

Corporal punishment of children in Bonaire, St Eustatius and Saba

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Child population 5,295 (4060 Bonaire, 894 St Eustatius, 341 Saba) (UNICEF, 2012)¹



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Summary of necessary legal reform to achieve full prohibition

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

There appears to be no legal defence in legislation for the use of corporal punishment by parents, but it is not explicitly prohibited and legal provisions against violence and abuse are not interpreted as prohibiting all corporal punishment. The near universal acceptance of corporal punishment in childrearing necessitates clarity in law that all such punishment is unacceptable and unlawful. Explicit prohibition should be enacted of all forms of corporal punishment, however light.

Alternative care settings – Explicit prohibition should be enacted in legislation applicable to all alternative care settings (foster care, institutions, places of safety, emergency care, etc).

Day care – Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, kindergartens, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Schools – Explicit prohibition should be enacted in relation to all educational settings, including public and private, full and part time.

Penal institutions – Explicit prohibition of corporal punishment should be enacted in relation to all institutions accommodating children in conflict with the law.

¹ Kloosterboer (2013), Child on Bonaire, St. Eustatius and Saba – Children’s rights in the Caribbean Netherlands: Summary, UNICEF

Note: Bonaire, St Eustatius and Saba are special municipalities in the Netherlands (Caribbean part). Until October 2010, they were part of the Netherlands Antilles but this was dismantled following constitutional reforms within the Kingdom of the Netherlands and Bonaire, St Eustatius and Saba became more closely associated with the Netherlands. The laws of the Netherlands will gradually be adopted, but in the meantime the legislation of the Netherlands Antilles applies.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. The new Civil Code of the Netherlands Antilles replaced the term “parental authority” with “parental responsibility”, but did not prohibit corporal punishment. Article 247 states: “Parental responsibility encompasses the duty and the right of the parent to care for and raise his or her child. The terms ‘care for’ and ‘raise’ include care and responsibility for the psychological and physical well-being of the child and efforts to promote the development of his or her personality” (unofficial translation). Legal provisions against violence and abuse are not interpreted as prohibiting all corporal punishment in childrearing.

In the European Netherlands the Civil Code was amended in 2007 to prohibit corporal punishment and this will apply in Bonaire, St Eustatius and Saba if the Code is adopted there. In reporting to the Committee on the Rights of the Child, the Government explained that when the political changes were implemented in 2010 it was decided to maintain existing legislation as far as possible for a five-year period and for this reason new child legislation has not yet been adopted on Bonaire, St Eustatius and Saba; children have limited protection under the Criminal Code but not yet from all corporal punishment in childrearing.² The Minister of the Interior and Kingdom Relations of the Netherlands confirmed in December 2015 that the issue of corporal punishment is being addressed in the context of prevention of abuse in Bonaire, St Eustatius and Saba, though made no reference to its prohibition in law.³

Alternative care settings

There is no explicit prohibition of corporal punishment in alternative care settings under Netherlands Antilles law but it is prohibited under Netherlands law in the Civil Code as amended in 2007 (see under “Home”).

Day care

There is no explicit prohibition of corporal punishment in early childhood and in day care for older children under Netherlands Antilles law but it is prohibited under Netherlands law in the Civil Code as amended in 2007 (see under “Home”).

Schools

Corporal punishment has been discouraged in schools for some years as a matter of policy but there appears to be no explicit prohibition in law: prohibition is not included in the National Ordinance on Compulsory Education 2008, the National Ordinance on Secondary Education 2008, the National

² 1 April 2015, CRC/C/NLD/Q/4/Add.1, Reply to list of issues, para. 46

³ Correspondence with the Global Initiative, 16 December 2016

Ordinance on Secondary Vocational Education and Training 2008, the National Ordinance on Primary Education 2001 or the National Ordinance on Nursery Education 2004.

Penal institutions

Corporal punishment is considered unlawful as a disciplinary measure in penal institutions, but there is no explicit prohibition under Netherlands Antilles law.

Sentence for crime

Corporal punishment is prohibited as a sentence for crime: there is no provision for judicial corporal punishment in criminal law.

Universal Periodic Review of the Netherlands' human rights record

The Kingdom of the Netherlands was examined in the first cycle of the Universal Periodic Review in 2008 (session 1). No recommendation was made specifically concerning corporal punishment of children.

Examination in the second cycle of the UPR took place in 2012 (session 13). The following recommendations were made:⁴

“Prohibit corporal punishment in all settings through the Kingdom of the Netherlands (Slovenia);

“Build on this success (achieving a total prohibition of corporal punishment of children in all settings in the European part of the Dutch territory) and ensure that this prohibition is also duly implemented in Aruba and the Netherland Antilles by enacting the necessary legislation in this regard (Hungary)”

The Government responded to the recommendations by stating: “Violence in parenting has been formally prohibited in the Netherlands for several years. In Aruba corporal punishment is prohibited by law in schools, and legislation to extend the prohibition to the family setting is expected in 2012. In Curaçao, the Civil Code was amended to define parents’ role as that of caregivers and educators, prohibiting them from employing emotional or physical violence or any other form of humiliating treatment in parenting their children. The same goes for Sint Maarten since passing of the National Ordinance on Parental Authority in 2011 amending the Civil Code.”⁵

The Netherlands’ third cycle examination took place in 2017 (session 27). The following recommendations were made:⁶

“Ensure that its legislation addresses all forms of violence, explicitly prohibits corporal punishment in all settings and includes measures to raise awareness of positive, non-violent and participatory forms of child-rearing throughout the Kingdom, in particular in Aruba as well as in the Caribbean Netherlands (Liechtenstein)”

“Intensify its efforts in relation to children’s rights including particularly the Caribbean countries forming part of the State, including to prohibit corporal punishment in all settings;

⁴ 9 July 2012, A/HRC/21/15, Report of the working group, paras. 98(18) and 98(75)

⁵ 12 October 2012, A/HRC/21/15/Add.1/Rev.1, Report of the working group: Addendum, page 3

⁶ 18 May 2017, A/HRC/WG.6/27/L.13, Draft report of the Working Group, paras. 5(117) and 5(154)

to develop and implement public awareness programmes; to reduce the rate of school drop-out and intensify efforts to eradicate child labour; to raise the minimum age of recruitment in the military to 18 years and to ratify the Optional protocol to the CRC on a communications procedure without reservations (Ireland)”

The Government accepted both recommendations, stating in regards to the first one: “Violence has already been made punishable by law in the Penal Code of Bonaire, St Eustatius, and Saba. In addition, the punishment can be increased by one-third if the offender committed the criminal offence against his or her child (among other parties). Corporal punishment in schools is prohibited by Aruban law. The New Civil Code includes a prohibition of corporal punishment in the family setting. In Curaçao, legislation addressing corporal punishment already exists.”⁷

Recommendations by human rights treaty bodies

Note: It appears the Convention on the Rights of the Child, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Convention on the Rights of Persons with Disabilities all apply in the Netherlands Antilles, as they do in the Netherlands. Article 17 of the European Social Charter, on which states’ obligation to prohibit is based, does not apply.

Committee on the Rights of the Child

(8 June 2015, CRC/C/NDL/CO/4 Advance Unedited Version, Concluding observations on fourth report, paras. 36 and 37)

“The Committee welcomes the State party’s efforts aimed at combatting child violence and abuse, but is concerned about: ...

e) absence of legal provisions expressly prohibiting corporal punishment in all settings, including at home, in Aruba; and

f) absence of legal provisions prohibiting corporal punishment of children in the home, alternative care settings, day care and schools in the Caribbean Netherlands.

“In the light of its General comments No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment and No. 13 (2011) on the right of the child to freedom from all forms of violence, the Committee recommends that the State party: ...

e) ensure that the State party’s legislation addresses all forms of violence, explicitly prohibits corporal punishment in all settings and includes measures to raise awareness of positive, non-violent and participatory forms of child-rearing throughout the Kingdom, in particular in Aruba as well as in the Caribbean Netherlands.”

Committee on the Rights of the Child

(27 March 2009, CRC/C/NLD/CO/3, Concluding observations on the third report of the Netherlands, paras. 36 and 37)

⁷ 14 September 2017, A/HRC/36/15/Add.1, Report of the working group: Addendum, page 6

“The Committee is concerned that corporal punishment in the home is not prohibited in Aruba, and that it is still being used at schools, day-care centres and in the home in the Netherlands Antilles.

“The Committee recommends that the State party prohibit corporal punishment by law and enforce the prohibition in all settings, including in the family, the schools and out of home placements. It also recommends that the State party conduct awareness-raising campaigns and parenting education programmes to ensure that alternative forms of discipline are used, in a manner consistent with the child’s human dignity and in conformity with the Convention, especially article 28, paragraph 2, while taking due account of general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment.”

Committee on the Rights of the Child

(7 June 2002, CRC/C/15/Add.186, Concluding observations on initial report, paras. 36 and 37)

“... The Committee is concerned, however, that there is insufficient information and awareness of the ill-treatment and abuse of children and that whilst corporal punishment has been formally banned and made a punishable offence in schools as a matter of policy, this form of punishment continues to be practised in schools, as well as in the home and in other public institutions such as prisons and in alternative care contexts.

“The Committee recommends that the Netherlands Antilles:

- a) take all legislative measure to prohibit all forms of physical and mental violence, including corporal punishment against children (boys as well as girls) in the home, schools and in all other contexts;
- b) conduct a study to assess the nature and extent of ill-treatment and abuse of children, and design policies and programmes to address it;
- c) carry out public education campaigns about the negative consequences of ill-treatment of children, and promote positive, non-violent forms of discipline as an alternative to corporal punishment....
- g) take into consideration the recommendations of the Committee adopted on its days of general discussion on children and violence in September 2000 (CRC/C/100, para.688) and September 2001 (CRC/C/111, paras.701-745).”

Prevalence/attitudinal research in the last ten years

None identified.