

Corporal punishment of children in Nauru

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Child population 4,000 (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 and in some alternative care and day care settings.

Clarification is required as to whether or not provisions in the articles 47 and 78 of the Crimes Act 2016, relating respectively to the offences involving force and common assault, constitute a legal defence for the use of corporal punishment in childrearing. Clear prohibition should be enacted of all corporal punishment by parents and others with parental authority.

Alternative care settings – Clear prohibition of corporal punishment 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 clearly prohibited in all early childhood care (nurseries, crèches, kindergartens, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Current legality of corporal punishment

Home

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 This provision was not reiterated in the Crimes Act 2016 which repealed the Criminal Code 1899, but neither was clear prohibition of corporal punishment introduced.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”.¹

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 reasonable 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.

Alternative care settings

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 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

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

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).

Day care

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.

Schools

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 \$500.²

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.

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.³

Penal institutions

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 is emerging of children detained for purposes of immigration being subjected to a high level of assault.⁴

Sentence for crime

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.

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

³ <https://www.theguardian.com/news/2016/aug/11/nauru-teachers-speak-out-for-children-we-dont-have-to-torture-them>, accessed 11 August 2016

⁴ 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

Universal Periodic Review of Nauru’s human rights record

Nauru was examined in the first cycle of the Universal Periodic Review in 2011 (session 10). No recommendations were made specifically concerning corporal punishment of children. However, the following recommendations were made and were accepted by the Government:⁵

“Continue its efforts aimed at promoting and protecting the rights of children (Brazil);

“With the support from the international community, draft legislative bills on domestic violence and on child abuse (Maldives);

“Strengthen its laws prohibiting physical abuse of children, including sexual exploitation (United States of America);

“Strengthen its efforts to fight sexual abuse of children within the framework of adopting a programme for the promotion of the rights of the child (Spain)”

Review in the second cycle took place in 2015 (session 23). No recommendations were made specifically concerning corporal punishment of children. However, the Government accepted recommendations to harmonise legislation with international treaties, including the Convention on the Rights of the Child.⁶

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

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

“While the Committee notes as positive the provisions in the Education Act 2011 (art. 37) and the Correctional Service Act 2009 (art. 33) prohibiting corporal punishment in schools and penal institutions, it is concerned that:

(a) Despite recent law reforms, corporal punishment continues to be widely accepted in society as a means of disciplining children and is not fully prohibited in the home, in alternative care and day-care settings;

(b) In spite of its explicit prohibition in schools and penal institutions, reports that have emerged concerning children living in detention-like settings, including in the Regional Processing Centre, suggest that it continues to be practised;

(c) Certain legal provisions, in particular article 78 of the Crimes Act 2016, may be construed as a justification for the use of corporal punishment in child-rearing.

“In the light of 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) Explicitly prohibit in legislation corporal punishment in all settings;

⁵ 8 March 2011, A/HRC/17/3, Report of the working group, paras. 79(37), 79(67), 79(70) and 79(71)

⁶ 16 December 2015, A/HRC/31/7, Report of the working group, paras. 85(20), 85(23) and 85(25)

- (b) Repeal all legislative provisions, in particular article 78 of the Crimes Act 2016, which could be construed as a justification for the use of corporal punishment in child-rearing;
- (c) Ensure that the prohibition of corporal punishment is adequately monitored and enforced;
- (d) Promote positive, non-violent and participatory forms of child-rearing and discipline through awareness-raising campaigns;
- (e) Ensure that offenders are brought before the competent administrative and judicial authorities.”

Prevalence/attitudinal research in the last ten years

None identified.