

Corporal punishment of children in the Marshall Islands: Briefing for the Universal Periodic Review, 36th session, May 2020



GLOBAL INITIATIVE TO
**End All Corporal
Punishment of Children**

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The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.

In the Marshall Islands, corporal punishment of children is still lawful despite repeated recommendations to prohibit it by the Committee on the Rights of the Child.

We hope the Working Group will note with concern the legality of corporal punishment of children in the Marshall Islands. We hope states will raise the issue during the review in 2020 and make a specific recommendation that the Marshall Islands draft and enact legislation as a matter of priority to explicitly prohibit all corporal punishment of children in all settings.

The Marshall Islands' commitment to prohibiting corporal punishment

The Marshall Islands expressed its commitment to prohibiting all corporal punishment of children, including in the home, by clearly accepting recommendations to do so made during the Universal Periodic Review of the Marshall Islands 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; further reform is also required in relation to schools.

Article 3.08 of the Criminal Code 2011 provides for the use of “justifiable” force on a child by parents, teachers and others, including for the purpose of punishing misconduct. This provision should be repealed and prohibition should be enacted of all corporal punishment by parents and others with authority over children.

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, crèches, children’s centres, etc.) and all day care for older children (day centres, after-school childcare, childminding, etc.).

Schools – The Criminal Code provisions for the use of force in the maintenance of discipline should be repealed.

Note: The Marshall Islands is a state in free association with the US.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. Article 3.08(1) of the Criminal Code 2011 (amended 2013) states: “The use of force upon or toward the person of another is justifiable if: (1) the actor is the parent or guardian or other person similarly responsible for the general care and supervision of a minor or a person acting at the request of such parent, guardian or other responsible person and: (a) the force is reasonable and the actor believes that the force used is necessary for the purpose of safeguarding or promoting the welfare of the minor, including the prevention or punishment of the minor’s misconduct; and (b) the force used is not designed to cause or known to create a substantial risk of causing death, serious bodily injury, disfigurement, extreme pain or mental distress or gross degradation.” Provisions protecting children from violence and abuse in the Child Rights Protection Act and in the Rights of Persons with Disabilities Act 2015 are not interpreted as prohibiting all corporal punishment.

The Domestic Violence Prevention and Protection Act 2011 states that one of its purposes is “to recognise that domestic violence of any kind is not acceptable in the Republic” (art. 2). It applies to children as well as to adults and defines domestic violence as assault or threat of assault against a family member (art. 4). However, assault is defined as under the Criminal Code and the protection for children is therefore undermined by the provisions for “justifiable” force in article 3.08 of the Code.

The Government has recognised that corporal punishment was not explicitly prohibited under the Act.¹

Child protection legislation was reviewed as part of child protection baseline research in collaboration with UNICEF: the report, launched in March 2013, recommended that the Child Abuse and Neglect Act 1991 be revised to include prohibition of corporal punishment, particularly in the home.² However the Child Rights Protection Act 2015, which repealed the Child Abuse and Neglect Act, does not prohibit corporal punishment in the home. The Government declared in 2017 that a consultation would be held in 2018 to review legislation based on recommendations from the 2012 Child Protection Baseline Research,³ recommendations which included prohibition of all corporal punishment.

The Government indicated its commitment to prohibiting corporal punishment, including in the home, when it accepted recommendations to do so made during the Universal Periodic Review of the Marshall Islands in 2015.⁴ In 2017, the Government stated that corporal punishment was “a difficult topic in Marshallese culture” and was often viewed as “a necessary tactic to discipline children or others under their care”.⁵

Alternative care settings

Corporal punishment is lawful in alternative care settings under the provisions for justifiable force in article 3.08 of the Criminal Code 2011.

Day care

Corporal punishment is lawful in day care under the provisions for justifiable force in article 3.08 of the Criminal Code 2011.

Schools

Corporal punishment is prohibited in schools, but the prohibition is undermined by the existence of legal defence for its use in the Criminal Code 2011, which has not yet been formally repealed.

The Public School System Act 2013 explicitly prohibits corporal punishment in article 324: “(3) Corporal punishment is prohibited in the public school system.” Article 331 appears to extend the prohibition to non-public schools: “(3) No non-public school shall be established except in conformity with this Chapter....” Non-public schools are defined as religiously or community group-supported schools and any schools which charges for tuition or attendance (art. 302). The Child Rights Protection Act 2015 states in article 9(2) on the right to education “(2) Corporal punishment shall be prohibited”, and the Government has said that the Child Rights Protection Policy 2015 prohibited its used by “all regular and volunteer teachers and staff”.⁶

¹ 13 November 2017, CEDAW/C/MHL/Q/1-3/Add.1, Reply to list of issues, para. 48

² UNICEF (2012), *Child Protection Baseline Report Republic of Marshall Islands: Value and Protect Our Previous Children*, UNICEF Pacific, p. 62

³ 27 October 2017, CRC/C/MHL/Q/3-4/Add.1, Reply to List of issues, para. 2

⁴ 20 July 2015, A/HRC/30/13, Report of the working group, paras. 75(74), 75(85), 75(86) and 75(87); 11 September 2015, A/HRC/30/13/Add.1, Report of the working group: Addendum, paras. 5

⁵ 27 October 2017, CRC/C/MHL/Q/3-4/Add.1, Reply to List of issues, para. 18

⁶ 13 November 2017, CEDAW/C/MHL/Q/1-3/Add.1, Reply to list of issues, para. 47

However, the prohibition in these laws is undermined by the Criminal Code 2011, which allows the use of force including for the maintenance of discipline, stating in article 3.08(2): “The use of force upon or toward the person of another is justifiable if: ... (2) the actor is a teacher or a person otherwise entrusted with the care or supervision for a special purpose of a minor and: (a) the force is reasonable and the actor believes that the force used is necessary to further such special purpose, including the maintenance of reasonable discipline in a school, class or other group, and that the use of such force is consistent with the welfare of the minor; and (b) the degree of force, if it had been used by the parent or guardian of the minor, would not be unjustifiable under Subsection (1)(b) of this Section.”

In reporting to the Committee on the Rights of the Child in 2004, the Government had stated that corporal punishment is prohibited in schools under the Rules and Regulations of the Ministry of Education, and that these defined corporal punishment as “hitting, kicking, slapping or any other means of brutal punishment”.⁷ The authorisation of justifiable force in the Criminal Code 2011 undermined this prohibition by providing a legal defence for the use of some level of physical punishment for the purpose of discipline.

Penal institutions

Corporal punishment is unlawful as a disciplinary measure in penal institutions. Article 40 of the Child Rights Protection Act 2015 on the protection of children deprived of their liberty states “(1) Children who are restricted in or deprived of their liberty shall be held in a manner that avoids harm to their dignity and is appropriate to their age. Those responsible for the care and guard of child detainees must protect them from physical, psychological, and sexual violence, respect their human rights, and ensure decent, humane, and just treatment” and “(5) ...Discipline at detention places shall preclude torture, cruel, and degrading treatment. It shall be prohibited to subject a child detainee to additional punishment. The use of restraint or force shall only be allowed when the child poses an imminent threat of injury to her/himself or others, but never as punishment.”

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in the Criminal Code 2011.

Universal Periodic Review of Marshall Islands’ human rights record

The Marshall Islands was examined under 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:⁸

“Ensure that human rights are afforded full legal protection (Australia);

“Strengthen the adoption of necessary measures to implement a national programme aimed at eliminating violence against children (Argentina); adopt all necessary measures to prevent violence against children as well as child abuse and neglect (Slovakia); take all necessary legal

⁷ 24 August 2005, CRC/C/93/Add.8, Second state party report, para. 67

⁸ 4 January 2011, A/HRC/16/12, Report of the working group, paras. 56(13) and 56(20)

and practical measures to prevent child abuse and neglect, and adopt a plan of action to combat any form of violence against children (Hungary)”

Examination in the second cycle took place in 2015 (session 22). During the review the following recommendations were made:⁹

“Continue combating violence against women and children by prohibiting the right to use force and severe corporal punishment of children at home, and effectively enforcing the existing laws in this area, especially the Domestic Violence Prevention and Protection Act (Thailand);

“Prohibit corporal punishment of children in all settings, including the home, and repeal the authorization of the use of force to correct children’s misconduct in the Criminal Code (Sweden);

“Reform its legislation with a view to establish the prohibition of all forms of corporal punishment of children, an indispensable component for the prevention and elimination of violence against children, as well as for the respect for children’s rights, dignity and physical integrity (Brazil);

“Adopt legislation to prohibit all forms of corporal punishment of children in all settings, and explicitly repeal the right to use force for ‘prevention or punishment of the minor’s misconduct’ and for the maintenance of ‘reasonable discipline’ in the Criminal Code (Namibia)

The Government accepted the recommendations.¹⁰

Recommendations by human rights treaty bodies

The Committee on the Rights of the Child has twice expressed concern at corporal punishment of children in the Marshall Islands and recommended it be prohibited in the home and other settings – in the concluding observations on the state party’s initial report in 2000,¹¹ on the second report in 2007¹² and on the third/fourth report in 2018.¹³

Prevalence/attitudinal research in the last ten years

In a study which involved questionnaires, group activities and interviews with adults and children throughout the Marshall Islands, carried out in 2010, 46% of interviewees working in education said teachers use corporal punishment in schools. Seven to 11 year olds who were involved in the study said “teacher spanking us” was one of the top four actions which children don’t like at school. Of the 660 16 and 17 year olds who took part in the research, 8% said they had been physically punished at home every day in the past month, 12% they had been physically punished once a week, 5% once every two weeks and 6% once during the past month.

(UNICEF Pacific (2012), *Child Protection Baseline Report Republic of the Marshall Islands*, Suva: UNICEF Pacific)

⁹ 20 July 2015, A/HRC/30/13, Report of the working group, paras. 75(74), 75(85), 75(86) and 75(87)

¹⁰ 11 September 2015, A/HRC/30/13/Add.1, Report of the working group: Addendum, paras. 5

¹¹ 16 October 2000, CRC/C/15/Add.139, Concluding observations on initial report, paras. 36 and 37

¹² 19 November 2007, CRC/C/MHL/CO/2, Concluding observations on second report, paras. 3, 41, 42 and 43

¹³ 2 February 2018, CRC/C/MHL/CO/3-4 Advance unedited version, Concluding observations on third/fourth report, paras. 4, 18 and 19