**BRIEFING ON MAURITIUS FOR THE COMMITTEE AGAINST TORTURE PRESESSIONAL WORKING GROUP, 70th session, Nov/Dec 2020**

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

**This briefing describes the legality of corporal punishment of children in Mauritius. In light of the obligation under international human rights law to prohibit all corporal punishment of children, the recommendations of the UN Secretary General’s Study on Violence against Children, the repeated recommendations to prohibit made to Mauritius by the Committee Against Torture, the Committee on the Rights of the Child, the Human Rights Committee, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and during the Universal Periodic Review in 2013 and 2018 (which the Government supported), as well as the global commitment to ending all violence against children in the context of the 2030 Agenda for Sustainable Development, we hope the Committee Against Torture will:**

* **raise the issue of corporal punishment of children in its List of Issues Prior to Reporting for Mauritius, in particular asking what progress is being made on enacting the draft Children’s Bill to prohibit all corporal punishment of children, and**
* **recommend, in the concluding observations on its fifth periodic report, that Mauritius immediately enact the Children’s Bill and clearly and explicitly prohibit all corporal punishment of children in all settings, including in the home.**

**1 The legality of corporal punishment of children in Mauritius**

1.1 ***Summary:*** Corporal punishment of children in Mauritius is unlawful in schools and as a sentence for a crime. It is not fully prohibited in the home, in alternative care and day care settings and in penal institutions.

1.2 ***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.

1.3 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.[[1]](#footnote-1) 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.[[2]](#footnote-2) 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”.[[3]](#footnote-3) In January 2015, the Government confirmed to the Committee on the Rights of the Child that the draft Bill included prohibition in all settings,[[4]](#footnote-4) this was again confirmed in 2018.[[5]](#footnote-5) The Bill was being reviewed by the Government in August 2017.[[6]](#footnote-6) The Government reported in 2017 that a “draft Child Protection and Care Bill” would prohibit corporal punishment[[7]](#footnote-7) and it was expected to be introduced to Parliament in 2018[[8]](#footnote-8) - it is unclear whether they are two different Bills. During the Universal Periodic Review of Mauritius in 2018, the Government reported that the draft Children’s Bill was expected to be introduced to the National Assembly the following year[[9]](#footnote-9) and later supported several recommendations to enact the Children’s Bill to prohibit all corporal punishment of children.[[10]](#footnote-10)

1.4 The Children’s Bill was introduced in September 2019 to the National Assembly. Article 11 of the Bill states: “(1) No parent or other person responsible for the care, treatment, education or supervision of a child shall inflict corporal or inflict humiliating punishment on the child as a measure to correct or discipline the child. (2) Any person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding 2 years. (3) In this section, “corporal or humiliating punishment” means any form of punishment which causes pain or suffering to a child through, but not limited to, the use of force or use of substances.” Although this seems to prohibit all corporal punishment in all settings, we are enquiring to confirm the scope of the potential ban, in light of article 11(3).

1.5 Other laws being discussed include a Family Court Bill, draft rules under the Protection from Domestic Violence (Amendment) Act 2007 and a Civil Code (Amendment) Bill; reviews of the Constitution and of the 1994 Child Protection Act are also planned.

1.6 ***Alternative care settings (lawful):*** There is no explicit prohibition of corporal punishment in all alternative care settings.

1.7 ***Day care settings (?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.

1.8 ***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.[[11]](#footnote-11) The Education Act reportedly prohibits corporal punishment, but we have yet to verify this.[[12]](#footnote-12)

1.9 ***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.[[13]](#footnote-13) In 2018, a Police and Criminal Justice Bill was under preparation.[[14]](#footnote-14)

1.10 ***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.

**2 Recommendations by human rights treaty bodies and during the UPR**

2.1 ***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.[[15]](#footnote-15)

2.2 ***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 1996[[16]](#footnote-16), on the second report in 2006[[17]](#footnote-17), and on the third-fifth report in 2015.[[18]](#footnote-18)

2.3 ***HRC***: In 2017, the Human Rights Committee recommended that the Government prohibit corporal punishment in all settings.[[19]](#footnote-19)

2.4 ***CEDAW***: In 2018, the Committee on the Elimination of Discrimination Against Women recommended that Mauritius adopt legislation explicitly prohibit corporal punishment of children in all settings.[[20]](#footnote-20)

2.5 ***CESCR***: In 2010, the Committee on Economic, Social and Cultural Rights recommended that the Government prohibit by law corporal punishment in all settings.[[21]](#footnote-21)

2.6 ***UPR:*** At the second cycle Universal Periodic Review of Mauritius in 2013, a recommendation to adopt legislation explicitly prohibiting corporal punishment was issued to the Government.[[22]](#footnote-22) This recommendation was accepted in 2016.[[23]](#footnote-23) Recommendations to prohibit all corporal punishment made in the third cycle UPR in 2018 were also accepted.[[24]](#footnote-24)

*Briefing prepared by the Global Initiative to End All Corporal Punishment of Children*

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1. Summary record, CAT/C/SR.1001, paras. 35 and 65 [↑](#footnote-ref-1)
2. 26 December 2013, A/HRC/25/8, Report of the working group, para. 126 [↑](#footnote-ref-2)
3. 14 March 2014, A/HRC/25/8/Add.1, Report of the working group: Addendum, para. 32 [↑](#footnote-ref-3)
4. 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 [↑](#footnote-ref-4)
5. 22 June 2018, CEDAW/C/MUS/8, Eighth report, para. 50; and 13 August 2018, A/HRC/WG.6/31/MUS/1, National report to the UPR, paras. 15 and 128 [↑](#footnote-ref-5)
6. 15 August 2017, CCPR/C/MUS/Q/5/Add.1, Reply to list of issues, para. 2 [↑](#footnote-ref-6)
7. 15 August 2017, CCPR/C/MUS/Q/5/Add.1, Reply to list of issues, para. 62 [↑](#footnote-ref-7)
8. 23 November 2017, CAT/C/SR.1588, Summary records of 1588th meeting [↑](#footnote-ref-8)
9. 27 December 2018, A/HRC/40/9, Report of the Working Group, para. 20 [↑](#footnote-ref-9)
10. 27 December 2018, A/HRC/40/9, Report of the Working Group, paras. 115(133), 115(135), 115(138), and 115(156); 15 February 2019, A/HRC/40/9/Add.1 Advance version, Report of the Working Group: Addendum [↑](#footnote-ref-10)
11. 28 October 2013, CRC/C/MUS/3-5, Third-fifth state party report, para. 41 [↑](#footnote-ref-11)
12. [July 2015], CRPD/C/MUS/Q/1/Add.1 Advance Unedited Version, Reply to list of issues, para. 8 [↑](#footnote-ref-12)
13. 19 January 2015, CRC/C/SR.1940, Summary record of 1940th meeting, para. 4; see also 9 November 2014, CRC/C/MUS/Q/3-5/Add.1, Reply to list of issues, para. 199; and 23 November 2017, CAT/C/SR.1591, Summary records of 1591st meeting [↑](#footnote-ref-13)
14. 13 August 2018, A/HRC/WG.6/31/MUS/1, National report to the UPR, para. 64 [↑](#footnote-ref-14)
15. 15 June 2011, CAT/C/MUS/CO/3, Concluding observations on third report, para. 17 [↑](#footnote-ref-15)
16. 30 October 1996, CRC/C/15/Add.64, Concluding observations on initial report, para. 31 [↑](#footnote-ref-16)
17. 17 March 2006, CRC/C/MUS/CO/2, Concluding observations on second report, paras. 37 and 38 [↑](#footnote-ref-17)
18. 27 February 2015, CRC/C/MUS/CO/3-5, Concluding observations on third-fifth report, paras. 37, 38 and 44 [↑](#footnote-ref-18)
19. 9 November 2017, CCPR/C/MUS/CO/5, Advance unedited version, Concluding observations on fifth report, paras. 23 and 24 [↑](#footnote-ref-19)
20. 9 November 2018, CEDAW/C/MUS/CO/8 Advance unedited version, Concluding observations on eighth report, paras. 17 and 18 [↑](#footnote-ref-20)
21. 8 June 2010, E/C.12/MUS/CO/4, Concluding observations on second to fourth report, para. 23 [↑](#footnote-ref-21)
22. 26 December 2013, A/HRC/25/8, Report of the working group, para. 129(29) [↑](#footnote-ref-22)
23. 2016, Mauritius’ national mid-term report [↑](#footnote-ref-23)
24. 27 December 2018, A/HRC/40/9, Report of the Working Group, paras. 115(133), 115(135), 115(138), 115(156) and 115(162); 15 February 2019, A/HRC/40/9/Add.1 Advance version, Report of the Working Group: Addendum [↑](#footnote-ref-24)