

Corporal punishment of children in Lao PDR: Briefing for the Universal Periodic Review, 35th session, January 2020



GLOBAL INITIATIVE TO
**End All Corporal
Punishment of Children**

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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 Lao PDR, corporal punishment of children is still lawful despite repeated recommendations to prohibit it by the Committee on the Rights of the Child.

We hope the Working Group will note with concern the legality of corporal punishment of children in Lao PDR. We hope states will raise the issue during the review in 2020 and make a specific recommendation that Lao PDR draft and enact legislation as a matter of priority to explicitly prohibit all corporal punishment of children, however light, in all settings including the home.

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings, day care and penal institutions.

There appears to be no confirmation in law of a right of parents and other carers to administer “reasonable chastisement” or similar in disciplining children, but legal provisions against violence and abuse are not interpreted as prohibiting all corporal punishment. The widespread acceptance of a certain degree of violence in childrearing necessitates clarity in law that no amount or kind of corporal punishment can be considered reasonable or lawful. Prohibition should be enacted of all corporal punishment of children, including within the family.

Alternative care settings – Prohibition should be enacted of all corporal punishment in all alternative care settings (foster care, institutions, children’s homes, places of safety, emergency care, etc).

Day care – Corporal punishment should be prohibited in all early childhood care (nurseries, preschools, crèches, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Penal institutions – Prohibition of corporal punishment should be enacted in relation to all institutions accommodating children in conflict with the law.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. Articles 90 and 91 of the Penal Law 2005 punish battery and physical injuries caused negligently, but the Law does not explicitly prohibit all forms of corporal punishment, however light. Article 32 of the Family Law 2008 provides for the withdrawal of parental rights for the use of violence: “Parents must educate their children to be patriotic, progressive and to lead pure lives and engage in activities useful for society. If parents do not meet their obligations to educate their children, exceed their parental rights, or use violence and ill-treatment towards children ... the court may withdraw their parental rights or filial rights based on article 59 of the Civil Procedures Law.” But the Law does not outlaw all corporal punishment, however light, in childrearing. Provisions against violence and abuse in the Act on the Protection of the Rights and Interests of Children 2006 and the Act on Development and Protection of Women 2004 are not interpreted as prohibiting all corporal punishment in childrearing.

The Government reported to the Committee on the Rights of the Child in 2015 that a National Plan of Action to Prevent and Eliminate Violence against Women and Violence against Children 2014-2010 has been adopted which addresses all forms of violence in all settings.¹ Although the National Plan of Action on the Prevention and Elimination of Violence against Women and Violence against Children 2014-2020 mentions corporal punishment, its definition seems restricted to acts intending to “cause pain or injury” and there is no commitment to prohibit its use in the home. It was also noted that a new Law on Preventing and Combatting Violence against Women and Children was passed by the National Assembly on 23 December 2014 which prohibits all forms of violence in all settings,

¹ 12 May 2015, CRC/C/OPSC/LAO/Q/1/Add.1, Reply to list of issues, para. 4

including the home.² This new law was promulgated in January 2015,³ but it does not explicitly prohibit all corporal punishment.

A new Penal Code was adopted by the National Assembly in May 2017, but has not yet been promulgated as it is undergoing technical changes. Its article 263 reportedly punishes “corporal or mental punishment” defined as “kicking, beating, tying, detaining, fasting, forcing to work exceeding limit, being unfaithful, engaging in sexual abuse” (unofficial translation).⁴ This does not seem to include the ‘milder’ forms of corporal punishment which are often not seen as violence. An explicit prohibition of all forms of corporal punishment, however light, must be enacted to ensure children’s equal protection from assault.

Alternative care settings

There is no prohibition of corporal punishment in alternative care settings: it is lawful as for parents (see under “Home”).

Day care

Corporal punishment is considered unlawful in early childhood education under article 47 of the Education Law 2007 (see under “Schools”), but it is not explicitly prohibited in other early childhood care or in day care for older children, where it is lawful as for parents (see under “Home”).

Schools

Corporal punishment is considered unlawful under article 47 of the Education Law 2007, though it is not explicitly prohibited (unofficial translation): “The prohibitions for teachers are ... (4) Batter, insult, ill-treat, and be not fair with learners.” In addition, article 27 of the Act on the Protection of the Rights and Interests of Children 2006 confirms the state’s policy to create “child-friendly” schools in which students are protected from corporal punishment: “The State has the policy to create child-friendly schools that are popular for children and attract them to learn. A child-friendly school is a place with a good environment ... [where children are] protected from the use of violence, physical punishment or inappropriate words or acts that affect the dignity of children....”

The National Plan of Action on the Prevention and Elimination of Violence against Women and Violence against Children 2014-2020 mentions several measures to prevent the use of corporal punishment in schools.

Penal institutions

Corporal punishment is considered unlawful as a disciplinary measure in penal institutions, but there is no explicit prohibition. Article 171 of the Penal Law 2005 punishes “physical violence and torture, or measures or other acts inconsistent with the laws, against suspects or prisoners during arrest, trial or serving of sentence”. Article 51 of the Act on the Protection of the Rights and Interests of Children 2006 lists the rights of child offenders, article 62 prohibits “all forms of violence” towards a child in detention, and article 75 lists the rights of children in vocational training centres, but there is no

² 12 May 2015, CRC/C/OPSC/LAO/Q/1/Add.1, Reply to list of issues, para. 5

³ <http://www.unwomen.org/~media/headquarters/attachments/initiatives/stepitup/commitments-speeches/laopdr-stepitup-commitmentspeech-201509-en.pdf?v=1&d=20150927T224250>, accessed 14 October 2015

⁴ Information provided to the Global Initiative, January 2018

reference to corporal punishment. Article 12 of the Criminal Procedure Law 2012 states that it is prohibited to “coerce, threaten, cause bodily harm to, or torture a suspect or defendant during case proceedings” (unofficial translation).

The Law on Juvenile Criminal Procedure 2013 states that children should be protected from physical harm at the stage of the proceedings (art. 7), and that children in training centres for child offenders have the right to be “protected from all form of tortures, abuse, taking advantage, neglect and inappropriate disciplines” (art. 103).

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. Article 27 of the Penal Law 2005 states that “punishment does not aim to generate physical suffering or to outrage human dignity”, and there is no provision for judicial corporal punishment in this Law or in the Act on the Protection of the Rights and Interests of Children 2006. Article 89 of the Law on Juvenile Criminal Procedure 2013 states that children cannot be sentenced to the death penalty.

Universal Periodic Review of Lao PDR’s human rights record

Lao PDR was examined in the first cycle of the Universal Periodic Review process in 2010 (session 8). No recommendations were made concerning corporal punishment of children. However, the following recommendations were made and were accepted by the Government:⁵

“Harmonize national legislation with the international obligations under the respective conventions (Germany);

“Continue its efforts to ensure that the provisions of international human rights conventions to which it is a party are incorporated into domestic law (Thailand)”

The second cycle review took place in 2015 (session 21). No recommendations were made specifically on corporal punishment but the Government accepted recommendations to harmonise its laws with international human rights standards, including through revision of the Penal Code, to ensure new laws conform with international human rights standards and to take additional measures for the protection of children.⁶

Recommendations by human rights treaty bodies

In 1997, the Committee on the Rights of the Child expressed concern at the prevalence of corporal punishment within the family.⁷ This was reiterated in 2011 and again in 2018, when the Committee recommended that corporal punishment is explicitly prohibited by law in all settings.⁸

Prevalence/attitudinal research in the last ten years

According to UNICEF statistics collected in 2011-2012, 76% of children aged 2-14 experienced violent “discipline” (physical punishment and/or psychological aggression) in the home in the month prior to

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

⁶ 23 March 2015, A/HRC/29/7, Report of the working group, paras. 121(37), 121(38), 121(39), 121(44) and 121(45)

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

⁸ 8 April 2011, CRC/C/LAO/CO/2, Concluding observations on second report, paras. 38 and 39; 11 October 2018, CRC/C/LAO/CO/3-6 Advance unedited version, Concluding observations on third/sixth report, para. 22

the survey. Forty-four per cent experienced physical punishment and 71% experienced psychological aggression (being shouted at, yelled at, screamed at or insulted). A smaller percentage (42%) of mothers and caregivers thought physical punishment was necessary in childrearing.

(UNICEF (2014), *Hidden in Plain Sight: A statistical analysis of violence against children*, NY: UNICEF)

A 2011 Human Rights Watch report documented beatings and other inhuman and degrading punishment in Somsanga Center, where drug users, homeless people, street children and people with mental disabilities were detained. The report was based on interviews with 12 former detainees, four of whom were children at the time of their detention, and eight current or former staff members of international organisations.

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