

Ending family violence in Mauritius – 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 Mauritius and CEDAW's examination of the eighth state party report

Legal protection from domestic violence is provided for in the Protection from Domestic Violence Act and the Criminal Code. However, the laws do not include clear prohibition of all corporal punishment. There does not appear to be a “right of correction” enshrined in law but the near-universal acceptance of violent punishment of girls and boys necessitates a clear statement that all forms of violence, including corporal punishment, are illegal in the domestic sphere.

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 Mauritius. In particular, we hope the Committee will:

- **in its list of issues prior to reporting for Mauritius, ask what progress has been made to ensure the explicit prohibition of corporal punishment in all settings is included in the Children's Bill so that children as well as adults have legal protection from violent assault, and**
- **in its concluding observations on the eighth state party report, recommend that Mauritius 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.**

The remainder of this briefing provides the following further details:

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

Summary

1.1 Protection from domestic violence in Mauritius is provided for in the Protection from Domestic Violence Act and the Criminal Code. However, the laws do not include clear prohibition of all corporal punishment.

Detail

1.2 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 harmonise 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 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 In response to the recommendation to prohibit all corporal punishment made during the UPR in 2013, the Government declared 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 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 The Bill was being finalised in August 2016.⁵

1.4 Other laws being discussed include a Family Court Bill, draft rules under the Protection from Domestic Violence (Amendment) Act and a Civil Code (Amendment) Bill; a review of the Constitution is also planned.

1.7 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 Mauritius to enact the Children’s Bill as a matter of priority to clearly prohibit all corporal punishment of girls and boys.

¹ Summary record, CAT/C/SR.1001, paras. 35 and 65

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

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

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

⁵ 2 August 2016, CCPR/C/MUS/5, Fifth report, para. 126

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

- 2.1 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 1996⁶, on the second report in 2006⁷, and on the third-fifth report in 2015.⁸
- 2.2 In 2010, the Committee on Economic, Social and Cultural Rights recommended that the Government prohibit by law corporal punishment in all settings.⁹
- 2.3 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.¹⁰
- 2.4 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.¹¹ This recommendation was accepted in 2016 in the mid-term report.¹²

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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⁶ 30 October 1996, CRC/C/15/Add.64, Concluding observations on initial report, para. 31

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

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

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

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

¹¹ 26 December 2013, A/HRC/25/8, Report of the working group, para. 129(29)

¹² 2016, Mauritius' national mid-term report