

Corporal punishment of children in Tuvalu: Briefing for the Universal Periodic Review, 30th session, 2018

From the Global Initiative to End All Corporal Punishment of Children, September 2017



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 Tuvalu, corporal punishment of children is lawful, despite recommendations to prohibit it by the Committee on the Rights of the Child, the Committee on the Elimination of Discrimination Against Women and during the 2nd cycle UPR of Tuvalu in 2013.

We hope the Working Group will note with concern the legality of corporal punishment of children in Tuvalu. We hope states will raise the issue during the review in 2018 and make a specific recommendation that Tuvalu draft and enact legislation as a matter of priority to clearly prohibit all corporal punishment of children, however light, in every setting of their lives, and repeal any legal defences to its use.

1 Review of Tuvalu in the 2nd cycle UPR (2013) and progress since

1.1 Tuvalu was reviewed in the second cycle of the Universal Periodic Review in 2013 (session 16).

The issue of corporal punishment of children was raised in the compilation of UN information¹ and the summary of stakeholders' information.² During the review, Tuvalu stated that it was addressing the issue of corporal punishment in schools and requested support from the international community in this respect.³ The Government's position on recommendations to prohibit corporal punishment was unclear as it accepted some and rejected others.⁴

1.2 Since the review in 2013, the Family Protection and Domestic Violence Act 2014 was enacted. The Act does not however explicitly protect children from corporal punishment nor repeal the right "to administer reasonable punishment" in the Penal Code. No further steps have been taken towards the prohibition of corporal punishment.

1.3 We hope the Working Group will note with concern the legality of corporal punishment of children in Tuvalu. We hope states will raise the issue during the review in 2018 and make a

¹ 8 February 2013, A/HRC/WG.6/16/TUV/2, Compilation of UN information, para. 21

² 23 January 2013, A/HRC/WG.6/16/TUV/3, Summary of stakeholders' views, paras. 6, 7, 8, 9, 10, 11 and 12

³ 5 July 2013, A/HRC/24/8, Report of the working group, para. 65

⁴ 5 July 2013, A/HRC/24/8, Report of the working group, paras. 82(53), 82(54), 84(23) and 84(24)

specific recommendation that Tuvalu draft and enact legislation as a matter of priority to clearly prohibit all corporal punishment of children, however light, in every setting of their lives, and repeal any legal defences to its use.

2 Legality of corporal punishment in Tuvalu

Summary of current law and reforms needed to achieve prohibition

Corporal punishment of children in Tuvalu is not fully prohibited in any setting. Achieving prohibition requires legislation to be enacted to explicitly prohibit corporal punishment of children in all settings, including the home and as a criminal sentence.

- 2.1 **Home (lawful):** The maintenance of family discipline is one of the principles of the Constitution 1978 (principle 4): “Amongst the values that the people of Tuvalu seek to maintain are their traditional forms of communities, the strength and support of the family and family discipline.” Article 17(2) of the Constitution provides for a person under 18 to be detained “in the reasonable exercise of the authority of a parent, teacher or guardian, or under the order of a court for the purpose of his education, welfare or proper discipline”. The Government has stated that this “envisages lawful corporal punishment”.⁵ Cruelty to children is addressed in article 226 of the Penal Code 1965, but this also states: “Nothing in this section shall be construed as affecting the right of any parent, teacher, or other person, having the lawful control of a child or young person to administer reasonable punishment to him.”
- 2.2 The Government plans to carry out a progressive review of its laws as part of the Te Kakeega II The National Development Plan for Tuvalu 2005-2015. During the Universal Periodic Review of Tuvalu in 2008, the Government stated that the issue of corporal punishment of children was being addressed as part of efforts to harmonise domestic laws with international human rights standards.⁶ During the second cycle review in 2013, the Government reported efforts to address abuse but made no reference to corporal punishment in the home: recommendations to prohibit corporal punishment in all settings were both accepted and rejected.⁷
- 2.3 The Family Protection and Domestic Violence Act 2014 was passed by Parliament on 18 December 2014. The Act protects children as well as adults from domestic violence, but this does not include prohibition from corporal punishment in childrearing. The Act defines the offence of domestic violence in article 38: “(1) A person who commits physical, sexual, verbal, psychological or economic abuse against another person in a domestic relationship commits an offence of domestic violence.” The Act does not repeal the right “to administer reasonable punishment” in the Penal Code.
- 2.4 **Alternative care settings (partially lawful):** Corporal punishment is lawful in alternative care settings under the right “to administer reasonable punishment” in article 226 of the Penal Code 1965. However, in the case of persons in the mental health wing of the hospital, the Mental Health Wing Management Regulations under the Mental Treatment Act 1927 state that attendants “shall not, on any account, punish patients ... [and] shall not use harsh, or

⁵ 10 October 2012, CRC/C/TUV/1, Initial report to the Committee on the Rights of the Child, para. 148

⁶ 9 January 2009, A/HRC/10/84, Report of the working group, para. 41

⁷ 5 July 2013, A/HRC/24/8, Report of the working group, paras. 81(53), 81(54), 83(23) and 83(24)

intemperate language to the patients, whatever the language or the conduct of the patients may be” (reg. 25) and “no patient shall be struck” (reg. 27).

- 2.5 **Day care (*lawful*)**: Corporal punishment is lawful in early childhood care and in day care for older children under the right “to administer reasonable punishment” in article 226 of the Penal Code 1965. Provisions for corporal punishment in article 29 of the Education Act 1976 possibly apply to preschool provision (see below, information unconfirmed).
- 2.6 **Schools (*lawful*)**: Corporal punishment is lawful in schools under article 29 of the Education Act 1976: “(1) No teacher, other than a head-teacher, shall administer corporal punishment to any pupil. (2) If a head-teacher administers corporal punishment to any pupil, he shall record details of the punishment administered and the offence for which the corporal punishment was administered in a book to be kept at the school for that purpose. (3) The Minister may give directions for further controlling corporal punishment in schools.” As at February 2012, no Ministerial directions on corporal punishment had been issued. The right “to administer reasonable punishment” in article 226 of the Penal Code 1965 also applies.
- 2.7 During the Universal Periodic Review of Tuvalu in 2013, the Tuvalu Director of Education reported that the Education Act had been reviewed with a view to integrating human rights concerns and that Tuvalu was addressing the issue of corporal punishment; Tuvalu requested support from the international community in this respect.⁸
- 2.8 **Penal institutions (*partially lawful*)**: There is no provision for corporal punishment as a disciplinary measure in the Prisons Act 1985. Article 55 of the Police Powers and Duties Act 2009 prohibits corporal punishment: “A police officer must not use corporal punishment against a person who is in police custody.” Corporal punishment is presumably lawful in other penal institutions under the right “to administer reasonable punishment” in article 226 of the Penal Code 1965.
- 2.9 **Sentence for crime (*partially lawful*)**: There is no provision for judicial corporal punishment in the Penal Code 1965, the Criminal Procedure Code 1963, the Magistrates Court Act 1963 or the Superior Courts Act 1987, but a male child or young person up to 16 years old may be caned by parents or guardians under article 8(8) of the Island Courts Act 1965. Failure to carry out the caning order is an offence under article 8(9).

3 Recommendations by human rights treaty bodies

- 3.1 **CRC**: In 2013, the Committee on the Rights of the Child expressed concern at the continued legality of corporal punishment in homes, schools and as a criminal sentence in Tuvalu. It recommended its abolition from all schools, homes and communities and its prohibition as a criminal sentence, as well as awareness-raising programmes on the harmful effects of corporal punishment and the promotion of positive discipline.⁹
- 3.2 **CEDAW**: In its concluding observations on the state party’s initial/second report in 2006, the Committee on the Elimination of Discrimination Against Women expressed concern at the legality of corporal punishment in schools under article 29 of the Education Act and article 226 of the Penal Code and recommended that it be prohibited.¹⁰

⁸ 5 July 2013, A/HRC/24/8, Report of the working group, para. 65

⁹ 4 October 2013, CRC/C/TUV/CO/1 Advance Unedited Version, Concluding observations on initial report, paras. 35, 36, 62 and 63

¹⁰ 7 August 2009, CEDAW/C/TUV/CO/2, Concluding observations on initial/second report, paras. 39 and 40

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
www.endcorporalpunishment.org; info@encorporalpunishment.org

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 since 2011 the Committee on the Rights of Persons with Disabilities.