

Prohibiting corporal punishment of children in Central Asia, South East Asia and the Pacific

PROGRESS REPORT 2014



Following up the UN Secretary General's Study on Violence against Children

“The dignity of each and every individual is the fundamental guiding principle of international human rights law.”

Committee on the Rights of the Child, General Comment No. 8, 2006



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Note on facts and figures

The Global Initiative bases its analyses on a total of 198 states, all those that have ratified the UN Convention on the Rights of the Child except Holy See, plus Palestine, Somalia, South Sudan, Taiwan, US and Western Sahara. Child population figures are from UNICEF and other sources (see country reports on pages 33 to 80).

Messages



Marta Santos Pais

Special Representative of the
Secretary General on Violence
against Children

The elimination and effective prohibition of all forms of violence against children was a key recommendation of the United Nations Study on Violence against Children and remains a high priority for my mandate. As Special Representative of the Secretary General, I am a strong advocate of explicit and effective legislation banning all forms of violence against children, ensuring the protection of child victims and fighting impunity. Strong laws prohibiting violence are indispensable to promote a culture of respect for children's rights and constitute a critical dimension of a robust national child protection system.

This new joint report by the Global Initiative to End All Corporal Punishment of Children and Save the Children on progress in South East and Central Asia and the Pacific in the prevention and elimination of all forms of violence against children is a significant contribution to the global efforts aiming at the prevention and elimination of this child rights violation. As the report shows, countries in South East and Central Asia and the Pacific have adopted important measures to strengthen the protection of children's rights and to prohibit corporal punishment in different settings. Although a number of nations still allow corporal punishment in the home by parents and other caregivers, I firmly believe that progressive developments made so far provide a sound basis to stimulate debate and support legislative reforms to secure children's legal protection from violence in all its forms, and in all settings.



Kirsten Sandberg

Chair, UN Committee on the
Rights of the Child

Violence in any form is a violation of children's rights, not to be excused by the aim of making them abide by the norms of the family or of society. Children who are hit by their parents report that they feel humiliated and frightened. It makes them afraid of the persons who should be the ones to provide security and love. Physical punishment makes children lose confidence in their parents and in themselves, and leaves them uncertain of whether their parents actually love them. A light slap or smack is no exception.

In addition to these harmful effects, the use of corporal punishment, whether by parents, schools or institutions, teaches children that violence is a way to solve problems and to make other people do as you wish. Raising children in that way upholds a culture of violence in society.

Instead children should be raised by positive measures, training them how to interact with other people in constructive ways. In its dialogue with states the Committee on the Rights of the Child repeatedly raises the issue of corporal punishment. The Committee asks of all states that they prohibit this violation of children's rights and urges them to promote non-violent forms of disciplining children. I strongly hope that the present report will influence states in the region to make progress in this important area.



Professor Paulo Sérgio Pinheiro

The Independent Expert
who led the UN Secretary
General's Study on Violence
against Children

I well remember the Regional Consultation for the East Asia and Pacific Region, held in Bangkok in 2005 during the UNSG's Violence Study process. A lengthy private meeting with child participants left me in no doubt of the tragic impact of physical punishment inflicted on them so routinely by parents, teachers and others across the region. I was also left in no doubt of children's expectations: that because the UN recognised their equal right to respect for their dignity and physical integrity, prohibition and elimination of violent punishment would come quickly....

My 2006 report to the UN General Assembly asserted that the Study should mark a turning point – “an end to adult justification of violence against children, whether accepted as ‘tradition’ or disguised as ‘discipline’. There can be no compromise in challenging violence against children...”.

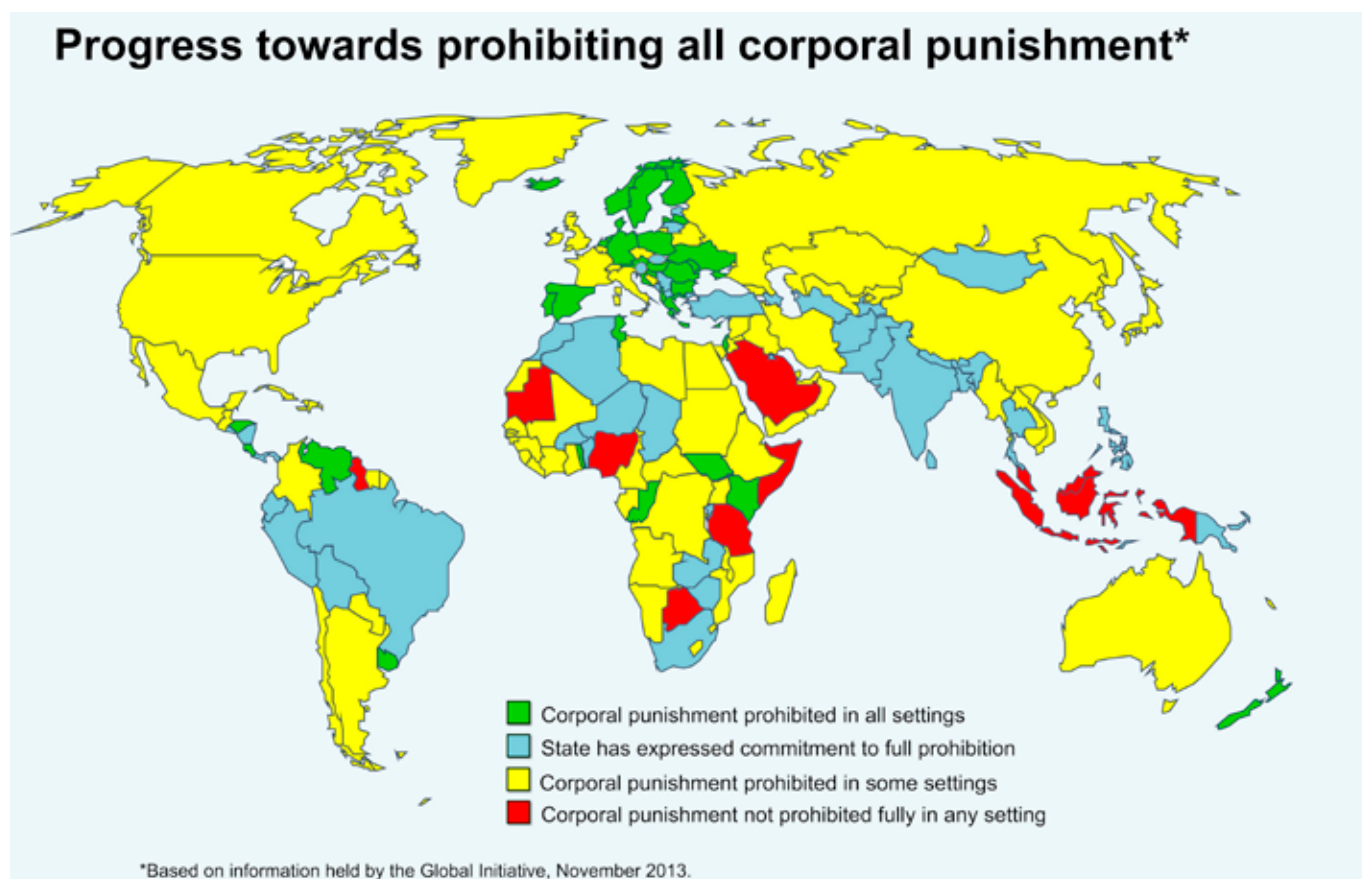
Seven years have passed – a long time in the life of a child – and the systematic documentation by the Global Initiative in this “progress” report shows how far we still are from ending this legalised, still socially-approved violence. It is welcome that globally the number of states to have prohibited all violent punishment of their children has doubled from 16 to 33 since I presented my report in 2006, and many more have abolished state-authorised violent punishment in their schools and penal systems. But given the strong human rights consensus asserting the obligation to prohibit and eliminate all violent punishment, and the repeated and clear recommendations from UN treaty bodies and in the Universal Periodic Review, surely we should demand rapidly accelerating progress?

The report illustrates how many immediate opportunities there are to achieve a clear ban in relevant legislation being planned or before parliaments, including in laws against family violence, surely the most obvious vehicle for protecting children from violent assault whether in the guise of “discipline” or for any other reason; this must be seen as a call to active and effective advocacy. As my report concluded: “None of us can look children in the eye if we continue to approve or condone any form of violence against them.”

Prohibiting corporal punishment – progress in the region and globally

The near universal and deep rooted acceptance of physical punishment in childrearing and education makes the enactment of legislation prohibiting it – together with the adoption of measures to implement the law and eliminate corporal punishment in practice – a challenging task. But the firmly established human rights imperative to prohibit corporal punishment, the repeated recommendations from the Committee on the Rights of the Child and other UN treaty bodies, the prominence of the issue in the Universal Periodic Review of states' overall human rights records, the strong recommendation to prohibit coming from the UN Study on Violence against Children in 2006 and the focused action on following up the UN Study in all regions, must surely make us question why this fundamental human right is enjoyed by so few of the world's children. Why are so many opportunities being missed to prohibit corporal punishment when relevant legislation is reviewed and replaced? Why are laws being enacted – including in the region covered by this report – which enshrine a “right” to impose violent punishment on children?

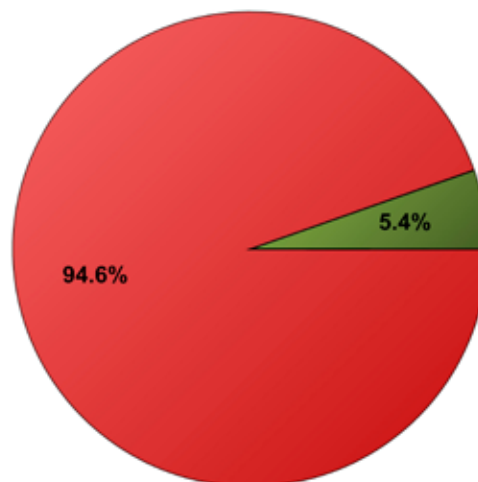
The region covered by this report is one of the most active in terms of introducing or reforming child-related laws (see the country reports on pages 33 to 80). The widespread and immediate opportunities for enacting prohibiting legislation have the potential to transform millions of children's lives. We hope this report will clarify issues, inspire action and support all those working for and with children in the region to advocate strongly to fulfil their right to full legal protection from violent punishment.



Progress worldwide

States in all regions are reforming their laws to protect children from corporal punishment. A growing number of states are fulfilling their obligations under international human rights law by ensuring that children are protected from violent punishment in all settings, including the family home. Others are enacting legislation to prohibit corporal punishment in specific settings outside the home – in schools, care settings, detention centres, etc. As at December 2013, 34 states have prohibited corporal punishment of children in all settings, including the home. Prohibition has been achieved in all alternative care settings in 40 states, in all schools in 121 states, in penal institutions in 125 states and as a sentence for crime in 159 states.

Percentage of global child population legally protected from all corporal punishment



■ Fully protected in law ■ Not fully protected in law

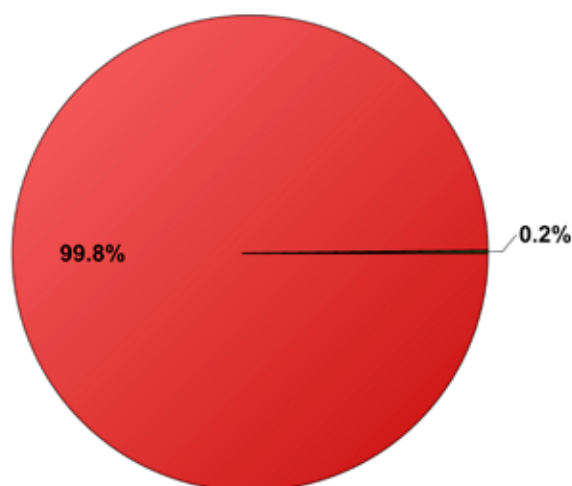
Progress in the region

Only one state in the region – New Zealand – has prohibited corporal punishment of children in all settings, including the home. (One UK territory – Pitcairn Islands – has also achieved this for its few children.)

But there has been progress in prohibiting corporal punishment of children outside the home. Of the 48 states and territories in the region, 40 have prohibited corporal punishment as a sentence for crimes committed by children (30 states, 10 territories), 29 as a disciplinary measure in penal institutions (22 states, 7 territories), 24 in all schools (21 states, 3 territories) and 2 in all alternative care settings (1 state, 1 territory).

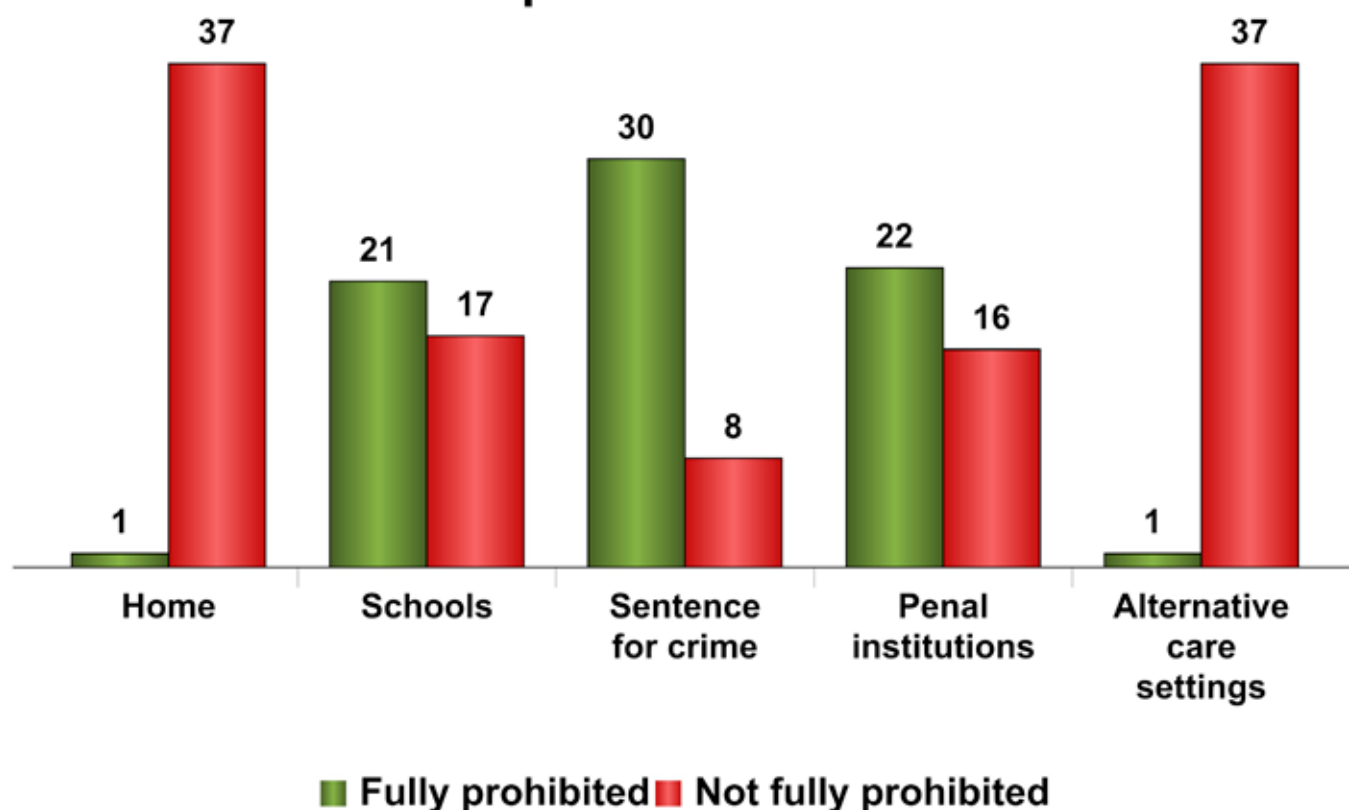
But there is much to be done: 24 states/territories have yet to prohibit corporal punishment in all their schools, 46 in all care settings and 19 in penal institutions. Eight states have not yet abolished corporal punishment as a sentence for crime. Corporal punishment by parents and other carers is still lawful in 46 states and territories.

Percentage of child population in the region legally protected from all corporal punishment

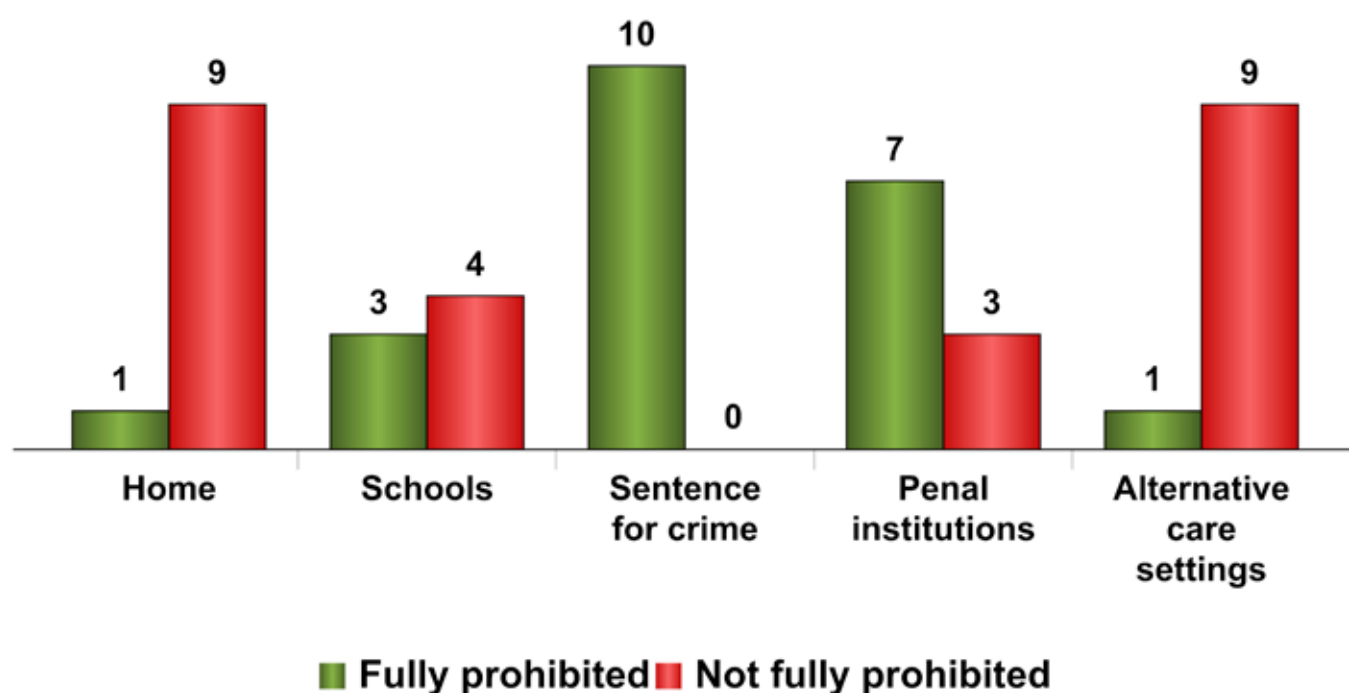


■ Fully protected in law ■ Not fully protected in law

Number of states in the region prohibiting corporal punishment



Number of territories in the region prohibiting corporal punishment



Moving – and not moving – towards law reform

Recent years have seen variable progress towards prohibition of corporal punishment in the region and a mixed response to recommendations on the issue made during the Universal Periodic Reviews (UPRs) of states' compliance with their human rights obligations in this respect. The following summary shows both encouraging and disappointing developments since 2010. For further information, see the UPR section on pages 11 to 15 and the country reports on pages 33 to 80.

Positive developments

Between 2010 and December 2013, the following states enacted legislation which explicitly prohibits corporal punishment in some settings outside the home:

- **Australia** – Corporal punishment is prohibited in approved education and care services in the Victoria Education and Care services National Law Act 2010, the Northern Territory Education and Care Services (National Uniform Legislation) Act 2011, the South Australia Education and Early Childhood Services (Registration and Standards) Act 2011 and the Western Australia Education and Care Services National Law (WA) Act 2012.
- **Cook Islands** – The Education Act 2012 prohibits corporal punishment in schools.
- **Republic of Korea** – Amendments in 2011 to the Enforcement Decree of the Elementary and Secondary Education Act 2009 prohibit corporal punishment in schools, though there is uncertainty as to interpretation of the law (see page 60). The Seoul Student Rights Ordinance 2012 and Children's Rights Ordinance 2012 prohibit corporal punishment in the home, schools and alternative care settings in Seoul.
- **Samoa** – The Prisons and Corrections Act 2013 prohibits corporal punishment in penal institutions.
- **Tonga** – Corporal punishment is prohibited in prisons in the Prisons Act 2010.



A statistical analysis of progress in the region

Of the nearly 590 million children living in the 38 independent states in the region:

- only 0.2% – those living in New Zealand – are fully legally protected from corporal punishment in the home and in all alternative care settings
- 99.8% can lawfully be hit and hurt by their parents and other carers in the name of “discipline” or “correction”
- 22.4% live where they are not legally protected from corporal punishment in schools
- 10% live where corporal punishment is lawful in penal institutions, and
- 15.1% live where corporal punishment may be imposed as a sentence on children in conflict with the law.

It appears from the above that considerable progress has been made in protecting children from corporal punishment in some settings outside the home, with only a minority of children living in states where it is still lawful in schools and in the penal system. But these figures in part reflect the fact that many of the states which have achieved prohibition in these settings have relatively large child populations. An alternative perspective on the work still to be done is revealed by considering the proportion of states yet to enact prohibiting laws. Of the 38 independent states in the region:

- 37 (97.4%) have yet to prohibit corporal punishment of children in the home and in all alternative care settings
- 17 (44.7%) have yet to prohibit corporal punishment in all schools
- 16 (42.1%) have not yet prohibited corporal punishment as a disciplinary measure in penal institutions, and
- 8 (21.1%) allow children convicted of an offence to be lawfully sentenced to corporal punishment.

Missed opportunities

Since 2010, the following states have enacted laws which increase children's protection from violence but do not explicitly prohibit all corporal punishment, however light, in all settings including the home:

- **Cambodia** – Criminal Code 2010
- **DPR Korea** – Law on the Protection of Women's Rights 2010; Law on the Protection of Children's Rights 2010
- **Fiji** – Child Welfare Decree 2010
- **Indonesia** – Law on the Juvenile Justice System 2012; Regulation on Protection of Women and Child Victims of Violence 2011
- **Kazakhstan** – Marriage and Family Code 2011
- **Kyrgyzstan** – Code on Children 2012
- **Samoa** – Family Safety Act 2013; Crimes Act 2013
- **Taiwan** – Child and Youth Welfare and Rights Protection Act 2012
- **Tajikistan** – Law on Parental Responsibility for Education and Upbringing of Children 2011; Law on Prevention of Violence in the Family 2013
- **Timor-Leste** – Law Against Domestic Violence 2010

While the strengthened protection from violence in the above laws is of course to be welcomed, these law reforms represent missed opportunities by states to fully comply with their obligation to explicitly prohibit all corporal punishment of children, without exception.

Backward steps

In a minority of states, there has not only been a lack of progress but laws have been enacted since 2010 which specifically authorise or provide a legal justification for the use of corporal punishment:

- **Marshall Islands** – The Criminal Code 2011 allows the use of force by parents, teachers and others for “punishment of the minor's misconduct” and “maintenance of reasonable discipline”.
- **Singapore** – The Criminal Procedure Code 2010, the Criminal Procedure Code (Corrective Training and Preventive Detention) Regulations 2010, amendments in 2011 to the Children and Young Persons Act 1993, and the Children and Young Persons (Government Homes) Regulations 2011 all authorise caning of children.

Negative responses to the Universal Periodic Review

These states **rejected** recommendations to prohibit corporal punishment made during the UPR of their overall human rights record:

Australia, Indonesia, Myanmar, Singapore, Tonga.

Brunei Darussalam partially rejected the recommendations.



Looking ahead

Given that some states in the region are publicly committed to prohibiting all corporal punishment (see pages 30 to 32), many have accepted recommendations to do so made during their Universal Periodic Reviews (see box below) and at least 24 are currently undertaking processes of law reform which provide immediate opportunities for enacting prohibition (see page 25), we should expect children's legal protection from violent punishment by parents to increase across the region in the near future. In many states, national campaigns are promoting law reform to prohibit corporal punishment:

- **Australia** – In 2013, the Royal Australasian College of Physicians issued a position statement calling for prohibition of all physical punishment. Save the Children Australia (www.savethechildren.org.au), the Australian Child Rights Taskforce Steering Committee and Melbourne University Futures Project are working to inform the development of the public policy debate on physical punishment. End Physical Punishment - Children Are Unbeatable (EPPA CAU), a group of legal and other professionals and academics, is also working for law reform.
- **Fiji** – Save the Children Fiji (www.savethechildren.org.fj) campaigns for explicit prohibition of corporal punishment of children in all settings.
- **Hong Kong (China)** – Against Child Abuse in Hong Kong (www.aca.org.hk) carries out advocacy on law reform to end all corporal punishment of children.
- **Japan** – The Initiative for Ending Violence against Children Japan (www.kodomosukoyaka.net), formed in 2011, is a group of organisations which carries out advocacy and awareness-raising events aiming for legal prohibition of corporal punishment of children and the promotion of non-violent and positive parenting.
- **Malaysia** – Voice of the Children (www.voc.org.my) is advocating for prohibition of corporal punishment to be included in the Child Act, including by submitting a memorandum on corporal punishment to the Prime Minister's office and preparing a research paper on corporal punishment. The Human Rights Commission of Malaysia (www.suhakam.org.my) is advocating for a ban on all corporal punishment of children, including through encouraging the Government to withdraw its reservation to article 37 of the Convention on the Rights of the Child.
- **Mongolia** – Save the Children Japan (www.savechildren.or.jp) works against corporal punishment in Mongolia, including advocating for prohibition and working to promote positive discipline in homes, schools and kindergartens.
- **Papua New Guinea** – Save the Children Australia (www.savethechildren.org.au/where-we-work/pacific-islands/papua-new-guinea/child-protection-programs) is advocating for law reform to prohibit corporal punishment in Papua New Guinea and incorporating positive discipline into its programming, including training teachers, parents and community members in positive discipline as an alternative to using physical or other humiliating punishment.
- **Philippines** – Save the Children in the Philippines (www.savethechildren.net) advocates for an end to all corporal punishment of children.
- **Republic of Korea** – Save the Children Korea (www.sc.or.kr) is carrying out research on physical and other humiliating punishment of children in alternative care and day care, working to promote law reform to prohibit corporal punishment and developing a positive discipline manual and training teachers and parents in positive discipline techniques.
- **Viet Nam** – Plan Viet Nam (<http://plan-international.org/where-we-work/asia/vietnam/>) is campaigning for law reform to prohibit corporal punishment and is working with the Ministry of Education and Training to deliver initial and in-service positive discipline training to teachers.

Positive signs from the Universal Periodic Review of states in the region

These states have **accepted** recommendations to prohibit corporal punishment made during the UPR(s) of their overall human rights record:

Japan, Kyrgyzstan, Mongolia, Palau, Papua New Guinea, Philippines, Republic of Korea, Samoa, Solomon Islands, Tajikistan, Thailand, Timor-Leste, Turkmenistan, Tuvalu.

Kiribati said it was "prepared to consider" the recommendations.

Brunei Darussalam partially accepted the recommendations.

Using immediate law reform opportunities to achieve prohibition is discussed in more detail on pages 25 and 26.

Human rights – driving reform

International human rights law requires prohibition of all corporal punishment

“... eliminating violent and humiliating punishment of children, through law reform and other necessary measures, is an immediate and unqualified obligation of States parties.”

(Committee on the Rights of the Child, General Comment No. 8, 2006)

All states in the region (except Taiwan, which has no official UN status) have ratified or acceded to the UN Convention on the Rights of the Child. Implementation of the Convention is monitored by the UN Committee on the Rights of the Child, which has been clear from the outset that it requires prohibition of all corporal punishment of children in all settings, including the home. Under articles 19, 28(2) and 37 of the Convention, children – wherever they are – have a right to protection from all forms of corporal punishment. States are under an obligation to ensure that this protection is enshrined in law and supported by policy, education and other measures. The Committee has now made more than 350 recommendations on corporal punishment to over 180 states worldwide, including 60 recommendations to 34 states in Central/South East Asia and the Pacific.

The Committee clarified the obligation of states to prohibit corporal punishment in its General Comment No. 8 (2006) on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia)”. The Committee adopted a comprehensive and uncompromising definition of corporal punishment (see box): no degree or form of corporal punishment is justifiable. The obligation to prohibit and eliminate corporal punishment is reiterated in General Comment No. 13 (2011) on “The right of the child to freedom from all forms of violence”, and states are reminded of this in General Comment No. 15 (2013) on “The right of the child to the enjoyment of the highest attainable standard of health (art. 24)”.

In 2006, the final report and recommendations of the UN Study on Violence against Children was published.

Definition of corporal punishment

“The Committee defines ‘corporal’ or ‘physical’ punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (‘smacking’, ‘slapping’, ‘spanking’) children, with the hand or with an implement – a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children’s mouths out with soap or forcing them to swallow hot spices). In the view of the Committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.”

(Committee on the Rights of the Child (2006), General Comment No. 8, “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”, para. 11)

The Study highlighted the extent to which children are subjected to corporal punishment in their homes and other settings in all regions, and recommended urgent law reform to prohibit it (see box on page 11).

Other UN treaty monitoring bodies have long been concerned with corporal punishment, particularly in penal systems and increasingly in schools and the home. Recommendations and observations on corporal punishment have been made to states – including in Central/South East Asia and the Pacific – by the Committee Against Torture, the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, and the Committee on the Elimination of Discrimination Against Women. The Committee on the Rights of Persons with Disabilities has also raised the issue with states, though is yet to issue concluding observations on a state in this region.

The table on pages 12 and 13 shows the human rights treaties ratified by states in the region under which corporal punishment should be prohibited, recommendations and observations made by the relevant treaty monitoring bodies to the states concerned, and recommendations on corporal punishment made to states during the Universal Periodic Review and governments’ responses to them. For further detail, see the individual country reports on pages 33 to 80.

Increasing pressure on states through the Universal Periodic Review

The mounting pressure on states to comply with their human rights obligations as they receive repeated recommendations from treaty bodies to prohibit all corporal punishment of children is compounded when their overall human rights records are reviewed by their peers in the Universal Periodic Review (UPR). Now well into its second cycle, the UPR holds states to account for their implementation of obligations under the various treaties they have ratified and their human rights records generally. Recommendations are made and should be responded to, and states are encouraged to submit reports on progress between reviews.



Since the first UPR session in 2008, many states have been questioned on their actions to prohibit and eliminate corporal punishment of children, and recommendations made to prohibit it. To date, recommendations to prohibit corporal punishment have been made to more than 110 states from all regions. Of states in Central/South East Asia and Pacific, 22 states received recommendations to prohibit it in the home and other settings: at least 14 of these states accepted the recommendations. For further information see the table on pages 14 to 15 and the detailed country reports on pages 33 to 80.

UN Study on Violence against Children

In October 2006, the report of the UN Secretary General's Study on Violence against Children – originally proposed by the Committee on the Rights of the Child and then requested by the General Assembly – was presented to the General Assembly by Professor Paulo Sérgio Pinheiro, the Independent Expert appointed by the Secretary General to lead the Study. The Study revealed the nature and extent of the violence being perpetrated against children all over the world. It included nine regional consultations, each actively involving children. Recommendations developed at every consultation included calls for the prohibition and elimination of all corporal punishment.

The key message of the Study is that “no violence against children is justifiable; all violence against children is preventable”. Drawing the attention of states to the Committee on the Rights of the Child's General Comment No. 8, the Report recommends prohibition of all forms of violence against children in all settings, including all corporal punishment and all other cruel, inhuman or degrading forms of punishment.

“The Study should mark a turning point – an end to adult justification of violence against children, whether accepted as ‘tradition’ or disguised as ‘discipline’. There can be no compromise in challenging violence against children. Children's uniqueness – their potential and vulnerability, their dependence on adults – makes it imperative that they have more, not less, protection from violence....

“... The core message of the Study is that no violence against children is justifiable; all violence against children is preventable. There should be no more excuses. Member States must act now with urgency to fulfil their human rights obligations and other commitments to ensure protection from all forms of violence.”

(Report of the Independent Expert for the United Nations Study on Violence against Children (2006), paras. 2 and 91)

Human rights pressure on states in the region to prohibit all corporal punishment of children

State	Human rights instruments ratified	Treaty monitoring body recommendations/observations on corporal punishment	UPR recommendations to prohibit corporal punishment and Government responses
Australia	CRC, CAT, ICCPR, ICESCR, CEDAW, CRPD	CRC (1997, 2005, 2012) CAT (2008)	2011 (rejected)
Brunei Darussalam	CRC, CEDAW	CRC (2003)	2009 (part accepted, part rejected)
Cambodia	CRC, CAT, ICCPR, ICESCR, CEDAW, CRPD	CRC (2011) HRC (1999)	-
China	CRC, CAT, ICESCR, CEDAW, CRPD	CRC (2005, 2013) HRC (2013)	-
Cook Islands	CRC, CEDAW, CRPD	CRC (2012)	n/a
DPR Korea	CRC, ICCPR, ICESCR, CEDAW	CRC (1998, 2004, 2009)	-
Fiji	CRC, CEDAW	CRC (1998)	-
Indonesia	CRC, CAT, ICCPR, ICESCR, CEDAW, CRPD	CRC (2004) CAT (2008) HRC (2013)	2012 (rejected)
Japan	CRC, CAT, ICCPR, ICESCR, CEDAW	CRC (1998, 2004, 2010) CAT (2013)	2008 (accepted), 2012 (accepted)
Kazakhstan	CRC, CAT, ICCPR, ICESCR, CEDAW	CRC (2003, 2007) HRC (2011)	-
Kiribati	CRC, CEDAW	CRC 2006	2010 ("prepared to consider")
Kyrgyzstan	CRC, CAT, ICCPR, ICESCR, CEDAW	CRC (2000, 2004) CAT (1999, 2013) HRC (2000)	2010 (accepted)
Lao PDR	CRC, CAT, ICCPR, ICESCR, CEDAW, CRPD	CRC (1997, 2011)	-
Malaysia	CRC, CEDAW, CRPD	CRC (2007)	2009 (unclear response)
Marshall Islands	CRC, CEDAW	CRC (2000, 2007)	-
Micronesia	CRC, CEDAW	-	-
Mongolia	CRC, CAT, ICCPR, ICESCR, CEDAW, CRPD	CRC (2005, 2010) CAT (2011) HRC (2011)	2010 (accepted)
Myanmar	CRC, CEDAW, CRPD	CRC (1997, 2004, 2012)	2011 (rejected)
Nauru	CRC, CAT, ICCPR, CEDAW, CRPD	-	-
New Zealand	CRC, CAT, ICCPR, ICESCR, CEDAW, CRPD	CRC (1997, 2003, 2011) CAT (2004, 2009) CESCR (2012)	-
Niue	CRC	CRC (2013)	n/a

Human rights pressure on states in the region to prohibit all corporal punishment of children *ctd*

State	Human rights instruments ratified	Treaty monitoring body recommendations/observations on corporal punishment	UPR recommendations to prohibit corporal punishment and Government responses
Palau	CRC, CRPD	CRC (2001)	2011 (accepted)
Papua New Guinea	CRC, ICCPR, ICESCR, CEDAW	CRC (2004)	2011 (accepted)
Philippines	CRC, CAT, ICCPR, ICESCR, CEDAW, CRPD	CRC (2005, 2009)	2012 (accepted)
Republic of Korea	CRC, CAT, ICCPR, ICESCR, CEDAW, CRPD	CRC (1996, 2003, 2012)	2008 (unclear response), 2012 (accepted)
Samoa	CRC, ICCPR, CEDAW	CRC (2006) CEDAW (2012)	2011 (accepted)
Singapore	CRC, CEDAW	CRC (2003, 2011)	2011 (rejected)
Solomon Islands	CRC, ICCPR, ICESCR, CEDAW	CRC (2003)	2011 (accepted)
Taiwan	n/a	n/a	n/a
Tajikistan	CRC, CAT, ICCPR, ICESCR, CEDAW	CRC (2000, 2010) CAT (2012) HRC (2005, 2013)	2011 (accepted)
Thailand	CRC, CAT, ICCPR, ICESCR, CEDAW, CRPD	CRC (1998, 2006, 2012)	2011 (accepted)
Timor-Leste	CRC, CAT, ICCPR, ICESCR, CEDAW	CRC (2008) CEDAW (2009)	2011 (accepted)
Tonga	CRC	-	2013 (rejected)
Turkmenistan	CRC, CAT, ICCPR, ICESCR, CEDAW, CRPD	CRC (2006)	2013 (accepted)
Tuvalu	CRC, CEDAW	CRC (2013) CEDAW (2009)	2008 (accepted), 2013 (unclear response)
Uzbekistan	CRC, CAT, ICCPR, ICESCR	CRC (2001, 2006, 2013)	-
Vanuatu	CRC, CAT, ICCPR, CEDAW, CRPD	CRC (1999)	[2009 (accepted)] ¹
Viet Nam	CRC, ICCPR, ICESCR, CEDAW	CRC (2003, 2012)	-

Abbreviations:

CRC - Convention on the Rights of the Child / Committee on the Rights of the Child

CAT - Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment / Committee Against Torture

ICCPR/HRC - International Covenant on Civil and Political Rights / Human Rights Committee

ICESCR/CESCR - International Covenant on Economic, Social and Cultural Rights / Committee on Economic, Social and Cultural Rights

CEDAW - Convention on the Elimination of All Forms of Discrimination Against Women / Committee on the Elimination of Discrimination Against Women

CRPD - Convention on the Rights of Persons with Disabilities

¹ The recommendation was to “eradicate the practice” of corporal punishment in the family and implement the prohibition in schools.

UPR recommendations and responses in detail

State review	Recommendations (summary)	Government response
Australia (2011)	To prohibit corporal punishment in the family in all states and territories	Recommendation rejected. Government confirmed that “reasonable” corporal punishment is lawful in all states and territories.
Brunei Darussalam (2009)	To prohibit all corporal punishment, including in the home and as a sentence for crime, and to promote alternative forms of discipline	Recommendations to prohibit in the home and schools and to promote alternative forms of discipline accepted, recommendations to prohibit as sentence rejected.
Indonesia (2012)	To abolish corporal punishment in all settings	Recommendation rejected. Government stated corporal punishment of children “is not an issue as such practices are not tolerated in Indonesia both legally and culturally”.
Japan (2008, 2012)	To prohibit all corporal punishment and promote positive, non-violent discipline (2008) To prohibit corporal punishment in all settings (2012)	Recommendations accepted without comment.
Kiribati (2010)	To harmonise national legislation, including customary law, with the Convention on the Rights of the Child regarding corporal punishment, to prohibit corporal punishment in the home, schools, penal institutions, care settings and as a sentence for crime	Government stated it was “prepared to consider” the recommendations, schools are prohibited from practising corporal punishment and “the challenge will be to prohibit corporal punishment in the home”.
Kyrgyzstan (2010)	To ensure children are fully legally protected from violence, including corporal punishment in all settings	Recommendations accepted without comment.
Malaysia (2009, 2013)	To outlaw whipping under the Immigration Act, to outlaw corporal punishment in the home, and to carry out information campaigns and public education on the matter (2009) To explicitly prohibit corporal punishment in all settings, including the home and as a sentence, and to carry out awareness raising (2013)	Recommendations in 2009 neither accepted nor rejected. Government stated children are protected from domestic violence under existing law and that awareness raising is consistently undertaken. Response to 2013 recommendations pending.
Mongolia (2010)	To introduce and adopt legislation to prevent and end all corporal punishment	Recommendations accepted without comment.
Myanmar (2011)	To ban corporal punishment in families, schools and other institutions, and organise educational campaigns	Recommendations rejected without comment.
Palau (2011)	To prohibit and eliminate all corporal punishment, including in the home and schools, and to conduct awareness raising campaigns	Recommendations accepted. Government stated they are “already implemented or in the process of implementation”.
Papua New Guinea (2011)	To prohibit corporal punishment in all settings, including the home and institutions	Recommendations accepted. Government stated that review of laws relating to corporal punishment is under way.
Philippines (2012)	To prohibit corporal punishment in all settings including the home, to promote non-violent methods of discipline, and to carry out public education on the harmful effects of corporal punishment	Recommendations accepted without comment.
Republic of Korea (2008, 2012)	To urgently amend legislation to prohibit corporal punishment in the home and schools, and to promote positive, non-violent discipline (2008) To prohibit corporal punishment in all settings, and to promote positive, non-violent discipline (2012)	Response in 2008 unclear. Government stated it would “continue to review appropriate measures”. Recommendations accepted in 2012 without comment.

UPR recommendations and responses in detail *ctd*

State review	Recommendations (summary)	Government response
Samoa (2011)	To implement the recommendations of the Committee on the Rights of the Child by prohibiting corporal punishment, to ban corporal punishment in the home and schools, and to conduct awareness raising campaigns and public education	Recommendations accepted. Government stated they are “already implemented or in the process of implementation”.
Singapore (2011)	To abolish corporal punishment as a sentence for crime including immigration offences and repeal all laws authorising it, to end corporal punishment in schools and detention centres, to prohibit corporal punishment in schools, and to incorporate the Convention on the Rights of the Child into domestic law especially with regard to corporal punishment	Recommendations to prohibit corporal punishment as a sentence rejected without comment. Recommendations to prohibit corporal punishment in schools and to incorporate the Convention on the Rights of the Child into national law with regard to corporal punishment rejected “as Singapore considers that they are based on incorrect assumptions or premises”.
Solomon Islands (2011)	To adopt legislation to prohibit corporal punishment, and to enforce the prohibition	Recommendations accepted. Government stated they are “already implemented or in the process of implementation”.
Tajikistan (2011)	To prohibit corporal punishment in all settings, to raise awareness of the negative impact of corporal punishment, and to conduct public and professional education and training	Recommendations accepted. Government stated they are already implemented and “Tajik law provides a full range of mechanisms to combat corporal punishment of children at all institutions”. Government also stated it would “take all necessary measures to implement these provisions”.
Thailand (2011)	To prohibit corporal punishment in all settings, and to take all necessary measures to eradicate it	Recommendations accepted. Government stated that corporal punishment is prohibited in schools and care settings and “we are determined to improve the laws in order to prohibit corporal punishment in communities and families”.
Timor-Leste (2011)	To adopt legislation to prohibit all corporal punishment, and to persist in efforts to eradicate it	Recommendations accepted without comment.
Tonga (2013)	To abolish corporal punishment as a sentence for crime, and to prohibit corporal punishment “on all grounds”	Recommendations rejected. Government stated whipping would be “retained as a deterrent, and used only at the most extreme cases where alternative sentences are not appropriate in the interests of the criminal justice system”, and noted that the courts had briefly considered corporal punishment but “have not yet expressly declared that corporal punishment under Tongan law is unlawful and unconstitutional”.
Turkmenistan (2013)	To prohibit corporal punishment in all settings	Recommendations accepted without comment.
Tuvalu (2008, 2013)	To reform the Penal Code to eliminate corporal punishment (2008) To harmonise legislation with the Convention on the Rights of the Child to eradicate corporal punishment, to prohibit corporal punishment in all settings including the home, and to eliminate corporal punishment through legislative and administrative measures	Recommendations accepted in 2008 and Government requested support from the international community to fulfil them. Response to recommendations in 2013 unclear. Government both accepted and rejected recommendations to prohibit.
Vanuatu (2009)	To take all measures to eradicate corporal punishment in the home and juvenile justice system, and to implement the prohibition in schools	Recommendations accepted without comment.

Fiji

In 2002, the High Court of Fiji at Lautoka ruled on the case of *Naushad Ali v State* (Criminal Appeal No. HAA 0083 of 2001), concerning an appeal against a judicial sentence of six strokes of corporal punishment. In its submission to the Court, the Fiji Commission on Human Rights requested that corporal punishment in schools also be considered.

Section 25(1) of the Constitution 1997 protects “every person” from “torture of any kind, whether physical, mental or emotional, and from cruel, inhumane, degrading or disproportionately severe treatment or punishment”. The judgment stated that “the interpretation of a constitution must reflect changes in society” and that “punishment and treatment of persons by state institutions that may have been condoned in the past may be offensive for the present”, and went on:

“The wording of Section 25(1) of our Constitution is almost identical to Article 5 of the Universal Declaration and Article 7 of the International Covenant on Civil and Political Rights. As such we are bound to interpret Section 25(1) in consonance with international human rights laws...”

The judgment paid particular attention to judgments on similar provisions in the Constitutions of Namibia (*Ex Parte Attorney General of Namibia: in re Corporal Punishment by Organs of State*) and Zimbabwe (*Ncube and Others v State*) (see www.endcorporalpunishment.org for details), noting that “while there are slight variations in language it is clear that the interpretations of the provisions confirm to a clear pronouncements [*sic*] to the banning of corporal punishment, whether judicial or quasi judicial and administrative, including corporal punishment in schools”.

In addressing corporal punishment in schools, the judgment stated:

“Children have rights now inferior to the rights of adults. Fiji has ratified the Convention on the Rights of the Child. Our Constitution also guarantees fundamental rights to every person. Government is required to adhere to principles respecting the rights of all individuals, communities and groups. By their status as children, children need special protection. Our educational institutions should be sanctuaries of peace and creative enrichment, not places for fear, ill-treatment and tampering with the human dignity of students.”

The judgment concluded that the sentence of six strokes be quashed and that legal and policy provisions for corporal punishment in the penal system and in schools were unlawful and unconstitutional.

Fiji has since prohibited corporal punishment in the penal system but prohibition is yet to be enacted in schools.

Tonga

In 2010 the Appeal Court ruled on a case involving sentences of whipping imposed on two 17 year olds (*Fangupo v Rex; Fa'aoa v Rex* [2010] TOCA 17; AC 34 of 2009; AC 36 of 2009 (14 7 2010)). The sentences of whipping were overturned. The Court questioned the constitutionality of the punishment and the role of a doctor in certifying that an offender is fit for whipping, though did not rule definitively on the issues:

“...The attitude of the courts in many countries has, over the last 20 years, changed in relation to sentences involving corporal punishment. A number of countries have adopted or amended constitutions to prohibit cruel and unusual punishment.... Interpreted in the light of international conventions and decisions of this Court such as Tu'itavake v Porter [1989] Tonga LR 14 it might be argued that the whipping provision is now unconstitutional....

“... we make reference to the International Convention against Torture and other Cruel Inhumane or Degrading Treatment or Punishment as being particularly apposite. In this connection we note the judgment of the Chief Justice in Tavake v Kingdom of Tonga [2008] TOSC 14 at para 52 to the effect that most international jurists now accept that the prohibition against torture is part of customary international law and is a jus cogens rule from which states cannot derogate whether or not they are a party to the various treaties which prohibit it...”

“... Section 31 (6) of the Criminal Offences Act provides that a sentence of whipping must not be carried out unless the offender has been examined by a doctor or a government medical assistant and certified by him that there is no mental or physical impairment of the offender such as to render him unfit to undergo such punishment. It is arguable that for a doctor to provide such certification would be contrary to various Medical Association declarations and codes and principles of medical ethics which taken together would appear to prevent a doctor from participating in the infliction of a whipping sentence. We note too that various human rights bodies such as the Human Rights Committee appointed by the UN, the Inter-American Court of Human Rights and the European Court of Human Rights have all described whipping or flogging as cruel inhumane and degrading. This view is increasingly becoming accepted by countries around the world and has led to the constitutional changes earlier referred to. Because it was not necessary for these issues to be argued before us we do not express any decided view on these matters.”

Following the Universal Periodic Review of Tonga in 2013, the Government reported to the Human Rights Council that it would retain the punishment of whipping (see page 15).

Research – exposing the scale and impact of violence

... at home

Studies carried out in 2005-2006 and 2010-2012 as part of UNICEF's systematic monitoring in low- and middle-income countries found that high percentages of children aged 2-14 had experienced physical punishment and/or psychological aggression in the home in the past month in many countries: **Fiji** (72%),¹ **Kazakhstan** (49%),² **Kiribati** (81%),³ **Kyrgyzstan** (54%),⁴ **Lao PDR** (74%),⁵ **Mongolia** (46%),⁶ **Solomon Islands** (72%),⁷ **Tajikistan** (78%),⁸ **Vanuatu** (78%)⁹ and **Viet Nam** (74%).¹⁰ UNICEF research has also revealed corporal punishment to be widespread in **Samoa**,¹¹ **Tokelau**,¹² **Tonga**¹³ and **Tuvalu**.¹⁴



Similarly high rates of corporal punishment have been found in other countries. A large multi-country study found that in **China**, 60% of boys and 48% of girls aged 7-10 had experienced “mild” corporal punishment (including being “spanked”, shaken and hit with an object) and 15% of boys and 10% of girls had experienced severe corporal punishment (being hit or slapped on the face, head, or ears and/or beaten repeatedly with an implement) by someone in their household in the past month.¹⁵ In a study in **Malaysia**, 40% of parents had imposed “moderate” corporal punishment (including hitting with an object, pinching and pulling hair) on their child and 8% had inflicted severe corporal punishment (including kicking, choking, smothering and burning children).¹⁶ A 2010 study in the **Philippines** found that 83% of children experienced physical punishment, including being “spanked” on the buttocks, hit with an object, slapped on the face and having hot pepper put in their mouth.¹⁷ In a 2010 study in **Thailand**, 72% of boys and 58% of girls had experienced “mild” corporal punishment.¹⁸ A study in **Timor-Leste** found that 60% of children had been beaten with a stick by their parents.¹⁹

In some countries, little or no data on prevalence has been identified but adult attitudes suggest corporal punishment is widespread. A 2006 study in **Australia** found that 45% of adults believed it reasonable to leave a mark on a child as a result of physical punishment and 10% thought it appropriate to use implements such as canes, sticks, belts, or slippers to punish a child.²⁰ In **Japan**, a 2010 survey of parents found that 58% regarded physical punishment as necessary in childrearing.²¹

1 UNICEF (2011), *The State of the World's Children*, Table 9: Child Protection, NY: UNICEF

2 Agency of Statistics & UNICEF (2012), *Multiple Indicator Cluster Survey (MICS) in the Republic of Kazakhstan, 2010-2011, Final Report*, Astana: Agency of Statistics & Republican State Enterprise Information Computing Center

3 UNICEF (2011), op. cit.

4 UNICEF (2010), *Child Disciplinary Practices at Home: Evidence from a Range of Low- and Middle-Income Countries*, NY: UNICEF

5 ibid.

6 National Statistics Office & UNICEF (2011), *Multiple Indicator Cluster Survey 2010: Summary Report*, Ulaanbaatar: National Statistics Office

7 UNICEF (2011), op. cit.

8 UNICEF (2010), op. cit.

9 UNICEF (2011), op. cit.

10 General Statistical Office (2011), *Viet Nam Multiple Indicator Cluster Survey 2011, Final Report*, Ha Noi: General Statistical Office

11 Government of Samoa & UNICEF (2006), *Samoa: A Situation Analysis of Children, Women and Youth*, Suva: UNICEF Pacific Office

12 Government of Tokelau & UNICEF (2006), *Tokelau: A Situation Analysis of Children, Women and Youth*, Suva: UNICEF Pacific Office

13 Government of Tonga & UNICEF (2006), *Tonga: A Situation Analysis of Children, Women and Youth*, Suva: UNICEF Pacific Office

14 Government of Tuvalu & UNICEF (2006), *Tuvalu: A Situation Analysis of Children, Women and Youth*, Suva: UNICEF Pacific Office

15 Lansford, J. et al (2010), “Corporal Punishment of Children in Nine Countries as a Function of Child Gender and Parent Gender”, *International Journal of Pediatrics*

16 Runyan, D. et al (2009), *Child Abuse & Neglect* 33: 826-832, cited in UNICEF East Asia and Pacific Regional Office (2012), *Child Maltreatment: Prevalence, Incidence and Consequences: A Systematic Review of Research*, Bangkok: UNICEF

17 Runyan, D. et al (2010), “International Variations in Harsh Child Discipline”, *Pediatrics*, published online 2 August 2010

18 Lansford, J. et al (2010), op. cit.

19 UNICEF (2006), *Speak Nicely to Me – A Study on Practices and Attitudes about Discipline of Children in Timor-Leste*

20 Tucci, J. et al (2006), *Crossing the Line: Making the case for changing Australian laws about the physical punishment of children*, Ringwood, Victoria, Australia: Australian Childhood Foundation

21 Reported in Campaign for Ending Violence against Children (2012), *Briefing for the Human Rights Council Universal Periodic Review 14th session*

What children say

Research with children gives insights into their experiences of corporal punishment.

In 2006, a major study in **Cambodia, Fiji, Hong Kong, Indonesia, Mongolia, Philippines, Republic of Korea and Viet Nam** asked more than 3,000 children about their views and experiences of corporal punishment. Children described punishments including being slapped, punched, pinched and kicked; hit with sticks, canes, belts, whips, chains, brooms, shoes and other implements; knives being used; being electrocuted; having their joints twisted; having their hair pulled; being forced to maintain uncomfortable positions and being forced to stand in the hot sun. Children said that corporal punishment is physically and emotionally painful.²²

The physical and emotional pain caused by corporal punishment was also reported by children participating in smaller scale interview research carried out in New Zealand before the achievement of full prohibition (see page 55)²³ and in **Australia**.²⁴

In a 2011 survey of over 300 young people in **Australia**, 69% thought that parents “smacking” their children maybe should or should be banned.²⁵ In research in **Vanuatu**, “being hit or hurt by adults” was the most common response given by 7-11 year olds when asked which actions they don’t like at home.²⁶



... at school

In research with 12-18 year olds in **Cambodia**, 56% of boys and 19% of girls said they had been beaten by a teacher.²⁷ A 2008 survey of 16-17 year olds in **Fiji** found that 31% had been physically hurt by a teacher in the past month.²⁸ In a 2008 study in **Kiribati**, 40% of interviewees working in education said corporal punishment was used in their school.²⁹

A government study in **Japan** found that 840 teachers were reported to have used corporal punishment between April 2012 and January 2013.³⁰ In a 2013 survey of 510 college athletes, 62% said violent punishment is acceptable in school athletics programmes.³¹ In a survey of 5,754 school students in **Malaysia**, 52% said caning was common in their schools; nearly 80% of teachers agreed that “persistent offenders should be caned”.³² In 2008, a study found that 13% of boys and 7% of girls in **Micronesia** and 14% of boys and 10% of girls in **Tonga** had been deliberately injured by a teacher in the past year.³³ In a 2007 study in primary schools in **Myanmar**, 82% of children said they were beaten if they “did something wrong” and 62% of teachers told their students they would be beaten if they did not perform well in a test. More than 40% of teachers said they caned children more than once a week.³⁴

22 Beazley, H. et al (2006), *What Children Say: Results of comparative research on the physical and emotional punishment of children in Southeast Asia and Pacific*, 2005, Stockholm: Save the Children Sweden

23 Dobbs, T. (2005), *Insights: children & young people speak out about family discipline*, Save the Children New Zealand

24 Saunders, B. J. & Goddard, C. (2007), “Some Australian Children’s Perceptions of Physical Punishment in Childhood”, *Children & Society*, 22, 405-417; see also Saunders, B. J. & Goddard, C. (2010), *Physical Punishment in Childhood: The Rights of the Child*, Wiley, Chichester

25 ACT Human Rights Commission (2011), *Children & Young People Commissioner Annual Report Summary 2010-2011*

26 UNICEF & AusAid (2009), *Protect me with love and care: A Baseline Report for creating a future free from violence, abuse and exploitation of girls and boys in Vanuatu*, Suva: UNICEF Pacific

27 Fordham, G. (2005), *“Wise” Before their Time: young people, gender-based violence and pornography in Kandal Stung district*, Phnom Penh: World Vision Cambodia

28 UNICEF & AusAid (2009), *Protect me with love and care: A Baseline Report for creating a future free from violence, abuse and exploitation of girls and boys in Fiji*, Suva: UNICEF Pacific

29 UNICEF & AusAid (2009), *Protect me with love and care: A Baseline Report for creating a future free from violence, abuse and exploitation of girls and boys in Kiribati*, Suva: UNICEF Pacific

30 Reported in *The Asahi Shimbun*, 28 April 2013

31 Reported in *The Asahi Shimbun*, 13 May 2013

32 Reported in *New Straits Times*, 21 March 2004

33 Smith, B. J. et al (2008), “Intentional injury reported by young people in the Federated States of Micronesia, Kingdom of Tonga and Vanuatu”, *BMC Public Health*, 8(145), 1-8, cited in UNICEF East Asia and Pacific Regional Office (2012), *Child Maltreatment: Prevalence, Incidence and Consequences: A Systematic Review of Research*, Bangkok: UNICEF

34 Ministry of National Planning and Economic Development & UNICEF (2012), *Situation Analysis of Children in Myanmar July 2012*, Nay Pyi Taw: UNICEF

In the **Philippines**, a 2009 study found that 18% of the 2,400 participating children (aged under 13) had been pinched and 16% had been “spanked” with a hand or an object by an adult at school.³⁵ In the **Republic of Korea**, a 2011 study involving nearly 500 high school students found that 95% of them had been physically punished at school.³⁶ A separate 2011 study of 1,430 student teachers found that nearly half of the primary teachers and 58% of the secondary teachers thought it was OK for a teacher to hit a child with a paddle.³⁷ In **Taiwan**, a 2012 survey found that less than 5% of the junior high school students and only 11% of the elementary school students interviewed had never seen corporal punishment at their schools, indicating that corporal punishment was used in around 90% of elementary and junior high schools.³⁸ In a 2008 study in **Vanuatu**, 38% of adults said a child in their household had told them about being hit by a teacher in the past month.³⁹

“Children do not lose their human rights by virtue of passing through the school gates.... Education must ... be provided in a way that respects the strict limits on discipline reflected in article 28(2) [of the Convention on the Rights of the Child] and promotes non-violence in school.... the use of corporal punishment does not respect the inherent dignity of the child nor the strict limits on school discipline.”

(Committee on the Rights of the Child (2001), General Comment No. 1, “The aims of education”, para. 8)

... in care settings and the penal system

In **Indonesia**, a large-scale study of the quality of care in childcare institutions found that physical and psychological punishment was widespread, and was often routine and accepted as a part of daily life by both children and staff. Pinching children’s stomachs and caning them were the most common forms of punishment; shaving children’s heads and throwing dirty water on them were also common.⁴⁰ In **Kazakhstan**, a study in 30 state-run residential institutions found that corporal punishment was common: in institutions for children with disabilities, more than half the staff reported witnessing violent punishment, 54% supported the use of corporal punishment and 11% thought corporal punishment does not really hurt children.⁴¹ In a “special school” in **Kyrgyzstan**, an NGO documented evidence of injuries caused by strenuous physical exercise used as punishment.⁴²

Corporal punishment has been documented in alternative care settings in **Myanmar**⁴³ and in **Viet Nam**, where a study found that punishments included beatings, locking children in their rooms, making them kneel in front of the caregivers and forcing them to clean the toilets or animal stables.⁴⁴ Reports on “drug detention centres” in **Cambodia**⁴⁵ and **Laos**⁴⁶ record beatings and other violent punishment.

In **Malaysia**, the number of sentences of whipping on under 18s in the past 10 years is said to be 50 (31 under secular law and 19 under Islamic law).⁴⁷ In **Kiribati**⁴⁸ and **Vanuatu**,⁴⁹ interviews with community chiefs and people working in the justice system revealed that children in conflict with the law are subjected to corporal punishment under traditional justice systems.

35 Plan Philippines (2009), *Toward a Child-Friendly Education Environment – A Baseline Study on Violence Against Children in Public Schools*

36 Reported in *Asian Correspondent*, 18 July 2012

37 Save the Children Korea (2011), *Incorporating Children’s Rights Education into the Teacher Training Curriculum of South Korea: A study on the teacher education curriculum, student-teachers’ awareness of children’s rights, and development of a children’s rights education course*

38 Reported in *Focus Taiwan*, 20 November 2012

39 See note 26

40 Martin, F. & Sudjarat, T. (2007), *Someone That Matters: The Quality of Care in Childcare Institutions in Indonesia*, Jakarta: Save the Children, UNICEF and DEPSOS RI

41 Haarr, R. N. (2011), *Violence Against Children in State-Run Residential Institutions in Kazakhstan: An Assessment*, UNICEF, National Human Rights Centre (Ombudsman) and Sange Research Centre

42 O’Donnell, D. (2012), *Juvenile Justice In Central Asia Reform Achievements And Challenges In Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan And Uzbekistan*, UNICEF Regional Office for Central and Eastern Europe/Commonwealth of Independent States

43 UNICEF (2006), *Alternative Care for Children without Primary Caregivers in Tsunami-Affected Countries: Indonesia, Malaysia, Myanmar and Thailand*

44 UNICEF Viet Nam et al (2004), *Situation Analysis of Institutional and Alternative Care Programs in Vietnam*

45 Human Rights Watch (2010), *“Skin on the Cable”: The Illegal Arrest, Arbitrary Detention and Torture of People Who Use Drugs in Cambodia*

46 Human Rights Watch (2011), *Somsanga’s Secrets: Arbitrary Detention, Physical Abuse, and Suicide inside a Lao Drug Detention Center*

47 Global Initiative questionnaire response from the Prison Department of Malaysia, 27 April 2012

48 See note 29

49 See note 26

Faith – supporting advocacy for change



Religious groups differ greatly in their beliefs, traditions and practices and in their concept of the deity or deities. But there is almost universal acceptance that, based on their teaching and sacred texts, the major world religions aim to teach respect and reverence for human dignity. All the major world religions are bound by the universal values of compassion, justice, equality, loving kindness and non-violence. These shared values are held in common with universal human rights; they transcend theological differences and are incompatible with corporal punishment of children. There is a growing global movement of religious communities speaking out and working with others towards prohibiting and eliminating this harmful practice.

But there are still groups across all faiths which use their religion to justify corporal punishment of children as a form of discipline. Some live by the literal interpretation of ancient religious texts, for example quoting from the Bible, the Koran and other holy books. The arguments used to justify corporal punishment often derive from the misinterpretation and misuse of religious texts. These arguments have been deeply entrenched in society and have remained part of traditional practice for generations. It is vitally important that information about the short and long-term effects of corporal punishment on children's development and well-being is widely disseminated through religious communities.

Religious leaders have a crucial part to play in this process. Respected religious leaders and scholars are in a position to clarify the interpretation of religious texts, to help change attitudes and culture and to use their scriptures to promote non-violence. With their extensive knowledge of their communities and through their roles as teachers, preachers, pastors, leaders of worship and community activists, local religious leaders have unique opportunities to demonstrate respect for children and help transform children's lives.

In response to the report of the UN Study on Violence against Children and in recognition of the duty and responsibility of religious communities to end violence against children, the Eighth World Assembly of Religions for Peace in 2006 endorsed "A Multi-Religious Commitment to Confront Violence against Children" (The Kyoto Declaration), which calls on governments to prohibit all forms of violence against children, including corporal punishment. Over 800 religious leaders from all regions in the world and representatives of all the major religious traditions and beliefs took part. The Declaration calls on governments "to adopt legislation to prohibit all forms of violence against children including corporal punishment and to ensure the full rights of children, consistent with the Convention on the Rights of the Child and other international and regional agreements". It also urges governments "to establish appropriate mechanisms to ensure the effective implementation of these laws and to ensure that religious communities participate formally in these mechanisms".

Building on positive religious support can make an important contribution to the movement for reform especially when different faith communities work together with other organisations.

Key international events provide an opportunity for different faith communities to collaborate towards ending violence against children. For example, the World Day of Prayer and Action for Children brings people together each year on Universal Children's Day (20 November) (<http://dayofprayerandaction.org>). Action and advocacy undertaken on the World Day is inspired by the Convention on the Rights of the Child. The following are some examples of World Day observances in the region under the current three-year theme for 2011-13, "Stop Violence Against Children":

"We will promote the child as a person with rights and dignity, using our religious texts to provide good examples that can help adults to stop using violence in dealing with children."

(A Multi-Religious Commitment to Confront Violence against Children (Kyoto Declaration), 2006)

- In **Australia** in 2011, the organisation Compassionate Citizens assembled at the Shrine of St Mary MacKillop in St Stephen's Chapel in Brisbane, Queensland, for a candle lighting ceremony for the protection of children.
- In **Cambodia** in 2012, UNICEF and the Ministry of Cult and Religions developed messages about violence against children to distribute to 2,000 to 3,000 faith leaders throughout the country over the course of the year. During the National Religious Congress in December 2012, all faith leaders signed a commitment to the protection of children which became part of the Monks Declaration. Since the event, monks from each province have benefited from national training in child protection.
- In **Papua New Guinea**, Kafe Women's Association and Save the Children have been working on a Banana Block settlement in Goroka Town to establish a pilot community child protection mechanism, "Protecting Children against Violence is Everybody's Responsibility". On World Day 2011 a local pastor said an opening prayer and local children spoke out about the changes they have seen with the introduction of local community child protection work.

"We are committed to inter-religious cooperation to address violence and will make use of the synergies among our religious communities to promote methodologies, experiences and practices in preventing violence against children."

(A Multi-Religious Commitment to Confront Violence against Children (Kyoto Declaration), 2006)

Save the Children partner with Churches' Network in Busan

Save the Children and the Churches' Network for Non-violence (www.churchesfornon-violence.org) jointly hosted an interactive exhibition entitled "Justice for Children - End legalised violence against children" at the 10th Assembly of the World Council of Churches (WCC), held in Busan, South Korea, 28 October to 8 November 2013.

The exhibition was part of the Assembly's Madang Programme. A "madang" is a traditional Korean courtyard which serves as a space for encounter and discussion. The activity contributed to the Assembly theme "God of life lead us to justice and peace" and emphasised that justice and peace are unattainable so long as violent punishment of children persists. It provided an opportunity to increase the visibility of legalised violence against children and provided a space for visitors to discuss the issue and gather materials and resources for work locally. Many signed up to support the aims of the Global Initiative, including Christian leaders in South Korea. A workshop was also held which challenged participants to address the prohibition and elimination of corporal punishment of children as a moral and religious imperative.

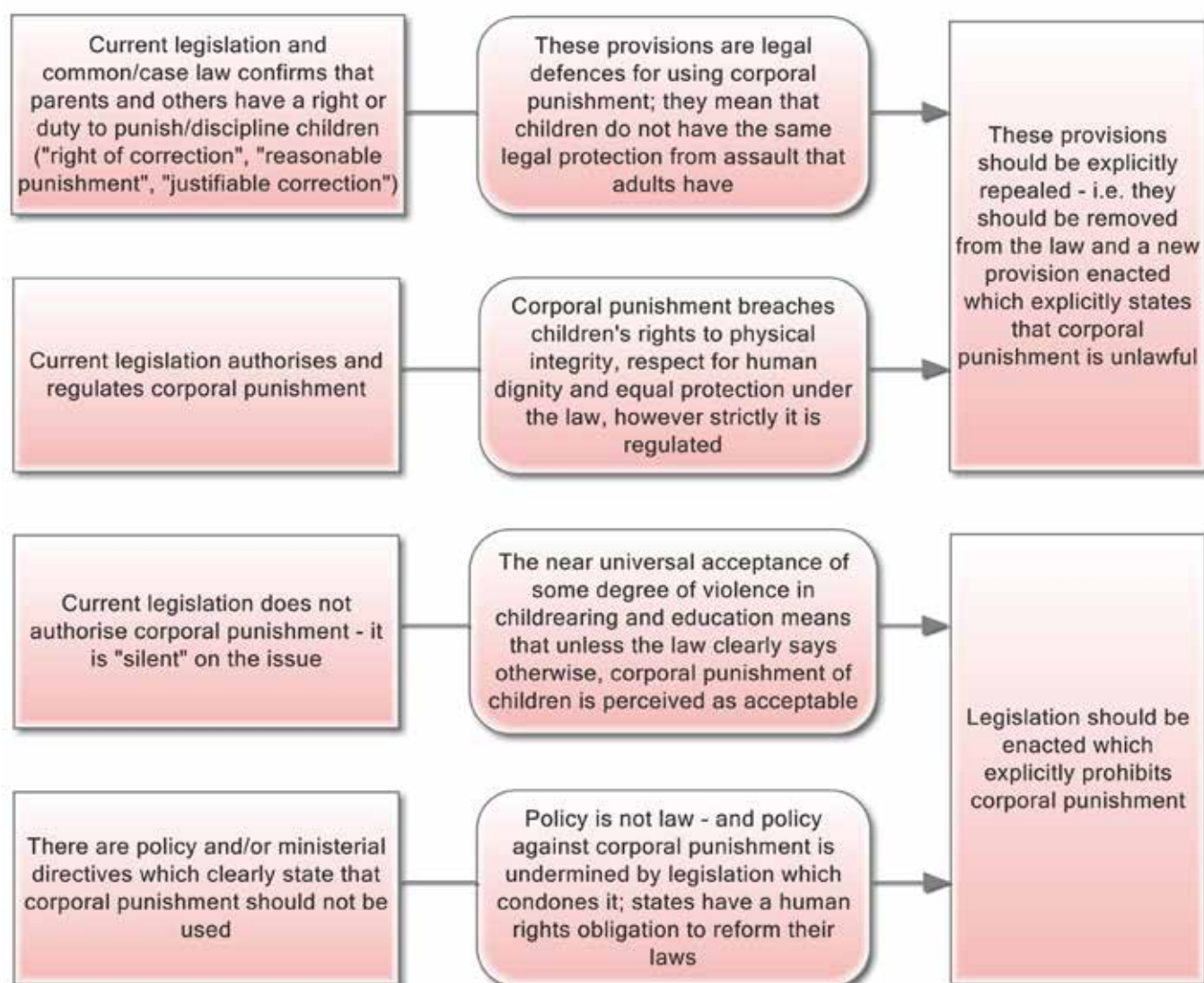
Achieving prohibition – what it means

Law reform to prohibit corporal punishment means ensuring children are legally protected from assault just as adults are – even when the assault is inflicted under the guise of “discipline” or “correction”. Corporal punishment must be prohibited in all settings of children’s lives, including the home, schools, penal institutions and all care settings. It must also be prohibited as a sentence of the courts and as a punishment within traditional, customary and religious justice systems.

Prohibition is achieved when:

- all defences and authorisations of corporal punishment are repealed, and
- legislation explicitly prohibits all corporal punishment and other cruel and degrading punishment.

Prohibiting all corporal punishment of children



Reforming the laws in Central/South East Asia and the Pacific

Repeal defences and authorisations of corporal punishment

Most states in the region have enshrined in their laws a “right” of parents and others with parental authority to administer “reasonable/moderate” punishment on children. Explicitly repealing these defences – not just limiting or restricting them – is an integral element of law reform to prohibit corporal punishment. Without repeal, children do not have the same protection from assault as adults. Thankfully, there are no rights in law to administer punishment to women – the existence of such in the 21st century would cause an outcry among advocates for women’s rights and opponents of domestic violence. Regrettably, the right to punish children too often raises voices only when it is perceived as being taken away; its existence in law is somehow still seen as “necessary” or as “reflecting our culture”. Nothing is more symbolic of the distance still to be travelled towards truly regarding children as equal in their humanity with adults and the obligation to protect their rights as just as important.

Legal defences for corporal punishment in the region – to be repealed as part of law reform to achieve prohibition

The following “rights” and/or “duties” are defences for the use of corporal punishment in childrearing in laws in the region and must be repealed.

“Every parent or person in the place of a parent, and every schoolmaster, is justified in using force by way of correction towards any child or pupil under his care, if the force used is reasonable in the circumstances.”

Cook Islands (Crimes Act 1969, art. 61). See also **American Samoa** (Criminal Law, s46.3311); **Marshall Islands** (Criminal Code 2011, art. 3.08); **Nauru** (Criminal Code, s280); **Papua New Guinea** (Criminal Code 1974, art. 278); **Tokelau** (Crimes, Procedure and Evidence Rules 2003, art. 15)

“Nothing in this section [on cruelty to children] shall be construed as affecting the right of any parent, teacher, or other person, having the lawful control of a child or young person to administer reasonable punishment to him.”

Kiribati (Penal Code 1977, art. 226). See also **Fiji** (Juveniles Act 1974, art. 57); **Samoa** (Infants Ordinance 1961, art. 14); **Solomon Islands** (Penal Code 1963, art. 233); **Tuvalu** (Penal Code 1965, art. 226)

“Nothing which is done in good faith for the benefit of a person under 12 years of age ... by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to cause, to that person”

Brunei Darussalam (Penal Code 1951, art. 89). See also **Malaysia** (Penal Code 1936, art. 89); **Myanmar** (Penal Code, art. 89); **Singapore** (Penal Code 1872, art. 89)

“A person who exercises parental authority can discipline the child within limits for the purpose of supervision, care and education”

Japan (Civil Code, art. 822). See also **Cambodia** (Civil Code, art. 1044); **Guam** (Parent and Child Act, s4202); **Myanmar** (Child Law 1993, art. 66); **Philippines** (Family Code 1987, art. 220; Child and Youth Welfare Code 1974, art. 45; Code of Muslim Personal Laws, art. 74); **Thailand** (Civil and Commercial Code, art. 1567)

Explicitly prohibiting all corporal punishment and other cruel and degrading punishment

When all authorisations and defences for corporal punishment are repealed, criminal law on assault applies to children as to all other people – any assault, including in the name of “discipline”, will be unlawful, whoever the perpetrator. To send a clear message, the law should explicitly state that corporal punishment is prohibited. Prohibition requires using language that is clear and not liable to misinterpretation. Laws prohibiting “all forms of violence” or confirming the child’s right to “respect for human dignity and physical integrity” are unlikely to be perceived and interpreted as prohibiting all corporal punishment in childrearing by those who support the use of physical punishment. Similarly, laws prohibiting “corporal punishment which causes harm” may be construed as not prohibiting all corporal punishment by those who believe that only severe corporal punishment is harmful and that “light” physical punishment is acceptable or even in the child’s best interests. Even laws which prohibit “cruel and degrading treatment” will not readily be perceived as prohibiting corporal punishment by adults who do not believe that corporal punishment is cruel or degrading. So-called “compromise laws”, which limit rather than completely prohibit corporal punishment, do not achieve equal protection from assault for children.

Examples of laws explicitly prohibiting corporal punishment in settings outside the home

The following are examples of laws in the region prohibiting corporal punishment of children in settings outside the home. Similar clarity is necessary in enacting prohibition in the home.

Australia (Victoria) Education and Care Services National Law Act 2010, art. 166	<p>(1) The approved provider of an education and care service must ensure that no child being educated and cared for by the service is subjected to –</p> <p>(a) any form of corporal punishment; or</p> <p>(b) any discipline that is unreasonable in the circumstances.</p> <p>Penalty: \$10 000, in the case of an individual. \$50 000, in any other case.</p> <p>[Subsections (2)–(4) set out similar prohibitions in relation to the nominated supervisor of an education and care service, staff members and volunteers of an education and care service, and family day care educators.]</p>
Brunei Darussalam Child Care Centres Act 2006, art. 17	<p>Every operator shall cause to ensure that the staff shall not administer the following disciplinary measures –</p> <p>(a) any form of corporal punishment, including the following – (i) striking a child, directly or with any physical objects; (ii) shaking, pushing, spanking or other forms of aggressive contact; and (iii) requiring or forcing the child to repeat physical movements;</p> <p>(b) harsh, humiliating, belittling or degrading responses of any kind, including verbal, emotional and physical.</p>
China Prison Law 1994, art. 14	<p>The people's police of a prison shall not commit any of the following acts –</p> <p>(3) to use torture to coerce a confession, or to use corporal punishment, or to maltreat a prisoner;</p> <p>(4) to humiliate the human dignity of a prisoner;</p> <p>(5) to beat or connive at others to beat a prisoner.</p> <p>If the people's police of a prison commit any act specified in the preceding paragraph and the case constitutes a crime, the offenders shall be investigated for criminal responsibility; if the case does not constitute a crime, the offenders shall be given administrative sanctions.</p>
Samoa Education Act 2009, art. 23	<p>(1) Every school and early childhood education centre must have a discipline policy.</p> <p>(2) A discipline policy must not include or permit the use of (a) corporal punishment; (b) any form of punishment that may cause harm to the recipient; or (c) any form of punishment that humiliates or is intended to humiliate the recipient.</p> <p>(3) A teacher or staff member of a school must not administer corporal punishment to a school student at a school or during any activity organised by a school.</p> <p>(4) A person employed at an early childhood education centre must not administer corporal punishment to any child at the early childhood education centre or during any activity organised by the early childhood education centre.</p>
Solomon Islands Correctional Services Act 2007, art. 53	<p>No prisoner may be subjected, by way of punishment, to –</p> <p>(a) corporal punishment in any form.</p>
Tonga Education (Schools and General Provisions) Regulations 2002	<p>(4) Under no circumstances shall a teacher inflict corporal punishment on any student.</p> <p>(5) Under no circumstances shall staff in any school direct students to administer corporal punishment on another student.</p> <p>(9) A principal teacher or teacher who inflicts corporal punishment on any student or causes any student to inflict corporal punishment on another student shall be reported for action to the Director or their nongovernment Managing Authority. Details of the incident shall be entered in the schools' staff discipline register.</p>

Opportunities in the region for law reform to prohibit corporal punishment

Key opportunities for enacting laws to prohibit corporal punishment arise when legislation is being reviewed, for example when national laws are being harmonised with the Convention on the Rights of the Child and other human rights instruments, and when new laws relevant to children are being drafted. There are many current opportunities for reform in the region, but while in some states prohibition is being actively promoted in this context, in others there are proposals to enact laws authorising corporal punishment. To comply with states' obligations under international human rights law, prohibition of corporal punishment should be promoted and enacted in the context of these reforms as a matter of urgency.



Opportunities for prohibiting corporal punishment of children

State	Draft law/bill under discussion	Prohibition included / proposed
Cambodia	Draft Juvenile Justice Law	?
Cook Islands	Draft Crimes Act and Family Law Bill	?
Fiji	Draft Constitution	?
Indonesia	Draft Criminal Code	NO (draft authorises corporal punishment)
Kiribati	Child, Young People and Family Welfare Bill; Family Peace Bill; Juvenile Justice Bill	YES (Juvenile Justice Bill)
Macau (China)	Draft domestic violence law	NO
Malaysia	Amendments to Child Act	?
Mongolia	Draft Law on Crime; Amendments to Law on the Protection of the Rights of the Child	YES
Myanmar	Amendments to Child Law	?
Nauru	Amendments to Criminal Code and Constitution	?
Niue	Family Protection Bill	?
Palau	Family Protection Bill	?
Philippines	Positive and Nonviolent Discipline of Children Bill	YES
Republic of Korea	Legislation on day care centres (unconfirmed)	YES
Samoa	Child Care and Protection Bill	NO
Solomon Islands	Family Protection Bill; draft Federal Constitution	?
Timor-Leste	Draft Child Code	YES
Tuvalu	Amendments to Education Act; Family Protection and Domestic Violence Bill	?
Uzbekistan	Amendments to Family Code (unconfirmed)	?
Vanuatu	Young Offenders Bill (unconfirmed)	?
Viet Nam	Amendments to Law on the Protection, Care and Education of Children	YES

The Global Initiative is seeking to identify immediate opportunities for law reform in Australia, Brunei Darussalam, China, DPR Korea, Japan, Kazakhstan, Kyrgyzstan, Lao PDR, Marshall Islands, Micronesia, Singapore, Taiwan, Tajikistan, Thailand and Turkmenistan. Please send information to info@endcorporalpunishment.org.

Why family protection/domestic violence laws should prohibit corporal punishment

As the table on page 25 shows, “family protection” bills are actively under consideration in a number of states in the region. These provide key opportunities for prohibiting corporal punishment of children. Yet too often “family protection” is perceived as addressing domestic violence in terms of protection for women from all violence in the home but protecting children only from witnessing such violence or, sometimes, from forms of violence which are considered to constitute “child abuse”. But “family protection” should by definition protect all members of the family from violence – girls, boys, women and men.

It is sometimes argued by those who favour the use of physical punishment in childrearing that the job of parenting is a private affair, and the state should not interfere. Yet the concept of a law on family protection clearly recognises that violence in the home is not a private matter: the state has an obligation to prevent it, including by prohibiting it. What can be the justification for protecting women in the home but leaving children in that same home vulnerable to violent punishment?

Family protection laws which do not prohibit corporal punishment of children will lead to the perverse situation of the same adults who are prevented in law from inflicting violence on their partners being able to inflict it on their children with impunity. Failure to prohibit corporal punishment of children in the home can only undermine the effectiveness of the protection for adults, making the home less safe for everyone.

A Family Protection Law which does not explicitly prohibit all corporal punishment of children fails to protect the most dependent and vulnerable members of the family. A home where it is lawful to “discipline” children by hitting and hurting them – however lightly – can never be completely safe or violence-free.



Implementing the law – from prohibition to elimination



The ultimate goal of state action to fulfil children's right to protection from corporal punishment and other cruel or degrading treatment or punishment is to ensure that no child ever experiences it, by eliminating its use altogether. Achieving prohibition in law sends a clear message that hitting and hurting a child, for whatever reason, is wrong, just as hitting and hurting adults is wrong, and when breached the law can be enforced appropriately according to the circumstances of the case. But implementing the law is not only about responding to adults who violently punish children. It is also about transforming attitudes and practice so that physical punishment is no longer seen as acceptable in childrearing and education. It is about working towards a society where no assault on a child, however light, can conceivably be thought of as "reasonable".

Preliminary list of measures needed to accompany/follow prohibition

- Wide dissemination and explanation of the law and its implications
- Detailed guidance, for all involved, on how the law prohibiting violent punishment should be implemented in the best interests of children
- Communication of children's right to protection from corporal punishment and all other cruel or degrading forms of punishment to children and adults
- Promotion of positive, non-violent forms of discipline to the public, children, parents, other carers, teachers, etc
- Dissemination of information on the dangers of corporal punishment
- Integration of implementation/enforcement of the prohibition into the national and local child protection system
- Identification of key public figures and a wide range of partners who can support implementation of the law and transformation of attitudes
- Attraction of necessary resources
- Evaluation of the impact of law reform and other measures, through a baseline survey and regular follow-up surveys, interviewing children and parents.



Possible channels and opportunities/contact points for communication of key messages

- Birth registration
- Pre- and post-natal services
- All other health service and health practitioner contacts with parents, future parents, children
- Pre-school entry, school entry, school curriculum, informal educational settings
- Social and welfare services in contact with children (including children in all non-family settings) and with families
- Initial and in-service training of all those working with and for families and children, including teachers, care workers, etc
- Elements of civil society in contact with children and families, including religious/faith groups
- Mass media, internet, social networking, etc.

Planning for change

A national plan should be developed by the government with other potentially active partners on how to progress from prohibition to elimination. This could be a distinct plan or an integral element in a national plan to eliminate all forms of violence against children. A review is likely to be needed, covering:

- what action there has been – including development of programmes and materials – challenging corporal punishment in the home and family, local community, schools and other institutions, all forms of alternative care, child labour and penal systems for children
- the structures of relevant national/local services impacting on children and families which could be used as a communications vehicle to support the move away from violent punishment
- available research on the prevalence of and attitudes towards violent punishment of children.

Promoting positive discipline

Many of the campaigns listed on page 9 are promoting positive discipline alongside law reform. Save the Children Sweden works with partners in Viet Nam, the Philippines, Thailand, Cambodia, China, Fiji, Hong Kong, Indonesia, Mongolia and Taiwan. A key focus of its work is the promotion of positive, non-violent parenting.



In 2007, a comprehensive resource on positive discipline was published which takes a practical approach to parenting children of all ages without the use of corporal punishment. Written by Child-Clinical Psychologist and Professor Joan E. Durrant, Canada, it was piloted in Asia with professionals working with parents and continues to support work on the issue throughout and beyond the region. Originally launched in 2007 in the Philippines and Fiji, the programme is now in 16 languages and is being delivered in more than 20 countries, including in this region. The parent book, now in its third edition and entitled *Positive Discipline in Everyday Parenting* (available at www.endcorporalpunishment.org), is being used to promote positive discipline worldwide, including in Asia and the Pacific. An international evaluation team is monitoring the impact of the training: information gathered to date shows significant attitudinal changes among parents participating in the training and among the programme facilitators themselves.

Save the Children Japan (www.savechildre.or.jp) has been promoting the prohibition and elimination of physical and other humiliating punishment since 2009. The above-mentioned positive discipline book has been translated into Japanese and made available in bookstores and online. With partners, Save the Children has now conducted seminars on positive discipline with around 1,500 participants and a home education programme on positive discipline in Toshima City, Tokyo, through 50 home education promoters per year. Promotion of law reform is led by the Initiative for Ending Violence Against Children Japan (www.kodomosukoyaka.net), campaigning for explicit prohibition of corporal punishment in all settings and the repeal of the defence for corporal punishment in article 822 of the Civil Code.

Since 2011, Save the Children in the Republic of Korea has been promoting positive discipline among parents of kindergarten and elementary school children, parents who have abused their children, soon-to-be parents, and teachers in institutions and kindergartens, reaching almost 3,700 parents and teachers to date. Between March and October 2012, Save the Children was also involved in promoting the Seoul Children's Rights Ordinance, enacted in October 2012, which explicitly prohibits corporal punishment by parents/carers in the home and in alternative care settings.



In 2007, New Zealand became the first country in the region to prohibit all corporal punishment, by repealing the defence for the use of force for the purpose of correction (see page 55). Research carried out in 2008 found that attitudes towards corporal punishment had changed even in the year since prohibition. A high level of awareness among adults of the prohibition of corporal punishment (91%) was accompanied by declining levels of support for its use (58% thought “smacking” was sometimes acceptable, compared with 87% in 1993 and around 90% in 1981).¹ A 2012 survey of 500 parents of children under 12 found that 44% had not smacked their children since prohibition.²

When the law was reformed, a system of regular reviews of police activity related to physical punishment of children was established, initially for two years commencing in June 2007. The purpose was to enable the police to “respond proactively to any issues which might arise following the enactment” and “to provide specific information on the number of calls to police about child assaults involving ‘smacking’ and ‘minor acts of physical discipline.’” In December 2009, the process was extended for a further three years.

The eleventh and final review was published in April 2013. It reports that the vast majority of incidents of “smacking” and “minor acts of physical discipline” attended by the police resulted in referrals to support agencies. In a small minority the perpetrators were prosecuted; sentences for those convicted included supervision, community service and/or attendance at a violence prevention programme. The findings are consistent with all previous reviews, showing that the fear expressed by some at the time of law reform that prohibition would lead to large numbers of prosecutions of parents and to families being broken up was unfounded and that the law is being implemented sensitively and with an emphasis on education and prevention.³ All reviews are publicly available on the New Zealand Police website (www.police.govt.nz).

Implementation of the law is also supported by the promotion of positive, non-violent discipline, particularly by the Office of the Children’s Commissioner (www.occ.org.nz) and Barnardos (www.barnardos.org.nz). Since 2004, the Government’s S.K.I.P. (Strategies with Kids, Information for Parents) initiative has promoted positive, non-violent ways to bring up children, focusing on parents and caregivers of 0-5 year olds (www.skip.org.nz).



- 1 UMR Research (2008), *Omnibus Survey Report: One year on: Public attitudes and New Zealand’s child discipline law*, Office of the Children’s Commissioner
- 2 Reported in *New Zealand Herald*, 2 April 2012
- 3 New Zealand Police (2013), *Eleventh review of police activity since enactment of the Crimes (Substituted Section 59) Amendment Act 2007*

Legality of corporal punishment in the region – state by state analysis (November 2013)

Please note: The following information has been compiled from many sources, including reports to and by the United Nations human rights treaty bodies. Information in square brackets is unconfirmed. We are very grateful to government officials, UNICEF and other UN agencies, NGOs and human rights institutions, and many individuals who have helped to provide and check information. Please let us know if you believe any of the information to be incorrect: info@endcorporalpunishment.org.

State	Prohibited in the home	Prohibited in schools	Prohibited in penal system		Prohibited in alternative care settings
			As sentence for crime	As disciplinary measure	
Australia	✗	SOME ¹	✓	SOME ²	SOME ³
Brunei Darussalam ⁴	✗	✗	✗	✗	SOME ⁵
Cambodia	✗	✓	✓	✓	✗
China	✗ ⁶	✓	✓	✓	SOME ⁷
Cook Islands	✗	✓	✓	✗	SOME ⁸
DPR Korea	✗	[✗] ⁹	[✓]	[✓]	✗
Fiji	✗	✓ ¹⁰	✓	✓	✗
Indonesia	✗	✗	SOME ¹¹	✓ ¹²	✗ ¹³
Japan ¹⁴	SOME ¹⁵	✓ ¹⁶	✓	✗	✗
Kazakhstan	✗	✓ ¹⁷	✓	✓	SOME ¹⁸
Kiribati	✗	✓	✗	✗	✗
Kyrgyzstan ¹⁹	✗	✓	✓	✓	SOME ²⁰
Lao PDR	✗	✓	✓	✓ ²¹	SOME ²²
Malaysia	✗	✗	✗ ²³	✗	✗

- 1 Prohibited in all states/territories except Queensland and Western Australia
- 2 Prohibited in all states/territories except Australian Capital Territory and Western Australia
- 3 Prohibited in all states/territories except Australian Capital Territory and Western Australia
- 4 Government accepted some UPR recommendations to prohibit but rejected others (2009)
- 5 Prohibited in child care centres
- 6 Corporal punishment of girls prohibited in Shenzhen Special Economic Zone
- 7 Prohibited in nurseries and kindergartens
- 8 Prohibited in institutions providing early childhood education
- 9 Policy states corporal punishment should not be used but possibly no prohibition in law
- 10 Ruled unconstitutional in 2002 High Court ruling but legislation still to be amended
- 11 Lawful under Shari'a law in Aceh province and in regional regulations based on Shari'a law in other areas
- 12 But no explicit prohibition
- 13 National Standards of Care for Child Welfare Institutions state corporal punishment should not be used but no prohibition in law
- 14 Government accepted UPR recommendations to prohibit all corporal punishment (2008, 2012), but denied that the legal "right to discipline" allowed for corporal punishment and stated that the law adequately protects children from "excessive" discipline (2012)
- 15 Prohibited in Kawasaki City by local ordinance
- 16 Prohibited in 1947 School Education Law but 1981 Tokyo High Court judgment stated some physical punishment may be lawful in some circumstances
- 17 But no explicit prohibition
- 18 Prohibited in children's villages and institutions
- 19 Government accepted UPR recommendation to prohibit in all settings but also stated that corporal punishment is already unlawful (2010)
- 20 Prohibited in residential institutions
- 21 But no explicit prohibition
- 22 Unlawful in early childhood education settings
- 23 Government committed to prohibition of judicial caning for persons under 18 (2007)

State	Prohibited in the home	Prohibited in schools	Prohibited in penal system		Prohibited in alternative care settings
			As sentence for crime	As disciplinary measure	
Marshall Islands	✗	✗	✓	✗	✗
Micronesia	✗	[✓]	✓	✗	✗
Mongolia ²⁴	✗	✓	✓	✗	✗ ²⁵
Myanmar	✗	[✗] ²⁶	✓ ²⁷	✗	✗
Nauru	✗	✗	[✓]	✗	✗
New Zealand	✓ ²⁸	✓	✓	✓	✓
Niue	✗	✗	✓	[✓]	✗
Palau ²⁹	✗	✗	✓	✗	✗
Papua New Guinea ³⁰	✗	✗	✓	✗	SOME ³¹
Philippines ³²	✗	✓	✓	✓	✓
Republic of Korea ³³	SOME ³⁴	SOME ³⁵	✓	✓ ³⁶	SOME ³⁷
Samoa ³⁸	✗	SOME ³⁹	✓	✓	SOME ⁴⁰
Singapore	✗	✗	✗	✗	SOME ⁴¹
Solomon Islands ⁴²	✗	✗	✓ ⁴³	✓	✗
Taiwan	✗	✓	✓	✓	[SOME] ⁴⁴
Tajikistan ⁴⁵	✗	✓ ⁴⁶	✓	✗	✗
Thailand ⁴⁷	✗	✓	✓ ⁴⁸	✓ ⁴⁹	✗
Timor-Leste ⁵⁰	✗	✗	✓	✓ ⁵¹	✗ ⁵²

24 Government accepted UPR recommendation to prohibit (2010); legislation which would prohibit being drafted (2013)

25 But possibly prohibited in preschool settings

26 Government directive advises against corporal punishment but no prohibition in law

27 But some legislation still to be repealed

28 Prohibited in Crimes (Substituted Section 59) Amendment Act 2007

29 Government accepted UPR recommendation to prohibit (2011)

30 Government accepted UPR recommendation to prohibit in all settings (2011)

31 Lukautim Pikinini (Child) Act 2009 prohibits corporal punishment of children "in the care of the Director"

32 Government accepted UPR recommendation to prohibit in the home and other settings (2012); bill which would prohibit under discussion (2013)

33 Government accepted UPR recommendations to prohibit in all settings (2012) but was unclear on the need for complete prohibition in the home

34 Prohibited in Seoul

35 Law prohibits direct physical punishment (involving physical contact) but not indirect physical punishment (no contact, e.g. painful positions); fully prohibited in Seoul

36 But no explicit prohibition

37 Prohibited in Seoul

38 Government accepted UPR recommendation to prohibit in the home (2011)

39 Prohibited in government schools for children aged 5-14

40 Prohibited in early childhood centres

41 Prohibited in child care centres

42 Government accepted UPR recommendation to prohibit in all settings (2011) but stated that the Penal Code was being reviewed to ascertain whether further provision or guidance is necessary to clarify when corporal punishment is lawful

43 But used in traditional justice

44 Possibly prohibited in care centres under education legislation

45 Government accepted UPR recommendation to prohibit in all settings (2011); Government stated legislation is being improved to prohibit corporal punishment in the family and education settings (2012)

46 But no explicit prohibition

47 Government accepted UPR recommendations to prohibit in all settings (2012)

48 But some legislation possibly still to be amended

49 But some legislation possibly still to be amended

50 Government accepted UPR recommendation to prohibit (2011); draft legislation which would prohibit in all settings under discussion (2013)

51 But no explicit prohibition

52 Policy advises against corporal punishment in some care settings but no prohibition in law

States *ctd*

State	Prohibited in the home	Prohibited in schools	Prohibited in penal system		Prohibited in alternative care settings
			As sentence for crime	As disciplinary measure	
Tonga			⁵³		SOME ⁵⁴
Turkmenistan ⁵⁵		⁵⁶			SOME ⁵⁷
Tuvalu ⁵⁸			SOME ⁵⁹	SOME ⁶⁰	SOME ⁶¹
Uzbekistan				⁶²	
Vanuatu			SOME ⁶³		
Viet Nam					

Overseas departments, territories and dependencies

Territory etc	Prohibited in the home	Prohibited in schools	Prohibited in penal system		Prohibited in alternative care settings
			As sentence for crime	As disciplinary measure	
China					
Hong Kong					SOME ⁶⁴
Macau		⁶⁵			
France					
French Polynesia				⁶⁶	
New Caledonia				⁶⁷	
Wallis and Futuna Islands				⁶⁸	
New Zealand					
Tokelau		⁶⁹			
UK					
Pitcairn Islands	⁷⁰				
US					
American Samoa					
Guam					SOME ⁷¹
Northern Mariana Islands					

53 2010 Court of Appeal ruling stated that “it might be argued” whipping is unconstitutional but did not declare it to be so

54 Prohibited in preschool institutions

55 Government accepted UPR recommendation to prohibit in all settings (2013)

56 But no explicit prohibition

57 Unlawful in preschool provision

58 Government accepted UPR recommendation to prohibit in 2008 but in 2013 accepted some UPR recommendations to prohibit and rejected others

59 Island Courts may order corporal punishment

60 Corporal punishment by police officers prohibited

61 Prohibited in hospital mental health wing

62 But no explicit prohibition

63 Permitted in rural areas under customary justice systems

64 Prohibited in child care centres

65 But no explicit prohibition

66 But no explicit prohibition

67 But no explicit prohibition

68 But no explicit prohibition

69 Policy states that corporal punishment should not be used but no prohibition in law

70 Prohibited in Children Ordinance 2003, amended 2009

71 Prohibited in child care centres and group child care homes

Country reports – independent states

AUSTRALIA

**Child population (0-17): 5,190,000
(UNICEF, 2011)**



Current legality of corporal punishment

Home (lawful): The defence of “reasonable chastisement” applies in all states and territories (in common law in **Australian Capital Territory** and **Victoria**, in **Northern Territory** Criminal Code Act s27, in **Queensland** Criminal Code Act 1899 s280, in **South Australia** Criminal Law Consolidation Act 1935 s20, in **Tasmania** Criminal Code Act 1924 s50 and in **Western Australia** Criminal Code 1913 s 257). In **New South Wales**, the Crimes Act as amended in 2001 provides for “lawful correction”, which excludes the use of force on a child’s head or neck or to any other part of the body in such a way as to cause, or threaten to cause, harm lasting more than a short period.

Schools (partial prohibition): Corporal punishment is prohibited in all schools in **Australian Capital Territory** (Education Act 2004), **New South Wales** (Education Act 1990; Children (Education and Care Services) National Law (NSW) No 104a), **Tasmania** (Education Act 1994; Education and Care Services National Law (Application) Act 2011) and **Victoria** (Education and Training Reform Act 2006; Education and Training Reform Regulations 2007; Education and Care Services National Law Act 2010). It is prohibited in some but not all schools in **Western Australia** (School Education Regulations; Education and Care Services National Law (WA) Act 2012), **Northern Territory** (Education and Care Services (National Uniform Legislation) Act 2011) and **South Australia** (Education and Early Childhood Services (Registration and Standards) Act 2011). In **Queensland**, corporal punishment is lawful under the provisions for reasonable force “by way of correction, discipline, management or control” in s280 of the Criminal Code Act 1899.

Penal system – sentence for crime (unlawful): There is no provision for judicial corporal punishment in criminal law in any state or territory.

Penal system – disciplinary measure in penal institutions (partial prohibition): Corporal punishment is unlawful as a disciplinary measure in penal institutions in **New South Wales** (Children (Detention Centres) Regulations 2005), **Northern Territory** (Youth Justice Act), **Queensland** (Juvenile Justice Regulations 2003), **South Australia** (Family and Community Services Regulations 1996), **Tasmania** (Youth Justice Act 1997, s132) and **Victoria** (Children, Youth and Families Act 2005). In **Australian Capital Territory**, corporal punishment is not among permitted disciplinary measures in the Children and Young People Act 2008 but is not explicitly prohibited. It is not prohibited in **Western Australia**.



Alternative care settings (partial prohibition): Corporal punishment is prohibited in all alternative care settings in **Australian Capital Territory** (Children and Young People Act 2008), **New South Wales** (Children’s Services Regulation 2004; Children and Young Persons (Care and Protection) Regulation 2000; Children (Education and Care Services) National Law (NSW) No 104a), **Queensland** (Child Protection Act 1999), **South Australia** (Children’s Services (Child Care Centres) Regulations 1998, Family and Community Services Regulations 1996 and by licensing requirements). It is prohibited in some but not all care settings in **Northern Territory** (Education and Care Services (National Uniform Legislation) Act 2011), **Victoria** (Children’s Services Act 1996, s28; Education and Care Services National Law Act 2010), and **Western Australia** (Child Care Services (Child Care) Regulations 2006, s85; Child Care Services (Family Day Care) Regulations 2006, s69; Child Care Services (Outside School Hours Care) Regulations 2006, s66; Child Care Services (Outside School Hours Family Day Care) Regulations 2006, s52).

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: Committee on the Rights of the Child (2012, 2005, 1997);¹ Committee Against Torture (2008).²

UPR (2011): Government rejected recommendation to prohibit corporal punishment in the home in all states and territories.³

Law reform necessary to achieve prohibition in Australia

Repeal of “reasonable chastisement” / “lawful correction” defence (in common law and state and territory criminal laws); explicit prohibition of corporal punishment in all schools in Queensland and Western Australia, and in all care settings in Northern Territory, Tasmania, Victoria and Western Australia.



- 1 28 August 2012, CRC/C/AUS/CO/4, Concluding observations on fourth report, paras. 7, 8, 43, 44, 45, 46 and 47; 20 October 2005, Concluding observations on second and third report, CRC/C/15/Add.268, paras. 5, 35 and 36; 10 October 1997, CRC/C/15/Add.79, Concluding observations on initial report, paras. 15 and 26
- 2 22 May 2008, CAT/C/AUS/CO/1, Concluding observations on third report, para. 31
- 3 24 March 2011, A/HRC/17/10, Report of the working group, para. 86(75); 31 May 2011, A/HRC/17/10/Add.1, Report of the working group: Addendum

BRUNEI DARUSSALAM

Child population (0-17): 124,000 (UNICEF, 2011)



Current legality of corporal punishment

Home (lawful): The Penal Code 1951 states that, with certain exceptions, “nothing which is done in good faith for the benefit of a person under 12 years of age ... by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person” (art. 89). The Children and Young Persons Act 2006 (in force 2010) punishes child abuse which causes injury, which under article 2 must be “substantial and observable” (art. 28): it does not prohibit all corporal punishment.

Schools (lawful): Article 5 of the Education (School Discipline) Regulations 2004, under the Education Act 2003, authorises the head teacher or principal, or a designated teacher, to impose corporal punishment on male pupils.

Penal system – sentence for crime (lawful): The Children and Young Persons Act 2006, in force 2010, states that a child or a young person may be sentenced to corporal punishment by the High Court (art. 44). The Criminal Procedure Code 1951 sets out how corporal punishment – whipping – should be inflicted: for a young offender it should not exceed 18 strokes, “inflicted in the way of school discipline with a light rattan” (art. 257). Females may not be sentenced to whipping (art. 258).

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: Committee on the Rights of the Child (2003).⁴

UPR (2009): Government accepted recommendations to prohibit corporal punishment in the home and schools but rejected recommendations to abolish whipping and flogging.⁵

Penal system – disciplinary measure in penal institutions (lawful):

Under the Youthful Offenders (Places of Detention) Rules 2001, boys under 14 may be given up to 6 strokes with a light cane, older children up to 10 strokes (arts. 51-55). The medical officer must certify that an inmate is able to sustain the punishment. The Children and Young Persons Act 2006 permits the use of “such force as is reasonable and necessary” in order “to compel a person being detained to obey any order or requirement given or made by him under this section; and (ii) to restrain any such person who is attempting or preparing to commit or is committing any offence or any breach of discipline” in approved schools, approved homes, remand homes and places of detention (art. 76).

Alternative care settings (partial prohibition):

Corporal punishment is explicitly prohibited in child care centres in the Child Care Centres Act 2006 (art. 17). It is lawful in other care settings.

Law reform necessary to achieve prohibition in Brunei Darussalam

Repeal/amendment of the legal defence for corporal punishment (in Penal Code 1951); repeal of provisions authorising corporal punishment (in Education (School Discipline) Regulations 2004, Criminal Procedure Code 1951, Penal Code 1951, Children and Young Persons Act 2006, Youthful Offenders (Places of Detention) Rules 2001); explicit prohibition of corporal punishment in the home, schools, penal system and all alternative care settings.

⁴ 27 October 2003, CRC/C/15/Add.219, Concluding observations on initial report, paras. 37, 38, 43, 44, 55 and 56

⁵ 4 January 2010, A/HRC/13/14, Report of the working group, paras. 89(18), 89(19), 90(15) and 90(18)



CAMBODIA

Child population (0-17): 5,480,000 (UNICEF, 2011)

Current legality of corporal punishment

Home (lawful): The Civil Code states that “a person who has parental authority may discipline his/her child by himself/herself within necessary scope” (art. 1044, provisional translation). The Law on the Prevention of Domestic Violence and the Protection of Victims 2005 states that discipline of children is not considered as violence or domestic violence (art. 8). The Constitution 1999 states that “the State shall protect the rights of children as stipulated in the Convention on Children” (art. 48), but legal provisions against violence and abuse in the Constitution and in the Marriage and Family Law 1989 and the Criminal Code 2010 are not interpreted as prohibiting all corporal punishment in childrearing.

Schools (unlawful): Corporal punishment is explicitly prohibited in the Education Law 2007 (art. 35).

Law reform under way

A draft new Juvenile Justice Law is under discussion. We do not know if it includes prohibition of corporal punishment.

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: Committee on the Rights of the Child (2011);⁶ Human Rights Committee (1999).⁷

UPR (2009): No recommendations made on corporal punishment but Government accepted recommendations to harmonise legislation with international human rights standards.⁸

Penal system – sentence for crime (unlawful): There is no provision for judicial corporal punishment in criminal law.

Penal system – disciplinary measure in penal institutions (unlawful): Corporal punishment is considered unlawful under the Constitution 1999 which prohibits “coercion, physical ill-treatment or any other mistreatment that imposes additional punishment on a detainee or prisoner” (art. 38), but there appears to be no explicit prohibition of corporal punishment.

Alternative care settings (lawful): The Civil Code authorises a person with parental authority to discipline the child “within necessary scope” (art. 1044).

Law reform necessary to achieve prohibition in Cambodia

Repeal of parental authority to discipline “within necessary scope” (in Civil Code); explicit prohibition of corporal punishment in the home and all alternative care settings.

⁶ 20 June 2011, CRC/C/KHM/CO/2 Advance Unedited Version, Concluding observations on second/third report, paras. 38, 39, 40 and 41

⁷ 27 July 1999, CCPR/C/79/Add.108, Concluding observations on initial report, para. 15

⁸ 4 January 2010, A/HRC/13/4, Report of the working group, paras. 82(5), 82(80) and 82(82)

CHINA



Child population (0-17): 317,892,000 (UNICEF, 2011)

Current legality of corporal punishment

Home (lawful): There is limited protection from corporal punishment by parents in some circumstances: Rules in the Shenzhen Special Economic Zone 1993 pursuant to the Law of the People's Republic of China on the Protection of the Rights and Interests of Women 1992 explicitly prohibit corporal punishment of the female child (art. 23), and under the Law on the Prevention of Juvenile Delinquency 1999, families of children in work-study schools must not impose physical punishment on them (art. 36). But the same Law states that parents or guardians of children who commit serious misbehaviour may be ordered to subject their children to "strict discipline" (arts. 35, 38 and 49). Provisions against violence and abuse in the revised Law on the Protection of Minors 2006, the Criminal Law 1979, the Constitution 1982 and the Marriage Law (amended 2001) are not interpreted as prohibiting all corporal punishment in childrearing.

Schools (unlawful): Corporal punishment is prohibited in the Compulsory Education Law 1986 (art. 16), the Teachers' Law 1994 (art. 37), the Prevention of Juvenile Delinquency 1999 (art. 36) and the Law on the Protection of Minors 2006 (arts. 21 and 63).

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: Committee on the Rights of the Child (2013, 2005).⁹

UPR (2013, 2009): No recommendations made on corporal punishment but in 2009 Government accepted recommendations to promote human rights through law reform and to attach more importance to the protection of the rights of the child.¹⁰

Penal system – sentence for crime (unlawful): There is no provision for judicial corporal punishment in criminal law.

Penal system – disciplinary measure in penal institutions (unlawful): Corporal punishment is explicitly prohibited in the Criminal Law 1979 (art. 248), the Law on the Prevention of Juvenile Delinquency 1999 (art. 36), the Prison Law (art. 14), the People's Police Law (art. 22) and in the Regulations on the Behaviour of People's Police on Duty in Custody-houses 2001.

Alternative care settings (partial prohibition): Corporal punishment is prohibited in nurseries and kindergartens in the Law on the Protection of Minors 2006 (arts. 21 and 63). There appears to be no explicit prohibition in other alternative care settings (unconfirmed).

Law reform necessary to achieve prohibition in China

Explicit prohibition of corporal punishment in the home and in all alternative care settings.

⁹ 29 October 2013, CRC/C/CHN/CO/3-4, Concluding observations on third/fourth report, paras. 6 and 7; 24 November 2005, Concluding observations on second report on China (including Hong Kong and Macau Special Administrative Regions), CRC/C/CHN/CO/2, paras. 46, 47 and 48

¹⁰ 5 October 2009, A/HRC/11/25, Report of the working group, paras. 114(2) and 114(13)



COOK ISLANDS

Child population (0-17): 8,000 (UNICEF, 2011)

Current legality of corporal punishment

Home (lawful): The Crimes Act 1969 states (art. 61): “(1) Every parent or person in the place of a parent, and every schoolmaster, is justified in using force by way of correction towards any child or pupil under his care, if the force used is reasonable in the circumstances. (2) The reasonableness of the force used is a question of fact.”

Schools (unlawful): Corporal punishment is explicitly prohibited in schools in article 109 of the Education Act 2012 (in force January 2013): “(1) A person at an educational institution, or at an educational institution activity, must not - (a) verbally abuse a student of the institution; or (b) use physical force, by way of correction or punishment, against a student of the institution; or (c) require a student of the institution to do an act intended or likely to cause the student pain, severe discomfort, or humiliation.”

Law reform under way

The Education Act 2012 explicitly prohibits corporal punishment in schools but as at June 2013, it appears that a date of commencement for the Act is still to be announced.

The Crimes Act 1969 is being comprehensively reviewed by Crown Law with technical assistance from the Australian Government; the draft of a new Crimes Act was expected to be complete by the end of 2012; a Family Law Bill was also being discussed. We do not know if prohibition of corporal punishment has been proposed in the context of these reforms but we note that the “Model Criminal Code” in use in Australia provides for “reasonable correction” of a child.

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: Committee on the Rights of the Child (2012).¹¹

UPR (---): The Cook Islands is not a UN member and is not reviewed in the Universal Periodic Review process.

Penal system – sentence for crime (unlawful): There is no provision for judicial corporal punishment in criminal law.

Penal system – disciplinary measure in penal institutions (lawful): There is no explicit prohibition of corporal punishment.

Alternative care settings (partial prohibition): Corporal punishment is unlawful in institutions providing early childhood education under the Education Act 2012 (art. 109). In other care settings, it is lawful under the provision for the use of force “by way of correction” in the Crimes Act 1969 (art. 61).

Law reform necessary to achieve prohibition in the Cook Islands

Repeal of the provision for the use of force “by way of correction” (in Crimes Act 1961); explicit prohibition of corporal punishment in the home, penal institutions and all alternative care settings.

¹¹ 21 February 2012, CRC/C/COK/CO/1, Concluding observations on initial report, paras. 35 and 36

DPR KOREA



Child population (0-19): 7,651,000
(World Population Prospects, 2010)

Current legality of corporal punishment

Home (lawful): Provisions protecting children from violence and abuse in the Family Law 1990 (amended 2004), the Criminal Law 1974 (amended 2004), the Law on Nursing and Upbringing of Children 1976 and the Law on the Protection of Women's Rights 2010 do not prohibit all corporal punishment in childrearing. The Law on the Protection of Children's Rights 2010 reportedly states that "children shall not be subject to abuse, indifference, verbal abuse, interrogations or beatings within the family" (art. 43).¹² We are currently seeking to verify this information. There is no suggestion that the law prohibits all forms of corporal punishment, however light.

Schools (?lawful): According to the third/fourth state party report to the Committee on the Rights of the Child in 2007, the Education Law 2005 takes into account the principles of the Convention on the Rights of the Child,¹³ but we have been unable to establish whether or not it explicitly prohibits corporal punishment. Government policy states that corporal punishment should not be used in schools. The Regulation on Primary and Senior Middle Schools states that education should be conducted by positive influence, explanation and persuasion, and related materials have been distributed by the Ministry of Education. We have yet to examine the text of the General Education Law 2011.

Penal system – sentence for crime (?unlawful): Corporal punishment appears to be unlawful for young people under 18, but we have yet to confirm that it is not an element of the "public education" measures imposed on children aged 15-16 convicted of an offence (Criminal Law 1974, art. 49). Young people aged 17 appear to be subject to adult criminal sanctions under the Criminal Law, which include "reform through labour". There is no protection from cruel and degrading treatment or punishment in the Socialist Constitution 1998.

Penal system – disciplinary measure in penal institutions (?unlawful): No information.

Alternative care settings (lawful): There is no explicit prohibition of all corporal punishment.

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: Committee on the Rights of the Child (2009, 2004, 1998).¹⁴

UPR (2009): No recommendations made on corporal punishment and Government did not respond to a recommendation to prohibit all forms of violence against children.¹⁵

Law reform necessary to achieve prohibition in DPR Korea

Explicit prohibition of corporal punishment in the home, schools, penal system and alternative care settings.

¹² Information submitted to UPR-info.org by the Citizens' Alliance for North Korean Human Rights, June 2012

¹³ 15 January 2008, CRC/C/PRK/4, Third/fourth state party report, para. 16

¹⁴ 27 March 2009, CRC/C/PRK/CO/4, Concluding observations on third/fourth report, paras. 36, 37, 70, 72 and 73; 1 July 2004, CRC/C/15/Add.239, Concluding observations on second report, paras. 7, 36 and 37; 5 June 1998, CRC/C/15/Add.88, Concluding observations on initial report, paras. 13 and 26

¹⁵ 4 January 2010, A/HRC/13/13, Report of the working group, para. 90(67)



FIJI

Child population: (0-17): 300,000 (UNICEF, 2011)

Current legality of corporal punishment

Home (lawful): The Juveniles Act 1974 punishes cruelty to children but also confirms “the right of any parent, teacher or other person having the lawful control or charge of a juvenile to administer reasonable punishment to him” (art. 57). There is no explicit prohibition of corporal punishment in the Crimes Decree 2009, the Domestic Violence Decree 2009 or the Child Welfare Decree 2010.

Schools (unlawful): Corporal punishment is unlawful under a 2002 High Court ruling which stated that it is unconstitutional.¹⁶ The Education Act 1978 is silent on the issue, but the Juveniles Act 1974 provides legal justification for the use of corporal punishment (art. 57). There are Guidelines Banning Corporal Punishment (Guidelines of the Permanent Secretary, Education Gazette Vol. III, 2003) but the High Court prohibition is yet to be confirmed in legislation.

Penal system – sentence for crime (unlawful): Corporal punishment was declared unconstitutional in the 2002 High Court ruling, there is no provision for judicial corporal punishment in the Crimes Decree 2009 or the Sentencing and Penalties Decree 2009, and it is prohibited in the Juveniles Act 1974 (art. 32).

Penal system – disciplinary measure in penal institutions (unlawful): Following the 2002 High Court ruling, the Prisons and Corrections Act 2006 included explicit prohibition of corporal punishment (art. 38) and repealed the Prisons Act and Prisons Regulations which provided for corporal punishment. There is no provision for corporal punishment in the Juveniles Act 1974 (arts. 29-34).

Alternative care settings (lawful): Corporal punishment is lawful under the right “to administer reasonable punishment” in the Juveniles Act 1974 (art. 57).

Law reform under way

The Juveniles Act 1974 was reviewed by the Fiji Law Reform Commission in 2000¹⁷ and recommendations for reform made: we do not know if prohibition of corporal punishment was recommended. The National Report on the Fiji Child Protection Baseline Research, a collaborative project of the Fiji Government and UNICEF published in 2008, includes an analysis of gaps in domestic legislation in light of obligations under the Convention on the Rights of the Child, including prohibition of corporal punishment.¹⁸ Law reform since then has not yet achieved prohibition of corporal punishment.

A new Constitution is expected to be adopted by 2014. We do not know if prohibition of corporal punishment has been proposed in this context.

Law reform necessary to achieve prohibition in Fiji

Repeal of the right “to administer reasonable punishment” (in Juveniles Act 1974); explicit prohibition of corporal punishment in the home, schools and alternative care settings.

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: Committee on the Rights of the Child (1998).¹⁹

UPR (2010): No recommendations made on corporal punishment but Government accepted recommendation to ensure children enjoy all the rights in the Convention on the Rights of the Child.²⁰

¹⁶ Lautoka High Court, March 2002, Appeal Case *Naushad Ali v State*

¹⁷ Fiji Law Reform Commission (2000), *Report for Children: A Review of Laws Affecting Children*

¹⁸ UNICEF & Australian Government AusAID (2008), *Protect me with love and care: A Baseline Report for creating a future free from violence, abuse and exploitation of girls and boys in Fiji*, UNICEF Pacific

¹⁹ 24 June 1998, CRC/C/15/Add.89, Concluding observations on initial report, paras. 16 and 36

²⁰ 23 March 2010, A/HRC/14/8, Report of the working group, para. 71(10)

INDONESIA

Child population (0-17): 77,471,000 (UNICEF, 2011)



Current legality of corporal punishment

Home (lawful): The Law on Child Protection 2002 states that parents and other carers must protect the child from “harsh treatment violence and abuse” (art. 13), that every child shall be entitled to protection from “abuse, torture or inhuman punishment” (art. 16) and that every person who commits or threatens violence against a child shall be punished (art. 80); the Law on Human Rights 1999 states that children – defined as unmarried persons under 18 (art. 1(5)) – have the right “to protection by parents, family, society, and state” (art. 52), to “protection before the law against all forms of physical and mental violence, neglect, mistreatment and sexual assault while under the care of his parents, guardian, or any other party responsible for his care” (art. 58), and “not to be the object of oppression, torture, or inhuman legal punishment” (art. 66(1)). But these provisions and provisions against violence and ill-treatment in the Penal Code 1918, the Law on Domestic Violence 2004, the Law on Youth 2009 and the Constitution 1945 are not interpreted as prohibiting all corporal punishment in childrearing. Ministerial Regulation No. 6/2011 on Protection of Women and Child Victims of Violence does not explicitly prohibit all corporal punishment in childrearing.

Schools (lawful): The Law on Child Protection 2002 protects children in schools from “violence and abuse from teachers, school managers, and school mates both in the school and other educational institutions” (art. 54) but it does not explicitly prohibit corporal punishment. The Act on the National Education System 2003 is silent on the issue.



Penal system – sentence for crime (partial prohibition)

Corporal punishment is unlawful under provisions protecting children from “inhuman punishment” in the Law on Human Rights 1999 (art. 66) and the Child Protection Law 2002 (art. 16). The Law on the Juvenile Justice System 2012 states that children in conflict with the law have a right to “be treated humanely and in accordance with the needs of their age” and to “freedom from torture and other cruel, inhuman or degrading punishment or treatment” (art. 3, unofficial translation) and that “the penalties imposed on children must not violate the dignity of the child” (art. 74). However, we have yet to ascertain the applicability of these laws in relation to Shari’a law in Aceh and other areas, where caning, flogging and stoning are imposed under Islamic law.

Penal system – disciplinary measure in penal institutions (unlawful)

Corporal punishment is considered unlawful but it is not explicitly prohibited. The Law on Correctional Facilities 1995 provides for respect for human dignity (art. 5) and corporal punishment is not among permitted disciplinary measures (art. 47). The Law on Human Rights 1999 states that children deprived of their liberty have the right to “humane treatment, as befits the personal development needs of his age” (art. 66); the protections from violence and cruel treatment in the Law on the Juvenile Justice System 2012, the Constitution 1945 and the Law on Child Protection 2002 also apply. Protection from cruel and degrading treatment is provided for in the Regulations of the Minister of Justice No. M.04-UM.01.06 1983 on Procedures for Placement of Prisoners and the Discipline of Prisoners in Correctional Facilities and No. M.04-UM.01.06 1983 on Detention and Care of Detainees, and Order of State Detention Center.

Alternative care settings (lawful): There is no explicit prohibition of corporal punishment in law, though National Standards of Care for Child Welfare Institutions state that corporal punishment should not be used in institutions.

Law reform under way

A draft new Criminal Code has long been under discussion: in March 2013 the Ministry of Justice and Human Rights reported that the revised Code had been submitted to the lawmakers.²¹ In 2009, the Aceh Legislative Council endorsed the Aceh Criminal Code (Qanun Hukum Jinayat) – a set of bylaws which would replace part of the Indonesian Criminal Code with Islamic provisions applicable to Muslims, including punishment for adultery and premarital or homosexual sex with caning or stoning to death. In March 2013, the draft Code was revised to remove the punishment of stoning for adultery. The proposed Criminal Code is under discussion alongside a proposed Criminal Procedure Code (Qanun Acara Jinayat).

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: Committee on the Rights of the Child (2004);²² Committee Against Torture (2008);²³ Human Rights Committee (2013).²⁴

UPR (2012, 2008): Government accepted recommendations to incorporate the Convention on the Rights of the Child into national legislation and to prohibit violence against children in all settings, but rejected the recommendation to prohibit corporal punishment.²⁵

Law reform necessary to achieve prohibition in Indonesia

Repeal of provisions authorising corporal punishment under Shari'a law; explicit prohibition of corporal punishment in the home, schools, penal system and alternative care settings.



²¹ Reported in *Jakarta Globe*, 7 March 2013

²² 26 February 2004, CRC/C/15/Add.223, Concluding observations on second report, paras. 43, 44 and 61

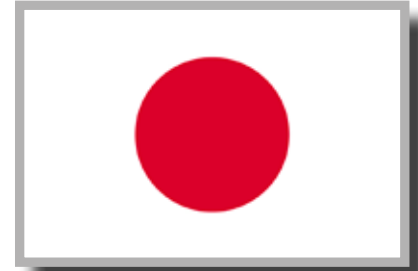
²³ 2 July 2008, CAT/C/IDN/CO/2, Concluding observations on second report, paras. 15 and 17

²⁴ [25 July 2013], CCPR/C/IND/CO/1 Advance Unedited Version, Concluding observations on initial report, para. 15

²⁵ 5 July 2012, A/HRC/21/7, Report of the working group, paras. 108(75); 5 September 2012, A/HRC/21/7/Add.1, Report of the working group: Addendum, para. 6(9); 14 May 2008, A/HRC/8/23, Report of the working group, para. 76(2)

JAPAN

Child population (0-17): 20,375,000 (UNICEF, 2011)



Current legality of corporal punishment

Home (lawful): The Civil Code, as amended in 2011, states (art. 822, unofficial translation): “A person who exercises parental authority can discipline the child within limits for the purpose of supervision, care and education...” The Child Abuse Prevention Law 2000 states (art. 14): “(1) The person who exercises parental authority shall give consideration to proper exercise of authority in disciplining the child. (2) Persons with parental authority cannot escape criminal punishment for the crimes of violence, injury or other crimes of abuse committed against the children simply because they have been entrusted to their parental authority.” The Government has stated that this Act obliges parents “to exercise such authority in a proper manner that will not constitute child abuse” and that the Penal Code punishes “exercise of disciplinary rights over a child [which] exceeds reasonable current social standards”.²⁶ There is no explicit prohibition of all corporal punishment, however light, in childrearing.

Schools (unlawful): Corporal punishment is explicitly prohibited in the Education Law 1947 (art. 11).

Penal system – sentence for crime (unlawful): There is no provision for judicial corporal punishment in criminal law.

Penal system – disciplinary measure in penal institutions (lawful): The Constitution 1946 prohibits cruel punishments and the Act on Penal Detention Facilities and Treatment of Inmates and Detainees 2005 provides for the maintenance of discipline in penal institutions, but there is no explicit prohibition of corporal punishment.

Alternative care settings (lawful): Corporal punishment is lawful under the power of those with parental authority to discipline children in the Child Abuse Prevention Law 2000 (art. 14). Minimum Standards for Child Welfare Facilities 1948 address abuse of disciplinary methods but do not prohibit corporal punishment. On 29 March 2012, the Ministry of Health, Labour and Welfare renewed guidelines for alternative care facilities which recommend that management guidelines for such facilities should state that corporal punishment should not be used – but these are guidelines and not law. The guidelines do not apply to day care centres and private child care facilities.

Law reform under way

The Civil Code is being revised. We do not know if prohibition of corporal punishment has been proposed in this context.

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: Committee on the Rights of the Child (2010, 2004, 1998);²⁷ CAT (2013).²⁸

UPR (2012, 2008): Government accepted recommendations to prohibit all corporal punishment.²⁹

Law reform necessary to achieve prohibition in Japan

Repeal/amendment of the authority to “discipline” (in Civil Code and Child Abuse Prevention Law 2000); explicit prohibition of corporal punishment in the home, penal institutions and alternative care settings.

26 6 August 2012, A/HRC/WG.6/14/JPN/1, National report to the UPR, paras. 50 and 51; see also 15 September 2011, CAT/C/JPN/2, Second state party report, para. 280

27 20 June 2010, CRC/C/JPN/CO/3, Concluding observations on third report, paras. 7, 8, 47, 48, 56 and 57; 26 February 2004, CRC/C/15/Add.231, Concluding observations on second report, paras. 35 and 36; 5 June 1998, CRC/C/15/Add.90, Concluding observations on initial report, paras. 24 and 45

28 [31 May 2013], CAT/C/JPN/CO/2 Advance Unedited Version, Concluding observations on second report, para. 23

29 14 December 2012, A/HRC/22/14, Report of the working group, para. 147(126); 30 May 2008, A/HRC/8/44, Report of the working group, para. 60(17)



KAZAKHSTAN

Child population (0-17): 4,800,000 (UNICEF, 2011)

Current legality of corporal punishment

Home (lawful): There is no confirmation in law of a “right” of parents to punish their children, but there is no explicit prohibition of all forms of corporal punishment in childrearing: the Marriage and Family Code 2011 states only that the child “has the right to be educated by the parents, ensuring its interests, full development and respect for human dignity” (art. 60, unofficial translation).

The Law on the Rights of the Child 2002 confirms the child’s right to respect for human dignity, the state’s obligation to protect the child from physical and mental abuse and cruel, inhuman or degrading treatment (art. 10) and confirms parents’ duty to educate and care for children (art. 24) but does not explicitly prohibit all corporal punishment. Similarly, there is no prohibition of all corporal punishment in childrearing in the Law on Prevention of Domestic Violence 2009: it defines domestic violence as “an intentional illegal act (action or failure to act) by one person in the sphere of the family and household relations concerning another (others) causing or containing threat of causing of physical and (or) mental suffering” (art. 1) and states that this can take the form of, among other things, physical abuse, defined as “intentional harm to health by use of force and causing of physical pain”, but we have no evidence that this is interpreted as prohibiting all corporal punishment of children.

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: Committee on the Rights of the Child (2007, 2003);³⁰ Human Rights Committee (2011).³¹

UPR (2010): No recommendations made on corporal punishment but Government accepted recommendation to further refine laws aimed at protecting children’s rights.³²

Schools (unlawful): Corporal punishment is considered unlawful, though it is not explicitly prohibited. The Law on Education 2007 prohibits physical and mental violence (art. 28) and protects students’ right to respect for their human dignity (arts. 47 and 51). Article 10 of the Law on the Rights of the Child 2002 also applies (see “Home”).

Penal system – sentence for crime (unlawful): There is no provision for judicial corporal punishment in criminal law.

Penal system – disciplinary measure in penal institutions (unlawful): There is no provision for corporal punishment among the permitted disciplinary measures specified in the Criminal and Executive Code 1997 (arts. 50, 111, 115, 132 and 134) and in the Law on Prevention of Offenses Among Minors and the Prevention of Children’s Neglect and Homelessness 2004 (art. 22-8).

Alternative care settings (partial prohibition): Corporal punishment is unlawful in children’s villages and institutions under the Law on Children’s Villages of Family Type and Youth Homes 2000 (arts. 5 and 18). In other care settings, children have protection from some corporal punishment under the Law on the Rights of the Child 2002 (art. 10) but there is no explicit prohibition of all corporal punishment.

Law reform necessary to achieve prohibition in Kazakhstan

Explicit prohibition of corporal punishment in the home and all alternative care settings

30 19 June 2007, CRC/C/KAZ/CO/3, Concluding observations on second/third report paras. 36 and 37; 10 July 2003, CRC/C/15/Add.213, Concluding observations on initial report, paras. 37 and 39

31 19 August 2011, CCPR/C/KAZ/CO/1, Concluding observations on initial report, para. 15

32 23 March 2010, A/HRC/14/10, Report of the working group, paras. 95(9) and 95(44)

KIRIBATI



Child population (0-17): 36,000 (UNICEF, 2011)

Current legality of corporal punishment

Home (lawful): The Penal Code 1977 prohibits cruelty to children but also states (art. 226): “Nothing in this section shall be construed as affecting the right of any parent, teacher, or other person, having the lawful control of a child or young person to administer reasonable punishment to him.”

Schools (unlawful): Corporal punishment is unlawful under the Education (Amendment) (No. 2) Act 1997, which repealed the provisions allowing corporal punishment in the Education Ordinance 1977. The amendment Act did not introduce explicit prohibition but the explanatory memorandum to the Act states clearly that its intention is to prohibit corporal punishment: “The principal object of this Act is to remove altogether the administration of corporal punishment in schools...”

Penal system – sentence for crime (lawful): There is no provision for judicial corporal punishment in the Penal Code 1977 or the Criminal Procedure Code 1977. However, under article 226 of the Penal Code corporal punishment is permitted in traditional sentencing by order of Island Councils. The Government has acknowledged the need to amend legislation in this respect.³³

Penal system – disciplinary measure in penal institutions (lawful): There are no regulations on appropriate treatment of detainees within prisons. Under the Penal Code 1977, offenders under 16 who are considered to be “in need of care, protection or control” may be committed to the care of “any fit person whether a relative or not”, including “any local government council, religious institution, welfare association or other organisation able and willing to undertake the care, protection or control of persons under the age of 18 years” (art. 39). Corporal punishment of children in these settings and in custody is permitted under the provisions for “reasonable punishment” in the Penal Code (art. 226).

Alternative care settings (lawful): Corporal punishment is lawful under the right “to administer reasonable punishment” in the Penal Code 1977 (art. 226).

Law reform under way

A number of reviews have been carried out to assess the compliance of national legislation with the Convention on the Rights of the Child. For example, in 2009, the Child Protection Baseline Report of a collaborative project by the Government of Kiribati and UNICEF included an analysis of gaps in domestic legislation in light of obligations under the Convention on the Rights of the Child, including prohibition of corporal punishment.³⁴ In May 2013, the Child, Young People and Family Welfare Bill, which addresses protection for children under 13, had its second reading in Parliament; it passed its first reading in December 2012. We have yet to establish if it prohibits corporal punishment. A Family Peace Bill is also under discussion which aims to address all forms of violence against women, and a Juvenile Justice Bill is being drafted.

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: Committee on the Rights of the Child (2006).³⁵

UPR (2010): Government stated it was “prepared to consider” recommendations to prohibit corporal punishment of children.³⁶

Law reform necessary to achieve prohibition in Kiribati

Repeal of right “to administer reasonable punishment” (in Penal Code 1977); explicit prohibition of corporal punishment in the home, penal system and alternative care settings.

³³ 22 September 2006, CRC/C/SR.1166, Summary record of 1166th meeting, para. 46

³⁴ UNICEF & Australian Government AusAID (2009), *Protect me with love and care: A Baseline Report for creating a future free from violence, abuse and exploitation of girls and boys in Kiribati*, UNICEF Pacific

³⁵ 29 September 2006, CRC/C/KIR/CO/1, Concluding observations on initial report, paras. 34 and 35

³⁶ 30 September 2010, A/HRC/15/3/Add.1, Report of the working group: Addendum, paras. 27, 75 and 76



KYRGYZSTAN

Child population (0-17): 1,957,000 (UNICEF, 2011)

Current legality of corporal punishment

Home (lawful): The Government stated in 2010 that corporal punishment is prohibited.³⁷ We are seeking to verify this but research to date suggests that the law prohibits some but not all corporal punishment in childrearing. The Code on Children 2012 states as one of the basic principles of child protection “ensuring protection of the child from all forms of violence” (art. 4), and includes provisions against violence, abuse and cruelty and protecting the child’s human dignity (arts. 5, 7 and 16), but it does not explicitly prohibit all corporal punishment, however light. The Family Code 2003 states that “methods of raising children should exclude neglectful, cruel or degrading treatment, abuse or exploitation” (art. 70) but does not explicitly prohibit all corporal punishment, however light.

Schools (unlawful): Corporal punishment is unlawful, though there appears to be no explicit prohibition. The Law on Education 2003 states that teachers shall “not apply methods of physical and moral abuse” on students (art. 29); the Law on the Status of the Teacher 2001 states that teachers shall respect students’ honour and dignity (art. 15), and the Code on Children 2012 protects children from “cruel, brutal, inhuman or degrading treatment” (art. 16).

Penal system – sentence for crime (unlawful): There is no provision for judicial corporal punishment in criminal law. The cases of crimes committed by children are often heard in aksakal (traditional village) courts. Corporal punishment is not among the measures available to these courts under the Law on Courts of Aksalals 2002, which also states that the court has no right to impose punishments degrading to human dignity (arts. 28 and 29).

Penal system – disciplinary measure in penal institutions (unlawful): There is no provision for corporal punishment among permitted disciplinary measures in the Criminal and Executive Code 1999 (arts. 39-15 and 87), though the Law on Bodies and Organisation of Criminal and Executive (Penitentiary) System 2003 states that staff may use physical force if nonviolent methods are ineffective (art. 28). The Code on Children 2012 protects children from “cruel, brutal, inhuman or degrading treatment” (art. 16).

Alternative care settings (partial prohibition): Corporal punishment is unlawful in residential institutions under clause 31 of Regulation No. 489 “On the state children’s home (residential institutions) of the system of the Ministry of Education, Science and Culture of the Kyrgyz Republic” 1998. There is no explicit prohibition of corporal punishment in foster care and other care settings. The Code on Children 2012 protects children from “cruel, brutal, inhuman or degrading treatment” but not from all forms of corporal punishment (art. 16).

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: Committee on the Rights of the Child (2004, 2000);³⁸ Human Rights Committee (2000);³⁹ Committee Against Torture (2013, 1999).⁴⁰

UPR (2010): Government accepted recommendations to prohibit corporal punishment.⁴¹

Law reform necessary to achieve prohibition in Kyrgyzstan

Explicit prohibition of corporal punishment in the home and all alternative care settings.

³⁷ 16 June 2010, A/HRC/15/2, Report of the working group, para. 53

³⁸ 3 November 2004, CRC/C/15/Add.244, Concluding observations on second report, paras. 37, 38, 43, 44, 45 and 46; 9 August 2000, CRC/C/15/Add.127, Concluding observations on initial report, paras. 33, 34, 39 and 40

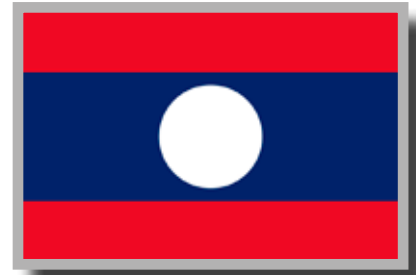
³⁹ 24 July 2000, CCPR/CO/69/KGZ, Concluding observations on initial report, para. 19

⁴⁰ [November 2013], CAT/C/KGZ/CO/2 Advance Unedited Version, Concluding observations on second report, para. 22; 18 November 1999, A/54/44, Concluding observations on initial report, paras. 74 and 75

⁴¹ 16 June 2010, A/HRC/15/2, Report of the working group, para. 53). Nevertheless, the following recommendations were made and were accepted by the Government (16 June 2010, A/HRC/15/2, Report of the working group, paras. 76(56) and 76(57)

LAO PDR

Child population (0-17): 2,871,000
(Statistical Yearbook, 2012)



Current legality of corporal punishment

Home (lawful): The Penal Law 2005 punishes battery and physical injuries caused negligently (arts. 90 and 91) and the Family Law 2008 provides for the withdrawal of parental rights for the use of violence (art. 32), but these laws do not explicitly prohibit all corporal punishment, however light, in childrearing.

Schools (unlawful): Corporal punishment is considered unlawful under the Education Law 2007, which states that teachers must not “batter, insult, ill-treat and be not fair with learners” (art. 47). The Act on Protection of the Rights and Interests of Children 2006 confirms the state’s policy to create child-friendly schools in which children are protected from corporal punishment (art. 27).

Penal system – sentence for crime (unlawful): The Penal Law 2005 states that “punishment does not aim at generating physical suffering or at outraging human dignity” (art. 27), and there is no provision for judicial corporal punishment in the Criminal Code or the Act on the Protection of the Rights and Interests of Children 2006.

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: Committee on the Rights of the Child (2011, 1997).⁴²

Penal system – disciplinary measure in penal institutions (unlawful):

Corporal punishment is considered unlawful, but there is no explicit prohibition. The Penal Law 2005 punishes “physical violence and torture, use of measures or other acts inconsistent with the law against suspects or prisoners during arrest, trial or service of sentence” (art. 171). The Act on the Protection of the Rights and Interests of Children 2006 lists the rights of child offenders (art. 51), prohibits “all forms of violence” towards a child in detention (art. 62), and lists the rights of children in vocational training centres (art. 75), but there is no reference to corporal punishment. The Criminal Procedure Law 2004 prohibits “beating or torture of the arrested person” (art. 62).

Alternative care settings (lawful): There is no explicit prohibition of corporal punishment. It is considered unlawful in early childhood education under the Education Law 2007 (art. 47).

Law reform necessary to achieve prohibition in Lao PDR

Explicit prohibition of corporal punishment in the home and alternative care settings.



UPR (2010): No recommendations made on corporal punishment but Government accepted recommendations to harmonise national legislation with international human rights standards.⁴³

⁴² 8 April 2011, CRC/C/LAO/CO/2, Concluding observations on second report, paras. 38 and 39; 10 October 1997, CRC/C/15/Add.78, Concluding observations on initial report, paras. 20 and 44

⁴³ 15 June 2010, A/HRC/15/5, Report of the working group, paras. 96(5) and 96(6)



MALAYSIA

Child population (0-17): 10,244,000 (UNICEF, 2011)

Current legality of corporal punishment

Home (lawful): The Penal Code 1936 states (art. 89): “Nothing, which is done in good faith for the benefit of a person under twelve years of age ... by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person: Provided that this exception shall not extend to (a) the intentional causing of death, or to the attempting to cause death; (b) the doing of anything which the person doing it knows to be likely to cause death for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity; (c) the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity; (d) the abetment of any offence, to the committing of which offence it would not extend.” Article 350 prohibits criminal force but states by way of illustration that caning of a scholar by a headteacher does not amount to criminal force. Article 499 confirms that a schoolmaster’s authority is derived from a parent. Children have limited protection from violence and abuse under the Child Act 2001, the Penal Code 1936, the Guardianship of Infants Act 1961 and the Domestic Violence Act 1994.

Schools (lawful): Corporal punishment of boys is regulated by the Education Regulations (Student Discipline) 2006 under the Education Act 1996. The Penal Code 1936 confirms that caning of a scholar by a headteacher does not amount to criminal force (art. 350).

Penal system – sentence for crime (lawful): The Child Act 2001 authorises the court for children to “order the child, if a male, to be whipped with not more than ten strokes of a light cane – (i) within the Court premises; and (ii) in the presence, if he desires to be present, of the parent or guardian of the child” (art. 91). Article 92

specifies how the whipping should be carried out: the child should first be certified fit for the punishment by a medical officer; the whipping should be with a light cane “with average force without lifting his hand over his head so that the child’s skin is not cut”; and it should be inflicted on any part of the child’s clothed body “except the face, head, stomach, chest or private parts”.

The Criminal Procedure Code 1976 provides for whipping of a youthful offender up to 10 strokes with a light rattan, “in the way of school discipline” (art. 288), and this may be ordered in cases normally punished by fine or imprisonment (art. 293). No sentence of whipping shall be passed on women or on males sentenced to death (art. 289). Many offences in the Penal Code and other laws are punishable by whipping.

Corporal punishment is lawful as a sentence for males and females under Islamic law. The Sharia Courts (Criminal Jurisdiction) Act 1965, applicable to Muslims in all the States of Peninsular Malaysia, provides for Islamic courts to order whipping up to six strokes (art. 2). The Sharia Criminal Offences (Federal Territories) Act 1997, applicable to Muslims in the Federal Territories of Kuala Lumpur and Labuan, provides for the punishment of whipping up to six strokes for the offences of false doctrine, incest, prostitution, homosexual acts and other sex offences (arts. 4, 20, 21, 22, 23, 25 and 26). The Act applies to children who have attained the age of puberty according to Islamic law (arts. 2 and 51). The Sharia Criminal Procedure (Federal Territories) Act 1997 specifies how whipping should be carried out (arts. 125 and 126).

Penal system – disciplinary measure in penal

institutions (lawful): The Prison Act 1995 allows for punishment with a rattan for disciplinary offences (art. 50).

Alternative care settings (lawful): Corporal punishment is lawful under articles 89 and 350 of the Penal Code 1936.

Law reform under way

In 2007, the Government stated its intention to amend the provisions for caning of boys in the Child Act.⁴⁴ In 2009, the Government reported to the Universal Periodic Review that abolition of judicial caning for persons under 18 at the time of the offence was an “immediate concern”, that the Child Act was under review and that the Ministry of Women, Family and Community Development was planning to recommend the withdrawal of the sentence of caning for children.⁴⁵ This reform has not yet been achieved.

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: Committee on the Rights of the Child (2007).⁴⁶

UPR (2013, 2009): Government did not accept or reject 2009 recommendation to prohibit corporal punishment in the home; response to 2013 recommendations is due in March 2014.⁴⁷

Law reform necessary to achieve prohibition in Malaysia

Repeal/amendment of legal defence for corporal punishment and provisions on criminal force (in Penal Code 1936); repeal of legal authorisations for corporal punishment (in Education Regulations (Student Discipline) 2006, Child Act 2001, Criminal Procedure Code 1976, Sharia Courts (Criminal Jurisdiction) Act 1965, Sharia Criminal Offences (Federal Territories) Act 1997, Sharia Criminal Procedure (Federal Territories) Act 1997, Prison Act 1995, Penal Code 1936 and other criminal laws); explicit prohibition of corporal punishment in the home, schools, penal system and alternative care settings.



⁴⁴ 25 June 2007, CRC/C/MYS/CO/1, Concluding observations on initial report to the Committee on the Rights of the Child, para. 48

⁴⁵ 5 October 2009, A/HRC/11/30, Report of the working group, paras. 56 and 59

⁴⁶ 25 June 2007, CRC/C/MYS/CO/1, Concluding observations on initial report, paras. 48, 49, 57, 58, 77 and 78

⁴⁷ 28 October 2013, A/HRC/WG.6/17/L.8 Unedited Version, Draft report of the working group, paras. 146(145) and 146(146); 5 October 2009, A/HRC/11/30, Report of the working group, para. 106(11)



MARSHALL ISLANDS

Child population (0-17): 20,000 (UNICEF, 2011)

Current legality of corporal punishment

Home (lawful): The Criminal Code 2011 states (art. 3.08(1)): “The use of force upon or toward the person of another is justifiable if: (1) the actor is the parent or guardian or other person similarly responsible for the general care and supervision of a minor or a person acting at the request of such parent, guardian or other responsible person and: (a) the force is reasonable and the actor believes that the force used is necessary for the purpose of safeguarding or promoting the welfare of the minor, including the prevention or punishment of the minor’s misconduct; and (b) the force used is not designed to cause or known to create a substantial risk of causing death, serious bodily injury, disfigurement, extreme pain or mental distress or gross degradation.”

Schools (lawful): Corporal punishment is lawful under the Criminal Code 2011 (art. 3.08(2)): “The use of force upon or toward the person of another is justifiable if: ... (2) the actor is a teacher or a person otherwise entrusted with the care or supervision for a special purpose of a minor and: (a) the force is reasonable and the actor believes that the force used is necessary to further such special purpose, including the maintenance of reasonable discipline in a school, class or other group, and that the use of such force is consistent with the welfare of the minor; and (b) the degree of force, if it had been used by the parent or guardian of the minor, would not be unjustifiable under Subsection (1)(b) of this Section.” In 2004, the Government stated that corporal punishment is prohibited in schools under the Rules and Regulations of the Ministry of Education, and that these defined corporal punishment as “hitting, kicking, slapping or any other means of brutal punishment”.⁴⁸ This prohibition is clearly undermined by the authorisation of justifiable force in the new Criminal Code which provides a legal defence for the use of some level of physical punishment for the purpose of discipline.

Penal system – sentence for crime (unlawful): There is no provision for judicial corporal punishment in the Criminal Code 2011. The Constitution 1979 prohibits “inhuman and degrading treatment” and “cruel and unusual punishment” (art. 6).

Penal system – disciplinary measure in penal institutions (lawful): There is no explicit prohibition of corporal punishment. In 2007, the Committee on the Rights of the Child was led to believe that corporal punishment is prohibited in the amended Criminal Code.⁴⁹ In fact, the Criminal Code 2011 allows some level of physical punishment in the provisions for justifiable force (art. 3.08).

Alternative care settings (lawful): Corporal punishment is lawful under the provisions for justifiable force in article 3.08 of the Criminal Code 2011 (art. 3.08).

Law reform under way

Child protection legislation has been reviewed as part of child protection baseline research in collaboration with UNICEF: the report was published in March 2013. We are seeking further information.

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: Committee on the Rights of the Child (2007, 2000).⁵⁰

UPR (2010): No recommendations made on corporal punishment but Government accepted recommendations to give full legal protection to human rights and to take measures to eliminate violence against children.⁵¹

Law reform necessary to achieve prohibition in Marshall Islands

Repeal of provisions for justifiable force (in Criminal Code 2011); explicit prohibition of corporal punishment in the home, schools, penal institutions and alternative care settings.

48 24 August 2005, CRC/C/93/Add.8, Second state party report to the Committee on the Rights of the Child, para. 67

49 19 November 2007, CRC/C/MHL/CO/2, Concluding observations on second report, para. 3

50 19 November 2007, CRC/C/MHL/CO/2, Concluding observations on second report, paras. 3, 41, 42 and 43; 16 October 2000, CRC/C/15/Add.139, Concluding observations on initial report, paras. 36 and 37

51 4 January 2011, A/HRC/16/12, Report of the working group, paras. 56(13) and 56(20)

MICRONESIA

Child population (0-17): 48,000 (UNICEF, 2011)



Current legality of corporal punishment

Home (lawful): Children are protected from violence and abuse under the federal Code of the Federated States of Micronesia 1982 and various state laws but there is no prohibition of corporal punishment. The State Juveniles Act in Yap states that parents “shall have control over the conduct and education of their minor children” and shall provide “for the discipline, support, and education of their children” (s1204). Similar provisions in the State Code of Kosrae 1997 specify that parents have a “duty of parental control of the minor” (s16.1102) and “the duty to control the minor and ... the power to exercise parental control and authority over the minor” (s6.4807).

Schools (?unlawful): Corporal punishment is reportedly prohibited in schools, but we have been unable to verify this information. There is no reference to corporal punishment or school discipline in the State Codes of Yap, Pohnpei or Kosrae or the draft State Code of Chuuk.

Penal system – sentence for crime (unlawful): The Constitution of the Federated States of Micronesia states that “cruel and unusual punishments” should not be inflicted (art. IV, section 8), and this is reflected in similar provisions in the Constitutions of Pohnpei (art. 4.9), Yap (art. 2.7), Kosrae (art. 2.1) and Chuuk (art. 3.6). There are no provisions in other state laws for judicial corporal punishment of children convicted of a crime. Recognition of custom and tradition is provided for but we have no information on whether this would allow for corporal punishment.

Penal system – disciplinary measure in penal institutions (lawful): There is no explicit prohibition of corporal punishment.

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

Law reform under way

A review of child protection legislation has been carried out in collaboration with UNICEF and is expected to be published in 2013.

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: No recommendations on corporal punishment.

UPR (2010): No recommendations on corporal punishment made but Government accepted recommendations to develop legislation in line with the Convention on the Rights of the Child.⁵²

Law reform necessary to achieve prohibition in Micronesia

Repeal of all legal defences and authorisations for corporal punishment; explicit prohibition of corporal punishment in the home, schools, penal institutions and alternative care settings.

⁵² 4 January 2011, A/HRC/16/16, Report of the working group, paras. 61(21), 61(31), 61(33), 61(55) and 61(64)



MONGOLIA

Child population (0-17): 934,000 (UNICEF, 2011)

Current legality of corporal punishment

Home (lawful): Provisions against violence and abuse in the Family Law 1999, the Law on the Protection of the Rights of the Child 1996, the Domestic Violence Act 2004, the Law on Crime Prevention 1997 and the Criminal Code (amended 2002), are not interpreted as prohibiting all corporal punishment in childrearing.

Schools (unlawful): Corporal punishment is prohibited in schools by amendments to the Education Law passed in December 2006.

Penal system – sentence for crime (unlawful): There is no provision for judicial corporal punishment in criminal law.

Penal system – disciplinary measure in penal institutions (lawful): There is no explicit prohibition of corporal punishment.

Alternative care settings (lawful): There is no explicit prohibition of corporal punishment. It is possibly prohibited in preschools under the Law on Education 2002 as amended in 2006 and in the Law on Preschool 2008, but we have yet to examine the full text of these laws.



Law reform under way

In 2009, the Government stated its intention to prohibit corporal punishment in the home.⁵³ The Criminal Code was being revised and there were plans to revise the Law on the Protection of the Rights of the Child. In 2010 proposed amendments to the Family Law which would prohibit corporal punishment were expected to be submitted to Parliament. A draft new Law on Crime is now under discussion and a proposal has been made to include “Punishing children” as a crime (art. 16(8)). However, as at May 2013 the proposed text punishes abuse but not explicitly all corporal punishment: “(1) If any adult physically abuses a child for any act or omission as a punishment, he or she will be sentenced for a period from two months up to six months imprisonment. (2) If this crime is committed by a tutor or educator, he or she will be sentenced for up to 1 year imprisonment.” As at November 2013, the draft had not yet been debated in Parliament. The Government has also begun work on the new child protection legislation.

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: Committee on the Rights of the Child (2010, 2005);⁵⁴ Committee Against Torture (2011);⁵⁵ Human Rights Committee (2011).⁵⁶

UPR (2010): Government accepted recommendations to prohibit all corporal punishment.⁵⁷

Law reform necessary to achieve prohibition in Mongolia

Explicit prohibition of corporal punishment in the home, penal institutions and alternative care settings.

⁵³ 13 November 2009, CRC/C/MNG/Q/3-4/Add.1, Reply to list of issues adopted by the Committee on the Rights of the Child, question 4

⁵⁴ 29 January 2010, CRC/C/MNG/CO/3-4 Advance Unedited Version, Concluding observations on third/fourth report, paras. 8, 37, 38, 41, 59 and 60; 21 September 2005, CRC/C/15/Add.263, Concluding observations on second report, paras. 29 and 30

⁵⁵ 20 January 2011, CAT/C/MNG/CO/1, Concluding observations on initial report, para. 23

⁵⁶ 2 May 2011, CCPR/C/MNG/CO/5, Concluding observations on fifth report, para. 19

⁵⁷ 4 January 2011, A/HRC/16/5, Report of the working group, paras. 84(15) and 84(18)

MYANMAR

Child population (0-17): 14,832,000 (UNICEF, 2011)



Current legality of corporal punishment

Home (lawful): The Child Law 1993 (revised 1999) provides for “the type of admonition by a parent, teacher or a person having the right to control the child, which is for the benefit of the child” (art. 66). The Penal Code states that, with certain provisos, “nothing which is done in good faith for the benefit of a person under twelve years of age ..., of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person” (art. 89).

Schools (?lawful): Government directives state that corporal punishment should not be used in schools but there is no explicit prohibition in law and corporal punishment appears to be lawful under the Child Law 1993 (art. 66) and the Penal Code (art. 89). The Government has repeatedly asserted that corporal punishment is prohibited in schools but has given no specific legal references.⁵⁸ We have been unable to identify prohibiting legislation.

Penal system – sentence for crime (unlawful): Corporal punishment is explicitly prohibited for children under 16 in the Child Law 1993 (art. 45). For children aged 16-17 whipping is unlawful under Rule 100 of the Rules of the Child Law 2001. There is no provision for corporal punishment in the Penal Code. However, it appears that provisions for whipping have yet to be repealed from the Criminal Procedure Code, the Whipping Act and the Citizenship Act.

Penal system – disciplinary measure in penal institutions (lawful): Corporal punishment is lawful in prisons under the Prisons Act (arts. 46, 47, 50, 51 and 53), including of children under 16. Discipline in training schools and prisons is also provided for in the Rules of the Child Law 2001, but there is no reference to corporal punishment.

Alternative care settings (lawful): Corporal punishment is lawful in alternative care settings under the Child Law 1993 (art. 66) and the Penal Code (art. 89).

Law reform under way

The Child Law 1993 is being reviewed. The Government of Myanmar has collaborated with UNICEF to produce an analysis of the situation of children, published in 2012, which draws attention to conflict between the Child Law and the Convention on the Rights of the Child, including the lack of explicit prohibition of corporal punishment and the provision for “admonition” of a child. The report recommends amending the Child Law “to remove scope for allowing physical punishment of children”.⁵⁹

Law reform necessary to achieve prohibition in Myanmar

Repeal of legal defences for corporal punishment by parents and others (in Child Law 1993 and Penal Code); repeal of laws authorising corporal punishment (in Criminal Procedure Code, Whipping Act, Citizenship Act); explicit prohibition of corporal punishment in the home, schools, penal institutions and alternative care settings.

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: Committee on the Rights of the Child (2012, 2004, 1997).⁶⁰

UPR (2011): Government rejected recommendation to prohibit corporal punishment in families and schools and other institutions.⁶¹

58 12 January 2012, CRC/C/MMR/Q/3-4/Add.1, Reply to list of issues, para. 53; 24 March 2011, A/HRC/17/9, Report of the working group of the UPR, para. 58

59 Ministry of National Planning and Economic Development & UNICEF (2012), *Situation Analysis of Children in Myanmar*, Nay Pyi Taw: UNICEF/Government of Myanmar

60 14 March 2012, CRC/C/MMR/CO/3-4, Concluding observations on third/fourth report, paras. 53 and 54; 30 June 2004, CRC/C/15/Add.237, Concluding observations on second report, paras. 7, 8, 38 and 39; 24 January 1997, CRC/C/15/Add.69, Concluding observations on initial report, para. 28)

61 24 March 2011, A/HRC/17/9, Report of the working group, para. 58)



NAURU

Child population (0-17): 4,000 (UNICEF, 2011)

Current legality of corporal punishment

Home (lawful): The Criminal Code in force in Nauru is that of the First Schedule to the Criminal Code Act 1899 of the State of Queensland. Section 280 of that Act states: “It is lawful for a parent or a person in the place of a parent, or for a schoolteacher or master, to use, by way of correction, discipline, management or control, towards a child or pupil, under the person’s care such force as is reasonable under the circumstances.” Children have limited protection from abuse under the Guardianship of Children Act 1975.

Schools (lawful): Corporal punishment is reportedly not permitted in schools.⁶² However, there appears to be no prohibition in legislation and corporal punishment is lawful under the provisions for schoolteachers to use force “by way of correction” in section 280 of the Criminal Code.

Penal system – sentence for crime (?unlawful): Provisions for whipping were removed from the First Schedule to the Criminal Code of Queensland 1899, applicable in Nauru, by the Criminal Code Amendment Ordinance 1955. We have yet to confirm that all other legal provisions for judicial corporal punishment have been prohibited, particularly in relation to young people aged 16-17. Corporal punishment is not mentioned as a sentence in the Criminal Justice Act 1999 concerning probation and parole as alternatives to imprisonment, and there is no provision for it in the Criminal Procedure Act 1972. Article 7 of the Constitution prohibits torture and treatment or punishment that is inhuman or degrading.

Penal system – disciplinary measure in penal institutions (lawful): There is no explicit prohibition of corporal punishment.

Alternative care settings (lawful): Corporal punishment is lawful under the provisions for the use of force “by way of correction” in section 280 of the Criminal Code.

Law reform under way

Proposed amendments to the Constitution which would extend the protection of rights to children were rejected in 2010. Constitutional reform remains under consideration by the Constitutional Review Committee. The Criminal Code is under review, supported by the Australian Attorney-General’s Department. We do not know if prohibition of corporal punishment has been proposed in the context of these reforms but we note that the “Model Criminal Code” in use in Australia includes provisions for “reasonable correction” of a child.

Law reform necessary to achieve prohibition in Nauru

Repeal of provisions for the use of force “by way of correction” (in Criminal Code); explicit prohibition of corporal punishment in the home, schools, penal system and alternative care settings.

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: No recommendations on corporal punishment.

UPR (2011): No recommendations made on corporal punishment but Government accepted recommendations to promote and protect children’s rights including through law reform.⁶³

⁶² UNICEF (2005), *Nauru: A situation analysis of children, women and youth*, Suva, Fiji: UNICEF Pacific Office

⁶³ 8 March 2011, A/HRC/17/3, Report of the working group, paras. 79(37), 79(67), 79(70) and 79(71)

NEW ZEALAND

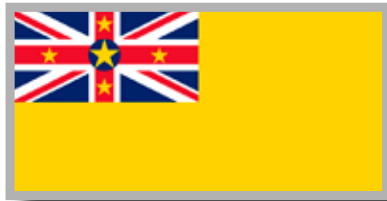
Child population (0-17): 1,091,000 (UNICEF, 2011)



Prohibition of corporal punishment

Corporal punishment is prohibited in all settings, including the home. The Crimes (Substituted Section 59) Amendment Act 2007 repeals the legal defence for the use of reasonable force “by way of correction” in the Crimes Act 1961 (s59). It substituted a new provision on parental authority which allows the use of reasonable force for purposes of protection from danger or prevention of damage to people or property (section 1) but states clearly that “nothing in subsection (1) or in any rule of common law justifies the use of force for the purpose of correction” (section 2). The law also explicitly recognises standard police practice of exercising discretion as to whether or not to prosecute in very minor cases where there is no public interest in proceeding. Implementation of the law is monitored closely and supported by the promotion of positive parenting.





NIUE

Child population (0-17): 1,000 (UNICEF, 2011)

Current legality of corporal punishment

Home (lawful): All child-related laws have been consolidated into the Family Law Code 2007: it does not include protection of children from violence, including corporal punishment. Provisions against violence and cruelty in the Niue Act 1966 are not interpreted as prohibiting corporal punishment. There is no reference to a specific right to administer punishment for purposes of discipline, but article 238 confirms that common law defences apply, which presumably includes the defence of “reasonable chastisement”.

Schools (lawful): Under the Education Act 1989, the Principal is responsible for the “care, safety, control and discipline of each pupil attending that school” (art. 22), but there is no explicit prohibition of corporal punishment. The Government has confirmed that corporal punishment is lawful.⁶⁴

Penal system – sentence for crime (unlawful): There is no provision for judicial corporal punishment in the Niue Act 1966.

Penal system – disciplinary measure in penal institutions (?unlawful): Corporal punishment appears to be unlawful but it is not explicitly prohibited. The Penal Manual (2006) does not include corporal punishment among permitted disciplinary measures.

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

Law reform under way

The Government has initiated a review of the Family Code’s conformity with the Convention on the Rights of the Child and as at February 2013 a Family Protection Bill was being prepared. We do not know if prohibition of corporal punishment has been proposed in this context, but in reporting to the Committee on the Rights of the Child, the Government stated that the Family Protection Bill aims to address domestic violence of all kinds and identified as a priority “develop and implement clear guidelines and enact legislation to explicitly prohibit corporal punishment”.⁶⁵

Law reform necessary to achieve prohibition in Niue

Repeal of the common law defence of “reasonable chastisement”; explicit prohibition of corporal punishment in the home, schools, penal institutions and alternative care settings.

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: Committee on the Rights of the Child (2013).⁶⁶

UPR (---): Niue is not a UN member state and is not reviewed in the Universal Periodic Review process.

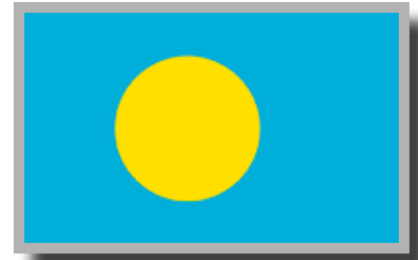
⁶⁴ 18 July 2011, CRC/C/NIU/1, Initial state party report, para. 326

⁶⁵ 6 January 2013, CRC/C/NIU/Q/Add.1 Advance Unedited Version, Reply to list of issues, para. 52 and Part II

⁶⁶ 26 June 2013, CRC/C/NIU/CO/1, Concluding observations on initial report, paras. 34 and 35

PALAU

Child population (0-17): 7,000 (UNICEF, 2011)



Current legality of corporal punishment

Home (lawful): The Palau National Code (34.61.31-32) states: “A parent or guardian having custody of a child is charged with the control of such child and shall have the power to exercise parental control and authority over such a child.” Provisions against violence and abuse in the Child Abuse Law are not interpreted as prohibiting corporal punishment in childrearing.

Schools (lawful): The Master Plan for Education (2000) aims to discourage and prevent the use of corporal punishment at primary and secondary levels but there is no explicit prohibition in law.

Penal system – sentence for crime (unlawful): The Constitution prohibits cruel, inhumane or degrading treatment or punishment (article IV, section 10), and there is no provision for judicial corporal punishment of juveniles in the Palau National Code.

Penal system – disciplinary measure in penal institutions (lawful): There is no explicit prohibition of corporal punishment.

Alternative care settings (lawful): Corporal punishment is lawful by guardians and others with parental authority under the provisions confirming “the power to exercise parental control and authority” in the Palau National Code (34.61.31-32).

Law reform under way

Child protection legislation has been reviewed as part of child protection baseline research in collaboration with UNICEF: the report was published in March 2013. We are seeking further information. A Family Protection Bill is under discussion: we do not know if it includes prohibition of corporal punishment.

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: Committee on the Rights of the Child (2001).⁶⁷

UPR (2011): Government accepted recommendations to prohibit corporal punishment.⁶⁸

Law reform necessary to achieve prohibition in Palau

Explicit prohibition of corporal punishment in the home, schools, penal institutions and alternative care settings.

⁶⁷ 21 February 2001, CRC/C/15/Add.149, Concluding observations on initial report, paras. 44 and 45

⁶⁸ 11 July 2011, A/HRC/18/5, Report of the working group, paras. 61(43), 61(44) and 61(45)



PAPUA NEW GUINEA

Child population (0-17): 3,168,000 (UNICEF, 2011)

Current legality of corporal punishment

Home (lawful): The Criminal Code 1974 states (art. 278): “It is lawful for a parent or a person in the place of a parent, or for a schoolmaster, or master, to use, by way of correction, towards a child, pupil or apprentice under his care such force as is reasonable under the circumstances.”

In September 2013, the Family Protection Act 2013 was passed. We have yet to see the Act as passed, but in its Bill form dated April 2013, it confirmed that “freedom from violence is every person’s right” (art. 4), included in the definition of domestic violence “assault ... whether or not there is evidence of a physical injury” (art. 5) and stated that “for the avoidance of doubt (a) a single act may amount to an act of domestic violence; and (b) a number of acts that form part of a pattern of behaviour may amount to domestic violence even though some or all of those acts when viewed in isolation may appear to be minor or trivial” (art. 5). However, the Act did not explicitly prohibit all corporal punishment in childrearing nor repeal the Criminal Code provision for the use of force “by way of correction”.

Schools (lawful): Corporal punishment is lawful under the provision for the use of force “by way of correction” in the Criminal Code 1974 (art. 278). The Education Act 1983 states that making rules for disciplining students is the responsibility of Boards of Governors and Governing Councils (arts. 68 and 74); it does not prohibit corporal punishment.

Penal system – sentence for crime (unlawful): There is no provision for judicial corporal punishment in criminal law.

Penal system – disciplinary measure in penal institutions (lawful): The Correctional Service Act 1995 provides for the custody, status, care, welfare and discipline of detainees and does not include corporal punishment among permitted disciplinary measures art. 160, but there is no explicit prohibition of corporal punishment.

Alternative care settings (partial prohibition): The Lukautim Pikinini (Child) Act 2009 states that children in care have the right “to be free from corporal punishment” (art. 88). The Act defines a child in care as “a child who is in the care of the Director or any person authorized by the Director”. The prohibition does not apply to private care arrangements and forms of care run by non-government bodies.

Law reform necessary to achieve prohibition in Papua New Guinea

Repeal of the provision for the use of force “by way of correction” (in Criminal Code 1974); explicit prohibition of corporal punishment in the home, schools, penal institutions and all alternative care settings.

Law reform under way

The Government reported to the Universal Periodic Review in 2011 that laws relating to corporal punishment are being reviewed.⁶⁹

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: Committee on the Rights of the Child (2004).⁷⁰

UPR (2011): Government accepted recommendations to prohibit corporal punishment in all settings.⁷¹

69 30 September 2011, A/HRC/18/18/Add.1, Report of the working group: Addendum, para. 79(37)

70 26 February 2004, CRC/C/15/Add.229, Concluding observations on initial report, paras. 37 and 38

71 11 July 2011, A/HRC/18/18, Report of the working group, paras. 78(53), 79(27) and 79(37)

PHILIPPINES

Child population (0-17): 39,205,000 (UNICEF, 2011)



Current legality of corporal punishment

Home (lawful): The Family Code 1987 states that the rights and duties of those exercising parental authority over children include “to impose discipline on them as may be required under the circumstances” (art. 220). The Child and Youth Welfare Code 1974 confirms the right of parents “to discipline the child as may be necessary for the formation of his good character” (art. 45). The Code of Muslim Personal Laws confirms parents’ “power to correct, discipline, and punish [their children] moderately” (art. 74); the Revised Penal Code states that the higher penalties for serious physical injuries “shall not be applicable to a parent who shall inflict physical injuries upon his child by excessive chastisement” (art. 263); the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases state that “discipline administered by a parent or legal guardian to a child does not constitute cruelty provided it is reasonable in manner and moderate in degree and does not constitute physical or psychological injury as defined herein” (art. 2).

Schools (unlawful): Corporal punishment is prohibited in the Family Code (art. 233), confirmed in the Public Schools Service Manual 1992 and the Manual of Regulations for Private Schools 1992 (s75, art. XIV).

Law reform under way

In 2012, Bill No. HB 4455 “on the promotion of positive discipline in lieu of corporal punishment” was under consideration in the House of Representatives. Its counterpart Bill No. SB 873 is pending in the Senate, together with Bill No. SB 1597 which would amend the Family Code to prohibit all corporal punishment, Bill No. 1107 which would amend the Special Protection of Children Against Abuse, Exploitation and Discrimination Act (Republic Act 7610 1992) to prohibit all corporal punishment, and Bill No. 3073 which aims to strengthen implementation of the prohibition in schools.

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: Committee on the Rights of the Child (2009).⁷²

UPR (2012, 2008): Government accepted recommendations to prohibit corporal punishment in all settings.⁷³

Penal system – sentence for crime (unlawful):

Corporal punishment is not a permitted sanction under the Revised Penal Code and is explicitly prohibited in the Rule on Juveniles in Conflict with the Law 2002 (Administrative Matter No. 02-1-18-SC). The Juvenile Justice and Welfare Act 2006 prohibits “punitive measures such as cursing, beating, stripping and solitary confinement” and “employment of degrading, inhuman and cruel forms of punishment such as shaving the heads, pouring irritating, corrosive or harmful substances over the body of the child in conflict with the law, or forcing him/her to walk around the community wearing signs which embarrass, humiliate, and degrade his/her personality and dignity” (art. 61).

Penal system – disciplinary measure in penal institutions (unlawful):

Corporal punishment is unlawful under the Juvenile Justice and Welfare Act (art. 61).

Alternative care settings (unlawful): Corporal punishment is unlawful under the Family Code 1987 (art. 233) and the Standards in the Implementation of Residential Care Services 2002 (Administrative Order No. 141) (art. 1.4).

Law reform necessary to achieve prohibition in the Philippines

Repeal of the legal defences for corporal punishment (in Family Code 1987, Child and Youth Welfare Code 1974, Code of Muslim Personal Laws, Revised Penal Code and Rules and Regulations on the Reporting and Investigation of Child Abuse Cases); explicit prohibition of corporal punishment in the home and all alternative care settings.

⁷² 22 October 2009, CRC/C/PHL/CO/3-4, Concluding observations on third/fourth report, paras. 10, 11, 12, 42 and 43; 21 September 2005, CRC/C/15/Add.259, Concluding observations on second report, paras. 41, 42 and 43

⁷³ 9 July 2012, A/HRC/21/12, Report of the working group, para. 129(24)



REPUBLIC OF KOREA

Child population (0-17): 11,346,000
(World Population Prospects, 2010)

Current legality of corporal punishment

Home (partial prohibition): The Civil Act 1958 states that a person with parental authority “may, in order to protect or educate his or her child, take necessary disciplinary action against the child” (art. 915). There appears to be no confirmation in the Criminal Act 1953 of a “right” of parents to impose corporal punishment, but an action which does not violate “social rules” is not punishable (art. 20).

The Child Welfare Act was revised in 2008 reportedly to provide for parent education on non-violent discipline.⁷⁴ The Act states that no person shall inflict an injury on a child’s body or on a child’s mental health (art. 29) and provides for precautionary and preventive measures against child abuse, including research and public education (art. 23), but there is no prohibition of corporal punishment in childrearing. The Seoul Children’s Rights Ordinance 2012 prohibits corporal punishment in the home in Seoul.

Schools (partial prohibition): Some but not all forms of corporal punishment are prohibited. The Elementary and Secondary Education Act 1997 (as amended 2007) states that a head of school may discipline a student under conditions “as deemed necessary for education” (art. 18). The Enforcement Decree of the Elementary and Secondary Education Act 2009, as amended in 2011, states that school guidance “must be conducted by methods such as discipline and admonition which do not inflict physical pain on a student’s body using punishing tools and body parts, pursuant to the school regulations” (art. 31). It appears that the prohibition does not apply to “indirect” physical punishments such as forcing a child to hold painful positions, imposing punitive physical exercise, etc. The Seoul Student Rights Ordinance 2012 prohibits all corporal punishment in Seoul Metropolitan City.

Penal system – sentence for crime (unlawful): There is no provision for judicial corporal punishment in criminal law.

Penal system – disciplinary measure in penal institutions (unlawful): The Training School Act (Juvenile Reformatory Act) and the Act on Execution of the Sentence and Treatment of Prisoners make no provision for corporal punishment.

Law reform necessary to achieve prohibition in Republic of Korea

Repeal of legal defences for corporal punishment (in Civil Act 1958); explicit prohibition of all corporal punishment in the home, schools and alternative care settings.

Alternative care settings (partial prohibition): Corporal punishment is prohibited in Seoul in the Seoul Children’s Rights Ordinance 2012; it is lawful in alternative care settings elsewhere.

Law reform under way

In 2010, the Ministry of Health and Welfare was reportedly drafting laws prohibiting physical punishment and emotional abuse in day care centres, following the disclosure of several cases of child abuse in the centres.⁷⁵ Amendments to the Civil Act in 2011 (in effect July 2013) did not prohibit corporal punishment.

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: Treaty body recommendations/observations: Committee on the Rights of the Child (2012, 2003, 1996).⁷⁶

UPR (2012, 2008): Government accepted recommendations to prohibit corporal punishment in all settings.⁷⁷

⁷⁴ 5 January 2011, CRC/C/KOR/3-4, Third/fourth report to the Committee on the Rights of the Child, para. 146; 2 February 2012, CRC/C/KOR/CO/3-4, Concluding observations on third/fourth report, para. 3

⁷⁵ Reported in Korea Joongang Daily, 21 December 2010

⁷⁶ 2 February 2012, CRC/C/KOR/CO/3-4, Concluding observations on third/fourth report, paras. 6, 7, 42 and 43; 18 March 2003, CRC/C/15/Add.197, Concluding observations on second report, paras. 7, 38 and 39; 13 February 1996, CRC/C/15/Add.51, Concluding observations on initial report, paras. 15 and 22

⁷⁷ 12 December 2012, A/HRC/22/10, Report of the working group, para. 124(38)

SAMOA



Child population (0-17): 81,000 (UNICEF, 2011)

Current legality of corporal punishment

Home (lawful): The Infants Ordinance 1961 provides for the protection of children from ill-treatment and neglect, but states (art. 14): “Nothing in this Part of this Ordinance shall be construed to take away or affect the right of any parent, teacher, or other person having the lawful control or charge of a child to administer reasonable punishment to such child.” The Crimes Act 2013 does not provide a specific defence for the use of corporal punishment but states generally that common law defences apply to charges under the Act (art. 11). The Family Safety Act 2013 protects children and adults from domestic violence and defines physical abuse as “any act or threatened act of physical violence, injury, torture, or inhumane punishment towards a complainant” (art. 2). However, while it amends the ill-treatment provisions in the Infants Ordinance 1961 to apply to children under 18 rather than under 14, it does not repeal the right “to administer reasonable punishment”.

Schools (partial prohibition): Corporal punishment is explicitly prohibited in the Education Act 2009 (art. 23), but this only applies to children of compulsory school age (5-14) and does not include private schools.

Penal system – sentence for crime (unlawful): There is no provision for judicial corporal punishment in criminal law.

Penal system – disciplinary measure in penal institutions (unlawful): The Young Offenders Act 2007 allows for young people aged 10-16 to be sent to residential institutions and prison but does not address disciplinary measures in these institutions. The Prisons and Corrections Act explicitly prohibits corporal punishment, including of “young prisoners” (under 18) (art. 42).

Alternative care settings (lawful): Corporal punishment is lawful under the right “to administer reasonable punishment” in the Infants Ordinance 1961 (art. 14).

Law reform under way

A review of existing relevant legislation and consultation on reform was published by the Law Reform Commission in 2009.⁷⁸ The review addressed the issue of corporal punishment and noted that the Convention on the Rights of the Child requires prohibition. In February 2013, the Law Reform Commission published its final report: the Commission recommends extending the prohibition in schools to cover private schools but delaying prohibition in the home until awareness raising and training has been carried out at village level. A Child Care and Protection Bill is under discussion (2013).⁷⁹

Law reform necessary to achieve prohibition in Samoa

Repeal of the right “to administer reasonable punishment” (in Infants Ordinance 1961); explicit prohibition of corporal punishment in the home, all schools and alternative care settings.

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: Committee on the Rights of the Child (2006);⁸⁰ Committee on the Elimination of Discrimination Against Women (2012).⁸¹

UPR (2011): Government accepted recommendations to prohibit corporal punishment in the home and schools.⁸²

⁷⁸ Samoa Law Reform Commission (2009), *Care and protection legislation to protect children: Issues Paper IP 03/09*

⁷⁹ Samoa Law Reform Commission (2013), *Child care and protection legislation: Final report 11/13*, paras. 3.1-3.17

⁸⁰ 16 October 2006, CRC/C/WSM/CO/1, Concluding observations on initial report, paras. 35 and 36

⁸¹ 7 August 2012, CEDAW/C/WSM/CO/4-5, Concluding observations on fourth/fifth report, para. 28

⁸² 11 July 2011, A/HRC/18/14, Report of the working group, paras. 74(20), 74(21) and 74(22)



SINGAPORE

Child population (0-17): 1,104,000 (UNICEF, 2011)

Current legality of corporal punishment

Home (lawful): The Penal Code 1872 states that “nothing, which is done in good faith for the benefit of a person under 12 years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person, provided that it does not cause or is likely or intended to cause death or grievous hurt” (art. 89). The Women’s Charter 1961 prohibits family violence, but this “does not include any force lawfully used ... by way of correction towards a child below 21 years of age” (art. 64). Under the Application of English Law Act (1993), English common law applies (art. 3), which presumably includes the legal defence of “reasonable chastisement”. The Children and Young Persons Act 1993 and other laws were extensively revised in 2011 but corporal punishment was not prohibited (it was re-authorised in settings outside the home, see following sections).

Schools (lawful): The Education (Schools) Regulations under the Education Act 1957 state that corporal punishment shall be administered to boys only, with a light cane on the palms of the hand or the buttocks, and by the principal or authorised person (art. 88).



Penal system – sentence for crime (lawful): Under the Children and Young Persons Act 1993, amended 2011, only the High Court may sentence a child aged 7-15 to be caned (art. 37). Older children are tried as adults and under the Criminal Procedure Code 2010 may be sentenced to caning up to 12 strokes by a District Court, up to six strokes by a Magistrate’s Court, and by a High Court to any sentence prescribed in law (art. 303). Caning is prescribed as a punishment in many laws, including the Penal Code 1872, the Misuse of Drugs Act 1973, the Piracy Act 1993, the Arms Offences Act 1973, the Explosive Substances Act 1924, the Corrosive and Explosive Substances and Offensive Weapons Act 1973, the Vandalism Act 1966, the Immigration Act 1989, the Dangerous Fireworks Act 1988, the Kidnapping Act 1961, the Women’s Charter 1961, the Public Order (Preservation) Act 1958, the Railways Act 1905 and the Road Traffic Act 1993. The Criminal Procedure Code 2010 states that children aged 7-15 should be caned up to 10 strokes with a light rattan, older children up to 24 strokes with a rattan up to 1.27cm in diameter (arts. 328, 329 and 330). A medical officer must be present and must certify that the offender is fit to receive the caning (art. 331). Females may not be caned (art. 325).

Penal system – disciplinary measure in penal

institutions (lawful): The Children and Young Persons Act 1993, as revised in 2011, states that the manager of a juvenile rehabilitation centre, a place of safety, a remand home or a place of detention may “use such force as is reasonable and necessary – to compel a person being detained in the rehabilitation centre, place of safety, remand home or place of detention to obey any order or requirement given or made by the manager under this section” (art. 68). Caning is specifically authorised in the Children and Young Persons (Remand Home) Regulations 1993 (art. 21), the Prisons Act 1939 (art. 77), the Criminal Procedure Code (Corrective Training and Preventive Detention) Regulations 2010 (arts. 10 and 13), the Intoxicating Substances (Discipline in Approved Centres) Regulations 1987 (art. 8) and the Misuse of Drugs (Approved Institutions) (Discipline) Regulations 1979 (art. 12).

Alternative care settings (partial prohibition):

Corporal punishment is explicitly prohibited in child care centres in the Child Care Centres Regulations under the Child Care Centres Act 1988 (art. 17).

But caning is authorised for boys and girls in children's homes in the Children and Young Persons (Government Homes) Regulations 2011 (art. 24) and in places of safety for girls in the Women's Charter (Protection of Women and Girls) Rules 1974 (arts. 50 and 51).

Military service (lawful):

Military service is compulsory for males. The Singapore Armed Forces (Detention and Imprisonment) Regulations 2003 and the Singapore Armed Forces (Disciplinary Barracks) Regulations 1990 allow for caning up to 24 strokes (10 strokes for boys under 16) for a variety of offences.

Law reform necessary to achieve prohibition in Singapore

Repeal of the legal defences for corporal punishment (in Penal Code 1872 and Women's Charter 1961); repeal of all authorisations for corporal punishment (see information opposite); explicit prohibition of corporal punishment in the home, schools, penal system and all alternative care settings.

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: Committee on the Rights of the Child (2011, 2003).⁸³

UPR (2011): Government rejected recommendations to prohibit corporal punishment.⁸⁴



⁸³ 2 May 2011, CRC/C/SGP/2-3, Concluding observations on second/third report, paras. 39, 40, 68 and 69; 27 October 2003, CRC/C/15/Add.220, Concluding observations on initial report, paras. 32, 33, 44 and 45

⁸⁴ 11 July 2011, A/HRC/18/11, Report of the working group, paras. 97 and 99



SOLOMON ISLANDS

Child population (0-17): 254,000 (UNICEF, 2011)

Current legality of corporal punishment

Home (lawful): The Penal Code 1963 addresses cruelty to children but also states (art. 233): “Nothing in this section shall be construed as affecting the right of any parent, teacher, or other person, having the lawful control of a child or young person to administer reasonable punishment to him.”

Schools (lawful): The Teaching Service Handbook states that corporal punishment should not be used, but it is not prohibited in law. Rather, it is lawful under the right “to administer reasonable punishment” in the Penal Code (art. 233). The Education Act 1978 is silent on the issue.

Penal system – sentence for crime (unlawful): There is no provision for corporal punishment in criminal law and in 2006, elders and church leaders on Wagina Islands agreed to stop whipping as a punishment for breaking village rules.⁸⁵ However, research has found that corporal punishment is inflicted on children who have committed a crime by police and at the village/community level.⁸⁶

Penal system – disciplinary measure in penal institutions

(unlawful): Corporal punishment is explicitly prohibited in the Correctional Services Act 2007 (art. 53).

Alternative care settings (lawful): Corporal punishment is lawful under the right “to administer reasonable punishment” in the Penal Code 1963 (art. 233).

Law reform necessary to achieve prohibition in the Solomon Islands

Repeal of the right “to administer reasonable punishment” (in Penal Code 1963); explicit prohibition of corporal punishment in the home, schools and alternative care settings.

Law reform under way

Legislation on child rights was drafted in 2004 but never passed. Since then, the Law Reform Commission has reviewed the Penal Code 1963 and the Criminal Procedure Code 1962, including the defence of “reasonable punishment”.⁸⁷ Child-related legislation has been reviewed by the Solomon Islands Government in collaboration with UNICEF.⁸⁸ The National Children’s Policy and Plan of Action, adopted by the Ministry of Women, Youth and Children Affairs in 2010, commits to enacting child protection legislation by 2015.

UNICEF anticipated that a Child and Family Welfare Bill would be developed by 2012.⁸⁹ The first draft of a Family Protection Bill, which addresses domestic violence, was completed in April 2013 and public consultation on the Bill was completed in August; it is expected to be presented to Parliament in 2013 or early 2014. We have yet to see the text of the Bill. The development of child protection legislation is presumably still under discussion (unconfirmed). A draft Federal Constitution is also under consideration: it includes protection for every person from inhuman or degrading punishment or treatment but does not specifically refer to corporal punishment. The Government expected that it would be laid before Parliament in 2013.⁹⁰

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: Committee on the Rights of the Child (2003).⁹¹

UPR (2011): Government accepted recommendations to prohibit corporal punishment in all settings.⁹²

⁸⁵ Reported in *People First*, 15 June 2006

⁸⁶ UNICEF & Australian Government AusAID (2009), *Protect me with love and care: A Baseline Report for creating a future free from violence, abuse and exploitation of girls and boys in the Solomon Islands*

⁸⁷ Law Reform Commission (2009), *Review of the Penal Code – Children*; Law Reform Commission (2008), *Review of Penal Code and Criminal Procedure Code: Issues Paper 1*

⁸⁸ UNICEF & Australian Government AusAID (2009), op. cit.

⁸⁹ UNICEF, *Child Protection Funding Proposal 2011-2012 Pacific*

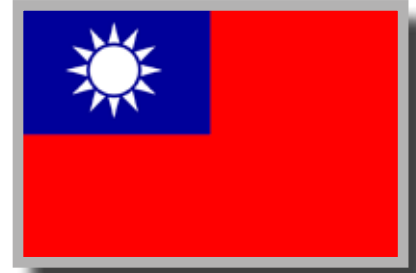
⁹⁰ 21 November 2012, CEDAW/C/SLB/Q/1-3/Add.1, Reply to list of issues, paras. 10 and 35

⁹¹ 2 July 2003, CRC/C/15/Add.208, Concluding observations on initial report, paras. 30 and 31

⁹² 11 July 2011, A/HRC/18/8, Report of the working group, paras. 80(15) and 80(31)

TAIWAN

Child population (0-17): 4,750,000 (Ministry of Foreign Affairs, 2009)



Current legality of corporal punishment

Home (lawful): The Child and Youth Welfare and Rights Protection Act 2012 protects children from “physical and mental mistreatment” (art. 49) but does not prohibit all corporal punishment. Neither the Family Education Law 2011 nor the Social Education Law 2011 prohibits corporal punishment.

Schools (unlawful): Corporal punishment is prohibited in the Fundamental Law of Education as amended in 2006 (art. 8). The prohibition applies to all educational institutions, including public and private schools and kindergartens, universities and all types of “cram” schools.

Penal system – sentence for crime (unlawful): There is no provision for judicial corporal punishment in criminal law.

Penal system – disciplinary measure in penal institutions (unlawful): Corporal punishment is considered to be unlawful but we have no details of prohibiting legislation.

Alternative care settings (partial prohibition): Corporal punishment is possibly prohibited in day care centres (unconfirmed). It is not prohibited in the Children and Youth Welfare Act 2010.

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: ---

UPR (---): Taiwan is not a UN member state and is not reviewed in the Universal Periodic Review process.

Law reform necessary to achieve prohibition in Taiwan

Explicit prohibition of corporal punishment in the home, all alternative care settings and possibly penal institutions.





TAJIKISTAN

Child population (0-17): 3,052,000 (UNICEF, 2011)

Current legality of corporal punishment

Home (lawful): The Law on Prevention of Violence in the Family 2013 defines violence in the family as “the intentional illegal act of physical, mental, sexual and economic nature made within the family relations by one member of the family in relation to other member of the family which violates its rights and freedoms, causes physical pain or harm to its health or threatens to cause such harm to health” and physical abuse as “intentional illegal act of one member of the family in relation to other member of the family, as a result of the use of physical force which causes physical pain or harm to its health” (art. 1, unofficial translation). One of the purposes of the Law is “assistance to increase of responsibility of parents for training and education of children” (art. 2). We are currently seeking to ascertain if this Law is interpreted as prohibiting all corporal punishment in childrearing.

The Law on Parental Responsibility for Education and Upbringing of Children 2011 states that parents have a responsibility to respect the honour and dignity of children and protect them from ill-treatment (art. 8), but does not explicitly prohibit all corporal punishment. The Family Code 1998 states that “methods of raising children should exclude neglectful, cruel or degrading treatment or abuse” (art. 65) but it does not prohibit all corporal punishment.

Schools (unlawful): Corporal punishment is unlawful under the Education Act 2004 (arts. 26 and 39).

Penal system – sentence for crime (unlawful): There is no provision for judicial corporal punishment in criminal law.

Penal system – disciplinary measure in penal institutions (lawful): There is no explicit prohibition of corporal punishment.

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

Law reform necessary to achieve prohibition in Tajikistan

Explicit prohibition of all corporal punishment in the home, penal institutions and alternative care settings.

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: Committee on the Rights of the Child (2010, 2000);⁹³ Committee Against Torture (2013);⁹⁴ Human Rights Committee (2013, 2005).⁹⁵

UPR (2011): Government accepted recommendations to prohibit corporal punishment in all settings.⁹⁶

⁹³ 5 February 2010, CRC/C/TJK/CO/2, Concluding observations on second report, paras. 39 and 40; 23 October 2000, CRC/C/15/Add.136, Concluding observations on initial report, paras. 28, 29, 34 and 35

⁹⁴ 21 January 2013, CAT/C/TJK/CO/2, Concluding observations on second report, para. 16

⁹⁵ [25 July 2013], CCPR/C/TJK/CO/2 Advance Unedited Version, Concluding observations on second report, para. 15; 18 July 2005, CCPR/CO/84/TJK, Concluding observations on initial report, para. 23

⁹⁶ 12 December 2011, A/HRC/19/3, Report of the working group, paras. 89(3) and 89(4)

THAILAND

Child population (0-17): 17,111,000 (UNICEF, 2011)



Current legality of corporal punishment

Home (lawful): The Civil and Commercial Code states (art. 1567): “A person exercising parental power has the right ... (2) to punish the child in a reasonable manner for disciplinary purposes.”

Schools (unlawful): There is no provision for corporal punishment among permitted disciplinary measures in the Regulation on the Ministry of Education Regulation on Student Punishment 2005. The Regulation on the Promotion and Protection of the Rights of Children and Juveniles in Educational Establishments 2000 prohibits “harsh treatment to the body or mind [and] cruel, humiliating, inhumane means” (art. 8).

Penal system – sentence for crime (unlawful): Corporal punishment is unlawful under the Revised Penal Code 2003 but provisions for flogging in the Establishment of Juvenile and Family Court and Procedure Act 1991 are possibly still to be repealed.

Penal system – disciplinary measure in penal institutions (unlawful): There is no provision for corporal punishment in the Ministry of Justice Regulation on Children and Youth Punishment and Provisional Permission for Children and Youth 2003 or the Military Prisons Act 2007. A Ministerial Regulation under the Corrections Act reportedly repealed provisions for caning.⁹⁷ However, some provisions for flogging and whipping children are possibly still to be repealed – in the Establishment of Juvenile and Family Court and Procedure Act 1991, the Training Arrangement for Certain Groups of Children Act 1936, and the Ministry of Interior Regulation on Punishment of Certain Groups of Children 1937.

Alternative care settings (lawful): The Government has stated that corporal punishment is prohibited in the Regulation of the Ministry of Social Development and Human Security on Child Punishment of 2005 which does not include corporal punishment among permitted disciplinary measures.⁹⁸ However, the prohibition appears to apply only to corporal punishment of some severity: under the Child Protection Act 2003 (art. 61) an owner, guardian of safety, and staff of a nursery, remand home, welfare centre, safety protection centre and development and rehabilitation centre must not mentally or physically assault or impose harsh punishment on any child under their care and guardianship, “except where such acts are reasonably applied for disciplinary purposes in accordance with the regulations specified by the Minister”. The Act states that punishment of children must be “carried out reasonably for disciplinary purposes” (art. 65).

Law reform necessary to achieve prohibition in Thailand

Repeal of “right to punish” (in Civil and Commercial Code); repeal of provisions for flogging/whipping (in Establishment of Juvenile and Family Court Procedure Act 1991, Training Arrangement for Certain Groups of Children Act 1936, Ministry of Interior Regulation on Punishment of Certain Groups of Children 1937); explicit prohibition of corporal punishment in the home, penal institutions and alternative care settings.

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: Committee on the Rights of the Child (2012, 2006, 1998).⁹⁹

UPR (2011): Government accepted recommendations to prohibit corporal punishment in all settings.¹⁰⁰

⁹⁷ [26 February 2013], CAT/C/THA/1, Initial state party report to the Committee Against Torture, page 74

⁹⁸ 20 January 2012, CRC/C/THA/Q/3-4/Add.1, Written replies to the Committee on the Rights of the Child, para. 44

⁹⁹ 17 February 2012, CRC/C/THA/CO/3-4, Concluding observations on third/fourth report, paras. 7, 8, 47 and 48; 17 March 2006, CRC/C/THA/CO/2, Concluding observations on second report, paras. 39, 40, 41, 76 and 77; 26 October 1998, CRC/C/15/Add.97, Concluding observations on initial report, para. 21

¹⁰⁰ 8 December 2011, A/HRC/19/8, Report of the working group, paras. 89(36) and 89(37)



TIMOR-LESTE

Child population (0-17): 616,000 (UNICEF, 2011)

Current legality of corporal punishment

Home (lawful): 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” (art. 18). 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 (arts. 145 and 146) and mistreatment of a minor (art. 155) but it does not prohibit all 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 corporal punishment in childrearing.

Schools (lawful): There is no explicit prohibition of corporal punishment. The Education Act 2008 appears to be silent on the issue (unconfirmed).

Penal system – sentence for crime (unlawful): There is no provision for judicial corporal punishment in criminal law.

Penal system – disciplinary measure in penal institutions (unlawful): Corporal punishment is considered unlawful, though there appears to be no explicit prohibition.

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

Law reform necessary to achieve prohibition in Timor-Leste

Explicit prohibition of corporal punishment in the home, schools, penal institutions and alternative care settings.

Law reform under way

A draft Child Code is under discussion which would prohibit all corporal punishment of children (2013). The version dated May 2011 explicitly prohibits corporal punishment in schools (arts. 30 and 31). It states that “no child shall be subjected to any form of physical or psychological violence, including corporal punishment or humiliating disciplinary measures” (art. 39) and that parents/guardians “must refrain from using violence and focus on positive methods of discipline” (art. 54). The Government was expected to approve the Code in 2013.

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: Committee on the Rights of the Child (2008),¹⁰¹ Committee on the Elimination of Discrimination Against Women (2009).¹⁰²

UPR (2011): Government accepted recommendations to prohibit corporal punishment.¹⁰³

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

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

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

TONGA

Child population (0-17): 46,000 (UNICEF, 2011)



Current legality of corporal punishment

Home (lawful): The Civil Law Act 1966 (as amended 1983) states that English common law applies (art. 3): this would include the “reasonable chastisement” defence. Children have limited protection from violence and abuse under the Criminal Offences Act 1926.

In September 2013, Parliament passed the Family Protection Act 2013, which is expected to come into force in 2014. We have yet to see the text as passed, but as a Bill it defined domestic violence, including against a child, as an act or omission or conduct which causes injury or harm “beyond the reasonable acceptance of family and domestic life”. There was no indication that the Bill was intended to prohibit corporal punishment.

Schools (unlawful): Corporal punishment is prohibited in the Education (Schools and General Provisions) Regulations 2002 (art. 40).

Penal system – sentence for crime (lawful): The Criminal Offences Act 1926 provides for corporal punishment (art. 24). Boys under 16 may be whipped up to 20 strokes “with a light rod or cane composed of tamarind or other twigs”; older males may be whipped up to 26 strokes “with a cat of a pattern approved by the Cabinet” (article 31). The punishment must be administered in one or two instalments, as specified by the Court; it is inflicted by the gaoler, in the presence of a magistrate, following certification that the offender is medically fit to undergo the punishment (art. 31). For certain sexual offences, theft or robbery, whipping may be ordered at the discretion of the court in lieu of or in addition to imprisonment (art. 142); for boys under 16, whipping may be ordered in lieu of imprisonment for certain sexual offences (art. 130). The Magistrates’ Courts Act 1919 allows whipping of boys aged 7-15 in lieu of any other punishment, to be inflicted by a constable or police sergeant and administered in one or two instalments, up to 10 strokes each, with “a light rod or cane composed of several tamarind or other twigs” (art. 30).

In 2010, the Appeal Court overturned sentences of judicial whipping that had been imposed on two 17 year olds, stating that in light of international convention and decisions of the court “it might be argued” that the provisions for whipping are now unconstitutional.¹⁰⁴ The judgment also questioned the doctor’s role in certifying an offender fit for whipping.

Penal system – disciplinary measure in penal institutions (?unlawful): Corporal punishment is explicitly prohibited in prisons in the Prisons Act 2010 (art. 66). We have yet to confirm that this effectively prohibits corporal punishment in all institutions accommodating children in conflict with the law.

Alternative care settings (lawful): Corporal punishment is lawful under the English common law defence of “reasonable chastisement”.

¹⁰⁴ *Fangupo v Rex; Fa’aoa v Rex* [2010] TOCA 17; AC 34 of 2009; AC 36 of 2009 (14 7 2010)

Law reform under way

In 2006, the Government, with the support of UNICEF, published a report on children in Tonga which included a recommendation to amend the Acts permitting corporal punishment of children.¹⁰⁵ In 2007, the Justice Minister was reportedly involved in discussions on developing youth justice laws in Tonga similar to New Zealand's model of restorative justice.¹⁰⁶ In 2010, MP and former Minister for Police Clive Edwards announced his intention to support a private members bill to abolish judicial whipping,¹⁰⁷ and in 2013 the Government accepted a recommendation made during the Universal Periodic Review of Tonga to abolish the statutory provisions for corporal punishment.¹⁰⁸ However, more recently the Government announced that it would retain judicial whipping "as a deterrent".¹⁰⁹

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: ---

UPR (2011): Government rejected recommendations to prohibit corporal punishment.¹¹⁰

Law reform necessary to achieve prohibition in Tonga

Repeal of the defence for "reasonable chastisement" (in common law); repeal of provisions authorising corporal punishment (in Criminal Offences Act 1926 and Magistrates' Courts Act 1919); explicit prohibition of corporal punishment in the home, penal system and alternative care settings.



¹⁰⁵ UNICEF & Government of Tonga (2006), *Tonga: A situation analysis of children, women and youth*, Suva: UNICEF Pacific

¹⁰⁶ *DCI Juvenile Justice Newsletter* 2007, No. 3, 30 June 2007

¹⁰⁷ *Radio New Zealand International*, 19 February 2010

¹⁰⁸ 21 March 2013, A/HRC/23/4, Report of the working group, para. 79(44)

¹⁰⁹ 3 June 2013, A/HRC/23/4/Add.1, Report of the working group: Addendum, para. 15

¹¹⁰ 3 June 2013, A/HRC/23/4/Add.1, Report of the working group: Addendum, paras. 13, 15 and 18

TURKMENISTAN

Child population (0-17): 1,785,000 (UNICEF, 2011)



Current legality of corporal punishment

Home (lawful): The Law on Guarantees of the Rights of the Child 2002 states (art. 24(3), unofficial translation): “Humiliation of the child’s dignity, intimidation, corporal punishment, other physical abuse harmful for the child’s mental or physical health are inadmissible.” The Family Code 2012 states (art. 85(2)): “Humiliation of the dignity of the child, intimidation, corporal punishment, other causing of the pain, causing injury (harm) to mental or physical health are inadmissible.” It also states that “methods of education of the child shall exclude neglectful, cruel, humiliating and degrading treatment” (art. 89(2)). We are seeking an official translation of the law and to establish if it has the effect of prohibiting all corporal punishment in childrearing.

Schools (unlawful): Corporal punishment is unlawful under the Education Act 2009 (arts. 13 and 38).

Penal system – sentence for crime (unlawful): There is no provision for judicial corporal punishment in criminal law.

Penal system – disciplinary measure in penal institutions (unlawful): Corporal punishment is unlawful under the Law on Guarantees of the Rights of the Child 2002.

Alternative care settings (unlawful): Corporal punishment is presumably unlawful under the Law on Guarantees of the Rights of the Child (art. 24) but we have yet to confirm that this applies to all corporal punishment, however light, in all forms of care without exception.

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: Committee on the Rights of the Child (2006).¹¹¹

UPR (2013, 2008): Government accepted recommendation to prohibit in all settings.¹¹²

Law reform necessary to achieve prohibition in Turkmenistan

Explicit prohibition of corporal punishment in the home and alternative care settings.

¹¹¹ 2 June 2006, CRC/C/TKM/CO/1, Concluding observations on initial report, paras. 46 and 47

¹¹² 24 April 2013, A/HRC/WG.6/6/16/L.1, Draft report of the working group, para. 112(28)



TUVALU

Child population (0-17): 4,000 (UNICEF, 2011)

Current legality of corporal punishment

Home (lawful): The Constitution 1978 states as one of its principles the maintenance of “family discipline” (principle 4) and provides for under 18s to be detained “in the reasonable exercise of the authority of a parent, teacher or guardian, or under the order of a court for the purpose of his education, welfare or proper discipline” (art. 17). The Government has stated that this “envisages lawful corporal punishment”.¹¹³ The Penal Code 1965 punishes cruelty to children but states (art. 226): “Nothing in this section shall be construed as affecting the right of any parent, teacher, or other person, having the lawful control of a child or young person to administer reasonable punishment to him.”

Schools (lawful): Corporal punishment is lawful under the Education Act 1976 (art. 29) and the Penal Code 1965 (art. 226).

Penal system – sentence for crime (partial prohibition): There is no provision for judicial corporal punishment in the Penal Code 1965, the Criminal Procedure Code 1963, the Magistrates Court Act 1963 or the Superior Courts Act 1987. However, a male child or young person may be caned under the Island Courts Act 1965, which states that in lieu of any other sentence the court may order the parent or guardian to cane their child up to 6 strokes or young person up to 10 strokes, and that failure to carry out this order is an offence (art. 8).

Law reform necessary to achieve prohibition in Tuvalu

Repeal of the right “to administer reasonable punishment” (in Penal Code 1965); repeal of provisions authorising corporal punishment (in Education Act 1976 and Island Courts Act 1965); explicit prohibition of corporal punishment in the home, schools, penal system and alternative care settings.

Penal system – disciplinary measure in penal institutions (partial prohibition): There is no provision for corporal punishment in the Prisons Act 1985. The Police Powers and Duties Act 2009 explicitly prohibits corporal punishment of persons in police custody (art. 55). Corporal punishment is presumably lawful in other penal institutions under the right “to administer reasonable punishment” in the Penal Code (art. 226).

Alternative care settings (partial prohibition): Corporal punishment is prohibited in the mental health wing of the hospital in the Mental Health Wing Management Regulations under the Mental Treatment Act 1927 (regulations 25 and 27). It is lawful in other care settings under the right “to administer reasonable punishment” in the Penal Code (art. 226).

Law reform under way

In 2008, the Government reported that corporal punishment of children was being addressed as part of efforts to harmonise domestic laws with international human rights standards.¹¹⁴ The Education Act has been reviewed and corporal punishment is reportedly being addressed.¹¹⁵ A Family Protection and Domestic Violence Bill was launched for community consultations in June 2013.

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: Committee on the Rights of the Child (2013);¹¹⁶ Committee on the Elimination of Discrimination Against Women (2009).¹¹⁷

UPR (2013, 2008): Government both accepted and rejected recommendations to prohibit corporal punishment.¹¹⁸

¹¹³ 10 October 2012, CRC/C/TUV/1, Initial report to the Committee on the Rights of the Child, para. 148

¹¹⁴ 9 January 2009, A/HRC/10/84, Report of the working group, para. 41

¹¹⁵ 26 April 2013, A/HRC/WG.6/16/L.6 Unedited Version, Draft report of the working group, para. 65

¹¹⁶ 4 October 2013, CRC/C/TUV/CO/1 Advance Unedited Version, Concluding observations on initial report, paras. 35, 36, 62 and 63

¹¹⁷ 7 August 2009, CEDAW/C/TUV/CO/2, Concluding observations on initial/second report, paras. 39 and 40

¹¹⁸ 26 April 2013, A/HRC/WG.6/16/L.6 Unedited Version, Draft report of the working group, paras. 81(53), 81(54), 83(23) and 83(24); 9 January 2009, A/HRC/10/84, Report of the working group, para. 68(8)

UZBEKISTAN

Child population (0-17): 9,849,000 (UNICEF, 2011)



Current legality of corporal punishment

Home (lawful): According to the Law On Guarantees of the Rights of the Child 2008, the state shall protect the child from “all forms of exploitation, including physical, mental and sexual abuse, torture or other cruel, brutal or degrading treatment” (art. 10) and the child “has the right to be protected from abuse by parents or persons replacing the parents” (art. 11, unofficial translation). The Family Code 1998 states that “methods of educating children must exclude neglectful, cruel or degrading treatment, abuse and exploitation” (art. 75). But there is no explicit prohibition of corporal punishment.

Schools (unlawful): Corporal punishment is considered unlawful under the Law On Guarantees of the Rights of the Child 2008 (art. 10), but it is not explicitly prohibited. The Law On Education 1997 is silent on the issue.

Penal system – sentence for crime (unlawful): There is no provision for judicial corporal punishment in criminal law. We have yet to confirm that corporal punishment cannot be imposed by the mahalliyas (associations of families living in the same area acting as organs of local authority and often dealing with minors who commit offences).

Penal system – disciplinary measure in penal institutions (unlawful): Corporal punishment is unlawful under the Law On Guarantees of the Rights of the Child 2008 (art. 10), though it is not explicitly prohibited. The Criminal and Executive Code 1997 does not include corporal punishment among permitted disciplinary measures in penal institutions.

Alternative care settings (lawful): There is no explicit prohibition of corporal punishment. Children are protected from some but not all corporal punishment under the Law on Guarantees of the Rights of the Child 2008 (art. 10).

Law reform under way

In 2009, the Government acknowledged the inadequacy of the law in relation to corporal punishment by parents and persons replacing them and stated that work had begun on amending the Family Code prohibiting violence against family members.¹¹⁹ We do not know if the above quoted Family Code provisions reflect these amendments or if further reform is planned.

Law reform necessary to achieve prohibition in Uzbekistan

Explicit prohibition of corporal punishment in the home, schools and alternative care settings.

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: Committee on the Rights of the Child (2013, 2006, 2001).¹²⁰

UPR (2013, 2008): No recommendations were made on corporal punishment but Government accepted recommendations to strengthen protection for child rights and to reform legislation relevant to human rights.¹²¹

¹¹⁹ 19 October 2009, CEDAW/C/UZB/Q/4/Add.1, Written reply to the Committee on the Elimination of Discrimination Against Women, Q11

¹²⁰ 14 June 2013, CRC/C/UZB/CO/3-4 Advance Unedited Version, Concluding observations on third/fourth report, paras. 38, 39, 40 and 41; 2 June 2006, CRC/C/UZB/CO/2, Concluding observations on second report, paras. 44 and 45; 7 November 2001, CRC/C/15/Add.168, Concluding observations on initial report, paras. 39, 40, 45 and 46

¹²¹ 9 March 2009, A/HRC/10/83, Report of the working group, paras. 104 (16), 104 (17) and 104(22); April/May 2013, A/HRC/WG.6/16/L.5 Unedited Version, Draft report of the working group, paras. 135(1)-(8), 135(28) and 135(93)



VANUATU

Child population (0-17): 109,000 (UNICEF, 2011)

Current legality of corporal punishment

Home (lawful): Corporal punishment is lawful under the English common law defence of “reasonable chastisement”. Children are protected from violence and ill-treatment by the Penal Code 1981 (amended 2007) and the Family Protection Act 2008 but these do not prohibit all corporal punishment in childrearing.

Schools (unlawful): Corporal punishment is unlawful the Education Act 2001 (art. 38).

Penal system – sentence for crime (partial prohibition): There is no provision for judicial corporal punishment in the Penal Code 1981, the Criminal Procedure Code (amended 2003) or the Island Courts Act 1983 (amended 2006). The Constitution 1980 (amended 2004) recognises the right to freedom from inhuman treatment (art. 5). However, the Larceny Act 1916, which provides for “private whipping”, is possibly still in force. Corporal punishment is used in rural areas as a traditional form of punishment favoured by chiefs: we have been unable to ascertain the legality of this. Research has also found that corporal punishment is inflicted by police on children who have committed a crime, and sometimes parents bring their children to the police and request that corporal punishment be inflicted.¹²²

Penal system – disciplinary measure in penal institutions (unlawful): Corporal punishment is not among permitted disciplinary measures in the Correctional Services Act 2006. It is reportedly explicitly prohibited in detention centres¹²³ but we have yet to identify prohibiting legislation.

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

Law reform under way

It was anticipated that a Young Offenders Bill would have been developed by the end of 2012.¹²⁴ In 2011, the police introduced new guidelines for responding to children in conflict with the law but no legislation appears to have been enacted (unconfirmed).

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: Committee on the Rights of the Child (1999).¹²⁵

UPR (2009): Government accepted a recommendation to eradicate corporal punishment in the family and juvenile justice systems and implement the prohibition in schools.¹²⁶

Law reform necessary to achieve prohibition in Vanuatu

Repeal of the defence of “reasonable chastisement” (in common law); repeal of provisions authorising corporal punishment (possibly in the Larceny Act 1916); explicit prohibition of corporal punishment in the home, penal system and alternative care settings.

¹²² UNICEF & AusAid (2009), *Protect me with love and care: A Baseline Report for creating a future free from violence, abuse and exploitation of girls and boys in Vanuatu*, Suva: UNICEF Pacific

¹²³ *ibid.*

¹²⁴ UNICEF, *Child Protection Funding Proposal 2011-2012 Pacific*

¹²⁵ 10 November 1999, CRC/C/15/Add.111, Concluding observations on initial report, para. 16

¹²⁶ 4 June 2009, A/HRC/12/14, Report of the working group, para. 56(36)

VIET NAM

Child population (0-17): 25,532,000 (UNICEF, 2011)



Current legality of corporal punishment

Home (lawful): Provisions against violence and abuse in the Law on the Protection, Care and Education of Children 1991 (amended 2004), the Penal Code 1999, the Law on Marriage and the Family, the Constitution 1980, the Civil Code 2005 and the Law on Domestic Violence Prevention and Control 2007 are not interpreted as prohibiting all corporal punishment in childrearing.

Schools (unlawful): Corporal punishment is unlawful under the Education Law 2005 (art. 75).

Penal system – sentence for crime (unlawful): There is no provision for judicial corporal punishment in criminal law.

Penal system – disciplinary measure in penal institutions (unlawful): Corporal punishment is prohibited in the Law on the Protection, Care and Education of Children 1991 (art. 7).

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

Law reform under way

Draft amendments to the Law on the Protection, Care and Education of Children are under discussion. During examination by the Committee on the Rights of the Child in 2012, the Government claimed that corporal punishment is unlawful under existing law but also acknowledged that the revised Child Protection, Care and Education Act “should provide a precise definition of corporal punishment”.¹²⁷

Law reform necessary to achieve prohibition in Viet Nam

Explicit prohibition of corporal punishment in the home and alternative care settings.

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations: Committee on the Rights of the Child (2012, 2003).¹²⁸

UPR (2009): No recommendations made on corporal punishment but Government accepted recommendations to continue to promote the rights of the child.¹²⁹

¹²⁷ 31 July 2012, CRC/C/SR.1703, Summary record of 1703rd meeting, para. 9

¹²⁸ 15 June 2012, CRC/C/VNM/C0/3-4 Advance Unedited Version, Concluding observations on third/fourth report, paras. 45 and 46; 18 March 2003, CRC/C/15/Add.200, Concluding observations on second report, paras. 33 and 34

¹²⁹ 5 October 2009, A/HRC/12/11, Report of the working group, paras. 99(1), 99(73) and 99(82)

Country reports – overseas territories etc

China



Hong Kong (Special Administrative Region of China)

Child population: [no information]

Legality of corporal punishment

In the **home**, corporal punishment is lawful under the common law right “to inflict moderate punishment”.¹ Corporal punishment is prohibited in **schools** in the Education Regulations 1971 (amended 1991) (regulation 58).

In the **penal system**, there is no provision for corporal punishment as a sentence for crime; it is unlawful as a disciplinary measure in penal institutions under the Prison Rules 1954, the Reformatory School Rules 1959, the Remand Home Rules 1955, the Rehabilitation Centres Regulation 2001, the Detention Centre Regulations 1972 and the Probation of Offenders Rules.

With regard to **alternative care settings**, corporal punishment is prohibited in child care centres in the Child Care Services Regulations 1976 (amended 2000) (regulations 15 and 45R). It is lawful in other forms of care as for parents.

Human rights jurisprudence on corporal punishment for Hong Kong and Macau

Treaty body recommendations/observations (Hong Kong):² Committee on the Rights of the Child (2013, 2005, 1996);³ Committee Against Torture (1996);⁴ Human Rights Committee (2013).⁵

Treaty body recommendations/observations (Macau): Committee on the Rights of the Child (2005).⁶

UPR of China (2013, 2009): Government accepted recommendations to human rights, including through law reform.⁷

¹ Law Reform Commission of Hong Kong (2002), *Report: Guardianship of Children*

² Note: Hong Kong ceased to be a dependent territory of the UK in 1997.

³ 29 October 2013, CRC/C/CHN/CO/3-4, Concluding observations on third/fourth report, paras. 6 and 7; 24 November 2005, Concluding observations on second report on China (including Hong Kong and Macau Special Administrative Regions), CRC/C/CHN/CO/2, paras. 46, 47 and 48; 30 October 1996, CRC/C/15/Add.63, Concluding observations on initial report of the United Kingdom of Great Britain and Northern Ireland: Dependent Territories (Hong Kong), para. 27

⁴ 9 July 1996, A/51/44, Concluding observations on second report of the United Kingdom of Great Britain and Northern Ireland and on the United Kingdom and its dependent Territories, paras. 58-65, para. 65

⁵ [March 2013], CCPR/C/CHN-HKG/CO/3 Advance Unedited Version, Concluding observations on third report, para. 16

⁶ 24 November 2005, Concluding observations on second report on China (including Hong Kong and Macau Special Administrative Regions), CRC/C/CHN/CO/2, paras. 46, 47 and 48

⁷ 5 October 2009, A/HRC/11/25, Report of the working group, paras. 114(2), 114(3) and 114(13)

Macau (Special Administrative Region of China)



Child population: 94,300 (Macau Statistics and Census Service, 2008)

Legality of corporal punishment

Legal provisions against violence and abuse are not interpreted as prohibiting corporal punishment in the **home**. A domestic violence law is under discussion (2013): the draft does not include prohibition of corporal punishment.

Corporal punishment is unlawful in **schools** under Order No. 46/SAAEJ/97 Adopting the student disciplinary system of educational institutions officers, pursuant to Law No. 11/91/M on Education in Macau, which does not include corporal punishment among permitted disciplinary measures.

In the **penal system**, there is no provision for corporal punishment as a sentence for crime; it is unlawful as a disciplinary measure in penal institutions under Decree Law 40/94/M (the Prison Establishment Law) and Law 2/2007 establishing educational guardianship measures for young offenders.

There is no prohibition of corporal punishment in **alternative care settings**.

Law reform necessary to achieve prohibition in Hong Kong and Macau

Repeal of common law right “to inflict moderate punishment” (Hong Kong); explicit prohibition of corporal punishment in the home and alternative care settings (Hong Kong and Macau).

France



French Polynesia (Overseas Collectivity of France)

Child population: [no information]

Legality of corporal punishment

Corporal punishment is lawful in the **home** under the “right of correction” in French customary law.

There appears to be no explicit prohibition of corporal punishment in **schools**. French Polynesian Law No. 2011-22 of 29 August 2011, which includes the Education Charter, is silent on the issue. The “right of correction” for teachers in French case law is applicable.

In the **penal system**, there is no provision for corporal punishment as a sentence in criminal law; it is considered unlawful as a disciplinary measure in penal institutions but it is not explicitly prohibited.

With regard to **alternative care settings**, under French Polynesian Law No. 2009-16 of 6 October 2009 foster carers must respect the physical integrity of the child (arts. 4 and 28) but the Law does not explicitly prohibit all corporal punishment and the “right to correct” under French customary law potentially applies. Corporal punishment is lawful in other care settings as for parents.

New Caledonia (Special Collectivity of France)

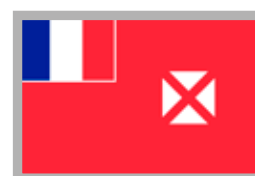


Child population: [no information]

Legality of corporal punishment

Corporal punishment is lawful in the **home** under the “right of correction” in French customary law. In **schools**, there is no explicit prohibition of corporal punishment, which is lawful under the “right of correction”. Corporal punishment is unlawful in the **penal system** but it is lawful in **alternative care settings**. French case law applies.

Wallis and Futuna Islands (Overseas Collectivity of France)



Child population: [TO
COME]

Legality of corporal punishment

As for New Caledonia.

Human rights jurisprudence on corporal punishment for French Polynesia, New Caledonia and Wallis and Futuna Islands

Treaty body recommendations/observations: Committee on the Rights of the Child (2009, 2004, 1994);⁸ European Committee of Social Rights (2012, 2005, 2003, 2001).⁹

UPR of France (2013, 2008): Government accepted recommendations to prohibit corporal punishment in all settings.¹⁰

Law reform necessary to achieve prohibition in French Polynesia, New Caledonia and Wallis and Futuna Islands

Repeal of the “right of correction” (in French customary law); explicit prohibition of corporal punishment in the home, schools and all alternative care settings.

⁸ 11 June 2009, CRC/C/FRA/CO/4 Advance Unedited Version, Concluding observations on third/fourth report of France, paras. 6, 57 and 58; 30 June 2004, CRC/C/15/Add.240, Concluding observations on second report of France, paras. 38 and 39; 25 April 1994, CRC/C/15/Add.20, Concluding observations on initial report of France, para. 24

⁹ January 2012, Conclusions 2011; March 2005, Conclusions 2005; 1 October 2003, Conclusions 2003 Vol. 1, page 173; 1 January 2001, Conclusions XV-2 vol. 1, pages 220-225

¹⁰ 21 March 2013, A/HRC/23/3, Report of the working group, paras. 120(116), 120(117) and 120(118)



New Zealand

Tokelau (Territory of New Zealand)

Child population: [no information]

Legality of corporal punishment

Corporal punishment is lawful in the **home** under the Crimes, Procedure and Evidence Rules 2003 (art. 15): “A person is justified in using force by way of correction of a child under their care or of a person voluntarily in their tutelage, if the force used is reasonable in the circumstances.”

In **schools**, the National Curriculum Policy Framework 2006 states that corporal punishment should not be used but this is policy, not law, and corporal punishment is lawful under the law allowing force “by way of correction”.

In the **penal system**, there is no provision for corporal punishment as a sentence for crime; it appears to be lawful as a disciplinary measure in penal institutions under the Crimes, Procedure and Evidence Rules 2003 (art. 15).

The same law provides a legal defence for the use of corporal punishment in **alternative care settings**.

Human rights jurisprudence on corporal punishment

Treaty body recommendations/observations:¹¹ ---

UPR of New Zealand (2009): No recommendations made on corporal punishment but Government accepted recommendations to improve child protection.¹²

Law reform necessary to achieve prohibition in Tokelau

Repeal of provisions for the use of force “by way of correction” (in Crimes, Procedure and Evidence Rules 2003); explicit prohibition of corporal punishment in the home, schools, penal institutions and alternative care settings.



UK

Pitcairn Islands (British Overseas Territory)

Child population: 9 (UK Government, 2007)

Legality of corporal punishment

Corporal punishment is **prohibited in all settings**, including the home, in the Children Ordinance 2003, amended 2009. Article 6 punishes abuse of children; article 7 punishes assault and repeals the common law defence for the use of force: “(1) Everyone who assaults any child is liable: (a) on conviction on information before the Supreme Court to imprisonment for a term not exceeding 5 years or to a maximum fine of \$1000 or to both; or (b) on conviction before the Magistrate’s Court in its summary jurisdiction to imprisonment for a term not exceeding 2 years or to a maximum fine of \$250 or to both. (2) The common law rules permitting the use of force for punishment of a child are abolished.” The prohibition applies to any person who has the custody, care or charge of a child (art. 5).

¹¹ New Zealand has not yet extended the application of the Convention on the Rights of the Child to Tokelau.

¹² 4 June 2009, A/HRC/12/8, Report of the working group, paras. 81(50), 81(51) and 81(52)

US

American Samoa (Unincorporated Territory of the US)

Child population: 25,538 (Population Reference Bureau, 2000)



Legality of corporal punishment

Corporal punishment is lawful in the **home** under the Juvenile Justice Law which defines “normal parental discipline” as “all actions by parents, such as administration of blows by hand, strap, or light switch upon the buttocks, or any firm handling, scolding or light taps, insufficient to seriously bruise or produce medical injury or disability” (§45.0103, subsection 20). Legal custody of a child entails the duty to discipline (subsection 18); this duty applies to “any individual, agency, or institution vested by the court with legal custody of a child” (§45.0361). The Law also states that in investigating reports of child abuse “accepted child rearing practices of the culture” must be taken into account, and nothing contained in the child abuse provisions “refers to acts which could be construed to be a reasonable exercise of parental discipline as defined in subsection (20) of 45.0103”. Under the Criminal Law, the use of force is permitted “to maintain reasonable discipline in a school, class or other group” (§46.3311). This applies to “a parent, guardian, or other person entrusted with the care and supervision of a minor” and to “a teacher or other person entrusted with the care and supervision of a minor for a special purpose”. The force used should not risk “causing death, serious physical injury, disfigurement, extreme pain, or extreme emotional distress”.

Corporal punishment is lawful in **schools** under the provision for “reasonable discipline” in the Criminal Law (§46.3311).

In the **penal system**, there is no provision for corporal punishment as a sentence for crime but it is lawful as a disciplinary measure in penal institutions: the Criminal Justice Law states that “a warden or other authorized official of a jail, prison, or correctional facility may, in order to maintain order and discipline, use whatever physical force, is authorized by law, including deadly force” (§46.3311).

Corporal punishment is lawful in **alternative care settings** under the Juvenile Justice Law (§45.0361).





Guam (Unincorporated Territory of the US)

Child population: 54,854 (Population Reference Bureau, 2000)

Legality of corporal punishment

Corporal punishment is lawful in the **home** under the Parent and Child Act, according to which legal custody of a child includes “the right and the duty to protect, train and discipline the child” (s4202).

Corporal punishment is lawful in **schools**.

In the **penal system**, there is no provision for corporal punishment as a sentence for crime; it is considered unlawful as a disciplinary measure in penal institutions though there appears to be no explicit prohibition.

Corporal punishment is prohibited in child care centers and group child care homes under the Rules and Regulations for Licensed Child Care Centers and Group Child Care Homes (s1118), but it is lawful in other **alternative care settings**.



Northern Mariana Islands (Commonwealth in Political Union with the US)

Child population (0-14): 13,378 (Index Mundi, 2012 est.)

Legality of corporal punishment

Corporal punishment is lawful in the **home**, schools and **alternative care settings** under the Child Abuse Amendments Act 1984 which amends section 5312 of the Commonwealth Code to punish anyone who “wilfully and intentionally strikes, beats or by any other act or omission inflicts physical pain, injury or mental distress upon a child under the age of 18 who is in the person’s custody, such pain or injury being clearly beyond the scope of reasonable corporal punishment” (s2).

The Education Act 1988 does not prohibit corporal punishment in **schools**.

In the **penal system**, there is no provision in criminal law for corporal punishment as a sentence for crime, but “reasonable” corporal punishment is lawful as a disciplinary measure in penal institutions under the Child Abuse Amendments Act 1984 (s2). The Juvenile Justice Act 2008 is silent on the issue.

Human rights jurisprudence on corporal punishment for American Samoa, Guam and Northern Mariana Islands

Treaty body recommendations/observations:¹³ ---

UPR of the US (2010): No recommendations made on corporal punishment but Government accepted recommendations to ratify the Convention on the Rights of the Child.¹⁴

Law reform necessary to achieve prohibition in American Samoa, Guam and Northern Mariana Islands

Repeal of legal defences for corporal punishment (in American Samoa Juvenile Justice Law and Criminal Law, Guam Parent and Child Act, Northern Mariana Islands Child Abuse Amendments Act 1984); explicit prohibition of corporal punishment in the home, schools, penal institutions and all alternative care settings.

¹³ The US has signed but not ratified the Convention on the Rights of the Child

¹⁴ 8 March 2011, A/HRC/16/11/Add.1, Report of the working group: Addendum, para. 28

The work of the Global Initiative

The Global Initiative carries out a wide range of activities specifically designed to promote law reform to prohibit corporal punishment in all settings and to support others in doing so. These include:

- Briefing and reviewing the work of international and regional human rights monitoring bodies and promoting follow-up to recommendations at national level
- Working with governments, UN agencies, human rights institutions and NGOs, commenting on draft legislation and bills and providing technical advice and support on all aspects of law reform to prohibit corporal punishment.
- Conducting legal research and reviewing other research and positive discipline materials, disseminated in individual country reports, regular publications and other formats as required

Detailed information on all aspects of prohibiting corporal punishment is available on the Global Initiative website: www.endcorporalpunishment.org



Human rights, law and corporal punishment – details of international and regional human rights standards, the work of the Committee on the Rights of the Child and other treaty monitoring bodies and briefings submitted to them by the Global Initiative, and national high level court judgments

Global progress – reports on the legality of corporal punishment and progress towards prohibition in every state worldwide, detailed information on states which have achieved prohibition in all settings including the home, and useful facts and figures

Research – research on prevalence, children's views and experiences, the effects of corporal punishment and on the experiences of states which have achieved full prohibition

Resources – internet and other resources to support the promotion of positive discipline for parents, teachers and carers, downloads of useful reports

Reform – details of legislative and other measures to support law reform, information on international, regional and national campaigns for law reform, online resources to support the promotion of law reform (designed to supplement the Global Initiative legal reform handbook)

Website for children

Keep up to date

The Global Initiative publishes a regular global e-newsletter with news of progress towards prohibition worldwide, new research and resources to support law reform, human rights monitoring and more (to subscribe email info@endcorporalpunishment.org).

Hitting people is wrong – and children are people too. Corporal punishment of children breaches their fundamental rights to respect for their human dignity and physical integrity. Its legality breaches their right to equal protection under the law. Urgent action is needed in every region of the world to respect fully the rights of all children – the smallest and most fragile of people.

This report reviews progress towards prohibition of corporal punishment of children in all states and territories in Central/South East Asia and the Pacific – home to almost 590 million children – in the context of follow up to the UN Secretary General's Study on Violence against Children. Opportunities to enact prohibiting legislation are widespread, as laws are being passed aimed at fulfilling states' obligations under the Convention on the Rights of the Child and addressing the problem of violence against children. The report sets out how to ensure that these reforms lead to protection for all the region's children from all forms of corporal punishment, in their homes, schools and all other settings.



The **Global Initiative to End All Corporal Punishment of Children** was launched

in Geneva in 2001. It aims to act as a catalyst to encourage more action and progress towards ending all corporal punishment in all continents; to encourage governments and other organisations to “own” the issue and work actively on it; and to support national campaigns with relevant information and assistance. The context for all its work is implementation of the Convention on the Rights of the Child. Its aims are supported by UNICEF, UNESCO, human rights institutions, and international and national NGOs.

www.endcorporalpunishment.org, info@endcorporalpunishment.org



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

WORKING WITH



Save the Children

Save the Children's vision is a world in which every child attains the right to survival, protection, development and participation. Our mission is to inspire breakthroughs in the way the world treats children, and to achieve immediate and lasting change in their lives. Save the Children opposes all corporal punishment and other humiliating punishment of children and works in close collaboration with local civil society organisations, governments and children to promote the prohibition of corporal punishment and the promotion of parenting skills to ensure children's rights to protection as outlined in the UN Convention on the Rights of the Child.

www.savethechildren.net, resourcecentre.savethechildren.se

For information
about the UN Secretary
General's Study on Violence
against Children, see
www.unviolencestudy.org