

Corporal punishment of children in Tuvalu: Briefing for the Universal Periodic Review, 44th session, Oct./Nov. 2023



*From the Global Partnership to End Violence Against Children,
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This submission provides an update on the legality of corporal punishment of children in Tuvalu since its review in the third cycle UPR in 2018. Corporal punishment prohibition is still to be fully achieved in the home, alternative care settings, day care, schools, penal institutions and as a sentence for crime.

The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.

In Tuvalu, corporal punishment of children is lawful, despite recommendations to prohibit it by the Committee on the Rights of the Child, other human rights treaty bodies, and during the 3rd cycle UPR of Tuvalu in 2018.

We hope the Working Group will note with concern the legality of corporal punishment of children in Tuvalu. We hope states will raise the issue during the review this year and make a specific recommendation that Tuvalu accelerates its efforts to clearly prohibit all corporal punishment of children in every setting of their lives and repeal any legal defence allowing its use, as a matter of priority.

1 Review of Tuvalu in the 3rd cycle UPR (2018) and progress since

1.1 Tuvalu was reviewed in the third cycle of the Universal Periodic Review in 2018 (session 30). During the Review, 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.

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

1.2 Recommendations to prohibit corporal punishment in all settings were made¹ during the UPR in 2018. The Government noted the recommendations, acknowledging “its lack of capacity and financial resources to implement the obligations in those recommendations”.²

1.3 Following the review, no legislation to explicitly prohibit corporal punishment of children in all settings seems to have been adopted. The Education (Amendment) Act 2017 only repealed the provision authorising the use of corporal punishment in schools but did not explicitly prohibit it. We are seeking further information about the legal implication of the Island Courts (Amendment) Act No. 5 of 2017.

1.3 We hope the Working Group will note with concern the legality of corporal punishment of children in Tuvalu. We hope states will raise the issue during the review this year and make a specific recommendation that Tuvalu intensify its efforts to enact a law to clearly prohibit all corporal punishment of children, however light, in every setting of their lives, as a matter of urgency.

2 Legality of corporal punishment in Tuvalu

Summary of current law and opportunities for achieving 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.

2.1 **Home (lawful):** 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

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

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

punishment”.³ The Constitution is currently under review.⁴ 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.”

2.2 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.

2.3 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.⁵ We are seeking further information. A Child Protection and Welfare Bill 2017 was under consultations in March 2018;⁶ we do not know whether prohibition in the home and other settings is being considered.

2.4 **Alternative care settings (lawful):** 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).

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

2.6 **Schools (lawful):** Corporal punishment is lawful in schools. Article 29 of the Education Act 1976 which explicitly provided for corporal punishment in schools was repealed by the Education (Amendment) Act 2017.⁷ However, the Education (Amendment) Act 2017 does not include explicit prohibition of corporal punishment in schools. The right “to administer reasonable punishment” in article 226 of the Penal Code 1965 also applies (see under “Home”).

2.7 **Penal institutions (lawful):** 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

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

⁴ 10 July 2018, A/HRC/39/8, Report of the Working Group, para. 12

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

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

⁷ Act No. 8 of 2017

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”.⁸ We have not been able to examine the text of the Child Protection and Welfare Bill 2017.

2.8 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”).

2.9 **Sentence for crime (lawful):** 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 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.”

2.10 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”.⁹ We have so far been unable to confirm this.

3 Recommendations by human rights treaty bodies

3.1 **CRC:** On two occasions, the Committee on the Rights of the Child has recommended to Tuvalu that legislation be enacted to explicitly prohibit corporal punishment in all settings, including in the home, schools and the penal system: in its concluding observations on the state party’s initial report in 2013,¹⁰ and on the second-fifth report in 2020.¹¹

3.2 **CEDAW:** In its concluding observations on the state party’s initial-second report in 2009,¹² the Committee on the Elimination of Discrimination Against Women recommended that the Government prohibit the use of corporal punishment in schools.

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

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

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

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

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

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