

Corporal punishment of children in Japan: Briefing for the Universal Periodic Review, 28th session, 2017

From the Global Initiative to End All Corporal Punishment of Children, March 2017



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 Japan, corporal punishment of children is lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child, the Committee Against Torture and the Human Rights Committee, and the recommendation made during the 2nd cycle UPR of Japan in 2012 (which the Government accepted).

We hope the Working Group will note with concern the legality of corporal punishment of children in Japan. We hope states will raise the issue during the review in 2017 and make a specific recommendation that Japan clearly prohibit all corporal punishment of children in all settings, including the home.

1 Review of Japan in the 2nd cycle UPR (2012) and progress since

1.1 Japan was reviewed in the second cycle of the Universal Periodic Review in 2012 (session 14). The issue of corporal punishment of children was raised in the compilation of UN information¹ and in the summary of stakeholders' information.² The Government accepted a recommendation to explicitly prohibit corporal punishment of children in all settings.³

1.2 Since the review in 2012 and despite the Government's renewed commitment there has been no change in the legality of corporal punishment of children. Although the Child Abuse Prevention Law and the Child Welfare Act were amended in 2015, the initial discussions on including a ban did not evolve into prohibition after the Government argued against it during the debate. The January 2017 mid-term report declares that "while the meaning of "corporal punishment" is not absolutely clear, the act of assault (Penal Code Article 208) or injury (Penal Code Article 204) can be punished".⁴

¹ 13 August 2012, A/HRC/WG.6/14/JPN/2, Compilation of UN information, para. 36

² 20 July 2012, A/HRC/WG.6/14/JPN/3, Summary of stakeholders' views, para. 39

³ 8 March 2013, A/HRC/22/14/Add.1, Report of the working group: Addendum, para. 147(126)

⁴ January 2017, Mid-term report on the progress made in the implementation of the recommendations issued at the second cycle of the Universal Periodic Review

- 1.3 **We hope the Working Group will note with concern the continued legality of corporal punishment of children in Japan. We hope states will raise the issue during the review in 2017, remind the Government of its international obligation and make a specific recommendation that Japan clearly prohibit all corporal punishment of children, however light, in all settings.**

2 Legality of corporal punishment in Japan

Summary of current law and opportunities for achieving prohibition

Corporal punishment of children in Japan is unlawful in schools and as a sentence for a crime, but it is not yet prohibited in the home, alternative care settings, day care and penal institutions.

- 2.1 **Home (*lawful*):** Corporal punishment is lawful in the home, though it is prohibited in Kawasaki City by local ordinance. Article 822 of the Civil Code, as amended in 2011, states (unofficial translation): “A person who exercises parental authority can discipline the child within limits for the purpose of supervision, care and education....” Article 14(1) of the Child Abuse Prevention Law 2000 was amended in 2015 to state “Those who exercise parental authority shall not discipline the child beyond the scope required for care and education pursuant to the provisions of Article 820 of the Civil Code and shall take into consideration the proper exercise of parental authority over the child” (unofficial translation). According to article 820 of the Civil Code, “a person who exercises parental authority holds the right and bears the duty on care and education for the children’s interests” (unofficial translation). Article 14(2) states “Persons with parental authority cannot escape criminal punishment for the crimes of violence, injury or other crimes of abuse committed against the children simply because they have been entrusted to their parental authority.” The Government has said that this Act obliges parents “to exercise such authority in a proper manner that will not constitute child abuse” and that the Penal Code punishes “exercise of disciplinary rights over a child [which] exceeds reasonable current social standards”.⁵ There is no explicit prohibition of all corporal punishment, however light, in childrearing. The Civil Code is being revised.
- 2.2 Article 1 of the Child Welfare Act 1947 states that all citizens shall endeavour to ensure that children are “brought up in good mental and physical health” and that they shall “be kindly treated”. Article 34 lists a number of prohibited acts against children. But the Act does not prohibit all corporal punishment of children. Although the inclusion of prohibition in amendments to the Act had been discussed, during the debate the Government argued against prohibition on the basis that the current legislation provided sufficient protection. As a result the amendments voted in 2016 did not prohibit corporal punishment.
- 2.3 Although the Government accepted the recommendations to prohibit all corporal punishment made during the Universal Periodic Reviews of Japan in 2008⁶ and in 2012,⁷ it denied that the

⁵ 6 August 2012, A/HRC/WG.6/14/JPN/1, National report to the UPR, paras. 50 and 51; see also 15 September 2011, CAT/C/JPN/2, Second state party report, para. 280

⁶ 30 May 2008, A/HRC/8/44, Report of the working group, paras. 60(17)

⁷ 14 December 2012, A/HRC/22/14, Report of the working group, para. 147(126)

legal “right to discipline” allowed for corporal punishment and stated that the law adequately protects children from “excessive” discipline.⁸

2.4 **Alternative care settings (lawful)**: Corporal punishment is lawful under the power of those with parental authority to punish and discipline children in the Civil Code and the Child Abuse Prevention Law. Minimum Standards for Child Welfare Facilities 1948 address abuse of disciplinary methods but do not prohibit corporal punishment. On 29 March 2012, the Ministry of Health, Labour and Welfare renewed guidelines for the management of alternative care facilities which recommend that management guidelines for such facilities should state that corporal punishment should not be used – but these are guidelines and not law.

2.5 **Day care (lawful)**: Corporal punishment is lawful in formal early childhood care (nurseries, crèches, children’s centres etc) and formal care for older children (after-school childcare, childminding, etc) under the power of those with parental authority to punish and discipline children in the Civil Code and the Child Abuse Prevention Law. In 2009, the Ministry of Health, Labour and Welfare renewed its guidelines for the management of day care facilities: the Manual for the guidelines state that corporal punishment should not be used in childcare but there is no prohibition in the law.

2.6 **Schools (unlawful)**: Corporal punishment is prohibited in schools under article 11 of the Education Law 1947, which states that disciplinary punishment may be inflicted but “in no case is corporal punishment permitted” (art. 11). A ruling by the Tokyo High Court on 1 April 1981 suggested this provision did not prohibit all physical punishment in all cases, and in 2007 a ministerial guideline issued to public schools relied on this in suggesting that some forms of physical punishment may be permitted in some circumstances. In 2012, the Government asserted that the said article of the Education Law “strictly prohibits corporal punishment” and that Ministerial guidelines and training support this, but did not comment on the High Court ruling.⁹ In 2014, the Government reported it was continuing its efforts to completely ban corporal punishment in schools.¹⁰

2.7 **Penal institutions (lawful)**: The Constitution 1946 prohibits cruel punishments and the Act on Penal Detention Facilities and Treatment of Inmates and Detainees 2005 provides for the maintenance of discipline in penal institutions, but there is no explicit prohibition of corporal punishment.

2.8 **Sentence for crime (unlawful)**: There is no provision for corporal punishment in the Penal Code or the Criminal Procedure Code.

3 Recommendations by human rights treaty bodies and during the UPR

3.1 **CRC**: The Committee on the Rights of the Child recommended on three occasions that Japan prohibit corporal punishment of children in all settings.¹¹

3.2 **CAT**: In 2013, the Committee Against Torture party should explicitly prohibit corporal punishment and all forms of degrading treatment of children in all settings by law recommended that the

⁸ 6 August 2012, A/HRC/WG.6/14/JPN/1, National report to the UPR, para. 48

⁹ 6 August 2012, A/HRC/WG.6/14/JPN/1, National report to the UPR, para. 47

¹⁰ 19 May 2014, CCPR/C/JPN/Q/6/Add. 1, Reply to list of issues, paras.282-286

¹¹ 5 June 1998, CRC/C/15/Add.90, Concluding observations on initial report, paras. 24 and 45, 26 February 2004, CRC/C/15/Add.231, Concluding observations on second report, paras. 35 and 36, 20 June 2010, CRC/C/JPN/CO/3, Concluding observations on third report, paras. 7, 8, 47, 48, 56 and 57

Government explicitly prohibit in law corporal punishment and all forms of degrading treatment of children in all settings.¹²

3.3 **HRC:** The Human Rights Committee recommended in 2014 that Japan take legislative measures to put an end to corporal punishment of children in all settings.¹³

3.4 **UPR:** Japan was examined in the first cycle of the Universal Periodic Review in 2008 and accepted a recommendation to explicitly prohibit all corporal punishment.¹⁴ However, Japan's mid-term progress report in 2011 simply described existing law on the issue and did not give any indication of progress towards prohibiting all corporal punishment of children.¹⁵ In 2012 at the second cycle examination, Japan again accepted a recommendation to prohibit corporal punishment in all settings.¹⁶ The 2017 mid-term report states in relation to the recommendation: "while the meaning of "corporal punishment" is not absolutely clear, the act of assault (Penal Code Article 208) or injury (Penal Code Article 204) can be punished".¹⁷

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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 since 2011 the Committee on the Rights of Persons with Disabilities.

¹² 28 June 2013, CAT/C/JPN/CO/2, Concluding observations on second report, para. 23

¹³ 20 August 2014, CCPR/C/JPN/CO/6, Concluding observations on sixth report, para. 25

¹⁴ 30 May 2008, A/HRC/8/44, Report of the working group, para. 60(17)

¹⁵ Government of Japan, March 2011, Mid-term progress report by Japan on its implementation of recommendations made in May 2008, pp. 9-10

¹⁶ 8 March 2013, A/HRC/22/14/Add.1, Report of the working group: Addendum, para. 147(126)

¹⁷ January 2017, Mid-term report on the progress made in the implementation of the recommendations issued at the second cycle of the Universal Periodic Review, rec. 126