

Ending family violence in Samoa – challenging physical punishment of girls and boys



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

Information for the Committee on the Elimination of Discrimination Against Women, 71st session, from the Global Initiative to End All Corporal Punishment of Children (www.endcorporalpunishment.org), September 2018

Introduction: family violence in Samoa and CEDAW's examination of the sixth state party report

The Family Safety Act 2013 provides some protection from family violence to women and girls, but the law is not interpreted as prohibiting all corporal punishment of children. Samoa is discussing reintroducing corporal punishment in schools but the Government has an obligation to move forward and enact prohibition of all violent punishment of children – it must not go back on the progress already made.

We hope the Committee on the Elimination of Discrimination Against Women will raise the issue of violent punishment of girls and boys in its examination of Samoa. In particular, we hope the Committee will, in its concluding observations on the sixth state party report, recommend that Samoa ensure that *no* form of violence within the domestic sphere is condoned, including by parents against their children, and that legislation is enacted to prohibit domestic violence against all family members, including the violent punishment of girls and boys.

The remainder of this briefing provides the following further details:

1. The current law relating to family violence and corporal punishment of children in Samoa.
 2. Treaty body and UPR recommendations on the issue made to Samoa to date.
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1 Laws on domestic violence and corporal punishment of children in Samoa

Summary

1.1 Provisions in the Family Safety Act 2013 provide some protection from family violence, but the law is not interpreted as prohibiting all forms of physical punishment of children. The Government has introduced legislation to allow the use of “reasonable force” in schools. It is paramount that it does not negate the human rights advances already made but instead raise awareness of the existing bans and strengthen teacher and community training on positive discipline.

Detail

1.2 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 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.

1.3 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”.

1.4 A review of existing relevant legislation and consultation on reform was published by the Law Reform Commission in 2009.¹ The review addressed the issue of corporal punishment and noted that the Convention on the Rights of the Child requires prohibition. In February 2013, the Law Reform Commission published its final report: the Commission recommends extending the prohibition in schools to cover private schools but delaying prohibition in the home until awareness raising and training has been carried out at village level.² Nevertheless, the Government’s acceptance in 2011 of recommendations to prohibit corporal punishment in the home and schools, made during the Universal Periodic Review of Samoa, indicates its commitment to law reform.³ In 2016, the Government noted a recommendation to prohibit corporal punishment in all settings, and stated that work to achieve prohibition in all settings – homes, schools and alternative care – is ongoing for Samoa.⁴

1.5 A legislative review in connection with a baseline report published in 2013 confirms that corporal punishment is not prohibited in the home and that protection for children from violence is undermined by the right “to administer reasonable punishment” in the Infants Ordinance 1961.⁵ A Child Care and Protection Bill is under discussion. During the Universal Periodic Review of Samoa in 2016, the Government stated that the Childcare Protection Bill 2013 seeks to prohibit corporal punishment.⁶ The Bill as drafted in 2013 would repeal Part III of the Infants Ordinance, which

¹ Samoa Law Reform Commission (2009), *Care and protection legislation to protect children: Issues Paper IP 03/09*

² Samoa Law Reform Commission (2013), *Child care and protection legislation: Final report 11/13*, paras. 3.1-3.17

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

⁴ 5 September 2016, A/HRC/33/6/Add.1, Report of the working group, para. 16

⁵ Ministry of Women, Community and Social Development, *Legislative compliance of Samoa in relation to international child protection standards – FULL REPORT*, prepared for MWCSA (2013), *Child Protection Baseline Report for Samoa*, MWCSA/Australian Aid/UNICEF

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

includes the right “to administer reasonable punishment”, but this would be a “silent” reform: it does not explicitly prohibit all corporal punishment in childrearing. The Government reported to the Committee on the Rights of the Child that a new bill – the Child Care and Protection Bill 2016 – is being finalised.⁷ We have yet to see the text of this Bill. An Infants Amendment Bill is also under discussion: it does not address the issue of corporal punishment or explicitly repeal the defence.

1.6 The existing prohibition of corporal punishment in some schools is being contested. In December 2017, Prime Minister Tuila'epa Sa'ilele Malielegaoi declared that the Government was considering enacting legislation to reintroduce corporal punishment in all schools,⁸ and a Bill to amend section 23 of the Education Act was introduced to Parliament in June 2018. The Government has reported 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”.⁹ However, this Bill was reported in the media as a reintroduction of corporal punishment in schools in response to “public requests”.¹⁰ Both Supreme Court judge and former Committee on the Rights of the Child member Vui Clarence Nelson and Maiava Iulai Toma, head of the National Human Rights Institution, have condemned this move by the Government. Maiava Iulai Toma specifically called on the government not to act on this Bill before reviewing a report on domestic violence and abuse.¹¹ The report from the National Inquiry into family violence was published in September 2018 and reportedly called on the Government to strengthen the ban on corporal punishment instead of weakening it.¹² As of August 2018, the Bill was being reviewed by the Parliamentary Committee for Social Development, with national consultations held with stakeholders.¹³

1.7 Prohibition of all violent punishment of children – which is critical in laying the legal foundations for efforts to reduce child abuse and domestic violence – requires an explicit ban in legislation. We hope the Committee will urge the Government of Samoa to enact legislation as a matter of urgency to clearly prohibit all corporal punishment of girls and boys.

2 Recommendations by human right treaty monitoring bodies and during the Universal Periodic Review

2.1 In 2006, the Committee on the Rights of the Child recommended to Samoa that legislation be introduced and implemented prohibiting all corporal punishment in all settings, including in the family and in the alternative childcare system.¹⁴ The Committee reiterated this recommendation in 2016, urging the Government to enact the Child Care and Protection Bill to explicitly prohibit all forms of corporal punishment in all settings, and explicitly repeal the “right to administer reasonable punishment”.¹⁵

2.2 The Government accepted recommendations to prohibit all corporal punishment of children made

⁷ 8 April 2016, CRC/C/WSM/Q/2-4/Add.1, List of issues, para. 18

⁸ See <https://www.radionz.co.nz/international/pacific-news/345432/samoa-govt-says-it-could-bring-back-corporal-punishment>, accessed 20 December 2017

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

¹⁰ See <https://www.radionz.co.nz/international/pacific-news/362424/don-t-pick-on-samoa-tuilaepa-to-child-rights-experts>, accessed 1 August 2018

¹¹ See “Opposition to reinstating corporal punishment in Samoa”, <https://www.radionz.co.nz/international/programmes/datelinepacific/audio/2018661581/opposition-to-reinstating-corporal-punishment-in-samoa>, accessed 27 September 2018

¹² See “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, accessed 27 September 2018

¹³ 28 August 2018, CEDAW/C/WSM/Q/6/Add.1, Reply to list of issues, para. 56

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

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

during the Universal Periodic Review of Samoa in 2011.¹⁶ However in 2016 the Government “noted” a recommendation to prohibit corporal punishment in all settings, but stated that “work to achieve prohibition in all settings including the home” was ongoing, including through the “Childcare Protection Bill 2013”.¹⁷

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

¹⁷ 27 June 2016, A/HRC/33/6, Report of the working group, para. 96(38); 5 September 2016, A/HRC/33/6/Add.1, Report of the working group, para. 16