

Corporal punishment of children in Kiribati

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Child population 46,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings, all day care, penal institutions and as a sentence for crime in traditional justice systems.

Article 226 of the Penal Code 1977 confirms “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”. This provision should be repealed so that there is clarity in the law that no kind or degree of corporal punishment can be considered “reasonable”. Prohibition should be enacted of all corporal punishment by parents, teachers and other persons with authority over children.

Alternative care settings – Prohibition should be enacted of all corporal punishment in all alternative care settings (foster care, institutions, places of safety, etc.).

Day care – Corporal punishment should be prohibited in all early childhood care for children under 3 (nurseries, preschools, crèches, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Penal institutions – Corporal punishment should be prohibited as a “disciplinary” measure in all institutions accommodating children in conflict with the law.

Sentence for crime – Judicial corporal punishment should be explicitly prohibited in traditional justice systems with any legislation authorising this repealed.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. Article 226 of the Penal Code 1977 prohibits cruelty to children but 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.”

A number of reviews have been carried out to assess the compliance of national legislation with the Convention on the Rights of the Child. For example, in 2009, the Child Protection Baseline Report of a collaborative project by the Government of Kiribati and UNICEF included an analysis of gaps in domestic legislation in light of obligations under the Convention on the Rights of the Child, including prohibition of corporal punishment.¹

The Children, Young People and Family Welfare Act 2013 states in article 4: “... All children and young people are entitled, as far as possible, to grow up in an environment that ... (i) is free from discrimination, violence, abuse, neglect and exploitation”. Article 5 addresses parental responsibility: “Parents, with the support of family members, have the primary role in safeguarding and promoting the wellbeing of children and young people, and in particular to ... (c) ensure that discipline is carried out in non-abusive ways; ... (g) ensure that they grow up in an environment that is free of violence, abuse, neglect and exploitation....” The Act provides for prevention services to promote “appropriate” parenting skills and awareness raising on the dangers of abuse (art. 15). However, the Act does not prohibit all corporal punishment in childrearing and does not repeal the right “to administer reasonable punishment” in article 226 of the Penal Code. It defines physical abuse as “any act of violence or maltreatment that results in physical wounds or bodily injury” (art. 2). The Government reported during the Universal Periodic Review of Kiribati in 2015 that under the Act any person must report concerns about the wellbeing of a child to the police and welfare officers, including corporal punishment in the community and at schools.²

The Family Peace Act for Domestic Violence 2014 (Te Rau N Te Mweenga Act) aims to protect adults and children from all forms of domestic violence. It is intended to comply with the Convention on the Rights of the Child and to protect children from direct domestic violence as well as from witness it between adults (art. 3); domestic violence includes physical abuse which is defined as the causing of bodily pain (art. 4.2) and includes single and repeated acts, even though in isolation these may appear “minor or trivial” (art. 4). However, while these provisions give substantial protection to children from violence in the home, they do not explicitly prohibit all forms of corporal punishment and the Act does not repeal the right “to administer reasonable punishment” in article 226 of the Penal Code.

Following the Universal Periodic Review of Kiribati in 2010, the Government stated it was “prepared to consider” the recommendations to prohibit corporal punishment but did not clearly accept or reject them.³ During the second cycle review in 2015, the Government had initially indicated its commitment to law reform by clearly accepting recommendations to prohibit corporal punishment in

¹ UNICEF & Australian Government AusAID (2009), *Protect me with love and care: A Baseline Report for creating a future free from violence, abuse and exploitation of girls and boys in Kiribati*, UNICEF Pacific

² 13 April 2015, A/HRC/29/5, Report of the working group, para. 18

³ 30 September 2010, A/HRC/15/3/Add.1, Report of the working group: Addendum, paras. 27, 75 and 76

all settings including the home and to repeal the “reasonable punishment” defence.⁴ However, the Global Initiative no longer considers Kiribati committed to prohibiting all corporal punishment of children without delay. In reporting to the Committee on the Rights of the Child in 2018, the Government of Kiribati misleadingly stated that corporal punishment was already explicitly prohibited “in the family, schools, penal institutions, alternative care settings and as a traditional form of sentencing” under article 226 of the Penal Code 1977 and the Children, Young People and Family Welfare Act 2013.⁵ During the Universal Periodic Review in 2020, Kiribati responded to concerns raised on article 226 of the Penal Code by stating that the issue “had been taken care of in the amendment to the Children, Young People and Family Welfare Act of 2013, but needed to be reflected in the Penal Code”.⁶

Alternative care settings

Corporal punishment is lawful in alternative care settings under the right “to administer reasonable punishment” in article 226 of the Penal Code 1977.

Day care

Article 48 of the Early Childhood and Care Act 2017 prohibits corporal punishment in all early childhood care and education for children between 3 and 6 years old: “(1) Any approved provider must not (a) disrespect, degrade, exploit, intimidate, or emotionally or physically harm or neglect a child who enrolls or attends the approved service, (b) harass or use corporal punishment to discipline or punish a child who enrolls or attends the approved service. (2) Non-compliance with subsection (1) is a ground for revocation of the approved service. (3) Any ECCE, preschool provider or staff engaged or employed in the service, who harasses or uses corporal punishment to a child commits an offence and shall be liable to a fine not exceeding \$1000.” Corporal punishment is defined as “a physical punishment inflicted on a child’s body by smacking, canning, beating or any other action that will cause physical pain or discomfort to a child”.

Corporal punishment is lawful in other day care for children under 3 and children 6 or over, under the right “to administer reasonable punishment” in article 226 of the Penal Code 1977.

Schools

Corporal punishment is prohibited in schools. The Education (Amendment) (No. 2) Act 1997 repealed the provisions allowing corporal punishment in the Education Ordinance 1977. The amendment Act did not introduce explicit prohibition (it was a “silent” repeal) but the explanatory memorandum to the Act stated clearly that its intention is to prohibit corporal punishment: “The principal object of this Act is to remove altogether the administration of corporal punishment in schools which can now be administered by the headteacher of any school under section 28 of the Education Ordinance. This is achieved by repealing the whole of section 28 of the Education Ordinance which indeed allows the infliction of such punishment in schools.”

The Education Act 2013 (in force 2014), explicitly prohibits corporal punishment in article 38: “The principal, or a body that is responsible for disciplinary matters must take the following guidelines

⁴ 1 July 2015, A/HRC/29/5/Add.1, Report of the working group: Addendum

⁵ [2018], CRC/C/KIR/2-4, Second/fourth report, paras. 66 and 99

⁶ 7 February 2020, A/HRC/WG.6/35/L.12 Unedited version, Draft report of the Working Group, para. 79

when applying disciplinary actions to a student – (a) discipline must be administered in a manner that is non-discriminatory and consistent with a student’s human dignity and other rights; ... (e) corporal punishment is not acceptable under any circumstances.” Corporal punishment is also explicitly prohibited in preschools for children between 3 and 6 years old under section 48 of the Early Childhood and Care Act 2017.

Penal institutions

There is no prohibition of corporal punishment as a disciplinary measure in penal institutions. The Juvenile Justice Act 2015 is silent on the issue of corporal punishment and there are no regulations on appropriate treatment of detainees within prisons. Under article 39 of the Penal Code 1977, offenders under the age of 16 who are considered to be “in need of care, protection or control” may be committed to the care of “any fit person whether a relative or not”, including “any local government council, religious institution, welfare association or other organisation able and willing to undertake the care, protection or control of persons under the age of 18 years”. Corporal punishment of children in these settings and in custody is permitted under the provisions for “reasonable punishment” in the Penal Code (see under “Home”).

Sentence for crime

Corporal punishment appears to be lawful as a sentence for a crime in traditional justice systems. There is no provision for corporal punishment as a sentence for crime in the Juvenile Justice Act 2015, the Penal Code 1977 or the Criminal Procedure Code 1977. Section 26 of the Magistrates’ Courts Ordinance, which had authorised judicial corporal punishment for boys aged between 10 and 17, was repealed by the Juvenile Justice Act 2015.

However, under article 4 of the Laws of Kiribati Act 1989, customary law is part of the laws of Kiribati. According article 3 of Schedule 1 of the same Act, customary law can be used in criminal proceedings for the purpose of “determining the penalty (if any) to be imposed on a guilty party”. There have been reports of corporal punishment being used in juvenile cases in traditional justice.⁷ Under article 5(2) of the Laws of Kiribati Act 1989, customary law is only applicable to the extent that it is not inconsistent with an “applied law”. But although the Juvenile Justice Act 2015 does not explicitly allow for judicial corporal punishment, it also does not explicitly prohibit it. Article 21 of the Juvenile Justice Act 2015 states: “Save in so far as other provision is expressly made in this Act nothing in this Act, shall be deemed to affect any other law relating to children or young persons”. Legislation must be enacted to clarify that no form of corporal punishment can be used as a sentence for a crime committed as a child, including in traditional justice systems.

Universal Periodic Review of Kiribati’s human rights record

Kiribati was examined in the first cycle of the Universal Periodic Review in 2010 (session 8). The following recommendations were made:⁸

⁷ UNICEF, *Situation Analysis of Children in Kiribati 2017*, p. 82; UNICEF Pacific, *Child Protection Baseline Study 2009*, p. 3; UNICEF, *‘Traditional’ Justice Systems in the Pacific, Indonesia and Timor-Leste*, 2009; see also <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/kiribati/> and <https://2009-2017.state.gov/j/drl/rls/hrrpt/2009/eap/135994.htm>

⁸ 17 June 2010, A/HRC/15/3, Report of the working group, paras. 66(21), 66(66) and 66(67)

“Adopt effective measures to bring its national legislation, including customary law, into line with the provisions and principles of the CRC, particularly in the area of child protection and the prevention of corporal punishment, child abuse and child pornography (Argentina);

“Prohibit the corporal punishment of children at home, at school, in penal institutions, in alternative-care settings and as a traditional form of sentencing (Slovenia);

“Explicitly prohibit, in all fields, corporal punishment for children and adolescents, particularly in view of section 226 of the Penal Code, which permits “reasonable punishments” in penal institutions and by decree of Island Councils (Chile)”

The Government stated that it was “prepared to consider” the recommendations but did not clearly accept or reject them.⁹

The second cycle review took place in 2015 (session 21). In its national report, the Government drew attention to the prohibition of corporal punishment in the Education Act 2013 and stated that one aim of the new juvenile justice legislation will be to repeal the provisions in the Magistrates’ Courts Ordinance which allow judicial corporal punishment of boys between 10 and 17.¹⁰ During the review, the following recommendations were made:¹¹

“Repeal the right “to administer reasonable punishment” and clearly prohibit corporal punishment in all settings, including in the home (Sweden);

“Continue reinforcing the plans and programs for the eradication of corporal punishment of children in the schools as well as in the home (Chile)”

The Government accepted the recommendations.¹²

Third cycle examination took place in 2020 (session 35). The following recommendations were extended:¹³

“Take further steps to eliminate sexual exploitation of children and child labour, as well as to prohibit all forms of corporal punishment in all settings, in compliance with international norms and standards on the rights of the child (Brazil)”

“Continue efforts to combat all violence against children by repealing article 226 of the criminal code, which authorizes the administration of “reasonable punishment”(France)”

The Government will examine the recommendations and respond by the 44th session of the Human Rights Council in June 2020.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(29 September 2006, CRC/C/KIR/CO/1, Concluding observations on initial report, paras. 34 and 35)

“The Committee is concerned that corporal punishment is not explicitly prohibited, is still widely practiced in the home, schools and is used as a disciplinary measure in alternative care settings. The

⁹ 30 September 2010, A/HRC/15/3/Add.1, Report of the working group: Addendum, paras. 27, 75 and 76

¹⁰ 4 November 2014, A/HRC/WG.6/21/KIR/1, National report to the UPR, paras. 56, 117 and 118

¹¹ 23 January 2015, A/HRC/WG.6/21/L.2 Unedited Version, Draft report of the working group, paras. 84(72) and 84(73)

¹² 1 July 2015, A/HRC/29/5/Add.1, Report of the working group: Addendum

¹³ 7 February 2020, A/HRC/WG.6/35/L.12 Unedited version, Draft report of the Working Group, paras. 80(120) and 80(125)

Committee is also concerned that under article 226 of the Penal Code, 'reasonable punishment' is permitted in penal institutions and by order of Island Councils.

"The Committee recommends that the State party, taking into account 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:

- a) amend all relevant legislation, in particular article 226 of the Penal Code to ensure that corporal punishment is explicitly prohibited in the family, schools, penal institutions, alternative care settings and as a traditional form of sentencing; and
- b) take effective measures, including through public awareness campaigns involving children and traditional leaders, to promote positive, participatory and non-violent forms of discipline as an alternative to corporal punishment at all levels of society, and to effectively implement the law prohibiting corporal punishment."

Prevalence/attitudinal research in the last ten years

In a study which involved questionnaires, group activities and interviews with adults and children throughout Kiribati, 81% of the 199 adults questioned said they sometimes hit, smacked, pinched, kicked, flicked or pulled or twisted the ears of children in their household. Nearly three in ten (29%) of the 198 children questioned said they had experienced this in the past month. Children were hit with hands and objects including brooms, wooden spoons and belts. Forty per cent of interviewees working in education said corporal punishment was used in their school; 29% of children said they had experienced school corporal punishment in the past month. When asked "if a child has committed a crime, how does the village/community handle the situation?" 5% of people working in the justice sector and community chiefs said physical punishment was used. The report of the study notes that corporal punishment is lawful in the home and elsewhere and that maneabas (community councils administering a traditional justice system) can punish children who have been accused of offences by beating them or excluding them from the community.

(UNICEF & AusAid (2009), *Protect me with love and care: A Baseline Report for creating a future free from violence, abuse and exploitation of girls and boys in Kiribati*, Suva: UNICEF Pacific)