

# Corporal punishment of children in the Federated States of Micronesia

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Child population 43,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal  
Punishment of Children**

## Micronesia's commitment to prohibiting corporal punishment

Micronesia expressed its commitment to prohibiting all corporal punishment in accepting clearly recommendations to do so made during the Universal Periodic Review of Micronesia in 2015.

## 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; prohibition in schools requires confirmation.

The State Codes of Yap and Kosrae confirm the duty of parents to control/discipline their children; we have been unable to establish whether or not there are similar provisions in the legislation of Chuuk and Pohnpei. The near universal acceptance of a certain degree of violence in childrearing means that legal provisions against violence and abuse are not interpreted as prohibiting all corporal punishment by parents. Realising children's right to protection from all forms of violence necessitates clarity in law that no corporal punishment is acceptable or lawful. Prohibition should be enacted of corporal punishment by all adults with authority over children, including within the family.

*Alternative care settings* – Prohibition should be enacted of all corporal punishment in 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, preschools, crèches, etc) and all day care for older children (day centres, after-school childcare, childminding, etc). Child protection policies against corporal punishment in some day care centres must be confirmed by way of clear prohibition in legislation.

*Schools* – Confirmation is required that corporal punishment is prohibited by law and not only as a matter of policy in all schools.

*Penal institutions* – Corporal punishment should be prohibited as a disciplinary measure in all institutions accommodating children in conflict with the law.

**Note:** Micronesia is a state in free association with the US.

## **Current legality of corporal punishment**

### **Home**

Corporal punishment is lawful in the home. Children are protected from violence and abuse under the federal Code of the Federated States of Micronesia<sup>1</sup> and various state laws but there is no prohibition of corporal punishment. The State Juveniles Act in Yap states that parents “shall have control over the conduct and education of their minor children” and shall provide “for the discipline, support, and education of their children” (s1204). Similar provisions in the State Code of Kosrae 1997 specify that parents have a “duty of parental control of the minor” (s16.1102) and “the duty to control the minor and ... the power to exercise parental control and authority over the minor” (s6.4807). The FSM Code Title 41 protects children from child abuse, where “abuse” is defined as “any case in which a child exhibits evidence of skin bruising, bleeding, sexual molestation, burns, fracture of any bone, subdural hematoma, soft-tissue swelling, and such condition or death is not justifiably explained, or the history given concerning such condition or death is at variance with the degree of type of such condition or death, or the circumstances indicate that such condition or death may not be the product of an accidental occurrence” (s502). This protects children from severe corporal punishment which causes physical injury, but it does not offer protection from all physical punishment. A review of child protection legislation has been carried out in collaboration with UNICEF which confirms that corporal punishment is not prohibited in the home.<sup>2</sup>

In 2014, the FSM Criminal Code was under review: we do not know if proposals to prohibit corporal punishment have been made in this context. In the same year Kosrae State became the first in Micronesia to enact domestic violence legislation (Family Protection Act 2013). According to the Government’s report to the Committee on the Rights of the Child in 2017, Pohnpei Family Violence Law was enacted in 2017 and Family Protection Bills are being drafted in Yap and Chuuk.<sup>3</sup> We are seeking further information but to our knowledge prohibition of corporal punishment is not included in these reforms.

The Government reported to the UPR in 2015 that it continues to consider a comprehensive review of legislation and harmonisation of law and customary practices in all four states with international standards.<sup>4</sup> It indicated its commitment to prohibiting all corporal punishment of children by clearly accepting recommendations to do so made during the UPR.<sup>5</sup> The Government later acknowledged that the legislation detailed above only protects children from “severe” physical punishment.<sup>6</sup>

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<sup>1</sup> At <http://www.fsm-ca2014.org>

<sup>2</sup> UNICEF (2014), *Protect Me with Love and Care: Child Protection Baseline Report for the Federated States of Micronesia*, Government of the Federated States of Micronesia/UNICEF/Australian Aid

<sup>3</sup> [2017], CRC/FSM/2, Second report, para. 84

<sup>4</sup> 7 August 2015, A/HRC/WG.6/23/FSM/1, National report to the UPR, para. 30

<sup>5</sup> 23 December 2015, A/HRC/31/4, Report of the working group, paras. 62(22), 62(71) and 62(74); 4 March 2016, A/HRC/31/4/Add.1, Report of working group: Addendum, paras. 2, 3, 14, 15, 17 and 18

<sup>6</sup> [2017], CRC/FSM/2, Second report, para. 82

## **Alternative care settings**

There is no prohibition of corporal punishment in alternative care settings and the emphasis in law on parents' and legal guardians' authority and duty to control children (see under "Home") indicates corporal punishment is lawful.

## **Day care**

There is no explicit prohibition of corporal punishment in early childhood care or in day care for older children. Some day care centres reportedly have child protection policies, which include a ban on corporal punishment, but there is no prohibition in law and corporal punishment continues to be used.<sup>7</sup>

## **Schools**

Corporal punishment is reportedly prohibited in schools, but we have been unable to ascertain if this is by policy or law. There is no reference to corporal punishment or school discipline in the State Codes of Yap, Pohnpei or Kosrae or the draft State Code of Chuuk. According to UNICEF's 2014 baseline research, corporal punishment is unlawful in schools under the Criminal Code, but we have been unable to identify explicit prohibition in the Code.<sup>8</sup> The research also reports that some schools have child protection policies which include a ban on corporal punishment, but it continues to be used. Corporal punishment of children is not allowed under the School Accreditation System: Procedural Manual 2016.

## **Penal institutions**

There is no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions.

## **Sentence for crime**

Corporal punishment is unlawful as a sentence for crime. The Constitution of the Federated States of Micronesia states that "cruel and unusual punishments" should not be inflicted (art. IV, s8), and this is reflected in similar provisions in the Constitutions of Pohnpei (art. 4.9), Yap (art. 2.7), Kosrae (art. 2.1) and Chuuk (art. 3.6). There are no provisions in other state laws for judicial corporal punishment of children convicted of a crime. Recognition of custom and tradition is provided for but we have no information on whether this would allow for corporal punishment.

## **Universal Periodic Review of Micronesia's human rights record**

Micronesia was examined in the first cycle of the Universal Periodic Review in 2010 (session 9). No recommendations were made specifically concerning corporal punishment of children. However, the following recommendations were made and were accepted by the Government:<sup>9</sup>

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<sup>7</sup> UNICEF (2014), *Protect Me with Love and Care: Child Protection Baseline Report for the Federated States of Micronesia*, Government of the Federated States of Micronesia/UNICEF/Australian Aid

<sup>8</sup> UNICEF (2014), *Protect Me with Love and Care: Child Protection Baseline Report for the Federated States of Micronesia*, Government of the Federated States of Micronesia/UNICEF/Australian Aid, p. 47

<sup>9</sup> 4 January 2011, A/HRC/16/16, Report of the working group, paras. 61(21), 61(31), 61(33), 61(55) and 61(64)

“Ensure full human rights legal protection throughout Micronesia (Australia);

“Implement the outstanding legislative and administrative reforms required under the Convention on the Rights of the Child, in particular all the necessary measures to prevent and address violence against children and child abuse (United Kingdom of Great Britain and Northern Ireland);

“Continue to develop legislation in order to adapt it to the Convention on the Rights of the Child, in particular in areas such as the care of children who are without protection, protection against abuse and sexual exploitation, birth registration, the prohibition of child labour, the minimum age for criminal responsibility and the administration of justice for minors (Spain);

“Continue implementing measures in its ongoing efforts to eliminate discrimination and all forms of violence against women and children, and, in particular, undertake appropriate measures to prevent and combat ill treatment, sexual abuse and violence against children, as well as rehabilitate child victims (Thailand);

“Take all appropriate measures, including the revision of legislation, the initiation of a comprehensive study on child abuse, ill treatment and domestic violence, to prevent and combat ill treatment within, inter alia, the family and institutions, as well as the sexual abuse of children (Slovakia)”

Examination in the second cycle took place in 2015 (session 23). The following recommendations were made:<sup>10</sup>

“Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its optional protocol, and prohibit all corporal punishment of children in all settings, including at home environment (Estonia)

“Strengthen measures to combat violence against women, as well as to prohibit corporal punishment of children and to set out the minimum age to work (Brazil)

“Take legislative measures to prohibit all forms of corporal punishment of children in all settings (Namibia)”

The Government accepted the recommendations.<sup>11</sup>

## **Recommendations by human rights treaty bodies**

Micronesia is one of the rare states that have never received recommendations specifically on corporal punishment.

## **Prevalence/attitudinal research in the last ten years**

The findings of a study conducted in 2014 suggest corporal punishment is a common form of discipline within the family. The most common perpetrators of physical non-partner violence against women from 15 years of age were parents (father/stepfathers 48.1%, mothers/stepmothers 44.2%) and other relatives (male relatives 19.3%, female relatives 18.4%). Of the women surveyed who had children, 23% believed they needed to physically punish the child in order to raise the child properly.

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<sup>10</sup> 23 December 2015, A/HRC/31/4, Report of the working group, paras. 62(22), 62(71) and 62(74)

<sup>11</sup> 4 March 2016, A/HRC/31/4/Add.1, Report of working group: Addendum, paras. 2, 3, 14, 15, 17 and 18

Qualitative findings provided consistent results, with female and male focus group participants indicating that corporal punishment is widely used to educate children and young people. Spanking children was often mentioned as a common approach to discipline and generally not considered as physical violence; only extreme cases are considered violence.

(FSM Department of Health and Social Affairs (2014), *FSM Family Health and Safety Study: A prevalence study on violence against women*, Palikir, Federated States of Micronesia: FSM Department of Health and Social Affairs)

Key informants in a 2014 survey reported physical punishment as one of three main ways their community uses to deal with children who have committed an offence and/or crimes, at a rate of 17%. In relation to educational settings, data shows 55% of parents/guardians believe physical punishment is used in schools, compared to 42% of children that reported school physical punishment in this survey; children also reported greater positive disciplining and praising by teachers (87%) than parents believe happens (74%).

(UNICEF & Government of the Federated States of Micronesia (2014), *Protect Me with Love and Care: Child Protection Baseline Report for the Federated States of Micronesia*, Suva, Fiji: UNICEF Pacific)

A study of 1,475 14-17 year olds found that 13% of boys and 7% of girls had experienced an intentional injury from a teacher in the past year.

(Smith, B. J. et al (2008), "Intentional injury reported by young people in the Federated States of Micronesia, Kingdom of Tonga and Vanuatu", *BMC Public Health*, 8 (145), 1-8, cited in UNICEF East Asia and Pacific Regional Office (2012), *Child Maltreatment: Prevalence, Incidence and Consequences: A Systematic Review of Research*, Bangkok: UNICEF)