

VIET NAM

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 18th session, 2014

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Global Initiative to
**End All Corporal Punishment
of Children**

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 Viet Nam, corporal punishment of children is lawful, despite the Government's stated intention to reform the law, its acceptance of recommendations to harmonise national legislation with international human rights obligations made during the UPR in 2009, and the repeated recommendations to prohibit corporal punishment by the Committee on the Rights of the Child.

We hope the Working Group will note with concern the legality of corporal punishment in Viet Nam. We hope states will raise the issue during the review in 2014 and make a specific recommendation that legislation is enacted in Viet Nam to explicitly prohibit corporal punishment of children in the home and all alternative care settings as a matter of priority.

1 The initial review of Viet Nam by the Human Rights Council (2009)

- 1.1 Viet Nam was examined in the first cycle of the Universal Periodic Review in 2009 (session 5). No recommendations were made concerning corporal punishment of children, though the issue was included in the compilation of UN information¹ and in the summary of stakeholders' information.² General recommendations were made concerning the fulfilment of obligations under international treaties and the promotion of the rights of the child:³ the Government accepted these recommendations.
- 1.2 Prohibiting and eliminating corporal punishment of children is a key obligation under the Convention on the Rights of the Child and other international human rights instruments. The Committee on the Rights of the Child has twice recommended that corporal punishment of children in Viet Nam be explicitly prohibited in all settings including the

¹ 16 March 2009, A/HRC/WG.6/5/VNM/2, Compilation of UN information, para. 28

² 23 February 2009, A/HRC/WG.6/5/VNM/3, Summary of stakeholder's information, paras. 15 and 17

³ 5 October 2009, A/HRC/12/11, Report of the working group, paras. 99(1), 99(73) and 99(82)

home – in the concluding observations on the second report in 2003 and, most recently, on the third/fourth report in 2012.⁴

- 1.3 In 2012, the Government of Viet Nam informed the Committee on the Rights of the Child of its intention to include a provision on corporal punishment in draft amendments to the Law on the Protection, Care and Education of Children.⁵ While this intention is to be welcomed, it nevertheless remains the case that law reform is yet to be achieved and, to date, the legality of corporal punishment has not changed since the initial review of Viet Nam in 2009.
- 1.4 The obligation to reform the law to prohibit corporal punishment, including in the home, is one frequently ignored or evaded by governments. 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. **It is for these reasons that we respectfully urge members of the Working Group to specifically recommend prohibition of corporal punishment in the review of Viet Nam.**

2 Legality and practice of corporal punishment in Viet Nam

- 2.1 **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 (article 26), the Constitution 1980, the Civil Code 2005 and the Law on Domestic Violence Prevention and Control are not interpreted as prohibiting all corporal punishment in childrearing. In reporting to the UN Committee on the Rights of the Child, the Government stated that corporal punishment is unlawful in the family, school and education centres under the Constitution and other laws.⁶ However, there is no explicit prohibition, and as noted above the Government has 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.⁷
- 2.2 UNICEF’s major analysis of data from 2005-2006 found that 94% of children aged 2-14 experienced violent “discipline” (physical punishment and/or psychological aggression) in the home in Viet Nam; one child in ten experienced severe physical punishment (being hit or slapped on the face, head or ears or being hit over and over with an implement).⁸
- 2.3 **Schools (unlawful):** Corporal punishment is considered unlawful 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”, though it is not explicitly prohibited.
- 2.4 **Penal system – sentence for crime (unlawful):** There is no provision for judicial corporal punishment in criminal law.

⁴ 18 March 2003, CRC/C/15/Add.200, Concluding observations on second report, paras. 33 and 34; 15 June 2012, CRC/C/VNM/C0/3-4 Advance Unedited Version, Concluding observations on third/fourth report, paras. 45 and 46

⁵ 15 June 2012, CRC/C/VNM/C0/3-4 Advance Unedited Version, Concluding observations on third/fourth report, para. 45

⁶ 24 May 2012, CRC/C/VNM/Q/3-4/Add.1, Written replies to the List of Issues, para. 73

⁷ 15 June 2012, CRC/C/VNM/C0/3-4 Advance Unedited Version, Concluding observations on third/fourth report, para. 45

⁸ UNICEF (2010), *Child Disciplinary Practices at Home: Evidence from a Range of Low- and Middle-Income Countries*, NY: UNICEF

2.5 **Penal system – disciplinary measure in penal institutions (unlawful)**: Article 7(9) of the Law on the Protection, Care and Education of Children explicitly prohibits corporal punishment of juvenile offenders.

2.6 **Alternative care settings (lawful)**: There is no explicit prohibition of corporal punishment. Research studies have documented the use of corporal punishment in institutional care settings, particularly for children with mental disabilities and children previously involved in commercial sex work, living in residential “rehabilitation” facilities in Ho Chi Minh City – punishments included beating children, locking them in their rooms, punishing them by making them kneel in front of the caregivers, and forcing them to clean the toilets or animal stables.⁹

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The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, and in 2011 began briefing the Committee on the Rights of Persons with Disabilities.

⁹ MOLISA, Canadian International Development Agency and UNICEF Viet Nam (2004), *Situation Analysis of Institutional and Alternative Care Programs in Vietnam*