and the Training Schools Act 1907, states in its section 15 that “notwithstanding any other law but subject to the Constitution”, juveniles “shall be dealt with as provided for in this Act”. Juveniles are children between fourteen and eighteen years; the age of criminal responsibility is fourteen. Part VI of the Act (“Sentencing”) makes no provision for judicial

³ <http://parliament.gov.gy/chamber-business/bill-status/education-bill-2014/>, accessed 6 April 2018

⁴ 19 January 2015, A/HRC/WG.6/21/GUY/1, National report to the UPR, paras. 48 and 49

⁵ 2 July 2015, A/HRC/29/16/Add.1, Report of the working group: Addendum

⁶ *Kaieteur News Online*, 24 January 2016, www.kaieteurnews.com/2016/01/24/no-place-for-corporal-punishment-in-guyana-president-granger/, accessed 10 February 2016

corporal punishment, although it does not explicitly prohibit it. Article 141 of the Constitution 1980 states that no person should be subjected to torture or inhuman or degrading punishment. The Whipping and Flogging Act 1922 is still to be formally repealed.

Universal Periodic Review of Guyana’s human rights record

Guyana was examined in the first cycle of the Universal Periodic Review process in 2010 (session 8). The following recommendations were made:⁷

“Implement legislative measures to prohibit all forms of corporal punishment against minors (Spain);

“Adopt a law prohibiting corporal punishment against children in all spheres (Uruguay);

“Expressly prohibit in law corporal punishment in the family, schools and other institutions (Chile);

“Prohibit corporal punishment, especially in schools, in accordance with article 19 of the Convention on the Rights of the Child (Slovenia);

“Eliminate all forms of corporal punishment with a view to abolishing them (Brazil);

“Forbid corporal punishment of children (Brazil);

“Take all necessary measures to guarantee that the mandatory limits for pre-trial detention are respected in practice, and seek international assistance to address the issue of corporal punishment as well as the one of street children (Germany)”

The Government did not clearly accept or reject the recommendations on corporal punishment. It drew attention to reforms underway in the penal system (amendments to the Training Schools Act and the Juvenile Offenders Act, see above) but defended the use of corporal punishment in other settings.⁸

The second cycle review took place in 2015 (session 21). In its national report, the Government drew attention to the prohibition of corporal punishment in the Training School (Amendment) Act 2010, the Juvenile Offenders (Amendment) Act 2010 and the Child Care and Development Services Act 2011, though did not disclose that these laws did not comprehensively prohibit corporal punishment in the relevant settings.⁹ The Government also noted that the Ministry of Education had carried out public consultations on the abolition of corporal punishment at school, but did not refer to the Education Bill, which does not prohibit corporal punishment.¹⁰ During the review the following recommendations were made:¹¹

“Intensify efforts to reduce the use of corporal punishment against minors in state-run institutions through awareness-raising campaigns and training in non-violent forms of discipline (Canada);

⁷ 21 June 2010, A/HRC/15/14, Report of the working group, paras. 70(36), 70(37), 70(38), 70(39), 70(40), 70(41) and 70(42)

⁸ 21 June 2010, A/HRC/WG.6/8/L.13, Report of the working group, paras. 70(36)-(42); 13 September 2010, A/HRC/15/14/Add.1, Report of the working group: Addendum, paras. 9, 53 and 54; 1 October 2010, A/HRC/15/L.10, Report of the Human Rights Council on its fifteenth session, para. 576

⁹ 19 January 2015, A/HRC/WG.6/21/GUY/1, National report to the UPR, paras. 46 and 47, 48 and 49

¹⁰ *ibid.*, para. 9

¹¹ 13 April 2015, A/HRC/29/16, Report of the working group, paras. 130(48), 132(51), 132(52), 132(53), 132(54) and 132(55)

“Repeal corporal punishment of children (Kuwait);

“Eliminate corporal punishment of children both in public and private life (Netherlands);

“Prohibit corporal punishment, especially in schools, in accordance with article 19 on the Convention on the Rights of the Child, as previously recommended (Slovenia);

“Develop a comprehensive national strategy and adopt a national coordinating framework to ban all corporal punishment against children (Germany);

“Take all the necessary measures including law reform initiatives to eliminate violence against children in all its forms, including corporal punishment (Namibia)”

The Government accepted the first of these recommendations, but did not clearly accept or reject the recommendations to prohibit corporal punishment, stating that further consultations on the issue will be held.¹²

Recommendations by human rights treaty bodies

The Committee on the Rights of the Child has twice expressed concern at corporal punishment in the family and other settings in Guyana and has recommended prohibition – in 2004¹³ and in 2013.¹⁴

In 2006, the Committee Against Torture recommended law reform to prohibit all corporal punishment of prisoners.¹⁵

In 2000, the Human Rights Committee expressed concern at corporal punishment and recommended legal and other measures to eliminate it.¹⁶

In 2012, the Committee on the Elimination of Discrimination Against Women recommended explicit prohibition of corporal punishment in all settings in Guyana, including families, schools and other education settings.¹⁷

Prevalence/attitudinal research in the last ten years

Research conducted in 2014 as part of UNICEF’s Multiple Indicator Cluster Surveys (MICS) programme, found on average 70% of 1-14 year-old children experienced some form of violent discipline (psychological aggression and/or physical punishment) in the month prior to the survey. On average 58% of children experienced psychological aggression, 51% physical punishment and 6% severe physical punishment (hit or slapped on the face, head or ears, or hit repeatedly). Physical punishment of children was least common for children aged 10-14 (42%) than those aged 1-2 (51%) or 3-9 (58%); it was least common in Region 1 (33%) and most common in Regions 7 and 8 (63%). Overall, only 20% of children experienced only non-violent forms of discipline.

(Bureau of Statistics, Ministry of Public Health & UNICEF (2015), Guyana Multiple Indicator Cluster Survey 2014, Final Report, Georgetown, Guyana: Bureau of Statistics, Ministry of Public Health & UNICEF)

¹² 2 July 2015, A/HRC/29/16/Add.1, Report of the working group: Addendum

¹³ 26 February 2004, CRC/C/15/Add.224, Concluding observations on initial report, paras. 31 and 32

¹⁴ 18 June 2013, CRC/C/GUY/CO/2-4, Concluding observations on second to fourth report, paras. 6, 7, 32 and 33

¹⁵ 7 December 2006, CAT/C/GUY/CO/1, Concluding observations on initial report, para. 13

¹⁶ 25 April 2000, CCPR/C/79/Add.121, Concluding observations on second report, para. 12

¹⁷ 7 August 2012, CEDAW/C/GUY/CO/7-8, Concluding observations on seventh/eighth report, paras. 28 and 29

According to UNICEF statistics collected between 2005 and 2012, 86% of children aged 2-14 experienced violent “discipline” (physical punishment and/or psychological aggression) in the home in the month prior to the survey (87% of boys and 85% of girls).

(UNICEF (2014), *The State of the World’s Children 2014 in Numbers: Every Child Counts*, NY: UNICEF)