

Corporal punishment of children in Mauritius: Briefing for the Universal Periodic Review, 31st session, November 2018

*From the Global Initiative to End All Corporal Punishment of
Children, March 2018*



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

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 Mauritius, corporal punishment of children is still lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child, the Human Rights Committee, the Committee Against Torture and the Committee on Economic, Social and Cultural Rights.

We hope the Working Group will note with concern the legality of corporal punishment of children in Mauritius. We hope states will raise the issue during the review in 2018 and make a specific recommendation that Mauritius fulfil its commitment and enact the Children’s Bill as a matter of urgency to clearly prohibit all corporal punishment of children in all settings, including in the home.

1 Review of Mauritius in the 2nd cycle UPR (2013) and progress since

- 1.1 Mauritius was reviewed in the second cycle of the Universal Periodic Review in 2013 (session 17). The issue of corporal punishment of children was raised in the compilation of UN information¹ and the summary of stakeholders’ information.² In its 2016 mid-term report, the Government accepted a recommendation to enact legislation explicitly prohibiting corporal punishment.³
- 1.2 Since the review, there has been no change in the legality of corporal punishment of children. The Government has repeatedly stated that the draft Children’s Bill would prohibit “all forms of corporal punishments in all settings”⁴ – however this Bill has been discussions since 2011 and does not seem to be a priority for the Government.
- 1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in Mauritius. We hope states will raise the issue during the review in 2018 and make a specific recommendation that Mauritius fulfil its commitment and enact the Children’s Bill as a matter of urgency to clearly prohibit all corporal punishment of children in all settings, including in the home.**

¹ 9 August 2013, A/HRC/WG.6/17/MUS/2, Compilation of UN information, para. 28

² 24 July 2013, A/HRC/WG.6/17/MUS/3, Summary of stakeholders’ views, paras. 10, 11, 12, 13, 14 and 15

³ 2016, Mauritius’ national mid-term report

⁴ See for example, 19 January 2015, CRC/C/SR.1940, Summary record of 1940th meeting, para. 21; see also 2016, Mauritius’ national mid-term report

2 Legality of corporal punishment in Mauritius

Summary of current law and reforms needed to achieve prohibition

Corporal punishment of children in Mauritius is lawful in the home, alternative care and some day care settings, and in penal institutions. Legislation should be enacted to explicitly prohibit all corporal punishment, however light, in all settings including in the home.

2.1 **Home (lawful):** Corporal punishment is lawful in the home. The Civil Code 1945 states that a child must “honour and respect his father and mother” and that parents must “protect the child’s safety, health and morals” and have a “right and duty to look after, monitor and educate” the child (“droit et devoir de garde, de surveillance et d’éducation”) (art. 371, as amended 1980). There appears to be no confirmation in this Code or in the Criminal Code 1838 of a right to punish/correct a child. However, there is no explicit prohibition of all corporal punishment in childrearing and since Mauritius gained independence from the UK in 1968, the situation regarding corporal punishment of children will undoubtedly have been influenced by the English common law defence of “reasonable chastisement”. 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.

2.2 A Children’s Bill is being drafted with a view to harmonising legislation with the Convention on the Rights of the Child. Under examination by the Committee Against Torture in 2011, the Government stated its intention to consider prohibiting corporal punishment of children in the Bill.⁵ Consultations on the Bill with all stakeholders have been carried out. During the Universal Periodic Review of Mauritius in 2013, the Government stated that it had decided to include prohibition of corporal punishment in the Bill.⁶ In response to the recommendation to prohibit all corporal punishment made during the UPR in 2013, the Government stated that “the Children’s Bill, which is currently under preparation, proposes to specifically prohibit corporal punishment in order to be in line with the international norms set out in the Convention on the Rights of the Children”.⁷ In January 2015, the Government confirmed to the Committee on the Rights of the Child that the draft Bill included prohibition in all settings.⁸ The Bill was still being reviewed by the Government in August 2017.⁹ The Government reported in 2017 that a “draft Child Protection and Care Bill” would prohibit corporal punishment¹⁰ and it was expected to be introduced to Parliament in 2018¹¹ - it is unclear whether they are two different Bills. Other laws being discussed include a Family Court Bill, draft rules under the Protection from Domestic

⁵ Summary record, CAT/C/SR.1001, paras. 35 and 65

⁶ 26 December 2013, A/HRC/25/8, Report of the working group, para. 126

⁷ 14 March 2014, A/HRC/25/8/Add.1, Report of the working group: Addendum, para. 32

⁸ 19 January 2015, CRC/C/SR.1940, Summary record of 1940th meeting, para. 21; see also 19 November 2014, CRC/C/MUS/Q/3-5/Add.1, Reply to list of issues, paras. 26 and 66

⁹ 15 August 2017, CCPR/C/MUS/Q/5/Add.1, Reply to list of issues, para. 2

¹⁰ 15 August 2017, CCPR/C/MUS/Q/5/Add.1, Reply to list of issues, para. 62

¹¹ 23 November 2017, CAT/C/SR.1588, Summary records of 1588th meeting

Violence (Amendment) Act 2007 and a Civil Code (Amendment) Bill; a review of the Constitution and of the 1994 Child Protection Act is also planned.

- 2.3 **Alternative care settings (lawful):** There is no explicit prohibition of corporal punishment in all alternative care settings.
- 2.4 **Day care (?partially lawful):** There is no explicit prohibition of corporal punishment in all early childhood care and all day care for older children. It is possibly unlawful in preschool provision under education law.
- 2.5 **Schools (unlawful):** Corporal punishment is prohibited in schools in article 13(4) of the Education Regulations 1957. The Ministry of Education and Human Resources has issued a circular to all schools stating that perpetrators of corporal punishment are liable to legal action under the Child Protection Act.¹² The Education Act reportedly prohibits corporal punishment, but we have yet to verify this.¹³
- 2.6 **Penal institutions (lawful):** 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”. In 2011, a Juvenile Offenders (Amendment) Bill and a Reform Institutions (Amendment) Bill were under discussion, but we have no further information. As at November 2017, the draft Juvenile Justice Bill was still under discussion.¹⁴
- 2.7 **Sentence for crime (unlawful):** Corporal punishment is unlawful as a sentence for crime. The Constitutional protection of every person from “inhuman or degrading punishment or other such treatment” is qualified by the provision that “nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in Mauritius on 11 March 1964” (art. 7). However, there is no provision for judicial corporal punishment in the Juvenile Offenders Act 1935 or the Criminal Code 1838.

3 Recommendations by human rights treaty bodies

- 3.1 **CRC:** On three occasions, the Committee on the Rights of the Child has recommended to Mauritius that legislation be enacted to explicitly prohibit corporal punishment in all settings: in its concluding observations on the state party’s initial report in 1996¹⁵, on the second report in 2006¹⁶, and on the third-fifth report in 2015.¹⁷

¹² 28 October 2013, CRC/C/MUS/3-5, Third-fifth state party report, para. 41

¹³ [July 2015], CRPD/C/MUS/Q/1/Add.1 Advance Unedited Version, Reply to list of issues, para. 8

¹⁴ 23 November 2017, CAT/C/SR.1591, Summary records of 1591st meeting; see also 19 January 2015, CRC/C/SR.1940, Summary record of 1940th meeting, para. 4; and 9 November 2014, CRC/C/MUS/Q/3-5/Add.1, Reply to list of issues, para. 199

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

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

¹⁷ 27 February 2015, CRC/C/MUS/CO/3-5, Concluding observations on third-fifth report, paras. 37, 38 and 44

- 3.2 **CAT**: In its 2011 concluding observations on the state party's third report, the Committee Against Torture recommended that prohibition of corporal punishment be included in the Children's Bill.¹⁸
- 3.3 **HRC**: In 2017, the Human Rights Committee recommended that the Government prohibit corporal punishment in all settings.¹⁹
- 3.4 **CESCR**: In 2010, the Committee on Economic, Social and Cultural Rights recommended that the Government prohibit by law corporal punishment in all settings.²⁰

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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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 since 2011 the Committee on the Rights of Persons with Disabilities.

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

¹⁹ 9 November 2017, CCPR/C/MUS/CO/5, Advance unedited version, Concluding observations on fifth report, paras. 23 and 24

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