

Corporal punishment of children in Vanuatu: Briefing for the Universal Periodic Review, 46th session, Jan./Feb. 2024

From End Corporal Punishment, October 2023

This submission provides an update on the legality of corporal punishment of children in Vanuatu since its review in the third cycle UPR in 2019. Corporal punishment prohibition is still to be fully achieved in the home, alternative care settings, day care, penal institutions and as a sentence for crime.

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 lawful, despite recommendations to prohibit it by the Committee on the Rights of the Child, other human rights treaty bodies, and during the 3rd cycle UPR of Vanuatu in 2019.

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 next year and make a specific recommendation that Vanuatu accelerates its efforts to clearly prohibit all corporal punishment of children in every setting of their lives and repeal any legal defence allowing its use, as a matter of priority.

1 Review of Vanuatu in the 3rd cycle UPR (2019) and progress since

1.1 Vanuatu was reviewed in the third cycle of the Universal Periodic Review in 2019 (session 32). Recommendation to prohibit corporal punishment in all settings were made and supported by the Government.¹

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

1.2 In February 2020, the Government reported that the Child Protection Bill would envisage “criminalizing *unreasonable or extreme* corporal punishment in all setting” (emphasis added).² We are trying to ascertain the exact phrasing of the Bill.

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 next year and make a specific recommendation that Vanuatu intensify its efforts to adopt the Child protection Bill to clearly prohibit all corporal punishment of children, however light, in every setting of their lives, as a matter of urgency.

2 Legality of corporal punishment in Vanuatu

Summary of current law and opportunities for achieving 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.

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 2009.³ 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.⁴ The Government also reported that the Department of Women’s Affairs is reviewing the Family Protection Act.⁵

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

² 28 February 2019, CRPD/C/VUT/Q/1/Add.1, Reply to list of issues, para. 107

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

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

⁵ 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



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highlights the need to develop a Child Protection Law in compliance with the UN Convention on the Rights of the Child.

- 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 (see under "Home").
- 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 (see under "Home").
- 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.
- 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 (lawful):** 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:⁶ we have been unable to examine the text. Corporal punishment is reportedly explicitly prohibited in detention centres⁷ but we have been unable to verify this.
- 2.9 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 2009.⁸ 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 2012.⁹ A draft Juvenile Bill was under consideration in November 2018.¹⁰

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

⁷ 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

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

⁹ UNICEF, *Child Protection Funding Proposal 2011-2012 Pacific*

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



Sentence for crime (lawful): 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.¹¹

3 Recommendations by human rights treaty bodies

- 3.1 **CRC:** In 1999,¹² 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. The Committee again recommended in 2017¹³ that Vanuatu amend its legislation to explicitly prohibit corporal punishment in all settings, and in particular the Family Protection Act and the Penal Code.
- 3.2 **CRPD:** The Committee on the Rights of persons with Disabilities recommended that the Government prohibit all forms of corporal punishment in all settings, “in line with the Convention to prohibit corporal punishment in all settings”, in its concluding observations on the state party’s initial report in 2019.¹⁴

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¹¹ 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

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

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

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