

Corporal punishment of children in Malta: Briefing for the Universal Periodic Review, 17th session, 2013

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Global Initiative to
**End All Corporal Punishment
of Children**

Corporal punishment of children breaches their rights to respect for human dignity and physical integrity and to equal protection under the law. It is recognised by the Committee on the Rights of the Child and other treaty bodies, as well as by the UN Secretary General's Study on Violence against Children, as a highly significant issue, both for asserting children's status as rights holders and for the prevention of all forms of violence.

In June 2006, the Committee on the Rights of the Child adopted General Comment No. 8 on "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment", which emphasises the immediate obligation on states parties to prohibit all corporal punishment of children, including within the home. Other treaty bodies and also regional human rights mechanisms have condemned all corporal punishment. In October 2006, the report of the UN Secretary General's Study on Violence against Children was submitted to the General Assembly. It recommends universal prohibition of all corporal punishment as a matter of priority.

The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, and in 2011 began briefing the Committee on the Rights of Persons with Disabilities. There is growing progress across all regions in challenging this common form of violence against children. But many States persist in ignoring treaty body recommendations to prohibit and eliminate all corporal punishment. We hope the Working Group of the UPR will give particular attention to states' response, or lack of response, to the concluding observations from treaty bodies on this issue, as well as to the recommendations made during the first cycle of the UPR.

Corporal punishment of children is lawful in Malta despite the recommendations to prohibit it made during the UPR in 2009 – which the Government rejected, providing misleading information on Maltese law – and the repeated recommendations of the Committee on the Rights of the Child and other treaty bodies.

We hope the Working Group will note with concern the legality of corporal punishment in Malta. We hope states will raise the issue during the review in 2013 and recommend to Malta that legislation is enacted to repeal the defence of "reasonable chastisement" and explicitly prohibit corporal punishment of children in all settings, including in the home, as a matter of priority.

1 The review of Malta in the first cycle (2009)

1.1 Malta was reviewed in the first cycle of the Universal Periodic Review in 2009 (session 5). The issue of corporal punishment of children was raised in the compilation of UN information¹ and in the summary of stakeholders' information.² The following recommendation was made:³

“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)”

1.2 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.... If any reasonable chastisement tantamounts to even slight bodily harm, this is an offence against the person. Hence, Malta cannot accept this recommendation.”⁴ This assertion about Maltese law completely misrepresents the legality of corporal punishment in Malta, where in fact “reasonable chastisement” by parents is lawful (see below).

1.3 Since the initial review in 2009, Malta's second report to the Committee on the Rights of the Child has been examined. The Government told the Committee that the concept of “reasonable chastisement” does not mean that Maltese law allows corporal punishment, because corporal punishment is unlawful under the Criminal Code prohibition of assault and of causing bodily harm; the Government also drew attention to the Domestic Violence Act 2006, which addresses all violence in the home, including against children.⁵ Nevertheless, and positively, the Head of Delegation Mr Frans Borg, Permanent Secretary, Ministry for Justice, Dialogue and the Family, confirmed to the Committee that “if further clarification of the law was required, he would inform the capital of the need to amend the law to make it clear that corporal punishment was prohibited everywhere”.⁶

1.4 It is notable that the Government's statements concerning “reasonable chastisement” to the UPR in 2009 and to the CRC in 2013 are inconsistent with statements to the CRC in 2000, when the initial state party report was examined. At that time, the Government told the Committee, when asked about the distinction between reasonable and unreasonable chastisement, that “‘reasonable’ chastisement was indeed permitted within the family, but would no longer be once the Children Act had been adopted”.⁷ In fact, the Children Act which was then being drafted by the Department for Children and Family Services was never enacted.

1.5 It is also noteworthy that the Office of the Commissioner for Children in Malta has long advocated law reform to prohibit corporal punishment. Its “Manifesto for Children” published in 2007-2008 clearly states that “Not all corporal punishment is prohibited by law” and that “Measures should be taken to explicitly prohibit any use of corporal punishment, in favour of positive and non-violent forms of discipline” (Family, para. 7). Its 2013 Manifesto confirms that the law on “reasonable chastisement” can lead to cases of physical abuse being interpreted as reasonable punishment and recommends that the

¹ 12 March 2009, A/HRC/WG.6/5/MLT/2, Compilation of UN information, para. 18

² 20 February 2009, A/HRC/WG.6/5/MLT/3, Summary of stakeholders' views, para. 5

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

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

⁵ 21 January 2013, CRC/C/MLT/Q/2/Add.1, Reply to list of issues, paras. 73 and 74

⁶ 23 January 2013, CRC/C/SR.1763, Summary record of 1763rd meeting, para. 8

⁷ 2 June 2000, CRC/C/SR.633, Summary record of 633rd meeting, paras. 50 and 53

law be amended to clarify that reasonable punishment must exclude beating children (section 3.2.2).

1.6 Prohibiting and eliminating corporal punishment – however light and whoever the perpetrator – is an obligation on states under the Convention on the Rights of the Child and other international human rights treaties. But it is an obligation too often ignored or evaded by governments. Prohibition requires that all legal defences for the use of corporal punishment by parents and others with parental authority are repealed and that legislation is enacted which explicitly prohibits corporal punishment in all settings, including the home. These necessary reforms have not been achieved in Malta.

2 Legality of corporal punishment in Malta

2.1 ***Home (lawful)***: Legal confirmation of the “right” of parents to impose “reasonable chastisement” is found in the Civil Code 1870, which 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” (article 154), and the Criminal Code 1854, which makes it an offence for a person who “being authorized to correct any other person, exceeds the bounds of moderation” (article 339).

2.2 ***Schools (no explicit prohibition)***: Corporal punishment is considered unlawful in schools, but there is no explicit prohibition. Article 62 of the Education Act 1988 (amended 2006) addresses good behaviour and discipline in schools and makes no provision for corporal punishment, but does not explicitly prohibit it. There is no explicit prohibition of corporal punishment in the Teachers (Code of Behaviours) Regulations 1988.

2.3 ***Penal system (no explicit prohibition)***: 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. It is reportedly unlawful as a disciplinary measure in penal institutions, but we have been unable to identify prohibiting legislation.

2.4 ***Alternative care settings (lawful)***: Corporal punishment is lawful under the provisions for “reasonable chastisement”. Residential institutions are governed by the Children and Young Persons (Care Orders) Regulations 1985, which do not prohibit corporal punishment.

3 Recommendations by human rights treaty monitoring bodies

3.1 The Committee on the Rights of the Child has twice recommended that corporal punishment of children in Malta be explicitly prohibited in the home and other settings – in its concluding observations on the initial report in 2000⁸ and on the second report in 2013.⁹

3.2 In 2004, the Committee on Economic, Social and Cultural Rights recommended prohibition of corporal punishment in the family in Malta.¹⁰

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

⁹ 29 January 2013, CRC/C/MLT/CO/2 Advance Unedited Version, Concluding observations on second report, paras. 8, 9, 36 and 37

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

3.3 In 2005 and again in 2012, the European Committee of Social Rights concluded that the situation in Malta is not in conformity with the Revised Social Charter because corporal punishment is not prohibited.¹¹

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¹¹ March 2005, Conclusions XVII-2; January 2012, Conclusions 2011