

Ending family violence in the Marshall Islands – challenging physical punishment of girls and boys



Information for the Committee on the Elimination of Discrimination Against Women, Pre-Sessional Working Group for the 69th session, from the Global Initiative to End All Corporal Punishment of Children (www.endcorporalpunishment.org), June 2017

Introduction: family violence in the Marshall Islands and CEDAW's examination of the initial/third state party report

Legal protection from domestic violence is provided for in the Domestic Violence Prevention and Protection Act 2011 and the Criminal Code. The Criminal Code provides for the use of “justifiable” force against girls and boys; there is no clear legal prohibition of all violent punishment of children. The widespread social acceptance of the use of violence in childrearing undermines efforts to eliminate family violence – the legal defences must be repealed and an explicit prohibition of violent punishment must be enacted.

We hope the Committee on the Elimination of Discrimination Against Women will raise the issue of violent punishment of girls and boys in its examination of the Marshall Islands. In particular, we hope the Committee will:

- **in its list of issues for the Marshall Islands, ask what steps are being taken to ensure that violent punishment in childrearing is prohibited by law and what progress has been made towards explicitly repealing the defence of justifiable force, and**
- **in its concluding observations on the initial/third state party report, recommend that the Marshall Islands ensure that *no* form of violence within the domestic sphere is condoned, including by parents against their children, and that legislation is enacted to prohibit domestic violence against all family members and repeal any legal defences for the use of violent punishment of girls and boys.**

The remainder of this briefing provides the following further details:

1. The current law relating to family violence and corporal punishment of children in the Marshall Islands
 2. Treaty body and UPR recommendations on the issue made to the Marshall Islands to date.
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1 Laws on domestic violence and corporal punishment of children in the Marshall Islands

Summary

1.1 Protection from domestic violence in the Marshall Islands is provided for in the Domestic Violence Prevention and Protection Act 2011 and the Criminal Code. However, the Criminal Code also allows for the use of “justifiable” force in childrearing. There is no clear legal prohibition of all violent punishment of children.

Detail

1.2 Article 3.08(1) of the Criminal Code 2011 (amended 2013) states: “The use of force upon or toward the person of another is justifiable if: (1) the actor is the parent or guardian or other person similarly responsible for the general care and supervision of a minor or a person acting at the request of such parent, guardian or other responsible person and: (a) the force is reasonable and the actor believes that the force used is necessary for the purpose of safeguarding or promoting the welfare of the minor, including the prevention or punishment of the minor’s misconduct; and (b) the force used is not designed to cause or known to create a substantial risk of causing death, serious bodily injury, disfigurement, extreme pain or mental distress or gross degradation.”

1.3 The Domestic Violence Prevention and Protection Act 2011 states that one of its purposes is “to recognise that domestic violence of any kind is not acceptable in the Republic” (art. 2). It applies to children as well as to adults and defines domestic violence as assault or threat of assault against a family member (art. 4). However, assault is defined as under the Criminal Code and the protection for children is therefore undermined by the provisions for “justifiable” force in article 3.08 of the Code.

1.4 Child protection legislation was reviewed as part of child protection baseline research in collaboration with UNICEF: the report, launched in March 2013, recommended that the Child Abuse and Neglect Act 1991 be revised to include prohibition of corporal punishment, particularly in the home.¹ However the Child Rights Protection Act 2015, which repealed the Child Abuse and Neglect Act, does not prohibit corporal punishment in the home. Provisions protecting children from violence and abuse in the Child Rights Protection Act and in the Rights of Persons with Disabilities Act 2015 are not interpreted as prohibiting all corporal punishment.

1.5 Prohibition of all violent punishment of children – which is critical in laying the legal foundations for efforts to reduce child abuse and domestic violence – requires an explicit ban in legislation. We hope the Committee will urge the Government of the Marshall Islands to enact legislation as a matter of priority to clearly prohibit all corporal punishment of girls and boys and repeal the “justifiable” force defence.

2 Recommendations by human right treaty monitoring bodies and during the Universal Periodic Review

2.1 The Committee on the Rights of the Child has twice expressed concern at corporal punishment of children in the Marshall Islands and recommended it be prohibited in the home and other settings – in the concluding observations on the state party’s initial report in 2000² and on the second report in 2007.³

¹ UNICEF (2012), *Child Protection Baseline Report Republic of Marshall Islands: Value and Protect Our Previous Children*, UNICEF Pacific, p. 62

² 16 October 2000, CRC/C/15/Add.139, Concluding observations on initial report, paras. 36 and 37

³ 19 November 2007, CRC/C/MHL/CO/2, Concluding observations on second report, paras. 3, 41, 42 and 43

2.2 At the second cycle Universal Periodic Review in 2015, the Government accepted recommendations to explicitly prohibit corporal punishment in all settings, including the home, and to repeal the justifiable force defence.⁴

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

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⁴ 11 September 2015, A/HRC/30/13/Add.1, Report of the working group: Addendum, paras. 5