

# Corporal punishment of children in Samoa: Briefing for the Universal Periodic Review, 39<sup>th</sup> session, 2021

*From the Global Partnership to End Violence Against Children,  
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This submission provides an update on the legality of corporal punishment of children in Samoa since its review in the second cycle UPR in 2016. Corporal punishment prohibition is still to be fully achieved in the home, alternative care settings, day care and schools.

**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 still lawful despite recommendations to prohibit it by the Committee on the Rights of the Child and the Committee on the Elimination and Discrimination against Women and during the 2<sup>nd</sup> cycle UPR of Samoa in 2016.**

**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 2021 and make a specific recommendation that Samoa enact legislation to explicitly prohibit corporal punishment of children in in every setting of their lives and repeal article 14 of the Infants Ordinance, as a matter of priority.**

## 1. Review of Samoa in the 2<sup>nd</sup> cycle UPR (2016) and progress since

1.1 Samoa was examined in the second cycle of the Universal Periodic Review in 2016 (session 25). The issue of corporal punishment of children was raised in the compilation of UN information and the summary of stakeholders' information. Recommendations to prohibit corporal punishment in all settings were made.<sup>1</sup> The Government noted a recommendation to prohibit corporal punishment in all settings, stating that work to achieve prohibition in all settings – homes, schools and alternative care – was ongoing.<sup>2</sup>

<sup>1</sup> 27 June 2016, A/HRC/33/6, Report of the working group, para. 96(38)

<sup>2</sup> 5 September 2016, A/HRC/33/6/Add.1, Report of the working group, para. 16

1.2 Since the review, no law reform appeared to have been initiated with a view to explicitly prohibit corporal punishment of children in all settings.<sup>3</sup> In December 2017, Prime Minister declared that the Government was considering enacting legislation to reintroduce corporal punishment in all schools. The Government stated at the time that the amendment would allow teachers to use “reasonable force” only to break up school fights and that “the use of corporal punishment to discipline a student [would] still [be] prohibited”.<sup>4</sup> A report from the National Inquiry into family violence, published in September 2018, called on the Government to strengthen the ban on corporal punishment in schools instead of weakening it.<sup>5</sup> The Education Amendment Act 2019 introduced in article 23(3)(c) an exception for secondary schools teachers to use “reasonable force” to prevent a child “from engaging or continuing to engage in threatening, offensive or disruptive behaviour”.

**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 2021 and make a specific recommendation that Samoa enact a legislation to clearly prohibit all corporal punishment of children, however light, in every setting of their lives, and repeal article 14 of the Infants Ordinance 1961 as well as article 23(3)(c) of the Education Amendment Act 2019, as a matter of urgency.**

## 2. Legality of corporal punishment in Samoa

### ***Summary of current law and opportunities for achieving prohibition***

Prohibition is still to be achieved in the home, alternative care settings, day care and schools. Article 14 of the Infants Ordinance 1961 confirms “the right of any parent, teacher, or other person having the lawful control or charge of a child to administer reasonable punishment to such child”. The near universal acceptance of a certain level of violence in childrearing means that in the absence of explicit prohibition, corporal punishment would be seen as “reasonable”. This provision should be explicitly repealed, so that there is clarity in the law that no degree or kind of corporal punishment can be considered “reasonable” or lawful, and legislation should be enacted to prohibit all corporal punishment of children by all persons with authority over them.

<sup>3</sup> See <https://www.radionz.co.nz/international/pacific-news/345432/samoa-govt-says-it-could-bring-back-corporal-punishment>, accessed 20 December 2017

<sup>4</sup> 28 August 2018, CEDAW/C/WSM/Q/6/Add.1, Reply to list of issues, paras. 55 and 56

<sup>5</sup> 2018, Samoa Office of the Ombudsman and National Human Rights Institution, *National Public Inquiry into Family Violence in Samoa*, pp 38-39; see also “Demand on Govt. to act to stamp out family violence”, [http://www.sobserver.ws/en/17\\_09\\_2018/local/36841/Demand-on-Govt-to-act-to-stamp-out-family-violence.htm](http://www.sobserver.ws/en/17_09_2018/local/36841/Demand-on-Govt-to-act-to-stamp-out-family-violence.htm), accessed 27 September 2018

- 2.1 **Home (lawful):** Corporal punishment is lawful in the home. 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 of 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 1969 are not interpreted as prohibiting corporal punishment in childrearing.
- 2.2 **Alternative care settings (lawful):** Corporal punishment is lawful in alternative care settings under the right “to administer reasonable punishment” in article 14 of the Infants Ordinance 1961 (see under “Home”). The Child Care and Protection Bill 2013 version would remove this right but does not clearly prohibit all corporal punishment. It sets out standards for approved carers in article 35: “(1) All approved carers and care service providers must take reasonable steps to ensure a child placed in their care under this Act is cared for in a way that meets all of the following standards – (a) the child’s dignity and rights will be respected at all times; ... (g) the child will receive positive guidance when necessary to help him or her to change inappropriate behaviour.... (3) For the purposes of subsection (1)(G), techniques for managing the child’s behaviour must not include punishment that humiliates, frightens or threatens the child in a way that is likely to cause emotional harm.” We have yet to see the text of the Child Care and Protection Bill 2016.
- 2.3 **Day care (lawful):** 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 older children under the right “to administer reasonable punishment” in article 14 of the Infants Ordinance 1961.
- 2.4 **Schools (lawful):** Corporal punishment is prohibited in government primary schools in article 23 of the Education Act 2009. This prohibition previously covered all government schools but the Education Amendment Act 2019 overturned this for secondary schools by amending article 23(3) which allows the use of “reasonable force”.
- 2.5 **Penal institutions (unlawful):** Corporal punishment is unlawful as a disciplinary measure in penal institutions. 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: “(1) No prisoner is to be subjected, by way of punishment, to the following: (a) corporal punishment in any form...” In 2014, Prisons Regulations under the Act were being developed.
- 2.6 **Sentence for crime (unlawful):** Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in the Criminal Procedure Act 1972

(amended 2004) or the Young Offenders Act 2007. Article 7 of the Constitution 1960 (amended 2000) provides for freedom from torture or inhuman or degrading treatment or punishment.

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

3.1 **CRC:** The Committee on the Rights of the Child has twice expressed concern at corporal punishment of children in Samoa and recommended it be explicitly prohibited in all settings – in its concluding observations on the state party’s initial report on 2006<sup>6</sup> and on the state party’s second to fourth report in 2016.<sup>7</sup>

3.2 **CEDAW:** The Committee on the Elimination of Discrimination Against Women has twice expressed concern at corporal punishment of children in Samoa and recommended it be explicitly prohibited in schools – in its concluding observations on the state party’s fourth to fifth report on 2012<sup>8</sup> and on the state party’s second to sixth report in 2018.<sup>9</sup>

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<sup>6</sup> 16 October 2006, CRC/C/WSM/CO/1, Concluding observations on initial report, paras. 35 and 36

<sup>7</sup> 3 June 2016, CRC/C/WSM/CO/2-4, Concluding observations on second-fourth report, paras. 30 and 31

<sup>8</sup> 7 August 2012, CEDAW/C/WSM/CO/4-5, Concluding observations on fourth/fifth report, para. 28

<sup>9</sup> 9 November 2018, CEDAW/C/WSM/CO/6 Advance unedited version, Concluding observations on sixth report, paras. 29 and 30