

Corporal punishment of children in Fiji: Briefing for the Universal Periodic Review, 20th session, 2014

From Dr Sharon Owen, Research Coordinator, Global Initiative,
info@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 Fiji, there is some opinion that the new Constitution protects children from corporal punishment. However, despite recommendations from the Committee on the Rights of the Child, prohibition is not explicit and the new Constitution does not send a clear message that all forms of corporal punishment, without exception, are prohibited.

We hope the Working Group will welcome the new Constitution in Fiji but note with concern the lack of clarity regarding prohibition of corporal punishment of children. No recommendation on corporal punishment was made during the initial UPR of Fiji in 2010: we hope states will raise the issue during the review in 2014 and make a specific recommendation that law reform is undertaken to achieve legal clarity that all forms of corporal punishment, without exception, are prohibited, including through the repeal of the right of parents and other “to administer reasonable punishment”.

1 The initial review of Fiji by the Human Rights Council (2010)

- 1.1 Fiji was reviewed in the first cycle of the Universal Periodic Review in 2010 (session 7). The issue of corporal punishment was raised in the compilation of UN information¹ and the summary of stakeholders information.² No recommendations specifically on corporal punishment were made, but the Government accepted recommendations to “ensure the full enjoyment by all children of the rights recognised in the Convention on the Rights of the Child” and to “ensure that human rights are afforded full legal and constitutional protection in Fiji”.³
- 1.2 Compliance with the Convention on the Rights of the Child and other human rights treaties involves enacting legislation to explicitly prohibit all corporal punishment of children in all settings, including the home. But the near universal acceptance of a degree of violent punishment in childrearing and deeply held views that parents and other adults have a

¹ 13 November 2009, A/HRC/WG.6/7/FJI/2, Compilation of UN information, para. 28

² 11 November 2009, A/HRC/WG.6/7/FJI/3, Summary of stakeholders' information, para. 27

³ 23 March 2010, A/HRC/14/8, Report of the working group, paras. 71(10) and 71(15)

“right” to physically punish children can challenge efforts to achieve prohibition. This situation also means that corporal punishment – at least to some degree – is typically not readily perceived as a violent act in the same way as, for example, sexual and other socially unacceptable forms of violence. In light of this, the protection of children from “any form of violence” in the new Constitution is inadequate as a prohibition of all corporal punishment, and it cannot be assumed that this effectively repeals the “right to administer reasonable punishment” in the Juveniles Act. **For all these reasons, we respectfully urge members of the Working Group to make specific recommendations to Fiji that legislation is enacted to explicitly prohibit all forms of corporal punishment, without exception, including through repeal of the legal “right to administer reasonable punishment”.**

2 Legality and practice of corporal punishment in Fiji

- 2.1 **Summary:** Corporal punishment in Fiji is unlawful in schools and the penal system but despite Constitutional reform it appears to be lawful in the home, alternative care settings and day care.
- 2.2 **Home (lawful):** Article 57 of the Juveniles Act 1974 punishes cruelty to children but also confirms “the right of any parent, teacher or other person having the lawful control or charge of a juvenile to administer reasonable punishment to him”. Legal provisions against violence and abuse such as those in the Juveniles Act 1974, the Crimes Decree 2009, the Domestic Violence Decree 2009 and the Child Welfare Decree 2010 are not interpreted as prohibiting corporal punishment in childrearing. According to statistics from UNICEF on violence in the family, 72% of 2-14 year olds experienced violent “discipline” (physical punishment and/or psychological aggression) in 2005-2006.⁴ A new Constitution is expected to be adopted by 2014: we are not aware of any proposals to prohibit corporal punishment.
- 2.3 The new Constitution 2013 is considered by some to have made corporal punishment of children unconstitutional. The Constitution undeniably strengthens children’s protection from violence, but on the face of it it does not achieve legal clarity that all forms of corporal punishment, without exception, are now prohibited. Article 41 states that every child has the right to be protected from “any form of violence, inhumane treatment and punishment” but it does not explicitly prohibit all physical punishment, without exception, and it is not immediately clear that the said provision would render null and void the “right to administer reasonable punishment” in the Juveniles Act (see para. 2.2). Furthermore, article 11 of the Constitution protects every person “from cruel, inhumane, degrading or *disproportionately severe* treatment or punishment” (emphasis added), clearly not prohibiting *all* physical punishment.
- 2.4 **Alternative care settings (lawful):** Notwithstanding the protection from violence in the new Constitution 2013, corporal punishment at least to some degree continues to be lawful in alternative care settings under the right “to administer reasonable punishment” in article 57 of the Juveniles Act 1974 (see para. 2.2).
- 2.5 **Day care (lawful):** Notwithstanding the protection from violence in the Constitution 2013, corporal punishment at least to some degree continues to be lawful in early childhood care

⁴ UNICEF (2011), *The State of the World’s Children*, NY: UNICEF

and in day care for older children under the right “to administer reasonable punishment” in article 57 of the Juveniles Act 1974 (see para. 2.2).

- 2.6 ***Schools (unlawful but further reform necessary)***: Corporal punishment is prohibited in schools under a High Court ruling in 2002 which stated that corporal punishment was unconstitutional.⁵ The Education Act 1978 is silent on the issue, but article 57 of the Juveniles Act 1974 provides legal justification for the use of corporal punishment under the right of teachers “to administer reasonable punishment”. There are Guidelines Banning Corporal Punishment (Guidelines of the Permanent Secretary, Education Gazette Vol. III, 2003) but the High Court ruling prohibition is yet to be confirmed in legislation.
- 2.7 ***Penal institutions (unlawful)***: The Prisons and Corrections Act 2006 explicitly prohibits corporal punishment (article 38): “No prisoner may be subjected, by way of punishment, to: (a) corporal punishment in any form....” The Act repealed the Prisons Act and the Prisons Regulations which provided for corporal punishment. There is no provision for corporal punishment in articles 29-34 (concerning juvenile offenders) of the Juveniles Act 1974.
- 2.8 ***Sentence for crime (unlawful)***: There is no provision for judicial corporal punishment in the Crimes Decree 2009 and the Sentencing and Penalties Decree 2009. It is explicitly prohibited in the Juveniles Act 1974 (article 32(2)): “Nothing in this section shall be construed as in any way restricting the power of the court to make any order or combination of orders which it is empowered to make under this or any other written law except that no juvenile shall be ordered to undergo corporal punishment.”

3 Recommendations by human rights treaty bodies

- 3.1 ***CRC***: In 1998, the Committee on the Rights of the Child expressed concern at corporal punishment in the home and schools and recommended to Fiji that corporal punishment be comprehensively prohibited by law.⁶

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
www.endcorporalpunishment.org; info@endcorporalpunishment.org
March 2014

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.

⁵ Lautoka High Court, March 2002, Appeal Case *Naushad Ali v State*

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