

Corporal punishment of children in Timor-Leste: Briefing for the Universal Periodic Review, 26th session, 2016

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Global Initiative to
**End All Corporal Punishment
of Children**

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 repeated recommendations to prohibit it by the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination Against Women, and the recommendation made during the 1st cycle UPR of Timor-Leste in 2011 (accepted by the Government).

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 2016 and make a specific recommendation that Timor-Leste clearly prohibit all corporal punishment of children in all settings including the home.

1 Review of Timor-Leste in the 1st cycle UPR (2011) and progress since

- 1.1 Timor-Leste was reviewed in the first cycle of the Universal Periodic Review in 2011 (session 12). The issue of corporal punishment of children was raised in the compilation of UN information¹ and the summary of stakeholders' information.² The Government accepted the recommendation to explicitly prohibit all forms of corporal punishment.³
- 1.2 Since the initial review of Timor-Leste in 2011, progress has been made towards prohibiting corporal punishment though the necessary law reform has not yet been achieved: the legality of corporal punishment of children in Timor-Leste today is the same as it was in 2011. A Child Code was drafted in 2012 which included prohibition in all settings; however, the Code was not tabled in Parliament. A draft Child Code is currently under discussion but it appears that now it includes prohibition of corporal punishment only in schools.
- 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 2016 and make a specific recommendation that Timor-Leste clearly prohibit all corporal punishment of children in all settings, including the home.**

¹ 25 July 2011, A/HRC/WG.6/12/TLS/2, Compilation of UN information, para. 33

² 22 July 2011, A/HRC/WG.6/12/TLS/3, Summary of stakeholders' information, para. 16

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

2 Legality of corporal punishment in Timor-Leste

Summary of current law and immediate opportunities to achieve prohibition

Corporal punishment of children in Timor-Leste is unlawful in the penal system but it is not prohibited in the home, alternative care settings, day care and schools. A draft Children's Code is under discussion which provides an immediate opportunity for prohibiting all corporal punishment.

- 2.1 **Home (lawful):** 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.
- 2.2 The Penal Code 2009 punishes offences against physical integrity which cause harm and serious harm (arts. 145 and 146). Article 155 punishes mistreatment of a minor and increases the penalty if the victim is a family relation. The Code does not provide for a “right” to discipline or punish children, but neither does it prohibit all forms of corporal punishment. Similarly, some protection from violence is afforded by the Law Against Domestic Violence 2010 and the Civil Code 2011, but neither clearly prohibits all corporal punishment in childrearing.
- 2.3 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 included clear prohibition of all corporal punishment, including in the home. By September 2013 the draft Code was pending for approval by the Council of Ministers.⁴ However, by 2015 the Code had not been adopted.⁵ Furthermore, 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).⁶
- 2.4 **Alternative care settings (lawful):** There is no explicit prohibition of corporal punishment.
- 2.5 **Day care (lawful):** There is no explicit prohibition of corporal punishment in early childhood care and in day care for older children.
- 2.6 **Schools (lawful):** There is no explicit prohibition of corporal punishment. The Education Act 2008 is silent on the issue.
- 2.7 **Penal institutions (unlawful):** Corporal punishment is considered unlawful as a disciplinary measure in penal institutions. 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”.
- 2.8 In 2012, consultations were held on a draft Law on Juvenile Justice which included prohibition of corporal punishment. In 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 and a draft Law on a Special

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

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

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

Penal Regime for Minors aged 16-21 was being prepared:⁷ we have yet to confirm that these drafts include explicit prohibition of corporal punishment.

2.9 *Sentence for crime (unlawful)*: There is no provision for judicial corporal punishment in criminal law.

3 Recommendations by human rights treaty bodies

3.1 *CRC*: The Committee on the Rights of the Child has twice recommended to Timor-Leste that all corporal punishment of children be prohibited in all settings, including the home – in its concluding observations on the state party's initial report in 2008⁸ and more recently on the second/third report in 2015.⁹

3.2 *CEDAW*: In 2009, the Committee on the Elimination of Discrimination Against Women recommended to Timor-Leste that corporal punishment of children be explicitly prohibited in all settings.¹⁰ In 2015, the Committee focused on corporal punishment in schools, expressing concern at the lack of effective implementation of the policy against corporal punishment.¹¹

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, and since 2011 the Committee on the Rights of Persons with Disabilities.

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

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

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

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

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