

**BRIEFING ON TIMOR-LESTE FOR THE
COMMITTEE ON THE RIGHTS OF THE CHILD,
PRESESSIONAL WORKING GROUP – February 2015**

*From Dr Sharon Owen, Research and Information Coordinator, Global Initiative*

*info@endcorporalpunishment.org*

**This briefing describes the legality of corporal punishment of children in Timor-Leste. 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’s previous recommendations on the issue and recommendations made during the UPR in 2011 (accepted by the Government), the importance of eradicating this form of violence given by the UN Secretary General’s Study on Violence against Children and the opportunities for enacting prohibiting legislation presented by current law reforms in Timor-Leste, we hope the Committee will:**

* **in its List of Issues for Timor-Leste, raise the issue of corporal punishment of children, in particular asking what progress has been made to ensure that the draft Children’s Code includes prohibition of all corporal punishment, including in the home,**
* **in its concluding observations on the second/third report of Timor-Leste, recommend that prohibition of all corporal punishment in the home and all other settings be included in the draft Children’s Code and that the Code be approved and adopted as a matter of priority.**

**1 The report of Timor-Leste to the Committee on the Rights of the Child**

1.1 The second/third report of Timor-Leste to the Committee on the Rights of the Child describes a number of measures aimed at eradicating corporal punishment in schools, including the prohibition of corporal punishment in schools in the draft Children’s Code.[[1]](#footnote-1) However, in relation to corporal punishment in the home, the report says only that parents have been prosecuted for “excessive” corporal punishment and “excessive” discipline.[[2]](#footnote-2)

1.2 The inclusion in the draft Children’s Code of prohibition of corporal punishment in schools is to be welcomed. The absence in the report of any reference to a provision in the Code prohibiting corporal punishment in the home and all other settings is a matter for concern. The most recent version of the draft Children’s Code seen by the Global Initiative is the 2012 version that was released for consultation. This version included clear prohibition of corporal punishment in the home and all settings, stating in article 43: “ (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.” Our recent attempts to obtain the current draft have been unsuccessful. We are concerned that the lack of any reference to prohibition in the home in the report before the Committee on the Rights of the Child might indicate that this has been dropped from the draft Children’s Code.

1.3 We note that in 2011, the Government of Timor-Leste indicated its commitment to prohibiting corporal punishment in all settings by clearly accepting the recommendation to do so made during the UPR of Timor-Leste (see below, para. 3.3).

**1.4 We hope the Committee will strongly recommend that the Government of Timor-Leste ensures that prohibition of corporal punishment in all settings, including the home, is included in the draft Children’s Code and that the Code is approved and adopted as a matter of priority.**

**2 The legality of corporal punishment of children in Timor-Leste**

2.1 ***Summary:*** 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.

2.2 ***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.

2.3 The Penal Code 2009 punishes offences against physical integrity which cause harm and serious harm (arts. 145 and 146). Article 155(1) 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 heath, 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.

2.4 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”.

2.5 ***Alternative care settings (lawful):***There is no explicit prohibition of corporal punishment in alternative care settings.

2.6 ***Day care (lawful):***There is no explicit prohibition of corporal punishment in early childhood care and in day care for older children.

2.7 ***Schools (lawful):*** There is no explicit prohibition of corporal punishment in schools. The Education Act 2008 appears to be silent on the issue (unconfirmed). The draft Child Code states: “(1) The following are prohibited in schools: (a) corporal punishment; (b) psychological punishment undermining of the dignity of the child; (c) collective punishment….”[[3]](#footnote-3)

2.8 ***Penal institutions (unlawful):***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.”

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

**3 Recommendations by human rights treaty bodies and during the UPR**

3.1 ***CRC:*** In 2008, the Committee on the Rights of the Child recommended to Timor-Leste that corporal punishment be prohibited in all settings.[[4]](#footnote-4)

3.2 ***CEDAW:*** In 2009, the Committee on the Elimination of Discrimination Against Women recommended that corporal punishment of children in Timor-Leste be prohibited in all settings, including the family and schools.[[5]](#footnote-5)

3.3 ***UPR:*** Timor-Leste was examined in the first cycle of the Universal Periodic Review in 2011 (session 12). During the review, the Government stated 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”.[[6]](#footnote-6) The Government accepted recommendations to explicitly prohibit and eradicate corporal punishment of children.[[7]](#footnote-7)

*Briefing prepared by the Global Initiative to End All Corporal Punishment of Children*

[*www.endcorporalpunishment.org*](http://www.endcorporalpunishment.org)*;* *info@endcorporalpunishment.org*

*October 2014*

1. [November 2013], CRC/C/TLS/2-3, Second/third state party report, paras. 92 and 209-213 [↑](#footnote-ref-1)
2. ibid., para. 94 [↑](#footnote-ref-2)
3. Draft quoted in [November 2013], CRC/C/TLS/2-3, Second/third state party report, para. 209 [↑](#footnote-ref-3)
4. 14 February 2008, CRC/C/TLS/CO/1, Concluding observations on initial report, paras. 40, 41, 42 and 43 [↑](#footnote-ref-4)
5. 7 August 2009, CEDAW/C/TLS/CO/1, Concluding observations on initial report, paras. 35 and 36 [↑](#footnote-ref-5)
6. 3 January 2012, A/HRC/19/17, Report of the working group, para. 48 [↑](#footnote-ref-6)
7. 3 January 2012, A/HRC/19/17, Report of the working group, paras. 77(26) and 77(27) [↑](#footnote-ref-7)