

# Corporal punishment of children in Vanuatu

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Child population 113,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal  
Punishment of Children**

## Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings, day care, penal institutions and as a sentence for crime.

The English common law defence of “reasonable punishment” is applicable in Vanuatu. There appears to be no confirmation of it in written law, but legal provisions against violence and abuse are not interpreted as prohibiting all corporal punishment. Given the near universal acceptance of corporal punishment in childrearing, it is crucial that there is legal clarity that no degree or kind of corporal punishment of children can be considered acceptable, however light and whoever it is inflicted by. Prohibition should be enacted of all corporal punishment, including in the family home.

*Alternative care settings* – Prohibition should also be enacted of all corporal punishment in all alternative care settings (foster care, institutions, places of safety, emergency care, etc).

*Day care* – Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

*Penal institutions* – Prohibition of corporal punishment as a disciplinary measure in penal institutions should be enacted in relation to all institutions accommodating children in conflict with the law.

*Sentence for crime* – Provisions for whipping in the Larceny Act 1916 and any legislation specifically authorising corporal punishment in traditional justice systems should be repealed.

## Current legality of corporal punishment

### Home

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.

The Government accepted the recommendation to “eradicate” corporal punishment in the home made during the Universal Periodic Review of Vanuatu in 2009.<sup>1</sup> 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.<sup>2</sup> The Government also reported that the Department of Women’s Affairs is reviewing the Family Protection Act.<sup>3</sup>

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.<sup>4</sup> As of November 2018, the Child Protection Bill was still in development.<sup>5</sup> In February 2019, the Government reported that the Child Protection Bill would envisage “criminalizing *unreasonable or extreme* corporal punishment in all setting” (emphasis added).<sup>6</sup> We are trying to ascertain the exact phrasing of the Bill. Also in February 2019, the Government supported several recommendations on the prohibition of all corporal punishment.<sup>7</sup>

### Alternative care settings

There is no explicit prohibition of corporal punishment in alternative care settings, where it is lawful as for parents (see under “Home”).

### Day care

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 (see under “Home”).

### Schools

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

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<sup>1</sup> 4 June 2009, A/HRC/12/14, Report of the working group, para. 56(36)

<sup>2</sup> 3 February 2014, A/HRC/WG.6/18/L.7, Draft report of the working group, Para. 85

<sup>3</sup> 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

<sup>4</sup> 9 August 2017, CRC/C/VUT/Q/2/Add.1, Reply to list of issues, para. 23

<sup>5</sup> 7 November 2018, A/HRC/WG.6/32/VUT/1, National report to the UPR, para. 43

<sup>6</sup> 28 February 2019, CRPD/C/VUT/Q/1/Add.1, Reply to list of issues, para. 107

<sup>7</sup> 5 April 2019, A/HRC/41/10, Report of the Working Group, paras. 90(77), 90(79) and 90(83)

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.

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).

## **Penal institutions**

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 recently:<sup>8</sup> we have been unable to examine the text. Corporal punishment is reportedly explicitly prohibited in detention centres<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> A draft Juvenile Bill was under consideration in November 2018.<sup>12</sup>

## **Sentence for crime**

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.<sup>13</sup>

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

<sup>9</sup> 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

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

<sup>11</sup> UNICEF, *Child Protection Funding Proposal 2011-2012 Pacific*

<sup>12</sup> 7 November 2018, A/HRC/WG.6/32/VUT/1, National report to the UPR, para. 51

<sup>13</sup> 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

## **Universal Periodic Review of Vanuatu’s human rights record**

Vanuatu was examined in the first cycle of the Universal Periodic Review in 2009 (session 5). The following recommendation was made and was accepted by the Government:<sup>14</sup>

“Take all measures to eradicate the practice of corporal punishment in the family and juvenile justice systems and to ensure effective implementation of the ban on this punishment in schools (Azerbaijan)”

The second cycle review took place in 2014 (session 18). In its national report, the Government commented on the above recommendation in relation to eradicating corporal punishment in schools but made no reference to prohibiting it in the family and juvenile justice systems: “The Government of Vanuatu bans corporal punishment in all schools. With the implementation of the UNCRC, parents are informed on the rights of the child including the right to education. They are aware of accountability for not respecting these rights.” No recommendations were made during the review specifically on corporal punishment but the following recommendations were made and were accepted by the Government:<sup>15</sup>

“Continue to promote legislation and actions to eliminate discrimination and strengthen protection of rights of vulnerable groups such as women, children and people with disabilities (China);

“Take further measures in combating gender-based violence, domestic violence, ill-treatment and abuse of children including sexual abuse (Ukraine);

“Include in its priority action plan measures to step up efforts towards protecting children from abuse or violence (Philippines)”

Third cycle examination took place in 2019 (session 32). The Government supported the following recommendations:<sup>16</sup>

“Take legislative action to adopt laws to prohibit corporal punishment against children in all settings (Algeria);

“Implement policies with a view to ending the practice of corporal punishment in its society (Indonesia);

“Redouble efforts to ensure that children’s rights are in conformity with the provisions of the Convention on the Rights of the Child, with a particular focus on the juvenile justice system and the prohibition of corporal punishment in all areas of society and as a sentence for crimes (Uruguay)”

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

### ***Committee on the Rights of the Child***

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

“The Committee recommends that the State party take all measures necessary to address its previous recommendations of 1999 (CRC/C/15/Add.111) which have not been implemented or not

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

<sup>15</sup> 4 April 2014, A/HRC/26/9, Report of the working group, paras. 99(32), 99(53) and 99(54)

<sup>16</sup> 5 April 2019, A/HRC/41/10, Report of the Working Group, paras. 90(77), 90(79) and 90(83)

sufficiently implemented and, in particular, those related to budget allocation (para. 11), training and dissemination (para. 12) and corporal punishment (para.16).”

“With the reference to the general comment No. 8 (2006) on corporal punishment, the Committee urges the State party to:

- (a) Amend existing legislation, in particular the Family Protection Act, and the Penal Code and explicitly prohibit corporal punishment in all settings;
- (b) Immediately and effectively implement the Education Act prohibiting corporal punishment in schools and strengthen teacher training on alternative forms of discipline and ensure it is part of pre- and in-service training programmes;
- (c) Develop Guidelines for the implementation of the prohibition of corporal punishment in accordance with the Education Act and vigorously prosecute offenders;
- (d) Provide programmes for parents, teachers, the police and professionals that work with and for children to encourage the use of alternative non-violent forms of discipline;
- (e) Provide children with a complaints mechanism in schools so that they can safely and confidentially report teachers that continue to use corporal punishment despite the ban;
- (f) Strengthen awareness raising programmes, trainings and other activities to promote the change of mind set with regard to corporal punishment, particularly in schools, family and at the community level.”

### ***Committee on the Rights of the Child***

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

“While the Committee is aware that corporal punishment is prohibited by law in schools, it remains concerned that traditional societal attitudes continue to encourage the use of such punishment within the family, in schools, care and juvenile justice systems and generally in society. The Committee recommends that the State party reinforce measures to raise awareness on the negative effects of corporal punishment and ensure that alternative forms of discipline are administered in families, schools, and care and other institutions, in a manner consistent with the child’s dignity and in conformity with the Convention. In this connection, the Committee recommends that the State party provide counselling and other programmes for parents, teachers and professionals working in institutions to encourage their use of alternative forms of punishment. In addition, the Committee strongly recommends that all necessary measures be taken to ensure the full and effective implementation of the ban on corporal punishment in schools.”

### ***Committee on the Rights of Persons with Disabilities***

(13 May 2019, CRPD/C/VUT/CO/1, Concluding observations on initial report, paras. 28 and 29)

“The Committee is concerned about cases of violence against and abuse of persons with disabilities, especially women and children, both in the home and in the community. In particular, it is concerned that:

- (a) The Family Protection Act, which is the legislative framework to protect victims of domestic violence, including persons with disabilities, is not aligned with the Convention;
- (b) There are cases of violence against and abuse of children with disabilities, including corporal punishment;

(c) Complaint mechanisms are inaccessible;

(d) There is no mechanism for monitoring cases of violence against persons with disabilities and the State party's intervention in cases of domestic violence against persons with disabilities largely depends on the Vanuatu Women's Centre;

(e) Cases of violence against and abuse of persons with disabilities are not properly investigated and the perpetrators are not punished; for example, cases of sexual abuse of women with disabilities, especially women with intellectual or psychosocial disabilities, are dealt with through reconciliation in the women's villages, whose authorities impose a fine as a sanction for the perpetrator.

"The Committee recommends that the State party:

(a) Amend the Family Protection Act (2008) in line with the Convention and improve the protection of persons with disabilities from violence and abuse;

(b) Protect children with disabilities from all forms of violence and abuse, including by expediting the enactment of the child protection bill, ensuring that it is in line with the Convention to prohibit corporal punishment in all settings;

(c) Establish accessible mechanisms for persons with disabilities to report violence and abuse against them and ensure that they know where to seek assistance;

(d) Strengthen the capacity of the Vanuatu Women's Centre and the authorized persons and registered counsellors under the Family Protection Act (2008) to protect and provide support to persons with disabilities, and effectively monitor the situations of persons who are victims of violence, particularly women;

(e) Adopt measures to increase the capacity of the Family Protection Unit under the police to investigate and prosecute perpetrators of violence against persons with disabilities, in particular women and girls with psychosocial or intellectual disabilities."

## **Prevalence/attitudinal research in the last ten years**

According to UNICEF statistics collected between 2005 and 2013, 84% of children aged 2-14 experienced "violent discipline" (physical punishment and/or psychological aggression) in the home in the month prior to the survey. Seventy-two per cent experienced physical punishment and 77% experienced psychological aggression (being shouted at, yelled at, screamed at or insulted). A smaller percentage (51%) of mothers and caregivers thought that physical punishment was necessary in childrearing.

(UNICEF (2014), *Hidden in Plain Sight: A statistical analysis of violence against children*, NY: UNICEF)

According to statistics from UNICEF on violence in the family, in 2005-2006 more than three quarters (78%) of children aged 2-14 years old experienced violent "discipline" (physical punishment and/or psychological aggression) in the home in the month prior to the survey.

(UNICEF (2011), *The State of the World's Children*, Table 9: Child Protection, [www.unicef.org/sowc](http://www.unicef.org/sowc), NY: UNICEF)

In a study carried out in 2008, 78% of the 265 adults surveyed said they sometimes hit, smacked, pinched, kicked or flicked children or pulled or twisted their ears. Of the 244 16-17 year olds surveyed, 17% said they had experienced this from an adult at home in the past month. They said it hurt (25%) or made them feel angry (20%) or sad (20%). Nearly half the adults (48%) said a child in their household had talked to them about being hit by an adult in their household in the past month. When children aged 7-11 were asked which actions they don't like at home, the most common response, given by 35%, was being hit or hurt by adults. When asked the same question about school,

teachers hitting, smacking or otherwise hurting children was the second most common response. Twenty-seven per cent of the 16-17 year olds who attended school said they had been physically hurt by a teacher in the past month; 38% of adults said a child in their household had told them about being hit by a teacher in the past month. When asked how the community handles children in conflict with the law, 3% of people working in the justice sector and community chiefs said physical punishment was used. Interviewees working in the police said parents sometimes bring their children to the police to be physically punished. Physical punishment was “occasionally” used by prison officers.

(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)

A study of 3,054 14-17 year olds found that 7% of boys and 5% of girls had experienced an intentional injury from a teacher in the past year.

(Smith, B. J. et al (2008), “Intentional injury reported by young people in the Federated States of Micronesia, Kingdom of Tonga and Vanuatu”, *BMC Public Health*, 8 (145), 1-8, cited in UNICEF East Asia and Pacific Regional Office (2012), *Child Maltreatment: Prevalence, Incidence and Consequences: A Systematic Review of Research*, Bangkok: UNICEF)