

**BRIEFING ON PALAU FOR THE
COMMITTEE ON THE RIGHTS OF THE CHILD,
SESSION 77 PRESESSIONAL WORKING GROUP – June 2017**

*From the Global Initiative to End All Corporal Punishment of Children, February 2017*

**This briefing describes the legality of corporal punishment of children in Palau. 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”, its previous recommendation to Palau on the issue, the importance of eradicating this form of violence given by the UN Secretary General’s Study on Violence against Children, the recommendations made during the UPR of Palau in 2011 and 2016 (accepted by the Government) and the new global commitment to ending all violence against children in the context of the 2030 Agenda for Sustainable Development, we hope the Committee will:**

* **in its List of Issues for Palau, raise the issue of corporal punishment of children, in particular asking what steps are being taken to ensure that all corporal punishment of children is prohibited by law in all settings, including the home, and** **what progress has been made towards explicitly repealing the legal defences;**
* **in its concluding observations on the second report of Palau, recommend that legislation is enacted to explicitly prohibit corporal punishment of all children in all settings and that any legal defences is repealed.**

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

* 1. Palau’s second state report to the Committee alleges that corporal punishment is prohibited by law in schools. Yet the prohibition of corporal punishment in schools is contained in policies, not law, and is undermined by article 309 of the Penal Code which allows the use of force in disciplining children. The report further invokes article 310 of the Penal Code as regulating the use of force against children, but article 310 only protects children from the use of force that “injures or creates a risk of injury” or in the situation where the perpetrator “is reckless or negligent in having such belief or in acquiring or failing to acquire any knowledge or belief that is material to the justifiability of the actor’s use of force”.
	2. Palau’s report states that “physical abuse is still somewhat hard to deal with as many Palauans still believe, to some extent in physical discipline”[[1]](#footnote-1). However, the state party has an immediate obligation under international human rights law to enact clear legal prohibition of corporal punishment of children in all settings. In fulfilling the human rights of children and adults, the Government must lead not follow public opinion. Legal prohibition, coupled with education on children’s right to protection from corporal punishment and alternative non-violent forms of discipline, is the most effective way to effect lasting changes in social norms around corporal punishment in childrearing.

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

2.1 ***Summary:***In Palau, corporal punishment is unlawful as a sentence for crime but it is lawful in all other settings – the home, alternative care settings, day care, schools and penal institutions. Recent law reform not only failed to achieve prohibition but specifically authorised the use of force in “disciplining” children.

2.2 ***Home (lawful):*** The Palau National Code (34.61.31-32) states: “A parent or guardian having custody of a child is charged with the control of such child and shall have the power to exercise parental control and authority over such a child.” The Family Protection Act 2012 protects children from violence and abuse under the offence of “endangering the welfare of a minor”, but this is only in relation to the infliction of “serious or substantial bodily injury” (arts. 801 and 802).

2.3 Article 309 of the Penal Code 2013 specifically authorises the use of force in disciplining children: “The use of force upon or toward the person of another is justifiable under the following circumstances: (a) The actor is the parent or guardian or other person similarly responsible for the general care and supervision of a minor, or a person acting at the request of the parent, guardian, or other responsible person, and: (1) The force is employed with due regard for the age and size of the minor and is reasonably related to the purpose of safeguarding or promoting the welfare of the minor, including the prevention or punishment of the minor’s misconduct; and (2) The force used is not designed to cause or known to create a risk of causing substantial bodily injury, disfigurement, extreme pain or mental distress, or neurological damage….” The same article authorises the use of force in schools and penal institutions (see below).

2.4 ***Alternative care (lawful):*** Corporal punishment is lawful by guardians and others with parental authority under the provisions confirming “the power to exercise parental control and authority” in the Palau National Code; article 309 of the Penal Code 2013, authorising the use of force by persons with responsibility for a child, is also applicable.

2.5 ***Day care (lawful):*** Corporal punishment is lawful in day care under the provisions confirming “the power to exercise parental control and authority” in the Palau National Code; article 309 of the Penal Code 2013 expressly provides for the use of force in disciplining children.

2.6 ***Schools (lawful):***The Master Plan for Education (2000) aims to discourage and prevent the use of corporal punishment at primary and secondary levels. According to the 2014 UNICEF baseline research all schools have child protection policies that include a ban on corporal punishment.[[2]](#footnote-2) However, corporal punishment is not prohibited by law, and article 309 of the Penal Code 2013 expressly provides for the use of force in disciplining children: “The use of force upon or toward the person of another is justifiable under the following circumstances: … (b) The actor is a principal, the principal’s agent, a teacher, or a person otherwise entrusted with the care or supervision for a special purpose of a minor, and: (1) The actor believes that the force used is necessary to further that special purpose, including maintenance of reasonable discipline in a school, class, other group, or at activities supervised by the Ministry of Education held on or off school property and that the use of force is consistent with the welfare of the minor; and (2) The degree of force, if it had been used by the parent or guardian of the minor, would not be unjustifiable under paragraph (a)(2) above.”

2.7 ***Penal institutions (lawful):*** Article 309 of the Penal Code 2013 authorises the use of force in penal institutions: “The use of force upon or toward the person of another is justifiable under the following circumstances: … (e) The actor is a warden or other authorized official of a correctional institution, and: (1) The actor believes that the force used is necessary for the purpose of enforcing the lawful rules or procedures of the institution; and (2) The nature or degree of force used is not forbidden by other provisions of the law governing the conduct of correctional institutions; and (3) If deadly force is used, its use is otherwise justifiable under this chapter.”

2.8 ***Sentence for crime (unlawful):*** There is no provision for judicial corporal punishment in criminal law. However, according to the baseline research published by UNICEF in 2014, in 7% of cases where children commit a crime the response of police officers is to impose physical punishment.[[3]](#footnote-3)

**3 Recommendations by human rights treaty bodies and during the UPR**

3.1 ***CRC:*** In 2001, the Committee on the Rights of the Child recommended to Palau that corporal punishment be prohibited and eliminated in schools and homes.[[4]](#footnote-4)

3.2 ***UPR:*** At the first cycle Universal Periodic Review in 2011, the Government accepted recommendations to explicitly prohibit corporal punishment in all settings, including the home and schools.[[5]](#footnote-5) In 2016 at the second cycle review, the Government again accepted recommendations to prohibit and eliminate corporal punishment in all settings, also stating in relation to these that “Palau will take appropriate measures to modify or amend appropriate legislation in line with international standards”.[[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*

1. CRC/C/PLW/2, Second report, para. 126 [↑](#footnote-ref-1)
2. UNICEF (2014), *Value and Protect Our Precious Resources: Our Children – The Republic of Palau Child Protection Baseline Report*, Australian Aid/Government of Palau/UNICEF [↑](#footnote-ref-2)
3. UNICEF (2014), *Value and Protect Our Precious Resources: Our Children – The Republic of Palau Child Protection Baseline Report*, Australian Aid/Government of Palau/UNICEF, p. 74 [↑](#footnote-ref-3)
4. 21 February 2001, CRC/C/15/Add.149, Concluding observations on initial report, paras. 44 and 45 [↑](#footnote-ref-4)
5. 11 July 2011, A/HRC/18/5, Report of the working group, paras. 61(43), 61(44) and 61(45) [↑](#footnote-ref-5)
6. 21 June 2016, A/HRC/32/11/Add.1, Report of the working group: Addendum, para. 26; see also 30 June 2016, A/HRC/32/2 Advance Unedited Version, Report of the Human Rights Council on its 32nd session, para. 515 [↑](#footnote-ref-6)