

Corporal punishment of children in Timor-Leste: Briefing for the Universal Periodic Review, 40th session, 2022

From the Global Partnership to End Violence Against Children, July 2021



This submission provides an update on the legality of corporal punishment of children in Timor-Leste since its review in the second cycle UPR in 2016. Corporal punishment prohibition is still to be fully achieved in the home, alternative care settings and day care.

The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.

In Timor-Leste, corporal punishment of children is lawful, despite recommendations to prohibit it by the Committee on the Rights of the Child and during the 1st and 2nd cycle UPR of Timor-Leste , respectively in 2011 and 2016.

We hope the Working Group will note with concern the legality of corporal punishment of children in Timor-Leste. We hope states will raise the issue during the review in 2022 and make a specific recommendation that Timor-Leste enact a legislation to clearly prohibit all corporal punishment of children in every setting of their lives and repeal any legal defence allowing its use, as a matter of priority.

1 Review of Timor-Leste in the 2nd cycle UPR (2016) and progress since

- 1.1 Timor-Leste was reviewed in the second cycle of the Universal Periodic Review in 2016 (session 26). Recommendations to prohibit corporal punishment in all settings were made and accepted by the Government.¹
- 1.2 Since the review, no progress was made to enact a legislation to explicitly prohibit corporal punishment of children in all settings. A draft Child Code which aims to prohibit corporal punishment in all settings has been in under discussion since 2011. In the National Action Plan for Children 2016-2020, the Government committed to adopt the Child Code and amend its legislation to explicitly prohibit corporal punishment in all settings, including the family, by 2018.

¹ 9 March 2017, A/HRC/34/11/Add.1, Report of the Working Group, Addendum, para. 5

- 1.3 We hope the Working Group will note with concern the legality of corporal punishment of children in Timor-Leste. We hope states will raise the issue during the review in 2022 and make a specific recommendation that Timor-Leste intensify its efforts to enact the Child Code to clearly prohibit all corporal punishment of children, however light, in every setting of their lives, as a matter of urgency.

2 Legality of corporal punishment in Timor-Leste

Summary of current law and opportunities for achieving prohibition

Corporal punishment of children in Timor-Leste is lawful in the home, alternative care, 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 repeal of any provisions in law that might provide a legal defence for its use. for its use.

- 2.1 **Home (lawful):** 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.
- 2.2 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”.

2.3 A draft Child Code under discussion 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.² However, by 2015 the Code had not been adopted.³ 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).⁴ In the National Action Plan for Children 2016-2020, the Government committed to adopt the Child Code and amend its legislation to explicitly prohibit corporal punishment in all settings, including the family, by 2018.

2.4 **Alternative care settings (lawful):** 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).⁵

2.5 **Day care (lawful):** 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).⁶

2.6 **Schools (lawful):** There is no explicit prohibition of corporal punishment in schools. The Education Act 2008 appears to be silent on the issue. The Government reported to the Universal Periodic Review in August 2016 that a “Zero tolerance” policy had been put in place by the Ministry of Education in schools throughout the country, stating that a person inflicting corporal punishment on a child would be removed from their position.⁷ The Office of the Provedor for Human Rights and Justice reported in 2017 that a Teachers’ Code of Conduct has been drafted and includes a prohibition of the use of corporal punishment by teachers and other educational staff (guideline 24.2).⁸ This is policy, not law, and it is unclear what scope this Code of Conduct has. Explicit prohibition of all corporal punishment in all educational

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

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

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

⁷ 22 August 2016, A/HRC/WG.6/26/TLS/1, National report, paras. 16 and 73

⁸ October 2017, Report to the Committee Against Torture by the Office of the Provedor for Human Rights and Justice (PDHJ)

settings must be enacted in legislation.

2.7 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....”⁹ 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).¹⁰ In August 2015, a draft Tutelary and Education Law for Minors aged 12-16 was being finalised.¹¹ We have no information on proposed provisions.

2.8 **Penal institutions (lawful):** 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.¹² Reporting to the Universal Periodic Review in 2016, the Government referred to a Draft Law on Punitive-Educational Measures for Minors which would create a special criminal regime for juveniles and was in the final stage of review.¹³ We have yet to confirm that these drafts include explicit prohibition of corporal punishment.

2.9 **Sentence for crime (unlawful):** 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.

3 Recommendations by human rights treaty bodies

⁹ Draft quoted in [November 2013], CRC/C/TLS/2-3, Second/third state party report, para. 209

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

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

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

¹³ 22 August 2016, A/HRC/WG.6/26/TLS/1, National report, para. 24; and 15 November 2016, A/HRC/WG.6/26/L.8, Draft report of the Working Group, para. 19

- 3.1 **CAT:** In its 2017 concluding observations on the state party's initial report, the Committee Against Torture expressed concern at corporal punishment of children and recommended the Government enact legislation to explicitly and clearly prohibit corporal punishment in all settings.¹⁴
- 3.2 **CEDAW:** The Committee on the Elimination of Discrimination Against Women expressed concern at the fact that corporal punishment is accepted in both school and home settings recommended that the Government introduce legislation to explicitly prohibit corporal in all settings, in its concluding observations on the state party's initial report in 2009.¹⁵
- 3.3 **CRC:** The Committee on the Rights of the Child has expressed concern at corporal punishment of children in Timor-Leste and recommended it be explicitly prohibited in all settings – in its concluding observations on the state party's initial report in 2008,¹⁶ and in the state party's second-third report in 2015.¹⁷

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¹⁴ 15 December 2017, CAT/C/TLS/CO/1, Concluding observations on initial report, paras. 6, 22, 23, 40 and 41

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

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

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