

Corporal punishment of children in Monaco

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Child population 7,000 (UNICEF, 2015)



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 is no defence for the use of corporal punishment enshrined in legislation but there is no explicit prohibition. Realisation of children's rights to equal legal protection from assault and to protection from all forms of violence requires clarity in law that no degree or form of corporal punishment is acceptable or lawful, without exception. Prohibition should be enacted of all corporal punishment and other humiliating and degrading treatment, in the home and all other settings where adults exercise authority over children.

Alternative care settings – Prohibition of corporal punishment should be enacted in relation 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 – Legislation should prohibit corporal punishment as a disciplinary measure in all schools, public and private.

Penal institutions – Legislation should prohibit 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 Government has repeatedly asserted that the criminal law on assault and battery, strengthened by amendments in 2007, adequately protects children from corporal punishment in all settings.¹ However, there is no explicit prohibition of corporal punishment in the Penal Code or its amending laws, Law No. 1.344 of 26 December 2007 increasing the punishment for crimes and offences against children and Law No. 1382 of 20 July 2011 on the prevention and repression of specific violence.

Following his visit to Monaco in January 2017, the Council of Europe's Commissioner for Human Rights pointed out that the Government could strengthen the "protection of children's rights by banning all forms of corporal punishment of children as a clear demonstration that all forms of violence against children are unacceptable".² In 2018, the Government accepted Universal Periodic Review (UPR) recommendations to prohibit corporal punishment of children.³

Reporting in 2019 to the Human Rights Council on its implementation of these UPR recommendations, the Government had highlighted Bill No. 984 amending certain provisions relating to penal sanctions (*projet de loi n° 984 portant modification de certaines dispositions relatives aux peines*).⁴ The Act amending certain provisions relating to penal sanctions (*loi n° 1.478 du 12 novembre 2019 portant modification de certaines dispositions relatives aux peines*) amended article 238-1 of the Penal Code – which in certain aggravating circumstances punishes assault which does not result in any physical harm with six months to a year's imprisonment as well as a fine – to include minority and close family relationship (e.g. parent to child) as an aggravating circumstance. But there are no indications that "assault" under this article would include all forms of corporal punishment, however light.

Alternative care settings

There is no explicit prohibition of corporal punishment in alternative care settings. Corporal punishment is lawful as for parents (see under "Home").

Day care

There is no explicit prohibition of corporal punishment in early childhood care and in day care for older children.

¹ 23 May 2011, Written replies to the Committee Against Torture; 27 May 2011, CAT/C/SR.1003, Summary record of examination by the Committee Against Torture, para. 21; 13 August 2012, CRC/C/MCO/2-3, Second/third report to the Committee on the Rights of the Child, paras. 213-217; 23 August 2013, CRC/C/MCO/Q/2-3/Add.1, Reply to list of issues; 15 April 2014, E/C.12/MCO/Q/2-3/Add.1, Reply to list of issues, paras. 133, 134, 135, 136 and 137; 17 November 2017, CEDAW/C/SR.1556, Summary records of 1556th meeting

² See <http://www.coe.int/en/web/commissioner/-/monaco-doit-consolider-les-progres-accomplis-en-matiere-de-protection-des-droits-des-enfants-des-personnes-handicapees-et-des-personnes-lgbti> (in English), accessed 22 March 2017

³ 26 December 2018, A/HRC/40/13, Report of the Working Group, paras. 76(63), 76(64), 76(65) and 76(66)

⁴ 15 February 2019, A/HRC/40/13/Add.1 Advance version, Report of the Working Group: Addendum, paras. 25 and 26

Schools

Corporal punishment is unlawful in schools. It is not among the permitted disciplinary measures listed in the Education Law 2007 but it is not explicitly prohibited.

Penal institutions

Corporal punishment is considered unlawful as a disciplinary measure in penal institutions, but there is no explicit prohibition in legislation.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. It is not a permitted sanction for crime under the Criminal Code.

Universal Periodic Review of Monaco's human rights record

Monaco was examined under the Universal Periodic Review process in 2009 (session 5). No recommendations were made concerning corporal punishment of children.

Examination in the second cycle took place in 2013 (session 17). No specific recommendations on corporal punishment were made. However, the following recommendations relevant to prohibition of corporal punishment were made and were accepted by the Government:⁵

“Continue strengthening protection policies in favour of boys and girls, women and persons with disabilities (Chile);

“Take measures to raise awareness of its new legislation concerning domestic violence and inform victims of violence about their rights and help available to them (Canada)”

Third cycle examination took place in 2018 (session 31). The Government supported the following recommendations:⁶

“Enact legislation to prohibit all forms of corporal punishment of children in all settings, while promoting positive, non-violent and participatory forms of child-rearing and discipline (Brazil);

“Adopt legislation to prohibit corporal punishment and violence against children (Madagascar);

“Adopt provisions to implement the recommendations of the Committee on the Rights of the Child to prohibit corporal punishment in all settings (Portugal);

“Enact legislation to clearly prohibit corporal punishment of children without exceptions in all settings, including in the home (Uruguay)”

⁵ 3 January 2014, A/HRC/25/12, Report of the working group, paras. 89(24) and 89 (38)

⁶ 26 December 2018, A/HRC/40/13, Report of the Working Group, paras. 76(63), 76(64), 76(65) and 76(66)

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(29 October 2013, CRC/C/MCO/CO/2-3, Concluding observations on second/third report, paras. 6, 7, 28 and 29)

“The Committee, while welcoming the State party’s efforts to implement the Committee’s concluding observations of 2001 on the State party’s initial report (CRC/C/15/Add.158), notes with regret that some of the recommendations contained therein have not been fully addressed.

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

“Despite the fact that the State party’s criminal law provisions prohibit different forms of violence against children, the Committee regrets that the State party continues to lack legislation explicitly prohibiting corporal punishment in all settings, including the home, institutions and all alternative care settings, as previously recommended by the Committee (CRC/C/15/Add.158, para. 27).

“The Committee urges the State party to introduce provisions expressly prohibiting corporal punishment in all settings, and to strengthen its efforts to promote positive, non-violent and participatory forms of child-rearing and discipline.”

Committee on the Rights of the Child

(8 June 2001, CRC/C/15/Add.158, Concluding observations on initial report, paras. 26 and 27)

“The Committee is concerned that corporal punishment is not prohibited under law.

“The Committee recommends that the State party prohibit the practice of corporal punishment in the family and conduct information campaigns targeting, among others, parents, children, law enforcement and judicial officials and teachers, explaining children’s rights in this regard and encouraging the use of alternative forms of discipline in a manner consistent with the child’s human dignity and in conformity with the Convention, especially articles 19 and 28.2.”

Committee Against Torture

(17 June 2011, CAT/C/MCO/4-5, Concluding observations on fourth/fifth report, para. 11)

“The Committee notes that Bill No. 869, on efforts to combat and prevent specific forms of violence against women, children and persons with disabilities, was submitted to the National Council in October 2009. It remains concerned, however, at the delay in the process of adopting this important legislation (arts. 2, 13, 14 and 16).

The State party should ensure that Bill No. 869 is adopted quickly in order to prevent and combat all forms of violence against women, children and persons with disabilities. It should also ensure that corporal punishment for children is explicitly prohibited in all areas of life and that domestic violence is punished. The Committee further recommends that the State party should organize training or awareness raising campaigns aimed specifically at informing victims of domestic violence about their rights.”

Prevalence/attitudinal research in the last ten years

None identified.