

Corporal punishment of children in Mauritius

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Child population 304,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Mauritius' commitment to prohibiting corporal punishment

Mauritius stated its intention to prohibit corporal punishment during the Universal Periodic Review of Mauritius in 2013. In 2015, the Government confirmed that prohibition is included in the draft Children's Bill.

Summary of necessary legal reform to achieve full prohibition

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

There appears to be no confirmation in legislation of a "right" of parents to administer "reasonable punishment" on their children (information unconfirmed), but legal provisions against violence and abuse are not interpreted as prohibiting all corporal punishment in childrearing. Mauritius gained independence from the UK in 1968, and the situation regarding corporal punishment of children will undoubtedly have been influenced by the English common law defence of "reasonable chastisement". The near universal acceptance of corporal punishment in childrearing necessitates clarity in law that all such punishment is unacceptable and unlawful. Prohibition should be enacted of all forms of corporal punishment, however light.

Alternative care settings – 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).

Penal institutions – The Reform Institutions Act prohibits punishment of detainees but article 12 allows the use of "such force as is reasonably necessary ... to maintain discipline in the institution". This provision should be amended/repealed and explicit prohibition enacted of corporal punishment as a disciplinary measure in all institutions accommodating children in conflict with the law.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. The Civil Code 1945 states that a child must “honour and respect his father and mother” and that parents must “protect the child’s safety, health and morals” and have a “right and duty to look after, monitor and educate” the child (“droit et devoir de garde, de surveillance et d’éducation”) (art. 371, as amended 1980). There appears to be no confirmation in this Code or in the Criminal Code 1838 of a right to punish/correct a child. However, there is no explicit prohibition of all corporal punishment in childrearing and since Mauritius gained independence from the UK in 1968, the situation regarding corporal punishment of children will undoubtedly have been influenced by the English common law defence of “reasonable chastisement”. Article 13(1) of the Child Protection Act 1994 makes it an offence to “ill-treat a child or otherwise expose a child to harm” but does not prohibit all corporal punishment. Provisions against violence and abuse in the Criminal Code, the Protection of the Child (Miscellaneous Provisions) Act 1998, the Social Aid Act, the Civil Code and the Protection from Domestic Violence Act 1997 are not interpreted as prohibiting all corporal punishment.

A Children’s Bill is being drafted with a view to harmonising legislation with the Convention on the Rights of the Child. Under examination by the Committee Against Torture in 2011, the Government stated its intention to consider prohibiting corporal punishment of children in the Bill.¹ Consultations on the Bill with all stakeholders have been carried out. During the Universal Periodic Review of Mauritius in 2013, the Government stated that it had decided to include prohibition of corporal punishment in the Bill.² In response to the recommendation to prohibit all corporal punishment made during the UPR in 2013, the Government stated that “the Children’s Bill, which is currently under preparation, proposes to specifically prohibit corporal punishment in order to be in line with the international norms set out in the Convention on the Rights of the Children”.³ In January 2015, the Government confirmed to the Committee on the Rights of the Child that the draft Bill included prohibition in all settings,⁴ this was again confirmed in 2018.⁵ The Bill was being reviewed by the Government in August 2017.⁶ The Government reported in 2017 that a “draft Child Protection and Care Bill” would prohibit corporal punishment⁷ and it was expected to be introduced to Parliament in 2018⁸ - it is unclear whether they are two different Bills.

Other laws being discussed include a Family Court Bill, draft rules under the Protection from Domestic Violence (Amendment) Act 2007 and a Civil Code (Amendment) Bill; reviews of the Constitution and of the 1994 Child Protection Act are also planned.

Alternative care settings

There is no explicit prohibition of corporal punishment in all alternative care settings.

¹ Summary record, CAT/C/SR.1001, paras. 35 and 65

² 26 December 2013, A/HRC/25/8, Report of the working group, para. 126

³ 14 March 2014, A/HRC/25/8/Add.1, Report of the working group: Addendum, para. 32

⁴ 19 January 2015, CRC/C/SR.1940, Summary record of 1940th meeting, para. 21; see also 19 November 2014, CRC/C/MUS/Q/3-5/Add.1, Reply to list of issues, paras. 26 and 66

⁵ 22 June 2018, CEDAW/C/MUS/8, Eighth report, para. 50; and 13 August 2018, A/HRC/WG.6/31/MUS/1, National report to the UPR, paras. 15 and 128

⁶ 15 August 2017, CCPR/C/MUS/Q/5/Add.1, Reply to list of issues, para. 2

⁷ 15 August 2017, CCPR/C/MUS/Q/5/Add.1, Reply to list of issues, para. 62

⁸ 23 November 2017, CAT/C/SR.1588, Summary records of 1588th meeting

Day care

There is no explicit prohibition of corporal punishment in all early childhood care and all day care for older children. It is possibly unlawful in preschool provision under education law.

Schools

Corporal punishment is prohibited in schools in article 13(4) of the Education Regulations 1957. The Ministry of Education and Human Resources has issued a circular to all schools stating that perpetrators of corporal punishment are liable to legal action under the Child Protection Act.⁹ The Education Act reportedly prohibits corporal punishment, but we have yet to verify this.¹⁰

Penal institutions

There is no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions. The treatment of detainees is governed by the Reform Institutions Act 1988 and associated regulations (the Prisons Regulations, the Rehabilitation Youth Centre Regulations and the Reforms Institutions Regulations). The Act states that “no detainee shall be subject to punishment or privation of any kind”, but article 12 allows the use of “such force as is reasonably necessary ... to maintain discipline in the institution”. In 2011, a Juvenile Offenders (Amendment) Bill and a Reform Institutions (Amendment) Bill were under discussion, but we have no further information. As at November 2017, the draft Juvenile Justice Bill was still under discussion.¹¹ In 2018, a Police and Criminal Justice Bill was under preparation.¹²

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. The Constitutional protection of every person from “inhuman or degrading punishment or other such treatment” is qualified by the provision that “nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in Mauritius on 11 March 1964” (art. 7). However, there is no provision for judicial corporal punishment in the Juvenile Offenders Act 1935 or the Criminal Code 1838.

Universal Periodic Review of Mauritius’ human rights record

Mauritius was examined in the first cycle of the Universal Periodic Review in 2009 (session 4). No recommendations were made specifically concerning corporal punishment of children. However, the following recommendations were made and were accepted by the Government:¹³

⁹ 28 October 2013, CRC/C/MUS/3-5, Third-fifth state party report, para. 41

¹⁰ [July 2015], CRPD/C/MUS/Q/1/Add.1 Advance Unedited Version, Reply to list of issues, para. 8

¹¹ 19 January 2015, CRC/C/SR.1940, Summary record of 1940th meeting, para. 4; see also 9 November 2014, CRC/C/MUS/Q/3-5/Add.1, Reply to list of issues, para. 199; and 23 November 2017, CAT/C/SR.1591, Summary records of 1591st meeting

¹² 13 August 2018, A/HRC/WG.6/31/MUS/1, National report to the UPR, para. 64

¹³ 3 March 2009, A/HRC/11/28, Report of the working group, paras. 27(2), 27(8), 27(12) and 27(27)

“Review its domestic legislation with a view to aligning it with the provisions of the human rights instruments that it has ratified (South Africa);

“Increase its efforts in ensuring full compliance of its domestic legislation with the Convention on the Rights of the Child, including by introducing a legal minimum age for criminal accountability (Italy) in line with international standards (Germany); Enact a Children’s Act as well as consolidating national legislation which is fully in line with the international obligations it has undertaken (Indonesia);

“Implement the recommendations of the Committee on the Rights of the Child (South Africa);

“Make all possible efforts to eradicate all forms of violence, all form of abuse against children and eliminate completely police brutality (Mexico)”

Examination in the second cycle took place in 2013 (session 17). During the review, the Government stated that it had “taken the decision to include corporal punishment as an offense in the Children’s Bill in order to bring the laws even more in line with the Convention on the Rights of the Child”.¹⁴ The following recommendation was made:¹⁵

“Adopt legislation that explicitly prohibits corporal punishment, and continue awareness raising campaigns on the negative effects of corporal punishment (Uruguay)”

During the dialogue, the Government did not clearly accept or reject the recommendation but confirmed that corporal punishment is prohibited in schools and that “the Children’s Bill, which is currently under preparation, proposes to specifically prohibit corporal punishment in order to be in line with the international norms set out in the Convention on the Rights of the Children”.¹⁶ The Government later formally accepted the recommendation in the state’s mid-term report.¹⁷

Third cycle examination took place in 2018 (session 31). The following recommendations were made:¹⁸

“Adopt as soon as possible the consolidated Children Bill, addressing key issues such as children’s access to justice and the prohibition of corporal punishment in all spheres of society, promoting the adoption of non-violent disciplinary measures (Uruguay)”

“Adopt the consolidated Children’s Bill, including a prohibition of all forms of corporal punishment of children in all settings (Germany)”

“Consider taking further steps to finalize the Children’s Bill which will, among others, abolish corporal punishment in all settings (Namibia)”

“Continue to strengthen efforts to combat child abuse in all its forms, by adopting and implementing the Children’s Bill with particular attention to issues such as corporal punishment, early and forced marriage, trafficking, sexual exploitation and forced prostitution (Netherlands)”

“Intensify efforts at formulating a comprehensive strategy for preventing and combating child abuse, including prohibition of corporal punishment in all settings (Ukraine)”

¹⁴ 26 December 2013, A/HRC/25/8, Report of the working group, para. 126

¹⁵ 26 December 2013, A/HRC/25/8, Report of the working group, para. 129(29)

¹⁶ 14 March 2014, A/HRC/25/8/Add.1, Report of the working group: Addendum, para. 32

¹⁷ 2016, Mauritius’ national mid-term report

¹⁸ 9 November 2018, A/HRC/WG.6/31/L.6 Unedited version, Draft report of the Working Group, paras. 6(133), 6(135), 6(138), 6(156) and 6(162)

The Government will examine the recommendations and respond before the 40th session of the Human Rights Council in March 2019.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(27 February 2015, CRC/C/MUS/CO/3-5, Concluding observations on third-fifth report, paras. 37, 38 and 44)

“The Committee is concerned that corporal punishment is applied in general as part of the school culture, even though it is prohibited by the Education Regulations of 1957, and that corporal punishment is not explicitly prohibited by law in all settings, including the home and alternative care settings, as well as the penal system.

“The Committee urges the State party to ensure that its legislation, including a children’s act, explicitly prohibits corporal punishment in all settings. The Committee also urges the State party to promote positive, non-violent and participatory forms of child-rearing and discipline. The State party is further encouraged to establish a clear reporting system for incidents of corporal punishment, notably in schools.

“Recalling the Guidelines for the Alternative Care of Children (General Assembly resolution 64/142, annex), the Committee emphasizes that financial and material poverty or conditions directly attributable to it should not be the sole justification for removing a child from parental care. The Committee recommends that the State party:

a) establish adequate support services for parents, as well as adopting and implementing awareness-raising and training programmes on parenting skills, including on alternatives to corporal punishment....”

Committee on the Rights of the Child

(17 March 2006, CRC/C/MUS/CO/2, Concluding observations on second report, paras. 37 and 38)

“While noting that corporal punishment is prohibited in schools through the Education Regulations of 1957, the Committee remains concerned that corporal punishment is not explicitly forbidden by law in the family and in all settings, including in alternative care settings.

“The Committee reiterates its previous concluding observations (CRC/C/15/Add.64, para. 31) and urges the State party to prohibit through legislation and other measures corporal punishment of children in the family, in schools, in penal institutions and in alternative care settings. The Committee further recommends that the State party conduct awareness-raising campaigns among adults and children, the promotion of non-violent, positive, participatory methods of child-rearing and education.”

Committee on the Rights of the Child

(30 October 1996, CRC/C/15/Add.64, Concluding observations on initial report, para. 31)

“In the light of articles 19, 34 and 35 of the Convention, the Committee encourages the State party to take all appropriate measures to prevent and combat ill-treatment of children, including child abuse within the family, corporal punishment, child labour and the sexual exploitation of children, including victims of sexual tourism....”

Committee Against Torture

(15 June 2011, CAT/C/MUS/CO/3, Concluding observations on third report, para. 17)

“While taking note of the information supplied by the State party, according to which section 13 of the Child Protection Act makes an offence to expose any child to harm, the Committee is concerned that corporal punishment is not fully prohibited in the legislation of the State party, including in penal institutions and in alternative care settings ... (art. 16).

The State party should adopt legislation to prohibit corporal punishment, in particular in social institutions and in alternative care settings. To that end, the State party should incorporate this issue in its Children’s Bill under preparation. The State party should also pursue awareness-campaigns on the negative effects of corporal punishment. Finally, it should strengthen its efforts to combat child abuse, including by investigating, prosecuting and punishing those responsible. The State party should provide the Committee with statistical data regarding cases of child abuse, the investigations, prosecutions, sentences imposed and redress or rehabilitation offered to victims.”

Human Rights Committee

(9 November 2017, CCPR/C/MUS/CO/5, Advance unedited version, Concluding observations on fifth report, paras. 23 and 24)

“The Committee is concerned that corporal punishment has not yet been explicitly prohibited at home, in day-care and alternative care settings as well as in penal institutions (arts. 7, 24).

“The State party should prohibit corporal punishment in all settings.”

Committee on the Elimination of Discrimination Against Women

(9 November 2018, CEDAW/C/MUS/CO/8 Advance unedited version, Concluding observations on eighth report, paras. 17 and 18)

“...The Committee, however, remains concerned at:

(b) The gaps in national legislation on some forms of gender-based violence, including the lack of an explicit prohibition of marital rape (even though marital rape can be prosecuted under section 249 of the Criminal Code and under section 13 (2) of the Protection from Domestic Violence Act) and the limited scope of section 13 (4) of the Child Protection Act of 1 April 1995 (Act No. 30 of 1994) that prohibits corporal punishment only in schools;

“The Committee recalls its General Recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, and reiterates its recommendation that the State party:

(b) Amend or adopt legislation to explicitly prohibit marital rape and corporal punishment of children in all settings”

Committee on Economic, Social and Cultural Rights

(8 June 2010, E/C.12/MUS/CO/4, Concluding observations on second to fourth report, para. 23)

“The Committee is concerned at the persistent problem with cases of child abuse and neglect in the State party (art. 10).

The Committee recommends that the State party take the necessary measures to combat child abuse and neglect, including explicitly prohibiting corporal punishment at home and in alternative care settings and as a disciplinary measure in the penal system.”

Prevalence/attitudinal research in the last ten years

None identified.