

Corporal punishment of children in Papua New Guinea: Briefing for the Universal Periodic Review, 39th session, 2021

From the Global Partnership to End Violence Against Children, March 2021



This submission provides an update on the legality of corporal punishment of children in Papua New Guinea since its review in the second cycle UPR in 2016. Corporal punishment prohibition is still to be fully achieved in the home, alternative care settings, day care and schools.

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 Papua New Guinea, corporal punishment of children is lawful, despite a recommendation to prohibit it by the Committee on the Rights of the Child and during the 2nd cycle UPR of Papua New Guinea in 2016.

We hope the Working Group will note with concern the legality of corporal punishment of children in Papua New Guinea. We hope states will raise the issue during the review in 2021 and make a specific recommendation that Papua New Guinea enact a legislation to clearly prohibit all corporal punishment of children in every setting of their lives and repeal article 278 of the Criminal Code 1974 and article 42 of the Constitution , as a matter of priority.

1 Review of Papua New Guinea in the 2nd cycle UPR (2016) and progress since

- 1.1 Papua New Guinea was reviewed in the second cycle of the Universal Periodic Review in 2016 (session 25). The issue of corporal punishment of children was raised in the compilation of UN information and the summary of stakeholders' information.¹ Recommendations to prohibit corporal punishment in all settings were made. During the review, the Government “noted” the recommendations, but stated that corporal punishment “has been outlawed” in Papua New Guinea, which is incorrect.²
- 1.2 Since the review, no law reform appeared to have been initiated with a view to explicitly prohibit corporal punishment of children in all settings. The Government claimed that existing legislation already achieved prohibition.

¹ 13 July 2016, A/HRC/33/10, Report of the working group, paras. 104(109), 104(126)

² 22 September 2016, A/HRC/33/10/Add.1, Report of the working group: Addendum, paras. 66, 104(109), 104(126)

1.3 We hope the Working Group will note with concern the legality of corporal punishment of children in Papua New Guinea. We hope states will raise the issue during the review in 2021 and make a specific recommendation that Papua New Guinea enact a legislation to clearly prohibit all corporal punishment of children, however light, in every setting of their lives, and repeal article 278 of the Criminal Code 1974 and article 42 of the Constitution, as a matter of urgency.

2 Legality of corporal punishment in Papua New Guinea

Summary of current law and opportunities for achieving prohibition

Corporal punishment of children in Papua New Guinea is lawful in the home, alternative care settings, day care and schools. Article 278 of the Criminal Code 1974 provides for the use of force “by way of correction” by parents and teachers. Article 42 of the Constitution, concerning the treatment of persons arrested or detained, states: “Subject to any other law, nothing in this section applies in respect of any reasonable act of the parent or guardian of a child, or a person into whose care a child has been committed, in the course of the education, discipline or upbringing of the child.” These provisions should be repealed and the law should prohibit all corporal punishment and other cruel or degrading forms of punishment, in the home, schools and all other settings where adults have parental authority over children, throughout Papua New Guinea and Bougainville.

Note: Papua New Guinea includes the Autonomous Region of Bougainville, previously known as the North Solomons Province. The autonomy arrangements are set out in the Bougainville Peace Agreement 2001, including for gradual transfer of powers and functions; the objectives of autonomy include provision for “a democratic and accountable system of government for Bougainville that meets internationally accepted standards of good governance, including protection of human rights” and “respect for the international obligations of Papua New Guinea” (s4). The primary law governing the region is the Bougainville Constitution 2004, which provides for the making of legislation and recognises the authority of traditional, customary and clan systems.

2.1 **Home (lawful):** Corporal punishment is lawful in the home. Article 278 of the Criminal Code 1974 states: “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.” The national Constitution 1975 states in article 42 on liberty of the person that “subject to any other law, nothing in this section applies in respect of any reasonable act of the parent or guardian of a child, or a person into whose care a child has been committed, in the course of the education, discipline or upbringing of the child”. Provisions against violence and abuse in the Lukautim Pikinini (Child) Act 2009 are not interpreted as prohibiting all corporal punishment in childrearing. The Lukautim Pikinini Act 2009 was amended in 2015 and certified by the Government in March 2016. The Act provides that a person who commits “abuses, neglects, ill-treats as exploit” or commits “violence and causes injuries to a child in his core” is guilty of an offence (section 78 (1) (a) and (b)). It does not explicitly prohibit corporal punishment of children in all settings.

- 2.2 The Government had initially expressed commitment to law reform by accepting a recommendation to consider prohibiting corporal punishment in the family and other settings made during the Universal Periodic Review of Papua New Guinea in 2011, reporting that laws relating to corporal punishment were being reviewed.³ The Global Initiative no longer considers Papua New Guinea committed to prohibiting all corporal punishment of children without delay, as at the subsequent examination in 2016 the Government claimed existing legislation already achieved prohibition⁴ and there is no evidence that the Government intends to introduce legislation prohibiting all corporal punishment in the near future.
- 2.3 In Bougainville, the Constitution 2004 includes among the obligations of a Bougainvillean “as a child, to obey his parents” (art. 9(1)), and states that customary practices of provision of care for children shall be encouraged (art. 20). It states that the basic rights of the National Constitution are applicable in Bougainville (art. 178) but allows for these to be regulated or restricted as necessary, including with regard to the protection of children (art. 180).
- 2.4 **Alternative care settings (lawful):** Corporal punishment is prohibited in some but not all alternative care settings. Article 88 of the Lukautim Pikinini (Child) Act 2009 states that children in care have the right “to be free from corporal punishment” (art. 88(1)(e)). The Act defines a child in care as “a child who is in the care of the Director or any person authorized by the Director”. The prohibition does not apply to private care arrangements and forms of care run by non-government bodies, where corporal punishment is lawful under the provision for the use of force “by way of correction” in article 278 of the Criminal Code 1974.
- 2.5 **Day care (lawful):** Corporal punishment is lawful in early childhood care and in day care for older children under the provision for the use of force “by way of correction” in article 278 of the Criminal Code 1974.
- 2.6 **Schools (lawful):** Corporal punishment is lawful in schools under the provision for the use of force “by way of correction” in article 278 of the Criminal Code 1974 (see under “Home”). The Education Act 1983 states that making rules for disciplining students is the responsibility of Boards of Governors and Governing Councils (arts. 68 and 74), but it does not prohibit corporal punishment.
- Corporal punishment is discouraged in schools by way of policy (not law). For example, the Teaching Service Commission *Disciplinary Policy and Procedures for Members of the Teaching Service* (2009) lists corporal punishment as a “serious offence” and the Ministerial *Behaviour Management Policy for the National Education System of Papua New Guinea* (2009) emphasises that corporal punishment should not be used at any time. Similar advice is given in the Department of Education’s *Behaviour Management: A guide for schools* (2009), *Guidance, Counselling & Behaviour Management Course Student Teacher Course Book – Improving student behaviour and welfare* (2009) and *Guidance, Counselling & Behaviour Management Lecturer’s Guide – Improving student behaviour and welfare* (2009).
- 2.7 **Penal institutions (unlawful):** Corporal punishment is unlawful as a disciplinary measure in penal institutions. The Juvenile Justice Act 2014 states in article 102: “(1) Any discipline imposed on a

³ 11 July 2011, A/HRC/18/18, Report of the working group, para. 78(53); 30 September 2011, A/HRC/18/18/Add.1, Report of the working group: Addendum, paras. 79(27) and 79(37)

⁴ 22 September 2016, A/HRC/33/10/Add.1, Report of the working group: Addendum, paras. 66, 104(109), 104(126)

juvenile in an institution shall be in accordance with the rules of that institution, and shall not include any of the following: (a) any cruel, inhumane or degrading treatment of the juvenile; or (b) corporal punishment of the juvenile....” The Correctional Service Act 1995 provides for the custody, status, care, welfare and discipline of detainees and does not include corporal punishment among permitted disciplinary measures (art. 160).

2.8 **Sentence for crime (unlawful):** Corporal punishment is unlawful as a sentence for crime. The Juvenile Justice Act 2014 states in article 85: “(1) The following sentences shall not be imposed on a juvenile – (a) corporal punishment; or (b) life imprisonment; or (c) capital punishment.” Article 30 states: “(2) The diversion of a juvenile shall not – ... (c) involve corporal punishment, public humiliation, or anything that would degrade or stigmatise the juvenile....” There is no provision for corporal punishment as a sentence in the Criminal Code 1974 or the Village Courts Act 1989. The Constitution prohibits “treatment or punishment that is cruel or otherwise inhuman, or is inconsistent with respect for the inherent dignity of the human person” (art. 36).

According to the Bougainville Constitution 2004, criminal law policy takes account of the roles of traditional chiefs and leaders in resolving disputes and incorporates customary practices and norms into the development and implementation of the region’s criminal law (art. 45(1)). Bougainville criminal policy and law must have full regard for the national justice system and the international human rights system (art. 45(2)).

3 Recommendations by human rights treaty bodies

3.1 **CRC:** The Committee on the Rights of the Child has expressed concern at corporal punishment of children in Papua New Guinea and recommended it be explicitly prohibited in the family and other institutions – in its concluding observations on the state party’s initial report in 2004.⁵

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⁵ 26 February 2004, CRC/C/15/Add.229, Concluding observations on initial report, paras. 37 and 38