

Corporal punishment of children in Timor-Leste

Report prepared by the Global Initiative to End All Corporal Punishment of Children (www.endcorporalpunishment.org), last updated December 2015



Child population

616,080 (UNICEF, 2013)

Timor-Leste is committed to reforming its laws to prohibit corporal punishment in all settings.

Timor-Leste's commitment to prohibiting corporal punishment

Timor-Leste expressed its commitment to prohibiting all corporal punishment in accepting clearly the recommendation to do so made during the Universal Periodic Review of Timor-Leste in 2011.

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings, day care, schools and penal institutions.

There is no legal confirmation in criminal or civil law of a “right” or “duty” of parents to punish/discipline children, but legal provisions against violence and abuse are not interpreted as prohibiting all forms of corporal punishment in childrearing. The near universal acceptance of corporal punishment in childrearing necessitates clarity in law that no degree or kind of such punishment is acceptable or lawful. Prohibition should be enacted of all corporal punishment, including by parents, as well as the repeal of any provisions in law that might provide a legal defence for its use.

Alternative care – Prohibition should be enacted in legislation applicable to all alternative care settings (foster care, institutions, places of safety, emergency care, etc).

Day care – Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, kindergartens, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Schools – Prohibition should be enacted in relation to all education settings, public and private.

Penal institutions – Legislation should prohibit corporal punishment as a disciplinary measure in all institutions accommodating children in conflict with the law.

Detailed country report

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. Article 18 of the Constitution states that children should be protected from all forms of violence and that they “shall enjoy all rights that are universally recognised, as well as all those that are enshrined in international conventions normally ratified or approved by the State”. But legal provisions against violence and abuse are not interpreted as prohibiting all corporal punishment in childrearing.

The Penal Code 2009 punishes offences against physical integrity which cause harm and serious harm (arts. 145 and 146). Article 155(1) (Mistreatment of a minor) punishes with imprisonment “any person who provides guardianship or custody, or is responsible for the upbringing of a minor aged less than 17 years, or does so under employment, and (a) causes harm to the minor’s body or health, or inflicts physical or mental mistreatment or cruel treatment”; article 155(3) increases the penalty if the victim is a family relation (including by adoption). The Code does not provide for a “right” to discipline or punish children, but neither does it prohibit all forms of corporal punishment.

The Law Against Domestic Violence 2010 confirms the right of every person “to live without violence and the right to preserve his or her physical and mental integrity” (art. 4), and defines domestic violence as “any act or a result of an act or acts committed in a family context ... which results in or may result in harm or physical, sexual or psychological suffering, economic abuse, including threats such as acts of intimidation, insults, bodily assault, coercion, harassment, or deprivation of liberty” (art. 1) and physical violence as “any conduct which offends bodily integrity or physical health” (art. 2), but it does not explicitly prohibit all forms of “disciplinary” corporal punishment in childrearing. A new Civil Code was enacted in 2011: article 1758 states that parents have a duty “of caring for their [children’s] safety and health, providing their sustenance, directing their education, representing them, even the newly born, and managing their assets” and that “children owe obedience to their parents; parents, however, depending on the maturity of their children, shall take into account their opinion on all important family matters and recognize their autonomy in organizing their own lives”.

A draft Child Code is under discussion that provides a key opportunity for enacting prohibition of corporal punishment. In 2012, article 43 of the version as drafted for consultation stated (unofficial translation): “(1) No child shall be subjected to corporal punishment or other forms of cruel or degrading punishment, in any environment, including in his home and family environment. (2) Corporal punishment involves the use of physical force intended to cause some degree of pain or discomfort [...]. (3) They are also prohibited corporal punishment which humiliates, denigrates, threatens, frightens or ridicules the child.” Article 58 stated in paragraph 4: “In carrying out their responsibilities, parents or legal guardians, must refrain from using physical or psychological violence and favour positive methods of discipline.” By September 2013 the draft Code was pending for approval by the Council of Ministers.¹ However, by 2015 the Code had not been adopted.² Furthermore, it appears that during examination by the Committee on the Rights of the Child in 2015, the Government reported that the Code prohibits only in schools (information unconfirmed).³

¹ 22 January 2014, CEDAW/C/TLS/2-3, Second/third state party report, para. 194

² 2 October 2015, CRC/C/TLS/CO/2-3, Advance Unedited Version, Concluding observations on second/third report, para. 9

³ 2 October 2015, CRC/C/TLS/CO/2-3, Advance Unedited Version, Concluding observations on second/third report, paras. 32 and 33

Alternative care settings

There is no explicit prohibition of corporal punishment in alternative care settings. The 2012 draft of the Child Code included prohibition in all settings (art. 43), but it appears that this is not the case in the draft as under consideration in 2015 (information unconfirmed).⁴

Day care

There is no explicit prohibition of corporal punishment in early childhood care and in day care for older children. The 2012 draft of the Child Code included prohibition in all settings (art. 43), but it appears that this is not the case in the draft as under consideration in 2015 (information unconfirmed).⁵

Schools

There is no explicit prohibition of corporal punishment in schools. The Education Act 2008 appears to be silent on the issue. The draft Child Code in its 2012 version stated: “(1) The following are prohibited in schools: (a) corporal punishment; (b) psychological punishment undermining of the dignity of the child; (c) collective punishment....”⁶ It appears that under examination by the Committee on the Rights of the Child in 2015 the Government confirmed that prohibition is still included in the draft Code (information unconfirmed).⁷

In August 2015, a draft Tutelary and Education Law for Minors aged 12-16 was being finalised.⁸ We have no information on proposed provisions.

Penal institutions

Corporal punishment is considered unlawful as a disciplinary measure in penal institutions, though there appears to be no explicit prohibition. Article 167 of the Penal Code 2009 prohibits torture or other cruel, degrading or inhuman treatment – defined as “any act consisting in inflicting severe physical or psychological suffering ...” – by “any person who, having the duty to prevent, investigate and decide on any types of offence, and to enforce the respective penalties, or to protect, guard, conduct surveillance on or monitor any persons who have been detained or arrested”, but it does not prohibit all forms of corporal punishment. In 2012, consultations were held on a draft Law on Juvenile Justice which included prohibition of corporal punishment (art. 172, unofficial translation): “(1) Implementing measures which result in cruel, inhuman, degrading treatment or endanger the physical or mental health of the young is prohibited. (2) The application of disciplinary action may not, under any circumstances, directly or indirectly, result in corporal punishment, deprivation of food or the right to receive visitors...; (3) No disciplinary action can be executed in violation of respect for the dignity of the young person.” Corporal punishment would also be explicitly prohibited in article 43 of the draft Child Code (see under “Home”). However, in August 2015, the Government reported that this law was to be split into two – a draft Law on Tutelary and Education Law for Minors aged 12-16 (see above) and a draft Law on a Special Penal Regime for Minors aged 16-21 was being prepared.⁹ We have yet to confirm that these drafts include explicit prohibition of corporal punishment.

⁴ 2 October 2015, CRC/C/TLS/CO/2-3, Advance Unedited Version, Concluding observations on second/third report, paras. 32 and 33

⁵ 2 October 2015, CRC/C/TLS/CO/2-3, Advance Unedited Version, Concluding observations on second/third report, paras. 32 and 33

⁶ Draft quoted in [November 2013], CRC/C/TLS/2-3, Second/third state party report, para. 209

⁷ 2 October 2015, CRC/C/TLS/CO/2-3, Advance Unedited Version, Concluding observations on second/third report, paras. 32 and 33

⁸ 19 August 2015, CRC/C/TLS/Q/2-3/Add.1, Reply to list of issues, para. 60

⁹ 19 August 2015, CRC/C/TLS/Q/2-3/Add.1, Reply to list of issues, paras. 57 and 60

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. The Constitution prohibits the use of torture and cruel, inhuman or degrading treatment, and there is no provision for judicial corporal punishment in the Penal Code 2009.

Universal Periodic Review of Timor-Leste's human rights record

Timor-Leste was examined in the first cycle of the Universal Periodic Review in 2011 (session 12). During the review, the Government stated that it had adopted a “zero-tolerance policy” on corporal punishment in schools and “it was affirmed that Timor-Leste regards corporal punishment as a form of ill-treatment and that the Children’s Code, when adopted, will prohibit such punishment in all settings”.¹⁰ The following recommendations were made and were accepted by the Government:¹¹

“Persist in its efforts to eradicate corruption, corporal punishment of children, discrimination against women and domestic violence (Holy See);

“Adopt a specific legislation to explicitly prohibit all forms of corporal punishments (Brazil)”

Examination in the second cycle is scheduled for 2016.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(2 October 2015, CRC/C/TLS/CO/2-3 Advance Unedited Version, Concluding observations on second/third report, paras. 32 and 33)

“The Committee notes that the draft Children’s Code prohibits corporal punishment in schools and also provides for mandatory reporting obligations with respect to child abuse within or outside the school. The Committee welcomes the information in the report of the State party about measures taken by the Ministry of Education to investigate complaints of corporal punishment in schools. The Committee, however, is concerned that corporal punishment is widely accepted in society as a way for disciplining children and remains lawful until now in schools, as well as in the home and residential institutions. It is also concerned about the lack of data on the number of incidents of corporal punishment in all settings.

“In line with its general comment No. 8 (2006) on the right of the child to protection from corporal punishment, and general comment No. 13 (2011) on the right of the child to freedom from all forms of violence, the Committee recommends that the State party:

- a) adopt the Children’s Code and amend its legislation to explicitly prohibit corporal punishment in all settings, including the family, schools and institutions;
- b) promote positive, non-violent and participatory forms of child-rearing and discipline as an alternative to corporal punishment, and expand parenting education programmes and training for principals, teachers, and other professionals working with and for children; and
- c) strengthen and expand its efforts through awareness-raising campaigns to inform the public in general about the negative impact of corporal punishment on children and actively involve children and the media in the process.”

¹⁰ 3 January 2012, A/HRC/19/17, Report of the working group, para. 48

¹¹ 3 January 2012, A/HRC/19/17, Report of the working group, paras. 77(26) and 77(27)

Committee on the Rights of the Child

(14 February 2008, CRC/C/TLS/CO/1, Concluding observations on initial report, paras. 40, 41, 42 and 43)

“The Committee welcomes the State party’s accession to the Convention against Torture and other Cruel, Inhuman or Degrading Punishment or Treatment, but is concerned at allegations concerning cases of degrading treatment of children by the police and in the prison system.

“The Committee urges the State party to strictly observe the minimum standards prescribed by the above Convention and to ensure that no child is subjected to inhumane or degrading treatment of any kind.

“The Committee is concerned at reports that corporal punishment is a common phenomenon at home and is frequently used to discipline children at school and in other educational settings.

“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 Committee recommends that the State party explicitly prohibit corporal punishment in all settings, including through awareness-raising campaigns aimed at families, the school system and other educational settings.”

Committee on the Elimination of Discrimination Against Women

(20 November 2015, CEDAW/C/TLS/CO/2-3, Concluding observations on second/third report, para. 26)

“The Committee welcomes that the State party is taking steps to ensure equal access to education for girls. The Committee also welcomes that in 2011 the Ministry of Education initiated a ‘Zero Tolerance’ policy against administrative malpractice in the education sector covering sexual violence, corporal punishment, and other forms of violence in schools but regrets the lack of its effective implementation....”

Committee on the Elimination of Discrimination Against Women

(7 August 2009, CEDAW/C/TLS/CO/1, Concluding observations on initial report, paras. 35 and 36)

“... the Committee is concerned ... that corporal punishment is accepted in both school and home settings and constitutes a form of violence against children, including the girl child.

“... The Committee recommends that the State party explicitly prohibit corporal punishment in all settings, including through awareness-raising campaigns aimed at families, the school system and other educational settings.”

Prevalence/attitudinal research in the last ten years

Research carried out in 2004/5 by the Ministry of Education and Culture, the Ministry of Labour and Community Reinsertion, UNCEF and Plan International, examined the attitudes and practices of teachers and parents towards discipline of children. Self administered questionnaires were completed by 168 students and interviews were carried out with 1,031 parents and 31 community leaders; focus group discussions were held separately with students, parents, children who lived in residential care, and residential care staff. Over two thirds of children (67%) reported being beaten with a stick by teachers, and 39% slapped on the face by teachers. Three out of five (60%) reported being beaten with a stick by their parents. Almost two thirds of parents (63%) felt it acceptable to yell violently at a child; 39% said it was acceptable to beat a child with a stick, and just over a third considered other physical punishments such as ear twisting and face slapping acceptable.

(UNICEF (2006), *Speak Nicely to Me – A Study on Practices and Attitudes about Discipline of Children in Timor-Leste*)

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www.endcorporalpunishment.org; info@endcorporalpunishment.org
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