

Corporal punishment of children in the Federated States of Micronesia: Briefing for the Universal Periodic Review, 37th session, November 2020



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

From the Global Initiative to End All Corporal Punishment of Children, July 2020

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 Micronesia, corporal punishment of children is still lawful despite recommendations to prohibit it during the second cycle Universal Periodic Review.

We hope the Working Group will note with concern the legality of corporal punishment of children in Micronesia. We hope states will raise the issue during the review in 2020 and make a specific recommendation that Micronesia draft and enact legislation as a matter of priority to explicitly prohibit corporal punishment of children in all settings, including the home, and repeal any legal defences for its use.

1 Review of Micronesia in the 2nd cycle UPR (2015) and progress since

- 1.1 Micronesia was reviewed in the second cycle of the Universal Periodic Review in 2015 (session 23). The issue of corporal punishment of children was raised in the summary of stakeholders' information.¹ During the review, Micronesia received and accepted recommendations to prohibit corporal punishment of children.²
- 1.2 Since the review, there have been no changes on the legality of corporal punishment.
- 1.3 **We hope the Working Group will note with concern the continued legality of corporal punishment of children in Micronesia. We hope states will raise the issue during the review in 2020 and make a specific recommendation that Micronesia draft and enact legislation as a matter of priority to explicitly prohibit corporal punishment of children in all settings, including the home, and repeal any legal defences for its use.**

2 Legality of corporal punishment in Micronesia

¹ 17 August 2015, A/HRC/WG.6/23/FSM/3, Summary of stakeholders' views, paras. 17, 18 and 19

² 23 December 2015, A/HRC/31/4, Report of the working group, paras. 62(22), 62(71) and 62(74); 4 March 2016, A/HRC/31/4/Add.1, Report of working group: Addendum, paras. 2, 3, 14, 15, 17 and 18

Summary of current law and reforms needed to achieve prohibition

Corporal punishment in Micronesia is prohibited in schools and as a sentence for a crime but it is still lawful in the home, in alternative care, in day care settings, and in penal institutions. Legislation should be enacted to explicitly prohibit all corporal punishment in all settings, including the home, and to repeal all provisions defending the use of corporal punishment in childrearing.

- 2.1 **Home (lawful):** Corporal punishment is lawful in the home. Children are protected from violence and abuse under the federal Code of the Federated States of Micronesia³ and various state laws but there is no prohibition of corporal punishment. The State Juveniles Act in Yap states that parents “shall have control over the conduct and education of their minor children” and shall provide “for the discipline, support, and education of their children” (s1204). Similar provisions in the State Code of Kosrae 1997 specify that parents have a “duty of parental control of the minor” (s16.1102) and “the duty to control the minor and ... the power to exercise parental control and authority over the minor” (s6.4807). The FSM Code Title 41 protects children from child abuse, where “abuse” is defined as “any case in which a child exhibits evidence of skin bruising, bleeding, sexual molestation, burns, fracture of any bone, subdural hematoma, soft-tissue swelling, and such condition or death is not justifiably explained, or the history given concerning such condition or death is at variance with the degree of type of such condition or death, or the circumstances indicate that such condition or death may not be the product of an accidental occurrence” (s502). This protects children from severe corporal punishment which causes physical injury, but it does not offer protection from all physical punishment. A review of child protection legislation has been carried out in collaboration with UNICEF which confirms that corporal punishment is not prohibited in the home.⁴
- 2.2 In 2014, the FSM Criminal Code was under review: we do not know if proposals to prohibit corporal punishment have been made in this context. In the same year Kosrae State became the first in Micronesia to enact domestic violence legislation (Family Protection Act 2013). According to the Government’s report to the Committee on the Rights of the Child in 2017, Pohnpei Family Violence Law was enacted in 2017 and Family Protection Bills are being drafted in Yap and Chuuk.⁵ We are seeking further information but to our knowledge prohibition of corporal punishment is not included in these reforms.
- 2.3 The Government reported to the UPR in 2015 that it continues to consider a comprehensive review of legislation and harmonisation of law and customary practices in all four states with international standards.⁶ It had initially indicated its commitment to prohibiting all corporal punishment of children by clearly accepting recommendations to do so made during the UPR,⁷ and the Government later acknowledged that the legislation detailed above only protects children from “severe” physical punishment.⁸ However, the Global Initiative no longer considers Micronesia committed to prohibiting all corporal punishment of children without delay, as there

³ At <http://www.fsm-ca2014.org>

⁴ UNICEF (2014), *Protect Me with Love and Care: Child Protection Baseline Report for the Federated States of Micronesia*, Government of the Federated States of Micronesia/UNICEF/Australian Aid

⁵ [2017], CRC/FSM/2, Second report, para. 84

⁶ 7 August 2015, A/HRC/WG.6/23/FSM/1, National report to the UPR, para. 30

⁷ 23 December 2015, A/HRC/31/4, Report of the working group, paras. 62(22), 62(71) and 62(74); 4 March 2016, A/HRC/31/4/Add.1, Report of working group: Addendum, paras. 2, 3, 14, 15, 17 and 18

⁸ [2017], CRC/FSM/2, Second report, para. 82

is no evidence that the Government intends to introduce legislation prohibiting all corporal punishment in the near future.

- 2.4 **Alternative care settings (lawful)**: There is no prohibition of corporal punishment in alternative care settings and the emphasis in law on parents' and legal guardians' authority and duty to control children indicates corporal punishment is lawful.
- 2.5 **Day care (lawful)**: There is no explicit prohibition of corporal punishment in early childhood care or in day care for older children. Some day care centres reportedly have child protection policies, which include a ban on corporal punishment, but there is no prohibition in law and corporal punishment continues to be used.⁹
- 2.6 **Schools (unlawful)**: Corporal punishment is reportedly prohibited in schools, but we have been unable to ascertain if this is by policy or law. There is no reference to corporal punishment or school discipline in the State Codes of Yap, Pohnpei or Kosrae or the draft State Code of Chuuk. According to UNICEF's 2014 baseline research, corporal punishment is unlawful in schools under the Criminal Code, but we have been unable to identify explicit prohibition in the Code.¹⁰ The research also reports that some schools have child protection policies which include a ban on corporal punishment, but it continues to be used. Corporal punishment of children is not allowed under the School Accreditation System: Procedural Manual 2016.
- 2.7 **Penal institutions (lawful)**: There is no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions.
- 2.8 **Sentence for crime (unlawful)**: Corporal punishment is unlawful as a sentence for crime. The Constitution of the Federated States of Micronesia states that "cruel and unusual punishments" should not be inflicted (art. IV, s8), and this is reflected in similar provisions in the Constitutions of Pohnpei (art. 4.9), Yap (art. 2.7), Kosrae (art. 2.1) and Chuuk (art. 3.6). There are no provisions in other state laws for judicial corporal punishment of children convicted of a crime. Recognition of custom and tradition is provided for but we have no information on whether this would allow for corporal punishment.

3 Recommendations by human rights treaty bodies

- 3.1 **CRC**: The Committee on the Rights of the Child raised for the first time the issue of corporal punishment to Micronesia in 2020, recommending that corporal punishment be explicitly prohibited in law in all settings.¹¹

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

⁹ UNICEF (2014), *Protect Me with Love and Care: Child Protection Baseline Report for the Federated States of Micronesia*, Government of the Federated States of Micronesia/UNICEF/Australian Aid

¹⁰ UNICEF (2014), *Protect Me with Love and Care: Child Protection Baseline Report for the Federated States of Micronesia*, Government of the Federated States of Micronesia/UNICEF/Australian Aid, p. 47

¹¹ 3 April 2020, CRC/C/FSM/CO/2, Concluding observations on second report, paras. 36 and 37

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.