

Corporal punishment of children in the Marshall Islands: Briefing for the Universal Periodic Review, 22nd session, 2015



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

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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 the Marshall Islands, corporal punishment of children is lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child and the Government’s acceptance of relevant recommendations during the 1st cycle UPR in 2010.

We hope the Working Group will note with concern the legality of corporal punishment of children in the Marshall Islands. We hope states will raise the issue during the review in 2015 and make a specific recommendation to the Marshall Islands that legislation be adopted which prohibits all forms of corporal punishment of children in all settings, including the home, and explicitly repeals the right to use force for “prevention or punishment of the minor’s misconduct” and for the maintenance of “reasonable discipline” in the Criminal Code.

1 Review of the Marshall Islands in the 1st cycle UPR (2010) and progress since then

- 1.1 The Marshall Islands was reviewed in the first cycle of the Universal Periodic Review in 2010 (session 9). The issue of corporal punishment of children was raised in the compilation of UN information¹ and the summary of stakeholders’ information.² No recommendations were made specifically on corporal punishment, but the Government accepted a recommendation to “ensure that human rights are afforded full legal protection” and a number of recommendations to take legislative and other measures to address violence against children.³
- 1.2 Prohibiting and eliminating all corporal punishment of children in all settings including the home – through law reform and other measures – is a key obligation under the Convention on the Rights of the Child and other human rights instruments, though it is one frequently evaded by Governments. But despite the fact that the Committee on the Rights of the Child has repeatedly recommended prohibition of corporal punishment in the Marshall Islands (see below, para. 3.1), the new Criminal Code 2011 explicitly authorises the use of force in the “prevention or punishment” of children’s “misconduct” (see below, para. 2.2).

¹ 4 August 2010, A/HRC/WG.6/9/MHL/2, Compilation of UN information, para. 11

² 30 July 2010, A/HRC/WG.6/9/MHL/3, Summary of stakeholders information, paras. 13 and 24

³ 4 January 2011, A/HRC/16/12, Report of the working group, paras. 56(13) and 56(20)

1.3 We hope members of the Working Group will urge the Marshall Islands to fulfil its obligations under international human rights law and recommend that legislation be adopted which prohibits all forms of corporal punishment of children in all settings, including the home, and explicitly repeals the right to use force for “prevention or punishment of the minor’s misconduct” and for the maintenance of “reasonable discipline” in the Criminal Code.

2 Legality of corporal punishment in the Marshall Islands

- 2.1 **Summary:** In the Marshall Islands, corporal punishment of children is unlawful as a sentence for crime but it is not prohibited in the home, alternative care settings, day care, schools or penal institutions.
- 2.2 **Home (lawful):** Article 3.08(1) of the Criminal Code 2011 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.”
- 2.3 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.
- 2.4 The Child Abuse and Neglect Act 1991 does not prohibit corporal punishment. 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 be revised to include prohibition of corporal punishment, particularly in the home.⁴
- 2.5 **Alternative care settings (lawful):** Corporal punishment is lawful under the provisions for justifiable force in article 3.08 of the Criminal Code 2011 (see paras. 2.2 and 2.7).
- 2.6 **Day care (lawful):** Corporal punishment is lawful in early childhood care and in day care for older children under the provisions for justifiable force in article 3.08 of the Criminal Code 2011 (see paras. 2.2 and 2.7).
- 2.7 **Schools (lawful):** Corporal punishment is lawful in schools under article 3.08(2) of the Criminal Code 2011: “The use of force upon or toward the person of another is justifiable if: ... (2) the actor is a teacher or a person otherwise entrusted with the care or supervision for a special purpose of a minor and: (a) the force is reasonable and the actor believes that the force used is necessary to further such special purpose, including the maintenance of reasonable discipline in a school, class or other group, and that the use of such force is consistent with the welfare of the minor; and (b) the degree of force, if it had been used by the parent or guardian of the minor, would not be unjustifiable under Subsection (1)(b) of this Section.”
- 2.8 In reporting to the Committee on the Rights of the Child in 2004, the Government stated that corporal punishment is prohibited in schools under the Rules and Regulations of the Ministry of Education, and that these define corporal punishment as “hitting, kicking, slapping or any other

⁴ UNICEF (2012), *Child Protection Baseline Report Republic of Marshall Islands: Value and Protect Our Previous Children*, UNICEF Pacific, p. 62

means of brutal punishment”.⁵ The authorisation of justifiable force in the new Criminal Code undermines this prohibition by providing a legal defence for the use of some level of physical punishment for the purpose of discipline.

2.9 **Penal institutions (lawful):** There is no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions. In 2007, the Committee on the Rights of the Child was led to believe that corporal punishment is prohibited in the amended Criminal Code.⁶ However, there is no prohibition of corporal punishment in the Criminal Code 2011, and some level of physical punishment is lawful under article 3.08 of the Code (see paras. 2.2 and 2.7, above).

2.10 **Sentence for crime (unlawful):** There is no provision for judicial corporal punishment in criminal law.

3 Recommendations by human rights treaty monitoring bodies

3.1 **CRC:** 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 2000⁷ and on the second report in 2007.⁸

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 Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, and in 2011 began briefing the Committee on the Rights of Persons with Disabilities.

⁵ 24 August 2005, CRC/C/93/Add.8, Second state party report, para. 67

⁶ 19 November 2007, CRC/C/MHL/CO/2, Concluding observations on second report, para. 3

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

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