



From the Global Initiative to End All Corporal Punishment of Children, October 2018

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 to Viet Nam to prohibit made by the Committee on the Rights of the Child, as well as the new global commitment to ending all violence against children in the context of the 2030 Agenda for Sustainable Development, we hope the Committee Against Torture will:

- **recommend to Viet Nam, following examination of the state party’s initial report, that legislation is enacted and implemented as a matter of priority to explicitly prohibit all corporal punishment of children, however light, in all settings including the home.**

1 Viet Nam’s report to the Committee Against Torture

1.1 Viet Nam’s initial report makes several references to corporal punishment being prohibited in the Constitution and various laws relating to the penal system. It is unclear whether this refers to corporal punishment as defined by the Committee on the Rights of the Child, as other translations of those texts do not include the term “corporal punishment”. In any case, these texts are not interpreted as protecting children from all forms of corporal punishment, however light, in all settings including the home.

1.2 **We hope the Committee will raise the issue of the prohibition of corporal punishment of children in its review of Viet Nam and recommend that legislation is enacted and implemented as a matter of priority to explicitly prohibit all corporal punishment of children, however light, in all settings including the home.**

2 The legality of corporal punishment of children in Viet Nam

2.1 **Summary:** Corporal punishment of children in Viet Nam is lawful in homes and in alternative care and in day care settings. It is prohibited in schools and in the penal system.

2.2 **Home (lawful):** Corporal punishment is lawful in the home. Provisions against violence and abuse in the Child Law 2016, the Criminal Code 2015, the Law on Marriage and the Family (art. 26), and the Law on Domestic Violence Prevention and Control 2007 are not interpreted as prohibiting all corporal punishment in childrearing. 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. The Criminal Code includes a specific provision against cruel treatment of family members (article 185). The 2015 Civil Code confirms the right of all individuals to "safety of life, health and body" and states that "each individual has the right to life, the inviolable right to life and body, the right to health protection by law" (article 33). But the Codes do not explicitly prohibit all corporal punishment of children. 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" (article 34). It does not explicitly prohibit all physical punishment in childrearing.

2.3 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." However, the Government has reported that article 20 contains a prohibition of corporal punishment:¹ we are enquiring as to the exact translation and interpretation of the article. 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."

2.4 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.² However, as noted above 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.³

2.5 The Child Law 2016 was voted in April 2016, repealing the Law on Child Protection, Care and Education 2004. The Child Act provides for children's right to be "protected, in any form, from violence" (art. 27, unofficial translation); parents have the responsibility to educate their children in a "comfortable, equal, progressive and happy family" (art. 98, unofficial translation). But the Law does not send a clear message that all corporal punishment, however light, is prohibited. The Law came into effect on 1 June 2017.

2.6 A new Criminal Code and a new Criminal Procedure Code were adopted in 2015, but a July 2016 parliamentary resolution delayed the implementation of most of their provisions, due to technical errors in the text of the Criminal Code 2015. The Law amending the Criminal Code 2015 was voted on by the National Assembly in 2017 and both the 2015 Criminal Code and the 2015 Code of Criminal Procedure entered into force in January 2018. Neither text explicitly prohibits all corporal punishment of children, including in the home.

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

¹ 9 January 2018, CCPR/C/VNM/3, Third report, paras. 72, 73 and 74

² 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

³ 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

- 2.8 **Day care settings (lawful)**: There is no explicit prohibition of corporal punishment in early childhood care and in day care for older children.
- 2.9 **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.
- 2.10 **Penal institutions (unlawful)**: Corporal punishment is unlawful as a disciplinary measure in penal institutions under article 30 of the Child Law 2016 which states (unofficial translation): “Children have the right to be protected during proceedings and the taking of actions against administrative violations. (...) In addition, they are protected from torture, extortion of deposition, corporal punishment, defamation of the honor and dignity, acts violating their body, psychological pressure and other violations”.
- 2.11 Other applicable laws include the 2015 Code of Criminal Procedure (art. 10), the 2015 Law on Execution of Temporary Custody and Detention (art. 4 and 8), the 2015 Law on Organisation of Criminal Investigation Agencies (art. 14) and Decree No.114/2006/ND-CP on punishment of administrative violations on population and children (art. 21). Ordinance No.33/CP 1997 on residential schools, which accommodate children in conflict with the law, provides for children’s honour and dignity but does not explicitly prohibit corporal punishment as a disciplinary measure.
- 2.12 **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 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 2012.⁴

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