

TUVALU

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 16th session, 2013

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

Corporal punishment of children breaches their rights to respect for human dignity and physical integrity and to equal protection under the law. It is recognised by the Committee on the Rights of the Child and other treaty bodies, as well as by the UN Secretary General’s Study on Violence against Children, as a highly significant issue, both for asserting children’s status as rights holders and for the prevention of all forms of violence.

In June 2006, the Committee on the Rights of the Child adopted General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”, which emphasises the immediate obligation on states parties to prohibit all corporal punishment of children, including within the home. Other treaty bodies and also regional human rights mechanisms have condemned all corporal punishment. In October 2006, the report of the UN Secretary General’s Study on Violence against Children was submitted to the General Assembly. It recommends universal prohibition of all corporal punishment as a matter of priority.

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. There is growing progress across all regions in challenging this common form of violence against children. But many States persist in ignoring treaty body recommendations to prohibit and eliminate all corporal punishment. We hope the Working Group of the UPR will give particular attention to states’ response, or lack of response, to the concluding observations from treaty bodies on this issue, as well as to the recommendations made during the first cycle of the UPR.

Corporal punishment of children is lawful in Tuvalu, despite Tuvalu’s acceptance of the recommendation to eliminate it through reforming the Penal Code made during the UPR in 2008 and the recommendation to prohibit it in schools by the Committee on the Elimination of Discrimination Against Women.

We hope the Working Group will note with concern the legality of corporal punishment in Tuvalu. We hope states will raise the issue during the review in 2013 and recommend to Tuvalu that legislation is enacted to explicitly prohibit all forms of corporal punishment of children in all settings, including the home and as a sentence of island courts, as a matter of priority.

1 The initial review of Tuvalu by the Human Rights Council (2008)

1.1 Tuvalu was examined in the first cycle of the Universal Periodic Review in 2008 (session 3). The issue of corporal punishment of children was included in the compilation of UN information¹ and the summary of stakeholders' information.² The following recommendation was made and was accepted by the Government:³

“Reform the Penal Code to cover offences such as sexual abuse against minors and to eliminate corporal punishment (Mexico)”

1.2 During the review, the Government confirmed that corporal punishment was being addressed as part of efforts to harmonise domestic laws with international human rights standards, but that corporal punishment has traditionally been permitted in family discipline and in primary schools; the Government was raising awareness on the issue and was committed to further consultation with regard to law reform.⁴

1.3 Despite accepting the recommendation, the legality of corporal punishment of children in Tuvalu is the same now as it was in 2008 – lawful in all settings.

2 Legality of corporal punishment in Tuvalu

2.1 Corporal punishment is lawful in the **home**. The maintenance of family discipline is one of the principles of the Constitution (principle 4): “Amongst the values that the people of Tuvalu seek to maintain are their traditional forms of communities, the strength and support of the family and family discipline.” Cruelty to children is addressed in article 226 of the Penal Code, but this 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.”

2.2 Corporal punishment is lawful in **schools** under article 29 of the Education Act (1976): “(1) No teacher, other than a head-teacher, shall administer corporal punishment to any pupil. (2) If a head-teacher administers corporal punishment to any pupil, he shall record details of the punishment administered and the offence for which the corporal punishment was administered in a book to be kept at the school for that purpose. (3) The Minister may give directions for further controlling corporal punishment in schools.” Article 226 of the Penal Code also applies (see above).

2.3 In the **penal system**, corporal punishment is lawful as a sentence for crime. It is not available under the Penal Code, the Criminal Procedure Code, the Magistrates Court Act or the Superior Courts Act, but article 8(8) of the Island Courts Act states that an island court may order a parent or guardian of a male child or young person to cane their child in lieu of any other sentence (up to 6 strokes for a child under 14 years, 10 strokes for a young person aged 14-16). Failure to carry out the order is an offence under article 8(9).

2.4 There is no provision for corporal punishment as a disciplinary measure in the Prisons Act (1985), but it is not explicitly prohibited and article 226 of the Penal Code presumably applies.

2.5 Corporal punishment is lawful in **alternative care settings** under article 226 of the Penal Code.

¹ 6 October 2008, A/HRC/WG.6/3/TUV/2, Compilation of UN information, para. 6

² 16 September 2008, A/HRC/WG.6/3/TUV/3, Summary of stakeholders' information, para. 10

³ 9 January 2009, A/HRC/10/84, Report of the Working Group, para. 68(8)

⁴ 9 January 2009, A/HRC/10/84, Report of the Working Group, para. 4

3 Recommendations by human rights treaty monitoring bodies

3.1 In its concluding observations on the state party's initial/second report in 2006, the **Committee on the Elimination of Discrimination Against Women** expressed concern at the legality of corporal punishment in schools under article 29 of the Education Act and article 226 of the Penal Code and recommended that it be prohibited.⁵

3.2 Tuvalu acceded to the **Convention on the Rights of the Child** in 1995. The initial report due in 1997 has now been submitted to the Committee: as at October 2012 examination is still to be scheduled.

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October 2012

⁵ 7 August 2009, CEDAW/C/TUV/CO/2, Concluding observations on initial/second report, paras. 39 and 40