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Against Children



End Corporal  
Punishment

# Corporal punishment of children in Tuvalu

LAST UPDATED April 2020

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Child population 4,000 (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, schools, penal institutions and as a sentence for crime.

Article 226 of the Penal Code 1965 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”, reflecting the near universal acceptance of corporal punishment in childrearing. This provision should be repealed, together with provisions for “discipline” in the Constitution 1978, so that there is clarity in law that no corporal punishment of children, however light, can be considered “reasonable”. Prohibition should be enacted of all corporal punishment, in all settings and by all adults with authority over children.

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Schools – Article 29 of the Education Act 1976 should be repealed and explicit prohibition enacted which applies to all education settings, public and private.

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

Sentence for crime – Article 8 of the Island Courts Act 1965 should be repealed.

## Current legality of corporal punishment

### Home

Corporal punishment is lawful in the home. The maintenance of family discipline is one of the principles of the Constitution 1978 (principle 4): “Amongst the values that the people of Tuvalu seek to maintain are their traditional forms of communities, the strength and support of the family and family discipline.” Article 17(2) of the Constitution provides for a person under 18 to be detained “in the reasonable exercise of the authority of a parent, teacher or guardian, or under the order of a court for the purpose of his education, welfare or proper discipline”. The Government has stated that this “envisages lawful corporal punishment”.<sup>1</sup> The Constitution is currently under review.<sup>2</sup>

Cruelty to children is addressed in article 226 of the Penal Code 1965, but this 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.”

The Government plans to carry out a progressive review of its laws as part of the Te Kakeega II The National Development Plan for Tuvalu 2005-2015. During the Universal Periodic Review of Tuvalu in 2008, the Government stated that the issue of corporal punishment of children was being addressed as part of efforts to harmonise domestic laws with international human rights standards.<sup>3</sup> During the second cycle review in 2013, the Government reported efforts to address abuse but made no reference to corporal punishment in the home: recommendations to prohibit corporal punishment in all settings were both accepted and rejected.<sup>4</sup>

The Family Protection and Domestic Violence Act 2014 (amended 2015) was passed by Parliament on 18 December 2014. The Act protects children as well as adults from domestic violence, but this does not include prohibition from corporal punishment in childrearing. The Act defines the offence of domestic violence in article 38: “(1) A person who commits physical, sexual, verbal, psychological or economic abuse against another person in a domestic relationship commits an offence of domestic violence.” The Act does not repeal the right “to administer reasonable punishment” in the Penal Code.

The Tuvalu National Human Rights Action Plan 2016-2020 raised the issue of corporal punishment of children, highlighting in particular the need to amend Education Act to prohibit in schools and to abolish judicial corporal punishment. During the Universal Periodic Review in 2018, the Government stated that “corporal punishment is now abolished”, referring to the Education (Amendment) Act 2017 and the Island Courts (Amendment) Act No. 5 of 2017 which reportedly prohibited corporal punishment in schools and as a judicial sentence for the Island Courts.<sup>5</sup> We are seeking further information. A Child Protection and Welfare Bill 2017 was under consultations in March 2018;<sup>6</sup> we do not know whether prohibition in the home and other settings is being considered.

### Alternative care settings

Corporal punishment is lawful in alternative care settings under the right “to administer reasonable punishment” in article 226 of the Penal Code 1965 (see under “Home”). However, in the case of persons in the mental health wing of the hospital, the Mental Health Wing Management Regulations under the Mental Treatment Act 1927 state that attendants “shall not, on any account, punish patients ... [and] shall not use harsh, or intemperate language to the patients, whatever the language or the conduct of the patients may be” (reg. 25) and “no patient shall be struck” (reg. 27).

### 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 226 of the Penal Code 1965 (see under “Home”).

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<sup>1</sup> 10 October 2012, CRC/C/TUV/1, Initial report to the Committee on the Rights of the Child, para. 148

<sup>2</sup> 10 July 2018, A/HRC/39/8, Report of the Working Group, para. 12

<sup>3</sup> 9 January 2009, A/HRC/10/84, Report of the working group, para. 41

<sup>4</sup> 5 July 2013, A/HRC/24/8, Report of the working group, paras. 81(53), 81(54), 83(23) and 83(24)

<sup>5</sup> 28 March 2018, A/HRC/WG.6/30/TUV/1, National report to the UPR, paras. 34, 57 and 58

<sup>6</sup> 28 March 2018, A/HRC/WG.6/30/TUV/1, National report to the UPR, para. 32

Provisions for corporal punishment in article 29 of the Education Act 1976 possibly apply to preschool provision (see under “Schools”) (information unconfirmed).

### Schools

Corporal punishment is lawful in schools under article 29 of the Education Act 1976: “(1) No teacher, other than a head-teacher, shall administer corporal punishment to any pupil. (2) If a head-teacher administers corporal punishment to any pupil, he shall record details of the punishment administered and the offence for which the corporal punishment was administered in a book to be kept at the school for that purpose. (3) The Minister may give directions for further controlling corporal punishment in schools.” As at February 2012, no Ministerial directions on corporal punishment had been issued. The right “to administer reasonable punishment” in article 226 of the Penal Code 1965 also applies (see under “Home”).

During the Universal Periodic Review of Tuvalu in 2013, the Tuvalu Director of Education reported that the Education Act had been reviewed with a view to integrating human rights concerns and that Tuvalu was addressing the issue of corporal punishment; Tuvalu requested support from the international community in this respect.<sup>7</sup> In 2018, the Government reported to the Universal Periodic Review that the Education (Amendment) Act 2017 repealed article 29 to prohibit corporal punishment “in any form and manifestation”.<sup>8</sup> We have been unable to verify this information. A Policy for the Protection of Children in all Educational Institutions in Tuvalu is under development, to provide a framework for child protection.<sup>9</sup>

### Penal institutions

There is no provision for corporal punishment as a disciplinary measure in the Prisons Act 1985. The Prisons Act has reportedly been amended to define any minor who has been sentenced to imprisonment as a child prisoner, and to insert Section 26A as follows “Treatment of child prisoners (1) All child prisoners must be treated in accordance with the requirements of the Child Protection and Welfare Bill 2017 during their time in custody. (2) In addition to the requirements under subsection (1), child prisoners must be given the following entitlements: (a) access to visits by their parents or guardian at any time during prescribed hours; (b) appropriate counselling, rehabilitation and other support services; (c) opportunities to continue their education through arrangements made between the Superintendent and the Ministry of Education.” The Government of Tuvalu has declared that the amendment will be effective “upon the passing of the proposed Child Protection and Welfare Bill 2017”.<sup>10</sup> We have not been able to examine the text of the Child Protection and Welfare Bill 2017.

Article 55 of the Police Powers and Duties Act 2009 prohibits corporal punishment: “A police officer must not use corporal punishment against a person who is in police custody.” Corporal punishment is presumably lawful in other penal institutions under the right “to administer reasonable punishment” in article 226 of the Penal Code 1965 (see under “Home”).

### Sentence for crime

Corporal punishment may be lawful as a sentence for crime. There is no provision for judicial corporal punishment in the Penal Code 1965, the Criminal Procedure Code 1963, the Magistrates Court Act 1963 or the Superior Courts Act 1987, but a male child or young person may be caned under article 8(8) of the Island Courts Act 1965: “In lieu of any other sentence which an island court may lawfully impose on any male child [under 14] or male young person [aged 14-16], the provisions of section 6(1) [providing for imprisonment and fines] to the contrary notwithstanding, it may order his parent or guardian to cane him with a specific number of strokes of a cane not exceeding, in the case of a child, 6 strokes, and in the case of a young person, 10 strokes; and any strokes so ordered shall be administered in

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<sup>7</sup> 5 July 2013, A/HRC/24/8, Report of the working group, para. 65

<sup>8</sup> 28 March 2018, A/HRC/WG.6/30/TUV/1, National report to the UPR, para. 57

<sup>9</sup> 28 March 2018, A/HRC/WG.6/30/TUV/1, National report to the UPR, paras. 6, 38 and 39

<sup>10</sup> 28 March 2018, A/HRC/WG.6/30/TUV/1, National report to the UPR, para. 6

accordance with such regulations as may, for the time being, be in force and in the presence of a member of the island court.” Failure to carry out the order is an offence under article 8(9): “Any parent or guardian who without lawful justification or excuse fails to obey an order given under subsection (8) shall commit an offence triable summarily by an island court, or other court of competent jurisdiction, and shall be liable to a fine of \$10.”

The Government reported to the Universal Periodic Review in 2018 that the Island Courts (Amendment) Act No. 5 of 2017 “abolishes physical punishment as a form of criminal sentence by the Island Courts”.<sup>11</sup> We have so far been unable to confirm this.

## Universal Periodic Review of Tuvalu’s human rights record

Tuvalu was examined in the first cycle of the Universal Periodic Review in 2008 (session 3). The following recommendation was made and was accepted by the Government:<sup>12</sup>

“Reform the Penal Code to cover offences such as sexual abuse against minors and to eliminate corporal punishment (Mexico)”

During the review, the Government confirmed that corporal punishment was being addressed as part of Government efforts to harmonise domestic laws with international human rights standards, but that corporal punishment has traditionally been permitted in family discipline and in primary schools; the Government was raising awareness on the issue and was committed to further consultation with regard to law reform.<sup>13</sup>

The second cycle review of Tuvalu took place in 2013 (session 16). During the review, Tuvalu stated that it was addressing the issue of corporal punishment in schools and requested support from the international community in this respect.<sup>14</sup> The following recommendations were made:<sup>15</sup>

“Harmonize its Penal Code and legislation with the CRC in order to eradicate corporal punishment of children in schools and other settings (Hungary);

“Opt for the prohibition of the use of corporal punishments, especially those involving minors (Spain);

“Adopt, as a matter of priority, all legal and administrative measures to prohibit and punish corporal punishment of children in all settings, including at home (Uruguay);

“Adopt legal and administrative measures to eliminate all forms of corporal punishment of children (Chile)”

The Government’s overall response is unclear: the first two recommendations were accepted, the second two were rejected.

Third cycle examination took place in 2018 (session 30). The following recommendations were extended:<sup>16</sup>

“Prohibit corporal punishment to discipline children both at home and in any other area of the society (Uruguay);

“Adopt public policies aiming at the eradication of violence against children, including legal measures to prohibit corporal punishment both in school and family (Chile);

“Continue to work towards its abolition in all settings, and that awareness raising campaigns about the negative impact of corporal punishment on the development of children are undertaken (Ireland);

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<sup>11</sup> 28 March 2018, A/HRC/WG.6/30/TUV/1, National report to the UPR, para. 58

<sup>12</sup> 9 January 2009, A/HRC/10/84, Report of the working group, para. 68(8)

<sup>13</sup> 9 January 2009, A/HRC/10/84, Report of the working group, para. 41

<sup>14</sup> 5 July 2013, A/HRC/24/8, Report of the working group, para. 65

<sup>15</sup> 5 July 2013, A/HRC/24/8, Report of the working group, paras. 82(53), 82(54), 84(23) and 84(24)

<sup>16</sup> 10 July 2018, A/HRC/39/8, Report of the Working Group, paras. 101(114), 101(115), 101(121), 101(122) and 101(123)

“Continue to strengthen the legislative measures by remedying protection gaps to protect all children from both violence and abuse as recommended by the Committee on the Rights of the Child (Maldives);

“Adopt legislative measures to fully bring the juvenile justice system with the relevant international standards, including by repealing the provisions that allow corporal punishment (Mexico)”

The Government accepted the recommendation referring to the Committee on the Rights of the Child but noted all of the recommendations on corporal punishment, stating that it admitted to “its lack of capacity and financial resources to implement the obligations in those recommendations”.<sup>17</sup>

## Recommendations by human rights treaty bodies

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

(31 March 2020, CRC/C/TUV/CO/2-5, Concluding observations on second/fifth report, paras. 27 and 28)

“According to the information given by the State party delegation during the constructive dialogue, the Committee notes with appreciation that following the amendments made to the Education Act and the Island Court Act, it is no longer legal to exercise corporal punishment in schools and as a form of criminal sentence. It also welcomes the awareness-raising programmes against corporal punishment, including campaigns, carried out in schools in Funafuti. However, the Committee is seriously concerned that corporal punishment remains legal in the home and in the community under article 226 (4) of the Penal Code.

“With reference to 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) Repeal article 226 (4) of its Penal Code and take the legislative and policy measures necessary to explicitly prohibit corporal punishment in all settings;
- b) Promote positive, non-violent and participatory forms of child-rearing and discipline, including by strengthening awareness-raising programmes and campaigns targeting children, parents, teachers and traditional, religious and community leaders.

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

(4 October 2013, CRC/C/TUV/CO/1 Advance Unedited Version, Concluding observations on initial report, paras. 35, 36, 62 and 63)

“The Committee is deeply concerned that the Constitution and the Penal Code allow parents and guardians to use corporal punishment to discipline children and that corporal punishment is still widely practiced in the homes and schools. The Committee is further concerned that Island Courts can authorize physical punishment as a criminal sentence.

“With reference to the Committee’s general comment N° 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) undertake awareness-raising programmes, including campaigns, about the negative impact of corporal punishment on the psychological development of children, especially concerning their dignity, with a view to changing adult perceptions and societal attitudes towards corporal punishment;
- b) bring all laws, policies, and regulations in full conformity with the Convention with a view to banning corporal punishment in all schools, homes and communities;
- c) abolish the physical punishment as a criminal sentence by the Island Courts; and

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<sup>17</sup> 18 September 2018, A/HRC/39/8/Add.1 Advance unedited version, Report of the Working Group: Addendum, paras. 2 and 3

d) promote positive, non-violent and participatory forms of child-rearing and discipline as an alternative to corporal punishment and seek the assistance of UNESCO and UNICEF in this regard in order to build on other successful initiatives in the Pacific Region or elsewhere in the world.

“The Committee is concerned that: ...

b) The Island Courts Act permits the court to order a parent or guardian to cane a child and that the Penal Code stipulates life imprisonment for child offenders;

“The Committee strongly urges the State party to bring its juvenile justice system in full accordance with the Convention, in particular articles 37, 39 and 40, and with other relevant standards, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules), the Guidelines for Action on Children in the Criminal Justice System, and the Committee’s general comment No. 10 (2007). The Committee recommends in particular that the State party: ...

c) Repeal the provisions that allow corporal punishment and life imprisonment for child offenders....”

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

(7 August 2009, CEDAW/C/TUV/CO/2, Concluding observations on initial/second report, paras. 39 and 40)

“The Committee welcomes the achievements in the field of education in the context of the Education for Life programme, including the achievement of Millennium Development Goal 2 on universal primary education and an adult literacy rate of 95 per cent, and it also notes the State party’s geographical constraints. However, the Committee is ... concerned that corporal punishment continues to be lawful in schools under article 29 of the Education Act (1976) and article 226 of the Penal Code, although it is not regularly used.

“The Committee ... recommends that the State party prohibit the use of corporal punishment in schools.”

## Prevalence/attitudinal research in the last ten years

None identified.

[End Corporal Punishment](#) is a critical initiative of the [Global Partnership to End Violence Against Children](#). Previously known as The Global Initiative to End All Corporal Punishment of Children, we act as a catalyst for progress towards universal prohibition and elimination of corporal punishment of children. We track global progress, support and hold governments to account, partner with organisations at all levels, and engage with human rights treaty body systems.