Global Initiative to
End All Corporal Punishment
of Children

BRIEFING ON TUVALU FOR THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, PRESESSIONAL WORKING GROUP – Jul 2014

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The human rights obligation to prohibit corporal punishment – a key strategy in eliminating all forms of violence

The legality and practice of corporal punishment of girls breaches their fundamental rights to respect for their human dignity and physical integrity, to equality under the law and to protection from all forms of violence – rights guaranteed in the Convention on the Elimination of All Forms of Discrimination Against Women and other international human rights instruments. There are strong links between corporal punishment of children – girls and boys – and all other forms of violence, including gender-based violence. As the Committee on the Rights of the Child emphasised in its General Comment No. 8 (2006), addressing corporal punishment is "a key strategy for reducing and preventing all form of violence in societies".

The near universal acceptance of a degree of violent punishment in childhood and deeply held views that parents and other adults have a "right" to physically punish children can challenge efforts to achieve prohibition. This situation also means that corporal punishment – at least to some degree – is typically not readily perceived as a violent act in the same way as, for example, sexual and other socially unacceptable forms of violence. Physical violence against girls and boys in their own home is typically assumed not to be domestic violence because it is inflicted under the guise of "discipline" or "correction" – a rationale totally unacceptable when the victim is an adult woman. **It is for these reasons that we respectfully urge the Committee on the Elimination of Discrimination Against Women to specifically recommend that corporal punishment be prohibited in the home and all settings.**

This briefing describes the legality of corporal punishment of children in Tuvalu. In light of General Recommendation No. 19 on Violence against women (1992), the links between corporal punishment of children and all other forms of violence including gender-based violence, the recommendations to Tuvalu during the UPR (accepted by the Government), and the previous recommendations of the Committee on the Elimination of Discrimination Against Women, we hope the Committee will:

- **raise the issue of corporal punishment of girls in its List of Issues for Tuvalu, asking what progress has been made towards prohibiting all corporal punishment of girls and boys, including in the home, and**
- **recommend to Tuvalu, in the concluding observations on the third/fourth state party report, that legislation be enacted which clearly prohibits all forms of corporal punishment in all settings, including in the home, and that provisions authorising corporal punishment in the Education Act and the Penal Code be repealed.**

1 The state party's report to CEDAW

1.1 In CEDAW's concluding observations on the initial/second report of Tuvalu in 2006, the Committee 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.[1] The third/fourth report of Tuvalu to CEDAW states that the legality of corporal punishment as provided for in these laws has not changed.[2] The Government does not offer an explanation for the failure to fulfil the Committee's recommendations in this respect, nor does it indicate any future intention to do so despite the opportunity for enacting prohibition presented by current processes of law reform (see below, paras. 2.3 and 2.7). **We hope the Committee will reiterate its previous concerns, and recommend that corporal punishment as provided for in the Education Act and the Penal Code be explicitly prohibited as a matter of priority.**

2 The legality of corporal punishment of children in Tuvalu

2.1 ***Summary:*** In Tuvalu, corporal punishment of children is not fully prohibited in any setting. Girls and boys may lawfully be hit and hurt in the guise of discipline and punishment in the home, alternative care settings, day care, schools and penal institutions; boys may be caned as a sentence for crime in Island Courts.

2.2 ***Home (lawful):*** The maintenance of family discipline is one of the principles of the Constitution 1978 (principle 4); article 17(2) of the Constitution provides for a person under 18 to be detained "in the reasonable exercise of the authority of a parent, teacher or guardian, or under the order of a court for the purpose of his education, welfare or proper discipline" and the Government has stated that this "envisages lawful corporal punishment".[3] Cruelty to children is addressed in article 226 of the Penal Code 1965, 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."

2.3 The Government plans to carry out a progressive review of its laws as part of the Te Kakeega II The National Development Plan for Tuvalu 2005-2015. During the Universal Periodic Review of Tuvalu in 2008, the Government stated that the issue of corporal punishment of children was being addressed as part of efforts to harmonise domestic laws with international human rights standards.[4] During the second cycle review in 2013, the Government reported efforts to address abuse but made no reference to corporal punishment in the home: recommendations to prohibit corporal punishment in all settings were confusingly both accepted and rejected.[5] A Family Protection and Domestic Violence Bill has been prepared and was launched for community consultations in June 2013. **We hope the Committee will urge the Government of Tuvalu to take the opportunity of the new family protection law to prohibit all corporal punishment of children, thus protecting girl children from all forms of violence, including when inflicted in the guise of "discipline".**

2.4 ***Alternative care settings (partially prohibited):*** Corporal punishment is lawful under the right "to administer reasonable punishment" in article 226 of the Penal Code 1965 (see para 2.2, above). However, it is explicitly prohibited in the Mental Health Wing Management Regulations under the Mental Treatment Act 1927.

2.5 ***Day care (lawful):*** Corporal punishment is lawful in early childhood care and in day care for older children under the right "to administer reasonable punishment" in article 226 of the Penal Code

[1] 7 August 2009, CEDAW/C/TUV/CO/2, Concluding observations on initial/second report, paras. 39 and 40
[2] 9 November 2012, CEDAW/C/TUV/3-4, Third-fourth state party report, para. 83
[3] 10 October 2012, CRC/C/TUV/1, Initial report to the Committee on the Rights of the Child, para. 148
[4] 9 January 2009, A/HRC/10/84, Report of the working group, para. 41
[5] 5 July 2013, A/HRC/24/8, Report of the working group, paras. 81(53), 81(54), 83(23) and 83(24)

1965 (see para. 2.2). Provisions for corporal punishment in article 29 of the Education Act 1976 possibly apply to preschool provision (see para. 2.6).

2.6 ***Schools (lawful):*** Corporal punishment is lawful 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." As at February 2012, no Ministerial directions on corporal punishment had been issued. The right "to administer reasonable punishment" in article 226 of the Penal Code 1965 also applies.

2.7 During the Universal Periodic Review of Tuvalu in 2013, the Tuvalu Director of Education reported that the Education Act had been reviewed with a view to integrating human rights concerns and that Tuvalu was addressing the issue of corporal punishment.[6] There has been no law reform to date.

2.8 ***Penal institutions (partially prohibited):*** There is no provision for corporal punishment in the Prisons Act 1985. Article 55 of the Police Powers and Duties Act 2009 prohibits corporal punishment: "A police officer must not use corporal punishment against a person who is in police custody." Corporal punishment is lawful in other penal institutions under the right "to administer reasonable punishment" in article 226 of the Penal Code 1965.

2.9 ***Sentence for crime (partially prohibited):*** There is no provision for judicial corporal punishment in the Penal Code 1965, the Criminal Procedure Code 1963, the Magistrates Court Act 1963 or the Superior Courts Act 1987, but a male child or young person may be caned under article 8(8) of the Island Courts Act 1965.

3 Recommendations by human right treaty monitoring bodies and during the UPR

3.1 ***CEDAW:*** 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.[7]

3.2 ***CRC:*** In 2013, the Committee on the Rights of the Child expressed concern at legislation authorising corporal punishment and recommended that corporal punishment be prohibited in all settings, including the home and as a sentence by the Island Courts.[8]

3.3 ***UPR:*** Tuvalu was examined in the first cycle of the Universal Periodic Review in 2008. The Government accepted the recommendation to "reform the Penal Code to cover offences such as sexual abuse against minors and to eliminate corporal punishment".[9] Following the second cycle review of Tuvalu in 2013, the Government accepted two recommendations to prohibit and eliminate corporal punishment but rejected a further two.[10]

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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[6] 5 July 2013, A/HRC/24/8, Report of the working group, para. 65
[7] 7 August 2009, CEDAW/C/TUV/CO/2, Concluding observations on initial/second report, paras. 39 and 40
[8] 4 October 2013, CRC/C/TUV/CO/1 Advance Unedited Version, Concluding observations on initial report, paras. 35, 36, 62 and 63
[9] 9 January 2009, A/HRC/10/84, Report of the Working Group, para. 68(8)
[10] 5 July 2013, A/HRC/24/8, Report of the working group, paras. 82(53), 82(54), 84(23) and 84(24)