

Corporal punishment of children in Samoa: Briefing for the Universal Periodic Review, 25th session, 2016

From Dr Sharon Owen, Research and Information Coordinator,
Global Initiative, sharon@endcorporalpunishment.org



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

The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.

In Samoa, corporal punishment of children is lawful, despite recommendations to prohibit it by the Committee on the Rights of the Child and recommendations made during the 1st cycle UPR of Samoa (accepted by the Government).

We hope the Working Group will note with concern the legality of corporal punishment of children in Samoa. We hope states will raise the issue during the review in 2016 and make a specific recommendation that Samoa clearly prohibit all corporal punishment of children in all settings including the home and explicitly repeal the right “to administer reasonable punishment” in the Infants Ordinance 1961.

1 Review of Samoa in the 1st cycle UPR (2011) and progress since

- 1.1 Samoa was reviewed in the first cycle of the Universal Periodic Review in 2011 (session 11). The issue of corporal punishment of children was raised in the compilation of UN information¹ and the summary of stakeholders’ information.² The Government accepted recommendations to prohibit all corporal punishment of children, including in the home, indicating that implementation was under way.³
- 1.2 Since the first cycle review in 2011, there have been a number of legislative reforms in Samoa. The Prisons and Corrections Act 2013 explicitly prohibits corporal punishment in penal institutions, including for prisoners under the age of 18. New criminal legislation has also been enacted, but the Crimes Act 2013 does not clearly prohibit all corporal punishment nor does it repeal the right “to administer punishment” to children as provided for in the Infants Ordinance 1961; rather, it confirms that common law defences apply to charges under the Act. The Family Safety Act 2013 similarly fails to prohibit all corporal punishment of children. A Child Care and Protection Bill is under discussion which would replace the Infants Ordinance, but as at July 2015 it did not include explicit repeal of the right “to administer punishment”.
- 1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in Samoa. We hope states will raise the issue during the review in 2016 and make a specific recommendation that Samoa clearly prohibit all corporal punishment of children in**

¹ 21 February 2011, A/HRC/WG.6/11/WSM/2, Compilation of UN information, para. 35

² 21 February 2011, A/HRC/WG.6/11/WSM/3, Summary of stakeholders’ information, paras. 17 and 18

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

all settings including the home and explicitly repeal the right “to administer reasonable punishment” in the Infants Ordinance 1961.

2 Legality of corporal punishment in Samoa

Summary of current law and reforms needed in order to achieve prohibition

Corporal punishment of children in Samoa is unlawful in the penal system but it is only partly prohibited in schools and day care settings, and it is not prohibited in alternative care settings or the home. Achieving full prohibition requires the enactment of legislation clearly prohibiting corporal punishment in these settings and explicitly repealing the right “to administer punishment” in the Infants Ordinance 1961. The Child Care and Protection Bill currently under discussion provides an immediate opportunity to achieve the necessary reforms, but it requires amendment in order to do so.

- 2.1 ***Home (lawful)***: Article 12 of the Infants Ordinance 1961, as amended in 2013, provides for the protection of children 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.” Provisions against violence and inhuman and degrading treatment in the Crimes Act 2013 and the Constitution 1960 are not interpreted as prohibiting corporal punishment in childrearing.
- 2.2 The Crimes Act 2013 does not provide a specific defence for the use of corporal punishment but states generally that common law defences apply to charges under the Act (art. 11). The Family Safety Act 2013 protects children and adults from domestic violence and defines physical abuse as “any act or threatened act of physical violence, injury, torture, or inhumane punishment towards a complainant” (art. 2). However, while it amends the ill-treatment provisions in the Infants Ordinance 1961 to apply to children under 18 rather than under 14, it does not repeal the right “to administer reasonable punishment”.
- 2.3 A review of existing relevant legislation and consultation on reform was published by the Law Reform Commission in 2009.⁴ The review addressed the issue of corporal punishment and noted that the Convention on the Rights of the Child requires prohibition. In 2013, the Law Reform Commission published its final report: the Commission recommends extending the prohibition in schools to cover private schools but delaying prohibition in the home until awareness raising and training has been carried out at village level.⁵
- 2.4 A Child Care and Protection Bill is under discussion. It would repeal Part III of the Infants Ordinance, which includes the right “to administer reasonable punishment”, but this would be a “silent” reform: it does not send a clear message by *explicitly* prohibiting all corporal punishment in childrearing. An Infants Amendment Bill is also under discussion: it does not address the issue of corporal punishment or explicitly repeal the defence.
- 2.5 ***Alternative care settings (lawful)***: Corporal punishment is lawful under the right “to administer reasonable punishment” in article 14 of the Infants Ordinance 1961.
- 2.6 ***Day care (partly prohibited)***: Corporal punishment is prohibited in early childhood centres under the Education Act 2009 (art. 23), but it is lawful in other early childhood care and in day care for

⁴ Samoa Law Reform Commission (2009), *Care and protection legislation to protect children: Issues Paper IP 03/09*

⁵ Samoa Law Reform Commission (2013), *Child care and protection legislation: Final report 11/13*, paras. 3.1-3.17

older children under the right “to administer reasonable punishment” in article 14 of the Infants Ordinance 1961.

- 2.7 ***Schools (partly prohibited)***: Corporal punishment is prohibited in government schools for children of compulsory school age (5-14) in article 23 of the Education Act 2009. According to the Act, compliance with article 23 is a requirement for registration of private and mission schools (art. 31(b)) and of village schools (art. 37); article 56 states that the discipline policies which must be developed by Ministry and village schools must comply with article 23. However, the Law Reform Commission has reported that private schools are not covered under the Act and has recommended that prohibition be extended to cover private schools.⁶ The Act does not prohibit corporal punishment in education settings for children under 5 or over 14 years of age.
- 2.8 ***Penal institutions (unlawful)***: The Young Offenders Act 2007 allows for young people aged 10-16 to be sent to residential institutions and prison but does not address disciplinary measures in these institutions. However, the Prisons and Corrections Act 2013 explicitly prohibits corporal punishment, including for “young prisoners” (under 18), in article 42.
- 2.9 ***Sentence for crime (unlawful)***: There is no provision for judicial corporal punishment in the Criminal Procedure Act 1972 (amended 2004) or the Young Offenders Act 2007.

3 Recommendations by human rights treaty bodies

- 3.1 ***CRC***: In 2006, in its concluding observations on the state party’s initial report, the Committee on the Rights of the Child recommended to Samoa that corporal punishment be prohibited in all settings, including in the family.⁷

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

⁶ Samoa Law Reform Commission (2013), *Child care and protection legislation: Final report 11/13*, paras. 3.1-3.17

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