

# **BRIEFING ON VIET NAM FOR THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, PRESESSIONAL WORKING GROUP – Nov 2014**

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## **Prohibiting corporal punishment of children – a key element in combating domestic and other violence against women and girls**

The legality and practice of corporal punishment of girls breaches their fundamental rights to respect for their human dignity and physical integrity, to equality under the law and to protection from all forms of violence – rights guaranteed in the Convention on the Elimination of All Forms of Discrimination Against Women and other international human rights instruments. There are strong links between corporal punishment of children – girls and boys – and all other forms of violence, including gender-based violence. As the Committee on the Rights of the Child has emphasised, addressing corporal punishment is “a key strategy for reducing and preventing all form of violence in societies”.<sup>1</sup>

The near universal acceptance of a degree of violent punishment in childhood and deeply held views that parents and other adults have a “right” to physically punish children can challenge efforts to achieve prohibition. This situation also means that corporal punishment – at least to some degree – is typically not readily perceived as a violent act in the same way as, for example, sexual and other socially unacceptable forms of violence. Physical violence against girls and boys in their own home is typically assumed not to be domestic violence because it is inflicted under the guise of “discipline” or “correction” – a rationale totally unacceptable when the victim is an adult woman. **It is for these reasons that we respectfully urge the Committee on the Elimination of Discrimination Against Women to specifically recommend that corporal punishment be prohibited in the home and all settings.**

“In almost all countries, parents and other caregivers are the most commonly cited perpetrators of physical violence against adolescent girls.”

UNICEF (2014), *Hidden in Plain Sight: A statistical analysis of violence against children*, p. 51

**This briefing describes the legality of corporal punishment of children in Viet Nam, where law reform to address domestic violence has not yet prohibited all violent punishment of children. In light of General Recommendation No. 19 on Violence against women (1992), the links between corporal punishment of children and all other forms of violence including gender-based violence, and the recommendations made by the Committee on the Rights of the Child, we hope the Committee on the Elimination of Discrimination Against Women will:**

- **raise the issue of corporal punishment of girls in its List of Issues for Viet Nam, asking what progress has been made towards prohibiting and eliminating corporal punishment in all settings, including the home, and**
- **recommend to Viet Nam, in the concluding observations on the seventh/eighth state party report, that legislation prohibiting corporal punishment in the home and all other settings, including repeal of the “right of correction”, be adopted as a matter of priority.**

<sup>1</sup> Committee on the Rights of the Child, General Comment No. 8 (2006) on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2, and 37, inter alia), para. 31

## 1 The state party's report to CEDAW

- 1.1 The seventh/eighth state party report of Viet Nam to CEDAW describes legislative measures to address domestic violence, including the Law on Prevention of family violence 2008 and decrees for its implementation and the Marriage and Family Law 2000.<sup>2</sup> It also describes other measures to curtail abuse and domestic violence against women.<sup>3</sup> But it makes no reference to physical punishment of children.
- 1.2 Government silence with regard to physical punishment of children while at the same time reporting on efforts to combat domestic violence reflects the fact that such punishment is rarely perceived as “violence” *per se*. It demonstrates the common perception that while violence against women within the home and in intimate relationships is viewed as unacceptable and as an issue to be addressed, similar violence against children is acceptable in the guise of “discipline”. **We hope the Committee challenge this perception by raising the issue in its list of issues for Viet Nam and during the review, and recommend specifically that legislation prohibiting corporal punishment in the home and all other settings, including repeal of the “right of correction”, be adopted as a matter of priority.**

## 2 Laws on violence against women and corporal punishment of children in Viet Nam

### *Summary*

- 2.1 There are laws in Viet Nam that protect all persons from violence and abuse. But the clear message prohibiting corporal punishment that is required from the law with regard to children – because of the longstanding acceptance of physical punishment in childrearing – has not been achieved. While physical punishment is clearly prohibited in schools and in the penal system, legislation in relation to the home and to alternative care settings and day care is significantly less clear, relying on general prohibitions of “abuse” and “ill-treatment” and associated with perceived actual, or likelihood of, injury. Further law reform is necessary to ensure that legislation prohibits all physical violence, including when it is inflicted with the intention of “disciplining” children.

### *Laws protecting women and children from violence*

- 2.2 The Law on Domestic Violence Prevention and Control 2007 defines domestic violence as “purposeful acts of certain family members that cause or may possibly cause physical, mental or economic injuries to other family members” (article 1). It lists acts of domestic violence, including “corporal beating, ill-treating, torturing or other purposeful acts causing injuries to one’s health and life” and “insulting or other intended acts meant to offend one’s pride, honour and dignity” (article 2). But the law does not clearly prohibit physical punishment intended to “discipline” children.
- 2.3 The Criminal Code includes provisions against cruel treatment of other people, including against “aged persons, children, pregnant women or disabled persons” (article 110). It includes a specific provision against cruel treatment of family members (article 151). The Civil Code confirms the right of all individuals to “safety of life, health and body” and states that “no one may infringe upon the life, health and body of other persons” (article 32). But the Codes do not explicitly prohibit all corporal punishment of children and therefore do not challenge the widespread perception that some degree of physical punishment in childrearing is not harmful but is necessary and even beneficial to children.
- 2.4 The Marriage and Family Law 2000 states that parents “have the obligations and rights to love, look after, rear, care for, and protect the legitimate rights and interests of, their children” and that parents must not “discriminatorily treat, ill-treat or persecute their children, or hurt their honour”

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<sup>2</sup> 13 December 2013, CEDAW/C/VNM/7-8, Seventh/eighth state party report, para. 39 40 41

<sup>3</sup> *ibid.*, paras. 256-260

(article 34). It does not explicitly prohibit all physical punishment in childrearing.

2.5 The Law on Child Protection, Care and Education 2004 protects children from a number of violent acts, including “torturing, maltreating, affronting” children and “applying corporal punishments to juvenile offenders” (article 7). The Law also states that children have the right to “have their life, body, dignity and honour protected by their respective families, the State and society” (article 14). It states that “the family, State and society have the responsibility to protect children’s life, body, dignity and honor” (article 26). Corporal punishment invariably breaches a child’s right to respect for their physical integrity and human dignity, but the consensus on this matter among human rights advocates is not typically reflected among societies, including in the legal profession. For this reason, the law must send a clear message that all forms of corporal punishment, without exception, are prohibited – and this Law on Protection, Care and Education 2004 does not achieve this.

### **3 The experience of corporal punishment of children in Viet Nam**

3.1 Research has documented widespread use of corporal punishment in childrearing in Viet Nam. For example, UNICEF’s major 2010 analysis of data on discipline of children in the home in 2005-2006 found that 94% of 2-14 year olds were violently “disciplined” (by physical punishment and/or psychological aggression) in the month prior to the survey.<sup>4</sup> A majority (64%) of girls and women aged 15-49 thought that a husband is justified in hitting or beating his wife under certain circumstances.<sup>5</sup> In a study involving 178 8-25 year olds, 70% reported having been “spanked” on the bottom or hand with a hand during their childhood and over half having been hit with an implement.<sup>6</sup>

### **4 Recommendations by human right treaty monitoring bodies**

4.1 **CRC:** The Committee on the Rights of the Child has twice expressed concern at corporal punishment of children in Viet Nam and recommended that it be prohibited in the family and other settings – in its concluding observations on the second report in 2003 and on the third/fourth report in 2012.<sup>7</sup>

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<sup>4</sup> UNICEF (2010), *Child Disciplinary Practices at Home: Evidence from a Range of Low- and Middle-Income Countries*, NY: UNICEF

<sup>5</sup> UNICEF (2009), *Progress for Children: A report card on child protection*, NY: UNICEF

<sup>6</sup> UNICEF Viet Nam (2006), *Child Abuse in Viet Nam: Final Report into the Concept, Nature and Extent of Child Abuse in Viet Nam*

<sup>7</sup> 18 March 2003, CRC/C/15/Add.200, Concluding observations on second report, paras. 33 and 34; 22 August 2012, CRC/C/VNM/C0/3-4, Concluding observations on third/fourth report, paras. 45 and 46