

**BRIEFING ON VIET NAM FOR THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, PRE-SESSIONAL WORKING GROUP
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**This briefing describes the legality of corporal punishment of children in Viet Nam. In light of the obligation under international human rights law to prohibit all corporal punishment of children, the recommendations of the UN Secretary General’s Study on Violence against Children and the recommendations made to Viet Nam by the Committee on the Rights of the Child, we hope the Committee on Economic, Social and Cultural Rights will:**

* **in its List of Issues for Viet Nam, raise the issue of corporal punishment of children, in particular asking what progress has been made towards ensuring that legislation is drafted and enacted which explicitly prohibits all forms of corporal punishment, including in the home?**
* **in its concluding observations on Viet Nam’s second to fourth report, recommend that legislation is enacted which explicitly prohibits all forms of corporal punishment in all settings, including the home.**

**1 Viet Nam’s report to the Committee on Economic, Social and Cultural Rights**

1.1 The second to fourth state party report to the Committee on Economic, Social and Cultural Rights asserts that all violence against children is prohibited.[[1]](#footnote-1) It also describes various measures, including legislative measures, to address domestic violence.[[2]](#footnote-2) However, it makes no reference to physical punishment of children – violence inflicted in the guise of “discipline” – and fails to acknowledge that this form of violence is not, in fact, fully prohibited.

1.2 The near universal and deeprooted acceptance of physical punishment in childrearing means that it is not readily perceived as a violent act or as something which is disrespectful to a child’s dignity. On the contrary, it is frequently argued that it is for a child’s own good, a necessary element or even a duty in parenting. It is for these reasons that the law must send a clear and unequivocal message that no corporal punishment is acceptable, and it is for these reasons that general prohibitions against “violence” or “abuse” do not achieve the required clarity. **We hope the Committee will emphasise to the Government of Viet Nam that legally protecting children from violence must entail *explicitly* prohibiting all forms of corporal punishment, and recommend that legislation which includes this prohibition is adopted as a matter of priority.**

**2 The legality and practice of corporal punishment of children in Viet Nam**

2.1 *Summary:*Corporal punishment of children in Viet Nam is unlawful in the penal system and in schools but it is not fully prohibited in the home, alternative care settings and day care.

2.2 *Home (lawful):* Provisions against violence and abuse in the Law on the Protection, Care and Education of Children 1991 (amended 2004), the Penal Code 1999, the Law on Marriage and the Family (art. 26), the Civil Code 2005 and the Law on Domestic Violence Prevention and Control 2007 are not interpreted as prohibiting all corporal punishment in childrearing. In reporting to the UN Committee on the Rights of the Child in 2012, the Government stated that corporal punishment is unlawful in the family, school and education centres under the Constitution and other laws.[[3]](#footnote-3) However, there is no explicit prohibition, and the Government also stated its intention to include a provision on corporal punishment in draft amendments to the Law on the Protection, Care and Education of Children.[[4]](#footnote-4) In November 2013, the new Constitution 2013 was adopted. Article 20(1) protects human dignity but does not clearly prohibit all corporal punishment: “Every one shall enjoy inviolability of the person and the legal protection of his or her life, health, honor and dignity; and is protected against torture, harassment and coercion, and any forma of violation of his or her life and health, and offence of honor and dignity.” Similarly, article 37(1) prohibits violence and abuse against children but it does not explicitly prohibit all forms of corporal punishment (unofficial translation): “Children enjoy protection, care and education by the family, the State and society; and are allowed to participate into children affairs. Infringement, maltreatment, abandonment, abuse, and exploitation of labor and other forms of violating children rights are strictly prohibited.”

2.3 UNICEF’s major 2010 analysis of data on child discipline from 2005-2006 found that 94% of 2-14 year olds in Viet Nam had experienced violent “discipline” (physical punishment and/or psychological aggression) in the month prior to the survey. One in ten children had been severely physically punished (hit or slapped on the face, head or ears or hit over and over with an implement).[[5]](#footnote-5)

2.4 *Alternative care settings (lawful):*There is no explicit prohibition of corporal punishment in alternative care settings, where corporal punishment is lawful as for parents (see para. 2.2).

2.5 *Day care (lawful):* There is no explicit prohibition of corporal punishment in early childhood care and in day care for older children.

2.6 *Schools (unlawful):*Corporal punishment is unlawful in schools under article 75 of the Education Law 2005, which states that teachers must not “disrespect the honour, dignity of learners, hurt or abuse them physically”. There are a number of other legal provisions regarding protection of students’ honour and dignity, including Decree No. 163/2003/ND-CP regulating education in commune, ward and town, the Primary Universal Education Law, and Decree 338-HDBT 26/10/1991 on the implementation of the Primary Universal Education Law.

2.7 *Penal institutions (unlawful):* Corporal punishment is unlawful under article 7(9) of the Law on the Protection, Care and Education of Children 1991, which prohibits “applying measures that offend or lower the honor or dignity of, or applying corporal punishments to, juvenile offenders”.

2.8 *Sentence for crime (unlawful):* There is no provision for judicial corporal punishment in criminal law.

**3 Recommendations by human rights treaty bodies**

3.1 *CRC:* The Committee on the Rights of the Child has twice recommended to Viet Nam that corporal punishment be explicitly prohibited in all settings, including the home – in its concluding observations on the state party’s second report in 2003 and on the third/fourth report in 2012.[[6]](#footnote-6)

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

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1. 14 March 2013, E/C.12/VNM/2-4, Second state party report, para. 19 [↑](#footnote-ref-1)
2. ibid., paras. 276ff [↑](#footnote-ref-2)
3. 24 May 2012, CRC/C/VNM/Q/3-4/Add.1, Written replies to the List of Issues, para. 73; 31 July 2012, CRC/C/SR.1703, Summary record of 1703rd meeting, para. 9 [↑](#footnote-ref-3)
4. 22 August 2012, CRC/C/VNM/C0/3-4, Concluding observations on third/fourth report, para. 45; 31 July 2012, CRC/C/SR.1703, Summary record of 1703rd meeting, para. 9 [↑](#footnote-ref-4)
5. UNICEF (2010), *Child Disciplinary Practices at Home: Evidence from a Range of Low- and Middle-Income Countries*, NY: UNICEF [↑](#footnote-ref-5)
6. 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 [↑](#footnote-ref-6)