

# Corporal punishment of children in Fiji: Briefing for the Universal Periodic Review, 34<sup>th</sup> session, November 2019



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

*From the Global Initiative to End All Corporal Punishment of Children, March 2019*

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

## **1 Review of Fiji in the 2<sup>nd</sup> cycle UPR (2014) and progress since**

1.1 Fiji was reviewed in the second cycle of the Universal Periodic Review in 2014 (session 20). The issue of corporal punishment of children was raised in the compilation of UN information<sup>1</sup> and in the summary of stakeholders' information.<sup>2</sup> The Government accepted a recommendation to repeal the right 'to administer reasonable punishment' in the Juveniles Act 1974 and to prohibit all corporal punishment of children, stating that it was already implemented or in the process of implementation.<sup>3</sup> Since the review, there has been no change in the legality of corporal punishment.

1.2 **We hope the Working Group will note with concern the continued legality of corporal punishment of children in Fiji. We hope states will raise the issue during the review in 2019 and make a specific recommendation that Fiji draft and enact legislation as a matter of priority to explicitly prohibit corporal punishment of children in all settings, including the home, and repeal all legal defences for its use.**

<sup>1</sup> 18 August 2014, A/HRC/WG.6/20/FJI/2, Compilation of UN information, para. 29

<sup>2</sup> 18 July 2014, A/HRC/WG.6/20/FJI/3, Summary of stakeholders' views, para. 23

<sup>3</sup> 17 December 2014, A/HRC/28/8, Report of the working group, para. 100(5)

## 2 Legality of corporal punishment in Fiji

### ***Summary of current law and reforms needed to achieve prohibition***

Corporal punishment in Fiji is prohibited in schools, in penal institutions and as a sentence for a crime but 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 the home, and repeal all legal defences for its use, including in the Juveniles Act 1974.

- 2.1 **Home (lawful):** Corporal punishment is lawful in the home. 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 do not include explicit prohibition of all corporal punishment in childrearing.
- 2.2 The Constitution 2013 states in article 41 that every child has the right “to be protected from abuse, neglect, harmful cultural practices, any form of violence, inhumane treatment and punishment, and hazardous or exploitative labour”. This could potentially be interpreted as prohibiting all forms of corporal punishment. However, such an interpretation conflicts with article 11 which, while confirming every person’s “right to be free from any form of violence from any source, at home, school, work or in any other place”, prohibits only severe punishment: “Every person has the right to freedom from torture of any kind, whether physical, mental or emotional, and from cruel, inhumane, degrading or disproportionately severe treatment or punishment.” In 2018, in answering a query from the Committee on the Elimination of Discrimination Against Women on corporal punishment and the repeal of the right to “administer reasonable punishment”, the Government stated that “all persons are protected under the section 11 of the Fijian Constitution”, referring also to the Crimes Decree 2009.<sup>4</sup> But although these provisions provide some protection from severe punishment, they do not explicitly prohibit all forms of corporal punishment and are not interpreted as such.
- 2.3 In reporting to the Committee on the Rights of the Child in 2013, the Government stated that there is “zero tolerance” of corporal punishment in Fiji, but also confirmed that the protections from violence in the Juveniles Act, the Crimes Decree and the Family Law Act are not interpreted as applying to childrearing.<sup>5</sup> The Government has acknowledged that corporal punishment is not explicitly prohibited in any existing laws and that “there certainly is a need to align laws with policies to prohibit corporal punishment in all settings”.<sup>6</sup> A draft Disability Decree is under consideration:<sup>7</sup> we do not know if there are proposals to include prohibition of corporal punishment.
- 2.4 The Government indicated its commitment to law reform by clearly accepting the recommendation made during the Universal Periodic Review of Fiji to prohibit corporal punishment in all settings including the home and to repeal the “reasonable punishment”

<sup>4</sup> 11 January 2018, CEDAW/C/FJI/Q/5/Add.1, Reply to list of issues, para. 27

<sup>5</sup> 17 September 2013, CRC/C/FJI/2-4, Second-fourth state party report, paras. 107 and 108

<sup>6</sup> 24 July 2014, CRC/C/FJI/Q/2-4/Add.1, Reply to list of issues, para. 15

<sup>7</sup> 26 August 2014, A/HRC/WG.6/20/FJI/1, National report to the UPR, para. 56

defence in the Juveniles Act 1974.<sup>8</sup> The Government has since made contradictory statements on the status of law reform. In January 2018, it reported that stakeholders were working on a “draft Child Justice Bill and Child Protection Bill which [would] repeal the Juvenile Act”.<sup>9</sup> However in March 2018, the Government stated that a proposed amendment to the Juveniles Act provision on reasonable chastisement was at the drafting stage and would be submitted to consultation before being presented to the Parliament for approval.<sup>10</sup>

- 2.5 **Alternative care settings (lawful):** Corporal punishment is lawful in alternative care settings under the right “to administer reasonable punishment” in article 57 of the Juveniles Act 1974.
- 2.6 **Day care (lawful):** Corporal punishment is lawful in early childhood care and in day care for older children under the right “to administer reasonable punishment” in article 57 of the Juveniles Act 1974.
- 2.7 **Schools (unlawful):** Corporal punishment is prohibited in schools under a High Court ruling which stated that corporal punishment was unconstitutional.<sup>11</sup> 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. There are Guidelines Banning Corporal Punishment.<sup>12</sup> The Government has stated that corporal punishment is banned under the Child Protection Policy<sup>13</sup> and that students subjected to corporal punishment could seek redress under article 11 of the Constitution and section 5 of the Crimes Decree.<sup>14</sup> However, the High Court prohibition is yet to be confirmed in legislation.
- 2.8 **Penal institutions (unlawful):** Corporal punishment is unlawful as a disciplinary measure in penal institutions. Following the 2002 High Court ruling, the Prisons and Corrections Act 2006 included explicit prohibition in 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.
- 2.9 **Sentence for crime (unlawful):** Corporal punishment is unlawful as a sentence for crime. It was declared unconstitutional under the 2002 High Court ruling and there is no provision for judicial corporal punishment in the Crimes Decree 2009 and the Sentencing and Penalties Decree 2009. It is prohibited in the Juveniles Act 1974 (art. 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.”

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<sup>8</sup> 17 December 2014, A/HRC/28/8, Report of the working group, para. 100(5)

<sup>9</sup> 11 January 2018, CEDAW/C/FJI/Q/5/Add.1, Reply to list of issues, para. 27

<sup>10</sup> 2 March 2018, CEDAW/C/SR.1579, Summary records of 1579th meeting, para. 8

<sup>11</sup> Lautoka High Court, March 2002, Appeal Case *Naushad Ali v State*

<sup>12</sup> Guidelines of the Permanent Secretary, Education Gazette Vol. III, 2003

<sup>13</sup> 24 July 2014, CRC/C/FJI/Q/2-4/Add.1, Reply to list of issues, para. 14; see also 2 March 2018, CEDAW/C/SR.1579, Summary records of 1579th meeting, para. 6

<sup>14</sup> 2 March 2018, CEDAW/C/SR.1579, Summary records of 1579th meeting, para. 8

### 3 Recommendations by human rights treaty bodies

3.1 **CRC:** On two occasions, the Committee on the Rights of the Child has recommended to Fiji that legislation be enacted to explicitly prohibit corporal punishment in all settings and repeal the right to “administer reasonable punishment”, in 1998<sup>15</sup> and 2014.<sup>16</sup>

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*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.*

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

<sup>16</sup> 19 September 2014, CRC/C/FJI/CO/2-4 Advance Unedited Version, Concluding observations on second-fourth report, paras. 6, 7, 30 and 31