

Corporal punishment of children in Malta

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Child population 76,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Law reform has been achieved. Corporal punishment is unlawful in all settings, including the home.

Prohibition of corporal punishment

Home

Corporal punishment is unlawful in the home under a 2014 amendment to the Criminal Code. Prior to reform, article 339 of the Criminal Code had made it an offence for a person who “being authorised to correct any other person, exceeds the bounds of moderation”, thus allowing the use of “moderate” corporal punishment in childrearing. In February 2014, this article was amended by the Criminal Code (Amendment No. 3) Act 2014 so that a clause was added which states: “Provided that, for the avoidance of any doubt, corporal punishment of any kind shall always be deemed to exceed the bounds of moderation.” The amendment achieves legal clarity that the infliction of any kind of corporal punishment constitutes a crime against the person.

Some legislation must still be formally amended to bring it into line with the prohibition of corporal punishment. The Civil Code 1870 states that a parent may be deprived of the rights of parental authority “if the parent, exceeding the bounds of reasonable chastisement, ill-treats the child, or neglects his education” (art. 154), and the Criminal Code includes a reference to “lawful correction” in article 229. In light of the 2014 reform to article 339 of the Criminal Code, these provisions no longer amount to a defence for the use of corporal punishment in childrearing. Nevertheless, they should be amended/repealed so as to achieve absolute consistency in law.

Alternative care settings

Corporal punishment is unlawful in alternative care settings under article 339 of the Criminal Code, as amended by the Criminal Code (Amendment No. 3) Act 2014 (see under “Home”).

Day care

Corporal punishment is unlawful in early childhood care and in day care for older children under article 339 of the Criminal Code, as amended by the Criminal Code (Amendment No. 3) Act 2014 (see under “Home”).

Schools

Corporal punishment is unlawful in schools under article 339 of the Criminal Code as amended in 2014 (see under “Home”). Article 62 of the Education Act 1988 (amended 2006) addresses good behaviour and discipline in schools and makes no provision for corporal punishment.

Penal institutions

Corporal punishment is unlawful as a disciplinary measure in penal institutions under article 339 of the Criminal Code as amended in 2014 (see under “Home”).

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. It is not available as a sentence under the Criminal Code, the Children and Young Persons (Care Orders) Act 1980 and the Juvenile Court Act.

Universal Periodic Review of Malta’s human rights record

Malta was examined in the first cycle of the Universal Periodic Review in 2009 (session 5). The following recommendation was made:¹

“Explicitly and entirely prohibit any kind of corporal punishment of children by law, even in cases of so-called ‘reasonable chastisement’ within the family (Italy and Germany)”

The Government rejected the recommendation, stating: “The intervention made by the Maltese delegation on 6 May 2009 explained that this was a misconception and in fact there is nothing to suggest that corporal punishment is permitted under Maltese Law, vide also paragraph 77 of the draft report on Malta (A/HRC/WG.6/5/L.6). If any reasonable chastisement tantamounts [sic] to even slight bodily harm, this is an offence against the person. Hence, Malta cannot accept this recommendation.”²

Examination in the second cycle took place in 2013 (session 17). In its national report to the UPR, the Government stated again that the provision for “reasonable chastisement” in the Civil Code does not legalise corporal punishment and briefly described work in schools to raise awareness about physical discipline and to prevent physical abuse.³ The following recommendation was made:⁴

“Prohibit and eliminate corporal punishment of children, as this is a key obligation under the Convention on the Rights of the Child and other international human rights instruments (Maldives)”

The Government accepted the recommendation.⁵ It reported the achievement of prohibition of corporal punishment to the Human Rights Council at its 25th session: “Malta also announced that, by amending the Criminal Code, it would be prohibiting punishment in all forms, both in the home and in alternative care settings, thereby confirming that proper respect for human rights, in particular, for

¹ 4 June 2009, A/HRC/12/7, Report of the working group, para. 80(32)

² 23 September 2009, A/HRC/12/7/Add.1/Rev.2, Report of the working group: Addendum, para. 22

³ 23 July 2013, A/HRC/WG.6/17/MLT/1, National report to the UPR, paras. 110, 111 and 112

⁴ 1 November 2013, A/HRC/WG.6/17/L.15 Unedited Version, Draft report of the working group, para. 102(72)

⁵ 11 March 2014, A/HRC/25/17/Add.1, Report of the working group: Addendum, para. 75

the rights of the child, requires that children should never undergo corporal punishment. To this end, this new legislation in Malta has considered reference to ‘bounds of reasonable chastisement’ as no longer acceptable.”⁶

Third cycle examination took place in 2018 (session 31). No recommendations specifically on corporal punishment were extended.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(18 June 2013, CRC/C/MLT/CO/2, Concluding observations on second report, paras. 8, 9, 36 and 37)

“The Committee, while welcoming the State party’s efforts to implement the Committee’s concluding observations of June 2000 on the State party’s initial report (CRC/C/15/Add.129), notes with regret that some of the recommendations, contained therein have not been fully addressed.

“The Committee urges the State party to take all necessary measures to address those recommendations in the concluding observations of the initial periodic report under the Convention that have not been implemented or sufficiently implemented, particularly those related to ... corporal punishment.....

“The Committee notes as positive the Foundation for Social Welfare Services ‘Blue Ribbon’ campaign to promote positive parenting that was launched in 2010. However, the Committee regrets that, notwithstanding its previous recommendation (CRC/C/15/Add.129, para. 30) to explicitly prohibit corporal punishment, the State party continues to lack legislation explicitly prohibiting corporal punishment in all settings. The Committee is particularly concerned that corporal punishment is permitted and prevalent in the home and alternative care contexts as so-called ‘reasonable chastisement’ under articles 229 and 339 of the State party’s Criminal Code and article 154 of its Civil Code.

“The Committee recommends that the State party take all appropriate measures to explicitly prohibit corporal punishment in all settings and ensure that this prohibition is adequately monitored and enforced. Furthermore, it recommends that the State party strengthen and expand awareness-raising and education campaigns, in order to promote positive and alternative forms of discipline and respect for children’s rights, with the involvement of children, while raising awareness about the adverse consequences of corporal punishment on children.”

Committee on the Rights of the Child

(28 June 2000, CRC/C/15/Add.129, Concluding observations on initial report, paras. 29 and 30)

“While the Committee takes note that the use of corporal punishment in schools has been prohibited and that the draft Children Act includes a prohibition on physical punishment, it remains concerned that corporal punishment and ‘reasonable chastisement’ in the home is not legally banned.

“The Committee recommends that the State party take all effective measures, including legal ones, to include an explicit prohibition on the use of corporal punishment in the home; to ensure that this

⁶ 27 March 2014, A/HRC/25/2 Advance Unedited Version, Draft report of the Human Rights Council on its twenty-fifth session, para. 751

prohibition is adequately monitored and enforced, both at home and in the schools; and to promote positive, non-violent forms of discipline as an alternative to corporal punishment in the home.”

Committee on Economic, Social and Cultural Rights

(26 November 2004, E/C.1/1/Add.101, Concluding observations on initial report, paras. 22 and 40)

“While corporal punishment is prohibited in schools and other institutions, the Committee notes that corporal punishment within the family, in the form of ‘reasonable chastisement’, is not prohibited by law.

“The Committee encourages the State party to consider an explicit prohibition on corporal punishment within the family.”

Human Rights Committee

(21 November 2014, CCPR/C/MLT/CO/2, Concluding observations on second report, para. 3)

“The Committee welcomes the following legislative and institutional steps taken by the State party:

...

d) the amendment to article 339 of the Criminal Code aimed at prohibiting corporal punishment in all settings....”

European Committee of Social Rights

(January 2016, Conclusions 2015)

“In its previous conclusion the Committee found that the situation was not in conformity with the Charter as not all forms of corporal punishment were prohibited. In this regard it notes from the report that as of 2014 all forms of corporal punishment have been outlawed. Article 339 of the Criminal Code provides that it is a contravention for any person being authorised to correct any other person, to exceed the bounds of moderation, provided that, for the avoidance of any doubt, corporal punishment of any kind shall always be deemed to exceed the bounds of moderation.

“The Committee also notes from the Global Initiative to end corporal punishment that the law reform has been achieved. Corporal punishment is prohibited in all settings, including the home. Corporal punishment is unlawful in the home under a 2014 amendment to the Criminal Code. Corporal punishment is unlawful in alternative care settings under article 339 of the Criminal Code, as amended by the Criminal Code (Amendment No. 3) Act 2014. Corporal punishment is unlawful in schools under Article 339 of the Criminal Code as amended in 2014.

“The Committee considers that with the legislative amendments introduced in 2014 (outside the reference period) the situation has been brought into conformity with the Charter. However, the Committee considers that during the reference period the situation was not in conformity with the Charter as corporal punishment was not prohibited in the home in schools and in institutions.”

“The Committee concludes that during the reference period the situation in Malta was not in conformity with Article 17§1 of the Charter on the ground that corporal punishment was not prohibited in the home, in schools and in institutions.”

European Committee of Social Rights

(January 2012, Conclusions 2011)

“The Committee notes from another source that corporal punishment is lawful in the home. In response to recommendations made during the Universal Periodic Review in 2009, the Government stated that corporal punishment is not permitted under Maltese law (16 September 2009, A/HRC/12/7/Add.1/Rev.1, *Report of the Working Group on the Universal Periodic Review: Malta, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*). However, ‘reasonable chastisement’ is permitted in common law. The Criminal Code (1854) states that ‘lawful correction’ is not a permissible defence for wilful homicide (article 229) and makes it an offence for a person who ‘being authorised to correct any other person, exceeds the bounds of moderation’ (article 339). Article 154 of the Civil Code (1870) states that a parent may be deprived of the rights of parental authority ‘if the parent, exceeding the bounds of reasonable chastisement, ill-treats the child, or neglects his education’. Provisions against violence and abuse in the Criminal Code and the Domestic Violence Act (2006) are not interpreted as prohibiting corporal punishment in childrearing.

“The Committee considers that since common law permits ‘reasonable chastisement’ by parents, the situation remains not to be in conformity with the Charter on this point.

“The Committee takes note of the establishment of the Office of the Commissioner for Children as an independent body charged with promoting and advocating for the rights and interests of children. The Commissioner may carry out, or commission a child impact assessment for any proposal or decision concerning a policy which may affect children. The Commissioner raises the office’s principal concerns in its annual report. The Committee would like to be informed of any concerns raised by the Commissioner relating to the issues covered by this provision i.e. corporal punishment, children in institutions and in foster care and young offenders.

...

“The Committee concludes that the situation in Malta is not in conformity with Article 17§1 of the Charter on the grounds that : ...

- not all forms of corporal punishment are prohibited....”

European Committee of Social Rights

(March 2005, Conclusions XVII-2)

“The Committee notes that the report provides no information on corporal punishment of children. It notes from another source that the use of corporal punishment in schools has been prohibited and that the draft Children Act includes a prohibition on physical punishment. The Committee asks whether legislation prohibits corporal punishment of children in other institutions. The Committee notes that corporal punishment and ‘reasonable chastisement’ in the home is not legally prohibited.

“The Committee recalls that Article 17 requires a prohibition in legislation against any form of violence against children, whether at school, in other institutions, in their home or elsewhere. It considers that this prohibition must be combined with adequate sanctions in penal or civil law. Therefore, it considers that since there is no prohibition in legislation of corporal punishment in the home, the situation in Malta is not in conformity with Article 17 of the Charter.

...

“The Committee concludes that the situation in Malta is not in conformity with Article 17 of the Charter on the grounds that:

- corporal punishment in the home is not prohibited....”

European Committee of Social Rights

(1 June 2001, Addendum to Conclusions XV-2, pages 125-127)

“The Committee asks whether legislation prohibits all forms of corporal punishment of children, in the home, in schools, in institutions, and elsewhere....”

Prevalence/attitudinal research in the last ten years

None identified.