

# Corporal punishment of children in Niue

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Child population 1,000 (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, day care, schools and possibly penal institutions.

There appears to be no explicit confirmation in written law of a “right” of parents and others with authority over children to administer “reasonable” punishment for purposes of discipline or correction, but article 238 of the Niue Act confirms that common law defences apply, which presumably includes the defence of “reasonable chastisement” or equivalent. The near universal acceptance of corporal punishment in childrearing means that any legal provisions protecting children from assault are not interpreted as prohibiting all corporal punishment. Legislation should be enacted which makes it clear that no degree or kind of corporal punishment can be considered acceptable, whatever the setting and whoever the adults involved.

*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, preschools, etc) and all day care for older children (day centres, after-school childcare, etc).

*Schools* – Prohibition should be enacted which applies to all education settings, public and private.

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

**Note:** Niue is an associated state of New Zealand.

## **Current legality of corporal punishment**

### **Home**

Corporal punishment is lawful in the home. All child-related laws have been consolidated into the Family Law Code 2007: it does not include protection of children from violence, including corporal punishment. Provisions against violence and cruelty in the Niue Act 1966 are not interpreted as prohibiting corporal punishment. There is no reference to a specific right to administer punishment for purposes of discipline, but article 238 confirms that common law defences apply, which presumably includes the defence of “reasonable chastisement”.

The Government has initiated a review of the Family Code’s conformity with the Convention on the Rights of the Child and as at February 2013 a Family Protection Bill was being prepared. We do not know if prohibition of corporal punishment has been proposed in this context, but in reporting to the Committee on the Rights of the Child in 2013, the Government stated that the Family Protection Bill aims to address domestic violence of all kinds and identified as a priority “develop and implement clear guidelines and enact legislation to explicitly prohibit corporal punishment”.<sup>1</sup> As at May 2015, the Family Law Bill was under discussion and expected to be passed by Parliament in 2015 or early 2016.<sup>2</sup>

### **Alternative care settings**

There is no explicit prohibition of corporal punishment in alternative care settings.

### **Day care**

There is no explicit prohibition of corporal punishment in early childhood care or in day care for older children.

### **Schools**

Corporal punishment is lawful in schools. Under article 22 of the Education Act 1989, the Principal is responsible for the “care, safety, control and discipline of each pupil attending that school”, but there is no explicit prohibition of corporal punishment.

### **Penal institutions**

Corporal punishment appears to be unlawful as a disciplinary measure in penal institutions but there is no explicit prohibition in law. The Penal Manual (2006) does not include corporal punishment among permitted disciplinary measures.

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<sup>1</sup> 6 January 2013, CRC/C/NIU/Q/Add.1, Reply to list of issues, paras. 23 and 52

<sup>2</sup> <http://www.fbc.com.fj/fiji/29073/women-parliamentarians-agree-to-work-to-end-family-violence>, accessed 7 May 2015

## **Sentence for crime**

Corporal punishment is unlawful as a sentence for crime. There is no provision for sentencing to corporal punishment in the Niue Act.

## **Universal Periodic Review**

Niue is not a UN member state and is not reviewed under the Universal Periodic Review process.

## **Recommendations by human rights treaty bodies**

### ***Committee on the Rights of the Child***

(26 June 2013, CRC/C/NIU/CO/1, Concluding observations on initial report, paras. 34 and 35)

“The Committee expresses concerns that there is no explicit legal prohibition of corporal punishment in the State party and that provisions against violence and cruelty in the Niue Act 1966 are not interpreted as prohibiting corporal punishment. The Committee is also concerned about the provision on the defence of reasonable chastisement (art. 238 of this Act). The Committee is furthermore concerned that corporal punishment is still commonly practised in schools and in the home and that violent punishment, mockery, ridicule, public humiliation and verbal abuse of children are widely accepted as valid forms of discipline.

“In the light of its general comment No. 8 on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (CRC/C/GC/8, 2007), the Committee urges that the State party:

- a) ensure that corporal punishment is explicitly prohibited in the home, schools and any other settings, including through explicit repeal of the common-law defence of reasonable chastisement;
- 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 and participatory forms of child-rearing and discipline as an alternative to corporal punishment; and
- c) provide information in the next periodic report on the legislative and concrete measures taken to eliminate corporal punishment.”

## **Prevalence/attitudinal research in the last ten years**

None identified.