

Corporal punishment of children in China, including Hong Kong and Macau: Briefing for the Universal Periodic Review, 17th session 2013



Global Initiative to
End All Corporal Punishment
of Children

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Corporal punishment of children breaches their rights to respect for human dignity and physical integrity and to equal protection under the law. It is recognised by the Committee on the Rights of the Child and other treaty bodies, as well as by the UN Secretary General's Study on Violence against Children, as a highly significant issue, both for asserting children's status as rights holders and for the prevention of all forms of violence.

In June 2006, the Committee on the Rights of the Child adopted General Comment No. 8 on "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment", which emphasises the immediate obligation on states parties to prohibit all corporal punishment of children, including within the home. Other treaty bodies and also regional human rights mechanisms have condemned all corporal punishment. In October 2006, the report of the UN Secretary General's Study on Violence against Children was submitted to the General Assembly. It recommends universal prohibition of all corporal punishment as a matter of priority.

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. There is growing progress across all regions in challenging this common form of violence against children. But many States persist in ignoring treaty body recommendations to prohibit and eliminate all corporal punishment. We hope the Working Group of the UPR will give particular attention to states' response, or lack of response, to the concluding observations from treaty bodies on this issue, as well as to the recommendations made during the first cycle of the UPR.

Corporal punishment of children is lawful in China – including in Hong Kong and in Macau – despite the Government's acceptance of recommendations to promote human rights and the rights of the child made during the UPR in 2009 and the 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 China, including Hong Kong and Macau. We hope states will raise the issue during the review in 2013 and recommend to China that legislation is enacted throughout the state to explicitly prohibit corporal punishment of children in the home and all forms of care as a matter of priority.

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

1.1 China was reviewed in the first cycle of the Universal Periodic Review in 2009 (session 4). No recommendations were made specifically concerning corporal punishment of children. However, the following recommendations were made and were accepted by the Government:¹

“Continue its efforts: for the promotion of human rights (Oman); in legal and judicial reforms, economic development and other areas towards promoting a harmonious society, democracy, the rule of law and human rights (Viet Nam);

“Continue enhancing the quality of life of its people through the enjoyment of economic, social and cultural rights and pursuant to international standards (Nicaragua);

“Attach more importance to the protection of rights of the child through national plans for economic and social development (Qatar)”

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 expressed its concern to China that corporal punishment is not prohibited by law and that it continues to be practiced in the home, including in Hong Kong and Macau; the Committee has recommended that corporal punishment be explicitly prohibited in the family, schools, institutions and all other settings.² In addition, recommendations concerning corporal punishment in Hong Kong were made in the 1990s by the Committee on the Rights of the Child and by the Committee Against Torture in the context of those treaty bodies’ examination of the UK, when Hong Kong was a dependent territory of the UK.³

1.3 But despite the Government’s acceptance of relevant recommendations in the first cycle UPR, there has been no change in the legality of corporal punishment of children since the initial review. Today, as in 2009, corporal punishment in China is lawful in the home and alternative care settings; in Macau it is lawful in the home, schools, alternative care settings and possibly penal institutions, and in Hong Kong it is lawful in the home and in some forms of alternative care.

2 Legality and practice of corporal punishment in China, Hong Kong and Macau

China

2.1 ***Home (not fully prohibited)***: In China, there is limited protection from corporal punishment by parents in some circumstances: Rules in the Shenzhen Special Economic Zone 1993 pursuant to the Law of the People’s Republic of China on the Protection of the Rights and Interests of Women 1992 explicitly prohibit corporal punishment of the female

¹ 5 October 2009, A/HRC/11/25, Report of the working group, paras. 114(2), 114(3) and 114(13)

² 24 November 2005, Concluding observations on second report on China (including Hong Kong and Macau Special Administrative Regions), CRC/C/CHN/CO/2, paras. 46, 47 and 48

³ 30 October 1996, CRC/C/15/Add.63, Concluding observations on initial report of the United Kingdom of Great Britain and Northern Ireland: Dependent Territories (Hong Kong), para. 27; 9 July 1996, A/51/44, Concluding observations on second report of the United Kingdom of Great Britain and Northern Ireland and on the United Kingdom and its dependent Territories, paras. 58-65, para. 65. Hong Kong ceased to be a dependent territory of the UK in 1997.

child (article 23), and under article 36 of the Law on the Prevention of Juvenile Delinquency 1999, families of children in work-study schools must not impose physical punishment on them. But the same Law states that parents or guardians of children who commit serious misbehaviour may be ordered to subject their children to “strict discipline” (articles 35, 38 and 49). Provisions against violence and abuse in the revised Law on the Protection of Minors 2006, the Criminal Law 1979, the Constitution 1982 and the Marriage Law (amended 2001) are not interpreted as prohibiting all corporal punishment in childrearing.

2.2 **Schools (prohibited)**: Corporal punishment is prohibited in schools, kindergartens and nurseries under article 16 of the Compulsory Education Law 1986, article 37 of the Teachers’ Law 1994, article 36 of the Law on the Prevention of Juvenile Delinquency 1999, and articles 21 and 63 of the Law on the Protection of Minors 2006.

2.3 **Penal system (prohibited)**: There is no provision for judicial corporal punishment in criminal law. Corporal punishment is prohibited as a disciplinary measure in penal institutions under article 248 of the Criminal Code, article 36 of the Law on the Prevention of Juvenile Delinquency, article 14 of the Prison Law, article 22 of the People’s Police Law, and the Regulations on the Behaviour of People’s Police on Duty in Custody-houses 2001.

2.4 **Alternative care settings (lawful)**: There is no explicit prohibition of corporal punishment.

Hong Kong

2.5 **Home (lawful)**: Article 8 of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China 1997 states that the common law previously in force shall be maintained, and this would include the “reasonable chastisement” defence in English common law. The Law Reform Commission of Hong Kong has confirmed the common law right of parents in Hong Kong “to inflict moderate punishment”.⁴

2.6 **Schools (prohibited)**: Corporal punishment is explicitly prohibited in Regulation 58 of the Education Regulations 1971 (amended 1991).

2.7 **Penal system (prohibited)**: There is no provision for judicial corporal punishment in criminal law. Corporal punishment as a disciplinary measure in penal institutions is unlawful under the Prison Rules 1954, the Reformatory School Rules 1959, the Remand Home Rules 1955, the Rehabilitation Centres Regulation 2001 and the Detention Centre Regulations 1972, which make no provision for it. It is explicitly prohibited in approved institutions by Rule 37 of the Probation of Offenders Rules.

2.8 **Alternative care settings (not fully prohibited)**: Corporal punishment is explicitly prohibited in child care centres and in mutual help child care centres in the Child Care Services Regulations 1976 (amended 2000) (regulations 15 and 45R). But in other forms of care it is lawful as for parents. The Protection of Children and Juveniles Ordinance, providing for the powers of juvenile courts in relation to guardianship and custody and control of children in need of care and protection, states that “any person or institution to whose care a child or juvenile is committed under this section shall, whilst the order is in force, have the like control over the child or juvenile as the parent” (section 34, para. 4). The Protection of Children and Juveniles (Places of Refuge) Regulations 1993 provide for

⁴ Law Reform Commission of Hong Kong (2002), *Report: Guardianship of Children*

the power of the Director of Social Welfare to approve rules made by places of refuge not wholly funded by public funds and states that this power “shall not be deemed to authorise the making or approval of any rules for the punishment, restraint or correction of any person other than such punishment, restraint or correction as a parent could lawfully administer to a child” (Regulation 7).

Macau

- 2.9 ***Home (lawful)***: The Law on Family Policy 1994 states that parents have the “right and duty to ensure, promote and guide the overall development of children” (article 15); there is a similar provision in the Civil Code, which also states that children must obey their parents (article 1733). There is no explicit legal defence for the use of corporal punishment in childrearing in these laws or in the Penal Code 1995 but legal provisions against violence and abuse are not interpreted as prohibiting all corporal punishment of children.
- 2.10 ***Schools (lawful)***: There appears to be no explicit prohibition of corporal punishment in schools. Law 9/2006 on the Legal Framework on the Educational System for Non-Higher Education is silent on the issue, as are Decree Law No. 33/96/M on education for students with special educational needs and Decree-Law No. 42/99/M on compulsory education.
- 2.11 ***Penal system (not fully prohibited)***: There is no provision for judicial corporal punishment in criminal law. Corporal punishment as a disciplinary measure is unlawful in prisons under Decree Law 40/94 (the Prison Establishment Law), but it is not prohibited in Law 2/2007 establishing educational guardianship measures for young offenders provides for detention in observation centres, education centres, and education and training centres.
- 2.12 ***Alternative care settings (lawful)***: There is no explicit prohibition of corporal punishment

Nature and prevalence of corporal punishment

- 2.13 Much research has been carried out on the infliction of corporal punishment by parents in China and Hong Kong. For example, in a study of 2,363 parents, 43.8% said they had physically punished a child; 32.8% had done so in the past year.⁵ A comparative study of the relationship between gender and physical punishment found that in China 48% of girls and 60% of boys had experienced “mild” corporal punishment (spanking, hitting, or slapping with a bare hand; hitting or slapping on the hand, arm, or leg; shaking; or hitting with an object), and 10% of girls and 15% of boys had experienced severe corporal punishment (hitting or slapping the child on the face, head, or ears; beating the child repeatedly with an implement) by someone in their household in the past month.⁶ A survey of more than 2,100 primary school children aged 9-12 found that 73% were

⁵ Chan, K. L. (2010), “Co-occurrence of intimate partner violence and child abuse in Hong Kong Chinese families”, *Journal of Interpersonal Violence*, (e-publication ahead of print), 1-21, cited in UNICEF East Asia and Pacific Regional Office (2012), *Child Maltreatment: Prevalence, Incidence and Consequences: A Systematic Review of Research*, Bangkok: UNICEF

⁶ Lansford, J. et al (2010), “Corporal Punishment of Children in Nine Countries as a Function of Child Gender and Parent Gender”, *International Journal of Pediatrics*

physically punished by their parents.⁷ In a study of 1,622 Chinese parents, 57.5% reported using corporal punishment.⁸

2.14 In a survey of 366 parents and 356 secondary school children, 83.3% of parents admitted inflicting corporal punishment on their children.⁹ Research published by the Department of Social Work and Social Administration of the University of Hong Kong and the Hong Kong Committee for UNICEF in 2008 found that more than one in five children are hit by their parents (21% of nearly 6,000 primary and secondary school students reported this) – but the lifetime prevalence was much higher, at 58%.¹⁰ In 2006, the results of the first household survey on domestic violence were reported, commissioned by Hong Kong Social Welfare Department, based on interviews with 5,049 adults and 2,062 children aged 12-17 years: about 44% of the parents admitted having administered corporal punishment and physical violence on their children, of which 32% said they had used violence on their children at least once during the past 12 months.¹¹

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⁷ Hesketh, T. et al (2010), “Stress and psychosomatic symptoms in Chinese school children: cross-sectional survey”, *Archives of Disease in Childhood*, 95(2), 136-140

⁸ Tang, C. S. K. (2006), “Corporal punishment and physical maltreatment against children: A community study on Chinese parents in Hong Kong”, *Child Abuse & Neglect*, 30, 893-907, cited in UNICEF East Asia and Pacific Regional Office (2012), *Child Maltreatment: Prevalence, Incidence and Consequences: A Systematic Review of Research*, Bangkok: UNICEF

⁹ Survey by NGO Against Child Abuse, announced in 2007 Spank Out Day press conference, information provided in correspondence with the Global Initiative, February 2009

¹⁰ Chan, K. L. (2008), *Study on Child-friendly Families: Immunity from Domestic Violence*, Hong Kong: Hong Kong Committee for UNICEF & Dept of Social Work and Social Administration, University of Hong Kong

¹¹ Chan, K. L. (2005), *Study on Child Abuse and Spouse Battering: Report on findings of Household Survey*, Hong Kong: Department of Social Work & Social Administration, the University of Hong Kong