

Corporal punishment of children in Tonga: Briefing for the Universal Periodic Review, 29th session, 2018

From the Global Initiative to End All Corporal Punishment of Children, June 2017



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 Tonga, corporal punishment of children is lawful, despite recommendations to prohibit it made during the 2nd cycle UPR of Tonga in 2013.

We hope the Working Group will note with concern the legality of corporal punishment of children in Tonga. We hope states will raise the issue during the review in 2018 and make a specific recommendation that Tonga clearly prohibit all corporal punishment of children, however light, in all settings including in the home and as a sentence of the courts.

1 Review of Tonga in the 2nd cycle UPR (2013) and progress since

- 1.1 Tonga was reviewed in the second cycle of the Universal Periodic Review in 2013 (session 15). The issue of corporal punishment of children was raised in the compilation of UN information¹ and the summary of stakeholders' information.² Tonga received several recommendations to prohibit corporal punishment as a sentence of the courts. The Government accepted one recommendation to "abolish any statutory provision which authorizes corporal punishment, in particular when the convicted is a child" immediately but then rejected the other ones.³
- 1.2 Since the review in 2013, no legal reform has been initiated. In contradiction with its international obligation to immediately prohibit all corporal punishment of children, the Government has defended the legality of corporal punishment as a judicial sanction "as a deterrent".⁴
- 1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in Tonga. We hope states will raise the issue during the review in 2018 and make a specific recommendation that Tonga clearly prohibit all corporal punishment of children, however light, in all settings including in the home and as a sentence of the courts.**

¹ 9 November 2012, A/HRC/WG.6/15/TON/2, Compilation of UN information, para. 14

² 29 October 2012, A/HRC/WG.6/15/TON/3, Summary of stakeholders' views, paras. 22, 23 and 24

³ 3 June 2013, A/HRC/23/4/Add.1, Report of the working group: Addendum, para. 13

⁴ Ibid., para. 15

2 Legality of corporal punishment in Tonga

Summary of current law and opportunities for achieving prohibition

In Tonga, corporal punishment of children is lawful in the home, alternative care, non-educational day care settings and as a sentence for a crime. It is unlawful in schools and in penal institutions.

- 2.1 **Home (lawful)**: Article 3 of the Civil Law Act 1966 (as amended 1983) states that English common law applies: this would include the “reasonable chastisement” defence. Children have limited protection from violence and abuse under the Criminal Offences Act 1926. The Family Protection Act 2013 (in force July 2014) defines domestic violence, including against a child, as an act or omission or threat thereof which causes injury or harm “beyond the reasonable expectations and acceptances of family and domestic life” (art. 4). It does not prohibit corporal punishment in childrearing.
- 2.2 **Alternative care settings (lawful)**: Corporal punishment is lawful in alternative care settings under the English common law defence of “reasonable chastisement”.
- 2.3 **Day care (partially lawful)**: Corporal punishment is prohibited in preschool education institutions under article 40 of the Education (Schools and General Provisions) Regulations 2002 (see below) but is lawful in other day care settings under the English common law defence of “reasonable chastisement”.
- 2.4 **Schools (unlawful)**: Corporal punishment is prohibited in schools in article 40 of the Education (Schools and General Provisions) Regulations 2002: “(4) Under no circumstances shall a teacher inflict corporal punishment on any student. (5) Under no circumstances shall staff in any school direct students to administer corporal punishment on another student.... (9) A principal teacher or teacher who inflicts corporal punishment on any student or causes any student to inflict corporal punishment on another student shall be reported for action to the Director or their nongovernment Managing Authority. Details of the incident shall be entered in the schools’ staff discipline register.”
- 2.5 The prohibition is reiterated in the Education Act 2013 (in force February 2014), article 37: “(1) A person in a school or on any school premise shall not – (a) verbally abuse any student; or (b) use force (whether by way of correction or punishment) against any student. (2) A person referred to in subsection (1) shall include an employee, agent, or volunteer of the Ministry, Managing Authority or school.”
- 2.6 **Penal institutions (?unlawful)**: Corporal punishment is prohibited as a disciplinary measure in prisons in article 66 of the Prisons Act 2010: “The following punishments are prohibited: ... (b) subjecting a prisoner to corporal punishment, torture or cruel, inhumane or degrading treatment.” We have yet to confirm that this effectively prohibits corporal punishment in all institutions accommodating children in conflict with the law. It appears that, as at May 2017, provisions in the Prison Rules 1947 (articles 45, 163, 164 and 165) authorising corporal punishment are still to be formally repealed.⁵

⁵ http://crownlaw.gov.to/cms/images/LEGISLATION/SUBORDINATE/1947/1947-0045/PrisonRules_1.pdf, accessed 25 May 2017

2.7 **Sentence for crime (lawful):** Corporal punishment is lawful as a sentence for crime under article 24 of the Criminal Offences Act 1926. Boys under 16 may be whipped up to 20 strokes “with a light rod or cane composed of tamarind or other twigs”; older males may be whipped up to 26 strokes “with a cat of a pattern approved by the Cabinet” (art. 31). The punishment must be administered in one or two instalments, as specified by the Court; it is inflicted by the gaoler, in the presence of a magistrate, following certification that the offender is medically fit to undergo the punishment (art. 31). For certain sexual offences, theft or robbery, whipping may be ordered at the discretion of the court in lieu of or in addition to imprisonment (art. 142); for boys under 16, whipping may be ordered in lieu of imprisonment for certain sexual offences (art. 130). Article 30 of the Magistrates’ Courts Act 1919 allows a magistrate to impose whipping on a boy aged 7-15 in lieu of any other punishment, to be inflicted by a constable or police sergeant and administered in one or two instalments, up to 10 strokes each, with “a light rod or cane composed of several tamarind or other twigs”.

2.8 In 1992, in a case concerning school corporal punishment, the Supreme Court concluded that “there is no constitutional objection or barrier to corporal punishment”.⁶ However, in 2010, the Appeal Court overturned sentences of judicial whipping that had been imposed on two 17 year olds,⁷ stating that in light of international convention and decisions of the court “it might be argued” that the provisions for whipping are now unconstitutional. The judgment also questioned the doctor’s role in certifying an offender fit for whipping.

2.9 In 2007, the Justice Minister was reportedly involved in discussions on developing youth justice laws in Tonga similar to New Zealand’s model of restorative justice;⁸ we have no information on further developments. In 2010, MP and former Minister for Police Clive Edwards announced his intention to support a private members bill to abolish judicial whipping,⁹ but there appears to have been no progress in this regard. In the Universal Periodic Review of Tonga in 2013, the Government accepted a recommendation to abolish laws authorising judicial corporal punishment of children.¹⁰ However, more recently the Government announced that it would retain judicial whipping “as a deterrent”.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 since 2011 the Committee on the Rights of Persons with Disabilities.

⁶ *Uhila v Kingdom of Tonga* [1992] TOSC 4; CC 145 1991 (19 October 1992)

⁷ *Fangupo v Rex; Fa’aoa v Rex* [2010] TOCA 17; AC 34 of 2009; AC 36 of 2009 (14 7 2010)

⁸ *DCI Juvenile Justice Newsletter 2007*, No. 3, 30 June 2007

⁹ *Radio New Zealand International*, 19 February 2010

¹⁰ 21 March 2013, A/HRC/23/4, Report of the working group, para. 79(44)

¹¹ 3 June 2013, A/HRC/23/4/Add.1, Report of the working group: Addendum, para. 15