

## **TONGA**

### **BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 15<sup>th</sup> session, 2013**

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Global Initiative to  
**End All Corporal Punishment  
of Children**

*Corporal punishment of children breaches their rights to respect for human dignity and physical integrity and to equal protection under the law. It is recognised by the Committee on the Rights of the Child and other treaty bodies, as well as by the UN Secretary General’s Study on Violence against Children, as a highly significant issue, both for asserting children’s status as rights holders and for the prevention of all forms of violence.*

*In June 2006, the Committee on the Rights of the Child adopted General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”, which emphasises the immediate obligation on states parties to prohibit all corporal punishment of children, including within the home. Other treaty bodies and also regional human rights mechanisms have condemned all corporal punishment. In October 2006, the report of the UN Secretary General’s Study on Violence against Children was submitted to the General Assembly. It recommends universal prohibition of all corporal punishment as a matter of priority.*

*The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, and in 2011 began briefing the Committee on the Rights of Persons with Disabilities. There is growing progress across all regions in challenging this common form of violence against children. But many States persist in ignoring treaty body recommendations to prohibit and eliminate all corporal punishment. We hope the Working Group of the UPR will give particular attention to states’ response, or lack of response, to the concluding observations from treaty bodies on this issue, as well as to the recommendations made during the first cycle of the UPR.*

**Corporal punishment of children is lawful in Tonga, despite the fact that this legality was questioned during the first cycle of the UPR and that Tonga has acceded to the Convention on the Rights of the Child.**

**We hope the Human Rights Council will note with concern the legality of corporal punishment of children in Tonga. We hope states will raise the issue during the review in 2013 and recommend to Tonga that legislation is enacted to explicitly prohibit corporal punishment of children in all settings, including the home and as a sentence for crime, as a matter of priority.**

## **1 The initial review of Tonga by the Human Rights Council (2008)**

1.1 Tonga was reviewed in the first cycle of the Universal Periodic Review in 2008 (session 2). The issue of corporal punishment of children was included in the summary of stakeholders' information<sup>1</sup> and was raised during the review by Latvia.<sup>2</sup> In response to Latvia's question about abolition of corporal punishment in all settings, Tonga replied that it was prohibited in schools and that violence against children is not tolerated in Tongan families.<sup>3</sup>

1.2 No specific recommendation on corporal punishment was made during the initial review. Nevertheless, since then Tonga has made some progress towards prohibiting it. At the time of the review in 2008, corporal punishment of children was lawful in Tonga in the home, in the penal system and in alternative care settings. Since the review, corporal punishment has been prohibited as a disciplinary measure in prisons and there have been indications of an intention to prohibit it as a sentence for crime. However, as at July 2012, children may lawfully be subjected to corporal punishment in their homes, in care settings and as a sentence under criminal law. This situation is clearly in breach of Tonga's obligations under the Convention on the Rights of the Child.

## **2 Legality of corporal punishment in Tonga**

2.1 Corporal punishment is lawful in the **home**. Article 3 of the Civil Law Act (1966, as amended 1983) states that English common law applies: this would include the "reasonable chastisement" defence. Children have limited protection from violence and abuse under the Criminal Offences Act (1926).

2.2 Corporal punishment is prohibited in **schools** in article 40 of the Education (Schools and General Provisions) Regulations (2002).

2.3 In the **penal system**, corporal punishment is lawful as a sentence for crime under article 24 of the Criminal Offences Act. Boys under 16 may be whipped up to 20 strokes "with a light rod or cane composed of tamarind or other twigs"; older males may be whipped up to 26 strokes "with a cat of a pattern approved by the Cabinet" (article 31). The punishment must be administered in one or two instalments, as specified by the Court; it is inflicted by the gaoler, in the presence of a magistrate, following certification that the offender is medically fit to undergo the punishment (article 31). For certain sexual offences, theft and robbery, whipping may be ordered at the discretion of the court in lieu of or in addition to imprisonment (article 142); for boys under 16, whipping may be ordered in lieu of imprisonment for some sexual offences (article 130). Article 30 of the Magistrates' Courts Act allows a magistrate to impose whipping on a boy aged 7-15 in lieu of any other punishment, to be inflicted by a constable or police sergeant and administered in one or two instalments, up to 10 strokes each, with "a light rod or cane composed of several tamarind or other twigs".

2.4 In 1992, in a case concerning school corporal punishment, the Supreme Court concluded that "there is no constitutional objection or barrier to corporal punishment".<sup>4</sup> However, in 2010, the Appeal Court overturned sentences of judicial whipping that had been imposed on two 17 year olds,<sup>5</sup> stating that in light of international conventions and decisions of the court

<sup>1</sup> 11 April 2008, A/HRC/WG.6/2/TON/3, Summary of stakeholders' information, para. 12

<sup>3</sup> April 2008, A/HRC/WG.6/2/FRA/3, Summary of stakeholders' information, para. 12

<sup>2</sup> 5 June 2008, A/HRC/8/48, Report of the Working Group, para. 41

<sup>3</sup> 5 June 2008, A/HRC/8/48, Report of the Working Group, para. 45

<sup>4</sup> *Uhila v Kingdom of Tonga* [1992] TOSC 4; CC 145 1991 (19 October 1992)

<sup>5</sup> *Fangupo v Rex; Fa'aoa v Rex* [2010] TOCA 17; AC 34 of 2009; AC 36 of 2009 (14 7 2010)

“it might be argued” that the provisions for whipping are now unconstitutional. The judgment also questioned the doctor’s role in certifying an offender fit for whipping. In 2010, MP and former Minister for Police Clive Edwards announced his intention to support a private members bill to abolish judicial whipping,<sup>6</sup> but there appears to have been no further progress in this regard.

2.5 Corporal punishment is explicitly prohibited as a disciplinary measure in prisons in article 66 of the Prisons Act (2010). We have yet to confirm that this effectively prohibits corporal punishment in all institutions accommodating children in conflict with the law.

2.6 Corporal punishment is lawful in **alternative care settings** under the English common law defence of “reasonable chastisement”.

### **3 Recommendations by human rights treaty monitoring bodies**

3.1 Tonga acceded to the Convention on the Rights of the Child in 1995, but has yet to be examined by the Committee on the Rights of the Child.

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<sup>6</sup> Radio New Zealand International, 19 February 2010