

Corporal punishment of children in Papua New Guinea: Briefing for the Universal Periodic Review, 25th 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 Papua New Guinea, corporal punishment of children is lawful, despite recommendations to prohibit it by the Committee on the Rights of the Child and recommendations made during the 1st cycle UPR (accepted by the Government).

We hope the Working Group will note with concern the legality of corporal punishment of children in Papua New Guinea. We hope states will raise the issue during the review in 2016 and make a specific recommendation that Papua New Guinea clearly prohibit all corporal punishment of children in all settings including the home and explicitly repeal the right to use force “by way of correction” in the Criminal Code 1974.

1 Review of Papua New Guinea in the 1st cycle UPR (2011) and progress since

- 1.1 Papua New Guinea 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 the summary of stakeholders’ information.² The Government accepted recommendations to prohibit all corporal punishment of children.³
- 1.2 Since the first cycle review in 2011, Papua New Guinea has enacted the Juvenile Justice Act 2014, which explicitly prohibits corporal punishment in penal institutions and as a sentence for crime. The Family Protection Act 2013 has strengthened protection of children from violence in the family, but it did not achieve prohibition of corporal punishment in childrearing and did not repeal the right to use force “by way of correction” in the Criminal Code 1974.
- 1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in Papua New Guinea. We hope states will raise the issue during the review in 2016 and make a specific recommendation that Papua New Guinea clearly prohibit all corporal punishment of children in all settings including the home and explicitly repeal the right to use force “by way of correction” in the Criminal Code 1974.**

¹ 21 February 2011, A/HRC/WG.6/11/PNG/2, Compilation of UN information, para. 38

² 28 January 2011, A/HRC/WG.6/11/PNG/3, Summary of stakeholders' information, para. 25

³ 30 September 2011, A/HRC/18/18/Add.1, Report of the working group: Addendum, paras. 79(27) and 79(37)

2 Legality of corporal punishment in Papua New Guinea

Summary of current law and reforms needed in order to achieve prohibition

Corporal punishment of children in Papua New Guinea is unlawful in the penal system and in some alternative care settings, but it is lawful in other settings, including in the home, day care and schools. Achieving prohibition requires the enactment of legislation clearly prohibiting corporal punishment in these settings and explicit repeal of the right to use force “by way of correction” in the Criminal Code 1974.

- 2.1 **Home (lawful):** Article 278 of the Criminal Code 1974 states: “It is lawful for a parent or a person in the place of a parent, or for a schoolmaster, or master, to use, by way of correction, towards a child, pupil or apprentice under his care such force as is reasonable under the circumstances.” Provisions against violence and abuse in the Lukautim Pikinini (Child) Act 2009 are not interpreted as prohibiting all corporal punishment in childrearing.
- 2.2 The Family Protection Act 2013 confirms that “freedom from violence is every person’s right” (art. 4), includes in the definition of domestic violence “assault ... whether or not there is evidence of a physical injury” (art. 5) and states that “for the avoidance of doubt (a) a single act may amount to an act of domestic violence; and (b) a number of acts that form part of a pattern of behaviour may amount to domestic violence even though some or all of those acts when viewed in isolation may appear to be minor or trivial” (art. 5). However, the Act does not explicitly prohibit all corporal punishment in childrearing nor repeal the Criminal Code provision for the use of force “by way of correction”. An implementation framework for the Family Protection Act has been drafted with a view to undertaking consultations on the drafting of Regulations and Orders under the Act.⁴
- 2.3 **Alternative care settings (partially prohibited):** Corporal punishment is prohibited in some but not all alternative care settings. Article 88 of the Lukautim Pikinini (Child) Act states that children in care have the right “to be free from corporal punishment” (art. 88(1)(e)). The Act defines a child in care as “a child who is in the care of the Director or any person authorized by the Director”. The prohibition does not apply to private care arrangements and forms of care run by non-government bodies, where corporal punishment is lawful under the provision for the use of force “by way of correction” in article 278 of the Criminal Code 1974.
- 2.4 **Day care (lawful):** Corporal punishment is lawful in early childhood care and in day care for older children under the provision for the use of force “by way of correction” in article 278 of the Criminal Code 1974.
- 2.5 **Schools (lawful):** Corporal punishment is lawful under the provision for the use of force “by way of correction” in article 278 of the Criminal Code. The Education Act 1983 states that making rules for disciplining students is the responsibility of Boards of Governors and Governing Councils (arts. 68 and 74), but it does not prohibit corporal punishment. Corporal punishment is discouraged in schools by way of policy. The Education Act is being reviewed, with regional consultations taking place throughout 2014.⁵ One aim of the review is to consolidate the policy changes since 1995.⁶
- 2.6 **Penal institutions (unlawful):** The Juvenile Justice Act 2014 explicitly prohibits corporal punishment in penal institutions (art. 102). The Correctional Service Act 1995 provides for the

⁴ http://www.academia.edu/7459990/IMPLEMENTATION_FRAMEWORK_-_PNG_FAMILY_PROTECTION_ACT_IMPLEMENTATION_PROGRAM, accessed 20 April 2015

⁵ <http://edu.pngfacts.com/education-news/consultation-on-education-act>, accessed 20 April 2015

⁶ *Education Pipeline Quarterly Newsletter*, October-December 2014

custody, status, care, welfare and discipline of detainees and does not include corporal punishment among permitted disciplinary measures (art. 160).

2.7 ***Sentence for crime (unlawful)***: The Juvenile Justice Act 2014 explicitly prohibits corporal punishment as a sentence of the courts (arts. 30 and 85).

3 Recommendations by human rights treaty bodies

3.1 ***CRC***: In 2004, following examination of the state party's initial report, the Committee on the Rights of the Child recommended to Papua New Guinea that corporal punishment be prohibited in the family and in institutions.⁷

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.

⁷ 26 February 2004, CRC/C/15/Add.229, Concluding observations on initial report, paras. 37 and 38