

Corporal punishment of children in the Republic of Korea: 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 Korea, corporal punishment of children is lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child and the recommendations made during the 2nd cycle UPR of Korea in 2012 (which the Government accepted).

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

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

1.1 The Republic of Korea 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 two recommendations to prohibit corporal punishment in all settings.³

1.2 Since the review in 2012 the Children's Rights Ordinance was enacted in Seoul, prohibiting corporal punishment in all settings. Although the 2014 mid-term report states that corporal punishment is prohibited in schools and that the Child Welfare Act "prohibits and penalizes corporal punishment of children", the prohibition in Seoul was not extended to other provinces and there has been no change in the legality of corporal punishment, despite the reviews of several laws.

¹ 13 August 2012, A/HRC/WG.6/14/KOR/2, Compilation of UN information, paras. 6 and 17

² 19 July 2012, A/HRC/WG.6/14/KOR/3, Summary of stakeholders' views, para. 46

³ 12 December 2012, A/HRC/22/10, Report of the working group, para. 124(38); and 16 January 2013, A/HRC/22/10/Add.1, Report of the working group: Addendum, para. 23

- 1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in Korea. We hope states will raise the issue during the review in 2017 and make a specific recommendation that Korea clearly prohibit all corporal punishment of children in all settings and throughout its territory.**

2 Legality of corporal punishment in Korea

Summary of current law and opportunities for achieving prohibition

Corporal punishment of children is prohibited in all settings in Seoul. Elsewhere, prohibition is still to be achieved in the home, in alternative care settings, in day care and in schools.

- 2.1 **Home (*partially lawful*):** Corporal punishment is lawful in the home except in Seoul. The Civil Act 1958 provides the legal framework for parental authority. Article 913 states that “a person of parental authority shall have the rights and duties to protect and educate his or her child”. Article 915 (“Right to Take Disciplinary Action”) states: “The person of parental authority may, in order to protect or educate his or her child, take necessary disciplinary action against the child, and may entrust such child to a reformatory or correctional institution upon the approval of the court.” Amendments to the Civil Act in 2011 (in effect July 2013) did not prohibit corporal punishment. There appears to be no explicit confirmation in the Criminal Act 1953 of a “right” of parents and guardian to inflict corporal punishment on their children, although article 20 states that an action which does not violate “social rules” is not punishable.
- 2.2 Provisions against violence and abuse in the Juvenile Protection Act 1997, the Child Welfare Act 2000, the Criminal Code, the Special Act on Punishment of Domestic Violence 1998, the Act on Prevention of Domestic Violence and Protection, etc of Victims Thereof 1997 and the Constitution 1987 are not interpreted as prohibiting corporal punishment in childrearing.
- 2.3 According to the Government, the Child Welfare Act was revised in 2008 to provide for parent education on non-violent discipline.⁴ The Act states that no person shall inflict an injury on a child’s body or on a child’s mental health (art. 29) and provides for precautionary and preventive measures against child abuse including research and public education (art. 23, as amended 2008), but there is no prohibition of corporal punishment in childrearing. Article 5 states that the protector of children (i.e. parents and other adults with parental authority) “shall rear the children healthy and safely within the family, according to the stage of their growth” and all citizens “shall respect the rights, interests and safety of children and rear them healthy”. In 2015 article 5(2) was amended to state that the protector “shall not inflict physical pain or emotional distress by using abusive language, etc to children” (unofficial translation),⁵ but it does not explicitly prohibit all corporal punishment and does not repeal the “right to discipline”.
- 2.4 The Anti-Discrimination Against and Remedies for Persons with Disabilities Act 2007 (ARPD) prohibits violence against persons with disabilities, including children, in article 32(1): “Persons with disabilities have a right to be free from any and all violence, irrespective of their gender, age,

⁴ 5 January 2011, CRC/C/KOR/3-4, Third/fourth state party report, para. 146; 2 February 2012, CRC/C/KOR/CO/3-4, Concluding observations on third/fourth report, para. 3

⁵ Information provided to the Global Initiative

disability type, extent or characteristics.” Article 35(4) specifically protects children with disabilities: “No one shall treat unfavourably children with disabilities based on disability, including abandonment, abuse, extortion, imprisonment and battering....” These provisions do not protect children from all violent punishment. The deep-rooted acceptance of some degree of physical punishment in childrearing means that it is not readily seen as “violence”, and the protection given is undermined by the “right to discipline” in the Civil Code (see above). The prohibition of “unfavourable” treatment of children with disabilities in ARPD article 35, including abuse and battering, protects children with disabilities from “disproportionate” violence, but leaves them vulnerable to some physical punishment by parents and others in authority as other children are vulnerable.

- 2.5 The Government accepted the recommendation to prohibit corporal punishment in all settings made during the Universal Periodic Review of the Republic of Korea in 2012.⁶ In the same year, the Children’s Rights Ordinance 2012 was enacted in Seoul, article 28 of which prohibits corporal punishment by parents: “Parents, custodians, or the person who has responsibilities for taking care of children should not use physical, emotional and verbal abuse including corporal punishment on their children” (unofficial translation). But corporal punishment remains lawful in other provinces and there is no prohibition at national level.
- 2.6 **Alternative care settings (partially lawful):** Corporal punishment is prohibited in alternative care settings in Seoul in the Children’s Rights Ordinance 2012, article 28 and article 31 (unofficial translation): “Directors and staff in residential alternative care institutions should not use physical, emotional and verbal abuse including corporal punishment on their children.” There is no prohibition of corporal punishment in alternative care settings in other provinces.
- 2.7 **Day care (partially lawful):** Corporal punishment is prohibited in day care in Seoul under articles 28 and 31 of the Children’s Rights Ordinance 2012 but it is lawful in other provinces. In 2010, the Ministry of Health and Welfare was reportedly drafting laws prohibiting physical punishment and emotional abuse in day care centres, following the disclosure of several cases of child abuse in the centres, including cases leading to the child’s death.⁷ To our knowledge prohibition has not been achieved: the Early Childhood Education Act 2004, amended in 2015, is silent on the issue.
- 2.8 **Schools (partially unlawful):** Some but not all forms of corporal punishment are prohibited in schools; in Seoul all corporal punishment is prohibited by the Student Rights Ordinance 2012. Article 12 of the Framework Act on Education 2008 states that the “fundamental human rights of learners including students shall be respected and protected in the process of school education or social education”. Article 18 of the Elementary and Secondary Education Act 1997 (as amended 2007) states that founders and operators of schools and the heads of schools “shall guarantee the students’ human rights clearly as defined by the Constitution of the Republic of Korea and International Covenants on Civil and Political Rights” and that a head of school may discipline a student under conditions “as deemed necessary for education”.
- 2.9 The Enforcement Decree of the Elementary and Secondary Education Act 2009 was amended in 2011 to prohibit corporal punishment, but it appears that the prohibition does not apply to “indirect” physical punishments such as forcing a child to hold painful positions, imposing punitive physical exercise, etc. Article 31 (“Discipline of Students”), as amended by Presidential Decree No. 22712, 18 March 2011, states that school guidance “must be conducted by methods such as discipline and admonition which do not inflict physical pain on a student’s body using punishing tools and body parts, pursuant to the school regulations”. There was some controversy during 2010 and 2011 concerning the distinction between direct and indirect corporal punishment;

⁶ 12 December 2012, A/HRC/22/10, Report of the working group, para. 124(38)

⁷ *Korea Joongang Daily*, 21 December 2010

according to media reports in January 2011, the Ministry of Education, Science and Technology issued guidelines allowing indirect physical punishment.

2.10 **Penal institutions (unlawful):** Corporal punishment is considered unlawful as a disciplinary measure in penal institutions, though there is no explicit prohibition. The Training School Act (Juvenile Reformatory Act) and the Act on Execution of the Sentence and Treatment of Prisoners do not include corporal punishment among permissible disciplinary measures. There is no provision for corporal punishment in the Act on the Treatment of Protected Juveniles, etc. 2004 amended 2013, or its Enforcement Decree 2008 amended 2014.

2.11 **Sentence for crime (unlawful):** Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in the Criminal Code, the Criminal Procedure Code 1954 and the Juvenile Act 1988.

3 Recommendations by human rights treaty bodies and during the UPR

3.1 **CRC:** The Committee on the Rights of the Child has recommended to the Republic of Korea that all corporal punishment of children be prohibited on three occasions – in concluding observations on the initial report in 1996,⁸ the second report in 2003⁹ and the third/fourth in 2012.¹⁰

3.2 **UPR:** Korea received a recommendation to prohibit corporal punishment in 2008 and stated that it would keep it under review.¹¹ A recommendation to prohibit was again issued in 2012, which the Government accepted.¹²

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

⁸ 13 February 1996, CRC/C/15/Add.51, Concluding observations on initial report, paras. 15 and 22

⁹ 18 March 2003, CRC/C/15/Add.197, Concluding observations on second report, paras. 7, 38 and 39

¹⁰ 2 February 2012, CRC/C/KOR/CO/3-4, Concluding observations on third/fourth report, paras. 6, 7, 42 and 43

¹¹ 29 May 2008, A/HRC/8/40, Report of the working group, para. 64(29); 25 August 2008, A/HRC/8/40/Add.1, Report of the working group: Addendum

¹² 12 December 2012, A/HRC/22/10, Report of the working group, para. 124(38); and 16 January 2013, A/HRC/22/10/Add.1, Report of the working group: Addendum, para. 23