**BRIEFING ON TUVALU FOR THE
COMMITTEE ON THE RIGHTS OF THE CHILD,
PRESESSIONAL WORKING GROUP – February 2013**

*From Peter Newell, Coordinator, Global Initiative*

*info@endcorporalpunishment.org*

**This briefing describes the legality of corporal punishment of children in Tuvalu. 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”, the recommendations on the issue by the Committee on the Elimination of Discrimination Against Women and during the UPR (accepted by the Government), and the importance of eradicating this form of violence given by the UN Secretary General’s Study on Violence against Children, we hope the Committee on the Rights of the Child will:**

* **in its List of Issues for Tuvalu, raise the issue of corporal punishment of children, in particular asking what measures have been taken towards explicitly prohibiting corporal punishment in the home and other settings?**
* **in its concluding observations on Tuvalu’s initial report, recommend that legislation is enacted to explicitly prohibit corporal punishment in all settings, including the home, as a matter of urgency, and that prohibition is enforced through appropriate public education and professional training on positive, participatory and non-violent forms of education and childrearing.**

**1 Tuvalu’s report to the Committee on the Rights of the Child**

1.1 The initial report to the Committee on the Rights of the Child (CRC) provides detailed information on legislation relating to corporal punishment of children in Tuvalu.[[1]](#footnote-1) This information concurs with the Global Initiative’s legal analysis as set out below (section 2). We note that despite the Government’s acceptance of the UPR recommendation to eliminate corporal punishment and its comments made during the review (see below, section 3), there is no indication in the report to the CRC of any moves towards prohibition or of a commitment to law reform.

**2 The legality of corporal punishment of children in Tuvalu**

2.1 *Summary:* In Tuvalu, corporal punishment is lawful in all settings – the home, schools, penal institutions, the majority of care settings and as a sentence of the Island Courts.

2.2 *Home (lawful):* The maintenance of family discipline is one of the principles of the Constitution (principle 4): “Amongst the values that the people of Tuvalu seek to maintain are their traditional forms of communities, the strength and support of the family and family discipline.” Cruelty to children is addressed in article 226 of the Penal Code, 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.” 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”. The Government has stated that this “envisages lawful corporal punishment”.[[2]](#footnote-2)

2.3 *Schools (lawful):* Article 29 of the Education Act (1976) states: “(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. Article 226 of the Penal Code also applies (see above).

2.4 *Penal system – sentence for crime (lawful):* Judicial corporal punishment is not provided for in the Penal Code, the Criminal Procedure Code, the Magistrates Court Act or the Superior Courts Act, but a male child or young person may be caned under article 8(8) of the Island Courts Act: “In lieu of any other sentence which an island court may lawfully impose on any male child [under 14] or male young person [aged 14-16], the provisions of section 6(1) [providing for imprisonment and fines] to the contrary notwithstanding, it may order his parent or guardian to cane him with a specific number of strokes of a cane not exceeding, in the case of a child, 6 strokes, and in the case of a young person, 10 strokes; and any strokes so ordered shall be administered in accordance with such regulations as may, for the time being, be in force and in the presence of a member of the island court.” Failure to carry out the order is an offence under article 8(9): “Any parent or guardian who without lawful justification or excuse fails to obey an order given under subsection (8) shall commit an offence triable summarily by an island court, or other court of competent jurisdiction, and shall be liable to a fine of $10.”

2.5 *Penal system – disciplinary measure in penal institutions (lawful):* There is no provision for corporal punishment in the Prisons Act (1985), but it is not explicitly prohibited and article 226 of the Penal Code (see above) presumably applies. It was anticipated that amendments to prison regulations following a review of police and related legislation in 2009 would include explicit prohibition of corporal punishment, but we have no further information.

2.6 *Alternative care settings (partial prohibition):* Corporal punishment is lawful in alternative care settings under article 226 of the Penal Code (see above). However, in the case of persons in the mental health wing of the hospital, the Mental Health Wing Management Regulations pursuant to the Mental Treatment Act (1927) state that attendants “shall not, on any account, punish patients … [and] shall not use harsh, or intemperate language to the patients, whatever the language or the conduct of the patients may be” (regulation 25) and “no patient shall be struck” (regulation 27).

**3 Recommendations by human rights treaty 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.[[3]](#footnote-3)

3.2 *UPR:* Tuvalu was examined in the first cycle of the Universal Periodic Review in 2008 (session 3). The Government accepted the recommendation to “reform the Penal Code to cover offences such as sexual abuse against minors and to eliminate corporal punishment”.[[4]](#footnote-4) During the review, the Government reported that corporal punishment was being addressed as part of efforts to harmonise domestic laws with international human rights standards; the Government was raising awareness on the issue and was committed to further consultation with regard to law reform.[[5]](#footnote-5)

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

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

*January 2013*

1. 10 October 2012, CRC/C/TUV/1, paras. 147-151, 189, 256, 257, 284-286, 330 [↑](#footnote-ref-1)
2. 10 October 2012, CRC/C/TUV/1, Initial report to the Committee on the Rights of the Child, para. 148 [↑](#footnote-ref-2)
3. 7 August 2009, CEDAW/C/TUV/CO/2, Concluding observations on initial/second report, paras. 39 and 40 [↑](#footnote-ref-3)
4. 9 January 2009, A/HRC/10/84, Report of the Working Group, para. 68(8) [↑](#footnote-ref-4)
5. 9 January 2009, A/HRC/10/84, Report of the Working Group, para. 4 [↑](#footnote-ref-5)