

Corporal punishment of children in Solomon Islands: Briefing for the Universal Periodic Review, 24th session, 2016

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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 the Solomon Islands, corporal punishment of children is lawful, despite recommendations to prohibit it by the Committee on the Rights of the Child, the Committee on the Elimination of Discrimination Against Women and during the 1st cycle UPR of the Solomon Islands (which the Government accepted). A draft new Constitution is under discussion which would expressly authorise “reasonable chastisement”.

We hope the Working Group will note with concern the legality of corporal punishment of children in the Solomon Islands. We hope states will raise the issue during the review in 2016 and make a specific recommendation that the Solomon Islands clearly prohibit all corporal punishment of children in all settings including the home, explicitly repeal the right “to administer reasonable punishment” in the Penal Code and ensure that the new Federal Constitution does *not* provide for “reasonable chastisement”.

1 Review of the Solomon Islands in the 1st cycle UPR (2011) and progress since then

1.1 The Solomon Islands was reviewed in the first cycle of the Universal Periodic Review in 2011 (session 11). The issue of corporal punishment of children was raised in the compilation of UN information¹ and in the summary of stakeholders’ information.² During the review, recommendations were made to prohibit all corporal punishment of children which the Government accepted, stating that it considered they were already implemented or in the process of implementation.³ The Government subsequently reported 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.⁴

¹ 17 February 2011, A/HRC/WG.6/11/SLB/2, Compilation of UN information, para. 26

² 16 February 2010, A/HRC/WG.6/11/SLB/3, Summary of stakeholders’ information, paras. 19 and 21

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

⁴ A/HRC/18/2 Advance Unedited Version, Report of the Human Rights Council on its eighteenth session, para. 374

- 1.2 Prohibiting and eliminating all corporal punishment of children in all settings including the home – through law reform and other measures – is a key obligation under the Convention on the Rights of the Child and other human rights instruments, though it is one frequently evaded by Governments. Despite the Government’s acceptance of the 2011 UPR recommendations, the legality of corporal punishment of children in the Solomon Islands has not changed. A Family Protection Bill passed in 2014 does not prohibit corporal punishment. More worryingly, the draft new Federal Constitution expressly authorises “reasonable chastisement” (see below, para. 2.4).
- 1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in the Solomon Islands. We hope states will raise the issue during the review in 2016 and make a specific recommendation that the Solomon Islands clearly prohibit all corporal punishment of children in all settings including the home, explicitly repeal the right “to administer reasonable punishment” in the Penal Code and ensure that the new Federal Constitution does *not* provide for “reasonable chastisement”.**

2 Legality and practice of corporal punishment in the Solomon Islands

- 2.1 **Summary:** In the Solomon Islands, corporal punishment is unlawful in the penal system but it is lawful in other settings – the home, alternative care settings, day care and schools. A proposed new Constitution expressly authorises “reasonable chastisement”.
- 2.2 **Home (lawful):** 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.⁵ 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.⁶ The right to administer punishment provides a defence in cases of assault and assault causing bodily harm.⁷
- 2.3 A Family Protection Bill was passed by Parliament in August 2014 and will come into force by notice in the Gazette. 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.
- 2.4 A new Federal Constitution has been drafted. The draft endorsed by the 4th 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 chastisement may be applied.” **Legal provisions for “reasonable chastisement” are authorisations for physical punishment of children. It is unacceptable for children – the most developmentally vulnerable and dependent of persons – not to be fully covered by constitutional protections from torture or inhuman or degrading punishment or treatment. This provision should be amended as a matter of urgency.**

⁵ *Regina v Rose* [1987] SILR 45

⁶ Law Reform Commission (2009), *Review of the Penal Code – Children*

⁷ Law Reform Commission (2008), *Review of Penal Code and Criminal Procedure Code: Issues Paper 1*

- 2.5 **Alternative care settings (lawful)**: Corporal punishment is lawful in the alternative care system under the “right to administer reasonable punishment” in article 233 of the Penal Code 1963.
- 2.6 **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 233 of the Penal Code 1963.
- 2.7 **Schools (lawful)**: Corporal punishment is lawful 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”.
- 2.8 **Penal institutions (unlawful)**: Corporal punishment is prohibited as a disciplinary measure in penal institutions in article 53 of the Correctional Services Act 2007.
- 2.9 **Sentence for crime (unlawful)**: 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.⁸ However, research has found that corporal punishment is inflicted on children who have committed a crime by police and at the village/ community level.⁹ The Police Act 2013 explicitly prohibits corporal punishment in article 69: “A police 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).

3 Recommendations by human rights treaty bodies

- 3.1 **CRC**: In 2003, the Committee on the Rights of the Child recommended to the Solomon Islands that corporal punishment of children be explicitly prohibited in the family, schools and all other contexts.¹⁰
- 3.2 **CEDAW**: In 2014, the Committee on the Elimination of Discrimination Against Women recommended measures be taken to protect girls and boys from corporal punishment at home and in the community.¹¹

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 Reported in *People First*, 15 June 2006

⁹ 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

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

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