

**BRIEFING ON NAURU FOR THE COMMITTEE ON THE RIGHTS OF THE CHILD, 73rd SESSION – September 2016**

*Submitted by the Global Initiative to End All Corporal Punishment of Children,* [*www.endcorporalpunishment.org*](http://www.endcorporalpunishment.org)

**This briefing describes the legality of corporal punishment of children in Nauru. In light of the Committee’s General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment” and the Government of Nauru’s acceptance of recommendations made during the UPR in 2015 to harmonise legislation with the Convention on the Rights of the Child, we hope the Committee will, in its concluding observations on the initial-sixth report of Nauru:**

* **recommend that legislation be enacted as a matter of priority to clearly prohibit corporal punishment in all settings, including the home, and explicitly repeal all legal provisions which can be construed as a justification for the use of corporal punishment in childrearing.**

**1 The report of Nauru to the Committee on the Rights of the Child**

1.1 Nauru’s initial to sixth state party report to the Committee on the Rights of the Child states that corporal punishment has been abolished in schools but that it remains an issue in the home, where “there is a thin barrier between discipline and child abuse” and where “the biblical belief of ‘spare the rod, spoil the child’ is still a principal of discipline in the Nauruan society”.[[1]](#footnote-1) Furthermore, the report notes that “corporal punishment as means of child control is still an accepted and expected parental *obligation* in Nauru” (emphasis added).[[2]](#footnote-2)

1.2 We can confirm that education law prohibits corporal punishment in schools in Nauru – but we would also draw the attention of the Committee to reports which have emerged in the context of revelations concerning children in immigration detention that corporal punishment continues to be practised in schools (see below). We also note that significant and recent law reform has strengthened legal protection for children from violence and abuse but has not achieved clear prohibition of corporal punishment.

**1.3 We hope the Committee will recommend to the Government of Nauru that legislation be enacted as a matter of priority to clearly prohibit corporal punishment in all settings, including the home, and explicitly repeal all legal provisions which can be construed as a justification for the use of corporal punishment in childrearing.**

**2 The legality and practice of corporal punishment of children in Nauru**

2.1 ***Summary:***Corporal punishment of children in Nauru is unlawful in schools and in the penal system, but despite recent law reform it is not fully prohibited in the home and in alternative care and day care settings.

2.2 ***Home (corporal punishment is lawful):*** The Criminal Code 2011 had allowed for parents, teachers and others to use force against children “by way of correction” (art. 280). This provision was not reiterated in the Crimes Act 2016, but neither was clear prohibition of corporal punishment introduced. Article 47 of the new Act 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”.

2.3 The Child Protection and Welfare Act 2016 states that a child has the right “to be protected from harm or risk of harm” (art. 5) but it does not prohibit all corporal punishment in childrearing. Harm is defined in the Crimes Act 2016 (art. 8): “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).

2.4 ***Alternative care settings (corporal punishment is not fully prohibited):*** According to the Child Protection and Welfare Act 2016, all approved carers and care service providers must take reasonable steps to ensure the care meets the specified standards, which include “the child’s dignity and rights will be respected at all times” and “the child will receive positive guidance when necessary to help him or her to change inappropriate behaviour” (arts. 20 and 36); techniques for managing behaviour “must not include punishment that: (a) humiliates, frightens or threatens the child in a way that is likely to cause any harm, including and physical, psychological, or emotional harm; and (b) involves any cruel, inhumane or degrading treatment of the child” (art. 20). This article does not explicitly prohibit all physical punishment; rather, it is tied to the concept of harm which as defined in the Crimes Act 2016 “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).

2.5 ***Day care (corporal punishment is not fully prohibited):*** Corporal punishment is possibly unlawful in pre-school education settings under the Education Act 2011 (see below). There appears to be no clear prohibition of corporal punishment in other early childhood care and in day care for older children.

2.6 ***Schools (corporal punishment is prohibited but continues to be used):***Corporal punishment is prohibited in schools in article 37 of the Education Act 2011: “In this section ‘corporal punishment’ means physical force applied to punish or correct, and includes any action designed or likely to cause physical pain or discomfort. (2) The following persons must not administer corporal punishment to a student of a school: (a) the principal of the school; (b) a member of staff of the school; (c) any other person instructing or teaching, or assisting or supporting teaching, at a school.” Those found guilty of using corporal punishment may be fined $500.[[3]](#footnote-3)

2.7 Despite prohibition, there have been reports that corporal punishment continues to be used in schools as evidence emerges of children’s exposure to violent treatment and punishment while in immigration detention.[[4]](#footnote-4)

2.8 ***Penal institutions (corporal punishment is prohibited):*** Corporal punishment is prohibited as a disciplinary measure in penal institutions in article 33 of the Correctional Service Act 2009: “No prisoner may be subjected, by way of punishment, to – (a) corporal punishment in any form; (b) the use of instruments of restraints….” Article 35 sets out the specific circumstances in which force may be used against a prisoner and does not include for purposes of discipline or punishment. However, evidence is emerging of children detained for purposes of immigration being subjected to a high level of assault.[[5]](#footnote-5)

2.9 ***Sentence for crime (corporal punishment is prohibited):*** There is no provision for corporal punishment as a sentence for a child in the Child Protection and Welfare Act 2016 or in the Crimes Act 2016, though it is not explicitly prohibited.

**3 Recommendations during the UPR**

3.1 ***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.[[6]](#footnote-6)

*Briefing prepared by the Global Initiative to End All Corporal Punishment of Children*

[*www.endcorporalpunishment.org*](http://www.endcorporalpunishment.org)*;* *info@endcorporalpunishment.org*

*August 2016*

1. 25 January 2016, CRC/C/NRU/1-6, Initial to sixth state party report, para. 24 [↑](#footnote-ref-1)
2. ibid., para. 83 [↑](#footnote-ref-2)
3. 25 January 2016, CRC/C/NRU/1-6, Initial to sixth state party report, para. 238 [↑](#footnote-ref-3)
4. <https://www.theguardian.com/news/2016/aug/11/nauru-teachers-speak-out-for-children-we-dont-have-to-torture-them>, accessed 11 August 2016 [↑](#footnote-ref-4)
5. Australian Human Rights Commission (2014), *The Forgotten Children: National Inquiry into Children in Immigration Detention*, [www.humanrights.gov.au/sites/default/files/document/publication/forgotten\_children\_2014.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten_children_2014.pdf) [↑](#footnote-ref-5)
6. 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) [↑](#footnote-ref-6)