**BRIEFING ON DOMINICA FOR THE HUMAN RIGHTS COMMITTEE, COUNTRY REPORT TASK FORCE, 125th session (March 2019)**

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

**This briefing describes the legality of corporal punishment of children in Dominica. In light of the obligation under international human rights treaties to prohibit all corporal punishment of children, the global commitment to ending violence against children – including corporal punishment – in the context of the 2030 Agenda for Sustainable Development, the recommendations of the UN Secretary General’s Study on Violence against Children, and those made to Dominica by the Committee on the Rights of the Child and during the Universal Periodic Review, we hope the Human Rights Committee will:**

* **raise the issue of corporal punishment of children in its List of Issues in the absence of a report for Dominica, in particular asking what steps are being taken to enact legislation explicitly prohibiting all corporal punishment of children, in all settings including in the home and as a sentence for a crime; and,**
* **in its concluding observations on Dominica’s second state party report, recommend that legislation is immediately drafted and enacted to explicitly prohibit all corporal punishment of children, in all settings including the home and as a sentence for a crime, and repeal all legal defences for its use.**

**1 The legality of corporal punishment of children in Dominica**

1.1 ***Summary:*** Corporal punishment of children in Dominica is lawful in almost every setting of children’s lives, except for early childhood education facilities.

1.2 ***Home (lawful):*** Corporal punishment of children is lawful in the home. 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 reporting to the Committee on the Rights of the Child in 2003, the Government stated that a Families and Children Act and a Domestic Violence Act were being considered for adoption;[[1]](#footnote-1) in 2004, the Government reported to the Committee that efforts were being made to harmonise national legislation with the Convention on the Rights of the Child and discussions were under way on the development of a Code on the Rights of the Child.[[2]](#footnote-2) Neither of these laws appear to have been enacted.

1.3 As part of an initiative to reform child laws in the region, the Organisation of Eastern Caribbean States (OECS) circulated a number of draft laws for consideration by member states, including Dominica. As originally drafted, the Children (Care and Adoption) Bill 2007 would protect children from “abuse” but not prohibit corporal punishment. It would define parental responsibility with reference to the duties, authority, rights and obligations “which by any law in force in [Dominica], the parent of a child has in relation to that child” (art. 2). In 2009, the Government reported to the Universal Periodic Review 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, but made no reference to any proposals to prohibit corporal punishment.[[3]](#footnote-3)

1.4 During the Universal Periodic Review of Dominica in 2014, the Government stated that its view “was that the country should move away from the use of corporal punishment as far as possible, and that it would continue to work towards that goal”.[[4]](#footnote-4) However, it did not respond clearly to recommendations made during the review to prohibit corporal punishment.[[5]](#footnote-5)

1.5 ***Alternative care settings (lawful)***: Corporal punishment is lawful in alternative 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. It would not be explicitly prohibited by the OECS draft Children (Care and Adoption) Bill, which in its original draft stated that a person authorised to provide care for a child shall “correct and manage the behaviour of the child” (art. 29(c)) and authorised the Minister to make regulations for “the management and discipline of an approved child care service” (art. 140(2)(m)).

1.6 ***Day care (partially lawful)***: Corporal punishment is prohibited in early childhood education facilities in the Education (Early Childhood Education) Regulations 2003, article 54 of which states: “A permit holder operating a facility shall ensure - … (c) that no child while attending the facility is subjected to emotional, physical or sexual abuse or to physical or emotional neglect or to shaking, shoving, hitting, spanking or any other form of corporal punishment.”

1.7 Corporal punishment is lawful in other early childhood care (nurseries, crèches, children’s centres, etc) and in day care for older children (day centres, after-school childcare, childminding) 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. It would not be explicitly prohibited by the OECS draft Children (Care and Adoption) Bill.

1.8 ***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, which states: “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.” Article 50 provides for the Minister to abolish corporal punishment in public and private schools by Order, but no abolition order has been made. The Education Regulations 2011 set out how corporal punishment should be provided for in schools. It states that a school’s student disciplinary policy should contain guidelines based on a number of principles, including “that corporal punishment, suspension and expulsion are acceptable components of discipline administered in the school” (art. 33(b)(iii)).

1.9 During the Universal Periodic Review of Dominica in 2014, the Government reported that there are several guidelines which must be followed regarding corporal punishment in schools, that it has come under criticism by several associations in Dominica “for having such rigorous guidelines for corporal punishment” and that “the Government’s view is that the country should move away from the use of corporal punishment as far as possible, so that is something that the country will continue to work on”.[[6]](#footnote-6) According to Chief Education Officer Melena Fontaine, speaking in March 2016 on the Child-Friendly Schools Initiative, there is a need to reassess whether or not corporal punishment should be retained in statute.[[7]](#footnote-7)

1.10 ***Penal institutions (lawful):***Corporal punishment is lawful as a disciplinary measure in penal institutions. 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. A Child Justice Bill drafted in 2007 by the OECS was sent to the attorney-general: as originally drafted it would not prohibit corporal punishment in penal institutions.

1.11 ***Sentence for crime (lawful):*** Corporal punishment is lawful as a sentence for crime. 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 (art. 2). 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 (art. 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 (arts. 4 and 5). 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”.

1.12 The Children and Young Persons Act 1970 does not specifically mention corporal punishment as a way of dealing with 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 (art. 100). The Offences Against the Person Act 1873 also provides for “private whipping” (art. 71).

1.13 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.[[8]](#footnote-8) The Child Justice Bill drafted by the OECS in 2007 would not include corporal punishment among permitted sentences, though it would not explicitly prohibit it. As at April 2014, the Bill was under discussion in the context of the OECS Juvenile Justice Reform Project, with a view to revising it before presentation to Parliament.[[9]](#footnote-9) As at February 2016, the Bill had not been enacted.[[10]](#footnote-10)

**2 Recommendations by human rights treaty bodies and during the UPR**

2.1 ***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 prohibition of corporal punishment in the family, schools and institutions and abolition of whipping as a sentence for crime.[[11]](#footnote-11)

2.2 ***UPR***: Dominica rejected recommendations to prohibit corporal punishment in all settings made in the Universal Periodic Review in 2009, stating that there was no intention to reform the law.[[12]](#footnote-12) At the second cycle Universal Periodic Review in 2014, the Government did not clearly accept or reject recommendations to prohibit corporal punishment.[[13]](#footnote-13)

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

[*www.endcorporalpunishment.org*](http://www.endcorporalpunishment.org)*;* [*info@endcorporalpunishment.org*](mailto:info@endcorporalpunishment.org)

1. 15 October 2003, CRC/C/8/Add.48, Initial state party report, para. 32 [↑](#footnote-ref-1)
2. 13 April 2004, DOM/1, Reply to list of issues, p. 8 [↑](#footnote-ref-2)
3. 3 December 2009, A/HRC/WG.6/6/DMA/1, National report to the UPR, para. 31 [↑](#footnote-ref-3)
4. 26 June 2014, A/HRC/27/9, Report of the working group, para. 63 [↑](#footnote-ref-4)
5. 5 May 2014, A/HRC/WG.6/19/L.7 Advance Unedited Version, Draft report of the working group, paras. 94(31), 94(32) and 94(34); 26 September 2014, A/HRC/27/2, Advance Unedited Version, Report of the Human Rights Council on its twenty-seventh session, para. 381 [↑](#footnote-ref-5)
6. 5 May 2014, A/HRC/WG.6/19/L.7 Advance Unedited Version, Draft report of the working group, paras. 14 and 63 [↑](#footnote-ref-6)
7. Reported in *Dominica News Online*, 18 March 2016, <http://dominicanewsonline.com/news/homepage/news/educationyouth/ministry-of-education-discusses-future-of-corporal-punishment/>, accessed 23 March 2016 [↑](#footnote-ref-7)
8. 10 August 2004, CRC/C/SR.963, Summary record of 963rd meeting, para. 36 [↑](#footnote-ref-8)
9. UNICEF (2014), *Terms of Reference: Consultancy to Facilitate the adoption of the Juvenile Justice Bill for the Commonwealth of Dominica, Saint Lucia and St Vincent and the Grenadines*, OECS Juvenile Justice Reform Project [↑](#footnote-ref-9)
10. <http://www.opm.gov.dm/?p=1636>, accessed 19 February 2016 [↑](#footnote-ref-10)
11. 30 June 2004, CRC/C/15/Add.238, Concluding observations on initial report, paras. 28, 29, 46 and 48 [↑](#footnote-ref-11)
12. 4 January 2010, A/HRC/13/12, Report of the working group, para. 71(4); 8 February 2011, A/HRC/13/56, Report of the Human Rights Council on its thirteenth session, paras. 586 and 587 [↑](#footnote-ref-12)
13. 5 May 2014, A/HRC/WG.6/19/L.7 Advance Unedited Version, Draft report of the working group, paras. 94(31), 94(32) and 94(34); 26 September 2014, A/HRC/27/2, Advance Unedited Version, Report of the Human Rights Council on its twenty-seventh session, para. 381 [↑](#footnote-ref-13)