



End Violence  
Against Children



End Corporal  
Punishment

# Corporal punishment of children in Timor-Leste

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Child population 581,000 (UNICEF, 2015)

## 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 and again in 2016.

## 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.

## 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 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.<sup>1</sup> However, by 2015 the Code had not been adopted.<sup>2</sup> 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).<sup>3</sup>

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.

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

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

<sup>3</sup> 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).<sup>4</sup>

## 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).<sup>5</sup>

## Schools

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.<sup>6</sup> 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).<sup>7</sup> 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 settings must be enacted in legislation.

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...”<sup>8</sup> 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).<sup>9</sup>

In August 2015, a draft Tutelary and Education Law for Minors aged 12-16 was being finalised.<sup>10</sup> 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.”

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

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

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

<sup>7</sup> October 2017, Report to the Committee Against Torture by the Office of the Provedor for Human Rights and Justice (PDHJ)

<sup>8</sup> Draft quoted in [November 2013], CRC/C/TLS/2-3, Second/third state party report, para. 209

<sup>9</sup> 2 October 2015, CRC/C/TLS/CO/2-3, Advance Unedited Version, Concluding observations on second/third report, paras. 32 and 33

<sup>10</sup> 19 August 2015, CRC/C/TLS/Q/2-3/Add.1, Reply to list of issues, para. 60

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.<sup>11</sup> 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.<sup>12</sup> We have yet to confirm that these drafts include explicit prohibition of corporal punishment.

### 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”.<sup>13</sup> The following recommendations were made and were accepted by the Government:<sup>14</sup>

“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 took place in 2016 (session 26). The following recommendations were made:<sup>15</sup>

“Step up measures to fight violence against children, particularly through the implementation of the prohibition of all corporal punishment in all settings, including within the family, in alternative care settings and schools, as set out in the Draft Children’s Code (Brazil)”

“Increase its investment in education so that future generations are better able to engage in the social and economic development of the country and to further take steps to eradicate corporal punishment in schools (New Zealand)”

The Government accepted both recommendations.<sup>16</sup>

Timor-Leste will be examined in the third cycle in 2021.

## 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

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<sup>11</sup> 19 August 2015, CRC/C/TLS/Q/2-3/Add.1, Reply to list of issues, paras. 57 and 60

<sup>12</sup> 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

<sup>13</sup> 3 January 2012, A/HRC/19/17, Report of the working group, para. 48

<sup>14</sup> 3 January 2012, A/HRC/19/17, Report of the working group, paras. 77(26) and 77(27)

<sup>15</sup> 15 November 2016, A/HRC/WG.6/26/L.8, Draft report of the Working Group, paras. 89(98) and 89(148)

<sup>16</sup> 9 March 2017, A/HRC/34/11/Add.1, Report of the Working Group, Addendum, para. 5

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.”

### *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 Against Torture*

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

“The Committee commends the State party’s initiatives to amend its policies and procedures in order to afford greater protection of human rights and to apply the Convention, in particular: ...

(b) The adoption of the national action plan for children’s rights (2016–2020), which calls for the issue of corporal punishment to be addressed”

“... The Committee regrets that the delegation did not provide information regarding the Committee’s concern at reports that all new prisoners are subjected not only to solitary confinement for several days, but also to regular beatings and/or degrading treatment by prison staff as a form of initiation (arts. 2, 11 and 16).

“The State party should:

(a) Undertake an independent investigation into allegations that new prisoners are routinely beaten by prison staff within the first days of arrival at all of the State party’s detention facilities and ensure that allegations of torture or ill-treatment revealed by that investigation result in the prosecution and punishment of perpetrators, as well as disciplinary sanctions where warranted;

(b) Bring its legislation and practice into line with international standards, particularly rules 43–46 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), which state, inter alia, that practices such as placement of a prisoner in a dark cell and corporal punishment shall be prohibited in all circumstances; that solitary confinement should be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to authorization by a competent authority; that solitary confinement shall not be imposed by virtue of a prisoner’s sentence; and that the use of solitary confinement and similar measures in cases involving women and children is prohibited;

(c) Ensure that high-level officials communicate to all employees of the prison service that the infliction of corporal punishment on prisoners amounts to torture or ill-treatment, will not be tolerated and will result in disciplinary or criminal penalties against perpetrators and superiors who order, instigate, or consent or acquiesce to such practices.”

“While noting that the Ministry of Education has adopted a zero-tolerance policy on violence against children in educational settings, the Committee is concerned by the fact that corporal punishment of children in the home, school and alternative care and day-care settings is not yet explicitly prohibited under national law and that it remains widespread (arts. 2 and 16).

“The State party should amend and/or enact legislation so as to explicitly and clearly prohibit corporal punishment in all settings and take the measures necessary to prevent such punishment, including through strict enforcement of the Ministry of Education’s guidelines on classroom discipline. It should encourage non-violent forms of discipline as alternatives to corporal punishment and conduct public information campaigns to raise awareness about the harmful effects of such punishment.”

#### *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

A report by Save the Children Australia in 2019 found violence against children in the Pacific had reached “endemic” levels, particularly in relation to violent discipline in the home, which ranges from 70% to 87%. It found that more than 4 million children across the region experience violent discipline in the home – including over 612,000 children in Timor-Leste.

(Save the Children Australia (2019), *Unseen, Unsafe: The Underinvestment in Ending Violence against Children in the Pacific and Timor-Leste*)

[End Corporal Punishment](#) is a critical initiative of the [Global Partnership to End Violence Against Children](#). Previously known as The Global Initiative to End All Corporal Punishment of Children, we act as a catalyst for progress towards universal prohibition and elimination of corporal punishment of children. We track global progress, support and hold governments to account, partner with organisations at all levels, and engage with human rights treaty body systems.