

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

From Dr Sharon Owen, Research Coordinator, Global Initiative,
info@endcorporalpunishment.org



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 Mauritius despite the Government's acceptance of relevant recommendations made during the UPR in 2009 and the repeated recommendations on the issue by 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 Mauritius – and the immediate opportunity to address this by including prohibition in the Children Bill currently under discussion. We hope states will raise the issue during the review in 2013 and recommend to Mauritius that legislation is enacted to explicitly prohibit corporal punishment of children in all settings including the home as a matter of priority.

1 The initial review of Mauritius by the Human Rights Council (2009)

1.1 Mauritius was reviewed in the first cycle of the Universal Periodic Review in 2009 (session 4). The issue of corporal punishment of children was raised in the compilation of UN information.¹ No recommendation was made specifically concerning corporal punishment, but the following recommendations were made and were accepted by the Government:²

“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)”

1.2 Prohibiting and eliminating corporal punishment of children is a key obligation under the Convention on the Rights of the Child and other international human rights instruments. But too often it is an obligation ignored or evaded by governments. We note that the Government of Mauritius, while being examined by the Committee Against Torture in 2011, stated its intention to consider prohibiting corporal punishment of children in the Children’s Bill then under discussion.³ Our information is that this Bill is still being drafted, having been the subject of consultation with stakeholders during 2012.

1.3 We do not know if prohibition has been proposed in the context of the forthcoming Children Bill. However, in terms of legislation currently in force there has been no change in the legality of corporal punishment of children in Mauritius since the initial UPR. Today, as in 2009, corporal punishment is lawful in the home, in penal institutions and in alternative care settings.

2 Legality of corporal punishment in Mauritius

2.1 **Home (*lawful*):** 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 in childrearing.

2.2 **Schools (*prohibited*):** Corporal punishment is prohibited in schools in article 13(4) of the Education Regulations 1957.

¹ 28 November 2008, A/HRC/WG.6/4/MUS/2, Compilation of UN information, para. 24

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

³ Summary record, CAT/C/SR.1001, paras. 35 and 65

2.3 **Penal system (*partial prohibition*)**: Corporal punishment is unlawful as a sentence for crime under the Constitution 1968 (amended 2003) and the Juvenile Offenders Act 1935 (amended 1998). 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”.

2.4 **Alternative care settings (*lawful*)**: There is no explicit prohibition of corporal punishment.

3 Recommendations by human rights treaty monitoring bodies

3.1 **CRC**: The Committee on the Rights of the Child has twice made recommendations concerning corporal punishment of children, including in the home, in Mauritius – following examination of the state party’s initial report in 1996⁴ and the second report in 2006.⁵

3.2 **CESCR**: In 2010, the Committee on Economic, Social and Cultural Rights recommended that corporal punishment in Mauritius be prohibited in the home, in alternative care settings and as a disciplinary measure in the penal system.⁶

3.3 **CAT**: In 2011, the Committee Against Torture recommended that Mauritius incorporate prohibition of corporal punishment in the Children Bill.⁷

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
www.endcorporalpunishment.org; info@encorporalpunishment.org
March 2013

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

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

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

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