

Corporal punishment of children in Kiribati: Briefing for the Universal Periodic Review, 35th session, January 2020



GLOBAL INITIATIVE TO
**End All Corporal
Punishment of Children**

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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 still lawful despite recommendations to prohibit it by the Committee on the Rights of the Child.

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 2020 and make a specific recommendation that Kiribati draft and enact legislation as a matter of priority to explicitly prohibit all corporal punishment of children, however light, in all settings including the home and as a sentence for a crime.

Kiribati's commitment to prohibiting corporal punishment

Kiribati expressed its commitment to prohibiting corporal punishment and repealing the “reasonable punishment” defence by accepting clearly the recommendations to do so made during the Universal Periodic Review of Kiribati in 2015.

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings, day care, penal institutions and as a sentence for crime.

Article 226 of the Penal Code 1977 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”. This provision should be repealed so that there is clarity in the law that no kind or degree of corporal punishment can be considered “reasonable”. Prohibition should be enacted of all corporal punishment by parents, teachers and other persons with authority over children.

Alternative care settings – Prohibition should be enacted of all corporal punishment in all alternative care settings (foster care, institutions, places of safety, etc.).

Day care – Corporal punishment should be prohibited in all early childhood care (nurseries, preschools, crèches, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Penal institutions – Corporal punishment should be prohibited as a “disciplinary” measure in all institutions accommodating children in conflict with the law.

Sentence for crime – Judicial corporal punishment should be prohibited and provisions authorising it in the Magistrates’ Courts Ordinance repealed.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. 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.”

A number of reviews have been carried out to assess the compliance of national legislation with the Convention on the Rights of the Child. For example, in 2009, the Child Protection Baseline Report of a collaborative project by the Government of Kiribati and UNICEF included an analysis of gaps in domestic legislation in light of obligations under the Convention on the Rights of the Child, including prohibition of corporal punishment.¹

The Children, Young People and Family Welfare Act 2013 states in article 4: “... All children and young people are entitled, as far as possible, to grow up in an environment that ... (i) is free from discrimination, violence, abuse, neglect and exploitation”. Article 5 addresses parental responsibility: “Parents, with the support of family members, have the primary role in safeguarding and promoting

¹ 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 Kiribati*, UNICEF Pacific

the wellbeing of children and young people, and in particular to ... (c) ensure that discipline is carried out in non-abusive ways; ... (g) ensure that they grow up in an environment that is free of violence, abuse, neglect and exploitation....” The Act provides for prevention services to promote “appropriate” parenting skills and awareness raising on the dangers of abuse (art. 15). However, the Act does not prohibit all corporal punishment in childrearing and does not repeal the right “to administer reasonable punishment” in article 226 of the Penal Code. It defines physical abuse as “any act of violence or maltreatment that results in physical wounds or bodily injury” (art. 2). The Government reported during the Universal Periodic Review of Kiribati in 2015 that under the Act any person must report concerns about the wellbeing of a child to the police and welfare officers, including corporal punishment in the community and at schools.²

The Family Peace Act for Domestic Violence 2014 (Te Rau N Te Mweenga Act) aims to protect adults and children from all forms of domestic violence. It is intended to comply with the Convention on the Rights of the Child and to protect children from direct domestic violence as well as from witness it between adults (art. 3); domestic violence includes physical abuse which is defined as the causing of bodily pain (art. 4.2) and includes single and repeated acts, even though in isolation these may appear “minor or trivial” (art. 4). However, while these provisions give substantial protection to children from violence in the home, they do not explicitly prohibit all forms of corporal punishment and the Act does not repeal the right “to administer reasonable punishment” in article 226 of the Penal Code.

Following the Universal Periodic Review of Kiribati in 2010, the Government stated it was “prepared to consider” the recommendations to prohibit corporal punishment but did not clearly accept or reject them.³ However, following the second cycle review in 2015, the Government indicated its commitment to law reform by clearly accepting recommendations to prohibit corporal punishment in all settings including the home and to repeal the “reasonable punishment” defence.⁴

Alternative care settings

Corporal punishment is lawful in alternative care settings under the right “to administer reasonable punishment” in article 226 of the Penal Code 1977.

Day care

Corporal punishment is lawful in day care under the right “to administer reasonable punishment” in article 226 of the Penal Code 1977.

Schools

Corporal punishment is prohibited in schools. The Education (Amendment) (No. 2) Act 1997 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 stated clearly that its intention is to prohibit corporal punishment: “The principal object of this Act is to remove 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

² 13 April 2015, A/HRC/29/5, Report of the working group, para. 18

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

⁴ 1 July 2015, A/HRC/29/5/Add.1, Report of the working group: Addendum

is achieved by repealing the whole of section 28 of the Education Ordinance which indeed allows the infliction of such punishment in schools.”

The Education Act 2013 (in force 2014), explicitly prohibits corporal punishment in article 38: “The principal, or a body that is responsible for disciplinary matters must take the following guidelines when applying disciplinary actions to a student – (a) discipline must be administered in a manner that is non-discriminatory and consistent with a student’s human dignity and other rights; ... (e) corporal punishment is not acceptable under any circumstances.”

Penal institutions

There is no prohibition of corporal punishment as a disciplinary measure in penal institutions. 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 under “Home”). A Juvenile Justice Bill is under discussion, and is expected to be submitted to the Cabinet by the end of March 2015.⁵

Sentence for crime

There is no provision for corporal punishment as a sentence for crime in the Penal Code 1977 or the Criminal Procedure Code 1977. However, the Magistrates’ Courts Ordinance authorises judicial corporal punishment for boys aged between 10 and 17 and under article 226 of the Penal Code (see under “Home”) 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.⁶ A Juvenile Justice Bill is under discussion which aims to repeal the provisions in the Magistrates’ Courts Ordinance allowing judicial corporal punishment of boys.⁷

Universal Periodic Review of Kiribati’s human rights record

Kiribati was examined in the first cycle of the Universal Periodic Review in 2010 (session 8). The following recommendations were made:⁸

“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);

⁵ 13 April 2015, A/HRC/29/5, Report of the working group, para. 19

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

⁷ 4 November 2014, A/HRC/WG.6/21/KIR/1, National report to the UPR, para. 118; 4 November 2014, A/HRC/WG.6/21/KIR/1, National report to the UPR, paras. 56, 117 and 118

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

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

The Government stated that it was “prepared to consider” the recommendations but did not clearly accept or reject them.⁹

The second cycle review took place in 2015 (session 21). In its national report, the Government drew attention to the prohibition of corporal punishment in the Education Act 2013 and stated that one aim of the new juvenile justice legislation will be to repeal the provisions in the Magistrates’ Courts Ordinance which allow judicial corporal punishment of boys between 10 and 17.¹⁰ During the review, the following recommendations were made:¹¹

“Repeal the right “to administer reasonable punishment” and clearly prohibit corporal punishment in all settings, including in the home (Sweden);

“Continue reinforcing the plans and programs for the eradication of corporal punishment of children in the schools as well as in the home (Chile)”

The Government accepted the recommendations.¹²

Recommendations by human rights treaty bodies

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.¹³

Prevalence/attitudinal research in the last ten years

In a study which involved questionnaires, group activities and interviews with adults and children throughout Kiribati, 81% of the 199 adults questioned said they sometimes hit, smacked, pinched, kicked, flicked or pulled or twisted the ears of children in their household. Nearly three in ten (29%) of the 198 children questioned said they had experienced this in the past month. Children were hit with hands and objects including brooms, wooden spoons and belts. Forty per cent of interviewees working in education said corporal punishment was used in their school; 29% of children said they had experienced school corporal punishment in the past month. When asked “if a child has committed a crime, how does the village/community handle the situation?” 5% of people working in the justice sector and community chiefs said physical punishment was used. The report of the study notes that corporal punishment is lawful in the home and elsewhere and that maneabas (community councils administering a traditional justice system) can punish children who have been accused of offences by beating them or excluding them from the community.

(UNICEF & 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 Kiribati*, Suva: UNICEF Pacific)

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

¹⁰ 4 November 2014, A/HRC/WG.6/21/KIR/1, National report to the UPR, paras. 56, 117 and 118

¹¹ 23 January 2015, A/HRC/WG.6/21/L.2 Unedited Version, Draft report of the working group, paras. 84(72) and 84(73)

¹² 1 July 2015, A/HRC/29/5/Add.1, Report of the working group: Addendum

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