

**FIJI**  
**NGO Submission to the United Nations Universal Periodic Review**

Submission of Save the Children Fiji, Republic of the Fiji Islands  
Seventh Session of the Universal Periodic Review Working Group, 2010

1. Save the Children Fiji (SC Fiji) is an autonomous and independently funded non-governmental organisation, affiliated to the International Save the Children Alliance (ISCA). SC Fiji uses a rights-based approach in its work and is guided by the United Nations Convention on the Rights of the Child which Fiji ratified in 1993. SC Fiji's goal is to strengthen the delivery of basic services for children; to promote the awareness of children's rights and values at all levels and to mobilize resources to address the diverse needs of children. Since its inception in 1972, SC Fiji has been dedicated to making meaningful contribution to the educational development of children, community capacity building and peaceful and fundamental transformation of disadvantaged communities. SC Fiji's primary role is to create a better world for children through program support, action-oriented research, awareness raising and advocacy.
2. This submission focuses on the issue of corporal punishment in Fiji and the necessary legal reform to achieve full prohibition in all settings including the home. It also includes the status of current legislation in force, the legality of corporal punishment in all settings such as home, schools, penal system, alternative care settings, workplace and prevalence research done on the issue in Fiji. Recommendations relating to these areas of concern are listed under the relevant sections.

### **Legality of Corporal Punishment**

#### **Home**

3. Corporal Punishment is lawful in the home. Section 57 subsections 7 of the Juveniles Act (1974) punishes cruelty to children but also states: "Nothing in this section shall be construed as affecting the right of any parent, teacher or other person having the lawful control or charge of a juvenile to administer reasonable punishment to him." Article 235 of the Penal Code (1945) criminalises "excessive" force.
4. Children have limited protection under provisions in the Juveniles Act, the Penal Code, the Family Law Amendment Act (2005). In 2006, the Prime Minister and other high level offices endorsed a statement calling for an end to all corporal punishment<sup>1</sup>, but as at August 2009 there has been no moves towards legal reform.

#### **Recommendation:**

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<sup>1</sup> See <http://www.info@endcorporalpunishment.org>

1. SC Fiji urges the Government of Fiji to repeal the relevant sections in the Juveniles Act (Cap 56) with particular reference to section 57 subsections 7 and any other in relation to corporal punishment.
2. SC Fiji urges the Government of Fiji to make concrete steps towards the implementation of the principles of the UNCRC into Fijian domestic law.
3. SC Fiji urges the Government of Fiji that when a new Constitution is promulgated, it should still address the issue of freedom from cruel or degrading treatment.

### **Schools**

5. Corporal Punishment is prohibited in schools under a High Court ruling by Justice Jayant Prakash which stated that corporal punishment was unconstitutional (Lautoka High Court, March 2002, Appeal Case *Naushad Ali v State*). The Education Act (Cap 262) does not make any specific provisions for corporal punishment in schools, but prior to the High Court ruling the Permanent Secretary issued guidelines for its administration by heads/ principals using a leather strap. The ruling elicited strong opposition from the Fiji Teachers Association, the Great Council of Chiefs and the Methodist Church, though the FTA has also stated that it does not condone corporal punishment and has encouraged its members to use other methods of discipline.<sup>2</sup> As at August 2009, the prohibition had not been confirmed in legislation and corporal punishment continues to be used in schools.

### **Recommendation:**

4. SC Fiji calls on the Government of Fiji, as a matter of priority to expressly provide for the prohibition of corporal punishment in the Education Act (Cap 262) and in all levels of education.

### **Penal System**

6. Corporal Punishment is unlawful as a **sentence for crime** under the 2002 High Court ruling (see above) but as at August 2009 the Penal Code is still to be amended to reflect this. Corporal Punishment of persons under the age of 17 years is prohibited in the Juveniles Act (Section 32). The Fiji Law Reform Commission has reviewed the Penal Code and, in its report presented to the Government in February 2007, recommended that no corporal punishment provision be restated in the new Crimes Act.

Corporal punishment is unlawful as a **disciplinary measure** in penal institutions under the 2002 High Court ruling (see above). In 2006 legislation providing for corporal punishment (section 84 of the Prisons Act and sections 44 and 134-136 of the Prisons and Corrections Act (2006), which states in section 38: “No prisoner may be subjected, by way of punishment, to: (a) corporal punishment in any form.....” Section 3 (guiding principles) states: “When interpreting or applying any provision of this Act, and when exercising any prescribed power or

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<sup>2</sup> See <http://www.info@endcorporalpunishment.org>

duty or function, all persons that: (a) ensure that full regard is had to the recognized international standards and obligations relating to the treatment of prisoners (and in particular those stated in the International Convention recognized in section 43 (2) of the Constitution and in the Standard Minimum Rules for the Treatment of Prisoners adopted at Geneva in 1955), and that these standards are applied to the fullest extent possible; (b) apply to the fullest extent possible the rights and obligations of CEDAW and CRC in the administration of Fiji's prisons and the treatment of prisoners.....". Section 8 of the Fundamental Rights and Freedoms Decree states that arrested or detained persons have the right "to be treated with humanity and with respect for his or her inherent dignity". There is no provision for corporal punishment in section 29-34 of the Juveniles Act, dealing with juvenile's offender.

7. The Penal Code (Cap 17) in sections 227, 230, 235, 244 and 245 make references to corporal punishments under these sections.

*(Grievous Harm)*

*s.227: Any person who unlawfully and maliciously does grievous harm to another is guilty of a felony, and is liable to imprisonment for seven years, with or without corporal punishment.*

*(Unlawful Wounding)*

*s.230: Any person who unlawfully wounds another is guilty of an offense and is liable to imprisonment for two years, with or without corporal punishment.*

*(Excess Force)*

*s.235: Any person authorized by law or by the consent of the person injured by him to use force is criminally responsible for any excess, according to the nature and quality of the act which constitutes the excess.*

*(Common Assault)*

*s.244: Any person who unlawfully assaults another is guilty of a misdemeanour, and if the assault is not committed in circumstances, for which a greater punishment is provided in this Code, is liable to imprisonment for one year.*

*(Assault causing actual bodily harm)*

*s.245: Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour, and is liable to imprisonment for five years, with or without corporal punishment.*

Sections 244 and 245 of the Penal Code are reconcilable offences under section 163 of the Criminal Procedure Code, which means that if the complainant reconciles with the accused, then the case is dismissed under that section.

**Recommendation:**

5. SC Fiji urges the Government of Fiji to repeal all references to corporal punishment in the Penal Code (Cap 17).
6. SC Fiji urges the Government of Fiji to prohibit the application of Section 163 of the CPC where the complainants are children under the age of 18.

**Alternative care**

8. Corporal Punishment is lawful in other institutions and forms of child care under section 57 subsection 7 of the Juveniles Act (see above). The provisions against violence and abuse in the Penal Code and the Family Law Act apply. The welfare of children in mental health facilities is covered by the Mental Treatment Act (1990).

**Recommendation:**

6. 5. SC Fiji urges the Government of Fiji SC Fiji urges the Government of Fiji to repeal the relevant sections in the Juveniles Act (Cap 56) with particular reference to section 57 subsections 7 and any other in relation to corporal punishment.
7. SC Fiji urges the Government of Fiji to make concrete steps towards the implementation of the principles of the UNCRC into Fijian domestic law.

**Workplace**

9. There is no explicit prohibition of corporal punishment of children in situations of employment. Section 33(3) of the Constitution (1997) states: “[E]very person has the right to fair labour practices, including humane treatment and proper working conditions”.

**Recommendation:**

8. SC Fiji calls on the Government of Fiji to incorporate the principles of the UNCRC into Fijian domestic law.

**Prevalence research**

10. Large scale comparative research into the views and experiences of 3,322 children and 1,000 adults in 8 countries in Southeast Asia and the Pacific (Cambodia, Fiji, Hong Kong, Indonesia, Mongolia, Philippines, Republic of Korea and Vietnam) was carried out by Save the Children in 2005. The research in Fiji involved 536 children (244 boys, 292 girls) aged 10-17 years from urban, semi-urban and rural areas, and 101 adults (49 men and 52 women, teachers in the schools and members of four community settlements in the Central Division). The research team led 51 sessions with the children, boys and girls separately, and two age groups – 10-13 years and 14-17 years. Methods used included research diaries, drawings, body maps, attitude survey, sentence completion, and discussions. Most punishment experienced by children were direct assaults, more frequently for younger children, including being beaten, hit, slapped or lashed, smacked, whacked, given a hiding, spanked, punched, “donged” (on the head) and pinched. Nine out of ten boys aged 10-13 years and almost eight out of ten aged 14-17 years reported the use of physical punishment; 71% of girls in both age groups reported this. More punishment was administered by immediate family members (parents 48%) than by teachers (45%); for all girls and younger boys, most punishment were experienced in the home; for older boys the majority of punishment happened at school. Reasons for the punishment included disobedience, unsatisfactory academic performance and misbehaviour. In

response to the statement “After I punish a child I feel unhappy”, 38% of adults disagree, 57% agreed, 5% had no opinion.<sup>3</sup>

11. Interviews with parents and teachers conducted for Pacific Children’s Program by a team from the University of the South Pacific found that corporal punishment of children is administered by parents, guardians and elders and takes many forms, including beating or using a belt or rod; hitting and punching the head with the hand or an object; inserting fingers down a child’s mouth until the child gags; tying a child up in a sack and hanging from a tree; and whipping with a stick or rope.<sup>4</sup>
12. A study by the Fiji Women’s Crisis Centre found that 80% of respondents had witnessed someone being beaten in the home, indicating a general acceptance of violence as a form of punishment. 57% of those described by respondents as victims of violence in the home were daughters and sons; 19.5% of those most frequently beaten being children; 81.2% of male respondents and 78.8% of female respondents reported being hit by their parents.<sup>5</sup>

To date there has been no public consultations between the Government of Fiji and civil society representatives regarding the issue of corporal punishment. Therefore, this submission was written independently of any consultation with the Government of Fiji. To the best of our knowledge there has been no internal consultation within Fiji in general.

**Recommendation:**

9. SC Fiji urges the Government of Fiji to make concrete steps towards holding consultations with key stakeholders on the issue of eliminating corporal punishment from all settings of society.

For further information on the submission of Save the Children Fiji, please contact the following person.

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<sup>3</sup> Save the Children (2006), *The Physical and Emotional Punishment of Children in Fiji: A research report*, Suva, Save the Children Fiji. See also Beazley, H. S. Bessell, et al., 2006, *What Children Say: Results of comparative research on the physical and emotional punishment of children in Southeast Asia and Pacific*, 2005, Stockholm, Save the Children Sweden.

<sup>4</sup> Vakaoti, P. & Finekaso, G. (2002), *Qualitative Study on Child Protection Practices: Fiji Report*, University of South Pacific, Report prepared International Development Support Services, Pacific Children’s Program

<sup>5</sup> FWCC (2001), *The incidence, prevalence and nature of domestic violence and sexual assault in Fiji: a research project of the Fiji Women’s Crisis Centre*, Suva, Fiji Women’s Crisis Centre. Cited in Save the Children (2006), *The Physical and Emotional Punishment of Children in Fiji: A research report*, Suva, Save the Children Fiji