

# Corporal punishment of children in Palau

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Child population 8,000 (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 penal institutions.

The Palau National Code confirms that a parent or guardian with custody of a child has “is charged with the control of such child and shall have the power to exercise parental control and authority over such child” (34.61.31-32); the Penal Code 2013 authorises the use of force for purposes of discipline by parents, teachers and others (art. 309). These defences should be explicitly repealed and prohibition enacted of all corporal punishment by parents and others with lawful control of a child, in all settings.

*Alternative care settings* – Prohibition should be enacted of all corporal punishment in 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, kindergartens, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

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

*Penal institutions* – Prohibition should be enacted in relation to permitted disciplinary measures in all institutions accommodating children in conflict with the law.

**Note:** Palau is a state in free association with the US.

## **Current legality of corporal punishment**

### **Home**

Corporal punishment is lawful in the home. The Palau National Code (34.61.31-32) states: “A parent or guardian having custody of a child is charged with the control of such child and shall have the power to exercise parental control and authority over such a child.” Provisions against violence and abuse in the Child Abuse Law are not interpreted as prohibiting corporal punishment in childrearing. It defines abuse as “any willful or negligent act or punishment which results in harm or threat of harm to the physical or mental health of a child which leads to consequences including but not limited to, death, fractures, burns, bleeding, disfigurement, severe bruises, severe psychological or emotional trauma, or illness not explainable on the basis of a disorder or natural occurrence” (s602).

In 2011, the Government had initially indicated its commitment to enacting prohibiting legislation by accepting recommendations to prohibit all corporal punishment including in the home made during the Universal Periodic Review of Palau.<sup>1</sup> However, subsequent law reform failed to achieve prohibition. On the contrary, article 309 of the Penal Code 2013 specifically authorises the use of force in disciplining children: “Use of force by persons with special responsibility for care, discipline, or safety of others. The use of force upon or toward the person of another is justifiable under the following circumstances: (a) The actor is the parent or guardian or other person similarly responsible for the general care and supervision of a minor, or a person acting at the request of the parent, guardian, or other responsible person, and: (1) The force is employed with due regard for the age and size of the minor and is reasonably related to the purpose of safeguarding or promoting the welfare of the minor, including the prevention or punishment of the minor’s misconduct; and (2) The force used is not designed to cause or known to create a risk of causing substantial bodily injury, disfigurement, extreme pain or mental distress, or neurological damage....” The same article authorises the use of force in schools and penal institutions (see below).

The Family Protection Act 2012 adds a new chapter 8 to title 21 of the Palau National Code (Domestic Relations) entitled “Offenses against the family and against incompetents”. The Act does not protect children from all corporal punishment. The new law defines “bodily injury” as “physical pain, illness, or any impairment of physical condition” (art. 800); the same article provides definitions of “serious bodily injury” and “substantial bodily injury” as having progressively more serious consequences. The law protects children from violence and abuse under the offence of “endangering the welfare of a minor”, but this is only in relation to the infliction of “serious or substantial bodily injury” (arts. 801 and 802).

Child protection legislation has been reviewed as part of child protection baseline research in collaboration with UNICEF. The final report, published in April 2014, identifies the need for corporal punishment to be prohibited in all settings, including the repeal of legal defences for its use.<sup>2</sup>

In 2016, the Government again accepted recommendations to do so made during the 2<sup>nd</sup> cycle Universal Periodic Review of Palau.<sup>3</sup> In 2017, the Government confirmed that there was no legal

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<sup>1</sup> 11 July 2011, A/HRC/18/5, Report of the working group, paras. 61(43), 61(44) and 61(45)

<sup>2</sup> UNICEF (2014), *Value and Protect Our Precious Resources: Our Children – The Republic of Palau Child Protection Baseline Report*, Australian Aid/Government of Palau/UNICEF

<sup>3</sup> 13 April 2016, A/HRC/32/11, Report of the working group, paras. 72, 104(90), 104(95) and 104(97)

prohibition of corporal punishment, as “there remains a need for greater awareness”, and that there had not been “any national campaign specifically to raise awareness of positive discipline and child rearing practices”.<sup>4</sup> The Global Initiative no longer considers Palau committed to prohibiting all corporal punishment of children without delay, as recent law reform specifically authorised the use of force in disciplining children (Penal Code 2013), corporal punishment remains lawful in most settings of children's lives, and there is no evidence that the Government intends to introduce legislation prohibiting all corporal punishment in the near future.

### **Alternative care settings**

Corporal punishment is lawful by guardians and others with parental authority under the provisions confirming “the power to exercise parental control and authority” in the Palau National Code (see above). Article 309 of the Penal Code 2013, authorising the use of force by persons with responsibility for a child, is also applicable.

### **Day care**

Corporal punishment is lawful in day care under the provisions confirming “the power to exercise parental control and authority” in the Palau National Code (see above). According to the 2014 UNICEF baseline research, all day care centres have child protection policies that include a ban on corporal punishment.<sup>5</sup> However, there is no prohibition in law and article 309 of the Penal Code 2013 expressly provides for the use of force in disciplining children (see above).

### **Schools**

There is no explicit prohibition of corporal punishment in schools. The Master Plan for Education (2000) aims to discourage and prevent the use of corporal punishment at primary and secondary levels. According to the 2014 UNICEF baseline research all schools have child protection policies that include a ban on corporal punishment.<sup>6</sup> The Government asserted during the Universal Periodic Review in 2016 that corporal punishment is “strictly prohibited” and that there had been legal cases against teachers for using corporal punishment.<sup>7</sup>

However, corporal punishment is not prohibited by law, and article 309 of the Penal Code 2013 expressly provides for the use of force in disciplining children: “Use of force by persons with special responsibility for care, discipline, or safety of others. The use of force upon or toward the person of another is justifiable under the following circumstances: ... (b) The actor is a principal, the principal’s agent, a teacher, or a person otherwise entrusted with the care or supervision for a special purpose of a minor, and: (1) The actor believes that the force used is necessary to further that special purpose, including maintenance of reasonable discipline in a school, class, other group, or at activities supervised by the Ministry of Education held on or off school property and that the use of force is

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<sup>4</sup> 7 November 2017, CRC/C/PLW/Q/2/Add.1, Reply to List of issues, para. 42

<sup>5</sup> UNICEF (2014), *Value and Protect Our Precious Resources: Our Children – The Republic of Palau Child Protection Baseline Report*, Australian Aid/Government of Palau/UNICEF

<sup>6</sup> UNICEF (2014), *Value and Protect Our Precious Resources: Our Children – The Republic of Palau Child Protection Baseline Report*, Australian Aid/Government of Palau/UNICEF

<sup>7</sup> 4 February 2016, A/HRC/WG.6/24/L.8 Unedited Version, Draft report of the working group, para. 73

consistent with the welfare of the minor; and (2) The degree of force, if it had been used by the parent or guardian of the minor, would not be unjustifiable under paragraph (a)(2) above.”

The Government reported to the UPR of Palau that the Ministry of Education School Handbook 2010, PRIDE project, provides policies, rules, regulations and guidelines for students, teachers and non-teaching school personnel in the public school system and “Corporal punishment is not allowed in the public school system. Teachers and staff are reminded that corporal punishment ... will constitute a cause for suspension or termination of employment”.<sup>8</sup> But this is policy, not law, and is undermined by the above mentioned Penal Code provisions allowing the use of force in disciplining children.

### **Penal institutions**

There is no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions. Article 309 of the Penal Code 2013 authorises the use of force in penal institutions: “Use of force by persons with special responsibility for care, discipline, or safety of others. The use of force upon or toward the person of another is justifiable under the following circumstances: ... (e) The actor is a warden or other authorized official of a correctional institution, and: (1) The actor believes that the force used is necessary for the purpose of enforcing the lawful rules or procedures of the institution; and (2) The nature or degree of force used is not forbidden by other provisions of the law governing the conduct of correctional institutions; and (3) If deadly force is used, its use is otherwise justifiable under this chapter.”

### **Sentence for crime**

Corporal punishment is unlawful as a sentence for crime. The Constitution 1979 prohibits cruel, inhumane or degrading treatment or punishment (art. IV, s10), and there is no provision for judicial corporal punishment of juveniles in the Palau National Code. However, according to the baseline research published by UNICEF in 2014, in 7% of cases where children commit a crime the response of police officers is to impose physical punishment.<sup>9</sup>

### **Universal Periodic Review of Palau’s human rights record**

Palau was examined in the first cycle of the Universal Periodic Review in 2011 (session 11). The following recommendations were made and were accepted by the Government:<sup>10</sup>

“Prohibit and eliminate all forms of corporal punishment (Poland);

“Prohibit the use of corporal punishment in homes and in schools and conduct awareness campaigns to reduce the scope of this action (Norway);

“Adopt legislation to raise public awareness to prohibit and eliminate all forms of corporal punishment (Brazil)”

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<sup>8</sup> 10 November 2015, A/HRC/WG.6/24/PLW/1, National report to the UPR, para. 72

<sup>9</sup> UNICEF (2014), *Value and Protect Our Precious Resources: Our Children – The Republic of Palau Child Protection Baseline Report*, Australian Aid/Government of Palau/UNICEF, p. 74

<sup>10</sup> 11 July 2011, A/HRC/18/5, Report of the working group, paras. 61(43), 61(44) and 61(45)

Examination in the second cycle took place in 2016 (session 24). The following recommendations were made:<sup>11</sup>

“Take concrete measures to raise public awareness and further develop legislation to combat domestic violence, especially against women and children, including through the adoption of legislation that prohibits all corporal punishment of children in any setting (Brazil);

“Enact further measures in order to address violence in the educational system, particularly by implementing programmes to prohibit and eliminate all forms of corporal punishment (Slovenia);

“Prohibit all corporal punishment in all settings, including in the home (Estonia)”

The Government accepted the recommendations, stating in relation to these that “Palau will take appropriate measures to modify or amend appropriate legislation in line with international standards”.<sup>12</sup>

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

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

(2 February 2018, CRC/C/PLW/CO/2-3 Advance unedited version, Concluding observations on second/third report, paras. 26 and 27)

“The Committee notes that schools have policies that include a ban on corporal punishment. However, the Committee is seriously concerned that the law does not explicitly prohibit the use of corporal punishment and that the Palau National Code and the Penal Code allows the use of force in disciplining children.

“With the reference to its general comment No. 8 (2006) on corporal punishment, the Committee urges the State party to:

(a) Amend existing legislation, in particular the Palau National Code and the Penal Code, to explicitly prohibit corporal punishment in all settings;

(b) Strengthen teacher training on alternative non-violent forms of discipline and ensure it is part of their pre- and in-service training programmes;

(c) Provide programmes for parents and all other professionals that work with and for children to encourage the use of alternative non-violent forms of discipline;

(d) Effectively enforce the prohibition against corporal punishment and provide children, especially in schools, with a complaints mechanism so that they can safely and confidentially report cases of corporal punishment;

(e) Strengthen awareness raising programmes, trainings and other activities to promote the change of mind set with regard to corporal punishment, particularly in schools, family and at the community level.”

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<sup>11</sup> 4 February 2016, A/HRC/WG.6/24/L.8 Unedited Version, Draft report of the working group, paras. 105(90), 105(95) and 105(97)

<sup>12</sup> 21 June 2016, A/HRC/32/11/Add.1, Report of the working group: Addendum, para. 26; see also 30 June 2016, A/HRC/32/2 Advance Unedited Version, Report of the Human Rights Council on its 32nd session, para. 515

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

(21 February 2001, CRC/C/15/Add.149, Concluding observations on initial report, paras. 44 and 45)

“The Committee notes that the Master Plan for Education (2000) is aimed, inter alia, at strengthening the network of guidance and counselling and at discouraging and preventing the use of physical punishment at both the primary and secondary school levels. The Committee is concerned, however, that corporal punishment is still practised and widely accepted in the State party and that domestic legislation generally does not prohibit and eliminate its use in homes and schools.

“The Committee recommends that the State party take all appropriate measures, including of a legislative nature, to prohibit and eliminate all forms of corporal punishment in schools and in homes. The Committee further suggests that awareness raising and education campaigns be conducted to change public attitudes and ensure that alternative forms of discipline are administered in a manner consistent with the child’s human dignity and in conformity with the Convention, especially articles 19 and 28.2.”

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

In a survey conducted by UNICEF in 2014, adults, children and key informants were asked about their perceptions of effective discipline. When asked to choose from a list of what children “enjoy” as a means of effective discipline, ranging from positive discipline practices to physical punishment, all categories of respondents placed an emphasis on positive discipline practices such as showing a good example (32%), rapport and communication (31%) and rewarding good behaviour (28%). When presented with the statement *‘Teachers/administrators don’t physically punish, hit, smack, pinch, kick, pull or twist children’s ears’*, 72% of children and 74% of adults and key informants agreed with the statement; 19% of children, 18% of adults and 16% of key informants disagreed.

(UNICEF & AusAid (2014), *The Republic of Palau Child Protection Baseline Report: A baseline report for creating a future free from violence, abuse and exploitation of girls and boys in Palau*, Suva: UNICEF Pacific)