

Ending family violence in Timor-Leste – confronting physical punishment of girls and boys



Information for the Committee on the Elimination of Discrimination Against Women from the Global Initiative to End All Corporal Punishment of Children (www.endcorporalpunishment.org), September 2015

Introduction: family violence in Timor-Leste and CEDAW’s examination of the second/third state party report

In 2009, the Committee on the Elimination of Discrimination Against Women recommended to Timor-Leste that corporal punishment of children be prohibited in all settings. In 2011, the Government expressed its commitment to prohibiting all corporal punishment by accepting a recommendation to do so made during the Universal Periodic Review. A draft Child Code has been prepared which since 2012 has included clear prohibition of all corporal punishment. Yet today physical punishment of children, including of the girl child, remains lawful: the necessary legal protections have still not been put in place. There can be no justification for delaying this most fundamental protection for women and girls – and all children – by adopting legislation clearly prohibiting all violent punishment.

We hope the Committee on the Elimination of Discrimination Against Women will raise the issue of violent punishment of girls and boys in its examination of Timor-Leste. In particular, we hope the Committee will:

- **in its concluding observations on the second/third state party report, welcome the commitment of Timor-Leste to prohibiting corporal punishment but express concern that its previous recommendation to prohibit corporal punishment in all settings has not yet been fulfilled and urge the state party to ensure that clear prohibition of all corporal punishment is retained in the new Child Law and to expedite its adoption as a matter of urgency.**

The remainder of this briefing provides the following further details:

1. Information provided to CEDAW by Timor-Leste in respect of corporal punishment
 2. The current law relating to family violence and corporal punishment of children in Timor-Leste and immediate opportunities for reform
 3. Treaty body and UPR recommendations on the issue made to Timor-Leste to date.
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1 Information provided by Timor-Leste to CEDAW in respect of corporal punishment

1.1 The second/third report of Timor-Leste describes the “zero-tolerance” approach to violence in schools, including corporal punishment, and notes that similar policies exist in relation to other settings.¹ The issue is not included in the list of issues nor the Government’s replies. We note that in its previous concluding observations, in 2009, the Committee recommended that Timor-Leste “explicitly prohibit corporal punishment in all settings, including through awareness-raising

¹ 22 January 2014, CEDAW/C/TLS/2-3, Second/third state party report, p. 10 and paras. 199, 203 and 204

campaigns aimed at families, the school system and other educational settings”.²

1.2 Under international law, the right of every person not to be subjected to violence entails protection in law as well as through other measures. Just as it would be unacceptable for protection for women from domestic violence to be set out in policy but not in legislation, so too it is not enough for a state to adopt policies against corporal punishment of children while retaining laws which are silent on the issue. Clear prohibition of corporal punishment in law is a necessary foundation for all other initiatives aimed at eliminating it in practice.

2 Laws on domestic violence and corporal punishment of children in Timor-Leste and immediate opportunities for prohibiting violent punishment of girls and boys

Summary

2.1 In Timor-Leste, legal reform has strengthened prevention of and protection from domestic violence, but it has so far failed to prohibit all violent punishment of children at the hands of their parents: the promotion of homes free from violence continues to be undermined by an inadequate legislative framework. Legislation has been drafted which includes prohibition but it has not yet been enacted.

Detail

2.2 Domestic violence is prohibited under criminal law – except when it is inflicted on children in the guise of “discipline”. 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 corporal punishment in childrearing.

2.3 The Penal Code 2009 punishes offences against physical integrity which cause 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. But the Code does not prohibit all corporal punishment.

2.4 Protecting children from violent punishment in the home in Timor-Leste requires clear prohibition of all corporal punishment. A draft new Child Code is under discussion which in 2012 included the necessary prohibition but has not yet progressed through parliament. The Code should be introduced and enacted as a matter of priority.

3 Recommendations by human right treaty monitoring bodies and during the UPR

3.1 Timor-Leste has received recommendations to prohibit corporal punishment from the Committee on the Elimination of Discrimination Against Women (2009),³ the Committee on the Rights of the Child (2008)⁴ and during the UPR (2011).⁵ The Government accepted the UPR recommendation.

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

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

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

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