

Corporal punishment of children in Palau: Briefing for the Universal Periodic Review, 24th session, 2016

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Global Initiative to
End All Corporal Punishment
of Children

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 Palau, corporal punishment of children is lawful, despite recommendations to prohibit it by the Committee on the Rights of the Child and during the 1st cycle UPR of Palau (which the Government accepted).

We hope the Working Group will note with concern the legality of corporal punishment of children in Palau. We hope states will raise the issue during the review in 2016 and make a specific recommendation that Palau clearly prohibit all corporal punishment of children in all settings including the home and explicitly repeal the provisions in the Penal Code authorising the use of force for purposes of “discipline”.

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

- 1.1 Palau was reviewed in the first cycle of the Universal Periodic Review in 2011 (session 11). The issue of corporal punishment of children was raised in the compilation of UN information¹ and in the summary of stakeholders' information.² The Government accepted a number of recommendations to prohibit corporal punishment in the home and other settings.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. Since the initial UPR of Palau in 2011, the Family Protection Act 2012 and the Penal Code 2013 have been adopted. Despite the Government's acceptance of the 2011 UPR recommendations to prohibit corporal punishment, these new laws do not achieve this. Of particular concern is the inclusion in the new Penal Code of a provision specifically authorising the use of force in the “discipline” of children, thus providing a legal basis for corporal punishment in the home, schools and other settings.
- 1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in Palau. We hope states will raise the issue during the review in 2016 and make a specific recommendation that Palau clearly prohibit all corporal punishment of children in**

¹ 17 February 2011, Compilation of UN information, para. 35

² 16 February 2011, A/HRC/WG.6/11/PLW/3, Summary of stakeholders' information, para. 11

³ 11 July 2011, A/HRC/18/5, Report of the working group, paras. 61(43), 61(44) and 61(45)

all settings including the home and explicitly repeal the provisions in the Penal Code authorising the use of force for purposes of “discipline”.

2 Legality of corporal punishment in Palau

- 2.1 **Summary:** In Palau, corporal punishment is unlawful as a sentence for crime but it is lawful in other settings – the home, alternative care settings, day care, schools and penal institutions. Recent law reform not only failed to achieve prohibition but specifically authorised the use of force in “disciplining” children.
- 2.2 **Home (lawful):** The Palau National Code (34.61.31-32) states: “A parent or guardian having custody of a child is charged with the control of such child and shall have the power to exercise parental control and authority over such a child.” The Family Protection Act 2012 protects children from violence and abuse under the offence of “endangering the welfare of a minor”, but this is only in relation to the infliction of “serious or substantial bodily injury” (arts. 801 and 802).
- 2.3 Article 309 of the Penal Code 2013 specifically authorises the use of force in disciplining children: “The use of force upon or toward the person of another is justifiable under the following circumstances: (a) 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 the parent, guardian, or other responsible person, and: (1) The force is employed with due regard for the age and size of the minor and is reasonably related to the purpose of safeguarding or promoting the welfare of the minor, including the prevention or punishment of the minor’s misconduct; and (2) The force used is not designed to cause or known to create a risk of causing substantial bodily injury, disfigurement, extreme pain or mental distress, or neurological damage....” The same article authorises the use of force in schools and penal institutions (see below).
- 2.4 Child protection legislation has been reviewed as part of child protection baseline research in collaboration with UNICEF. The final report, published in April 2014, identifies the need for corporal punishment to be prohibited in all settings, including the repeal of legal defences for its use.⁴
- 2.5 **Alternative care settings (partially prohibited):** Corporal punishment is lawful by guardians and others with parental authority under the provisions confirming “the power to exercise parental control and authority” in the Palau National Code; article 309 of the Penal Code 2013, authorising the use of force by persons with responsibility for a child, is also applicable.
- 2.6 **Day care (lawful):** Corporal punishment is lawful in day care under the provisions confirming “the power to exercise parental control and authority” in the Palau National Code; article 309 of the Penal Code 2013 expressly provides for the use of force in disciplining children.
- 2.7 **Schools (lawful):** The Master Plan for Education (2000) aims to discourage and prevent the use of corporal punishment at primary and secondary levels. According to the 2014 UNICEF baseline research all schools have child protection policies that include a ban on corporal punishment.⁵ However, corporal punishment is not prohibited by law, and article 309 of the Penal Code 2013 expressly provides for the use of force in disciplining children: “The use of force upon or toward the person of another is justifiable under the following circumstances: ... (b) The actor is a principal, the principal’s agent, a teacher, or a person otherwise entrusted with the care or supervision for a special purpose of a minor, and: (1) The actor believes that the force used is necessary to further that special purpose, including maintenance of reasonable discipline in a school, class, other group, or at activities supervised by the Ministry of Education held on or off

⁴ UNICEF (2014), *Value and Protect Our Precious Resources: Our Children – The Republic of Palau Child Protection Baseline Report*, Australian Aid/Government of Palau/UNICEF

⁵ UNICEF (2014), *Value and Protect Our Precious Resources: Our Children – The Republic of Palau Child Protection Baseline Report*, Australian Aid/Government of Palau/UNICEF

school property and that the use of force is consistent with the welfare of the minor; and (2) The degree of force, if it had been used by the parent or guardian of the minor, would not be unjustifiable under paragraph (a)(2) above.”

- 2.8 **Penal institutions (lawful):** Article 309 of the Penal Code 2013 authorises the use of force in penal institutions: “The use of force upon or toward the person of another is justifiable under the following circumstances: ... (e) The actor is a warden or other authorized official of a correctional institution, and: (1) The actor believes that the force used is necessary for the purpose of enforcing the lawful rules or procedures of the institution; and (2) The nature or degree of force used is not forbidden by other provisions of the law governing the conduct of correctional institutions; and (3) If deadly force is used, its use is otherwise justifiable under this chapter.”
- 2.9 **Sentence for crime (unlawful):** There is no provision for judicial corporal punishment in criminal law. However, according to the baseline research published by UNICEF in 2014, in 7% of cases where children commit a crime the response of police officers is to impose physical punishment.⁶

3 Recommendations by human rights treaty bodies

- 3.1 **CRC:** In 2001, the Committee on the Rights of the Child recommended to Palau that corporal punishment be prohibited and eliminated in schools and homes.⁷

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.

⁶ UNICEF (2014), *Value and Protect Our Precious Resources: Our Children – The Republic of Palau Child Protection Baseline Report*, Australian Aid/Government of Palau/UNICEF, p. 74

⁷ 21 February 2001, CRC/C/15/Add.149, Concluding observations on initial report, paras. 44 and 45