

Ending family violence in the Cook Islands – challenging physical punishment of girls and boys



Global Initiative to
End All Corporal Punishment
of Children

Information for the Committee on the Elimination of Discrimination Against Women, Pre-Sessional Working Group for the 70th session, from the Global Initiative to End All Corporal Punishment of Children (www.endcorporalpunishment.org), September 2017

Introduction: family violence in the Cook Islands and CEDAW's examination of the second/third state party report

It appears the Family Law Act 2017 might protect girls and boys from some family violence but a right to use force “by way of correction” is recognised to parents and persons with parental authority. The current review of the Crimes Act provides an opportunity to ensure that no form of violence is tolerated within the home.

We hope the Committee on the Elimination of Discrimination Against Women will raise the issue of violent punishment of girls and boys in its examination of the Cook Islands. In particular, we hope the Committee will:

- **in its list of issues for the Cook Islands, ask what steps are being taken to ensure that the Crimes Bill does not confirm the legal defence to the use of violent discipline of children, as currently drafted in its article 32, and**
- **in its concluding observations on the second/third state party report, recommend that the Cook Islands ensure that *no* form of violence within the domestic sphere is condoned, including by parents against their children, and that legislation is enacted to prohibit domestic violence against all family members, including the violent punishment of girls and boys, and to repeal the legal defence for its use.**

The remainder of this briefing provides the following further details:

1. The current law relating to family violence and corporal punishment of children in the Cook Islands
 2. Treaty body recommendations on the issue made to the Cook Islands to date.
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1 Laws on domestic violence and corporal punishment of children in the Cook Islands

Summary

1.1 It appears that provisions in the Family Law Act 2017 may protect girls and boys from some family violence; however, the Crimes Act 1969 recognises a right to use force “by way of correction”. The review of the Crimes Act provides an opportunity to repeal the above provision and ensure that all children are protected from all forms of violence in the home. **We are concerned that the current draft of the Crimes Bill seems to confirm the legal defence to the use of violent discipline of children in its article 32 (“lawful correction of a child”). This provision must be removed from the Bill and explicit prohibition of violent punishment in the home must be included.**

Detail

1.2 Corporal punishment is lawful in the home. Article 61 of the Crimes Act 1969 states: “(1) Every parent or person in the place of a parent, and every schoolmaster, is justified in using force by way of correction towards any child or pupil under his care, if the force used is reasonable in the circumstances. (2) The reasonableness of the force used is a question of fact.” Article 64 covers excessive force. Children have some protection from violence and abuse under other provisions in the Crimes Act 1969, the Cook Islands Act 1915 and the Cook Islands Protection of Children Ordinance 1954. The Constitution states that no law in the Cook Islands shall be construed or applied “so as to impose or authorise the imposition on any person of cruel and unusual treatment or punishment” (art. 65), but this is not interpreted as protecting children from all corporal punishment.

1.3 The Crimes Act is being comprehensively reviewed by Crown Law with technical assistance from the Australian Government. In 2015 according to the Government’s report to the Committee on the Rights of Persons with Disabilities, the Crimes Act Amendment Bill 2013 provided for offences against children (art. 6(4)) and the Family Law Bill provided for civil responses to violence.¹ As at August 2017, the Crimes Bill 2017 was being discussed in a Parliamentary select committee;² its draft article 32 recognised the “lawful correction of a child” as a defence for the use of force on a child. The Government reported to the Committee on the Elimination of Discrimination Against Women in 2017 that the Family Law Bill had been consulted upon in 2015 and 2016 and was expected to be tabled in Parliament at the next sitting.³ It appears the Family Law Act was enacted in July 2017:⁴ domestic violence was addressed but we are investigating whether prohibition of corporal punishment was included – however in light of article 32 of the Crimes Bill it appears unlikely.

1.4 Under examination by the Committee on the Rights of Persons with Disabilities in 2015, the Government drew attention to prohibition of corporal punishment in schools and acknowledged “there was a need to look into expanding prohibition to the family context as well”.⁵

1.5 Prohibition of all violent punishment of children – which is critical in laying the legal foundations for efforts to reduce child abuse and domestic violence – requires an explicit ban in legislation. We hope the Committee will urge the Government of the Cook Islands to enact legislation as a matter of priority to clearly prohibit all corporal punishment of girls and boys and repeal all legal defences for its use.

¹ 18 February 2015, CRPD/C/COK/Q/1/Add.1 Advance Unedited Version, Reply to list of issues, pp. 11-12

² <http://www.radionz.co.nz/international/pacific-news/336890/cooks-to-begin-hearing-submissions-on-crimes-bill>, accessed 8 September 2017

³ 15 May 2017, CEDAW/C/COK/2-3, Second/third report, para. 10

⁴ <http://www.cookislandsnews.com/item/65177-minister-praises-new-family-law>, accessed 15 September 2017

⁵ Committee on the Rights of Persons with Disabilities considers initial report of the Cook Islands, 10 April 2015, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15819&LangID=E>, accessed 29 April 2015

2 Recommendations by human right treaty monitoring bodies

- 2.1 In 2012, the *Committee on the Rights of the Child* recommended to the Cook Islands that corporal punishment be prohibited in all settings, including the home.⁶
- 2.2 In 2015, the *Committee on the Rights of Persons with Disabilities* expressed concern that the law provides a defence to the use of force “by way of correction” and recommended that the Cook Islands legally prohibit all corporal punishment, including in the home.⁷

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⁶ 21 February 2012, CRC/C/COK/CO/1, Concluding observations on initial report, paras. 35 and 36

⁷ 15 May 2015, CRPD/C/COK/CO/1, Concluding observations on initial report, paras. 31 and 32