

Corporal punishment of children in Fiji

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Child population 302,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Fiji's commitment to prohibiting corporal punishment

Fiji expressed its commitment to prohibiting all corporal punishment of children by accepting clearly the recommendation to do so made during the Universal Periodic Review of Fiji in 2014.

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings, day care and schools.

Article 57 of the Juveniles Act 1974 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” and laws against violence and abuse are not interpreted as prohibiting all corporal punishment of children. The near universal acceptance of corporal punishment in childrearing necessitates clarity in law that no degree of corporal punishment is acceptable or lawful. Article 57 of the Juveniles Act should be repealed and all forms of corporal punishment explicitly prohibited, including by parents.

Alternative care settings – Prohibition should be enacted in legislation applicable to all alternative care settings (foster care, institutions, children’s homes, places of safety, emergency care, etc).

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

Schools – The High Court ruling against corporal punishment should be confirmed through the enactment of prohibition of corporal punishment in all schools, including public and private.

Current legality of corporal punishment

Home

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.

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 2009.¹ 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.

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.² 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”.³ A draft Disability Decree is under consideration:⁴ we do not know if there are proposals to include prohibition of corporal punishment.

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” defence in the Juveniles Act 1974.⁵ 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”.⁶ 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.⁷

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

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

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

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

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

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

⁷ 2 March 2018, CEDAW/C/SR.1579, Summary records of 1579th meeting, para. 8

Alternative care settings

Corporal punishment is lawful in alternative care settings under the right “to administer reasonable punishment” in article 57 of the Juveniles Act 1974 (see under “Home”).

Day care

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 (see under “Home”).

Schools

Corporal punishment is prohibited in schools under a High Court ruling which stated that corporal punishment was unconstitutional.⁸ 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.⁹ The Government has stated that corporal punishment is banned under the Child Protection Policy¹⁰ and that students subjected to corporal punishment could seek redress under article 11 of the Constitution and section 5 of the Crimes Decree.¹¹ However, the High Court prohibition is yet to be confirmed in legislation.

Penal institutions

Corporal punishment is unlawful as a disciplinary measure in penal institutions. Following the 2002 High Court ruling (see under “Schools”), 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.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. It was declared unconstitutional under the 2002 High Court ruling (see under “Schools”) 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.”

⁸ Lautoka High Court, March 2002, Appeal Case *Naushad Ali v State*

⁹ Guidelines of the Permanent Secretary, Education Gazette Vol. III, 2003

¹⁰ 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

¹¹ 2 March 2018, CEDAW/C/SR.1579, Summary records of 1579th meeting, para. 8

Universal Periodic Review of Fiji's human rights record

Fiji was examined in the first cycle of the Universal Periodic Review in 2010 (session 7). No recommendations were made specifically concerning corporal punishment of children. However, the following recommendations were made and were accepted by the Government:¹²

“To ensure the full enjoyment by all children of the rights recognized in the Convention on the Rights of the Child, particularly with regard to access to education and health services (Slovenia);

“To ensure that human rights are afforded full legal and constitutional protection in Fiji (Australia)”

Examination in the second cycle took place in 2014 (session 20). The following recommendation was made and was accepted by the Government in the category of recommendations it considers already implemented or in the process of implementation:¹³

“Repeal the right ‘to administer reasonable punishment’ in the Juveniles Act 1974 and prohibit all corporal punishment of children, including in the home (Germany)”

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

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

“While welcoming the State party’s efforts to implement the Committee’s concluding observations of 1998 on the State party’s initial report (CRC/C/28/Add.7), the Committee notes with regret that some of the recommendations contained therein have not been fully addressed.

“The Committee urges the State party to take all necessary measures to address those recommendations from the concluding observations of the initial report under the Convention that have not been sufficiently implemented, particularly those related to allocation of resources, data collection, birth registration, corporal punishment, sexual abuse and children with disabilities.

“The Committee welcomes the constitutional protection from corporal punishment and notes that the Juveniles Act, article 57 of which provides legal justification for the use of corporal punishment under the right of teachers “to administer reasonable punishment” is currently under review. Furthermore, the Committee notes with serious concern that corporal punishment is not explicitly prohibited in the home, alternative care settings and day care.

“In light of its general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, the Committee urges the State party to promote positive, non-violent and participatory forms of child-rearing and discipline as an alternative to corporal punishment, and furthermore reiterates its previous recommendations (CRC/C/15/Add.89, para. 36) to comprehensively prohibit corporal punishment by law and that measures be taken to raise awareness on the negative effects of corporal punishment and to ensure that discipline in schools, families and institutional care is administered in a manner consistent with

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

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

the child's dignity. The State party shall furthermore establish regular compulsory training on child rights for every educator and teacher."

Committee on the Rights of the Child

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

"While aware of the initiative presented by the CCC [Coordinating Committee on Children] to Fiji's Law Reform Commission for the legal prohibition of the use of corporal punishment, the Committee remains concerned that corporal punishment is still used by parents and that internal school regulations do not contain explicit provisions prohibiting this harmful practice, in conformity with, inter alia, articles 3, 19 and 28 of the Convention.

"The Committee recommends that corporal punishment be comprehensively prohibited by law and that measures be taken to raise awareness on the negative effects of corporal punishment and to ensure that discipline in schools, families and institutional care is administered in a manner consistent with the child's dignity, in light of article 28 of the Convention."

Prevalence/attitudinal research in the last ten years

A study carried out in 2008 found that 37% of the 248 16-17 year olds involved had been physically hurt by an adult at home in the past month; 72% of the 338 adults surveyed said they sometimes hit, smacked, pinched, kicked or "donged" children, or pulled or twisted their ears. When asked why parents and teachers might physically abuse children, high proportions of interviewees replied "discipline" or "punishment" (37% for parents, 44% for teachers). Three quarters of interviewees working in education said teachers in their school "hit, smack, kick, dong, pinch or pull or twist children's ears," 31% of children who attended school said they had been physically hurt by a teacher in the past month and 9% of adults said a child in their household had told them about being physically hurt by a teacher in the past month. Children said that the top three implements teachers used to hurt them were an open hand (38%), a stick (32%) and a closed fist (8%) and that teachers hitting children is the number one thing which makes them feel unsafe in schools. Children in conflict with the law were sometimes physically punished in their communities: 4% of community leaders and people working in and with the justice system said physical punishment was used to deal with children in conflict with the law when the police were not involved, 7% said it was used when a case of a child in conflict with the law was informally diverted to the village or community and 5% said it was used when cases were formally diverted at police or court level.

(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 Fiji, Suva: UNICEF Pacific)