

Corporal punishment of children in Nauru: Briefing for the Universal Periodic Review, 37th session, November 2020



GLOBAL INITIATIVE TO
**End All Corporal
Punishment of Children**

From the Global Initiative to End All Corporal Punishment of Children, July 2020

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 still lawful despite recommendations to prohibit it by the Committee on the Rights of the Child.

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 2020 and make a specific recommendation that Nauru draft and enact legislation as a matter of priority to explicitly prohibit corporal punishment of children in all settings, including the home, and repeal any legal defences for its use.

1 Review of Nauru in the 2nd cycle UPR (2015) and progress since

- 1.1 Nauru was reviewed in the second cycle of the Universal Periodic Review in 2015 (session 23). Although the issue of corporal punishment of children was raised in the compilation of UN information¹ and in the summary of stakeholders' information,² no recommendations were extended on the corporal punishment of children.
- 1.2 Since the review, the Criminal Code 1899, which provided for reasonable correction of a child, was repealed by the Crimes Act 2016. It is unclear whether defences for the use of corporal punishment still exist within the Crimes Act 2016, but neither that Act nor the Child Protection and Welfare Act 2016 or the Domestic Violence and Family Protection Act 2017 explicitly prohibit all corporal punishment in childrearing.
- 1.3 **We hope the Working Group will note with concern the continued legality of corporal punishment of children in Nauru. We hope states will raise the issue during the review in 2020 and make a specific recommendation that Nauru draft and enact legislation as a matter of priority to explicitly prohibit corporal punishment of children in all settings, including the home, and repeal any legal defences for its use.**

2 Legality of corporal punishment in Nauru

¹ 21 August 2015, A/HRC/WG.6/23/NRU/2, Compilation of UN information, para. 22

² 10 August 2015, A/HRC/WG.6/23/NRU/3, Summary of stakeholders' views, para. 26

Summary of current law and reforms needed to achieve prohibition

Corporal punishment in Nauru is prohibited in schools, in penal institutions and as a sentence for a crime but it is still lawful in the home, in alternative care and in day care settings. Legislation should be enacted to explicitly prohibit all corporal punishment in all settings, including the home, and to repeal all provisions defending the use of corporal punishment in childrearing.

- 2.1 **Home (lawful):** Corporal punishment is lawful in the home. The Criminal Code 1899 (amended 2011) stated in section 280: “It is lawful for a parent or a person in the place of a parent, or for a schoolmaster or master, to use, by way of correction, towards a child, pupil, or apprentice, under his care such force as is reasonable under the circumstances.” This provision was not reiterated in the Crimes Act 2016 which repealed the Criminal Code 1899, but neither was clear prohibition of corporal punishment introduced. Article 47 of the Crimes Act 2016 provides for the defence of “claim of right” and states that “this section does not negate criminal responsibility for an offence relating to the use of force against a person.” (art. 47). However, in punishing common assault, article 78 states that “conduct that is within the limits of what would be acceptable to a reasonable person as incidental to social interaction or community life cannot amount to an offence under this section”. Provisions protecting against violence and abuse in the Domestic Violence and Family Protection Act 2017 are not interpreted as prohibiting all corporal punishment of children, as the Act refers to the Crimes Act 2016 for the definition of “assault”. In reporting to the Committee on the Rights of the Child in 2016, the Government referred to corporal punishment as “an accepted and expected parental *obligation*” (emphasis added), and reported that “the biblical belief of ‘spare the rod, spoil the child’ is still a principal of discipline in the Naurian society”.³
- 2.2 The Child Protection and Welfare Act 2016 states that a child has the right “to be protected from harm or risk of harm” and confirms that the child’s family has “primary responsibility for the child’s upbringing, protection and development” (art. 5): it does not prohibit all corporal punishment in childrearing. Harm is defined in the Crimes Act 2016 as “physical harm and mental harm” (art. 8). “Mental harm” “includes psychological harm (whether temporary or permanent) but does not include an emotional reaction such as distress, grief, fear or anger unless the reaction results in psychological harm”; “physical harm” “(a) includes any of the following (whether temporary or permanent): (i) unconsciousness; (ii) pain; (iii) disfigurement; (iv) infection with a disease; (v) any physical contact with a person to which the person might reasonably object in the circumstances, whether or not the person was aware of it at the time; but (b) does not include being subject to any force or impact that is within the limits of what would be acceptable to a reasonable person as incidental to social interaction or to life in the community” (art. 8). Proposed amendments to the Constitution which would extend the protection of rights to children were rejected in 2010. Constitutional reform remains under consideration by the Constitutional Review Committee.
- 2.3 **Alternative care settings (lawful):** According to the Child Protection and Welfare Act 2016, all approved carers and care service providers must take reasonable steps to ensure the care meets the specified standards, which include “the child’s dignity and rights will be respected at all times” and “the child will receive positive guidance when necessary to help him or her to change inappropriate behaviour” (arts. 20 and 36); techniques for managing behaviour “must not

³ 25 January 2016, CRC/C/NRU/1-6, Initial to sixth state party report, paras. 83 and 24

include punishment that: (a) humiliates, frightens or threatens the child in a way that is likely to cause any harm, including and physical, psychological, or emotional harm; and (b) involves any cruel, inhumane or degrading treatment of the child” (art. 20). This article does not explicitly prohibit all physical punishment; rather, it is tied to the concept of harm which as defined in the Crimes Act 2016 “does not include being subject to any force or impact that is within the limits of what would be acceptable to a reasonable person as incidental to social interaction or to life in the community” (art. 8).

- 2.4 **Day care (lawful):** Corporal punishment is possibly unlawful in pre-school education settings under the Education Act 2011 (see below). There appears to be no clear prohibition of corporal punishment in other early childhood care and in day care for older children.
- 2.5 **Schools (unlawful):** Corporal punishment is prohibited in schools in article 37 of the Education Act 2011: “In this section ‘corporal punishment’ means physical force applied to punish or correct, and includes any action designed or likely to cause physical pain or discomfort. (2) The following persons must not administer corporal punishment to a student of a school: (a) the principal of the school; (b) a member of staff of the school; (c) any other person instructing or teaching, or assisting or supporting teaching, at a school.” Those found guilty of using corporal punishment may be fined \$500.⁴ Previously, the Compulsory Education Ordinance 1921 had authorised the Administrator in Council to make rules, regulations and orders to govern the conduct and maintenance of schools (art. 8) but it had not stated that this excluded the use of corporal punishment.
- 2.6 Despite prohibition, there have been reports that corporal punishment continues to be used in schools as evidence emerges of children’s exposure to violent treatment and punishment while in immigration detention.⁵
- 2.7 **Penal institutions (unlawful):** Corporal punishment is prohibited as a disciplinary measure in penal institutions in article 33 of the Correctional Service Act 2009: “No prisoner may be subjected, by way of punishment, to – (a) corporal punishment in any form; (b) the use of instruments of restraints...” Article 35 sets out the specific circumstances in which force may be used against a prisoner and does not include for purposes of discipline or punishment. However, evidence has emerged of children detained for purposes of immigration being subjected to a high level of assault.⁶
- 2.8 **Sentence for crime (unlawful):** Corporal punishment is unlawful as a sentence for crime. There is no provision for corporal punishment as a sentence for a child in the Child Protection and Welfare Act 2016 or in the Crimes Act 2016, though it is not explicitly prohibited.

3 Recommendations by human rights treaty bodies

⁴ 25 January 2016, CRC/C/NRU/1-6, Initial to sixth state party report, para. 238

⁵ <https://www.theguardian.com/news/2016/aug/11/nauru-teachers-speak-out-for-children-we-dont-have-to-torture-them>, accessed 11 August 2016

⁶ Australian Human Rights Commission (2014), *The Forgotten Children: National Inquiry into Children in Immigration Detention*, www.humanrights.gov.au/sites/default/files/document/publication/forgotten_children_2014.pdf

3.1 **CRC:** In 2016, the Committee on the Rights of the Child recommended that corporal punishment of children be prohibited in the home and all other settings.⁷

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.

⁷ 28 October 2016, CRC/C/NRU/CO/1, Concluding observations on combined initial report, paras. 34 and 35