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(WAND)

# **Remembering the Humanity of Children in the Constitutional Reform Process of Barbados**

## **ABSTRACT**

This submission to the Constitutional Reform Commission makes a call for the rights and protection of children to have a place in the new constitution of Barbados. The document focuses on corporal punishment by reviewing how this issue has been treated in research, and national and international legal frameworks. We provide an overview of research findings which show the negative effects of corporal punishment on children. We conclude by making clear recommendations for law reform.

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## **Introduction**

The Women and Development Unit of the Consortium for Social Development and Research is a specialized unit of the University of the West Indies Open Campus. WAND centres women and their families in Caribbean development through community outreach and public discourse; online courses in gender and development planning; technical partnerships in policy development, capacity building, and research of/for vulnerable populations; applied research for evidence-based policy making, law reform and advocacy.

The leadership of the University of the West Indies has identified UWI as an [activist university](#), with a responsibility to participate in policy discourse and debate around the issues pertinent to the region it serves, and contribute towards finding and implementing solutions. In this light, this submission from WAND to the Constitutional Reform Advisory Commission of Barbados concentrates on issues relating to our mandate, which we have special interest and technical expertise. Our submission shares factual information and provides analysis on the rights of children and corporal punishment which we would like the Commission to be aware. Our submission makes recommendations to repeal laws which make corporal punishment legal and recommend the enshrining of the rights of children in the Constitution for the new Republic of Barbados.

WAND UWI Open Campus makes this submission because we believe that while corporal punishment is a controversial area for adults, the research has been telling, clear and consistent about the negative effects of corporal punishment on children; whose lives are important as worthy constituents in the present and future of Barbados.

The historian, Stacey Patton (2015) identifies corporal punishment as a byproduct of slavery and related trauma that was supported by (neo)colonial laws which were developed based on the myth that colonial subjects, including children, could only learn and follow instructions by using violence and the threat of violence. Patton illustrates that corporal punishment is not actually a cultural practice that stems of African ancestry or pre-colonial African societies. Against this background, we make this submission asking, if in good conscience, is this a practice that we are really comfortable to propagate in the new Republic of Barbados. If we agree that children deserve better – what does the current situation look like and what would we like to change?

Finally, WAND makes this submission at this juncture of Barbados becoming a Republic and is particularly guided by two of the five core values in leadership outlined by the Government, offered by President Dame Sandra Mason:<sup>1</sup>

**Value 1 - People-Centred Leadership**, which is visionary and decisive, compassionate and caring, keeps Barbados and Barbadians safe and helps to secure an equitable and fair future for all.

**Value 2 - Government Must Deliver For ALL**, by becoming a model of ethical leadership which inspires confidence and builds public trust by delivering on its promises; creating a people-centred culture; being fair; transparent; inclusive; efficient; and by incentivising the public and private sectors and individual citizens to perform and to embrace excellence.

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<sup>1</sup> The President's Address by The Most Honourable Dame Sandra Mason President of Barbados, February 2022.  
<https://gisbarbados.gov.bb/download/presidents-address-at-the-opening-of-parliament-2022/>

## **An Overview of Corporal Punishment**

Murray Straus, has standardized the following definition of corporal punishment:

*the use of physical force with the intention of causing a child to experience pain, but not injury, for the purpose of correction or control of the child's behaviour".*<sup>2</sup>

More broadly, corporal punishment is:

*the infliction of ritualized physical pain or ordeal, the primary object of which is to bind the recipient or observers to the rules, norms, or customs of a larger social institution."*<sup>3</sup>

The American Academy of Child and Adolescent Psychiatry defined corporal punishment as:

*a discipline method in which a supervising adult deliberately inflicts pain upon a child in response to a child's unacceptable behavior and/or inappropriate language. The immediate aims of such punishment are usually to halt the offense, prevent its recurrence and set an example for others. The purported long-term goal is to change the child's behavior and to make it more consistent with the adult's expectations. In corporal punishment, the adult usually hits various parts of the child's body with a hand, or with canes, paddles, yardsticks, belts, or other objects expected to cause pain and fear*<sup>4</sup>.

At its core, corporal punishment primarily inflicted by adults upon children, encompasses a variety of behaviours intended to influence and shape behaviour by means of physical acts committed by adult persons holding more power against

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<sup>2</sup> Straus & Donnelly, 2001, cited in Landon, p. 4.

<sup>3</sup> Pate & Gould, 2012, p. xvi, cited in Landon.

<sup>4</sup> The American Academy of Child and Adolescent Psychiatry, Policy Statement on Corporal Punishment, 1988, revised 2014.

[https://www.aacap.org/aacap/Policy\\_Statements/1988/Corporal\\_Punishment\\_in\\_Schools.aspx](https://www.aacap.org/aacap/Policy_Statements/1988/Corporal_Punishment_in_Schools.aspx)

children, who have less power. In the realm of children, there is considerable overlap of corporal punishment/physical discipline with child abuse and child maltreatment.

The Committee on the Rights of the Child (2006) defined corporal punishment as:

*'...‘physical’ punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (‘smacking’, ‘slapping’, ‘spanking’) children, with the hand or with an implement – a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children’s mouths out with soap or forcing them to swallow hot spices). ...corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment that are also cruel and degrading .... These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.’<sup>5</sup>*

In the Caribbean, corporal punishment is normally administered with an instrument such as a wooden rod or cane and is typically referred to as ‘flogging’ or ‘lashing’. Whereas in some countries, the manner of administration is left completely to the discretion of the school or the parents, in others, though still permitted by law, guidelines have been introduced by legislation (cited in Bailey, Robinson & Coore-Desai, 2014).

### **Effects of Corporal Punishment**

Across cultures, children who are physically punished have been shown to possess fewer social skills, reduced academic and occupational achievement, higher rates of mental and physical illness and injury in both childhood and adulthood, and increased violent and/or criminal behaviour relative to that of same-age peers who are disciplined by other means (Gershoff, 2002; Gershoff & Bitensky, 2007; Gershoff & Grogan-Kaylor, 2016; Lee, Altschul, & Gershoff<sup>6</sup>, 2013; Paolucci & Violato, 2004)<sup>7</sup>.

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<sup>5</sup> Convention on the Rights of the Child. General Comment No. 8, para. 11, 2006.

<sup>6</sup> <https://www.apa.org/act/resources/webinars/corporal-punishment-gershoff.pdf>

<sup>7</sup> Global status report on preventing violence against children 2020, WHO. Paolucci, E. O., & Violato, C. (2004). A meta-analysis of the published research on the affective, cognitive, and behavioral effects of corporal punishment. *The Journal of Psychology*, 138(3), 197-222.

At this point, there is a plethora of sound research demonstrating consistent links between corporal punishment, regardless of harshness, and aggressive child behaviour, insecure parent-child attachment, decreased moral internalization, decreased empathy, decreased self-regulation, poorer academic outcomes, antisocial childhood behaviours such as bullying, lying, cheating, running away, involvement in crime, and child abuse<sup>8</sup>.

Negative adult outcomes - adult antisocial behaviour, mental health problems, and attitudes towards corporal punishment of their own children - were also significantly associated with a history of having been spanked by parents and teachers. Biologically, an expanding body of neuroscientific research suggests that harsh physical discipline and child maltreatment are associated with reduced gray matter in key areas of the brain, including regions related to empathy, problem solving, learning, and pattern recognition. Children's expressive and receptive language abilities, strongly associated with brain development, have been linked to spanking, with spanked children scoring significantly lower on a test of language acquisition (Smith, 2012; citing Gershoff 2008)<sup>9</sup>. Threatening experiences and the toxic stress (and subsequent neurohormonal and autonomic events) they engender in young children have been directly linked to impoverished brain development.

Experts in child development and parenting practices affirm no solid science suggests that hitting children, to any extent and regardless of race or ethnic background, is beneficial for them or society (Patton 2015). Corporal punishment triggers harmful psychological and physiological responses. Children not only experience pain, sadness, fear, anger, shame and guilt, but feeling threatened also leads to

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<sup>8</sup> For reviews see [Spanking and child outcomes: Old controversies and new meta-analyses - PubMed \(nih.gov\)](#) Gershoff & Grogan-Kaylor, 2016; [\[PDF\] Spanking and Child Development: We Know Enough Now To Stop Hitting Our Children. | Semantic Scholar](#); Global Initiative to End All Corporal Punishment, 2016.

<sup>9</sup> The case against spanking Physical discipline is slowly declining as some studies reveal lasting harms for children, Brendan L. Smith, April 2012, Vol 43, No. 4.



physiological stress and the activation of neural pathways that support dealing with danger. Children who have been physically punished at home or at school tend to exhibit high hormonal reactivity to stress, overloaded biological systems, including the nervous, cardiovascular, and nutritional systems, and changes in brain structure and function.

Corporal punishment in homes and in schools might actually be contributing to the negative outcomes that parents, educators and caretakers were seeking to avoid. A new meta-analysis by Elizabeth Gershoff<sup>10</sup>, confirms the negative impacts of corporal punishment and demonstrates that school corporal punishment is associated with lower performance in school, in line with findings of previous systematic reviews by including those by Gershoff and Sasha-Lee Heekes<sup>11</sup>. The World Health Organisation<sup>12</sup>, shows links between corporal punishment and a wide range of negative outcomes, both immediate and long-term:

- direct physical harm, sometimes resulting in severe damage, long-term disability or death;
- mental ill-health, including behavioural and anxiety disorders, depression, hopelessness, low self-esteem, self-harm and suicide attempts, alcohol and drug dependency, hostility and emotional instability, which continue into adulthood;
- impaired cognitive and socio-emotional development, specifically emotion regulation and conflict solving skills;
- damage to education, including school dropout and lower academic and occupational success;

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<sup>10</sup> [School Corporal Punishment in Global Perspective: Prevalence, Outcomes, and Efforts at Intervention - PMC \(nih.gov\)](#)

<sup>11</sup> [A Systematic Review of Corporal Punishment in Schools: Global Prevalence and Correlates - PubMed \(nih.gov\)](#)

<sup>12</sup> Global status report on preventing violence against children 2020, <https://www.who.int/teams/social-determinants-of-health/violence-prevention/global-status-report-on-violence-against-children-2020>

- poor moral internalization and increased antisocial behaviour;
- increased aggression in children;
- adult perpetration of violent, antisocial and criminal behaviour;
- indirect physical harm due to overloaded biological systems, including developing cancer, alcohol-related problems, migraine, cardiovascular disease, arthritis and obesity that continue into adulthood;
- increased acceptance and use of other forms of violence; and
- damaged family relationships.

Steve Miller (2017) makes the link between corporal punishment and gender-based violence and shows that children exposed to violence at home learn early and powerful lessons about the use of violence as a means to solve their problems and dominate others. Boys were found to be more likely to experience corporal punishment at school more frequently than girls until they get older (aged 14). Whereas girls are more likely to experience corporal punishment throughout their school life (Shamim & Ahmed 2019; Mehlhausen-Hassoen, 2021, James, 1995). Children with disabilities are more likely to be physically punished than those without disabilities. Mothers and fathers who were physically punished as children are more likely to physically punish their own children. Men who physically abuse their partners, are more likely to abuse their children. Women who are victims of intimate partner violence are also more likely to abuse their children, with boys more likely to receive corporal punishment than girls (Lansford, Jennifer & Alampay, Liane et al. 2018; Shamim & Ahmed 2019).

In terms of class background, children from wealthier households are equally likely to experience violent discipline as those from poorer households. In contrast with education, however, it was found that in resource-poor settings, the strain on

teachers resulting from the limited human and physical resources led to a greater use of corporal punishment in the classroom, and public schools resorted to corporal punishment more often than private schools.

According to surveys conducted by the Caribbean Development Research Services (CADRES) between 2004 and 2014, there has been a significant decline in support for corporal punishment in schools in Barbados over a ten-year period. In 2004, 80% of those surveyed supported corporal punishment in the home; 69% in schools. In 2009, support had dropped to 75% in the home and 54% in schools. A further study in 2014 found 77% support for corporal punishment in the home, but just 50% in schools. The figures suggest that those who continue to support this form of punishment at school will continue to decline.<sup>13</sup>

In a survey conducted in 2012, three out of four children (75.1%) aged 2-14 years were found to have been subjected to at least one form of violent “discipline” (psychological aggression or physical punishment) by their parent or another household member in the month preceding the survey; this was slightly higher for boys (78.1%) compared to girls (72.1%); in urban areas (76.7%) compared to rural areas (72.3%), and for younger children compared to older children<sup>14</sup>. While corporal punishment is on a decline with each generation, the data speaks to how commonplace and persistent adults have been in punishing children in this form. We therefore cannot have discussions about where adults inherited this behavior from without talking about history.

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<sup>13</sup> Reported in “Spare them! Waning appetite for flogging in schools – pollsters”, Barbados Today, 25 February 2016, <http://www.babadostoday.bb/2016/02/25/spare-them/>.

<sup>14</sup> Barbados Statistical Service (2014), Barbados Multiple Indicator Cluster Survey 2012: Final Report, Bridgetown, Barbados: Barbados Statistical Service.

### **The Colonial Roots of Corporal Punishment of Children**

Across the Caribbean as in much of Africa and Asia, corporal punishment of children was promoted and institutionalized during the colonial period, in the context of military occupation and slavery, in the development of early school and penal systems, and in Christian missionary teaching and literature. Another well cited explanation for corporal punishment in Barbados and other parts of the Caribbean, is that of Christian religious values, which is recorded as the most-practiced religion. The literal interpretation of the Christian Old Testament, particularly the book of Proverbs, is often given as a rationale for corporal punishment (Arnold, 1982; Bailey et al., 2014). The book of Proverbs is generally attributed to the Hebrew King Solomon, and parenting practices over his son Rehoboam over 3000 years ago. The quote most often referenced, that of 'Spare the rod and spoil the child,' did not actually originate from the Bible at all; and has its origins in a love poem by 17<sup>th</sup> century British satirist Samuel Butler.<sup>15</sup> However, its origins were never questioned as Christianity missionary source was considered credible at that time.

The legality of corporal punishment across the region has its origins in the laws of colonising European countries. This is visible in the provisions allowing for "reasonable punishment" in the laws of many Caribbean nations, including Barbados. Corporal punishment of enslaved people, including whipping, was commonplace: in British colonies it was regulated through slave laws. At the abolition of slavery, new laws regulating corporal punishment of workers were introduced: for example, in 1824 an order forbade the use of the whip to coerce labour in the field and limited its use as a disciplinary measure – only men could be flogged, to a maximum of twenty-five lashes. Today, this is echoed in legal provisions which specify the types of corporal punishment to be inflicted and allow for corporal punishment of males only: for example, the laws of Barbados, Dominica and St Vincent and the Grenadines all allow for boys but not girls to be sentenced to corporal punishment and specify the number of strokes which may be used.

The continuation of corporal punishment, an inherited practice, is now an unchecked generational trauma response that chips away at the vitality and quality of Caribbean family life which give parents, educators, and other adults in positions of authority the legal right to participate in a sustaining dehumanization process of mostly, but not exclusively, black children. What makes the issue of corporal punishment particularly difficult is compounded by colonial history, is that many parents struggle with the dichotomy of discipline versus abuse. They believe that discipline is delivered by parents who love and care for their children, while abuse is inflicted by cruel and uncaring parents. But research shows that this is not true, all corporal punishment, however mild or light, carries an inbuilt risk of escalation. Studies suggest that parents who used corporal punishment are at heightened risk of perpetrating severe maltreatment.

Parents, educators, social workers and psychologists will have to develop the ability to translate and communicate the intersections between historical trauma and parenting patterns as learned behaviour rather than “cultural traditions” – and learn to self-regulate their own behaviour. Reforming the Constitution to enshrine the rights of children can support this endeavour.

### **Corporal Punishment, Domestic and International Law in Barbados**

An overview of the treatment of children in Barbadian law, suggests that the protection of children have not been strongly prioritized nationally or internationally, with various laws in need of reform, and varying commitments lagging under the Convention on the Rights of the Child (CRC) and the Universal Periodic Review (UPR). Currently, there is no modern comprehensive or consolidated Children's Act in Barbadian law. Relevant legislation is found in several Acts including, but by no means limited to:

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<sup>15</sup> A 17th century poem by [Samuel Butler](#) called *Hudibras*. In the poem, a love affair is likened to a child, and [spanking](#) is mockingly commended as a way to make the love grow stronger.

- *The Minors Act 1985 (Cap 215)*
- *The Child Protection Act 1990 (Cap. 146A)*
- *The Juvenile Offenders Act 1998 (Cap. 138)*
- *The Sexual Offences Act 1992 (Cap. 154)*
- *The Domestic Violence (Protection Orders) Act 1992 (Cap. 130A)*
- *The Family Law Act 1982 (Cap. 214)*
- *The Corporal Punishment Act 1899 (Cap. 125)*
- *The Magistrates' Courts Act 2001 (Cap. 116A)*
- *The Reformatory and Industrial Schools Act 1926 (Cap. 169)*
- *The Education Act 1997 (Cap. 41)*

## Home

Corporal punishment is lawful in the home. Article 4 of the *Prevention of Cruelty to Children Act 1904* states: **“Nothing in this Act shall be construed to take away or affect the right of any parent, teacher or other person having the lawful control or charge of a child to administer punishment to such child.”** Provisions against violence and abuse in the *Domestic Violence (Protection Orders) Act 1994 (amended 2016)*, the *Protection of Children Act 1990*, the *Employment (Miscellaneous Provisions) Act 1977* and the *Offences Against the Person Act 1994* **are not** interpreted as prohibiting corporal punishment in childrearing.

The *Domestic Violence (Protection Orders) (Amendment) Act 2016* aimed to provide a comprehensive definition of domestic violence and to extend the persons considered to be victims of domestic violence. The Act defines child abuse as “any act of domestic violence perpetrated against a child” and domestic violence as “the willful infliction or threat of infliction of harm by one person in a domestic relationship upon another person in that relationship and includes child abuse,

emotional abuse, financial abuse, physical abuse and sexual abuse” (art. 2). **It does not prohibit corporal punishment or repeal the right “to administer punishment”.**

Proposed amendments to the Offences Against the Person Act and the *Penal System Reform Act* **do not include prohibition of corporal punishment.** In 2017, the Government reported to the Committee on the Rights of the Child that recommendations for law reform, including a unified Children’s Act, were “prioritized in 2016”.<sup>16</sup> In April 2017 the draft Bill was submitted to the Cabinet for approval.<sup>17</sup> In July 2017, in response to Government statements that “corporal punishment was still generally accepted by Barbadian society” and that “the use of excessive discipline was not permitted under Barbadian law”, the Committee on the Elimination of Discrimination Against Women stated that “although corporal punishment had been, and continued to be, a widespread practice, its negative effects were well documented, and alternative methods of discipline should be considered. Furthermore, drawing a distinction between the use of corporal punishment in public settings, namely schools, and private settings, such as the home, served to reinforce the idea that violence was permissible as long as it was not publicly seen”.<sup>18</sup>

### **Alternative care settings**

There is **no explicit prohibition of corporal punishment in alternative care settings**, where **it is lawful under the right “to administer punishment”** in article 4 of the Prevention of Cruelty to Children Act 1904 (see under “Home”).

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<sup>16</sup> 16 January 2017, CRC/C/BRB/Q/2/Add.1, Reply to the list of issues, para. 1.

<sup>17</sup> See <http://www.nationnews.com/nationnews/news/96050/children-act-coming>.

<sup>18</sup> 25 July 2017, CEDAW/C/SR.1515, Summary records of 1515th meeting.

## Day care

Corporal punishment is prohibited in day nurseries under article 14 of the Child Care Board Regulations 1985: “Corporal punishment, severe or frightening measures must not be inflicted on a child of the day nursery.” There is no explicit prohibition of corporal punishment in other early childhood care or in day care for older children, where it is lawful under the right “to administer punishment” in article 4 of the *Prevention of Cruelty to Children Act 1904* (see under “Home”).

## Schools

Corporal punishment is lawful in schools under the right **“to administer punishment”** in article 4 of the *Prevention of Cruelty to Children Act 1904* (see under “Home”) and the Education Regulations pursuant to article 59 of the *Education Act 1983*. Education Regulation 18(j) authorises principals to inflict corporal punishment and to delegate the authority to do so to the deputy principal and senior teachers. Ministerial “Guidelines for the Administration of Corporal Punishment” state that corporal punishment should be “a last resort”, “moderate and reasonable” and “administered with a proper instrument”; where possible, a female should administer it on female students, and all corporal punishment must be recorded in the punishment book; it “shall not be administered to a child whose parents or legal guardian has upon the day of enrolment of the pupil filed with the principal of the school a statement from a medical doctor saying that it is detrimental to the child’s mental or emotional stability”. The Ministry of Education is developing a Draft Behaviour Policy to provide “a broad set of guidelines for schools, with the structure necessary for the development and implementation of school level discipline and procedures, as set out under the Education Act, Education Regulations and national policies”.<sup>19</sup>

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<sup>19</sup> 4 January 2018, A/HRC/WG.6/29/BRB/1, National report, para. 55.



In 2006, the Government reported to the Human Rights Committee that “the Government and people of Barbados did not view corporal punishment as torture, or inhumane or degrading in itself” and there were no plans to review its legality.<sup>20</sup> During the Universal Periodic Review of Barbados in 2008, the Government noted that the Minister of Education had publicly advocated for abolition of corporal punishment in schools but that this was not currently the official position, though “it may move in that direction in future”.<sup>21</sup> In reporting to the second UPR in 2013, the Government stated that alternatives to corporal punishment were being encouraged but support for corporal punishment remained strong; however, the Education Act and Regulations were being reviewed and the Code of Discipline in schools would be examined in relation to human rights.<sup>22</sup> In June 2014, Minister of Education, Science, Technology and Innovation Ronald Jones spoke of his opposition to corporal punishment in schools.<sup>23</sup> *The Education (Amendment) Bill 2015 was passed* and it does not prohibit corporal punishment.

The 2014 report to the Committee on the Rights of the Child notes the conclusion of the National Commission on Law and Order in 2004 that corporal punishment should remain in the education system. The Government notes the “prolonged difficulty in changing the public’s attitude towards corporal punishment” and notes efforts to promote positive discipline in schools with the support of UNICEF but makes no reference to the drafting of prohibiting legislation.<sup>24</sup>

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<sup>20</sup> 25 September 2006, CCPR/C/BRB/3, Third state party report, para. 244.

<sup>21</sup> 16 March 2009, A/HRC/10/73/Add.1, Report of the working group: Addendum, para. 23

<sup>22</sup> 5 December 2012, A/HRC/WG.6/15/BRB/1, National report to the UPR, paras. 85 and 86.

<sup>23</sup> Reported in *The Barbados Advocate*, 29 June 2014  
([www.barbadosadvocate.com/newsitem.asp?more=local&NewsID=37229](http://www.barbadosadvocate.com/newsitem.asp?more=local&NewsID=37229),

<sup>24</sup> 4 May 2015, CRC/C/BRB/2, Second state party report, paras. 91 and 94.

## Penal institutions

Corporal punishment is lawful as a disciplinary measure in penal institutions. On conviction of an offence, children and young people may be sent to a *Reformatory and Industrial School (Juvenile Offenders Act, art. 16)*. The Reformatory and Industrial Schools Act 1926 authorises the infliction of corporal punishment as a disciplinary measure on boys (art. 31) and allows a magistrate to order whipping as a punishment for attempted escape (art. 34). The Government has reported that the Juvenile Justice Bill would repeal the Reformatory and Industrial Schools Act 1926.<sup>25</sup>

Young people aged 16 and above are tried as adults and may be sentenced to imprisonment. In reporting to the Committee on the Rights of the Child in 2014, the Government noted the findings of the National Commission on Law and Order that corporal punishment “no longer exists” in the penal system by virtue of a 1992 Court of Appeal decision which concluded that the use of the same instrument utilized during slavery and colonization – the cat-o’-nine tails (for flogging) as inhuman and degrading.<sup>26</sup> *The Prisons (Amendment) Act 2015* has now formally repealed the provisions in the *Prisons Act 1964* which authorised the use of force for purposes of maintaining discipline (art. 20) and provided for corporal punishment for specific disciplinary offences, up to 12 strokes for persons below the age of 21 (art. 40).

## Sentence for crime

Corporal punishment is lawful as a sentence for crime for boy children aged 8 to 15 years. *The Magistrate’s Courts Act 2001* provides for **boys aged 8-15 to be “privately whipped” at a police station, up to 12 strokes** with a “tamarind or other similar rod”, in place of or in addition to any other punishment (art. 71). *The Juvenile Offenders Act 1932* includes **“ordering the offender to be whipped”** among the list of available sanctions for children and young people (art. 16(f)). The

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<sup>25</sup> 4 January 2018, A/HRC/WG.6/29/BRB/1, National report, para. 56.

<sup>26</sup> 4 May 2015, CRC/C/BRB/2, Second state party report, para. 64.

Act also provides for a court to order a boy aged 12-15 to be “privately whipped” in lieu of or in addition to any other punishment (art. 9). *The Corporal Punishment Act 1899* states that whipping or flogging should be administered on a single occasion, up to **12 strokes for persons under 16 or 24 for older persons** (art. 2). Corporal punishment may be carried out only after medical examination and under the supervision of a prison official.

In 2018, a Juvenile Justice Bill which would repeal the above provisions was reported to be under drafting.<sup>27</sup> It was reported that there was a final draft, which would also repeal the Juvenile Offenders Rules 1933, was being examined by the Office of the Chief Parliamentary Counsel.<sup>28</sup> In June 2018, the Government accepted a UPR recommendation to expedite the adoption of the Bill to “outlaw the use of corporal punishment as a criminal sanction”.<sup>29</sup>

### **The Universal Periodic Review of Barbados’ Human Rights Record relating to Corporal Punishment**

Barbados was reviewed in the first cycle of the Universal Periodic Review in 2008 (session 3). The following recommendations were made:<sup>30</sup>

*“Eliminate all forms of corporal punishment from its legislation (Chile); abolish corporal punishment for children (Germany); address the concerns raised by the Human Rights Committee and the Committee on the Rights of the Child on corporal punishment (Turkey); take measures to eliminate corporal punishment as a legitimate sanction in the law and to discourage its use in schools with a view to its eventual and total abolition; conduct public awareness initiatives to change peoples’ attitudes to corporal punishment (Slovenia)”*

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<sup>27</sup> 16 January 2017, CRC/C/BRB/Q/2/Add.1, Reply to the list of issues, para. 39.

<sup>28</sup> 4 January 2018, A/HRC/WG.6/29/BRB/1, National report, para. 56.

<sup>29</sup> 14 June 2018, A/HRC/38/12/Add.1 Advance unedited version, Report of the working group: Addendum, para. 3.

<sup>30</sup> 9 January 2009, A/HRC/10/73, Report of the working group, para. 77(14).

The Government rejected recommendations to prohibit corporal punishment made during the Universal Periodic Review (UPR) in 2008.<sup>31</sup> In rejecting the recommendations to prohibit corporal punishment, the Government stated that the laws of Barbados protect children from abuse and but at the same time did not see corporal punishment as abuse in stating that corporal punishment in schools and prisons must be administered in compliance respectively with the Code of Discipline promulgated under the Education Act and the Prison Rules Act.<sup>32</sup>

The Government also noted during the review that the Minister for Education's public advocacy of prohibition of corporal punishment in schools was not the official position, though "it may move in that direction in future".<sup>33</sup> However, the Government accepted the recommendation regarding public awareness initiatives to change people's attitudes to corporal punishment.<sup>34</sup>

Six years later, the second cycle review of the UPR took place in 2013 (session 15). In its national report, the Government noted that it is "cognizant of the call for the total abolition of corporal punishment" but that "there continues to be strong support for the retention of corporal punishment particularly within the school and home settings" and that while alternative disciplinary methods are being encouraged in schools "there is still a mammoth task of changing the national mindset in relation to corporal punishment".<sup>35</sup> In 2013, the Government left the review not taking a firm stance of commitment or responsibility to protect children and stated that "greater public acceptance seems to be needed for Government to

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<sup>31</sup> 16 March 2009, A/HRC/10/73/Add.1, Report of the working group: Addendum, paras. 21 and 22.

<sup>32</sup> 16 March 2009, A/HRC/10/73/Add.1, Report of the working group: Addendum, paras. 21 and 22.

<sup>33</sup> 9 January 2009, A/HRC/10/73, Report of the working group, para. 49.

<sup>34</sup> 16 March 2009, A/HRC/10/73/Add.1, Report of the working group: Addendum, para. 23.

<sup>35</sup> 5 December 2012, A/HRC/WG.6/15/BRB/1, National report to the UPR, paras. 85 and 86.

comfortably introduce this change into its legislation".<sup>36</sup>

The UPR's third cycle examination took place in 2018 (session 29). The Government gave a mixed response to recommendations on the prohibition of corporal punishment. It accepted recommendations to expedite the prohibition of judicial corporal punishment in the Juvenile Justice Bill and to implement previous UPR recommendations and the Committee on the Rights of the Child's 2017 recommendations. It noted other recommendations on the explicit prohibition of all corporal punishment in legislation however the state provided no clear or decisive direction to alter what appears to be comfortable acceptance of corporal punishment.<sup>37</sup>

This review of child rights under the legal system and the Barbadian state responses over the last few years, to international human rights bodies and UN conventions that the state has signed on to, it is apparent that there is no objection to legal sanctioning of corporal punishment. The reasons for this are unclear, however it does leave us to question that if the framers of the laws are adults, if it is possible that they do not see the humanity of children as worthy of protection? If adult framers of the laws and those who represent citizenry (including children) in Barbadian democracy and at global levels, also accept corporal punishment as norm and not abuse, could it be because they too have been impacted by the same generational trauma response? Have they accepted violent punishment towards children as normal and acceptable because they received violent punishment when they were children? Is this Republican status an opportunity to break they cycle and treat children better under the law and in real life?

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<sup>36</sup> 12 March 2013, A/HRC/23/11, Report of the working group, para. 39.

<sup>37</sup> 14 June 2018, A/HRC/38/12/Add.1 Advance unedited version, Report of the working group: Addendum, paras. 3, 4 and 5.

## The Constitution of Barbados

Chapter III of the Constitution of Barbados contains several rights provisions that apply to children as to any other person, **but only one specifically addresses children**. There are a few other provisions throughout the Constitution that also make reference to children:

- Ch. II: refers to children in several respects with regards to citizenship rights
- Ch. III, s. 18(10)(a): allows for the exclusion of the public from legal proceedings involving persons under 18 years of age
- Ch. VIII, Part 3, ss. 103 and 104: refer to children with regards to pension rights.

## Child Rights in Other Constitutions

By way of example, reference is made to other countries which specifically recognise the rights of children in their Constitutions.

- The Constitution of Kenya recognises the right of all children to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhumane treatment, and punishment, and hazardous or exploitative labour.
- Section 28 of the Bill of Rights in the Constitution of South Africa states that “every child has the right to basic nutrition, shelter, health care and social services, as well as the right to be protected from maltreatment, neglect, abuse or degradation”.
- Article 39 of the Constitution of Nepal adopted in 2015 includes the following provisions:
  - (4) No child shall be employed in factories, mines, or in any other hazardous works.
  - (5) No child shall be subjected to child marriage, illegal trafficking, kidnapping, or being held hostage.
  - (6) No child shall be subjected to recruitment or any kind of use in the

army, police or armed groups, neglected, or used immorally, or abused physically, mentally, or sexually, or exploited through any other means, in the name of religious or cultural practices.

- (7) No child shall be subjected to physical, mental, or any other forms of torture at home, in school, or in any other places or situations.

## **Recommendations for Constitutional Reform**

A study carried out in 2009, which involved 800 adults and 350 children in Barbados, found high levels of support among adults for “flogging” in homes and schools: 75% supported flogging in the home, 54% in schools. The figures had decreased since a similar survey in 2004, when 80% supported flogging in the home and 69% in schools. Of children, 54% supported flogging in the home (76% in 2004).

Children, on the other hand felt differently. A large majority of children (74%) were opposed to flogging in schools (compared to 56% in 2004). Eighty-six per cent of children said they had been flogged at home, 56% at school; 63% of adults said they had flogged their child; 62% of the children who had been flogged at home and at school said **they would not flog their own children**.<sup>38</sup>

## **Evidence shows that children do not wish to be beaten.**

We should not presume that adults and their families are so invested in corporal punishment that they are incapable accepting law reform in favour of child protection; or that adults are incapable of learning and integrating healthier alternatives into their parenting toolkit. Part of the Constitutional reform process demands a shift. In making the legal changes, we can shift the public discourse around corporal punishment to set a new standard of care based on solid evidence

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<sup>38</sup> Caribbean Development Research Services (2009), *Corporal Punishment and Other Major Educational Issues in Barbados*, UNICEF & Barbados Union of Teachers).

that gets translated and communicated effectively to the diverse communities in dire need of healthier parenting practices.

The risk to children is far greater and more important than the fear of alienating parents who often use cultural tradition to defend hitting. Instead of blaming and stigmatizing parents and educators, we can offer information about why the practice is harmful but have been told it is necessary and offer healthier alternatives that produce better outcomes for children, families and communities. Such an approach will support parents' own parenting goals as they strive for the security and welfare of their children.

We are at critical juncture where becoming a Republic should imply change that is more than symbolic.

The Women and Development Unit of the UWI Open Campus recommends that:

1. **all** pieces of legislation that legalize corporal punishment in homes, in schools and day care settings be repealed.
  - a. The Prevention of Cruelty to Children Act 1904 confirms "the right of any parent, teacher or other person having the lawful control or charge of a child to administer punishment to such child" (art. 4). This provision should be repealed, and the Constitution should clearly state that all forms of corporal punishment and other cruel and degrading treatment are unacceptable, including by parents and others with parental authority.
  - b. **Alternative care settings** – The constitution should repeal all legislation applicable to all alternative care settings without exception, including foster care, institutions, children's homes, places of safety, emergency care, etc.
  - c. **Day care** – The constitution should repeal all corporal punishment in



all early childhood care settings (nurseries, preschools, crèches, children's centres, etc.) and all-day care for older children (day centres, after-school childcare, childminding, etc.).

- d. **Schools** – Provisions in the Education Act and Education Regulations authorising corporal punishment in schools should be repealed and prohibition enacted in relation to all schools, public and private.
  - e. **Penal institutions** – Provisions for “disciplinary” corporal punishment in the Reformatory and Industrial Schools Act 1926 should be repealed and prohibition of corporal punishment enacted in relation to all institutions accommodating children in conflict with the law.
2. that the recognition of children as full human beings born with inalienable rights and citizenship, should not be contingent upon their relationship with an adult.
  3. that distinct provisions safeguarding the protection of children from all forms of corporal punishment must be enshrined in the Constitution. For example:
    - *Every child has the right to be protected from abuse, neglect, all forms of violence, including corporal punishment, inhumane treatment, and punishment, and hazardous or exploitative labour and imprisonment.*
    - *Every child has the right to a life of dignity and peace, free from physical, mental, sexual, or any other forms of abuse, including corporal punishment, at home, in school, in penal institutions or in any other places or situations.*

**We further recommend** that any provisions authorising a “right of correction”, or a “right to administer reasonable punishment/chastisement”, or a “right to moderately and adequately correct a child” must be removed. Without explicit repeal of these defences and justifications, children do not have equal protection from assault; laws may exist against violence and abuse of children, but these are

not interpreted as prohibiting all corporal punishment.

This law inherited from the colonial period, which provide a legal defence for the use of corporal punishment. In many, the defence for “reasonable chastisement” is derived from English common law. Explicitly repealing these defences in their entirety (not simply limiting or restricting them) is an integral element of law reform to prohibit corporal punishment of children.

For example, the repeal may be done by enacting a law which states:

*“Nothing in any rule of English common law justifies the use of force for the purpose of correction.”*

The legal defences in written Caribbean legislation might be repealed with the following law:

*“No child may be subjected to corporal punishment. Section [...] is repealed.”*

### **Recommendations After Constitutional Reform**

While the Women and Development Unit, (WAND UWI Open Campus) has made these recommendations to the Commission, we are fully aware that Constitutional Reform also needs institutional backing and implementation. We therefore recommend that after the new Constitution takes effect, that there is follow through with the following programmes:

- Norms and values programmes to transform harmful social norms around child-rearing and child discipline.
- Parent and caregiver support through information and skill-building sessions to develop nurturing, non-violent parenting.
- Education and life skills interventions to build a positive school climate and violence-free environment, and strengthening relationships between

students, teachers and administrators.

- Response and support services for early recognition and care of child victims and families to help reduce reoccurrence of violent discipline and lessen its consequences.

The earlier such interventions occur in children's lives, the greater the benefits to the child and to broader society.

## **Conclusion**

Evidence suggests that violence can reduce national productivity by as much as 1.4% of the Gross Domestic Product (GDP) Among the risks faced by children and youth, is the high level of physical abuse experienced by children and the fact that it enjoys social acceptance within much of the Caribbean region (Bailey, Robinson, Coore-Desai, 2014). A lack of administrative acceptance that the practice is wrong, as well as the failure of Caribbean governments, signatories to the Convention on the Rights of the Child, to bring their laws in accordance with the provisions of the Convention, have served to undermine positive disciplinary messages and allow such negative practices to continue. A manifestation of this violent culture, affecting children, is the continued use of corporal punishment as a means of discipline, by those charged with the responsibility of caring for them. Barbados, as evidenced here, is no exception.

International standards of decency have evolved, and norms about what is considered cruel, inhumane or degrading have changed. Colonial forms of punishment that are still upheld by law such as corporal punishment of children as a form of discipline is incompatible with the core values of respect for human dignity, justice, freedom and peace. As shown here, the evidence of the harm it causes both in the short and long-term.

Christian doctrine has also been commonly used to justify physical punishment and may argue that it is sanctioned in scriptural texts. **We assert** that it is not appropriate to take such texts out of their ancient cultural context to justify violence towards children. Another perspective from Christians, also reminds us that the reading of the Bible is done in the light of Jesus' teaching and example. Jesus treated children with respect and placed them in the middle of the group, as in Mark 9:37: 'Whoever welcomes one such child in my name welcomes me.' Additionally, the word 'discipline' is for many people synonymous with physical punishment. The word 'discipline' comes from the same root as 'disciple'. Positive non-violent discipline is about adults guiding children and leading by example. It is based on empathy, compassion, and an understanding of how children develop. Positive discipline is both respectful and kind and it is the best way to promote self-discipline. and provide support for parents.

**We emphasize** that law reform should go hand in hand with support for parents, widespread education and the promotion of positive discipline<sup>39</sup>. Through working with others and honouring children's human right to equal protection under the law, we can put our faith into action and make a significant impact towards a Republic that is peaceful and non-violent.

**We assert**, that becoming a Republic is an opportunity to do things differently and choose a path of protection of children over the neocolonial path of violence as punishment.

**We assert**, that as a new Republic, the law-making should be emancipatory by establishing a framework for the next generation to follow.

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<sup>39</sup> WHO INSPIRE Technical Package. <https://www.who.int/teams/social-determinants-of-health/violence-prevention/inspire-technical-package>

**We affirm** that constitutional reform is transformative, and that it takes into account the importance of building a constitution that is relevant for the future of adults who are children now, and not for adults who will not be present in the future.

**We affirm** that esteemed Commissioners who are possibly parents and/or grandparents, imbued with this power and responsibility, will embrace humility required of this task to put children first.

**We recommend** that the Government takes clear and pro-active steps in prohibiting corporal punishment and positively shift Barbados's international reputation in this regard by the time the fourth reporting cycle of the Universal Periodic Review comes around for Barbados in 2023.

**We affirm** that by repealing corporal punishment from the relevant laws mentioned in this submission, and further enshrine the rights of children in the Constitution beyond 'the right to life'<sup>40</sup>, the Republic can provide Barbadian children with a framework of rights to a life of dignity, a life free from the violence and abuse of corporal punishment in all settings.

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<sup>40</sup> Article 6 of the Barbados Constitution - Article 6 - The right to life, survival, and development. 48. Barbados accepts that every person, including the child, has the inherent right to life. This right is protected by the law, namely: "not to be deprived of his life intentionally save in execution of the sentence of a court in respect of the criminal offence under the laws of Barbados of which he has been convicted ...".

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