

BRIEFING ON MAURITIUS FOR THE HUMAN RIGHTS COMMITTEE, COUNTRY REPORT TASK FORCE, 119th session (March 2017)

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

This briefing describes the legality of corporal punishment of children in Mauritius. In light of the obligation under international human rights treaties to prohibit all corporal punishment of children, the global commitment to ending violence against children – including corporal punishment – in the context of the 2030 Agenda for Sustainable Development, the recommendations of the UN Secretary General’s Study on Violence against Children, the recommendations made to Mauritius by the Committee on the Rights of the Child (in 1996, 2006 and 2015), the Committee on Economic, Social and Cultural Rights in 2010, the Committee Against Torture in 2011, during the UPR in 2013 (which the Government accepted), and the Government’s commitment to prohibiting all corporal punishment of children, we hope the Human Rights Committee will:

- raise the issue of corporal punishment of children in its List of Issues for Mauritius, in particular asking what progress has been made to ensure the explicit prohibition of corporal punishment in all settings is included in the Children’s Bill, and**
- in its concluding observations on Mauritius’ fifth periodic report, welcome the state party’s commitment to include prohibition of all corporal punishment in the Children’s Bill, and recommend that this commitment be fulfilled by ensuring the Bill is tabled in Parliament and enacted as a matter of priority.**

1 The report of Mauritius to the Human Rights Committee

1.1 Mauritius’ fifth state party report to the Human Rights Committee (CCPR/C/MUS/5) addresses the issue of corporal punishment and provides details on the prohibition of corporal punishment in schools. The report also states that the inclusion in the Children’s Bill of prohibition of all corporal punishment is being considered.¹

1.2 In light of the state’s commitment to prohibit corporal punishment in all settings, we hope the Committee will raise the issue of corporal punishment of children in its review of Mauritius and recommend that the state’s commitment be fulfilled by ensuring the Children’s Bill includes prohibition of corporal punishment in all settings, and is enacted as a matter of priority.

¹ 2 August 2016, CCPR/C/MUS/5, Mauritius’ fifth periodic report, para. 38

2 The legality of corporal punishment of children in Mauritius

- 2.1 **Summary:** In Mauritius, corporal punishment is unlawful in schools and as a sentence for a crime, but it is not fully prohibited in the home, in all forms of alternative care and day care settings, and in penal institutions.
- 2.2 **Home (lawful):** 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.
- 2.3 **Alternative care settings (lawful):** There is no explicit prohibition of corporal punishment in all alternative care settings.
- 2.4 **Day care (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.² The Education Act reportedly prohibits corporal punishment, but we have yet to verify this.³
- 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. A draft Juvenile Justice Bill is under discussion.⁴
- 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.

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

³ [July 2015], CRPD/C/MUS/Q/1/Add.1 Advance Unedited Version, Reply to list of issues, para. 8

⁴ 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

3 Mauritius' commitment to prohibiting all corporal punishment and progress to date

- 3.1 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
- 3.2 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; a review of the Constitution is also planned.

4 Recommendations by human rights treaty bodies and during the UPR

- 4.1 **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 1996⁹, on the second report in 2006¹⁰, and on the third-fifth report in 2015.¹¹
- 4.2 **CESCR:** In 2010, the Committee on Economic, Social and Cultural Rights recommended that the Government prohibit by law corporal punishment in all settings.¹²
- 4.3 **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.¹³
- 4.4 **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.¹⁴ This recommendation was accepted in 2016.¹⁵

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

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

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

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

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

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

¹⁵ 2016, Mauritius' national mid-term report