

Corporal punishment of children in Sao Tome and Principe

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Child population 94,000 (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 and day care; prohibition in schools and penal institutions requires confirmation.

Article 86 of Act No. 2/77 confirms a right of parents to punish their children. The near universal acceptance of a certain degree of violence in childrearing necessitates clarity in law that no degree of corporal punishment is acceptable or lawful. The right to punish should be repealed and prohibition of all corporal punishment should be enacted in relation to parents and all those with parental authority.

Alternative care settings – 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 – Confirmation that corporal punishment is prohibited in schools by law is required.

Penal institutions – Confirmation that corporal punishment is prohibited in penal institutions is required.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. Article 86 of the Family Law No. 2/77 confirms the right of parents to punish children “appropriately and moderately”. Provisions against violence and abuse in the Domestic Violence Law 2008,¹ the Law reinforcing protection for victims of domestic violence 2008² and the Constitution 2003³ are not interpreted as prohibiting all corporal punishment in childrearing. The Penal Code 2012 punishes cruelty against children (under 16) by parents, guardians and others charged with the care, custody or education of the child (art. 152): it does not explicitly prohibit all corporal punishment in childrearing.

The Family Law is being revised and a draft has been approved by the Government and sent to the National Assembly: it does not appear that the draft will achieve complete prohibition of corporal punishment. The Juvenile Justice Law and other laws related to child protection are also under review; we have no further information.⁴

The Government had initially indicated its commitment to law reform in 2011 by accepting the recommendation made during the Universal Periodic Review (UPR) of Sao Tome and Principe to prohibit corporal punishment in all settings.⁵ This commitment had been reaffirmed by accepting similar recommendations in the 2015 UPR.⁶ However, the Global Initiative no longer considers Sao Tome and Principe committed to prohibiting all corporal punishment of children without delay, as the Government has not taken any clear action since then to indicate that it intends to pursue law reform.

Alternative care settings

There is no explicit prohibition of corporal punishment in alternative care settings. Corporal punishment is lawful under the right to punish children “appropriately and moderately” in article 86 of the Family Law (see under “Home”).

Day care

There is no explicit prohibition of corporal punishment in early childhood care and in day care for older children. The right of parents to punish children “appropriately and moderately” in article 86 of the Family Code (see under “Home”) presumably applies to all person with parental authority. A draft framework law on the reform of early education is being discussed but it does not appear that prohibition of corporal punishment is being proposed in this context.

¹ Law No. 11/2008

² Law No. 12/2008

³ Law No. 1/2003

⁴ Information provided to the Global Initiative, March 2017.

⁵ 16 March 2011, A/HRC/17/13, Report of the working group, paras. 64(49) and 64(50)

⁶ 13 November 2015, A/HRC/WG.6/23/L.13 Advance Unedited Version, Draft report of the working group, paras. 5(61), 5(63) and 5(67)

Schools

Corporal punishment is reportedly unlawful in schools, but we have no details of applicable legislation.

Penal institutions

Corporal punishment is considered unlawful as a disciplinary measure in penal institutions but we have yet to identify prohibiting legislation.

Sentence for crime

Corporal punishment appears to be unlawful as a sentence for crime. The Constitution prohibits torture and other cruel, inhuman or degrading treatment or punishment. However, we have yet to examine details of provisions in the Law on sentencing and incarceration measures 2003,⁷ the Penal Code, the Code of Criminal Procedure 1929 or the new Code of Criminal Procedure 2010.⁸

Universal Periodic Review of Sao Tome and Principe's human rights record

Sao Tome and Principe was examined in the first cycle of the Universal Periodic Review in 2011 (session 10). The following recommendations were made and were accepted by the Government:⁹

“Prohibit corporal punishment by law, protect victims and punish perpetrators (Germany);

“Enact legislation that legally prohibits corporal punishment of children in all settings, including at home and in care institutions (Hungary).”

Examination in the second cycle took place in 2015 (session 23). The following recommendations were made and were accepted by the Government:¹⁰

“Remove any rule authorizing corporal punishment and incorporate effective sanctions for such practices, as well as carry out general awareness-raising campaigns against ill-treatment of children that emphasize the peaceful resolution of violent relationships (Chile);

“Prohibit all corporal punishment of children in all settings and repeal the right to punish children ‘appropriately and moderately’ in the Family Law (Estonia);

“Enact without delay legislation for the protection of children, such as prohibition of corporal punishment under any circumstances, and to swiftly work towards the ratification of the human rights instruments to which São Tomé and Príncipe has earlier committed itself, namely the ICCPR; the ICESCR, the ICERD, the CAT, and the Rome Statute of the International Criminal Court (Netherlands)”

A recommendation was also made by Costa Rica but was not formally recorded as such.¹¹

⁷ Law No. 3/2003

⁸ Law No. 5/2010

⁹ 16 March 2011, A/HRC/17/13, Report of the working group, paras. 64(49) and 64(50)

¹⁰ 13 November 2015, A/HRC/WG.6/23/L.13 Advance Unedited Version, Draft report of the working group, paras. 5(61), 5(63) and 5(67)

¹¹ 13 January 2016, A/HRC/31/17, Report of the working group, para. 39

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(29 October 2013, CRC/C/STP/CO/2-4, Concluding observations on second-fourth report, paras. 6 and 7)

“While welcoming the State party’s efforts to implement the Committee’s concluding observations of 1 July 2004 on the State party’s initial report (CRC/C/15/Add.235), the Committee notes with regret that some of the recommendations contained therein have not been fully addressed.

“The Committee urges the State party to take all necessary measures to address the recommendations in the concluding observations (CRC/C/15/Add.235) that have not been implemented or sufficiently implemented, and in particular, it recommends and urges the State party to: ...

d) amend the current legislation to explicitly prohibit corporal punishment in all settings, including in the home, schools and other childcare settings, defining what constitutes ill-treatment and prohibiting such practices in all settings; carry out public education campaigns on the negative consequences of ill-treatment of children and promote positive, non-violent forms of discipline as an alternative to corporal punishment, in light of article 28, paragraph 2, of the Convention.”

Committee on the Rights of the Child

(1 July 2004, CRC/C/15/Add.235, Concluding observations on initial report, paras. 33 and 34)

“The Committee is deeply concerned that corporal punishment in the family, in schools and other institutions occurs and is still lawful in certain circumstances. The Committee is further concerned that domestic legislation contains no definition of ill-treatment.

“The Committee recommends that the State party:

a) amend the current legislation to prohibit corporal punishment in all places, including in the family, in schools and other childcare settings;

b) amend the current legislation so as to provide a definition of what constitutes ill-treatment and to prohibit such practices in all settings;

c) carry out public education campaigns about the negative consequences of ill-treatment of children and promote positive, non-violent forms of discipline as an alternative to corporal punishment, in light of article 28(2) of the Convention.”

Prevalence/attitudinal research in the last ten years

Research conducted in 2014 as part of UNICEF’s Multiple Indicator Cluster Surveys (MICS) programme found 80% of 1-14 year-old children experienced some form of violent “discipline” (psychological aggression and/or physical punishment) in the month prior to the survey. The survey found 64% of children experienced psychological aggression, 69% physical punishment and 10% severe physical punishment (hit or slapped on the face, head or ears, or hit repeatedly). The use of physical punishment did not vary much with the sex of the child, but violent discipline was more common in the poorest households (82%) than the richest (75%). Only 10% of children experienced only non-violent forms of discipline.

(National Institute of Statistics (2016), *Sao Tome and Principe Multiple Indicator Cluster Survey 2014, Final Report*, São Tomé, Sao Tome and Principe: National Institute of Statistics)