

Corporal punishment of children in Nauru: Briefing for the Universal Periodic Review, 23rd session, 2015

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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 Nauru, corporal punishment of children is lawful, despite the state’s accession to the Convention on the Rights of the Child in 1994 and the Government’s acceptance of recommendations made during the UPR in 2011 to protect the rights of children including through the enactment of legislation.

We hope the Working Group will note with concern the legality of corporal punishment of children in Nauru. We hope states will raise the issue during the review in 2015 and make a specific recommendation that Nauru prohibit all corporal punishment of children in all settings including the home and repeal the Criminal Code provision for the use of force “by way of correction, discipline, management or control”.

1 Review of Nauru in the 1st cycle UPR (2011) and progress since then

- 1.1 Nauru was reviewed in the first cycle of the Universal Periodic Review in 2011 (session 10). During the review, no recommendations were made specifically on corporal punishment but the Government accepted a number of recommendations on protecting children’s rights including through legislative measures.¹
- 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. Nauru acceded to the Convention on the Rights of the Child in 1994. Since the initial UPR in 2011, Nauru has enacted the Education 2011, achieving prohibition of corporal punishment in schools. However, corporal punishment remains lawful in the home and other settings.
- 1.3 The Criminal Code is under review. **This provides a key opportunity for enacting prohibition of corporal punishment in the home and all other settings.**

¹ 8 March 2011, A/HRC/17/3, Report of the working group, paras. 79(37), 79(67), 79(70) and 79(71)

2 Legality of corporal punishment in Nauru

- 2.1 **Summary:** In Nauru, corporal punishment of children is unlawful in schools and possibly as a sentence for crime but it is not prohibited in the home, alternative care settings, day care and penal institutions.
- 2.2 **Home (lawful):** The Criminal Code in force in Nauru is that of the First Schedule to the Criminal Code Act 1899 of the State of Queensland. Section 280 of that Act states: “It is lawful for a parent or a person in the place of a parent, or for a schoolteacher or master, to use, by way of correction, discipline, management or control, towards a child or pupil, under the person’s care such force as is reasonable under the circumstances.” The Criminal Code is under review, supported by the Australian Attorney-General’s Department. We do not know if prohibition of corporal punishment has been proposed in the context of these reforms but we note that the “Model Criminal Code” in use in Australia includes provides for “reasonable correction” of a child. *This legal defence for the use of corporal punishment should not be included in Nauru’s new Criminal Code.*
- 2.3 **Alternative care settings (lawful):** Corporal punishment is lawful in alternative care settings under the provisions for the use of force “by way of correction” in section 280 of the Criminal Code.
- 2.4 **Day care (lawful):** Corporal punishment is lawful in early childhood care and in day care for older children under the provisions for the use of force “by way of correction” in section 280 of the Criminal Code.
- 2.5 **Schools (unlawful):** Corporal punishment is explicitly prohibited in the Education Act 2011 (s37).
- 2.6 **Penal institutions (lawful):** There is no prohibition of corporal punishment.
- 2.7 **Sentence for crime (?unlawful):** Provisions for whipping were removed from the First Schedule to the Criminal Code of Queensland 1899, applicable in Nauru, by the Criminal Code Amendment Ordinance 1955. We have yet to confirm that all other legal provisions for judicial corporal punishment have been prohibited, particularly in relation to young people aged 16-17. Corporal punishment is not mentioned as a sentence in the Criminal Justice Act 1999 concerning probation and parole as alternatives to imprisonment, and there is no provision for it in the Criminal Procedure Act 1972.

*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.