

Corporal punishment of children in Samoa

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Child population 85,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Summary of necessary legal reform to achieve full prohibition

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

Article 14 of the Infants Ordinance 1961 confirms “the right of any parent, teacher, or other person having the lawful control or charge of a child to administer reasonable punishment to such child”. The near universal acceptance of a certain level of violence in childrearing means that in the absence of explicit prohibition corporal punishment would be seen as “reasonable”. This provision should be explicitly repealed, so that there is clarity in the law that no degree or kind of corporal punishment can be considered “reasonable” or lawful, and prohibition should be enacted of all corporal punishment of children by all persons with authority over them.

Alternative care settings – Prohibition should be enacted of all corporal punishment in 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, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Schools – Corporal punishment should be prohibited in all education settings, including private schools and in education for all children under the age of 18.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. Article 12 of the Infants Ordinance 1961, as amended in 2013, provides for the protection of children from ill-treatment and neglect, but article 14 states: “Nothing in this Part of this Ordinance shall be construed to take away or affect the right of any parent, teacher, or other person having the lawful control or charge of a child to administer reasonable punishment to such child.” Provisions against violence and inhuman and degrading treatment in the Crimes Act 2013 and the Constitution 1960 are not interpreted as prohibiting corporal punishment in childrearing.

The Crimes Act 2013 does not provide a specific defence for the use of corporal punishment but states generally that common law defences apply to charges under the Act (art. 11). The Family Safety Act 2013 protects children and adults from domestic violence and defines physical abuse as “any act or threatened act of physical violence, injury, torture, or inhumane punishment towards a complainant” (art. 2). However, while it amends the ill-treatment provisions in the Infants Ordinance 1961 to apply to children under 18 rather than under 14, it does not repeal the right “to administer reasonable punishment”.

A review of existing relevant legislation and consultation on reform was published by the Law Reform Commission in 2009.¹ The review addressed the issue of corporal punishment and noted that the Convention on the Rights of the Child requires prohibition. In February 2013, the Law Reform Commission published its final report: the Commission recommends extending the prohibition in schools to cover private schools (see under “Schools”) but delaying prohibition in the home until awareness raising and training has been carried out at village level.² A legislative review in connection with a baseline report published in 2013 confirms that corporal punishment is not prohibited in the home and that protection for children from violence is undermined by the right “to administer reasonable punishment” in the Infants Ordinance 1961.³

The Government had initially indicated its commitment to prohibiting corporal punishment in all settings by accepting Universal Periodic Review recommendations to do so in 2011.⁴ In 2016, the Government noted a recommendation to prohibit corporal punishment in all settings, stating that work to achieve prohibition in all settings – homes, schools and alternative care – was ongoing.⁵ The final report of the National Inquiry into family violence, published in September 2018, stated that “a ban on corporal punishment is not only possible but (...) the programmes required for it to be effective are often based on fundamental Fa’asamoa principles and the costs are easily covered by the savings they create. Furthermore, all of the arguments for the continued use of corporal punishment have been found to be false or without substance”.⁶ The report went on to recommend that the Government “strengthen the ban on corporal punishment in schools” instead of weakening

¹ Samoa Law Reform Commission (2009), *Care and protection legislation to protect children: Issues Paper IP 03/09*

² Samoa Law Reform Commission (2013), *Child care and protection legislation: Final report 11/13*, paras. 3.1-3.17

³ Ministry of Women, Community and Social Development, *Legislative compliance of Samoa in relation to international child protection standards – FULL REPORT*, prepared for MWCSO (2013), *Child Protection Baseline Report for Samoa*, MWCSO/Australian Aid/UNICEF

⁴ 11 July 2011, A/HRC/18/14, Report of the working group, paras. 74(20), 74(21) and 74(22)

⁵ 5 September 2016, A/HRC/33/6/Add.1, Report of the working group: Addendum, para. 16

⁶ 2018, Samoa Office of the Ombudsman and National Human Rights Institution, *National Public Inquiry into Family Violence in Samoa*, page 35

it and “gradually move to ban corporal punishment and harsh verbal punishment in homes”.⁷ The Global Initiative no longer considers Samoa committed to prohibiting all corporal punishment of children without delay, as in 2019 the Government amended legislation prohibiting the use of 'reasonable force' in secondary schools (see under “Schools”).

A Child Care and Protection Bill is under discussion. During the Universal Periodic Review of Samoa in 2016, the Government stated that the Childcare Protection Bill 2013 seeks to prohibit corporal punishment.⁸ The Bill as drafted in 2013 would repeal Part III of the Infants Ordinance, which includes the right “to administer reasonable punishment”, but this would be a “silent” reform: it does not explicitly prohibit all corporal punishment in childrearing. The Government reported to the Committee on the Rights of the Child that a new bill – the Child Care and Protection Bill 2016 – is being finalised.⁹ We have yet to see the text of this Bill. An Infants Amendment Bill is also under discussion: it does not address the issue of corporal punishment or explicitly repeal the defence.

Alternative care settings

Corporal punishment is lawful in alternative care settings under the right “to administer reasonable punishment” in article 14 of the Infants Ordinance 1961 (see under “Home”). The Child Care and Protection Bill 2013 version would remove this right but does not clearly prohibit all corporal punishment. It sets out standards for approved carers in article 35: “(1) All approved carers and care service providers must take reasonable steps to ensure a child placed in their care under this Act is cared for in a way that meets all of the following standards – (a) the child’s dignity and rights will be respected at all times; ... (g) the child will receive positive guidance when necessary to help him or her to change inappropriate behaviour.... (3) For the purposes of subsection (1)(G), techniques for managing the child’s behaviour must not include punishment that humiliates, frightens or threatens the child in a way that is likely to cause emotional harm.” We have yet to see the text of the Child Care and Protection Bill 2016.

Day care

Corporal punishment is prohibited in early childhood centres under the Education Act 2009 (art. 23, see under “Schools”), but it is lawful in other early childhood care and in day care for older children under the right “to administer reasonable punishment” in article 14 of the Infants Ordinance 1961 (see under “Home”).

Schools

Corporal punishment is prohibited in government primary schools (ages 5 to 13, information unconfirmed) in article 23 of the Education Act 2009. This prohibition previously covered all government schools but the Education Amendment Act 2019 overturned this for secondary schools by amending article 23(3): “Discipline – (1) Every school and early childhood education centre must have a discipline policy. (2) A discipline policy must not include or permit the use of (a) corporal punishment; (b) any form of punishment that may cause harm to the recipient; or (c) any form of punishment that humiliates or is intended to humiliate the recipient. (3) Despite subsection (2), any

⁷ 2018, Samoa Office of the Ombudsman and National Human Rights Institution, *National Public Inquiry into Family Violence in Samoa*, pp. 46-47

⁸ 5 September 2016, A/HRC/33/6/Add.1, Report of the working group, para. 16

⁹ 8 April 2016, CRC/C/WSM/Q/2-4/Add.1, List of issues, para. 18

teacher for a secondary school is justified in using reasonable force on a child attending the school that teacher teaches in, if the force is used in a reasonable circumstance which includes but is not limited to: (a) preventing or minimising harm to the child or another person; or (b) preventing the child from engaging or continuing to engage in conduct that amounts to a criminal offence; or (c) preventing the child from engaging or continuing to engage in threatening, offensive or disruptive behaviour. (3A) For the purpose of subsection (3) the use of any object by a teacher to impose force does not amount to reasonable force. (3B) A teacher who uses an object to impose force under this section is liable to being charged with an offence under the Crimes Act 2013. (4) A person employed at an early childhood education centre must not administer corporal punishment to any child at the early childhood education centre or during any activity organised by the early childhood education centre.”

In December 2017, Prime Minister Tuila'epa Sa'ilele Malielegaoi had declared that the Government was considering enacting legislation to reintroduce corporal punishment in all schools.¹⁰ A Bill to amend section 23 of the Education Act was introduced to Parliament in June 2018. The Government stated at the time that the amendment would allow teachers to use “reasonable force” only to break up school fights and that “the use of corporal punishment to discipline a student [would] still [be] prohibited”.¹¹ However, the Bill was reported in the media as a reintroduction of corporal punishment in schools in response to “public requests”.¹² Both Supreme Court judge and former Committee on the Rights of the Child member Vui Clarence Nelson and Maiava Iulai Toma, head of the National Human Rights Institution, condemned this move by the Government. Maiava Iulai Toma specifically called on the government not to act on this Bill before reviewing a report on domestic violence and abuse.¹³ The report from the National Inquiry into family violence, published in September 2018, called on the Government to strengthen the ban on corporal punishment in schools instead of weakening it.¹⁴ The Education Amendment Act 2019 introduced in article 23(3)(c) an exception for secondary schools teachers to use “reasonable force” to prevent a child “from engaging or continuing to engage in threatening, offensive or disruptive behaviour”.

According to the 2009 Act, compliance with article 23 is a requirement for registration of private and mission schools (art. 31(b)). However, the Law Reform Commission has reported that private schools are not covered under the Act and has recommended that prohibition be extended to cover private schools.¹⁵ The Act also does not prohibit corporal punishment in government secondary schools.

In its legislative review on compliance with international child protection standards, the Government questioned the prohibition in light of the right “to administer reasonable punishment” in the Infants

¹⁰ See <https://www.radionz.co.nz/international/pacific-news/345432/samoa-govt-says-it-could-bring-back-corporal-punishment>, accessed 20 December 2017

¹¹ 28 August 2018, CEDAW/C/WSM/Q/6/Add.1, Reply to list of issues, paras. 55 and 56

¹² See <https://www.radionz.co.nz/international/pacific-news/362424/don-t-pick-on-samoa-tuilaepa-to-child-rights-experts>, accessed 1 August 2018

¹³ See “Opposition to reinstating corporal punishment in Samoa”, <https://www.radionz.co.nz/international/programmes/datelinepacific/audio/2018661581/opposition-to-reinstating-corporal-punishment-in-samoa>, accessed 27 September 2018

¹⁴ 2018, Samoa Office of the Ombudsman and National Human Rights Institution, *National Public Inquiry into Family Violence in Samoa*, pp 38-39; see also “Demand on Govt. to act to stamp out family violence”, http://www.sobserver.ws/en/17_09_2018/local/36841/Demand-on-Govt-to-act-to-stamp-out-family-violence.htm, accessed 27 September 2018

¹⁵ Samoa Law Reform Commission (2013), *Child care and protection legislation: Final report 11/13*, paras. 3.1-3.17

Ordinance 1961:¹⁶ “It is not clear how the Education Act prohibition on corporal punishment can be reconciled with s14 of the Infants Ordinance 1961 which states: (with reference to punishment for illtreatment and neglect of children) —Nothing in this Part of this Ordinance shall be construed to take away or affect the right of any parent, teacher, or other person having the lawful control or charge of a child to administer reasonable punishment to such child. This provision was not amended or repealed by the Education Act 2009.”

In following up the Education Act, the Ministry of Education, Sports and Culture produced *Behaviour Management Guidelines: A Guide for Schools – Improving student behaviour and welfare* (2011) aimed at implementing the prohibition of corporal punishment and other humiliating punishments in schools through the promotion of positive discipline techniques and the creation of a safe, no-violent school environment.¹⁷ A Teachers Bill is under discussion, but as at July 2015 it made no reference to corporal punishment.

Penal institutions

Corporal punishment is unlawful as a disciplinary measure in penal institutions. The Young Offenders Act 2007 allows for young people aged 10-16 to be sent to residential institutions and prison but does not address disciplinary measures in these institutions. However, the Prisons and Corrections Act 2013 explicitly prohibits corporal punishment, including for “young prisoners” (under 18), in article 42: “(1) No prisoner is to be subjected, by way of punishment, to the following: (a) corporal punishment in any form....” In 2014, Prisons Regulations under the Act were being developed.¹⁸ A Criminal Procedure Bill is under discussion (2015).

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in the Criminal Procedure Act 1972 (amended 2004) or the Young Offenders Act 2007. Article 7 of the Constitution 1960 (amended 2000) provides for freedom from torture or inhuman or degrading treatment or punishment.

Universal Periodic Review of Samoa’s human rights record

Samoa was examined in the first cycle of the Universal Periodic Review in 2011 (session 11). The following recommendations were made and were accepted by the Government, which stated that they were already implemented or in the process of implementation:¹⁹

“Implement fully the recommendations of the Committee on the Rights of the Child, including by taking measures to address the issue of child labour, prohibiting corporal punishment, and

¹⁶ Ministry of Women, Community and Social Development, *Legislative compliance of Samoa in relation to international child protection standards – FULL REPORT*, prepared for MWCSO (2013), *Child Protection Baseline Report for Samoa*, MWCSO/Australian Aid/UNICEF

¹⁷ Ministry of Women, Community & Social Development (2013), *Child Protection Baseline Report for Samoa 2013*, UNICEF Pacific

¹⁸ Office of the Attorney General – Samoa (2014), *PILON report*

¹⁹ 11 July 2011, A/HRC/18/14, Report of the working group, paras. 74(20), 74(21) and 74(22)

raising the minimum age of criminal responsibility to an internationally acceptable level (Slovenia);

“Ban corporal punishment as a disciplinary measure in schools and in homes, and conduct awareness campaigns so as to reduce the scope of such action (Norway);

“Design policies which strengthen the rights of the child, and in that regard, sensitize the population to end corporal punishment and child labour (Spain)”

Samoa was examined in the second cycle of the Universal Periodic Review in 2016 (session 25). The following recommendation was made:²⁰

“Amend its laws to prohibit corporal punishment of children in all settings and circumstances, and take further steps to eradicate child labour and guarantee the right to education of all children (Ireland)”

The Government “noted” the recommendation, and said the Childcare Protection Bill 2013, which contains a legislative and policy framework for the care and protection of children, and would domesticate the Convention on the Rights of the Child in its entirety, also seeks to prohibit corporal punishment.²¹ It further stated that work to achieve prohibition in all settings including the home is ongoing for Samoa.

Examination in the third cycle is scheduled for 2021.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(3 June 2016, CRC/C/WSM/CO/2-4, Concluding observations on second-fourth report, paras. 30 and 31)

“The Committee notes with appreciation that the Education Act of 2009 prohibits corporal punishment in the schools. It also notes a number of measures, including the National Violence-Free School Policy, the Minimum Service Standards for primary and secondary schools and training for teachers on the ban of the corporal punishment. However, the Committee is seriously concerned that corporal punishment:

- a) despite being outlawed in schools and in early childhood settings, is not prohibited in other settings such as family, alternative care and private schools;
- b) is reportedly still widely used in schools and by caregivers due to the traditional beliefs and attitudes on disciplinary measures;
- c) is not clearly prohibited under the Crimes Act 2013 and Family Safety Act 2013, which do not explicitly repeal the “right to administer reasonable punishment” in the Infants Ordinance 1961.

“The Committee recommends that the State party:

- a) revise its existing legislation and ensure that the Child Care and Protection Bill explicitly prohibit all forms of corporal punishment in all settings, including at home, in the community, at schools and justice system without any exception;

²⁰ 27 June 2016, A/HRC/33/6, Report of the working group, para. 96(38)

²¹ 5 September 2016, A/HRC/33/6/Add.1, Report of the working group, para. 16

- b) explicitly repeal clauses related to the “right to administer reasonable punishment” in the Infants Ordinance 1961 as a matter of priority;
- c) immediately and effectively implement the Education Act 2009 prohibiting corporal punishment in schools and the National Violence-Free School Policy, and in this regard, strengthen teacher training on positive discipline and ensure that the Behaviour Management Guidelines are part of the teacher service training programmes;
- d) strengthen complaints mechanism in schools so that children can safely and confidentially report teachers who continue to use corporal punishment;
- e) strengthen awareness raising programmes, trainings and other activities to promote the change of mind set with regard to corporal punishment, particularly in schools, family and on the community level.

Committee on the Rights of the Child

(16 October 2006, CRC/C/WSM/CO/1, Concluding observations on initial report, paras. 35 and 36)

“The Committee is concerned that corporal punishment in the family, in schools and in alternative care settings is not formally prohibited and widely practised.

“The Committee recommends that the State party introduce and enforce legislation prohibiting all forms of corporal punishment in all settings, including in the family and the alternative childcare system and in this respect the Committee fully supports the actions planned by the State party. Furthermore, the Committee recommends that the State party conduct awareness-raising campaigns to ensure that alternative forms of discipline are administered in a manner consistent with the child’s human dignity and in conformity with the Convention, especially article 28, paragraph 2, and take into account its general comment No. 8 on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (CRC/GC/2006/8).”

Committee on the Elimination of Discrimination Against Women

(9 November 2018, CEDAW/C/WSM/CO/6 Advance unedited version, Concluding observations on sixth report, paras. 29 and 30)

“The Committee ... is, however, concerned that:

(f) Corporal punishment is culturally accepted and practised in schools and that the Infants Ordinance (1961) allows “reasonable punishment” by teachers, notwithstanding the prohibition under the section 23 of the Education Act;

“In line with its General Recommendation No. 36 (2017) on the right of girls and women to education, the Committee recommends that the State party:

(f) Repeal section 14 of the Infants Ordinance (1961) to explicitly prohibit corporal punishment at school and ensure that the prohibition of corporal punishment is adequately monitored and enforced; and strengthen teacher training to promote non-violent forms discipline”

Committee on the Elimination of Discrimination Against Women

(7 August 2012, CEDAW/C/WSM/CO/4-5, Concluding observations on fourth/fifth report, para. 28)

“ ... [The Committee noted] the adoption by the State party in 2009 of the Education Act providing zero tolerance for corporal punishment in schools....”

Prevalence/attitudinal research in the last ten years

In a survey conducted in 2013, 77% of adults said they “hit, smack, kick, pinch or dong children’s heads or pull their ears”, with 60.6% saying this is “to discipline and educate” the child; 51.4% of children said an adult at home has hit, smacked, kicked, pinched or dinged their heads or pulled their ears within the past year; 46.9% said this has not happened. In schools, 41% of children said a teacher has physically hurt them in the past year (most often when the child did not do their homework), but an unusually high number of “don’t know” responses suggests this number may actually be higher. In contrast to its prevalence, only 0.2% of responses from adults, children and community and religious leaders stated that hitting and smacking children is one of the best ways to discipline children.

(UNICEF & AusAid (2013), *Child Protection Baseline Report for Samoa*, Suva: UNICEF Pacific)