

Corporal punishment of children in the Cook Islands

LAST UPDATED April 2020

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Child population 7,000 (UNICEF, 2015)

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings, day care and penal institutions.

Article 61 of the Crimes Act 1969 authorises the use of force “by way of correction”. This should be repealed and explicit prohibition enacted of all corporal punishment of children, in all settings and by all persons with authority over children. The near universal acceptance of corporal punishment in “disciplining” children necessitates a clear statement in law that all corporal punishment, however “light”, is prohibited.

Alternative care settings – Prohibition should be enacted in legislation applicable to all alternative care settings (foster care, institutions, places of safety, emergency care, etc).

Day care – Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, etc) and all day care for older children (day centres, childminding, after-school childcare, etc).

Penal institutions – Prohibition should be enacted of corporal punishment as a disciplinary measure in all institutions accommodating children in conflict with the law.

Note: The Cook Islands is a state in free association with New Zealand.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. Article 61 of the Crimes Act 1969 states: “(1) Every parent or person in the place of a parent, and every schoolmaster, is justified in using force by way of correction towards any child or pupil under his care, if the force used is reasonable in the circumstances. (2) The reasonableness of the force used is a question of fact.” Article 64 covers excessive force. Children have some protection from violence and abuse under other provisions in the Crimes Act 1969, the Cook Islands Act 1915 and the Cook Islands Protection of Children Ordinance 1954. The Constitution states that no law in the Cook Islands shall be construed or applied “so as to impose or authorise the imposition on any person of cruel and unusual treatment or punishment” (art. 65), but this is not interpreted as protecting children from all corporal punishment.

The Crimes Act is being comprehensively reviewed by Crown Law with technical assistance from the Australian Government. In 2015 according to the Government’s report to the Committee on the Rights of Persons with Disabilities, the Crimes Act Amendment Bill 2013 provided for offences against children (art. 6(4)).¹ As at March 2018, the Crimes Bill 2017 was being discussed in the Parliamentary Select Committee; its draft article 32 recognised the “lawful correction of a child” as a defence for the use of force on a child. Island and community consultations were being conducted and the Bill was envisaged “to be tabled in Parliament by the end of 2018 for enactment”.²

The Family Protection and Support Act 2017 provides some protection from domestic violence but these provisions are not interpreted as prohibiting all corporal punishment of children, particularly in light of article 61 of the Crimes Act 1969 and draft article 32 of the Crimes Bill.

Under examination by the Committee on the Rights of Persons with Disabilities in 2015, the Government drew attention to prohibition of corporal punishment in schools and acknowledged “there was a need to look into expanding prohibition to the family context as well”.³

Alternative care settings

Corporal punishment is lawful in alternative care settings (foster care, institutions, children’s homes, places of safety, etc) under the right of persons with parental authority to use force “by way of correction” in article 61 of the Crimes Act (see under “Home”).

Day care

Corporal punishment is prohibited in institutions providing early childhood education (for children under 5) in article 109 of the Education Act 2012 (see under “Schools”). It is lawful in other early childhood care (nurseries, crèches, family centres) and day care for older children (day centres, after-school childcare, childminding, etc) under the provision for the use of force “by way of correction” in article 61 of the Crimes Act 1969 (see under “Home”).

Schools

Corporal punishment is prohibited in the Education Act 2012, enacted in December 2012. Article 109 states: “(1) A person at an educational institution, or at an educational institution activity, must not – (a) verbally abuse a student of the institution; or (b) use physical force, by way of correction or punishment, against a student of the institution; or (c) require a student of the institution to do an act intended or

¹ 18 February 2015, CRPD/C/COK/Q/1/Add.1 Advance Unedited Version, Reply to list of issues, pp. 11-12

² 7 March 2018, CEDAW/C/COK/Q/2-3/Add.1, Reply to list of issues, para. 6

³ Committee on the Rights of Persons with Disabilities considers initial report of the Cook Islands, 10 April 2015, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15819&LangID=E>, accessed 29 April 2015

likely to cause the student pain, severe discomfort, or humiliation.” The Act came into force in January 2013.

Penal institutions

There is no explicit prohibition of corporal punishment or as a disciplinary measure in penal institutions, and article 61 of the Crimes Act authorises the use of force “by way of correction” (see under “Home”).

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in the Prevention of Juvenile Crimes Act 1968 and the Criminal Justice Act 1967.

Universal Periodic Review

Although the Cook Islands can enter into regional and international treaties, it is not a UN member state and is not reviewed in the Universal Periodic Review process.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(2 April 2020, CRC/C/COK/CO/1, Concluding observations on second/fifth report, paras. 25 and 26)

“While noting that the Education Act prohibits corporal punishment in schools, the Committee is seriously concerned that such punishment remains legal in other settings, including in the home, alternative care settings, some forms of day-care settings and penal institutions. The Committee is concerned in particular that section 32 of the draft crimes bill elaboration in 2017 provides for the so-called “lawful correction of a child”, as does the Crimes Act.

“Recalling its general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, the Committee urges the State party to:

- a) repeal laws that permit the corporal punishment of children and enact legislation to explicitly prohibit such punishment in all settings;
- b) intensify efforts to promote positive, non-violent and participatory forms of child-rearing and discipline, including by strengthening awareness-raising programmes and campaigns targeting children, parents, teachers and traditional, religious and community leaders.

Committee on the Rights of the Child

(21 February 2012, CRC/C/COK/CO/1, Concluding observations on initial report, paras. 35 and 36)

“The Committee notes the legal review undertaken by the State party of the Education Act that aims at banning all forms of corporal punishment in schools. The Committee also notes with appreciation the State party’s efforts to combat domestic violence, including through the legal review of the Crimes Act and Family law Bill that, among others, aim to provide wider protection for child victims of domestic violence. However, the Committee expresses its concern about:

- a) the prevalence of violence against children including corporal punishment used in all settings and especially in the home, where it remains lawful;
- b) the fact that cases of domestic violence against children do not receive the adequate treatment from the police;
- c) the fact that child victims of violence are not aware of reporting procedures and thus many such cases go unreported.

“Recalling its general comments Nos. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment and 13 (2011) on the right of the child to freedom from all forms of violence, the Committee recommends that the State party:

- a) prohibit corporal punishment in all settings including in the family, schools and in institutions for children; in this regard the State party is urged to accelerate the adoption of the Education Amendment Bill;
- b) introduce public education, on the harmful effects of corporal punishment, with a view to changing the general attitude towards this practice, and promote positive, non-violent, participatory forms of child-rearing and education as an alternative to corporal punishment;
- c) extend application of the existing ‘no drop’ policy in the State party, to child victims of domestic violence so that prosecution of such cases will proceed despite the victims’ non-cooperation;
- d) strengthen the Police Domestic Violence Unit, by providing adequate human, technical and financial resources to fulfil its role effectively, and strengthen child rights training for law enforcement personnel, in order to ensure that they can provide adequate support to child victims;
- e) take all necessary measures to ensure that child victims of violence are aware of the reporting procedures so as to encourage them to report cases of domestic violence to the authorities;
- f) cooperate with the Special Representative of the Secretary-General on violence against children and seek technical assistance, inter alia, from UNICEF and the Office of the High Commissioner for Human Rights (OHCHR).”

Committee on the Rights of Persons with Disabilities

(17 April 2015, CRPD/C/COK/CO/1 Advance Unedited Version, Concluding observations on initial report, paras. 31 and 32)

“The Committee is concerned that current law authorises the use of force against children with disabilities ‘by way of correction’.

“The Committee recommends that the State party replace laws to prohibit all corporal punishment so children with disabilities are legally protected from all punitive assault including in the home.”

Prevalence/attitudinal research in the last ten years

None identified.

[End Corporal Punishment](#) is a critical initiative of the [Global Partnership to End Violence Against Children](#). Previously known as The Global Initiative to End All Corporal Punishment of Children, we act as a catalyst for progress towards universal prohibition and elimination of corporal punishment of children. We track global progress, support and hold governments to account, partner with organisations at all levels, and engage with human rights treaty body systems.