

# Ending family violence in Nauru – challenging physical punishment of girls and boys



Information for the Committee on the Elimination of Discrimination Against Women, Pre-Sessional Working Group for the 68<sup>th</sup> session, from the Global Initiative to End All Corporal Punishment of Children ([www.endcorporalpunishment.org](http://www.endcorporalpunishment.org)), January 2017

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## Introduction: violence against children in their homes in Nauru and CEDAW's examination of the initial/second state party report

Violent punishment of girls and boys is lawful in Nauru. Despite the recent review of the Criminal Code, prohibition of corporal punishment of children was not achieved. The Government must deliver on its international obligations and achieve law reform.

**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 Nauru. In particular, we hope the Committee will:**

- **in its list of issues for Nauru, ask the Government what progress is being made towards the prohibition of all violent punishment of children, and**
- **in its concluding observations on the initial/second state party report, recommend that Nauru take immediate action to ensure that *no* form of violence within the domestic sphere is condoned, including by parents against their children, and that legislation is enacted prohibiting all corporal punishment of children in all settings.**

The remainder of this briefing provides the following further details:

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

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## 1 Laws on the use of force in “correcting” children in Nauru

1.1 Corporal punishment is lawful in the home. The Criminal Code 2011, which was based on the 1899 Criminal Code, stated in section 280: “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.” This provision was not reiterated in the Crimes Act 2016, but neither was clear prohibition of corporal punishment introduced. Article 47 of the Crimes Act 2016 provides for the defence of “claim of right” and states that “this section does not negate criminal responsibility for an offence relating to the use of force against a person.” (art. 47). However, in punishing common assault, article 78 states that “conduct that is within the limits of what would be acceptable to a reasonable person as incidental to social interaction or community life cannot amount to an offence under this section”. In reporting to the Committee on the Rights of the Child in 2016, the Government referred to corporal punishment as “an accepted and expected parental *obligation*” (emphasis added), and reported that “the biblical belief of ‘spare the rod, spoil the child’ is still a principal of discipline in the Naurian

society”.<sup>1</sup>

- 1.2 The Child Protection and Welfare Act 2016 states that a child has the right “to be protected from harm or risk of harm” and confirms that the child’s family has “primary responsibility for the child’s upbringing, protection and development” (art. 5): it does not prohibit all corporal punishment in childrearing. Harm is defined in the Crimes Act 2016 as “physical harm and mental harm” (art. 8). “Mental harm” “includes psychological harm (whether temporary or permanent) but does not include an emotional reaction such as distress, grief, fear or anger unless the reaction results in psychological harm”; “physical harm” “(a) includes any of the following (whether temporary or permanent): (i) unconsciousness; (ii) pain; (iii) disfigurement; (iv) infection with a disease; (v) any physical contact with a person to which the person might reasonable object in the circumstances, whether or not the person was aware of it at the time; but (b) does not include being subject to any force or impact that is within the limits of what would be acceptable to a reasonable person as incidental to social interaction or to life in the community” (art. 8).
- 1.3 Proposed amendments to the Constitution which would extend the protection of rights to children were rejected in 2010. Constitutional reform remains under consideration by the Constitutional Review Committee.
- 1.4 **We hope the Committee will raise the issue of corporal punishment of children in its review of Nauru, and recommend that the Government immediately enact legislation explicitly prohibiting corporal punishment of children in all settings.**

## **2 Recommendations by human right treaty monitoring bodies and during the Universal Periodic Review**

- 2.1 **CRC:** In 2016, the Committee on the Rights of the Child recommended that corporal punishment of children be prohibited in the home and all other settings.<sup>2</sup>
- 2.2 **UPR:** Nauru was reviewed in the UPR process in 2011 and again in 2015. No recommendations were made specifically on corporal punishment but on both occasions the Government accepted recommendations to promote and protect the rights of the child, and in 2015 the Government accepted recommendations to harmonise legislation with international treaties, including the Convention on the Rights of the Child.<sup>3</sup>

*Briefing prepared by the Global Initiative to End All Corporal Punishment of Children*  
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<sup>1</sup> 25 January 2016, CRC/C/NRU/1-6, Initial to sixth state party report, paras. 83 and 24

<sup>2</sup> 28 October 2016, CRC/C/NRU/CO/1, Concluding observations on combined initial report, paras. 34 and 35

<sup>3</sup> 8 March 2011, A/HRC/17/3, Report of the working group, paras. 79(37), 79(67), 79(70) and 79(71); 16 December 2015, A/HRC/31/7, Report of the working group, paras. 85(20), 85(23) and 85(25)