

Ending family violence in Fiji – challenging physical punishment of girls and boys



Global Initiative to
End All Corporal Punishment
of Children

Information for the Committee on the Elimination of Discrimination Against Women, Pre-Sessional Working Group for the 69th session, from the Global Initiative to End All Corporal Punishment of Children (www.endcorporalpunishment.org), June 2017

Introduction: family violence in Fiji and CEDAW's examination of the fifth state party report

Legal protection from domestic violence is provided for in the Domestic Violence Decree 2009. However a right to “administer reasonable punishment” is recognized in the Juveniles Act 1974 and there is no clear prohibition of all violent punishment. This notion of “reasonable punishment” must be repealed to challenge the widespread use and acceptance of violent punishment of girls and boys. Without an explicit prohibition of the use of violence in childrearing, some level of violence will always be lawful in the home and elimination of domestic violence will remain an impossibility.

We hope the Committee on the Elimination of Discrimination Against Women will raise the issue of violent punishment of girls and boys in its examination of Fiji. In particular, we hope the Committee will:

- **in its list of issues for Fiji, ask what progress is being made towards ensuring that legal protection from domestic violence includes explicit repeal of the right to “administer reasonable punishment” so that children as well as adults have legal protection from violent assault, and**
- **in its concluding observations on the fifth state party report, recommend that Fiji ensure that *no* form of violence within the domestic sphere is condoned, including by parents against their children, and that legislation is enacted to prohibit domestic violence against all family members and repeal the right to “administer reasonable punishment”.**

The remainder of this briefing provides the following further details:

1. The current law relating to family violence and corporal punishment of children in Fiji
 2. Treaty body and UPR recommendations on the issue made to Fiji to date.
-

1 Laws on domestic violence and corporal punishment of children in Fiji

Summary

1.1 Protection from domestic violence in Fiji is provided for in the Domestic Violence Decree 2009. However, the Juveniles Act 1974 recognises a right to “administer reasonable punishment” and the laws do not include clear prohibition of all corporal punishment.

Detail

1.2 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.

1.3 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.”

1.4 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.¹ 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”.² A draft Disability Decree is under consideration:³ we do not know if there are proposals to include prohibition of corporal punishment.

1.5 Prohibition of all violent punishment of children – which is critical in laying the legal foundations for efforts to reduce child abuse and domestic violence – requires an explicit ban in legislation. We hope the Committee will urge the Government of Fiji to enact legislation as a matter of priority to clearly prohibit all corporal punishment of girls and boys and repeal the right to “administer reasonable punishment”.

2 Recommendations by human right treaty monitoring bodies and during the Universal Periodic Review

2.1 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 1998⁴ and 2014.⁵

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

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

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

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

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

2.2 At the second cycle Universal Periodic Review of Fiji in 2014, the Government accepted a recommendation to explicitly repeal the right to “administer reasonable punishment” and to prohibit all corporal punishment of children.⁶

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children

www.endcorporalpunishment.org; info@endcorporalpunishment.org

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