

# Corporal punishment of children in the Solomon Islands

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Child population 269,000 (UNICEF, 2015)

## 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 233 of the Penal Code 1963 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”. Nearly the world over, corporal punishment is socially and legally accepted in childrearing. There should be clarity in law that no degree or kind of corporal punishment can be considered “reasonable”, through repeal of article 233 of the Penal Code and prohibition of all corporal punishment of children by all persons with authority over them. The Draft Federal Constitution 2013 expressly provides for “reasonable chastisement”. This provision should be removed from the draft.

**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.

## Current legality of corporal punishment

### Home

Corporal punishment is lawful in the home. Article 233 of the Penal Code 1963 addresses 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.” In 1987, the High Court ruled that corporal punishment itself was not a violation of the Constitutional right not to be subjected to torture or inhuman treatment (art. 7) but that degrading forms of punishment, such as corporal punishment in front of other people, did violate the Constitution 1978.<sup>1</sup> More recently, the Law Reform Commission confirmed the current legal position that corporal punishment must be “reasonable” and that degrading punishment “such as caning a child in public” is not allowed.<sup>2</sup> The right to administer punishment provides a defence in cases of assault and assault causing bodily harm.<sup>3</sup>

Legislation on child rights was drafted in 2004 but never passed. Since then, the Law Reform Commission has reviewed the Penal Code 1963 and the Criminal Procedure Code 1962, including the defence of “reasonable punishment”.<sup>4</sup> The Solomon Islands Government in collaboration with UNICEF has reviewed child-related legislation.<sup>5</sup> The National Children’s Policy and Plan of Action, adopted by the Ministry of Women, Youth and Children Affairs in 2010, commits to enacting child protection legislation by 2015. The Government accepted recommendations to prohibit all corporal punishment including in the home made during the Universal Periodic Review of Solomon Islands in 2011, but also defended the use of “reasonable” punishment.<sup>6</sup>

A Family Protection Act was enacted in 2014 and was to come into force by notice in the Gazette. It appears the Act came into force on 1 April 2016.<sup>7</sup> It prohibits domestic violence including against a child and including physical abuse which is defined as “(a) conduct causing bodily pain or harm to the person or danger to the person’s life or health; and (b) includes assault” (art. 3). However, it does not clearly prohibit all corporal punishment in childrearing and does not repeal the “right to administer punishment” in the Penal Code.

The Government reported to the Universal Periodic Review in 2016 that “fair discipline” is addressed in a Child and Family Welfare Bill, which would soon be tabled in Parliament.<sup>8</sup> The Child and Family Welfare Act 2017 was enacted in February 2017 and will come into force by notice in the Gazette. It does not directly address corporal punishment of children, but defines physical abuse as “any act, or series of acts, of violence and maltreatment that results in physical wounds or bodily injury” (emphasis added). This is not construed as prohibiting all corporal punishment, as its near universal social acceptance means that it is often not seen as violence or abuse. All corporal punishment, however light, must be explicitly prohibited in legislation.

A new Federal Constitution has been drafted. The draft endorsed by the 4<sup>th</sup> Joint Plenary of Constitutional Congress and Eminent Persons Advisory Council (EPAC) in 2014 expressly provides for “reasonable chastisement” of children, stating in article 32: “Protection from inhuman treatment. No person shall be subjected to torture or to inhuman or degrading punishment or other mistreatment except for the protection and maintenance of family, village or communal peace where reasonable

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<sup>1</sup> Regina v Rose [1987] SILR 45

<sup>2</sup> Law Reform Commission (2009), Review of the Penal Code – Children

<sup>3</sup> Law Reform Commission (2008), Review of Penal Code and Criminal Procedure Code: Issues Paper 1; see also 30 October 2015, A/HRC/WG.6/24/SLB/1, National report to the UPR, para. 49

<sup>4</sup> Law Reform Commission (2009), Review of the Penal Code – Children; Law Reform Commission (2008), Review of Penal Code and Criminal Procedure Code: Issues Paper 1

<sup>5</sup> 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 the Solomon Islands

<sup>6</sup> 11 July 2011, A/HRC/18/8, Report of the working group, paras. 53, 80(15) and 80(31)

<sup>7</sup> See “Commencement of the Family Protection Act in Solomon Islands”, <http://rrrt.spc.int/news/item/717-commencement-of-the-family-protection-act-in-solomon-islands-keynote-address-the-prime-minister-hon-manasseh-sogavare>, accessed 13 February 2018

<sup>8</sup> 30 June 2016, A/HRC/32/2 Advance Unedited Version, Report of the Human Rights Council on its 32nd session, paras. 646 and 647

chastisement may be applied.” During the Universal Periodic Review of the Solomon Islands in 2016, the Government confirmed that this provision is in the draft Constitution, but also stated that “it was important to raise awareness in communities and in the home that the use of corporal punishment was a violation of human rights”.<sup>9</sup>

### Alternative care settings

Corporal punishment is lawful in the alternative care system under the “right to administer reasonable punishment” in article 233 of the Penal Code 1963. The draft Federal Constitution would confirm the right of “reasonable chastisement” (art. 32).

### Day care

Corporal punishment is lawful in early childhood care and in day care for older children under the “right to administer reasonable punishment” in article 233 of the Penal Code 1963. The draft Federal Constitution would confirm the right of “reasonable chastisement” (art. 32).

### Schools

Corporal punishment is lawful in schools under the right “to administer reasonable punishment” in article 233 of the Penal Code 1963. The Education Act 1978 is silent on corporal punishment, stating in article 45 that the Minister may make rules concerning “powers of discipline over pupils that may be exercised by teachers and Education Authorities”. In reporting to the Universal Periodic Review in 2015, the Government noted that the Ministry of Education and Human Resource Management had made recommendations “towards addressing corporal punishment” but also that there is no legislation which prohibits corporal punishment.<sup>10</sup> The Government also stated that it had developed an Inclusive Education Policy which would, among other things, “abolish corporal punishment”, and that the Education Bill provided for abolition.<sup>11</sup> There is an ongoing review of the Bill.<sup>12</sup>

### Penal institutions

Corporal punishment is prohibited as a disciplinary measure in penal institutions in article 53 of the Correctional Services Act 2007: “No prisoner may be subjected, by way of punishment, to (a) corporal punishment in any form....”

### Sentence for crime

Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in the Penal Code 1963, the Criminal Procedure Act or the Juvenile Offenders Act 1972.

In June 2006, elders and church leaders on Wagina Island reportedly agreed to stop whipping as a form of punishment for people who break village rules.<sup>13</sup> However, research has found that corporal punishment is inflicted on children who have committed a crime by police and at the village/ community level.<sup>14</sup> The Police Act 2013 explicitly prohibits corporal punishment in article 69: “A police

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<sup>9</sup> 13 April 2016, A/HRC/32/14, Report of the working group, para. 35

<sup>10</sup> 30 October 2015, A/HRC/WG.6/24/SLB/1, National report to the UPR, paras. 49 and 50

<sup>11</sup> 13 April 2016, A/HRC/32/14, Report of the working group, paras. 20 and 89

<sup>12</sup> 30 June 2016, A/HRC/32/2 Advance Unedited Version, Report of the Human Rights Council on its 32<sup>nd</sup> session, para. 651

<sup>13</sup> Reported in People First, 15 June 2006

<sup>14</sup> 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 the Solomon Islands; see also 4 November 2014, “Beaten, traumatised”, *Solomon Star*, media report concerning a 14 year old boy whipped as a community punishment, <http://www.solomonstarnews.com/news/national/4781-beaten-traumatised>, accessed 18 November 2014

officer must not use corporal punishment against a person.” However, the draft Federal Constitution would confirm the right to impose “reasonable chastisement” in maintaining “village or communal peace” (art. 32). A Youth Justice Bill is being drafted.<sup>15</sup>

## Universal Periodic Review of the Solomon Islands’ human rights record

The Solomon Islands was examined in the first cycle of the Universal Periodic Review in 2011 (session 11). The following recommendations were made:<sup>16</sup>

“Adopt legislation to legally prohibit corporal punishment of children (Hungary);

“End all forms of corporal punishment of children in all settings, including in the home and in schools, by enforcing its prohibition (Slovenia)”

The Government accepted the recommendations to prohibit corporal punishment of children, stating that it considered they are already implemented or in the process of implementation.<sup>17</sup> During the review, the Government confirmed the current legal situation on corporal punishment: “On the issue of corporal punishment of children, the delegation stated that the Penal Code contained an offence of cruelty towards children, section 233. However, that section did not affect the right of any parent or any other person having the control of a child to administer reasonable punishment to a child. ‘Reasonable’ must be consistent with the constitutional right to be free from torture and it was usually determined by the court on a case-by-case basis. The review of the Penal Code was looking at whether any further provision or guidance should be given in the law about when corporal punishment was lawful.”<sup>18</sup> The Government also stated that the Law Reform Commission had terms of reference to review the Penal Code and the Criminal Government Procedure Code which would address the issue of corporal punishment.<sup>19</sup>

Examination in the second cycle took place in 2016 (session 24). The following recommendations were made:<sup>20</sup>

“End all forms of corporal punishment of children in all settings, including in the home and in schools, by enforcing its prohibition, as previously recommended (Slovenia);

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

The Government accepted the first of the recommendations, but only “noted” the second, stating: “Solomon Islands teaching service handbook prohibits corporal punishment in schools. The Education Bill review has made provision for the ending of corporal punishment. A provision in the Child and Family Welfare Bill also promotes fair discipline.”<sup>21</sup>

## Recommendations by human rights treaty bodies

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

(2 February 2018, CRC/C/SLB/CO/2-3 Advance unedited version, Concluding observations on second/third report, paras. 24 and 25)

“The Committee notes that corporal punishment is prohibited in schools only by a policy and is seriously concerned that the Penal Code still recognises the right of any parent, teacher or other person having the lawful control of a child to administer “reasonable punishment” and that corporal punishment of children is still used.

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<sup>15</sup> 2 February 2018, CRC/C/SLB/CO/2-3 Advance unedited version, Concluding observations on second/third report, para. 5

<sup>16</sup> 11 July 2011, A/HRC/18/8, Report of the working group, paras. 80(15) and 80(31)

<sup>17</sup> 11 July 2011, A/HRC/18/8, Report of the working group, paras. 80(15) and 80(31)

<sup>18</sup> 11 July 2011, A/HRC/18/8, Report of the working group, para. 53

<sup>19</sup> A/HRC/18/2 Advance Unedited Version, Report of the Human Rights Council on its eighteenth session, para. 374

<sup>20</sup> 13 April 2016, A/HRC/32/14, Report of the working group, paras. 100(57) and 100(58)

<sup>21</sup> 22 June 2016, A/HRC/32/14/Add.1, Report of the working group: Addendum

“With reference to its general comment No. 8 (2006) on corporal punishment, the Committee recalls its previous recommendation (para. 31) and urges the State party to:

- (a) Explicitly prohibit in law corporal punishment in all settings and repeal the right to administer “reasonable punishment” on children;
- (b) Strengthen teacher training on alternative non-violent forms of discipline and ensure it is part of pre- and in-service training programmes;
- (c) Provide programmes for parents and all 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 teachers and others that continue to use corporal punishment;
- (e) Strengthen awareness raising programmes, trainings and other activities to promote attitudinal change with regard to corporal punishment, particularly in schools, family and at the community level.”

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

(2 July 2003, CRC/C/15/Add.208, Concluding observations on initial report, paras. 30 and 31)

“The Committee is concerned that:

- a) corporal punishment is widely practised in the family, schools and other institutions such as prisons and in alternative care contexts;
- b) there is insufficient knowledge about ill-treatment of children, including on the part of State agents;
- c) acts of violations against the mother and/or other members of the family frequently take place in the presence of children.

“The Committee recommends that the State party:

- a) take all legislative and other measures to prohibit all forms of physical and mental violence, including corporal punishment, against children in the family, schools, and in all other contexts;
- b) conduct a study to assess the nature and extent of ill-treatment of children, and design policies and programmes to address it, including with international cooperation;
- c) carry out public education campaigns about the negative consequences of ill-treatment of children and promote positive, non-violent forms of discipline as an alternative to corporal punishment; ...”

### *Committee on the Elimination of Discrimination Against Women*

(7 November 2014, CEDAW/C/SLB/CO/1-3 Advance Unedited Version, Concluding observations on initial-third report, paras. 22 and 23)

“The Committee observes that stereotypes and harmful practices constitute a serious challenge for the equality of women and men due to the prevailing patriarchal society which subordinates women to men, overemphasizes women’s roles as mothers and housewives and neglects their active participation in decision-making and other aspects of public life. The Committee regrets that girls are subjected to child marriages and bride selling under customary laws and that corporal punishment of children is a continuing practice which affects girls.

“The Committee calls upon the State party to: ...

- d) establish complaint mechanisms for women and girl victims of harmful practices and create precautionary measures to protect girls and boys from corporal punishment at home and in the community.”

## Prevalence/attitudinal research in the last ten years

In a study carried out in 2008, 72% of the 272 adults involved said they sometimes hit, smacked, pinched, kicked or flicked children or pulled or twisted their ears; 17% of the 275 16-17 year olds involved said they had experienced this from an adult at home in the past month. When 7-11 year olds were asked about which actions they don't like at home, adults hitting children was the most common response (given by 32% of the children). Seventy per cent of interviewees working in education said teachers in their school sometimes hit, smacked, pinched, kicked or knocked children or pulled or twisted their ears.

(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 the Solomon Islands, Suva: UNICEF Pacific)

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