

# Corporal punishment of children in Papua New Guinea

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Child population 3,330,000 (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 and schools.

Article 278 of the Criminal Code 1974 provides for the use of force “by way of correction” by parents and teachers. Article 42 of the Constitution, concerning the treatment of persons arrested or detained, states: “Subject to any other law, nothing in this section applies in respect of any reasonable act of the parent or guardian of a child, or a person into whose care a child has been committed, in the course of the education, discipline or upbringing of the child.” These provisions should be repealed and the law should prohibit all corporal punishment and other cruel or degrading forms of punishment, in the home, schools and all other settings where adults have parental authority over children, throughout Papua New Guinea and in Bougainville.

*Alternative care settings* – Full prohibition in all alternative care settings requires prohibition in laws relating to all forms of alternative care (foster care, institutions, places of safety, emergency care, etc), throughout Papua New Guinea and in Bougainville.

*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), throughout Papua New Guinea and in Bougainville.

*Schools* – Policy against corporal punishment in schools should be confirmed through prohibition in legislation relating to all education settings (public and private) in Papua New Guinea and Bougainville, in addition to repeal of legal provisions allowing “reasonable” force by way of discipline or correction.

**Note:** Papua New Guinea includes the Autonomous Region of Bougainville, previously known as the North Solomons Province. The autonomy arrangements are set out in the Bougainville Peace Agreement 2001, including for gradual transfer of powers and functions; the objectives of autonomy include provision for “a democratic and accountable system of government for Bougainville that meets internationally accepted standards of good governance, including protection of human rights” and “respect for the international obligations of Papua New Guinea” (s4). The primary law governing the region is the Bougainville Constitution 2004, which provides for the making of legislation and recognises the authority of traditional, customary and clan systems.

## **Current legality of corporal punishment**

### **Home**

Corporal punishment is lawful in the home. Article 278 of the Criminal Code 1974 states: “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.” The national Constitution 1975 states in article 42 on liberty of the person that “subject to any other law, nothing in this section applies in respect of any reasonable act of the parent or guardian of a child, or a person into whose care a child has been committed, in the course of the education, discipline or upbringing of the child”. Provisions against violence and abuse in the Lukautim Pikinini (Child) Act 2009 are not interpreted as prohibiting all corporal punishment in childrearing. The Lukautim Pikinini Act 2009 was amended in 2015 and is said to protect children “in relation to the use of excessive force against children as punishment”.<sup>1</sup> It is not clear however whether the new text was certified by the government and we have not yet seen the full text.

The Government had initially expressed commitment to law reform by accepting a recommendation to consider prohibiting corporal punishment in the family and other settings made during the Universal Periodic Review of Papua New Guinea in 2011, reporting that laws relating to corporal punishment were being reviewed.<sup>2</sup> The Global Initiative no longer considers Papua New Guinea committed to prohibiting all corporal punishment of children without delay, as at the subsequent examination in 2016 the Government claimed existing legislation already achieved prohibition<sup>3</sup> and there is no evidence that the Government intends to introduce legislation prohibiting all corporal punishment in the near future.

In reporting to the Universal Periodic Review in 2011, the Government noted that “disciplining wives is an accepted practice” but that this conflicts with the law.<sup>4</sup> The Family Protection Act 2013 confirms that “freedom from violence is every person’s right” (art. 4), includes in the definition of domestic violence “assault ... whether or not there is evidence of a physical injury” (art. 5) and states that “for the avoidance of doubt (a) a single act may amount to an act of domestic violence; and (b) a number of acts that form part of a pattern of behaviour may amount to domestic violence even though some or all of those acts when viewed in isolation may appear to be minor or trivial” (art. 5). However, the

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<sup>1</sup> 3 May 2016, A/HRC/WG.6/25/PNG/1, National report, paras. 51 and 52

<sup>2</sup> 11 July 2011, A/HRC/18/18, Report of the working group, para. 78(53); 30 September 2011, A/HRC/18/18/Add.1, Report of the working group: Addendum, paras. 79(27) and 79(37)

<sup>3</sup> 22 September 2016, A/HRC/33/10/Add.1, Report of the working group: Addendum, paras. 66, 104(109), 104(126)

<sup>4</sup> 9 May 2011, WG.6/1/PNG/1, National report to the UPR, para. 64

Act does not explicitly prohibit all corporal punishment in childrearing nor repeal the Criminal Code provision for the use of force “by way of correction”. An implementation framework for the Family Protection Act has been drafted with a view to undertaking consultations on the drafting of Regulations and Orders under the Act;<sup>5</sup> as at November 2015, regulations had not been drafted.<sup>6</sup>

In Bougainville, the Constitution 2004 includes among the obligations of a Bougainvillean “as a child, to obey his parents” (art. 9(1)), and states that customary practices of provision of care for children shall be encouraged (art. 20). It states that the basic rights of the National Constitution are applicable in Bougainville (art. 178) but allows for these to be regulated or restricted as necessary, including with regard to the protection of children (art. 180).

### **Alternative care settings**

Corporal punishment is prohibited in some but not all alternative care settings. Article 88 of the Lukautim Pikinini (Child) Act 2009 states that children in care have the right “to be free from corporal punishment” (art. 88(1)(e)). The Act defines a child in care as “a child who is in the care of the Director or any person authorized by the Director”. The prohibition does not apply to private care arrangements and forms of care run by non-government bodies, where corporal punishment is lawful under the provision for the use of force “by way of correction” in article 278 of the Criminal Code 1974.

### **Day care**

Corporal punishment is lawful in early childhood care and in day care for older children under the provision for the use of force “by way of correction” in article 278 of the Criminal Code 1974.

### **Schools**

Corporal punishment is lawful in schools under the provision for the use of force “by way of correction” in article 278 of the Criminal Code 1974 (see under “Home”). The Education Act 1983 states that making rules for disciplining students is the responsibility of Boards of Governors and Governing Councils (arts. 68 and 74), but it does not prohibit corporal punishment.

Corporal punishment is discouraged in schools by way of policy (not law). For example, the Teaching Service Commission *Disciplinary Policy and Procedures for Members of the Teaching Service* (2009) lists corporal punishment as a “serious offence” and the Ministerial *Behaviour Management Policy for the National Education System of Papua New Guinea* (2009) emphasises that corporal punishment should not be used at any time. Similar advice is given in the Department of Education’s *Behaviour Management: A guide for schools* (2009), *Guidance, Counselling & Behaviour Management Course Student Teacher Course Book – Improving student behaviour and welfare* (2009) and *Guidance, Counselling & Behaviour Management Lecturer’s Guide – Improving student behaviour and welfare* (2009).

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<sup>5</sup> [http://www.academia.edu/7459990/IMPLEMENTATION\\_FRAMEWORK\\_-\\_PNG\\_FAMILY\\_PROTECTION\\_ACT\\_IMPLEMENTATION\\_PROGRAM](http://www.academia.edu/7459990/IMPLEMENTATION_FRAMEWORK_-_PNG_FAMILY_PROTECTION_ACT_IMPLEMENTATION_PROGRAM), accessed 20 April 2015

<sup>6</sup> <https://www.hrw.org/news/2015/11/03/interview-domestic-violence-ignored-papua-new-guinea>, accessed 9 November 2015

The Education Act is being reviewed, with regional consultations taking place throughout 2014.<sup>7</sup> One aim of the review is to consolidate the policy changes since 1995.<sup>8</sup> We are seeking confirmation that this includes prohibition of corporal punishment.

In the autonomous region of Bougainville, education is governed by the Bougainville Education Act 2013, enacted in 2014 and brought into force in 2015, and the Papua New Guinea Act 1983 no longer applies.<sup>9</sup> We have yet to establish whether or not the new Act prohibits corporal punishment. The Bougainville Plan for Education 2007-2017 emphasises the importance of discipline but is silent on the issue of corporal punishment.<sup>10</sup>

## **Penal institutions**

Corporal punishment is unlawful as a disciplinary measure in penal institutions. The Juvenile Justice Act 2014 states in article 102: “(1) Any discipline imposed on a juvenile in an institution shall be in accordance with the rules of that institution, and shall not include any of the following: (a) any cruel, inhumane or degrading treatment of the juvenile; or (b) corporal punishment of the juvenile....” The Correctional Service Act 1995 provides for the custody, status, care, welfare and discipline of detainees and does not include corporal punishment among permitted disciplinary measures (art. 160).

## **Sentence for crime**

Corporal punishment is unlawful as a sentence for crime. The Juvenile Justice Act 2014 states in article 85: “(1) The following sentences shall not be imposed on a juvenile – (a) corporal punishment; or (b) life imprisonment; or (c) capital punishment.” Article 30 states: “(2) The diversion of a juvenile shall not – ... (c) involve corporal punishment, public humiliation, or anything that would degrade or stigmatise the juvenile....” There is no provision for corporal punishment as a sentence in the Criminal Code 1974 or the Village Courts Act 1989. The Constitution prohibits “treatment or punishment that is cruel or otherwise inhuman, or is inconsistent with respect for the inherent dignity of the human person” (art. 36).

According to the Bougainville Constitution 2004, criminal law policy takes account of the roles of traditional chiefs and leaders in resolving disputes and incorporates customary practices and norms into the development and implementation of the region’s criminal law (art. 45(1)). Bougainville criminal policy and law must have full regard for the national justice system and the international human rights system (art. 45(2)).

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<sup>7</sup> <http://edu.pngfacts.com/education-news/consultation-on-education-act>, accessed 20 April 2015 ; see also <https://www.youtube.com/watch?v=xJNjNslbMY>, accessed 22 April 2016

<sup>8</sup> *Education Pipeline Quarterly Newsletter*, October-December 2014

<sup>9</sup> <http://www.pngloop.com/2014/11/19/png-education-act-longer-applies-b%C2%92ville-minister/>, accessed 20 April 2015

<sup>10</sup> Bougainville Autonomous Government, Division of Education, *Achieving a Better Future: Bougainville Plan for Education 2007-2016*

## **Universal Periodic Review of Papua New Guinea’s human rights record**

Papua New Guinea was examined in the first cycle of the Universal Periodic Review in 2011 (session 11). The following recommendations were made:<sup>11</sup>

“Consider prohibiting by law corporal punishment within the family and other institutions (Chile);

“Develop proactive strategies for economic development and social cultural transformation, with priority given to addressing the problems of discrimination against women, gender-based violence, the HIV/AIDS epidemic, child labour, corporal punishment of children, and sorcery-related killings (Thailand);

“Prohibit corporal punishment of children in all settings and ensure protection against child labour and child prostitution (Slovenia)”

The Government accepted the recommendations, stating that prohibition in the home and other settings is an “ongoing effort” and that “work is currently underway in relation to reviewing the laws relating to corporal punishment”.<sup>12</sup>

Papua New Guinea was examined in the second cycle of the Universal Periodic Review in 2016 (session 25). The following recommendations were made:<sup>13</sup>

“Strengthen the measures and norms necessary for the full implementation of the Law on the Protection of the Family, explicitly sanctioning the corporal punishment of children (Chile);

“Repeal article 278 of the Criminal Code and prohibit corporal punishment in all settings including the home; and improve the accessibility and resourcing of education to all communities, especially those located in remote areas (Ireland)”

The Government “noted” the recommendations, but stated that corporal punishment “has been outlawed” in Papua New Guinea, which is incorrect and misleading – we are following up to clarify the meaning of this statement.<sup>14</sup>

Examination in the third cycle is scheduled for 2021.

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

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

(26 February 2004, CRC/C/15/Add.229, Concluding observations on initial report, paras. 37 and 38)

“The Committee is deeply concerned that corporal punishment of children is rather widespread in the State party and not prohibited by law.

“The Committee recommends that the State party:

a) Carry out public education campaigns about the negative consequences of corporal punishment of children, and promote positive, non-violent forms of discipline as an alternative to corporal punishment;

b) Expressly prohibit corporal punishment by law in the family and other institutions.”

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<sup>11</sup> 11 July 2011, A/HRC/18/18, Report of the working group, paras. 78(53), 79(27) and 79(37)

<sup>12</sup> 30 September 2011, A/HRC/18/18/Add.1, Report of the working group: Addendum, paras. 79(27) and 79(37)

<sup>13</sup> 13 July 2016, A/HRC/33/10, Report of the working group, paras. 104(109), 104(126)

<sup>14</sup> 22 September 2016, A/HRC/33/10/Add.1, Report of the working group: Addendum, paras. 66, 104(109), 104(126)

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

A report by Save the Children Australia in 2019 found violence against children in the Pacific had reached “endemic” levels, particularly in relation to violent discipline in the home, which ranges from 70% to 87%. It found that more than 4 million children across the region experience violent discipline in the home – nearly 2.8 million children in Papua New Guinea, where 27% of parents or caregivers use physical punishment “over and over as hard as they could”.

(Save the Children Australia (2019), *Unseen, Unsafe: The Underinvestment in Ending Violence against Children in the Pacific and Timor-Leste*)