

# Ending legalised violence against children



Global Initiative to  
End All Corporal Punishment  
of Children

**Report for East Asia & Pacific Regional Consultation**  
— the UN Secretary General's Study on Violence against Children

**Bangkok, Thailand 2005**

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## Global Initiative to End All Corporal Punishment of Children

[www.endcorporalpunishment.org](http://www.endcorporalpunishment.org)

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**H**itting 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 law and policy in relation to corporal punishment and deliberate humiliation of children in each state in East Asia and the Pacific. It makes recommendations for law reform and other measures which it is hoped will be adopted at the Consultation and pursued at a national, regional and international level.

# Foreword

Jaap E. Doek

Chairperson

United Nations Committee on the Rights of the Child

**O**ne hundred and ninety two governments, including all those in this region, have accepted an obligation to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of violence (article 19 of the United Nations Convention on the Rights of the Child).

The Committee on the Rights of the Child, which monitors implementation of this Convention, has recommended to governments across the region and the world that they should systematically:

- Prohibit all forms of violence, including all corporal punishment however light, in the upbringing of children in their homes, in schools, in care institutions, penal systems and any other place;
- Undertake – at the same time – educational and awareness-raising campaigns to inform parents and others about children's right to protection and about non-violent methods of disciplining and raising children.

Many citizens and politicians express deep concern about increasing violence in their societies. The credibility of this concern is questionable as long as they are not willing to seriously and systematically address the use of violence against children. And nobody should suggest that a little bit of violence is acceptable. That applies equally for adults and children.

The Committee on the Rights of the Child believes that the UN Secretary-General's Study on Violence against Children will accelerate moves to prohibit and eliminate corporal punishment and other forms of violence against children as an unacceptable violation of human dignity and physical integrity. It is the best way to a violence-free society.

**Jaap E. Doek**  
**Chairperson**  
**Committee on the Rights of the Child**  
**June 2005**

# The human rights imperative to end all corporal punishment

**R**ights to respect for human dignity and physical integrity and to equal protection under the law are upheld for everyone – including children – in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The Convention on the Rights of the Child (CRC) re-emphasises that children, too, are holders of human rights. The Convention also requires states to protect children from “all forms of physical or mental violence” while in the care of parents or others (article 19).

The Committee on the Rights of the Child – the monitoring treaty body for the CRC – consistently interprets the Convention as requiring prohibition of all corporal punishment, including in the family, linked to awareness-raising and public education. This interpretation is supported by other human rights treaty bodies, both international and regional, and by high-level court judgments in a growing number of states.

States’ human rights obligations to end all currently legalised violence against children are clear and immediate; there can be no justification for delay. Humanity and logic suggest that children should be the first, not the last, members of human societies to be effectively protected from assault and deliberate humiliation.

The case against corporal punishment does not have to be proved. We do not look for evidence of harm to justify prohibition and other measures to end domestic violence against women or elderly people. The issue is one of fundamental rights. But in any case there is overwhelming research evidence to support the human rights imperative for eliminating corporal punishment. Hitting babies and children is dangerous. Harsh and humiliating forms of discipline are associated with the development of violent and anti-social attitudes and actions in childhood and later life and also with psychological difficulties for the victims.





Hitting children is a lesson in bad behaviour; it teaches them that adults who demand their respect believe that violence is a legitimate way to sort out conflicts or impose authority.

Some adults like to suggest that corporal punishment and child “abuse” are two quite separate phenomena. In fact, more or less all physical “abuse” is administered in a context of punishment or control – it **is** corporal punishment. There are different degrees of severity, but all corporal punishment breaches children’s right to respect for their human dignity and physical integrity. We do not try to draw lines and justify any level of violence against women or elderly people – so why children? Zero tolerance is generally accepted as a target for ending domestic violence between adults in the home – so why not for children?

Defenders of corporal punishment suggest that children are different. But their differences – their dependence, developmental state and fragility – certainly do not reduce their human rights or justify less protection from violence. Parents and other carers need to use physical actions to protect and restrain children, especially babies and young children. But such actions are clearly distinguishable from causing pain or humiliation as a form of discipline or control.

# Human rights standards in the region

All states in the region have ratified the Convention on the Rights of the Child. None has entered any reservation to reduce its obligation to protect children from all forms of violence. The Committee on the Rights of the Child has expressed concern over the prevalence of corporal punishment and other forms of violence against children to many states in the region (see text of recommendations in state-by-state analysis beginning on page 15). In many cases, the Committee has recommended explicit prohibition of all corporal punishment, including in the family, and awareness raising and public education to promote positive, non-violent forms of childrearing and education.

In examining second reports from some states in the region, the Committee has followed up recommendations in the concluding observations on the initial report, expressing particular concern where there has been no further action towards prohibiting and eradicating corporal punishment of children.

In Fiji in 2002, an appeal court declared corporal punishment in schools and the penal system unconstitutional, quoting international standards. The Fiji Human Rights Commission intervened in the case with written submissions. These stated that all corporal punishment, per se, is against section 25(1) of the Fiji Constitution and against international human rights law.

The judgment declared: “Children have rights no wit 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.”

# Global progress towards ending all corporal punishment

**G**lobally, less than 20 of the 190-plus states have as yet prohibited all corporal punishment, including in the family (for details see [www.endcorporalpunishment.org](http://www.endcorporalpunishment.org)). So only 52 million children out of the world's 2,195 million live in countries where the law gives them equal protection from being assaulted. In about 90 states worldwide, corporal punishment is still authorised in schools and other institutions, including at least 16 states in East Asia and the Pacific. In almost 80 states globally, whipping or caning is still permitted as a sentence of the courts or as a punishment in penal institutions for young offenders. This includes 14 states in this region. All this state-authorised deliberate and severe violence against children ironically co-exists in these countries with child protection systems. Corporal punishment is also reported in domestic and other situations of child labour.

## Prevalence of corporal punishment

**O**ne indication of the low priority accorded to this issue is the lack of research into the violent victimisation of children by adults in their homes, schools, other institutions and situations of child labour. No state can judge to what extent it is fulfilling its human rights obligations to children without this basic research.

Where corporal punishment in the family has not been systematically challenged through law reform linked to public education, research from a number of states in each continent suggests that a majority of children are being hit regularly by one or both parents and that up to a third are being punished “severely” – beaten with belts or sticks.

In this region there has been some research in a few states (see state-by-state analysis beginning on page 15). This suggests that corporal punishment remains socially approved by a majority and severe punishment is still common.



## Promoting positive discipline

In states in all continents there are developed programmes and materials to promote positive, non-violent forms of discipline and child-rearing for parents, other carers and teachers. In some states, the government has taken a lead with public education. In others, non-governmental organisations, human rights institutions and private sector publishers and media have taken initiatives (for links to a variety of programmes and materials, see [www.endcorporalpunishment.org](http://www.endcorporalpunishment.org)).

**“States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child...”**

UN Convention on the Rights of the Child, article 19

# RECOMMENDATIONS

THE GLOBAL INITIATIVE TO END ALL CORPORAL PUNISHMENT OF CHILDREN URGES THE EAST ASIA AND PACIFIC REGIONAL CONSULTATION TO ADOPT AND PROMOTE THE FOLLOWING RECOMMENDATIONS FOR IMMEDIATE ACTION IN ALL STATES IN THE REGION. THE AIM SHOULD BE TO ADOPT THE DEADLINE OF THE CONCLUSION OF THE UN SECRETARY GENERAL'S STUDY ON VIOLENCE AGAINST CHILDREN IN 2006 FOR IMPLEMENTATION OF LAW REFORM AND PUBLIC EDUCATION TO ELIMINATE CORPORAL PUNISHMENT.

**1** Explicitly prohibit all violence against children, including all corporal punishment, in the family and in all other settings. This requires repeal of any existing defences that can be used to justify violent punishment and of any laws that authorise corporal punishment in any setting. Explicit prohibition in sectoral laws applying within the family and to alternative care, schools and the penal system is required to send a clear message.

This action, taken to date by less than 20 countries worldwide, sends a clear signal that children have an equal right to respect for their human dignity and physical integrity. The extent to which the law is respected and effectively and appropriately enforced may vary between states. But no state will make significant progress towards preventing and eliminating violence against children until it has a clear and well-publicised legal framework prohibiting all violence. All states have criminal laws against assault; some have constitutions outlawing inhuman or degrading treatment; most have laws prohibiting "abuse" or cruelty; many have incorporated the Convention on the Rights of the Child and other international instruments into their domestic law. But none of this is adequate to challenge the traditional acceptance of violent and humiliating punishment of children.

**2** Ensure that awareness-raising of children's right to protection, promotion of non-violent child-rearing and education and the principles of non-violent conflict resolution are built into all the points of contact with future parents and parents and into the training of all those working with or for children and families. Encourage political, community and faith leaders and educators to support this awareness-raising and public education.

Promoting non-violence does not have to be a separate and expensive process. All those in contact with future parents and parents can build messages into their programmes and activities, from ante-natal classes, through birth registration, immunisation, health surveillance and treatment, pre-school and school and so on. There is no shortage of models of programmes and materials which can be adapted for all states and cultures.

**3** Review the extent of violent victimisation of children, including in the family, through interview studies with children themselves, parents and other carers.

Making the true extent of violence against children visible is an essential step towards gaining public support and political priority for its elimination. The methodology exists for such studies, involving confidential interviews with parents and with children, with appropriate ethical safeguards. Studies can be quite small-scale, but must cover children of all ages and children in institutions and other forms of care, as well as children living and/or working on the street and in other situations of child labour.

**4** Review safeguards to protect children from all forms of violence in the full range of residential institutions and other forms of alternative care, state and private, and implement any necessary improvements.

Studies in states in all continents suggest that children in institutions and alternative care have suffered physical, mental and sexual violence on a huge scale and remain at risk unless a range of safeguards are implemented. These include effective training and vetting of all staff, regular, confidential reviews of all children's placement and treatment, independent inspection including interviewing of children and staff in private and protection of whistle-blowers.

# What is the purpose of law reform against corporal punishment and how will it be implemented?

**C**hildren's rights to respect for their human dignity and physical integrity and to equal protection under the law require that the law effectively and equally protects them from all forms of corporal punishment and other humiliating punishment or treatment.

Equal protection for children **does** mean that any assault of a child that would be considered a criminal assault if directed at an adult should be considered and dealt with under the criminal law as a crime. All countries have laws which define and prohibit criminal assault and this definition should include all corporal punishment as a form of assault.

But this principle of equal protection for both adults and children in cases of assault **does not** necessarily mean that cases involving corporal punishment should result in prosecution of parents. This is very seldom in the interests of children, because of children's dependent status, and should only be used as an intervention of last resort.

In every case in which corporal punishment in the family comes to light, the aim must be first to seek to help parents and children through voluntary positive interventions – offers of advice, discussions with other parents and so on – which aim to stop violent and humiliating treatment of children.

In extreme cases of serious and continuing abuse, separating children from their parents may be the only way to protect them. And in those cases, according to the Convention on the Rights of the Child (article 9), there must be a court hearing, focusing on the best interests of the child and with the parents and child represented. In exceptional cases, where it is believed the child is at risk of severe violence, it may be necessary immediately to remove the child or the perpetrator to protect the child. But such measures should be temporary and only continued following a court hearing.

## Equal protection under the law

Efforts to reform the law to prohibit all corporal punishment as a form of assault often meet with strong opposition. One of the fears expressed is that it will lead to thousands of parents being prosecuted and put in prison, or children will be taken away and put in institutions; it will turn children against their parents, and so on. But in the growing number of states in which the law has been changed, this has not been the experience. The first aim of these reforms, linked to awareness-raising and public education, is to raise awareness of the right of the child to equal protection. Changing the law and linking this to awareness-raising is likely to change attitudes and reduce violence against children. Adults' sensitivity to violence against children is likely to increase and this may lead to more reporting of such violence.

## Controlling prosecution policy in relation to parental corporal punishment

In most countries, there is a code or advice to decide when prosecution for a crime should go ahead. This usually requires certain tests to be satisfied. For example:

- that there is sufficient evidence to make conviction likely;
- that the prosecution is in the public interest.

The prosecution of parents and other close family carers should only proceed when it appears to be the only way to provide the child with effective protection and other supportive interventions have failed. It is important that guidelines are developed and implemented which set out conditions for prosecution in these cases. In addition, detailed guidance is required for all those involved in child protection, including for example social workers, health workers, teachers and police. This should focus on the need for interventions to emphasise the dangers and illegality of hitting children and to seek to provide appropriate support for positive, non-violent parenting.

In advocating law reform, it can be emphasised that minor assaults on adults by adults, while clearly unlawful, very seldom get to court (in many states, the *de minimis* principle is recognised: that the law does not concern itself with trivial matters).

Some opponents of law reform will then respond: "But what is the point of a law if it is unenforceable?" The first answer is that the real purpose of law is education and deterrence to achieve protection, rather than prosecution. Prosecution is always a sign of the failure of the law effectively to deter and prevent a child being assaulted.

The law will be as enforceable as the law on assault between adults, if the necessary evidence exists – but there will need to be consideration to determine whether prosecution is in the best interests of the victim child as well as in the public interest. In the few cases in which prosecution is considered necessary to protect a child, and in the child’s best interests, it will be easier to pursue if parents can no longer defend assault before the courts as “reasonable punishment”.

In order to deter parents from using corporal punishment in the privacy of their homes, the law needs to send a very clear message. That is the real purpose of explicit law reform. Having clear law that prohibits all corporal punishment enables all those working with and for families and children to promote this clear message.

## **Enforcing prohibition of corporal punishment outside the family**

**C**orporal punishment in schools, other institutions and forms of care and places of employment must be prohibited explicitly in legislation. Prohibition through administrative circular or guidance is not adequate. Implementation and enforcement of prohibition requires proper administrative measures including awareness-raising of the law among adults and children; building knowledge of the prohibition into training, both initial and in-service, for teachers and other school personnel; rigorous inspection by trained inspectors independent of the institution (including interviews in private with children and adults); and access to advice, advocacy and independent complaints procedures for children and parents and ultimately access to the courts.

Respecting the law will or should become a contractual condition, so that teachers and others who continue to use corporal punishment risk losing their jobs. This in itself will act as a strong deterrent. In cases in which teachers and others, after warning, continue to use corporal punishment, prosecution is a legitimate and necessary response.





# CORPORAL PUNISHMENT IN EAST ASIA AND PACIFIC

## State-by-state analysis of legality and prevalence

The information in this section was compiled by the Global Initiative from many sources, including reports to and by the United Nations human rights treaty bodies. We are very grateful to government officials, UNICEF and other UN agencies, NGOs and human rights institutions and many individuals who have helped to compile and check information. Please let us know if you believe any of the information to be incorrect: [info@endcorporalpunishment.org](mailto:info@endcorporalpunishment.org)

Country reports will be published and updated on the website of the Global Initiative: [www.endcorporalpunishment.org](http://www.endcorporalpunishment.org)

## AUSTRALIA

### Lawfulness of corporal punishment

#### Home

Corporal punishment in the home is lawful throughout Australia under the right of “reasonable chastisement” or similar in state legislation.

In New South Wales, a 2001 amendment to the Crimes Act (1900) makes physical punishment by a parent or caregiver unreasonable if the force is applied to a child’s head or neck, or to any part of the body in such a way as to cause, or threaten to cause, harm to the child which lasts more than a short period. Legal reform is being considered in Tasmania, where in 2003 the Law Reform Institute recommended the abolition of the defence of reasonable correction from criminal and civil law. As at May 2005, no changes in the law had been made.

#### Schools

Corporal punishment in schools is regulated at state level. In Australian Capital Territory and Tasmania it is prohibited by law in government and independent schools. In New South Wales it is prohibited in government schools under Ministerial school discipline guidelines and in private schools as a condition of registration, but the “reasonable chastisement” defence is available. In Queensland and Western Australia, corporal punishment is prohibited as a matter of policy but the defence of “reasonable chastisement” is available; it is permitted in non-government schools. In Victoria corporal punishment is prohibited in government schools but lawful in private schools. In Northern Territory and South Australia, corporal punishment is lawful in government and in private schools.

#### Penal system

Corporal punishment is prohibited as a **sentence for crime** in all states and territories.

Corporal punishment is unlawful as a **disciplinary measure** in penal institutions in New South Wales, Northern Territory, South Australia and Victoria. It is prohibited in Queensland and Tasmania, but the “reasonable chastisement” defence is potentially available. In Western Australia, regulations prohibiting the use of corporal punishment in detention centres were superseded by new regulations which do not include an explicit prohibition. There are no juvenile detention centres in Australian Capital Territory.

#### Alternative care

Corporal punishment is prohibited by policy guidelines or departmental instructions in most, but not all, other institutions and forms of childcare. It is prohibited in **child care centres** in Australian Capital Territory, New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia, but permitted in child care centres in Northern Territory. It is prohibited in **residential centres** in New South Wales, Queensland, South Australia and Victoria, but “reasonable” corporal punishment is permitted in Northern Territory and Western Australia, and the “reasonable chastisement” defence is available in Australian Capital Territory, Queensland, South Australia and Tasmania. Corporal punishment in **foster care** is prohibited in New South Wales, Queensland, South Australia and Tasmania, but permitted in Northern Territory and Victoria, and the “reasonable chastisement” defence is available in Australian Capital Territory, Queensland, South Australia, Tasmania, Victoria and Western Australia.

## Prevalence research

A survey of 1,200 parents commissioned by the National Child Protection Council, reported in 1995, found that 80% thought it unharmed to hit a child, with 20% believing it acceptable to use an implement such as a ruler, leather strap or wooden spoon; 50% of respondents believed it is every parent's right to discipline children in any way they see fit. (Reported in "Editorial: Australia", *Times Educational Supplement*, 15 September 1995)

## Recommendations by human rights treaty bodies

*Committee on the Rights of the Child*

(10 October 1997, CRC/C/15/Add.79, Concluding observations on initial report, paras. 15 and 26)

"The Committee expresses its concern about the lack of prohibition in local legislation of the use of corporal punishment, however light, in schools, at home and in institutions; in the view of the Committee this contravenes the principles and provisions of the Convention, in particular articles 3, 5, 6, 19, 28 (2), 37 (a), (c), and 39. The Committee is also concerned about the existence of child abuse and violence within the family.

"The Committee suggests that the State party take all appropriate measures, including of a legislative nature, to prohibit corporal punishment in private schools and at home. The Committee also suggests that awareness-raising campaigns be conducted to ensure that alternative forms of discipline are administered in a manner consistent with the child's human dignity and in conformity with the Convention. The Committee also believes that cases of abuse and ill-treatment of children, including sexual abuse within the family, should be properly investigated, sanctions applied to perpetrators and publicity given to decisions taken. Further measures should be taken with a view to ensuring the physical and psychological recovery and social reintegration of the victims of abuse, neglect, ill-treatment, violence or exploitation, in accordance with article 39 of the Convention."

# BRUNEI DARUSSALAM

## Lawfulness of corporal punishment

### Home

Corporal punishment is lawful in the home.

Children have limited protection from abuse under the Child Protection Act (1999) and the Children's Order (2000).

### Schools

Corporal punishment is lawful in schools. In 2003, discipline guidelines for teachers which made no reference to corporal punishment were being prepared by the Ministry of Education, to replace the 1984 Book of Discipline.

### Penal system

Corporal punishment (whipping) is lawful as a **sentence for crime** for males for a wide range of offences under the Penal Code and other laws. Article 257(1) of the Criminal Procedure Code states: "[W]hen an accused is sentenced to whipping the instrument to be used and the number of strokes shall be specified in the sentence. In no case shall the whipping exceed 24 strokes in the case of an adult or 18 strokes in the case of a youthful offender." Section 257(4) states that in the case of a youthful offender, whipping should be inflicted in the way of school discipline.

Corporal punishment is lawful as a **disciplinary measure** in penal institutions.

### Alternative care

There is no prohibition of corporal punishment in other institutions and forms of childcare. The provisions against abuse in the Child Protection Act and the Children's Order apply.

## Prevalence research

None identified.

## Recommendations by human rights treaty bodies

*Committee on the Rights of the Child*

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

"The Committee is concerned that corporal punishment is not prohibited at home, in schools or institutions and remains acceptable in the society. The Committee also notes that the new book of discipline for schools does not specifically prohibit corporal punishment nor does it even refer to it as a form of discipline.

"The Committee strongly recommends that the State party prohibit corporal punishment at home, in schools and institutions and undertake education campaigns to educate families on alternative forms of discipline.

"The Committee notes the adoption of the Children's Order 2000 and welcomes the special unit of the police established in 1997 to deal with child victims of abuse and violence, but remains concerned that there is insufficient information and awareness in the State party of the ill-treatment and abuse of children within the family and institutions.

“The Committee recommends that the State party:

b) take legislative measures to prohibit all forms of physical and mental violence, including corporal punishment and sexual abuse of children, in the family and in institutions;

c) carry out public education campaigns about the negative consequences of ill-treatment of children, and promote positive, non-violent forms of discipline as an alternative to corporal punishment....

“The Committee is concerned that the minimum age of criminal responsibility is set at 7 years, which is far too low. The Committee is further concerned that there is no juvenile justice system although it is foreseen in law, that children are detained with adults and that whipping is used as a form of punishment for boys.

“The Committee recommends that the State party:

g) abolish the sentence of whipping for boys....”

## CAMBODIA

### Lawfulness of corporal punishment

#### Home

Corporal punishment is lawful in the home. In the draft Civil Code submitted by the Ministry of Justice to the Council of Ministers in 2003, article 1044 states that “a person who has parental authority may punish his/her child by himself/herself within necessary scope” (provisional translation). As at April 2005, the draft was still being considered by the Council of Ministers.

Children have some protection from violence and abuse under the Marriage and Family Law (1989), the Constitution (1993) and the UNTAC (UN Transitional Authority in Cambodia) law, Transitional Criminal Law (1992).

#### Schools

Corporal punishment in schools is prohibited in a new Education Law, as at March 2005 not yet implemented. Article 9 of the draft Law states: “A learner shall have ... the right to receive respect and observe human rights of learners, especially the right to dignity, the right to freedom from any form of corporal punishment or freedom from physical and mental torture.”

Article 18 of the Ministry of Education, Youth & Sport Internal Regulation of General Knowledge for Primary Schools prohibits the use of physical punishment. The Internal Regulations of General Knowledge for Secondary Schools (article 25) states that the school disciplinary council must decide how to discipline students, but does not explicitly mention corporal punishment.

#### Penal system

Corporal punishment is unlawful as a **sentence for crime** and as a **disciplinary measure** in penal institutions. Article 38 of the Constitution protects individuals from physical abuse. The UNTAC Transitional Criminal Law (article 12) states that no detainee shall be subjected to cruel, inhumane or degrading treatment or punishment nor be beaten or tortured. It states that arrest and detention should conform to the Standard Minimum Rules for the Treatment of Detainees and the Body of Principles for the Protection of any Person Under Any Form of Detention or Imprisonment adopted by the UN. Article 8 of the Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia during the Transition Law (1992) states that “the aim of the correction system is social rehabilitation” and treatment of prisoners must conform with the Standard Minimum Rules for the Treatment of Prisoners and the Basic Principles for the Treatment of Prisoners.

#### Alternative care

There is no explicit prohibition of corporal punishment in other institutions and forms of childcare. Draft Minimum Standards applicable to alternative care settings, including residential care, family-based care and group home care, prohibit corporal punishment and provide guidelines on positive disciplinary methods.

#### Prevalence research

Large-scale research into children’s attitudes towards violence has been undertaken by Tearfund, a relief and development NGO working in partnership with Christian agencies and churches. The first stage of the research involved focus groups of boys and girls aged 11-13 from an urban slum community, a rural community and a provincial town community, and found that most children believed that children should be beaten by teachers if they are disobedient or if they “made a mistake”, with few feeling that beating was inappropriate in some cases. Children also felt that parents should beat children if they “made a mistake”. The second stage, supported by the Ministry of Education, comprised a written questionnaire survey of 1,314 children aged 12-15. Half of the boys (50.5%) and over a third of the girls (36.4%) reported having been beaten by their parents; 82.4% of girls and 81.1% of boys reported witnessing other children being beaten by their parents. Nearly one in four girls (24.1%) and over one in three boys (34.7%) reported having been beaten by their teacher in school. (Miles, G. & Varin, S., 2005, “*Stop Violence Against Us!*” A preliminary national research study into the prevalence and perceptions of Cambodian children to violence against children in Cambodia, Summary report, Tearfund)



A comparative study of children across East Asia and the Pacific by UNICEF and Research International Asia (Thailand) in 2001 found that of 500 school children aged 9-17 years, 44% reported having been beaten by their parents. (UNICEF, 2001, *Speaking Out! Voices of Children and Adolescents in East Asia and the Pacific*)

The Household Survey on Domestic Violence in Cambodia for the Ministry of Women's Affairs in 1996 involved interviews with 2,764 households in six provinces. The majority (67.5%) believed they should hit their children as a disciplinary measure (women 71.6%, men 57.3%). (Nelson, E. & Zimmerman, C., 1996, *Household Survey on Domestic Violence in Cambodia*, Ministry of Women's Affairs and Project Against Domestic Violence with the International Research Centre, Canada, cited in Miles, G., 2003, "Exploring the attitude of Cambodian Children to violence including sexual abuse and trafficking", unpublished paper.)

### Recommendations by human rights treaty bodies

#### *Committee on the Rights of the Child*

(28 June 2000, CRC/C/15/Add.128, Concluding observations on initial report, paras. 42 and 43)

"Concern is expressed at the insufficient awareness of the scope and harmful consequences of mistreatment and abuse of children, including sexual abuse, both within and outside the family, the insufficient resources, both financial and human, to prevent and combat child abuse; and the insufficient care and rehabilitation measures, including facilities available for child victims of abuse.

"In light of articles 19 and 39 of the Convention, among others, the Committee recommends that the State party take effective measures, including setting up multidisciplinary programmes and care and rehabilitation measures, to prevent and combat child abuse and ill-treatment of children within the family, at school and other institutions, and in society at large. It suggests, inter alia, that ... educational programmes should be established to combat traditional attitudes within society regarding this issue...."

#### *Human Rights Committee*

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

"The Committee is concerned at reports that children are detained in juvenile detention facilities for considerable periods without charge, and without access to a lawyer or to court. It is particularly concerned that these children are subjected to beatings and to ill-treatment.

"The State party should ensure strict observance of articles 7, 9 and 10 and should take appropriate measures to ensure protection of children in accordance with article 24 of the Covenant."

## CHINA

### Lawfulness of corporal punishment

#### Home

Corporal punishment is lawful in the home.

Children have some protection from violence and abuse under the Protection of Minors Act, the Criminal Law (1979, amended 1997) and the Constitution (1982). Article 260 of the Criminal Law punishes serious mistreatment of family members and article 49 of the Constitution prohibits the mistreatment of old people, women and children.

#### Schools

Corporal punishment is prohibited in schools under the Compulsory Education Act, the Rules on Implementation of the Compulsory Education Act, the Protection of Minors Act and the Kindergarten Regulations.

#### Penal system

Corporal punishment is unlawful as a **sentence for crime**. It is not a permitted punishment in articles 33 and 34 of the Criminal Law.

Corporal punishment is unlawful as a **disciplinary measure** in penal institutions. Article 40 of the Protection of Minors Act states: "... Public security organs, people's procuratorates, people's courts and disciplinary institutions for juvenile offenders must respect the individual dignity of juvenile offenders and safeguard their lawful rights and interests." Article 248 of the Criminal Law punishes "supervisory and management personnel of prisons, detention centres, and other guard houses who beat or physically abuse their inmates".

#### Alternative care

No information.

#### Prevalence research

A questionnaire survey on attitudes to physical punishment of 331 child health professionals in Eastern China, found that 97% believed corporal punishment to be widely used by Chinese parents. 76% stated that they themselves generally disapproved of physical punishment, with younger respondents significantly more likely to disapprove than older respondents. 86% regarded physical punishment to be equally appropriate for girls and boys and 3% approved of the use of an implement. However, when asked specific questions about the age at which physical punishment was acceptable,

only 43% indicated that it was unacceptable at any age. Physical punishment was regarded as more acceptable for 4-13 year-olds than children of other ages. (Hesketh, T., Hong, Z. S. & Lynch, M. A., 2000, "Child abuse in China: the views and experiences of child health professionals", *Child Abuse & Neglect*, vol.24, no.6, pp.867-872)

A questionnaire survey in 1998 of 483 school children in grades 4-6 studied personal opinions on corporal punishment and experience of violence by family members, school teachers or peers in the last year. Rates of corporal punishment by teachers were 51.1%, while rates of violence in the family were 70.6%. (Kim, D-H., Kim, K-I. & Park, Y-C., 2000, "Children's experience of violence in China and Korea: A transcultural study", *Child Abuse & Neglect*, vol.24, no.9, pp.1163-1173)

### **Recommendations by human rights treaty bodies**

*Committee on the Rights of the Child*

(7 June 1996, CRC/C/15/Add.56, Concluding observations on initial report, para. 33)

"... The Committee suggests that further attention be accorded to reviewing the effectiveness of procedures available to children for the presentation and investigation of complaints of their abuse or neglect, in the event of such violations arising from, inter alia, domestic violence and abuse in institutions or detention facilities."

## COOK ISLANDS

### **Lawfulness of corporal punishment**

#### **Home**

Corporal punishment is lawful in the home. The Crimes Act (1969, amended 2003) states in article 61: "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." Article 64 covers excessive force.

Children have some protection from violence and abuse under other provisions in the Crimes Act.

#### **Schools**

Corporal punishment is lawful in schools under article 61 of the Crimes Act (see above).

#### **Penal system**

We have been unable to establish the legality of corporal punishment as a **sentence for crime** or as a **disciplinary measure** in penal institutions. The Constitution states that no person shall be subject to "cruel and unusual treatment or punishment" (article 65). The "Punishments" section of the Crimes Act (articles 12-22) has been repealed, but we have been unable to ascertain the content of this nor its replacement. Children are protected from excessive force in the penal system by article 64 of the Crimes Act.

#### **Alternative care**

Corporal punishment is lawful in other institutions and forms of childcare under article 61 of the Crimes Act (see above). The provisions against violence and abuse in the Crimes Act also apply.

#### **Prevalence research**

None identified.

## DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

### **Lawfulness of corporal punishment**

#### **Home**

Corporal punishment is lawful in the home.

The Family Law (1990) states parents' responsibilities for their children's education, health and physical development (articles 27 and 28), but there is no prohibition of corporal punishment. Children are protected from other violence and ill-treatment under the Criminal Law and other provisions in the Family Law. There is a Law on Education and Rearing Children, but we have been unable to obtain details of its provisions. In 2004, a bill for the amendment and supplement of the Criminal Law was under discussion, aimed at furthering children's human rights protection.

#### **Schools**

Corporal punishment is prohibited in schools by government policy. 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. In 2004, the enactment of a Law on School Education and rules was planned.





## Penal system

Corporal punishment is unlawful as a **sentence for crime** for young people under 18 years.

Corporal punishment is unlawful as a **disciplinary measure** in penal institutions. It is not a permitted disciplinary measure under article 15 of the Juvenile Reformatory Act.

## Alternative care

No information.

## Prevalence research

None identified.

## Recommendations by human rights treaty bodies

### *Committee on the Rights of the Child*

(1 July 2004, CRC/C/15/Add.239, Concluding observations on second report, paras. 7, 36 and 37)

“The Committee notes with satisfaction that some concerns and recommendations (CRC/C/15/Add.88) made upon the consideration of the State party’s initial report (CRC/C/3/Add.41) have been addressed through legislative measures and policies. However, recommendations regarding, inter alia, ... corporal punishment (para.13) ... have not been given sufficient follow-up. The Committee notes that these concerns and recommendations are reiterated in the present document.

“While welcoming the positive steps taken by the State party and the information that it has almost eliminated corporal punishment through, inter alia, public campaigns, the Committee remains concerned that owing to traditional customs, corporal punishment may still be practised and accepted in schools, families, and care institutions.

“The Committee encourages the State party to continue to reinforce its public awareness campaigns to promote positive, participatory and non-violent forms of discipline as an alternative to corporal punishment at all levels of society.”

### *Committee on the Rights of the Child*

(5 June 1998, CRC/C/15/Add.88, Concluding observations on initial report, paras. 13 and 26)

“The Committee is concerned that corporal punishment is still used, especially within the family environment and in institutions, and by the fact that no comprehensive strategy exists to eradicate this form of violence, in light of, inter alia, articles 3, 19 and 28 of the Convention.

“The Committee suggests that the State party take all appropriate measures, including of a legislative nature, to prevent and combat the use of corporal punishment, especially at home and in institutions. The Committee also suggests that awareness-raising campaigns be conducted to ensure that alternative forms of discipline are administered in a manner consistent with the child’s human dignity and in conformity with the Convention.”

# FIJI

## Lawfulness of corporal punishment

### Home

Corporal punishment is lawful in the home. Article 57 of the Juveniles Act (1974) punishes cruelty to children but also states: “Nothing in this section shall be construed as affecting the right of any parent, teacher or other person having the lawful control or charge of a juvenile to administer reasonable punishment to him.” Article 235 of the Penal Code criminalises “excessive” force.

Children have limited protection from violence and abuse under other provisions in the Juveniles Act, the Penal Code, the Family Law Act (2003) and the Constitution (amended 1997). Article 25 of the Constitution states: “Every person has the right to freedom from torture of any kind, whether physical, mental, or emotional and from cruel, inhumane, degrading or disproportionately severe treatment or punishment.” This is reiterated in article 6 of the Fundamental Rights and Freedoms Decree (2000).

### Schools

Corporal punishment is prohibited in schools under a High Court ruling by Justice Jayant Prakash which stated that corporal punishment was unconstitutional (Lautoka High Court, March 2002). Prior to this, Ministry of Education policy (and Regulation Issue 2, 1997, under the Education Act) allowed principals to administer corporal punishment. The ruling has elicited strong opposition from the Fijian Teachers Association and the Great Council of Chiefs. As at January 2005, the prohibition had not been confirmed in legislation.

### Penal system

Corporal punishment is unlawful as a **sentence for crime** under the 2002 High Court ruling (see above). As at April 2005, legislation providing for up to 12 strokes as a sentence for males aged 17 and over (articles 7 and 8 of the Criminal Procedure Code and article 34 of the Penal Code) had not been repealed. Corporal punishment of persons under the age of 17 is prohibited in the Juveniles Act (article 32).

Corporal punishment is unlawful as a **disciplinary measure** in penal institutions under the 2002 High Court ruling (see above). We have been unable to ascertain whether legislation providing for corporal punishment (article 84 of the Prisons Act and articles 44 and 134-136 of the Prisons Regulations) has been repealed.



### Alternative care

Corporal punishment is lawful in other institutions and forms of child care under article 57 of the Juveniles Act (see above). The provisions against violence and abuse in the Penal Code and the Family Law Act apply.

### Prevalence research

Interviews with parents and teachers conducted for Pacific Children's Program by a team from the University of South Pacific found that corporal punishment of children is administered by parents, guardians and elders and takes many forms, including beating or using a belt or rod; hitting and punching the head with the hand or an object; inserting fingers down a child's mouth until the child gags; tying a child up in a sack and hanging from a tree; and whipping with a stick or rope. (Vakoati, P. & Finekaso, G., 2002, *Qualitative Study on Child Protection Practices: Fiji Report*, University of South Pacific, Report prepared for International Development Support Services, Pacific Children's Program)

### Recommendations by human rights treaty bodies

*Committee on the Rights of the Child*

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

"While aware of the initiative presented by the CCC [Coordinating Committee on Children] to Fiji's Law Reform Commission for the legal prohibition of the use of corporal punishment, the Committee remains concerned that corporal punishment is still used by parents and that internal school regulations do not contain explicit provisions prohibiting this harmful practice, in conformity with, inter alia, articles 3, 19 and 28 of the Convention.

"The Committee recommends that corporal punishment be comprehensively prohibited by law and that measures be taken to raise awareness on the negative effects of corporal punishment and to ensure that discipline in schools, families and institutional care is administered in a manner consistent with the child's dignity, in light of article 28 of the Convention."

## INDONESIA

### Lawfulness of corporal punishment

#### Home

Corporal punishment is lawful in the home.

Children have limited protection from violence and ill-treatment under the Penal Code, the Law on Child Protection (2002), the Law on Human Rights (1999), the Law on Elimination of Domestic Violence (2004) and the Constitution (1945, amended 2000).

#### Schools

There is no explicit prohibition of corporal punishment in schools. Article 54 of the Law on Child Protection states: "Children attending school must be protected against violence and abuse from teachers, school managers, and school mates both in the school and other educational institutions."

#### Penal system

Corporal punishment is unlawful as a **sentence for crime** under article 66 of the Law on Human Rights, concerning protection during the legal process, which states: "Every child has the right not to be subjected to acts of oppression, ill treatment or inhuman penalty...." The Government has accepted the application of Shari'a law in the Aceh province, but we have been unable to ascertain whether this applies to criminal law and whether it allows young persons under the age of 18 to be sentenced to corporal punishment.

There is no explicit prohibition of corporal punishment as a **disciplinary measure** in penal institutions, although the Constitution, the Law on Human Rights and the Law on Child Protection apply, and the Directorate General of Corrections has stated in policy the right of juvenile offenders to humane treatment. As at January 2005, the Penal Code and the juvenile justice system were under review.

### Alternative care

There is no explicit prohibition of corporal punishment in other institutions and forms of childcare. The provisions against violence and abuse in the Law on Child Protection, the Law on Human Rights and the Constitution (see above) apply.

### Prevalence research

None identified.

### Recommendations by human rights treaty bodies

*Committee on the Rights of the Child*

(26 February 2004, CRC/C/15/Add.223, Concluding observations on second report, paras. 43, 44 (a and b) and 61 (e))

"The Committee is deeply concerned that corporal punishment in the family and in schools is widespread, culturally accepted and still lawful.



“The Committee recommends that the State party:

a) amend its current legislation to prohibit corporal punishment everywhere, including in the family, schools and child-care settings;

b) carry out public education campaigns about the negative consequences of ill-treatment of children and promote positive, non-violent forms of discipline as an alternative to corporal punishment.

“... the Committee is very concerned:

e) at the high incidence of violence against children in the schools, including bullying and fighting among students, and that no specific law exists to regulate school discipline and protect children against violence and abuse in the school.”

## JAPAN

### Lawfulness of corporal punishment

#### Home

Corporal punishment is lawful in the home.

The Penal Code provides protection from violence leading to bodily injury (article 204), physical violence without bodily injury (article 208) and intimidation (article 222), but does not prohibit all corporal punishment. The definition of abuse in the Child Abuse Prevention Law includes violence which causes or may cause bodily injury and “behaviour and words that inflict psychological trauma to a child”.

#### Schools

Corporal punishment was first prohibited in schools in 1879. The School Education Law (1947) states that disciplinary punishment may be inflicted but “in no case is corporal punishment permitted” (article 11).

#### Penal system

Corporal punishment is unlawful as a **sentence for crime** and as a **disciplinary measure** in penal institutions. Treatment of juveniles in correctional institutions is covered by the Juvenile Law. Article 36 of the Constitution prohibits the use of torture and cruel punishments by public officers.

#### Alternative care

Corporal punishment is reportedly prohibited in day care and residential institutions for children. However, heads of Child Welfare Institutions exercise parental authority until someone is found to exercise parental authority or guardianship and it would seem that corporal punishment could be administered in such circumstances. It is lawful in foster care as for parents.

#### Prevalence research

According to Ministry of Education reports, schools using and suspected of using corporal punishment during the years 1990 to 1995 numbered from 600 to 850 per year, about 2% of all public schools. The number of cases of corporal punishment reported during the period was 700 to 1,000 per year, with 30% to 45% of teachers responsible receiving legal sanctions. The figures show an increase in the use of corporal punishment over the period. (Kobayashi, N., Tanimura, M. & Shimauchi, Y., 1997, “Corporal punishment in the schools and homes of Japan”, *IPA Journal (INCH)*, vol.8, no.3 Pre-congress workshops: Prevention of childhood injuries: intentional and unintentional – 9th Asian Congress of Paediatrics, Hong Kong, 22-23 March 1997)

A retrospective survey of 600 mothers of 13-year-old children, carried out by the Educational Research Center, Benesse Corporation, found that 56% had received corporal punishment once or more since primary school, with the number of children increasing with age and more commonly for boys than girls. Nearly half the children felt the punishment had been severe or too severe. 50% of mothers accepted or tolerated the punishment because their child had misbehaved; 16% denied their child had misbehaved; and only 20% objected to the teacher’s use of corporal punishment. 14% of mothers felt that punishment was an effective discipline tool; 68% approved of occasional punishment; 17% disapproved of corporal punishment on any occasion. (Fukaya, K., 1986, *Corporal punishment monograph: Primary school children now*, Educational Research Center, Fukutake Shoten, Benesse Corp. Cited in Kobayashi, N., Tanimura, M. & Shimauchi, Y., 1997, “Corporal punishment in the schools and homes of Japan”, *IPA Journal (INCH)*, vol.8, no.3 Pre-congress workshops: Prevention of childhood injuries: intentional and unintentional – 9th Asian Congress of Paediatrics, Hong Kong, 22-23 March 1997)

Of the 435 cases of child abuse encountered at paediatric departments of general and children’s hospitals registered with the Department of Child Ecology, National Children’s Medical Research Center, and the National Children’s Hospital from 1986 to 1995, the rationale of “discipline and education” or the child’s misbehaviour was given in 36.3% of cases. (Kobayashi, N., Tanimura, M. & Shimauchi, Y., 1997, “Corporal punishment in the schools and homes of Japan”, *IPA Journal (INCH)*, vol.8, no.3 Pre-congress workshops: Prevention of childhood injuries: intentional and unintentional – 9th Asian Congress of Paediatrics, Hong Kong, 22-23 March 1997)

## Recommendations by human rights treaty bodies

### *Committee on the Rights of the Child*

(26 February 2004, CRC/C/15/Add.231, Concluding observations on second report, paras. 35 and 36 (a, b and c))

“The Committee notes with concern that corporal punishment, although legally prohibited in schools, is widely practised in schools, institutions and the family.

“The Committee recommends that the State party:

- a) prohibit corporal punishment in institutions and the home;
- b) carry out public education campaigns about the negative consequences of ill-treatment of children in order to change attitudes towards corporal punishment, and promote positive, non-violent forms of discipline in schools, institutions and at home as an alternative to such punishment;
- c) strengthen complaints mechanisms for children in institutions and schools to ensure that they deal with complaints of ill-treatment effectively and in a child-sensitive manner.”

### *Committee on the Rights of the Child*

(5 June 1998, CRC/C/15/Add.90, Concluding observations on initial report, paras. 19, 24 and 45)

“The Committee is concerned about the increase of child abuse and ill-treatment, including sexual abuse, within the family. The Committee notes with concern that insufficient measures have been taken to ensure that all cases of abuse and ill-treatment of children are properly investigated, sanctions applied to perpetrators and publicity given to decisions taken. It is also concerned about the insufficient measures taken to ensure the early identification, protection and rehabilitation of abused children.

“The Committee is concerned at the frequency and level of violence in schools, especially the widespread use of corporal punishment and the existence of numerous cases of bullying among students. While legislation prohibiting corporal punishment and such measures as hot lines for victims of bullying do exist, the Committee notes with concern that current measures have been insufficient to prevent school violence.

“In light of, inter alia, articles 3, 19 and 28.2 of the Convention, the Committee recommends that a comprehensive programme be devised and its implementation closely monitored in order to prevent violence in schools, especially with a view to eliminating corporal punishment and bullying. Additionally, it recommends that corporal punishment be prohibited by law in the family and in child-care and other institutions. The Committee also recommends that awareness-raising campaigns be conducted to ensure that alternative forms of discipline are administered in a manner consistent with the child’s human dignity and in conformity with the Convention.”

# KIRIBATI

## Lawfulness of corporal punishment

### Home

Corporal punishment is lawful in the home. Article 226 of the Penal Code prohibits cruelty to children but also states: “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.” Children are protected from excessive force under article 228.

### Schools

Corporal punishment is unlawful in schools.

### Penal system

Corporal punishment is unlawful as a **sentence for crime**. It is not an available sentence under the Penal Code and is not provided for in the Criminal Procedure Code. Article 7 of the Constitution prohibits “inhuman or degrading punishment or other treatment”.

There is no prohibition of corporal punishment as a **disciplinary measure** in penal institutions. From the age of 16, children may be sentenced to imprisonment. There are no regulations on appropriate treatment of detainees within prisons. Under article 39 of the Penal Code, offenders under the age of 16 years 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”. Corporal punishment of children in these settings and in custody is permitted under the provisions for “reasonable punishment” in the Penal Code (see above).

### Alternative care

There is no prohibition of corporal punishment in other institutions and article 226 of the Penal Code (see above) applies. There are no foster homes or day care centres.

### Prevalence research

None identified.



# LAO PEOPLE'S DEMOCRATIC REPUBLIC

## Lawfulness of corporal punishment

### Home

Corporal punishment is lawful in the home.

Children have some protection from violence and abuse under the Penal Code and the Family Law.

### Schools

There is no explicit legal prohibition of corporal punishment in schools.

### Penal system

Corporal punishment is unlawful as a **sentence for crime** and as a **disciplinary measure** in penal institutions under the Penal Code. Article 25 states that “punishment does not aim at generating physical suffering or at outraging human dignity” and article 160 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”.

### Alternative care

There is no prohibition of corporal punishment in other institutions and forms of childcare.

### Prevalence research

None identified.

## Recommendations by human rights treaty bodies

### *Committee on the Rights of the Child*

(10 October 1997, CRC/C/15/Add.78, Concluding observations on initial report, paras. 20 and 44)

“The Committee is concerned at the lack of awareness and information on ill-treatment and abuse of children, including sexual abuse, both within and outside the family, and at the lack of appropriate measures and mechanisms to prevent and combat such abuse. The lack of special structures for children victims of abuses and their limited access to justice are also matters of concern, as is the lack of rehabilitation measures for such children. The persistence of corporal punishment within the family and its acceptance by the society is also a matter of concern.

“In the light of article 19 of the Convention, the Committee further recommends that the State party take all appropriate measures, including revision of legislation, to prevent and combat ill-treatment within the family and sexual abuse of children. It suggests, inter alia, that the authorities initiate a comprehensive study on abuse, ill-treatment and domestic violence to improve the understanding of the nature and the scope of the problem, and set up social programmes to prevent all types of child abuses as well as to rehabilitate the child victims. Law enforcement should be strengthened with respect to such crimes; adequate procedures and mechanisms to deal with complaints of child abuse should be developed, such as multidisciplinary teams to handle cases, special rules of evidence, and special investigators or community focal points.”

### *Committee on the Elimination of Discrimination against Women*

(15 February 2005, CEDAW/C/LAO/CC/1-5, Concluding observations on combined initial, second, third, fourth and fifth reports, paras. 35 and 36)

“The Committee is concerned that there is a lack of awareness or recognition of domestic violence, including marital rape, as a form of discrimination against women and as a violation of their human rights. The Committee is concerned that domestic violence is considered to be fairly normal by young people, both boys and girls, and the Criminal Law grants exemption from penal liabilities in cases of physical violence without serious injury or physical damage....

“The Committee recommends that the State party undertake measures to increase awareness of all forms of violence against women, including domestic violence and marital rape. It recommends that domestic violence and marital rape be criminalized and that more studies and data be collected on various forms of violence against women, especially domestic violence....”

# MALAYSIA

## Lawfulness of corporal punishment

### Home

Corporal punishment is lawful in the home.

Children are protected from some violence and abuse under the Child Act (2001, in force 2002), article 31 of which punishes “any person who, being a person having the care of a child – (a) abuses, neglects, abandons or exposes the child in a manner likely to cause him physical or emotional injury or permits him to be so abused, neglected, abandoned or exposed....” This Act repeals the Juvenile Courts Act (1947), the Women and Girls Protection Act (1973) and the Child Protection Act (1991).

## Schools

Corporal punishment is lawful in schools under the Education Ordinance (1957) and Education Rules (School Discipline) (1959). Education Ministry guidelines advise that caning should not be given for “light offences” but up to two strokes can be given for “moderate offences” and 3-7 strokes for “serious offences”. In 2003, the Ministry proposed to expand the power of caning students to all teachers, instead of only disciplinary masters and principals. In “vernacular schools” (Chinese-medium schools funded by government allocations), caning has long been used in primary and secondary schools by teachers as well as heads and on girls as well as boys.

## Penal system

Corporal punishment is lawful as a **sentence for crime**. Article 91 of the Child Act, applicable to children aged between 10 and 18, states that the Court for Children may “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”. Article 92 states the manner of executing the whipping. Whipping is the prescribed punishment under the Penal Code and other laws for an increasingly wide range of crimes, including immigration offences, drug related offences, rape and other sex offences, grievous bodily harm and firearms offences. There have been proposals to prescribe caning for vandalism, traffic offences, and illegal motorbike racing. In 1990, the Federal Constitution was amended to allow state Shari’a courts to sentence offenders to caning and imprisonment instead of just imposing fines, though where punishments exceed what is permitted by the Constitution (e.g. amputations), implementation has been controversial.

Corporal punishment is lawful as a **disciplinary measure** in penal institutions.

## Alternative care

Corporal punishment is lawful in other institutions and forms of childcare. The Child Act (see above) applies.

## Prevalence research

In 2005, the Human Rights Commission of Malaysia conducted an online poll on school corporal punishment. Of the 64 respondents to the question “Is caning students in schools a violation of human rights?” 31.3% agreed, 57.8% disagreed, and 10.9% were unsure ([www.suhakam.org.my/en/](http://www.suhakam.org.my/en/)).

## Recommendations by human rights treaty bodies

Malaysia has not yet (May 2005) submitted an initial report under the Convention on the Rights of the Child.

# MARSHALL ISLANDS

## Lawfulness of corporal punishment

### Home

Corporal punishment is lawful in the home. The right of parents or guardians to exercise control and authority over their children is recognised in the Juveniles Procedures Act (articles 308-309).

Children are protected from some violence and abuse under the Child Abuse and Neglect Act (Public Law 1991-207) (1991), the Domestic Relations Act and the Criminal Code.

### Schools

Corporal punishment is prohibited in schools by the Rules and Regulations of the Ministry of Education (1992), which define corporal punishment as “hitting, kicking, slapping or any other means of brutal punishment”.

### Penal system

Corporal punishment is unlawful as a **sentence for crime**. The Constitution (1979) prohibits “inhuman and degrading treatment” and “cruel and unusual punishment” (article 6). Articles 181-195 of the Criminal Code (“Punishments; judgement and sentencing”) do not include corporal punishment among available sanctions for crime. Under article 181, customs should be taken into account in sentencing. We have been unable to ascertain whether this would allow for corporal punishment of young offenders.

Corporal punishment is unlawful as a **disciplinary measure** in penal institutions. The Criminal Procedure Code makes no provision for corporal punishment. The Criminal Code as amended prohibits the use of corporal punishment against children as a disciplinary measure.

### Alternative care

There is no explicit prohibition of corporal punishment in other institutions and forms of childcare. The provisions against violence and abuse in the Child Abuse and Neglect Act and the Criminal Code apply.

### Prevalence research

None identified.





## Recommendations by human rights treaty bodies

*Committee on the Rights of the Child*

(16 October 2000, CRC/C/15/Add.139, Concluding observations on initial report, paras. 36 and 37)

“The Committee is concerned that the use of corporal punishment within the family, schools, other institutions, and generally within society is not expressly prohibited by law.

“In light of articles 19, 28 (2) and 37 of the Convention, the Committee recommends that the State party adopt appropriate legislative measures to prohibit the use of any form of corporal punishment within the family, schools and other institutions. It also encourages the State party to develop measures to raise awareness about the negative effects of corporal punishment and ensure that alternative forms of discipline are administered in families, schools and other institutions in a manner consistent with the child’s dignity and in conformity with the Convention.”

# MICRONESIA, FEDERATED STATES OF

## Lawfulness of corporal punishment

### Home

Corporal punishment is lawful in the home.

Children are protected from some violence and abuse under the federal Code of the Federated States of Micronesia (1982).

The State Code (2000 edition) of **Yap** contains provisions on offences against the person (Penal Code, sections 201-216), including “bodily injury”, “serious bodily injury” and “serious psychological injury”. Section 210 on “assault and battery” punishes “every person who shall unlawfully strike, beat, wound or otherwise do bodily harm to another”. Under section 1204 of the State Juveniles Act 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”.

The State Code of **Kosrae** (1997) specifies that parents have a “duty of parental control of the minor” (section 16.1102). Chapter 48 states that parents have “the duty to control the minor and ... the power to exercise parental control and authority over the minor” (section 6.4807). Section 16.1201 protects children from child abuse, but not corporal punishment.

In **Chuuk**, child abuse is covered in the draft State Code, section 1602. Other protection is provided under sections 2056 on endangering the welfare of children and 2057-2060 and 2067 on assault.

In **Pohnpei**, the Constitution recognises and protects “the responsibility and authority of parents over their children” (article 5, section 3).

### Schools

Corporal punishment is prohibited in schools, but we have been unable to ascertain if this is by policy or law. There is no mention of corporal punishment or school discipline in the State Codes of Yap, Pohnpei or Kosrae or the draft State Code of Chuuk.

### Penal system

Corporal punishment is unlawful as a **sentence for crime**. The Constitution of the Federated States of Micronesia states that “cruel and unusual punishments” should not be inflicted (article IV, section 8). Under the federal Juveniles Law, juvenile courts base their practices on those of the United States, although those aged 16 or over may be tried as adults (section 1101). There is no provision for corporal punishment in federal law. “Cruel or unusual punishment” is prohibited in the Constitutions of Pohnpei, Yap, Kosrae and Chuuk. There is no provision for corporal punishment as a sentence for crime in the State Codes of Yap and Kosrae and the draft State Code of Chuuk, though “due recognition” must be given to custom in sentencing in all states.

There is no explicit prohibition of corporal punishment as a **disciplinary measure** in penal institutions.

### Alternative care

There is no prohibition of corporal punishment in other institutions and the emphasis on the authority and duty to control children of parents and legal guardians (see above) indicates corporal punishment is lawful in other childcare settings. The provisions against violence in the federal and state Codes (see above) apply.

### Prevalence research

None identified.

## Recommendations by human rights treaty bodies

*Committee on the Rights of the Child*

(4 February 1998, CRC/C/15/Add.86, Concluding observations on initial report, paras. 17 and 35)

“While taking note of the efforts undertaken by the State party, such as the Child Abuse and Neglect Programme (CAN), the Committee is concerned at the insufficient awareness of and the lack of information on ill-treatment and abuse, including sexual abuse, both within and outside the family, at the absence of specific laws in all the states and of appropriate resources, both financial and human, as well as at the lack of adequately trained personnel to prevent and combat such abuse. The lack of rehabilitation measures for such children and their limited access to justice are also matters of concern.



“In the light of article 19 of the Convention, the Committee further recommends that the State party take all appropriate measures, including revision of legislation, to prevent and combat ill-treatment within, inter alia, the family and institutions, and sexual abuse of children. It suggests, inter alia, that the authorities initiate a comprehensive study on abuse, ill-treatment and domestic violence, to improve the understanding of the nature and the scope of the problem and strengthen social programmes to prevent all types of child abuses as well as to rehabilitate the child victims. Adequate procedures and mechanisms to deal with complaints of child ill-treatment should be developed.”

## MONGOLIA

### Lawfulness of corporal punishment

#### Home

Corporal punishment is lawful in the home.

Children are protected from some violence and abuse under the Family Code (1973), the Child Rights Protection Act (1996, amended 2003), the Domestic Violence Act (in force 2005), and the Criminal Code, which stipulates “that any form of exploitation or abuse and all forms of physical and mental violence against children shall be considered as crime”, including “systematic beating and inflicting of physical pain”.

#### Schools

Corporal punishment is prohibited in schools.

#### Penal system

Corporal punishment is unlawful as a **sentence for crime** and as a **disciplinary measure** in penal institutions.

#### Alternative care

No information.

#### Prevalence research

None identified.

### Recommendations by human rights treaty bodies

#### *Committee on the Rights of the Child*

(3 June 2005, Unedited version, CRC/C/15/Add.263, Concluding observations on second report, paras. 29 and 30)

“The Committee is concerned that corporal punishment of children remains socially acceptable in Mongolia and it is still practised in families and also in places where it has been formally prohibited, such as schools and other institutions. It further notes with concern that Mongolian legislation does not expressly prohibit corporal punishment in the family.

“The Committee urges the State party to prevent and combat the practice of corporal punishment of children in the family, in schools and other institutions and to explicitly prohibit by law corporal punishment in the family. The Committee recommends that the State party introduce public education and awareness-raising campaigns with the involvement of children on alternative non-violent forms of discipline in order to change public attitudes about corporal punishment and to strengthen its cooperation with the non-governmental institutions in this respect.”

#### *Committee on the Rights of the Child*

(13 February 1996, CRC/C/15/Add.48, Concluding observations on initial report, paras. 16 and 28)

“The Committee is concerned that appropriate measures have not yet been taken to prevent and combat effectively ill-treatment of children within the family and about insufficient information existing on this matter....

“In the light of article 19 of the Convention, the Committee further recommends that the Government take all appropriate measures, including legislative ones, to combat ill-treatment within the family and sexual abuse of children. It suggests, inter alia, that the authorities gather information and initiate a comprehensive study to improve understanding of the nature and scope of the problem and set up social programmes to prevent all types of child abuse.”

# MYANMAR

## Lawfulness of corporal punishment

### Home

Corporal punishment is lawful in the home. Article 66 of the Child Law (1993, revised 1999) provides for “admonition by a parent, teacher, or other person having the right to control the child”.

### Schools

Corporal punishment is prohibited in schools under government directives issued regularly since the 1950s, but as at 2004, the prohibition had not been confirmed in law. Article 66 of the Child Law (see above) applies.

### Penal system

Corporal punishment is prohibited as a **sentence for crime** for children below the age of 16 years under article 45 of the Child Law, which states that “notwithstanding anything contained in any existing law, a death sentence, transportation for life or a sentence for whipping shall not be passed on any child”. Whipping is prohibited for youths aged 16-17 years by Rule 100 in Chapter 15 of the Rules of the Child Law (2001) which states: “When passing the order to the youth who is found guilty in accordance with the provisions of the Law, notwithstanding anything contained in any existing law, the Juvenile Court shall: (a) not pass an order for a death sentence, transportation for life or sentence of whipping....”

There is no explicit prohibition of corporal punishment as a **disciplinary measure** in penal institutions. The Rules of the Child Law relate to detention of persons below the age of 18 years in training schools and in prisons but do not prohibit corporal punishment in these settings and article 66 of the Child Law (see above) potentially applies. Article 27 of the Child Law and Rule 64 prohibit maltreatment by police officers when arresting a child.

### Alternative care

There is no explicit prohibition of corporal punishment in other institutions and forms of childcare. Article 66 of the Child Law (see above) applies. The Rules of the Child Law cover day care centres, pre-school provision, home and special schools and adoption. There is no prohibition in the Rules of corporal punishment in relation to any of these forms of childcare.

### Prevalence research

In a 2002 study by UNICEF, 17% of children surveyed in four peri-urban townships said they were unhappy at school because teachers beat them. The study involved face-to-face interviews and focus group discussions, and included both primary and secondary schools and children currently out-of-school. (Reported by UNICEF, September 2003)

### Recommendations by human rights treaty bodies

#### *Committee on the Rights of the Child*

(30 June 2004, CRC/C/15/Add.237, Concluding observations on second report, paras. 7, 8 (b), 38 and 39)

“The Committee is aware of the efforts undertaken by the State party to amend the Child Law (1993), in particular, the enactment of the Rules and Regulations related to the Child Law in 2001, in order to fully harmonize it with the provisions and principles of the Convention, but is of the view that the Child Law is still not in full compliance with the Convention. The Committee ... remains concerned at the fact that the Village and Town Acts are still in existence. This concern is also reiterated regarding the existence of the Citizenship Act and the Whipping Act, despite previous recommendations of the Committee to amend or repeal them.

“In light of the previous recommendations (CRC/C/15/Add.69, para. 28), the Committee recommends that the State party:

b) repeal the Whipping Act and amend the Citizenship Act and the Village and Town Acts....

“The Committee is deeply concerned that article 66 (d) of the 1993 Child Law provides for possible ‘admonition by a parent, teacher, or other person having the right to control the child’ and that corporal punishment continues to be regarded as acceptable in society. The Committee is also concerned that the State party has not repealed the Whipping Act and that the orders prohibiting corporal punishment in schools do not seem to be effective.

“The Committee strongly recommends that the State party repeal article 66 (d) of the 1993 Child Law and prohibit corporal punishment in the family, the schools and other institutions, and undertake education campaigns to educate families and professionals on alternative forms of discipline.”

#### *Committee on the Rights of the Child*

(24 January 1997, CRC/C/15/Add.69, Concluding observations on initial report, para. 28)

“The Committee recommends that the State party undertake a comprehensive review of the national legislation to bring it into conformity with the principles and provisions of the Convention, especially in the areas of non-discrimination, citizenship, freedom of association, corporal punishment, child labour, adoption and the administration of juvenile justice. The Committee also recommends that the Citizenship Act, the Village and Towns Acts and the Whipping Acts be repealed....”

# NAURU

## Lawfulness of corporal punishment

### Home

Corporal punishment is lawful in the home.

### Schools

No information.

### Penal system

We have been unable to ascertain the legal status of corporal punishment as a **sentence for crime** or as a **disciplinary measure** in penal institutions. Article 7 of the Constitution prohibits torture and treatment or punishment that is inhuman or degrading. Corporal punishment is not mentioned as a sentence in the Criminal Justice Act (1999) concerning probation and parole as alternatives to imprisonment.

### Alternative care

No information.

### Prevalence research

None identified.

# NEW ZEALAND

## Lawfulness of corporal punishment

### Home

Corporal punishment is lawful in the home. Parents are justified in using corporal punishment under article 59 of the Crimes Act (1961, amended 1990), which states: “(1) Every parent of a child and every person in the place of the parent of a child, is justified in using force by way of correction towards the child, if the force used is reasonable in the circumstances....” This provision has been under review by the Government since 2000 and a decision is expected in 2006.

Children are protected from some violence and abuse under other provisions in the Crimes Act and under the Children and Young Persons Act (1989), the Children, Young Persons and their Families Act (1989, amended 2001), the Crimes of Torture Act (1989), the Summary Offences Act (1981), the Guardianship Act (1967), the New Zealand Bill of Rights Act (1990), the Domestic Violence Act (1995), the Domestic Violence Programmes (Regulations) Act (1996) and the Human Rights Act (1993).

### Schools

Corporal punishment is prohibited in schools in the Education Amendment Act (1990), article 139A of which prohibits “the use of force, by way of correction or punishment, towards any child enrolled at or attending a school, institution or centre by any employee of the school or anyone supervising or controlling students on behalf of the school unless that person is a guardian of the student”. Article 59 of the Crimes Act, justifying “reasonable” force (see above), states: “(3) Nothing in subsection (1) of this section justifies the use of force towards a child in contravention of section 139A of the Education Act 1989”. A number of private Christian schools have reportedly exploited the legal loophole by bringing in parents to administer corporal punishment.

### Penal system

Corporal punishment is unlawful as a **sentence for crime**. Under the New Zealand Bill of Rights Act, persons should not be subjected to “degrading or disproportionately severe treatment or punishment” (article 9). The Crimes of Torture Act prohibits the imposition of cruel treatment or punishment on a child.

Corporal punishment is unlawful as a **disciplinary measure** in penal institutions. The New Zealand Bill of Rights Act states that a person deprived of liberty should be treated with humanity and respect for the inherent dignity of the person (article 23). Other applicable laws are the Children, Young Persons and their Families Act, the Children, Young Persons and their Families (Residential Care) Regulations (1996), the Crimes Act, the Penal Institutions Act (1954) and the Penal Institutions Regulations (1999).

### Alternative care

Corporal punishment is prohibited in pre-school settings and early childhood centres under the amendments to the Crimes Act in article 139A of the Education Amendment Act (see above), although guardians are excluded from the amendment and it does not apply to private foster care. Corporal punishment is prohibited in state day care institutions by regulations under the Children and Young Persons Act and in residential institutions by Regulation 22 of the Children and Young Persons (Residential Care) (1986) and Children, Young Persons and their Families (Residential Care) Regulations (1996).

## Prevalence research

As part of the Government's *Strategies with Kids: Information for Parents* public education programme, designed to promote alternatives to corporal punishment, the Ministry of Social Development commissioned telephone interviews with 612 parents and 539 caregivers of children up to 5 years of age nationwide in 2004. Overall, 51% of parents and 21% of caregivers reported using physical discipline, with this being more likely the lower the level of education and higher the number of children (for parents) and with decreasing household income and increasing age (for caregivers). The most common form was smacking on the bottom (45% parents, 32% caregivers). 25% of parents using physical discipline were not interested in receiving information on parenting. (Gravitas Research and Strategy Ltd, for the Ministry of Social Development, 2004, *Strategies with Kids – Information for Parents (SKIP) Strategy Development Research: Parent and Care-giver Survey Report*, draft report)

In 2001, a survey commissioned by the Ministry of Justice revealed that 80% of parents believed smacks with an open hand should be permissible, but 95% were against the use of a wooden spoon or belt, and 98.7% believed hits to the head and neck area should be outlawed. Force that involves bruising was unacceptable to almost all respondents. (Reported in Boyson, R., 2002, ed. Thorpe, L. *Equal protection for children: An overview of the experience of countries that accord children full legal protection from physical punishment*, London: NSPCC)

In 1993, The Listener/Heylen Monitor polled 1,000 home occupiers aged 15 and over on the acceptability of corporal punishment, and found that 49% supported corporal punishment for girls, 54% for boys. This was reported as representing a significant decline in support of physical punishment since its abolition in schools in 1990. (*Physical Punishment in the Home in New Zealand*, 1993, available from the Office of the Commissioner for Children)

## Recommendations by human rights treaty bodies

### *Committee on the Rights of the Child*

(27 October 2003, CRC/C/15/Add.216, Concluding observations on second report, paras. 4, 5, 29 and 30 (a and b))

“While acknowledging the attention that the State party has given to the implementation of the recommendations contained in the Committee’s previous concluding observations (CRC/C/15/Add.71) adopted following the consideration of the State party’s initial report (CRC/C/28/Add.3), the Committee is particularly concerned about ... the prohibition of corporal punishment and the establishment of mechanisms to ensure the recovery of victims of ill-treatment and abuse (para.29).

“The Committee reiterates those concerns and urges the State party to make sustained efforts to address those recommendations contained in the concluding observations on the initial report that have not been implemented....

“The Committee is deeply concerned that despite a review of legislation, the State party has still not amended section 59 of the Crimes Act 1961, which allows parents to use reasonable force to discipline their children. While welcoming the Government’s public education campaign to promote positive, non-violent forms of discipline within the home, the Committee emphasizes that the Convention requires the protection of children from all forms of violence, which includes corporal punishment in the family and which should be accompanied by awareness-raising campaigns on the law and on children’s right to protection.

“The Committee recommends that the State party:

- a) amend legislation to prohibit corporal punishment in the home;
- b) strengthen public education campaigns and activities aimed at promoting positive, non-violent forms of discipline and respect for children’s right to human dignity and physical integrity, while raising awareness about the negative consequences of corporal punishment.”

### *Committee on the Rights of the Child*

(24 January 1997, CRC/C/15/Add.71, Concluding observations on initial report, paras. 16 and 29)

“The Committee expresses its concern at the authorization provided by section 59 of the Crimes Act to use physical force against children as punishment within the family, provided that the force is reasonable in the circumstances. Moreover, the Committee notes the insufficient measures taken to address the issue of ill-treatment and abuse, including sexual abuse, within the family, as well as issues of physical and psychological recovery and social reintegration of children victims of such ill-treatment or abuse.

“The Committee recommends that the State party review legislation with regard to corporal punishment of children within the family in order to effectively ban all forms of physical or mental violence, injury or abuse. It further recommends that appropriate mechanisms be established to ensure the physical and psychological recovery and social reintegration of children victims of such ill-treatment and abuse, in the light of article 39 of the Convention.”

### *Committee Against Torture*

(11 June 2004, CAT/C/CR/32/4, Concluding observations on third report, para. 6 (e))

“The Committee recommends that the State party:

- e) implement the recommendations made by the Committee on the Rights of the Child (CRC/C/15/Add.216, paras. 30 and 50) ...”

# NIUE

## Lawfulness of corporal punishment

### Home

Corporal punishment is lawful in the home.

Children are protected from some violence and abuse by the Niue Act (1966, amended 1971).

### Schools

No information.

### Penal system

Corporal punishment is unlawful as a **sentence for crime**. There is no provision for sentencing to corporal punishment in the Niue Act (1966).

We have been unable to ascertain the legality of corporal punishment as a **disciplinary measure** in penal institutions.

### Alternative care

No information.

### Prevalence research

None identified.

# PALAU

## Lawfulness of corporal punishment

### Home

Corporal punishment is lawful in the home. The Constitution states that parents or “individuals acting as parents” are legally responsible for the support and conduct of minor children (article 4). The Legal Code (PNC) (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.”

Children are protected from some violence and abuse by the Child Abuse Statute (PNC Title 21.601.606).

### Schools

Corporal punishment is lawful in schools. The Master Plan for Education (2000) aims to discourage and prevent the use of corporal punishment at primary and secondary levels.

### Penal system

We have been unable to ascertain the legality of corporal punishment as a **sentence for crime** or as a **disciplinary measure** in penal institutions. The Constitution prohibits cruel, inhumane or degrading treatment or punishment.

### Alternative care

Corporal punishment is lawful by guardians and others with parental authority under the PNC and article 4 of the Constitution (see above).

### Prevalence research

None identified.

## Recommendations by human rights treaty bodies

### *Committee on the Rights of the Child*

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

“The Committee notes that the Master Plan for Education (2000) is aimed, inter alia, at strengthening the network of guidance and counselling and at discouraging and preventing the use of physical punishment at both the primary and secondary school levels. The Committee is concerned, however, that corporal punishment is still practised and widely accepted in the State party and that domestic legislation generally does not prohibit and eliminate its use in homes and schools.

“The Committee recommends that the State party take all appropriate measures, including of a legislative nature, to prohibit and eliminate all forms of corporal punishment in schools and in homes. The Committee further suggests that awareness raising and education campaigns be conducted to change public attitudes and ensure that alternative forms of discipline are administered in a manner consistent with the child’s human dignity and in conformity with the Convention, especially articles 19 and 28.2.”



# PAPUA NEW GUINEA

## Lawfulness of corporal punishment

### Home

Corporal punishment is lawful in the home. Article 278 of the Criminal Code Act (1974, in force 1975) states: “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.” Article 42 of the Constitution, concerning the treatment of persons arrested or detained, states: “Subject to any other law, nothing in this section applies in respect of any reasonable act of the parent or guardian of a child, or a person into whose care a child has been committed, in the course of the education, discipline or upbringing of the child.” The use of “excessive force” is an offence under article 281 of the Criminal Code Act.

Children are protected from some violence and abuse by other provisions in the Criminal Code Act.

### Schools

Corporal punishment has been unlawful in schools since the 1970s. Under articles 62 and 66 of the Education Act (1983), the Board of Management or the Board of Governors of an educational institution is responsible for making rules of discipline by suspension, expulsion or the provision of work or services. Similar provisions apply to International Agency Schools, and corporal punishment is not mentioned as a permitted disciplinary measure in the Education (International Agency Schools) Regulation (1985). However, as at April 2005 the defence of “reasonable” force “by way of correction” under article 278 of the Criminal Code Act (see above) had not been repealed or amended.

### Penal system

Corporal punishment is unlawful as a **sentence for crime**. It is not an available sentence under articles 18-21 of the Criminal Code Act or article 30 of the Juvenile Courts Act (1991). The Juvenile Courts Act repeals article 32 of the Child Welfare Act (1961) which allowed for disciplinary punishment of children under 14 by a guardian or other person. There is no explicit prohibition of corporal punishment as a **disciplinary measure** in penal institutions. The Correctional Service Act (1995) provides for the custody, status, care, welfare and discipline of detainees and states that a correctional officer shall “maintain order and discipline with firmness, but with no more restriction or force than is required for safe custody and well-ordered life within the correctional institution ...” (article 111). The Act does not include corporal punishment among permitted disciplinary measures (article 160). The Constitution prohibits “treatment or punishment that is cruel or otherwise inhuman, or is inconsistent with respect for the inherent dignity of the human person” (article 36). However, corporal punishment of children under 16 years in institutions is permitted and regulated by the Child Welfare Act (article 109) and the Child Welfare Regulation (1962) (article 23), and article 278 of the Criminal Code Act (see above) applies. As at April 2005, the Child Welfare Act and the Juvenile Courts Act were under review. The Lukautim Pikinini Bill (2003), intended to replace the Child Welfare Act, states that children have the right to protection from all forms of violence but does not explicitly prohibit corporal punishment. Article 94 of the draft Juvenile Justice Act, intended to replace the Juvenile Courts Act, disallows corporal punishment as a form of discipline on juveniles in institutions.

### Alternative care

Corporal punishment is lawful in other institutions and forms of childcare. Institutions, including mission stations, reformatories, orphanages and other institutions, are covered by the Child Welfare Act. Corporal punishment is lawful under article 109 of the Act and regulated by article 23 of the Child Welfare Regulation. Article 278 of the Criminal Code Act also applies (see above).

### Prevalence research

None identified.

### Recommendations by human rights treaty bodies

#### *Committee on the Rights of the Child*

(30 January 2004, Unedited version CRC/C/15/Add.229, Concluding observations on initial report, paras. 37 and 38 (a and b))

“The Committee is deeply concerned that corporal punishment of children is rather widespread in the State party and not prohibited by law.

“The Committee recommends that the State party:

- a) carry out public education campaigns about the negative consequences of corporal punishment of children, and promote positive, non-violent forms of discipline as an alternative to corporal punishment;
- b) expressly prohibit corporal punishment by law in the family and other institutions.”



# PHILIPPINES

## Lawfulness of corporal punishment

### Home

Corporal punishment is lawful in the home. Article 220 of the Family Code (1987, in force 1988) 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”. Article 45 of the Child and Youth Welfare Code (Presidential Decree 603) (1974, in force 1975) states: “Parents have the right to discipline the child as may be necessary for the formation of his good character, and may therefore require from him obedience to just and reasonable rules, suggestions and admonitions.” Article 74 of the Muslim Personal Law (Presidential Decree 1083) states that in relation to their children parents have “the power to correct, discipline, and punish them moderately”. The Rules and Regulations on the Reporting and Investigation of Child Abuse Cases state in defining cruelty (section 2): “... 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.” The provisions in the Revised Penal Code on serious physical injuries (article 263) state: “The provisions of the preceding paragraph shall not be applicable to a parent who shall inflict physical injuries upon his child by excessive chastisement.” Children are protected from “excessive chastisement” under article 59 of the Child and Youth Welfare Code.

Children are protected from some violence and abuse by Republic Act No. 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act) (1992), the Revised Penal Code, the Family Code, the Domestic Adoption Act (1998) and the Child and Youth Welfare Code.

### Schools

Corporal punishment is prohibited in public and private schools. Article 233 of the Family Code states: “The person exercising substitute parental authority shall have the same authority over the person of the child as the parents. In no case shall the school administrator, teacher or individual engaged in child care exercising special parental authority inflict corporal punishment upon the child.” The prohibition is reiterated in the Public Schools Service Manual (1992) and the Manual of Regulations for Private Schools (section 75, article XIV) (1992).

### Penal system

Corporal punishment is unlawful as a **sentence for crime**. It is not a permitted sanction under the Revised Penal Code. The Rule on Juveniles in Conflict with the Law (Administrative Matter No. 02-1-18-SC) (2002) explicitly prohibits the imposition of corporal punishment (section 30), which is defined as “any kind of physical punishment inflicted on the body as distinguished from pecuniary punishment or fine”. As at April 2005, a Comprehensive Juvenile Justice System Bill was pending in the Congress, under which one of the rights of the child in conflict with the law is “the right not to be imposed corporal punishment” (S. B. No. 1402, Sec. 5[11]).

Corporal punishment is unlawful as a **disciplinary measure** in penal institutions. The Revised Penal Code punishes maltreatment of prisoners (article 235). The Operating Manual of the Bureau of Jail Management and Penology (1994) states in section 3, Rule I: “Penalties to be imposed shall not be cruel, inhuman or degrading. No physical punishment shall be employed as a corrective measure.” The Bureau of Corrections Operating Manual (2000) states that inmates shall be protected against “(a) the imposition of any cruel, unusual or degrading act as a form of disciplinary punishment; (b) corporal punishment” (section 3). The Constitution (1987) prohibits violence and cruel or degrading treatment or punishment (article III, sections 12 (2) and 19).

### Alternative care

Corporal punishment is prohibited in residential institutions under the Standards in the Implementation of Residential Care Services (Administrative Order No. 141) (2002) which state (subsection 1.4): “... Corporal punishment detrimental to the residents’ emotional, psychological and physical development shall never be used.” Corporal punishment is prohibited in day care centres by section 233 of Executive Order No. 209. We have been unable to ascertain the legality of corporal punishment in foster care, though children would be protected from “excessive chastisement” under article 59 of the Child and Youth Welfare Code (see above).

### Prevalence research

Research into children’s experiences of child abuse found that the most abusive acts were those inflicted by parents in the name of discipline and included spanking, being beaten up or mauled (including when a parent uses a wooden stick, belt, bat or broom, incessant beatings, slaps on the face, and being burned with a flat iron), being scolded or punished when the child did nothing wrong, humiliating the child in public, and shouting and cursing at the child. (De la Cruz, T. et al., 2001, *Trust and power: Child abuse in the eyes of the child and the parent*, Manila: UP-CIDS Psychosocial Trauma and Human Rights Program, cited in International Save the Children Alliance, 2004, *How to research the physical and emotional punishment of children: Resource handbook*, Thailand: International Save the Children Alliance, Southeast, East Asia and Pacific Region)

As part of the World Studies of Abuse in the Family Environment (WorldSAFE) cross-national project, researchers looked at incidence rates for corporal punishment as self-reported by mothers covering the period of the previous 6 months. In the Philippines, “severe physical punishment” was reported as follows: hitting the child with an object not on the buttocks 21%, kicking 6%, beating 3%, threatening with a knife or gun 1%, choking 1%. “Moderate physical



punishment” was reported as: spanked buttocks with hand 75%, pinching 60%, hit with object on buttocks 51%, twisted ear 31%, pulled hair 23%, slapped face or head 21%, shook child 20%, hit with knuckles 8%, forced to kneel/stand in uncomfortable position 4%, put hot pepper in mouth 1%. (Reported in Krug, E. G. et al., eds, 2002, *World report on violence and health*, Geneva: World Health Organization)

### **Recommendations by human rights treaty bodies**

#### *Committee on the Rights of the Child*

(3 June 2005, Unedited version, CRC/C/15/Add.258, Concluding observations on second report, paras. 41 42 and 43)

“While noting the State party’s efforts to prohibit the use of corporal punishment in schools, prisons, institutions and forms of childcare by implementing various relevant provisions, the prevalence of corporal punishment in society give cause to serious concern. The Committee is concerned that a provision on corporal punishment is not included in the Child and Youth Welfare Code and regrets that the corporal punishment in the home is not explicitly prohibited by law. “In the light of its General Comment No.1 on the aims of education (CRC/GC/2001/1) and the recommendations adopted by the Committee on its day of general discussion on violence against children within the family and in schools (see CRC/C/111), the Committee reiterates that corporal punishment is not compatible with the provisions of the Convention and it is not consistent with the requirement of respect for the child’s dignity, as specifically required by article 28 paragraph 2 of the Convention. Therefore, the Committee recommends that the State party prohibit by law all forms of corporal punishment in the home, in schools, in private and public institutions, in the juvenile justice system and the alternative care system by law.

“The Committee recommends the State party conduct a comprehensive study to assess the nature and extent of corporal punishment in different settings, including the home environment. Furthermore, the Committee recommends that the State party sensitize and educate parents, guardians and professionals working with and for children by carrying out public educational campaigns about the harmful impact of violent forms of ‘discipline’ and promote positive, non-violent forms of discipline as an alternative to corporal punishment.”

#### *Committee on the Rights of the Child*

(15 February 1995, CRC/C/15/Add.29, Concluding observations on initial report, paras. 14, 24 and 25)

“... [The Committee] notes with concern that the efforts of the Government to combat child abuse and neglect are insufficient, both from the prevention and the sanction point of view. The lack of rehabilitation measures for such children is also a matter of concern....

“The Committee recommends that the State intensify its action against all violence directed at and ill-treatment of children....

“The State party should ensure that adequate procedures and mechanisms to deal with complaints of child ill-treatment are developed, that cases of violations of children’s rights are duly investigated and that the results of such investigations are given publicity.”

#### *Human Rights Committee*

(1 December 2003, CCPR/CO/79/PHL, Concluding observations on second and third reports, para. 17)

“The Committee is concerned that the measures of protection of children are inadequate and the situation of large numbers of children, particularly the most vulnerable, is deplorable. While recognizing that certain legislation has been adopted in this respect, many problems remain in practice, such as:

b) persistent reports of ill-treatment and abuse, including sexual abuse, in situations of detention and children being detained together with adults where conditions of detention may amount to cruel, inhuman and degrading treatment (art.7)....

“The State party should:

a) expedite the adoption of legislation governing juvenile justice which complies with international standards of juvenile justice in accordance with article 10, paragraph 3 of the Covenant. The Committee recommends that training for professionals in the area of administration of juvenile justice be enhanced and that human and financial resources for effective implementation of the new legislation be secured....”

## **REPUBLIC OF KOREA**

### **Lawfulness of corporal punishment**

#### **Home**

Corporal punishment is lawful in the home.

Children have limited protection from violence and abuse under the Child Welfare Act, the Penal Code, the Special Act on Punishment of Domestic Violence and etc, and the Act on Prevention of Domestic Violence and Victim Protection.

#### **Schools**

Corporal punishment is lawful in schools under article 18 of the Act on Primary and Secondary Education. Some schools have prohibited corporal punishment. According to official figures from the Ministry of Education and Human Resources Development in 2003, out of 10,381 schools, 7,536 allow teachers to administer corporal punishment (“7 in 10 schools allow corporal punishment”, Korea Times, Seoul, 14 September 2003).

## Penal system

Corporal punishment is unlawful as a **sentence for crime** under the Penal Code.

Corporal punishment is unlawful as a **disciplinary measure** in penal institutions. The Training School Act (Juvenile Reformatory Act) provides that the head of a training school shall take the necessary measures to prevent possible disturbances or violence (article 14). The only permissible punishment measures are admonition, school service, demerit marks and confinement (article 15).

## Alternative care

There is no explicit prohibition of corporal punishment in other institutions and forms of childcare. There are no legal provisions covering residential care institutions. The provisions against violence and abuse in the Child Welfare Act and the Penal Code apply.

## Prevalence research

In a nationwide survey of 3,228 students conducted by the Korean Federation of Teachers Association in April 2003, 70% said that corporal punishment given by their teachers was fair but that it should be limited to severe cases of insubordination. Students said teachers should not abuse the right to punish students. (Reported in Hae-noon, K., 2003, "Students cite slip in respect for teachers", *Joong Ang Daily*, Seoul, 14 May 2003)

A questionnaire survey of 489 children in grades 4-6 in Korea in autumn 1998 looked at personal opinion on corporal punishment and experience of violence by family members, school teachers or peers in the last year. The rate of corporal punishment by teachers was 62%, while the rate of violence in the family was 68.9%. (Kim, D-H., Kim, K-I. & Park, Y-C., 2000, "Children's experience of violence in China and Korea: A transcultural study", *Child Abuse & Neglect*, vol.24, no.9, pp.1163-1173)

In a national telephone survey of 1,272 people, 91.8% of mothers and 82.9% of fathers approved of corporal punishment of children. (Kim, J. Y., 1998, "A study of correlations between attitudes about domestic violence and violent behaviors", *Korean Family Welfare Studies*, vol.2, pp.87-114, cited in Doe, S. J., 2000, "Cultural factors in child maltreatment and domestic violence in Korea", *Children and Youth Services Review*, vol.22, nos.3/4, pp.231-236)

## Recommendations by human rights treaty bodies

*Committee on the Rights of the Child*

(18 March 2003, CRC/C/15/Add.197, Concluding observations on second report, paras. 7 (d), 38 and 39)

"The Committee regrets that most recommendations in the concluding observations (CRC/C/15/Add.51), adopted following its consideration of the State party's initial report (CRC/C/8/Add.21), have been insufficiently addressed, particularly those regarding:

d) the prohibition of all forms of corporal punishment (para. 22)....

"The Committee notes with great concern that corporal punishment is officially permitted in schools. The Committee is of the opinion that corporal punishment does not conform with the principles and provisions of the Convention, particularly since it constitutes a serious violation of the dignity of the child (see similar observations of the Committee on Economic, Social and Cultural Rights, E/C.12/1/Add.79, para. 36). The fact that the Ministry of Education guidelines leave the decision on whether to use corporal punishment in schools to the individual school administrators suggests that some forms of corporal punishment are acceptable and therefore undermines educational measures to promote positive, non-violent forms of discipline.

"The Committee recommends that the State party:

- a) implement the recommendation of the National Human Rights Commission that the relevant legislation and regulations be amended to expressly prohibit corporal punishment in the home, schools and all other institutions;
- b) carry out public education campaigns about the negative consequences of ill-treatment of children in order to change attitudes to corporal punishment, and promote positive, non-violent forms of discipline in schools and at home as an alternative to such punishment."

*Committee on the Rights of the Child*

(13 February 1996, CRC/C/15/Add.51, Concluding observations on initial report, paras. 15 and 22)

"... With regard to child abuse and domestic violence, the Committee is concerned at the lack of preventive policies and of adequate reporting mechanisms. Abandonment of children, the high rate of child headed families and the persistence of corporal punishment, widely envisaged by parents and teachers as an educational measure, are other subjects of concern to the Committee.

"... The Committee particularly recommends that legislative measures be adopted with a view to ... clearly prohibiting any form of corporal punishment...."



# SAMOA

## Lawfulness of corporal punishment

### Home

Corporal punishment is lawful in the home. Article 12 of the Infants Ordinance (1961) provides for the protection of children under 14 years from ill-treatment and neglect, but article 14 states: “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.” Children are protected from excessive force by article 20 of the Crimes Ordinance (1961).

Other protection is given by the Crimes Ordinance provisions against neglect, assault and bodily harm (articles 77-82).

### Schools

Corporal punishment is reportedly unlawful in schools, but we have been unable to obtain details of any explicit prohibition in law or to ascertain whether article 14 of the Infants Ordinance (see above) has been amended accordingly.

### Penal system

Corporal punishment is unlawful as a **sentence for crime**. Article 7 of the Constitution (1960, amended 2000) provides for freedom from torture or inhuman or degrading treatment or punishment. The Criminal Procedure Act (1972) mentions only deprivation of liberty and financial penalties as sentences for crime (articles 112-122), and repeals the sections of the Crimes Ordinance 1961 on punishments and sentencing.

Corporal punishment is unlawful as a **disciplinary measure** in penal institutions.

### Alternative care

Corporal punishment is lawful in alternative care settings. “Destitute and delinquent children” may be placed in the care of a Child Welfare Officer, who has the same powers as a parent or guardian under the Infants Ordinance (see above).

Children are protected from excessive force by article 20 of the Crimes Ordinance.

### Prevalence research

None identified.

# SINGAPORE

## Lawfulness of corporal punishment

### Home

Corporal punishment is lawful in the home. Article 89 of the Penal Code 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.

Children have limited protection from violence and abuse under the Constitution, the Children and Young Person’s Act (1993, amended 2001), the Women’s Charter (1961, amended 1997), the Penal Code (1871) and the Criminal Procedure Code.

### Schools

Corporal punishment is lawful in schools. Regulation No. 88 under the Schools Regulation Act (1957) states that corporal punishment shall be administered to boys only, on the palms of the hand or the clothed buttocks, and by the principal or authorised person. The Discipline Framework, produced by the Psychological and Guidance Services Branch of the Ministry of Education, emphasises positive discipline and advises that punishment should be used only as a “last course of action”.

### Penal system

Corporal punishment is lawful as a **sentence for crime** for a wide range of offences, including vandalism and traffic offences, as a mandatory sentence in some cases, optional in others. It is regulated by the Penal Code, the Criminal Procedure Act, the Prisons Act and Prison Rules, and articles 227-229 of the Children and Young Persons Act. Under the Children and Young Persons Act, only the High Court can sentence a child or young person below the age of 16 to corporal punishment (article 37). Under the Criminal Procedure Code, a person must be certified medically fit to undergo corporal punishment and a medical officer must be present (article 231). Up to 24 strokes with a rattan (or up to 10 strokes for boys under 16) may be given, usually in a single session to the bare buttocks.

Corporal punishment is lawful as a **disciplinary measure** in penal institutions, including the Singapore Boys Home for boys as young as 13. The Prisons Act allows a juvenile, defined as “any person under the age of 16 years, whether convicted or not, under detention in any prison” (article 2), to be given up to 10 strokes. Under the Prison Rules, caning is



allowed for 10 different breaches of discipline, ranging from attempted escape to repetition of a minor offence. In 1998, a 15-minute video commissioned by the National Crime Prevention Council was sent to over 140 schools to demonstrate the reality of prison life, including caning. Up to six strokes of the cane may also be ordered as a disciplinary measure in Drug Rehabilitation Centres.

### Alternative care

Corporal punishment is explicitly prohibited in child care centres by Regulation 17 of the Child Care Centres Regulations, pursuant to the Child Care Centres Act (1988, revised 1989), which states: "Every operator shall ensure that the staff shall not administer the following disciplinary measures: (a) any form of corporal punishment, including the following: (i) striking a child, directly or with any physical objects; (ii) shaking, shoving, spanking or other forms of aggressive contact; and (iii) requiring or forcing the child to repeat physical movements; (b) harsh, humiliating, belittling or degrading responses of any kind, including verbal, emotional and physical..."

There is no prohibition of corporal punishment in other forms of childcare. In residential institutions corporal punishment may be administered by the home's superintendent or by an authorised person. General provisions against violence and abuse (see above) apply in all settings.

### Prevalence research

A telephone poll of 358 people following the resignation of a school principal for breaking Ministry of Education guidelines on corporal punishment was carried out by the Sunday Times (by the Singapore Press Holdings' research arm in April 2004) and found that seven in 10 favoured corporal punishment, while nine in 10 said parents today were too protective of their children. (Reported in Quek, T., 2004, "Go ahead, cane wayward students", *Sunday Times*, Singapore, 2 May 2004)

A Lifestyle (Sunday Times) poll of 50 people found that nine in 10 think girls are less well-behaved than they used to be and six in 10 approved of corporal punishment for girls. (Reported in Wee, T. C., 2004, "Girls behaving badly", *Sunday Times*, Singapore, 9 May 2004)

An analysis of newspaper reports of caning sentences imposed in 1997-2000 found that of about 360 sentences reported, 30 (8%) involved teenagers. Reported cases are likely to reflect only a fraction of the total, and it was estimated that in total an estimated 280 16-19 year-olds were sentenced to caning during this period. (Farrell, C. et al., 2002, "Judicial Caning in Singapore", [www.corpun.com/singfeat.htm](http://www.corpun.com/singfeat.htm))

### Recommendations by human rights treaty bodies

*Committee on the Rights of the Child*

(27 October 2003, CRC/C/15/Add.220, Concluding observations on initial report, paras. 32, 33, 44 and 45 (d))

"The Committee notes with concern that corporal punishment is permitted by law in the home, schools and institutions and as a form of punishment for male juvenile offenders.

"The Committee recommends that the State party amend its legislation to prohibit corporal punishment in the home, schools, institutions and the juvenile justice system. Furthermore, the Committee recommends that the State party conduct well-targeted public awareness campaigns on the negative impact corporal punishment has on children, and provide training for teachers and personnel working in institutions and youth detention centres on non-violent forms of discipline as an alternative to corporal punishment.

"The Committee is concerned that the minimum age of criminal responsibility is too low, that all persons in conflict with the law under 18 are not afforded special protection, and that corporal punishment and solitary confinement are used to discipline juvenile offenders.

"The Committee recommends that the State party:

d) prohibit the use of corporal punishment, including whipping and caning, and solitary confinement in all detention institutions for juvenile offenders, including police stations...."

## SOLOMON ISLANDS

### Lawfulness of corporal punishment

#### Home

Corporal punishment is lawful in the home. Article 233 of the Penal Code addresses cruelty to children but also states: "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." Children are protected from excessive force by article 235.

#### Schools

Corporal punishment is lawful in schools under article 233 of the Penal Code (see above).

#### Penal system

Corporal punishment is unlawful as a **sentence for crime**. There is no provision for corporal punishment as a sentence in the Penal Code or the Criminal Procedure Act. Protection from inhuman or degrading treatment or punishment is given by article 7 of the Constitution.

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There is no explicit prohibition of corporal punishment as a **disciplinary measure** in penal institutions. Article 233 of the Penal Code (see above) possibly applies and children and young persons would be protected from excessive force by article 235 (see above).

#### Alternative care

Corporal punishment is lawful in the alternative care system where articles 233 and 235 of the Penal Code (see above) apply.

#### Prevalence research

None identified.

#### Recommendations by human rights treaty bodies

*Committee on the Rights of the Child*

(2 July 2003, CRC/C/15/Add.208, Concluding observations on initial report, paras. 30 (a, b and c) and 31 (a, b and c))

“The Committee is concerned that:

- a) corporal punishment is widely practised in the family, schools and other institutions such as prisons and in alternative care contexts;
- b) there is insufficient knowledge about ill-treatment of children, including on the part of State agents;
- c) acts of violations against the mother and/or other members of the family frequently take place in the presence of children.

“The Committee recommends that the State party:

- a) take all legislative and other measures to prohibit all forms of physical and mental violence, including corporal punishment, against children in the family, schools, and in all other contexts;
- b) conduct a study to assess the nature and extent of ill-treatment of children, and design policies and programmes to address it, including with international cooperation;
- c) carry out public education campaigns about the negative consequences of ill-treatment of children and promote positive, non-violent forms of discipline as an alternative to corporal punishment; ...”

## TAIWAN

### Lawfulness of corporal punishment

#### Home

Corporal punishment is lawful in the home.

Children are protected from some violence and abuse by the Child Welfare Law (1993).

#### Schools

Corporal punishment is forbidden by the Ministry of Education as a matter of policy but it is not prohibited in law.

#### Penal system

Corporal punishment is reportedly lawful as a **sentence for crime** and as a **disciplinary measure** in penal institutions, but we have been unable to obtain definitive confirmation.

#### Alternative care

No information.

#### Prevalence research

A survey by the Humanistic Education Foundation in 2004 found that corporal punishment continues to be used in elementary and junior high schools across Taiwan. 1,311 students in 62 junior high schools and 159 primary schools were polled, and spanking and other forms of corporal punishment (including an imposed painful posture, increase of schoolwork, labour service, slappings, fining, tagging, shaven heads, and public ridicule) were reported in nine out of 10 schools. 70% of students had been given corporal punishment in the school year so far. Spanking was the most common form of corporal punishment. 72% of students reported having seen teachers spank students; only 11% reported never seeing their teachers give corporal punishment. Reasons for punishment included disobedience and poor schoolwork, and group punishment was also reported. About 14% of students said teachers demanded that parents agree to corporal punishment. 33% said they ought to be punished for disobedience; 29% said they were afraid of corporal punishment; 20% wanted to avenge themselves on the teachers; 13% believed teachers punished them to vent their frustration; and 65% said if they became teachers they would spank their students. (Reported in “Spanking goes on in schools despite law”, *China Post*, Taipei, 2 April 2004)



# THAILAND

## Lawfulness of corporal punishment

### Home

Corporal punishment is lawful in the home.

Children are protected from some violence and abuse by the Penal Code (amended 2003) and the Child Protection Act (2003).

### Schools

Corporal punishment is unlawful in schools. It is not among permitted disciplinary measures in article 65 of the Child Protection Act (2003).

### Penal system

Corporal punishment is lawful as a **sentence for crime** and as a **disciplinary measure** in penal institutions. Children over the age of 14 may be subject to reduced sentences of the Penal Code. According to the initial state party report to the Human Rights Committee (CCPR/C/THA/2004/1, para. 186), Thailand's punishment does not include flogging, although whipping is permitted against prisoners who breach rules of discipline under the Correction Act (1936).

However, the Establishment of Juvenile and Family Court and Procedure Act (1991) allows courts to order children and young people in observation and protection centres to be flogged up to 12 times as a punishment for committing a criminal offence, and this may be ordered in lieu of a fine. The law also allows the Director of an observation and protection centre to order a child to be flogged for disciplinary breaches.

In 2001 a Youth and Family Court and Prosecution Act was issued which provides for juvenile justice, but we have been unable to obtain details of its provisions. In 2003, the Justice Ministry proposed banning caning and solitary confinement in youth observation and protection centres for young offenders. The proposals were to be considered by the Cabinet in July 2003.

### Alternative care

Corporal punishment is lawful in other institutions and forms of childcare. The provisions against violence and abuse in the Child Protection Act apply.

### Prevalence research

A survey in 2001 of 9,488 young people aged 1-18 years in 16 provinces, reported by the Thailand Research Fund, found that 45.9% of children were verbally and physically attacked by their parents and elder relatives. (Reported in the *Bangkok Post*, 1 October 2003, cited in International Save the Children Alliance, 2004, *How to research the physical and emotional punishment of children: Resource Handbook*, Bangkok, Thailand: International Save the Children Alliance)

### Recommendations by human rights treaty bodies

*Committee on the Rights of the Child*

(26 October 1998, CRC/C/15/Add.97, Concluding observations on initial report, para. 21)

“The Committee notes the State party's efforts to prohibit the use of corporal punishment in schools. It is concerned, however, that corporal punishment is still practised and that domestic legislation does not prohibit its use within the family, the juvenile justice and alternative care systems and generally within the society. In this regard, the Committee recommends that the State party take all appropriate measures, including of a legislative nature, to prohibit corporal punishment within the family, the juvenile justice and alternative care systems and generally within the society. It further suggests that awareness-raising campaigns be conducted to ensure that alternative forms of discipline are administered in a manner consistent with the child's human dignity and in conformity with the Convention, especially article 28.2.”

# TIMOR-LESTE, DEMOCRATIC REPUBLIC OF

## Lawfulness of corporal punishment

### Home

Corporal punishment is lawful in the home.

Articles 351-358 of the Indonesian Penal Code prohibit maltreatment – intentional injury to health, serious or light, with or without premeditation, with the punishment increased if committed against one's child. Article 18 of the Constitution states: “(1) Children shall be entitled to special protection by the family, the community and the State, particularly against all forms of abandonment, discrimination, violence, oppression, sexual abuse and exploitation. (2) Children 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.” As at April 2005, a draft Domestic Violence Law was under discussion and a Children's Code was being drafted with the support of UNICEF.



## Schools

Corporal punishment is lawful in schools. A draft Education policy refers to the “promotion of nonviolent and positive disciplining methods in schools” and the Ministry of Education is committed to addressing the issue of corporal punishment.

## Penal system

Corporal punishment is unlawful as a **sentence for crime** and as a **disciplinary measure** in penal institutions. The Constitution prohibits the use of torture and cruel, inhuman or degrading treatment. Under the UNTAET (UN Transitional Administration in East Timor) Rules of Criminal Procedure 2000/30 (revision 2001/25) all suspects and accused have the right “to be free from any form of coercion, duress or threat, torture, or any other form of cruel, inhuman or degrading treatment or punishment.” UNTAET Regulation 2001/23 on the Establishment of Prison Service states that no person under any form of detention or imprisonment shall be subjected to torture or cruel, inhuman or degrading treatment or punishment, and corporal punishment is not among the list of permitted disciplinary measures. Section 2 of the Regulation states that every penal institution shall be operated in accordance with the principles of international instruments, including the UN Convention on the Rights of the Child and the UN Rules for the Protection of Juveniles Deprived of their Liberty.

## Alternative care

There is no explicit prohibition in law of corporal punishment in other institutions and forms of childcare. From April 2005, Policy and Procedures for Child Care Centres and Boarding Houses are being launched which prohibit corporal punishment and physical abuse in child care centres, orphanages and boarding houses.

## Prevalence research

In a survey by UNICEF of more than 500 children aged 9-17 years, carried out in 2001, 53% of children said “my parents beat me when I do something wrong”; 44% said that people hit each other in their homes; and while 87% of children found it easy to talk to their teachers about school related problems, among the remaining children 34% stated the reason they found it difficult to talk to teachers was because “they beat me”. (UNICEF, 2001, *Speaking Out! Voices of Children and Adolescents in East Asia and the Pacific*)

# TONGA

## Lawfulness of corporal punishment

### Home

Corporal punishment is lawful in the home.

Children have limited protection from violence and abuse under the Criminal Offences Act.

### Schools

No information.

### Penal system

Corporal punishment is lawful as a **sentence for crime**. The sentences available under the Criminal Offences Act (article 24) are payment of compensation, fine, whipping, imprisonment and death. Under article 31 (as amended in 1984 and 1987), the sentence of whipping can be given to males only. In the case of offenders under the age of 16, “the total number of strokes to which he is sentenced shall not exceed 20 ... no person who has been whipped shall be again whipped within 14 days” and it should be “inflicted on the breech with a light rod or cane composed of tamarind or other twigs”. Offenders aged 16-17 years are treated as adults and may be given up to 26 strokes, administered “on the breech with a cat of a pattern approved by the Cabinet”. A doctor or government medical assistant must certify that there is “no mental or physical impairment of the offender such as to render him unfit to undergo such punishment”. Articles 130 and 142 allow juvenile offenders to be whipped in place of or in addition to imprisonment for certain offences against the person. There is no explicit prohibition of corporal punishment as a **disciplinary measure** in penal institutions.

### Alternative care

No information.

### Prevalence research

None identified.

# TUVALU

## Lawfulness of corporal punishment

### Home

Corporal punishment is lawful in the home. The maintenance of family discipline is one of the principles of the Constitution (principle 4). Cruelty to children is addressed in article 226 of the Penal Code, but this also states: “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.” Article 228 protects children from “excessive force”.

### Schools

Corporal punishment is lawful in schools under article 226 of the Penal Code (see above), with children protected from excessive force by article 228.

### Penal system

Corporal punishment is unlawful as a **sentence for crime**. Article 19 of the Constitution states that “no-one shall (c) be tortured; or (d) given inhuman or degrading punishment or treatment”. There is no provision for corporal punishment as a sentence for crime in the Penal Code. Article 39 deals specifically with offenders under the age of 16 years and does not allow for corporal punishment.

There is no explicit prohibition of corporal punishment as a **disciplinary measure** in penal institutions. Articles 226 and 228 of the Penal Code (see above) may apply.

### Alternative care

There is no explicit prohibition of corporal punishment in other institutions and forms of childcare. Articles 226 and 228 of the Penal Code (see above) apply.

### Prevalence research

None identified.

# VANUATU

## Lawfulness of corporal punishment

### Home

Corporal punishment is lawful in the home.

Children are legally protected from violence and ill-treatment by the Penal Code (1981). In 2001, a Family Protection Bill was resubmitted to Parliament.

### Schools

Corporal punishment has been prohibited in schools since 1998. Under the Education Act (2001), the Director General must prepare discipline guidelines for schools which “must not permit corporal punishment of students attending schools” (article 38).

### Penal system

Corporal punishment is unlawful as a **sentence for crime**. It is not among permitted punishments for crime in the Criminal Procedure Code. Corporal punishment of children is used in rural areas as a traditional form of punishment favoured by chiefs, but we have been unable to obtain further details of such traditional practices.

Corporal punishment is reportedly unlawful as a **disciplinary measure** in penal institutions, but we have been unable to obtain confirmation. Children are often whipped by police at police stations rather than having their cases pursued through the courts.

### Alternative care

There is no explicit prohibition of corporal punishment in other institutions and forms of childcare.

### Prevalence research

Research conducted for Pacific Children’s Program by a team from the University of South Pacific found that corporal punishment is common and can be severe. The rationale for its use is to “teach children about correct thinking and appropriate behaviour”, although it is often administered in anger. The most common type of punishment is “whipping”, used in the home and in schools. (Hughes, D., 2002, *Qualitative Study on Child Protection Practices: Vanuatu Report*, University of South Pacific, Report prepared for International Development Support Services, Pacific Children’s Program)



## Recommendations by human rights treaty bodies

*Committee on the Rights of the Child*

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

“While the Committee is aware that corporal punishment is prohibited by law in schools, it remains concerned that traditional societal attitudes continue to encourage the use of such punishment within the family, in schools, care and juvenile justice systems and generally in society. The Committee recommends that the State party reinforce measures to raise awareness on the negative effects of corporal punishment and ensure that alternative forms of discipline are administered in families, schools, and care and other institutions, in a manner consistent with the child’s dignity and in conformity with the Convention. In this connection, the Committee recommends that the State party provide counselling and other programmes for parents, teachers and professionals working in institutions to encourage their use of alternative forms of punishment. In addition, the Committee strongly recommends that all necessary measures be taken to ensure the full and effective implementation of the ban on corporal punishment in schools.”

# VIET NAM

## Lawfulness of corporal punishment

### Home

Corporal punishment is lawful in the home.

Under the Law on the Protection, Care and Education of Children (amended 2004), parents should respect the life, physical safety, dignity and honour of children, and ill-treatment, humiliation and neglect are prohibited. Further protection from violence and abuse is given by the Penal Code (1999), the Law on Marriage and the Family (article 26) and the Constitution (1980). Article 32 of the Civil Code (1996) states that individuals have the “right to safety of life, health and body”.

### Schools

There is no explicit prohibition of all forms of corporal punishment in schools. Article 108 of the Education Law (1998) states that any person who mistreats or persecutes learners in a school or other educational establishment may be subject to disciplinary or administrative sanctions or examined for penal liability. Decree No. 49/2005/NDD-CP on Handling Administrative Violations in the Field of Education, issued in April 2005, provides for administrative sanctions for people who physically harm learners. Teachers are prohibited from causing physical harm to learners in the Education Bill, and protection from harm is also provided by the Law on the Protection, Care and Education of Children.

### Penal system

Corporal punishment is unlawful as a **sentence for crime** and as a **disciplinary measure** in penal institutions. Article 7 of the Law on the Protection, Care and Education of Children prohibits acts of “applying measures that offend or lower the honor or dignity of, or applying corporal punishments to, juvenile offenders”. Article 298 of the Penal Code punishes those who inflict corporal punishment on persons in penal institutions, including persons under the age of 18 years. Article 298 of the Penal Code punishes “those who apply corporal punishment in investigating, prosecuting, adjudicating and/or judgement-executing activities”.

### Alternative care

There is no prohibition of corporal punishment in other institutions. The provisions against violence and abuse in the Law on the Protection, Care and Education of Children, the Penal Code and the Civil Code (see above) apply.

## Prevalence research

None identified.

## Recommendations by human rights treaty bodies

*Committee on the Rights of the Child*

(18 March 2003, CRC/C/15/Add.200, Concluding observations on second report, paras. 33 and 34 (e and f))

“The Committee is concerned that children in the State party are subject to various forms of violence and ill-treatment, including child abuse and neglect, and corporal punishment.

“The Committee recommends that the State party:

e) explicitly prohibit corporal punishment in the home, schools and all other institutions;

f) carry out public education campaigns about the negative consequences of ill-treatment of children, and promote positive, non-violent forms of discipline as an alternative to corporal punishment.”

# DEPENDENT TERRITORIES

## CHINA – HONG KONG SPECIAL ADMINISTRATIVE REGION

### Lawfulness of corporal punishment

#### Home

Corporal punishment is lawful in the home.

Children have some protection from violence and abuse under the Protection of Children and Juveniles Ordinance (1951, amended 1997), the Domestic Violence Ordinance, the Offences Against the Person Ordinance (1950), the Crimes Ordinance (1971) and the Protection of Women and Juveniles Ordinance.

#### Schools

Corporal punishment is prohibited by Regulation 58 of the Education Regulations (1991) which states: “No teacher shall administer corporal punishment to a pupil.”

#### Penal system

Corporal punishment is unlawful as a **sentence for crime**. It is not a permitted sentencing option under section 15 of the Juvenile Offenders Ordinance (1950, amended 2003) or the Criminal Procedure Ordinance. The Bill of Rights Ordinance (1991) provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (section 8, article 3).

Corporal punishment is prohibited as a **disciplinary measure** in penal institutions. It is not among permitted disciplinary measures in Rule 63 of the Prison Rules (1954, amended 1997), Rule 12 of the Reformatory School Rules (1959, amended 1990), section 19 of the Rehabilitation Centres Regulation (2001) and Regulation 16 of the Detention Centre Regulations (1972, amended 1990). It is explicitly prohibited in approved institutions by Rule 37 of the Probation of Offenders Rules, which states: “(2) (a) No corporal punishment of any kind shall be inflicted on a probationer in an approved institution; (b) For the purpose of this rule the term ‘corporal punishment’ includes striking, cuffing or shaking or the intentional infliction of any form of physical pain as a means of punishment.” Article 6 of the Bill of Rights Ordinance states: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

#### Alternative care

Corporal punishment is prohibited in childcare centres under Regulation 15 of the Child Care Services Regulations (1976) which states: “No person shall administer corporal punishment to a child in a centre.” Regulation 45R similarly prohibits its use in mutual help child care centres.

In other forms of childcare corporal punishment appears to be lawful as for parents. The Protection of Children and Juveniles Ordinance, providing for the powers of juvenile courts in relation to guardianship and custody and control of children in need of care and protection, states that “any person or institution to whose care a child or juvenile is committed under this section shall, whilst the order is in force, have the like control over the child or juvenile as the parent” (section 34, para. 4). The Protection of Children and Juveniles (Places of Refuge) Regulations (1993) provide for the power of the Director of Social Welfare to approve rules made by places of refuge not wholly funded by public funds and states that this power “shall not be deemed to authorize the making or approval of any rules for the punishment, restraint or correction of any person other than such punishment, restraint or correction as a parent could lawfully administer to a child” (Regulation 7).

#### Prevalence research

In a 1997 study by the Chinese University of Hong Kong, 46% of parents admitted “severe abuse” of their children, defined as kicking, biting, punching, hitting or trying to hit with an object or threatening or using an object. More than half said they had used general abuse such as spanking, shoving, pushing or throwing things during family conflicts. (Chinese University of Hong Kong, 1999, “Prevalence and correlates of physical abuse in Hong Kong Chinese adolescents: a population based approach, 1997”, *Child Abuse & Neglect*, vol.23, no.8)

The first Community Survey of Family Violence in Hong Kong, in 1995, interviewing over 1,000 households, found that almost half the children aged under 16 years had been victims of severe violence (kicked, hit with fist, beaten with implement, etc.) during the year surveyed; 45.6% of parents (36.4% fathers and 50.7% mothers) admitted to hitting or trying to hit their child with an object. (Tang, C.S., 1998, “The rate of physical child abuse in Chinese families: a community survey in Hong Kong”, *Child Abuse & Neglect*, vol.22, no.5, pp.381-391, cited in Krug, E. G. et al., eds, 2002, *World report on violence and health*, Geneva: World Health Organization)

Another study revealed that once children reach the age of 6 years, strict discipline is often imposed, with 47% of respondents believing it acceptable to smack the child’s bottom and 46% to smack the child’s hand. (O’Brien, C. & Lau, L. S. W., 1995, “Defining child abuse in Hong Kong”, *Child Abuse Review*, vol.4, pp.38-46, cited in Hesketh, T., Hong, Z. S. & Lynch, M. A., 2000, “Child abuse in China: the views and experiences of child health professionals”, *Child Abuse & Neglect*, vol.24, no.6, pp.867-872)





## Recommendations by human rights treaty bodies

### *Committee on the Rights of the Child*

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

“The Committee wishes to acknowledge once again the important efforts taken to deal with the question of child abuse. Notwithstanding this, the Committee is of the view that the prevention of this violation of children’s rights requires further attitudinal changes in society, not only as regards the non-acceptance of corporal punishment and physical and psychological abuse but also greater respect for the inherent dignity of the child.”

### *Committee Against Torture*

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

“The Committee recommends that the Government of the United Kingdom take the following measures:

i) reconsidering corporal punishment with a view to determining if it should be abolished in those dependencies that still retain it.”

## CHINA – MACAO SPECIAL ADMINISTRATIVE REGION

### Lawfulness of corporal punishment

#### Home

Corporal punishment is lawful in the home.

Children have some protection from violence and abuse under the Criminal Code, the Civil Code and the Constitution of China (1982).

#### Schools

No information.

#### Penal system

Corporal punishment is unlawful as a **sentence for crime**. Juvenile justice is governed by Decree-Law 65/99/M concerning educational and social regimes (1999). Children aged between 12 and 16 may be subject to educational measures which do not include corporal punishment (article 7). Children below the age of 12 may be subject to social protection measures (article 77). From the age of 16, a young person may be sentenced to reduced measures applicable to adults under criminal law (Code of Criminal Procedure). Article 28 of the Basic Law prohibits torture or other cruel, inhuman or degrading treatment or punishment. Articles 234-238 of the Criminal Code prohibit torture or other cruel, inhuman or degrading treatment by a public official, including any act by which severe physical or psychological pain or suffering is inflicted on a person.

We have been unable to ascertain the legal status of corporal punishment as a **disciplinary measure** in penal institutions.

#### Alternative care

No information.

#### Prevalence research

None identified.

## FRANCE – FRENCH POLYNESIA (France overseas territory)

We have been informed that French law applies in the overseas departments, including the Penal and Civil Codes, but this requires explicit confirmation in the case of French Polynesia. The following information is based primarily on the assumption of the application of French law.

### Lawfulness of corporal punishment

#### Home

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

Children have limited protection from violence and abuse under the Criminal Code, the Civil Code, and French Act No. 2004-1 on Childcare and Protection (2004).

#### Schools

Corporal punishment is reportedly prohibited in schools, but there is no explicit prohibition in law and it would seem that “light correction” is tolerated as for parents.



### Penal system

Corporal punishment is unlawful in the penal system.

### Alternative care

Corporal punishment is not explicitly prohibited in other institutions and forms of care but prosecution is possible under the Criminal Code.

### Prevalence research

None identified.

## FRANCE – NEW CALEDONIA (France overseas territory)

We have been informed that French law applies in the overseas departments, including the Penal and Civil Codes, but this requires explicit confirmation in the case of New Caledonia. The following information is based on the assumption of the application of French law.

### Lawfulness of corporal punishment

#### Home

Corporal punishment is lawful in the home, under the parental “right of correction” in customary law. Children have limited protection from violence and abuse under the Criminal Code, the Civil Code, and French Act No. 2004-1 on Childcare and Protection (2004).

#### Schools

Corporal punishment is reportedly prohibited in schools, but there is no explicit prohibition in law and it would seem that “light correction” is tolerated as for parents.

### Penal system

Corporal punishment is unlawful in the penal system.

### Alternative care

Corporal punishment is not explicitly prohibited in other institutions and forms of care but prosecution is possible under the Criminal Code.

### Prevalence research

None identified.

## FRANCE – WALLIS AND FUTUNA ISLANDS (France overseas territory)

We have been informed that French law applies in the overseas departments, including the Penal and Civil Codes, but this requires explicit confirmation in the case of Wallis and Futuna Islands. The following information is based on the assumption of the application of French law.

### Lawfulness of corporal punishment

#### Home

Corporal punishment is lawful in the home, under the parental “right of correction” in customary law. Children have limited protection from violence and abuse under the Criminal Code, the Civil Code, and French Act No.2004-1 on Childcare and Protection (2004).

#### Schools

Corporal punishment is reportedly prohibited in schools, but there is no explicit prohibition in law and it would seem that “light correction” is tolerated as for parents.

### Penal system

Corporal punishment is unlawful in the penal system.

### Alternative care

Corporal punishment is not explicitly prohibited in other institutions and forms of care but prosecution is possible under the Criminal Code.

### Prevalence research

None identified.



## NEW ZEALAND – TOKELAU (New Zealand territory)

### Lawfulness of corporal punishment

#### Home

Corporal punishment is lawful in the home.

Children have some protection from violence and abuse under the Criminal Law provisions of the Niue Act (1966, amended 1971), which apply to Tokelau (Tokelau Crimes Regulations, 1975, article 2).

#### Schools

No information.

#### Penal system

Corporal punishment is unlawful as a **sentence for crime**. There is no provision for corporal punishment as a sentence in the Niue Act (1966), which applies to Tokelau.

We have been unable to ascertain the legality of corporal punishment as a **disciplinary measure** in penal institutions.

#### Alternative care

No information.

#### Prevalence research

None identified.

## UK – PITCAIRN ISLANDS (UK overseas territory)

### Lawfulness of corporal punishment

#### Home

Corporal punishment is prohibited in the home. Section 7 of the Children Ordinance (2003) states: “Nothing in this ordinance shall be construed as conferring the right on any parent, teacher or other person having lawful control or charge of a child to strike him or her or otherwise use force upon him or her for the purpose of discipline or punishment.”

#### Schools

Corporal punishment is prohibited in schools under section 7 of the Children Ordinance (see above).

#### Penal system

Corporal punishment is unlawful as a **sentence for crime** and as a **disciplinary measure** in penal institutions. Section 7 of the Children Ordinance (see above) applies.

#### Alternative care

Corporal punishment is unlawful in other institutions and forms of childcare under section 7 of the Children Ordinance (see above).

#### Prevalence research

None identified.

#### Recommendations by human rights treaty bodies

##### *Committee on the Rights of the Child*

(16 October 2000, CRC/C/15/Add.135, Concluding observations on initial report, paras. 35 and 36)

“The Committee expresses grave concern that corporal punishment is still widely practised in many of the Overseas Territories and that domestic legislation generally does not prohibit and eliminate its use in schools, care institutions and homes....

“The Committee recommends that all appropriate measures, including of a legislative nature, be taken to prohibit and eliminate all forms of corporal punishment within the school, juvenile justice and alternative care systems and in the home. The Committee further suggests that awareness raising and education campaigns be conducted to change public attitudes and ensure that alternative forms of discipline are administered in a manner consistent with the child’s human dignity and in conformity with the Convention, especially articles 19 and 28.2.”

##### *Committee on Economic, Social and Cultural Rights*

(5 June 2002, E/C.12/1/Add.79, Concluding observations on fourth report of UK, the Crown Dependencies and the Overseas Dependent Territories, para. 36)

“Given the principle of the dignity of the individual, which provides the foundation for international human rights law

(see paragraph 41 of the Committee's General Comment No.13) and in the light of article 10.1 and 10.3 of the Covenant, the Committee recommends that the physical punishment of children in families be prohibited, in line with the recommendation of the Committee on the Rights of the Child (see paragraph 31 of the 1995 concluding observations of that Committee (CRC/C/15/Add.34))."

#### *Committee Against Torture*

(17 November 1998, A/54/44, Concluding observations on third report, para. 74)

"Positive aspects:

d) the removal of corporal punishment as a penalty in several of the Dependent Territories."

#### *Committee Against Torture*

(9 July 1996, A/51/44, Concluding observations on second report, para. 65)

"The Committee recommends that the Government of the United Kingdom take the following measures:

i) reconsidering corporal punishment with a view to determining if it should be abolished in those dependencies that still retain it."

#### *Committee Against Torture*

(26 June 1993, A/48/44, Concluding observations on initial report, para. 283)

"... The territories appeared to be governed in accordance with the obligations in the Convention and the Committee congratulated the Government of the United Kingdom in this respect. The Committee was, however, interested in receiving more detail pertaining to cases of corporal punishment in the territories retaining it. The nature and incidence of such punishment, together with details of the crime and the characteristics of the offender, should be forwarded to the Committee when the information is gathered..."

## UNITED STATES – AMERICAN SAMOA (US territory)

### Lawfulness of corporal punishment

#### Home

Corporal punishment is lawful in the home. The Juvenile Justice Law provides for "reasonable" corporal punishment by parents. Subsection 20 of section 45.0103 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". Under subsection 18, legal custody of a child entails the duty to discipline. According to section 45.0361, this duty applies to "any individual, agency, or institution vested by the court with legal custody of a child". The Juvenile Justice Law also covers child abuse (section 45.2001) but 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 section 46.3311 of the Criminal Law, the use of force is permitted "to promote the welfare of a minor" or "to maintain reasonable discipline in a school, class or other group". 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". Children have limited protection from violence and abuse under provisions in the Criminal Justice Law.

#### Schools

Corporal punishment is lawful in schools under the provision for "reasonable discipline" in the Criminal Law, section 46.3311 (see above). It was prohibited in public schools by Education Department policy in 1998.

#### Penal system

Corporal punishment is unlawful as a **sentence for crime**. Section 6 of the Constitution prohibits "cruel or unusual punishments", and corporal punishment is not a permitted punishment for crime under the Criminal Justice Law. Corporal punishment is not a listed **disciplinary measure** in prisons under the Criminal Justice Law, but there would appear to be no explicit prohibition of all corporal punishment in penal institutions for young offenders. Section 46.3311 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".

#### Alternative care

Corporal punishment is lawful in other institutions and forms of childcare under section 45.0361 of the Juvenile Justice Law applying to those with legal custody of the child (see above).

#### Prevalence research

None identified.

#### Recommendations by human rights treaty bodies

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



## UNITED STATES – GUAM (US territory)

### Lawfulness of corporal punishment

#### Home

Corporal punishment is lawful in the home.

#### Schools

Corporal punishment is lawful in schools. The policy published by the Education Policy Board (last amended 1991) states that it must be used only as a last resort, only by the principal, and only for children whose parents sign a notarised consent form. In 2003, the Board was considering revising the policy such that enrolment into the public school system would itself constitute consent by parents for corporal punishment.

#### Penal system

Corporal punishment is unlawful as a **sentence for crime** and as a **disciplinary measure** in penal institutions.

#### Alternative care

No information.

#### Prevalence research

None identified.

#### Recommendations by human rights treaty bodies relating to US territories

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

## UNITED STATES – NORTHERN MARIANA ISLANDS (commonwealth in political union with US)

### Lawfulness of corporal punishment

#### Home

Corporal punishment is lawful in the home.

#### Schools

No information.

#### Penal system

Corporal punishment is unlawful as a **sentence for crime**. We have been unable to ascertain its legality as a **disciplinary measure** in penal institutions.

#### Alternative care

No information.

#### Prevalence research

None identified.

#### Recommendations by human rights treaty bodies

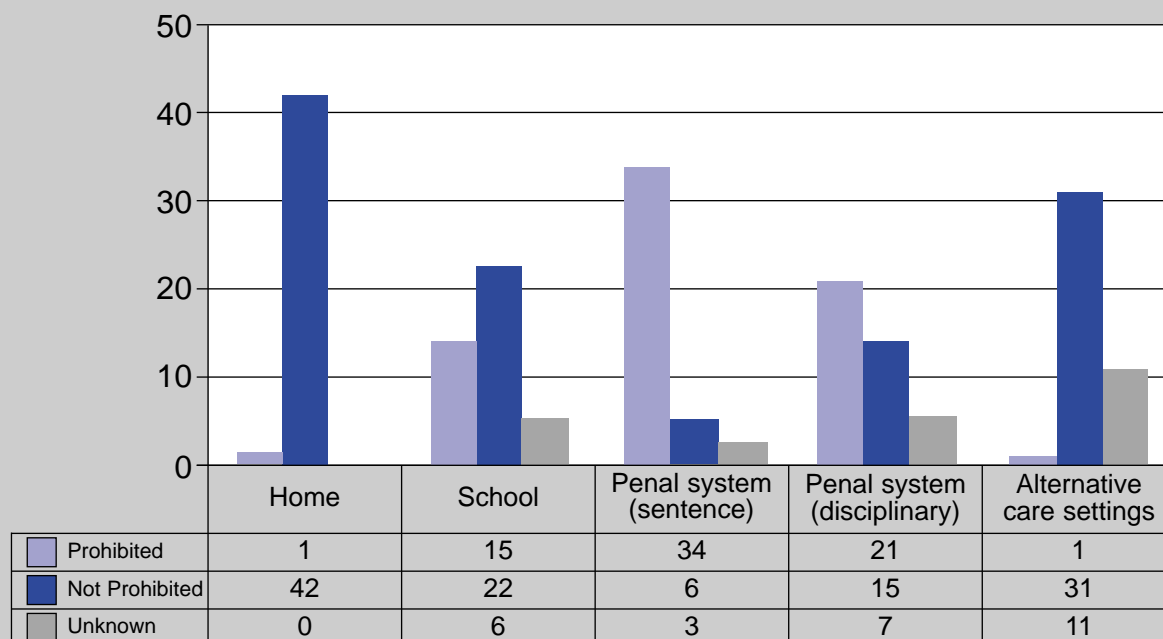
The US has signed but not ratified the Convention on the Rights of the Child.

# SUMMARY TABLE LEGAL STATUS OF CORPORAL PUNISHMENT OF CHILDREN

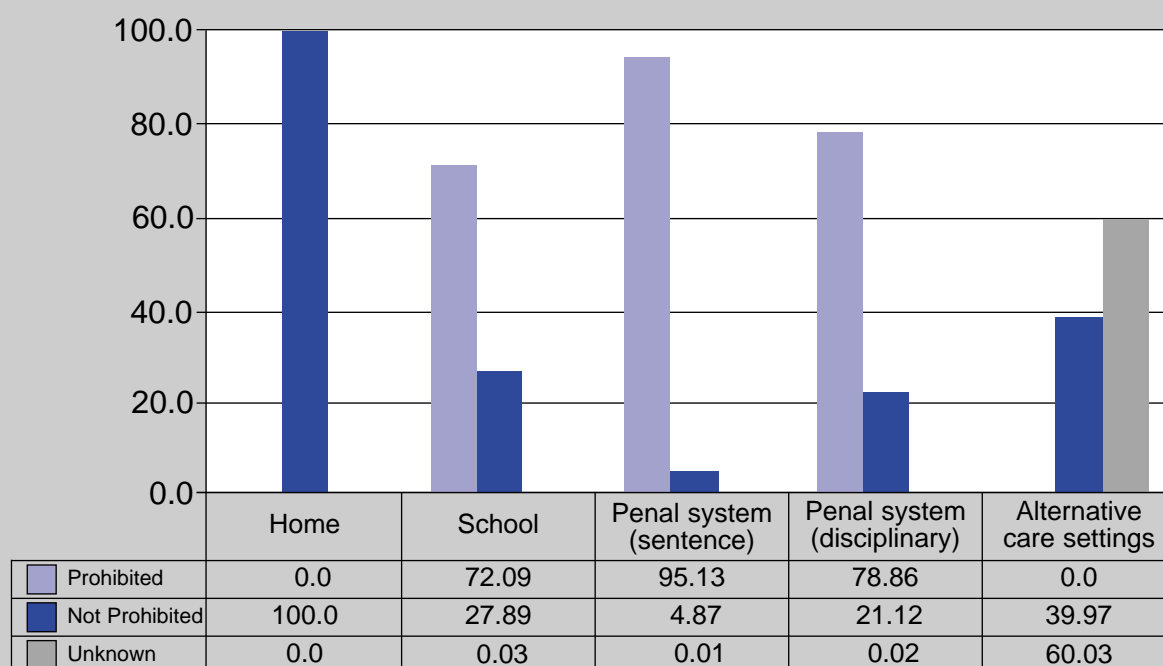
	Prohibited in the home	Prohibited in schools	Prohibited in the penal system As a sentence for crime	Prohibited in the penal system As a disciplinary measure in penal institutions	Prohibited in alternative care
Australia	NO	SOME <sup>1</sup>	YES	NO <sup>2</sup>	SOME <sup>3</sup>
Brunei Darussalam	NO	NO	NO	NO	NO
Cambodia	NO	NO <sup>4</sup>	YES	YES	NO <sup>5</sup>
China	NO	YES	YES	YES	?
Cook Islands	NO	NO	?	?	NO
Democratic People's Republic of Korea	NO	NO <sup>6</sup>	YES	YES	?
Fiji	NO	YES <sup>7</sup>	YES <sup>8</sup>	YES <sup>9</sup>	NO
Indonesia	NO	NO	YES <sup>10</sup>	NO	NO
Japan	NO	YES	YES	YES	SOME <sup>11</sup>
Kiribati	NO	YES	YES	NO	NO
Lao People's Democratic Republic	NO	NO	YES	YES	NO
Malaysia	NO	NO	NO	NO	NO
Marshall Islands	NO	YES	YES	YES	NO
Micronesia, Federated states of	NO	YES <sup>12</sup>	YES	NO	NO
Mongolia	NO	YES	YES	YES	?
Myanmar	NO	NO <sup>13</sup>	YES	NO	NO
Nauru	NO	?	?	?	?
New Zealand	NO	YES	YES	YES	SOME <sup>14</sup>
Niue	NO	?	YES	?	?
Palau	NO	NO	?	?	NO
Papua New Guinea	NO	YES <sup>15</sup>	YES	NO <sup>16</sup>	NO
Philippines	NO	YES	YES	YES	SOME <sup>17</sup>
Republic of Korea	NO	NO	YES	YES	NO
Samoa	NO	YES <sup>18</sup>	YES	YES	NO
Singapore	NO	NO <sup>19</sup>	NO	NO	SOME <sup>20</sup>
Solomon Islands	NO	NO	YES	NO	NO
Taiwan	NO	NO <sup>21</sup>	NO <sup>22</sup>	NO <sup>23</sup>	?
Thailand	NO	YES	NO <sup>24</sup>	NO <sup>25</sup>	NO
Timor-Leste, Democratic Republic of	NO	NO	YES	YES	NO <sup>26</sup>
Tonga	NO	?	NO	NO	?
Tuvalu	NO	NO	YES	NO	NO
Vanuatu	NO	YES	YES <sup>27</sup>	YES <sup>28</sup>	NO
Viet Nam	NO	NO	YES	YES	NO
China - Hong Kong	NO	YES	YES	YES	SOME <sup>29</sup>
China - Macao	NO	?	YES	?	?
France - French Polynesia <sup>30</sup>	NO	NO <sup>31</sup>	YES	YES	NO
France - New Caledonia <sup>32</sup>	NO	NO <sup>33</sup>	YES	YES	NO
France - Wallis and Futuna Islands <sup>34</sup>	NO	NO <sup>35</sup>	YES	YES	NO
New Zealand - Tokelau	NO	?	YES	?	?
UK - Pitcairn Islands	YES <sup>36</sup>	YES	YES	YES	YES
US - American Samoa	NO	NO <sup>37</sup>	YES	NO	NO
US - Guam	NO	NO	YES	YES	?
US - Northern Mariana Islands	NO	?	YES	?	?

<sup>1</sup>Prohibited in state and independent schools in Australian Capital Territory and Tasmania; prohibited in state schools in Victoria; prohibited by Ministerial guidelines in New South Wales and by policy in Queensland and Western Australia but "reasonable chastisement" defence potentially available. <sup>2</sup>Prohibited in New South Wales, Northern Territory, South Australia and Victoria; "reasonable chastisement" defence potentially available in Queensland and Tasmania; no explicit prohibition in Western Australia. <sup>3</sup>Prohibited in child care centres except in Northern Territory; prohibited in residential centres in New South Wales, Queensland, South Australia and Victoria; prohibited in foster care in Queensland, South Australia, Tasmania and New South Wales, but "reasonable chastisement" defence available in all but the last. <sup>4</sup>Prohibited in primary schools but not explicitly in secondary schools; draft Education Law would prohibit throughout. <sup>5</sup>But prohibited in draft Minimum Standards. <sup>6</sup>Prohibited by policy, but as at April 2004 not in law. <sup>7</sup>Ruled unconstitutional in 2002 High Court ruling, but as at January 2005 legislation not amended. <sup>8</sup>Ruled unconstitutional in 2002 High Court ruling, but as at April 2005 some legislation yet to be amended. <sup>9</sup>Ruled unconstitutional in 2002 High Court ruling, but legislation possibly not amended. <sup>10</sup>But possibly permitted under Shari'a law in Aceh province. <sup>11</sup>Prohibited in day care centres and residential institutions (information unconfirmed). <sup>12</sup>But prohibition in law unconfirmed. <sup>13</sup>Prohibited by government directive. <sup>14</sup>Prohibited in pre-school settings and early childhood centres, except in the case of guardians, and in state day care and residential institutions. <sup>15</sup>But as at April 2005, right of correction still in Criminal Code. <sup>16</sup>But unlawful under draft Juvenile Justice Act. <sup>17</sup>Prohibited in residential institutions and day care centres. <sup>18</sup>Information unconfirmed; "reasonable punishment" defence potentially available. <sup>19</sup>But Ministry of Education Discipline Framework promotes positive discipline. <sup>20</sup>Prohibited in child care centres. <sup>21</sup>Prohibited by policy. <sup>22</sup>Information unconfirmed. <sup>23</sup>Information unconfirmed. <sup>24</sup>But prohibition proposed in 2003. <sup>25</sup>But prohibition proposed in 2003. <sup>26</sup>Prohibited by policy in child care centres, orphanages and boarding houses from April 2005. <sup>27</sup>But ordered by traditional chiefs in rural areas. <sup>28</sup>Information unconfirmed; children reportedly whipped at police stations in lieu of going through the courts. <sup>29</sup>Prohibited in childcare centres and mutual help childcare centres. <sup>30</sup>Information unconfirmed. <sup>31</sup>No explicit prohibition in law and "light correction" tolerated as for parents. <sup>32</sup>Information unconfirmed. <sup>33</sup>No explicit prohibition in law and "light correction" tolerated as for parents. <sup>34</sup>Information unconfirmed. <sup>35</sup>No explicit prohibition in law and "light correction" tolerated as for parents. <sup>36</sup>Prohibited in Children Ordinance (2003). <sup>37</sup>Prohibited by policy.

## East Asia and Pacific - states and dependent territories prohibiting corporal punishment of children



## Percentage of child population legally protected from corporal punishment



**Note on top chart:** The one country prohibiting corporal punishment in the home is the Pitcairn Islands (UK dependent territory). With a total population of 48 persons, the number of children involved is extremely small.

**Note on bottom chart:** Population figures available for 36 out of the 43 states and territories in the region (all except Taiwan, Wallis & Futuna Islands, Tokelau, Pitcairn Islands, American Samoa, Guam and Northern Mariana Islands). China accounts for 58.71% of the total child population.





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This report is one in a series prepared by the Global Initiative for submission to each of the nine regional consultations being held in connection with the UN Secretary General's Study on Violence against Children.

The Global Initiative was launched during the Commission on Human Rights 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. We believe ending all corporal punishment is fundamental to improving the status of children and realising their rights to respect for their human dignity and physical integrity and to equal protection under the law.



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

The aims of the Global Initiative are to:

- A**Forge a strong alliance of human rights agencies, key individuals and international and national non-governmental organisations against corporal punishment;
- A**Make corporal punishment of children visible by building a global map of its prevalence and legal status, ensuring that children's views are heard and charting progress towards ending it;
- A**Lobby governments systematically to ban all forms of violence including corporal punishment and to develop public education programmes;
- A**Promote awareness-raising of children's rights to protection and public education on positive, non-violent forms of discipline for children;
- A**Provide detailed technical assistance to support states with these reforms.

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

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