

Corporal punishment of children in Kiribati: Briefing for the Universal Periodic Review, 21st session, 2015

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Global Initiative to
**End All Corporal Punishment
of Children**

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 Kiribati, corporal punishment of children is lawful despite recommendations to prohibit it by the Committee on the Rights of the Child and during the 1st cycle UPR of Kiribati in 2010.

We hope the Working Group will note with concern the legality of corporal punishment of children in Kiribati. We hope states will raise the issue during the review in 2015 and make a specific recommendation that the forthcoming Juvenile Justice Bill includes prohibition of all corporal punishment in all settings and repeals the right “to administer reasonable and proper punishment” from the statute books.

1 Review of Kiribati in the 1st cycle UPR (2010) and progress since then

1.1 Kiribati was reviewed in the first cycle of the Universal Periodic Review in 2010 (session 8). The issue of corporal punishment was included in the compilation of UN information¹ and the summary of stakeholders’ information.² The following recommendations were made during the review:³

“Adopt effective measures to bring its national legislation, including customary law, into line with the provisions and principles of the CRC, particularly in the area of child protection and the prevention of corporal punishment, child abuse and child pornography (Argentina);

“Prohibit the corporal punishment of children at home, at school, in penal institutions, in alternative-care settings and as a traditional form of sentencing (Slovenia);

“Explicitly prohibit, in all fields, corporal punishment for children and adolescents,

¹ 19 February 2010, A/HRC/WG.6/8/KIR/2, Compilation of UN information, para. 21

² 28 January 2010, A/HRC/WG.6/8/KIR/3, Summary of stakeholders’ views, para. 22

³ 17 June 2010, A/HRC/15/3, Report of the working group, paras. 66(21), 66(66) and 66(67)

particularly in view of section 226 of the Penal Code, which permits ‘reasonable punishments’ in penal institutions and by decree of Island Councils (Chile)”

- 1.2 The Government stated that it was “prepared to consider” the recommendations but did not clearly accept or reject them.⁴
- 1.3 The prohibition and elimination of all corporal punishment, without exception, is an immediate obligation under the Convention on the Rights of the Child and other international human rights instruments. Since the review in 2010, Kiribati has enacted the Children Young People and Family Welfare Act 2013: we have yet to examine the full text in order to assess its impact on the legality of corporal punishment, but indications are that it does not prohibit corporal punishment. A Juvenile Justice Bill is currently under discussion which reportedly addresses corporal punishment⁵ but we have no further details. **We hope members of the Working Group will urge the Government of Kiribati to ensure that the Juvenile Justice Bill includes prohibition of all corporal punishment of children in all settings and repeals the right “to administer reasonable and proper punishment” from the statute books.**

2 Legality and practice of corporal punishment in Kiribati

- 2.1 **Summary:** In Kiribati, corporal punishment of children is prohibited in schools but it is lawful in all other settings – the home, alternative care settings, day care, penal institutions and as a sentence for crime.
- 2.2 **Home (lawful):** Article 226 of the Penal Code 1977 prohibits 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.”
- 2.3 According to statistics from UNICEF on violence in the family in 2005-2006, 81% of children aged 2-14 experienced violent “discipline” (physical punishment and/or psychological aggression) in the month prior to the survey.⁶ A 2005 report stated that punishment of children by their parents included severe beatings and that it was commonly accepted that men can, or even should, physically punish their wives and children.⁷
- 2.4 **Alternative care settings (lawful):** Corporal punishment is lawful under the right “to administer reasonable punishment” in article 226 of the Penal Code 1977.
- 2.5 **Day care (lawful):** Corporal punishment is lawful under the right “to administer reasonable punishment” in article 226 of the Penal Code 1977.
- 2.6 **Schools (unlawful):** Corporal punishment is unlawful under the Education (Amendment) (No. 2) Act 1997, which repealed the provisions allowing corporal punishment in the Education Ordinance 1977. The amendment Act did not introduce explicit prohibition (it was a “silent” repeal) but the explanatory memorandum to the Act states clearly that its intention is to prohibit corporal punishment: “The principal object of this Act is to remove

⁴ 30 September 2010, A/HRC/15/3/Add.1, Report of the working group: Addendum, paras. 27, 75 and 76

⁵ Information provided to the Global Initiative, 19 August 2013

⁶ UNICEF (2011), *The State of the World's Children*, Table 9: Child Protection, NY: UNICEF

⁷ Government of Kiribati & UNICEF (2005), *Kiribati: A Situation Analysis of Children, Women & Youth*, Suva: UNICEF Pacific Office

altogether the administration of corporal punishment in schools which can now be administered by the headteacher of any school under section 28 of the Education Ordinance. This is achieved by repealing the whole of section 28 of the Education Ordinance which indeed allows the infliction of such punishment in schools.”

2.7 **Penal institutions (lawful):** There are no regulations on appropriate treatment of detainees within prisons. Under article 39 of the Penal Code 1977, offenders under the age of 16 who are considered to be “in need of care, protection or control” may be committed to the care of “any fit person whether a relative or not”, including “any local government council, religious institution, welfare association or other organisation able and willing to undertake the care, protection or control of persons under the age of 18 years”. Corporal punishment of children in these settings and in custody is permitted under the provisions for “reasonable punishment” in the Penal Code (see para. 2.2, above).

2.8 **Sentence for crime (lawful):** There is no provision for judicial corporal punishment in the Penal Code 1977 or the Criminal Procedure Code 1977. However, under article 226 of the Penal Code, corporal punishment is permitted in traditional sentencing by order of Island Councils. Under examination by the Committee on the Rights of the Child in 2006, the Government stated that although corporal punishment was a sentencing option available to magistrates it was rarely used, and the Government was aware of the need to amend legislation.⁸

3 Recommendations by human rights treaty monitoring bodies

3.1 **CRC:** In 2006, the Committee on the Rights of the Child expressed concern at corporal punishment of children in Kiribati and recommended that it be prohibited in the family, schools, penal institutions, alternative care settings and as a traditional form of sentencing.⁹

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, and in 2011 began briefing the Committee on the Rights of Persons with Disabilities.

⁸ 22 September 2006, CRC/C/SR.1166, Summary record of 1166th meeting, para. 46

⁹ 29 September 2006, CRC/C/KIR/CO/1, Concluding observations on initial report, paras. 34 and 35