

Corporal punishment of children in Vanuatu: Briefing for the Universal Periodic Review, 32nd session, January 2019



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

From the Global Initiative to End All Corporal Punishment of Children, July 2018

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 Vanuatu, 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 Vanuatu. We hope states will raise the issue during the review in 2019 and make a specific recommendation that Vanuatu enact legislation to explicitly prohibit corporal punishment of children in all settings, including in the home and as a sentence for a crime, and repeal all legal defences for its use.

1 Review of Vanuatu in the 2nd cycle UPR (2014) and progress since

- 1.1 Vanuatu was reviewed in the second cycle of the Universal Periodic Review in 2014 (session 18). Although the issue of corporal punishment of children was raised in the compilation of UN information¹ and in the summary of stakeholders' information,² no specific recommendation was made on the issue. The Government did however support several general recommendations on children's rights.³
- 1.2 Since the review, there has been no change in the legality of corporal punishment of children. The National Child Protection Policy 2016-2026 raises corporal punishment of children as an issue but it does not commit the Government to enacting explicit prohibition in legislation.
- 1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in Vanuatu. We hope states will raise the issue during the review in 2019 and make a specific recommendation that Vanuatu enact legislation to explicitly prohibit corporal punishment of children in all settings, including in the home and as a sentence for a crime, and repeal all legal defences for its use.**

¹ 6 November 2018, A/HRC/WG.6/18/VUT/2, Compilation of UN information, para. 25

² 7 November 2013, A/HRC/WG.6/18/VUT/3, Summary of stakeholders' views, paras. 15, 16, 17 and 18

³ 4 April 2014, A/HRC/26/9, Report of the working group, paras. 99(32), 99(53) and 99(54)

2 Legality of corporal punishment in Vanuatu

Summary of current law and reforms needed to achieve prohibition

Corporal punishment in Vanuatu is prohibited in schools and in penal institutions. Prohibition of judicial corporal punishment requires confirmation; it is still lawful in the home and in alternative and day care settings. Legislation should be enacted to explicitly prohibit all corporal punishment in all settings, including in the home and as a sentence for a crime, and all legal defences for its use, including the English common law defence of “reasonable punishment”, should be repealed.

- 2.1 **Home (*lawful*)**: Corporal punishment is lawful under the English common law defence of “reasonable chastisement”. Children are protected from violence and ill-treatment by the Penal Code 1981 (amended 2007) and the Family Protection Act 2008 but these do not prohibit all corporal punishment in childrearing.
- 2.2 The Government accepted the recommendation to “eradicate” corporal punishment in the home made during the Universal Periodic Review of Vanuatu in 2009.⁴ In reporting to the UPR in 2014, the Government referred to “efforts to pass a comprehensive law on children” but did not mention prohibition of corporal punishment.⁵ The Government also reported that the Department of Women’s Affairs is reviewing the Family Protection Act.⁶
- 2.3 Although the National Child Protection Policy 2016-2026 raises corporal punishment of children as an issue it does not set prohibition as a policy objective; instead the Policy highlights the need to develop a Child Protection Law in compliance with the UN Convention on the Rights of the Child. The Government reported in August 2017 to the Committee on the Rights of the Child that a Child Protection Bill, which would “cover the general application on the prohibition of corporal punishment in all setting”, had been drafted and would soon be consulted upon.⁷
- 2.4 **Alternative care settings (*lawful*)**: There is no explicit prohibition of corporal punishment in alternative care settings, where it is lawful as for parents.
- 2.5 **Day care (*lawful*)**: There is no explicit prohibition of corporal punishment in early childhood care or in day care for older children: it is lawful as for parents.
- 2.6 **Schools (*unlawful*)**: Corporal punishment is unlawful in schools. Prohibition was previously contained in article 38 of the Education Act 2001: “(1) As soon as possible after comment, the Director-General must prepare guidelines for the adoption by schools of fair discipline practices that provide for the control and regulation of student discipline in schools, and that reinforce good behaviour. (2) The guidelines must not permit corporal punishment of students attending schools. However, they may permit other reasonable forms of punishment or correction of those students, including requiring students to perform any reasonable work or service for the school....” The 2001 Act has been repealed by the Education Act 2014, article 47 of which reiterates the prohibition of corporal punishment.

⁴ 4 June 2009, A/HRC/12/14, Report of the working group, para. 56(36)

⁵ 3 February 2014, A/HRC/WG.6/18/L.7, Draft report of the working group, Para. 85

⁶ 3 February 2014, A/HRC/WG.6/18/L.7, Draft report of the working group, para. 14; see also 24 October 2016, CRC/C/VUT/2, Second report, para. 8

⁷ 9 August 2017, CRC/C/VUT/Q/2/Add.1, Reply to list of issues, para. 23

2.7 The Teaching Service Act 2013 states that an employee is guilty of misconduct if he or she “physically assaults a child, including administering corporal punishment of any kind to a student”, and defines corporal punishment as “the use of physical force to punish or correct a student and includes any action intended or likely to cause physical pain or discomfort” (art. 52).

2.8 **Penal institutions (unlawful):** Corporal punishment is unlawful as a disciplinary measure in penal institutions. It is not among permitted disciplinary measures in the Correctional Services Act 2006. A Correctional Services (Amendment) Bill was enacted in 2017:⁸ we have been unable to examine the text. Corporal punishment is reportedly explicitly prohibited in detention centres⁹ but we have been unable to verify this. In 2009, the Government accepted the recommendation to “eradicate” corporal punishment in the juvenile justice system made during the Universal Periodic Review of Vanuatu in 2009.¹⁰ In 2011, the police introduced new guidelines for responding to children in conflict with the law but no legislation appears to have been enacted (unconfirmed). It was anticipated that a Young Offenders Bill would have been developed by the end of 2012.¹¹

2.9 **Sentence for crime (?unlawful):** Corporal punishment is unlawful as a sentence for crime. There is no provision for it in the Penal Code 1981, the Criminal Procedure Code (amended 2003) or the Island Courts Act 1983 (amended 2006), and the Constitution 1980 (amended 2004) recognises the right to freedom from inhuman treatment (art. 5). However, the Larceny Act 1916, which provides for “private whipping”, is possibly still in force. Corporal punishment is used in rural areas as a traditional form of punishment favoured by chiefs: we have been unable to ascertain the legality of this. Research has also found that corporal punishment is inflicted by police on children who have committed a crime, and sometimes parents bring their children to the police and request that corporal punishment be inflicted.¹²

3 Recommendations by human rights treaty bodies

3.1 **CRC:** In 1999, the Committee on the Rights of the Child expressed concern at corporal punishment within families and other settings in Vanuatu and recommended that measures be taken to end it.¹³ The Committee again recommended in 2017 that Vanuatu amend its legislation to explicitly prohibit corporal punishment in all settings, and in particular the Family Protection Act and the Penal Code.¹⁴

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

⁸ 29 September 2017, CRC/C/VUT/CO/2-4, Concluding observations on second/fourth report, Advance unedited version, para. 50

⁹ UNICEF & AusAid (2009), *Protect me with love and care: A Baseline Report for creating a future free from violence, abuse and exploitation of girls and boys in Vanuatu*, Suva: UNICEF Pacific

¹⁰ 4 June 2009, A/HRC/12/14, Report of the working group, para. 56(36)

¹¹ UNICEF, *Child Protection Funding Proposal 2011-2012 Pacific*

¹² UNICEF & AusAid (2009), *Protect me with love and care: A Baseline Report for creating a future free from violence, abuse and exploitation of girls and boys in Vanuatu*, Suva: UNICEF Pacific

¹³ 10 November 1999, CRC/C/15/Add.111, Concluding observations on initial report, para. 16

¹⁴ 29 September 2017, CRC/C/VUT/CO/2-4, Concluding observations on second/fourth report, Advance unedited version, paras. 4 and 25

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 since 2011 the Committee on the Rights of Persons with Disabilities.