

Progress towards prohibiting all corporal punishment of children in Pacific countries

Summary

This briefing highlights the immediate human rights obligations to prohibit all violent punishment of children in the 16 Pacific Islands Forum member states and the action needed to fulfil them. It summarises progress so far towards prohibition in each state and what remains to be done. Aiming to promote national action for prohibition, it emphasises the many immediate opportunities for working to fulfil children's right to protection in law from all corporal punishment in all settings. Many Pacific states are now reforming their laws to strengthen children's protection from violence. To date one – New Zealand – has achieved prohibition of all corporal punishment including in the family; four – Fiji, Palau, Papua New Guinea and Samoa – have made a commitment to doing so.

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Why prohibit corporal punishment?

Everyone has a right to protection in law from being hit and hurt, regardless of where they are, who they are with or what the circumstances are. For children – the most vulnerable and dependent of citizens yet also the most susceptible to being assaulted – this right can be particularly difficult to experience. In many societies, the belief that physical and other humiliating punishment is a necessary part of “disciplining” children is widely held. Some people view the use of violent punishment in childrearing and education as a religious imperative. But seeing children as human beings in their own right – and due the protection of their human rights in the same way as adults are – means that corporal punishment and other violations of their physical integrity and human dignity cannot be justified.

The UN Committee on the Rights of the Child and other international and regional human rights bodies have made it very clear that all corporal punishment of children must be prohibited and eliminated, including within the family. The issue of corporal punishment has been raised – in some cases repeatedly – in the examinations by UN treaty bodies of Pacific states. Many have also received recommendations to prohibit corporal punishment during the Universal Periodic Review of their overall human rights records.

Legal protection from all corporal punishment is a right in itself. But prohibition is also critical in fulfilling children's rights to health, development and education. Experience of corporal punishment as a child is associated with poor mental health in childhood and adulthood. Physical punishment is linked to increased aggression and antisocial behaviour in children and an increased likelihood of perpetrating, experiencing and accepting violence as an adult. Corporal punishment damages family relationships and teaches children that violence is an acceptable way to resolve conflict.

Progress towards prohibition

Global progress towards prohibition is accelerating: 46 countries have prohibited all corporal punishment, including in the home. Progress in the Pacific is relatively slow, with just one state – New Zealand – prohibiting corporal punishment in the home. A further four states are committed to prohibition. Progress towards prohibition in settings outside the home is gaining pace – corporal punishment is now prohibited in schools in nine Pacific states, in penal institutions in nine states and as a sentence for crime in 12 states. Nevertheless, still only 10.3% of the Pacific child population are fully protected in law from corporal punishment.

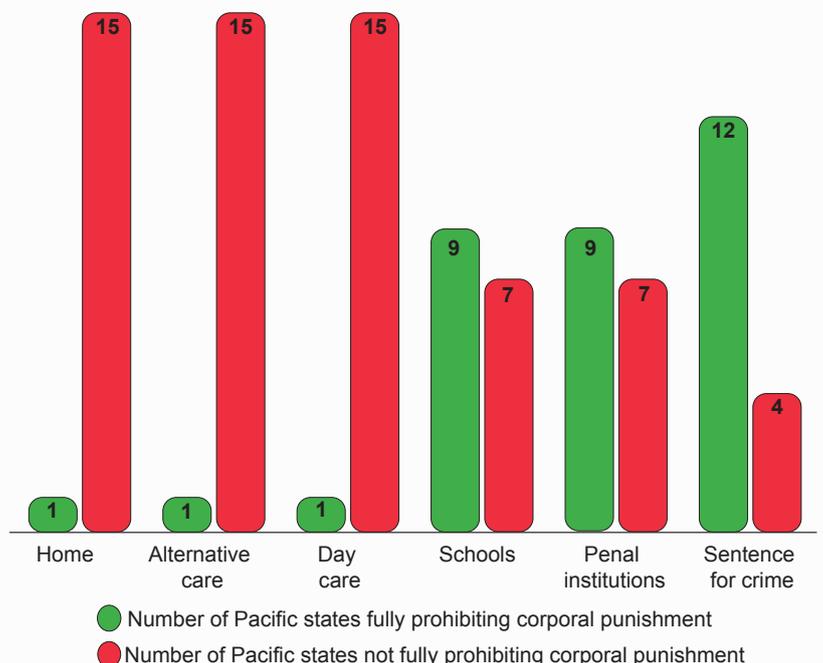


Opportunities for action in Pacific states still to achieve prohibition of all corporal punishment

Law reform to prohibit corporal punishment is achieved when legislation sends a clear message that corporal punishment, whatever level of severity and regardless of perceived impact in terms of “injury” or “harm”, is prohibited in all settings, including within the family home. The law must be absolutely clear that discipline of children must never involve physical punishment.

The deeply held view that some degree of violent punishment is necessary or even a duty in childrearing means it is not perceived as an abusive or violent act unless it reaches some level of severity. This is reflected in laws that authorise parents and others to impose “moderate” correction or “reasonable” punishment on children – provisions that typically constitute a legal defence against charges of assault. These defences must be explicitly repealed or amended so as to unequivocally rule out the use of corporal punishment as a “disciplinary” method.

The following tables identify the 15 Pacific states where children are not fully protected in law from all forms of corporal punishment. In four of these states, Governments have expressed a commitment to prohibiting all corporal punishment of children by clearly accepting recommendations to do so made during the Universal Periodic Review of their overall human rights record. The tables summarise the progress made towards prohibition in each state and what remains to be done. Crucially, they identify immediate opportunities for drafting and introducing prohibiting legislation. We welcome information on opportunities for action, as well as comments and updates: email sharon@endcorporalpunishment.org.



****States which have committed to prohibition of all corporal punishment****

State	Not fully prohibited	Opportunities for law reform and progress towards prohibition	Immediate action required to achieve full prohibition
<p>Fiji</p> 	home, alternative care, day care	Constitution 2013 protects children from “any form of violence” but not explicitly from all corporal punishment; Government indicated commitment to prohibition by clearly accepting 2014 UPR recommendation to prohibit.	Drafting and introduction of legislation prohibiting all corporal punishment, including in the home, and explicitly repealing right “to administer punishment” in Juveniles Act 1974.
<p>Palau</p> 	home, alternative care, day care, schools, penal institutions	Government indicated commitment to prohibition by clearly accepting 2011 UPR recommendations to prohibit, but Family Protection Act 2012 does not include prohibition and Penal Code 2013 introduced legal defence for use of force in “disciplining” children.	Drafting and introduction of legislation prohibiting all corporal punishment, including in the home, and explicitly repealing provisions for use of force for purposes of “discipline” in Penal Code 2013.
<p>Papua New Guinea</p> 	home, alternative care, day care, schools, penal institutions	Government indicated commitment to prohibition by clearly accepting 2011 UPR recommendations to prohibit; Family Protection Act 2013 confirms right to “freedom from violence” but does not explicitly prohibit all corporal punishment or repeal Criminal Code defence for using force “by way of correction”; Juvenile Justice Act 2014 prohibits corporal punishment in penal system; education policy introduced in 2009 states corporal punishment should not be used but no prohibition in law. Regulations under Family Protection Act are being drafted; Education Act 1983 is being revised.	Drafting and introduction of legislation prohibiting all corporal punishment, including in the home and schools, and explicitly repealing Criminal Code provision for use of force “by way of correction”. Ensure Regulations under Family Protection Act 2013 and new Education Act and Provincial Education Acts include prohibition.
<p>Samoa</p> 	home, alternative care, day care, schools	Government indicated commitment to prohibition by clearly accepting 2011 UPR recommendations to prohibit, but Crimes Act 2013 and Family Safety Act 2013 do not clearly prohibit corporal punishment or explicitly repeal right “to administer reasonable punishment” in Infants Ordinance 1961 and common law; Education Act 2009 prohibits corporal punishment for some but not all school children. Child Care and Protection Bill is under discussion but current version does not clearly prohibit all corporal punishment or explicitly repeal right “to administer reasonable punishment”.	Ensure Child Care and Protection Bill includes clear prohibition of all corporal punishment, including in the home and all schools without exception, and explicitly repeals right “to administer reasonable punishment” in Infants Ordinance 1961 and common law.

Details of legislation on corporal punishment of children in all states and territories worldwide can be found in the individual country reports prepared by the Global Initiative, available at www.endcorporalpunishment.org. For technical advice and support on reforming the law to prohibit corporal punishment, email info@endcorporalpunishment.org.

****States which have not yet committed to law reform****

State	Not fully prohibited	Opportunities for law reform and progress towards prohibition	Immediate action required to achieve full prohibition
Australia 	home, alternative care, day care, schools, penal institutions	Government promotes positive parenting but confirmed to the UN Committee on the Rights of the Child that it has taken no steps towards law reform to prohibit; widespread reform of education and early childhood legislation included prohibition in some but not all relevant settings.	Drafting and enacting of legislation prohibiting all corporal punishment, including the home and all schools, and explicitly repealing right to inflict “reasonable” punishment in state laws and common law.
Cook Islands 	home, alternative care, day care, penal institutions	Education Act 2012 prohibits corporal punishment in schools; Crimes Act Amendment Bill and Family Law Bill under discussion – no known proposals for prohibition.	Ensure Family Law Bill and Crimes Act Amendment Bill clearly prohibit all corporal punishment, including in the home, and explicitly repeal authorisation for use of force “by way of correction” in Crimes Act 1969.
Kiribati 	home, alternative care, day care, penal system	Children, Young People and Family Welfare Act 2013 and Family Peace Act for Domestic Violence 2014 do not achieve prohibition; Education Act 2013 prohibits in schools, confirming prohibition achieved in 1997. Government reported to 2015 UPR that Juvenile Justice Bill would repeal provisions for judicial corporal punishment of boys in Magistrates’ Courts Ordinance.	Drafting and enacting of legislation prohibiting all corporal punishment, including in the home and all schools, and explicitly repealing Penal Code right “to administer reasonable punishment”. Ensure Juvenile Justice Bill includes prohibition and repeals provisions for judicial corporal punishment in Magistrates’ Courts Ordinance.
Marshall Islands 	home, alternative care, day care, penal institutions	Public School System Act 2013 prohibits corporal punishment in schools, but Criminal Code 2011 provides for use of force by teachers and parents in maintenance of discipline and prevention of misconduct.	Drafting and enacting of legislation prohibiting all corporal punishment, including in the home, and explicitly repealing provision for use of force in disciplining children and preventing their misconduct in Criminal Code 2011.
Micronesia, Federated States 	home, alternative care, day care, penal institutions	Criminal Code being reviewed – no known proposals for prohibition.	Drafting and enacting of legislation prohibiting all corporal punishment, including in the home and explicitly repealing legal defences authorising discipline of children.
Nauru 	home, alternative care, day care	Education Act 2011 prohibits corporal punishment in schools; Correctional Service Act 2009 prohibits in penal institutions; Criminal Code under review.	Drafting and enacting of legislation prohibiting all corporal punishment, including in the home, and explicitly repealing Criminal Code provision for using force “by way of correction”; this could be achieved in new Criminal Code.
Niue 	home, alternative care, day care, schools	Family Protection Bill being drafted – no known proposals for prohibition.	Drafting and enacting of legislation prohibiting all corporal punishment, including in the home and schools, and explicitly repealing common law defence of “reasonable chastisement”.

****States which have not yet committed to law reform****

State	Not fully prohibited	Opportunities for law reform and progress towards prohibition	Immediate action required to achieve full prohibition
Solomon Islands 	home, alternative care, day care, schools	Government accepted 2011 recommendations to prohibit corporal punishment but defended use of “reasonable” punishment; Family Protection Act 2014 does not include prohibition and does not repeal defence for “reasonable punishment; Draft Federal Constitution 2013 expressly provides for “reasonable chastisement”.	Drafting and enacting of legislation prohibiting all corporal punishment, including in the home and schools, and explicitly repealing right “to administer reasonable punishment” in Penal Code 1963. “Reasonable chastisement” defence in Draft Federal Constitution 2013 should be removed.
Tonga 	home, alternative care, day care, penal system	Family Protection Act 2013 does not include prohibition and does not repeal “reasonable chastisement” defence; Education Act 2013 prohibits in schools, reiterating prohibition in regulations of 2002; Prisons Act 2010 prohibits in penal institutions but some legislation possibly still to be formally repealed; Government reported to UPR in 2013 it would retain judicial whipping as a deterrent and rejected UPR recommendations to prohibit in all settings.	Drafting and enacting of legislation prohibiting all corporal punishment, including in the home, and explicitly repealing common law defence of “reasonable chastisement”. Provisions in Criminal Offences Act 1926 and Magistrates’ Courts Act 1919 authorising judicial whipping of boys should be repealed.
Tuvalu 	home, alternative care, day care, schools, penal system	Government both accepted and rejected 2013 UPR recommendations to prohibit. Family Protection and Domestic Violence Act 2014 did not include prohibition or repeal “reasonable punishment” defence. The Education Act is under review and Government has said corporal punishment is being addressed.	Drafting and enacting of legislation prohibiting all corporal punishment, including in the home, and explicitly repealing Penal Code right “to administer reasonable punishment”. Provisions for corporal punishment in Island Courts Act 1965 and Education Act 1976 should be repealed. Ensure revised Education Act prohibits corporal punishment.
Vanuatu 	home, alternative care, day care, penal system	Education Act 2014 includes prohibition, reiterating prohibition in Education Act 2001; Teaching Service Act 2013 includes prohibition as “misconduct”; Young Offenders Bill possibly under discussion	Drafting and enacting of legislation prohibiting all corporal punishment, including in the home, and explicitly repealing common law defence of “reasonable punishment”. All legal provisions for judicial corporal punishment should be repealed.

“Children have rights no wit inferior to the rights of adults. Fiji has ratified the Convention on the Rights of the Child. Our Constitution also guarantees fundamental rights to every person. Government is required to adhere to principles respecting the rights of all individuals, communities and groups. By their status as children, children need special protection. Our educational institutions should be sanctuaries of peace and creative enrichment, not places for fear, ill-treatment and tampering with the human dignity of students.”

Fiji High Court, 2002

Taking action for children

Across the Pacific, violent punishment is a near universal childhood experience. Nearly all studies on the topic in the past ten years have found children experiencing corporal punishment in the family home and other settings of their lives. This has been documented in baseline reports prepared by UNICEF in many Pacific countries; analysis by UNICEF of data on child discipline in the home have found high rates of “violent discipline” (psychological aggression and/or physical punishment) of 2-14 year olds in Fiji (72%), Kiribati (81%), Solomon Islands (72%) and Vanuatu (84%).

Reforming legislation to prohibit corporal punishment provides a firm foundation for eliminating its use and transforming the lives of children. Many opportunities for prohibition exist across the region. Whenever relevant laws (e.g. on children, domestic violence, juvenile justice, education) are introduced or reviewed, the opportunities afforded to prohibit corporal punishment should not be missed. When these opportunities arise, it is vital to propose that prohibition – including the repeal of all legal defences/authorisations for the use of corporal punishment – is included in the laws and retained as the legislation passes through parliament. Every opportunity to prohibit represents a chance to fulfil children’s right to legal protection, stopping children from being hit and hurt by their parents and others.

Moving swiftly from discussion to action is key. National attention to corporal punishment (e.g. through government consultations, new research, media reports, etc) can be used to promote prohibition: proposals for law reform must be made and followed through. But it is not necessary to consult on the issue, nor is it justifiable to wait for public attitudes to change before reforming the law. Children have an immediate right to protection.

By prohibiting corporal punishment, governments and parliaments can lead the way. All over the world there is some opposition to prohibition, but the experiences of states which have achieved prohibition show that on this issue those in power must lead rather than follow public opinion. Prohibition, accompanied by appropriate measures to raise awareness of and implement the law, together with promotion of positive, non-violent forms of discipline, is the most efficient way to change attitudes and the only way to fulfil children’s right to protection in law and practice.

“The vision of a world in which violent punishment of children is universally condemned and prohibited is now within our grasp. We cannot let more generations of children suffer these obvious and deliberate violations of their rights. We must not keep children waiting.”

Paulo Sérgio Pinheiro, The Independent Expert who led the UN Study on Violence against Children



Global Initiative to

**End All Corporal Punishment
of Children**

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