

JAPAN

Briefing for the Human Rights Council Universal Periodic Review 28th session, 2017

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Campaign for Ending Violence against Children Japan was formed by civil society organizations in 2011. In the campaign, we have implemented advocacy and awareness-raising events, aiming for legal prohibition of corporal punishment of children and promoting non-violent and positive parenting. For instance, we invited UN Special Representative of the Secretary General on Violence against Children in February 2012 and jointly advocated for prohibition of all violence against children, including corporal punishment of children. Another example is that we submitted a joint letter to Minister of Health, Labour and Welfare in January 2016, and requested to ban all corporal punishment of children explicitly when amendments of the Child Welfare Act and other relevant laws were being discussed in the government and National Diet. The secretariat is managed by Initiative for Ending Violence against Children Japan (Kodomo Sukoyaka Support-Net in Japanese), which was established in December 2009 in order to promote children's rights and to prevent all violence against children.

Members

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Corporal and Humiliating Punishment of Children

Legal Prohibition of Corporal and Humiliating Punishment of Children with Its Awareness-raising is the Basis for Eliminating This Form of Violence and a Key Strategy toward for Reducing and Preventing All Forms of Violence in the Society of Japan.

■ The current situations in Japan regarding this issue

1. Corporal punishment of children is not yet explicitly prohibited by law in all settings except school (details written in a following part). In reality, there are many parents and others being with/for children who use corporal punishment as a disciplinary method and this trend hinders from preventing and/or reducing risks on children being abused and children's healthy development.

■ The recommendation in the Second Cycle of the Universal Periodic Review for Japan on this issue

2. Japan accepted to follow up the following recommendation, which is included in the document A/HRC/22/14/Add.1 issued in March 2013.

“Expressly prohibit corporal punishment in all settings (147.126)”

This recommendation was made in Report of the Working Group on the Universal Periodic Review (December 2012) A/HRC/22/14.

3. Prior to the Universal Periodic Reviews for Japan in the 14th session, the national report was submitted by the government of Japan (July 2012). The following statement was reported in the page 14 of the national report.

“Article 822 of the Civil Code stipulates that a person with parental authority may discipline a child to an extent deemed necessary. This provision allows a person who exercises parental authority to discipline the child to an extent deemed necessary and appropriate from the perspective of taking care of the child in order to correct the child's misconduct and guide the child onto the right path. This provision does not allow for corporal punishment. “

Note:

Article 822 of the Civil Code as revised in 2011 deletes the provision—“A person who excises parental authority may enroll the child at a disciplinary institution with the permission of the family court. Instead, it states that a person with parental authority “can discipline the child

within limits for the purpose of supervision, care and education.”

4. The Japan accepted the following recommendation after the reviews on human rights situations in the first cycle of the Universal Periodic Review (August, 2008) A/HRC/8/44Add.1

“Prohibit expressly all forms of corporal punishment of children and promote positive and non-violent forms of discipline.”

This recommendation is included in the subparagraph 17, the paragraph 60 in the Report of the Working Group on the Universal Periodic Review (A/HRC/8/44)

■ **Implementations by the government of Japan since the UPR2 cycle on this issue**

5. From September 2015, a discussion for amending the Child Welfare Act was held at a committee established by the Ministry of Health, Labor and Welfare for the purpose of strengthening the child abuse prevention system in Japan and the proposal made in March 2016, which included a statement of prohibiting corporal punishment of children with other significant proposal for this end. However, the bill on amending the Child Welfare Act submitted to the National Assembly did not include the provision of legal prohibition of corporal punishment. In the standing committee of Health, Welfare and Labour of the 190th National Assembly, there was a discussion on the issue of corporal punishment along with the parent’s disciplinary authority over the child. During the official discussion in the committee, it was mentioned officially by the government side that some forms of corporal punishment are considered to be permitted in some circumstances under the article 822 of the Civil Code, and therefore the argument did not go into the further discussion. As a result, the committee maintained the original bill and the National Assembly voted on it without legal prohibition of corporal punishment. Instead, as it was set in the original bill, Article 14 of the Child Abuse Prevention Law was amended to the provision that parental authority shall not inflict disciplinary actions to an extent that exceeds the levels necessary for custody and education.

■ **Importance of explicitly prohibiting corporal punishment of children**

6. Corporal punishment is not explicitly prohibited in the **home**. The Civil Code states that a person with parental authority “can discipline the child within limits for the purpose of supervision, care and education (article 822),” which does not exclude corporal and humiliating punishment of children according to the official statement made by the government during official discussion in the 190th National assembly. Also, Article 14 of the Child Abuse Prevention Law, which regulates the disciplinary way, does not rule out corporal punishment in upbringing.
7. Corporal punishment is prohibited in **schools** in article 11 of the Education Law. However, a

ruling by the Tokyo High Court on 1 April 1981 suggested that 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 physical forces to correction may be permitted in some circumstances. In December 2012, a child committed suicide at a school caused by corporal punishment. In response to it, ministerial notifications issued by the ministry in charge and some forms of training were implemented by some schools to ensure thorough prohibition of corporal punishment in the school setting, but not a few cases of corporal punishment still have occurred in schools. It is pointed out that this is due to the fact that corporal punishment is still permitted in homes and communities, and that the society as a whole does not ensure a children's right to be free from violence adequately.

8. Corporal punishment is not explicitly prohibited in **alternative care settings and daycare facilities**, under the power of those with parental authority to discipline children in the Civil Code and the Child Abuse Prevention Law (see above). Minimum Standards for Child Welfare Facilities (1948) set a limit to disciplinary methods and define child abuse, but do not explicitly prohibit corporal punishment.
9. In the **penal system**, corporal punishment is not explicitly prohibited. 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.

■ **The reason we think it is absolutely necessary for Japan to explicitly prohibit all corporal punishment.**

10. Human Rights Obligations

➤ The Constitution of Japan

Explicit prohibition of corporal and humiliating punishment of children is harmonized with the Constitution of Japan. The following articles are particularly relevant to the harmonization;

- Article 11 - the people shall not be prevented from enjoying any of the fundamental human rights. These fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generations as eternal and inviolate rights.
- Article 13 - the people are respected as individuals. Regarding the rights of the people to pursue life, freedom and happiness, unless contrary to the public welfare, the greatest respect is required on legislative and other administrative affairs.
- Article 18 - no person shall be held in bondage of any kind. Involuntary servitude, except as punishment for crime, is prohibited.
- Article 31 - no person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law.

- Article 36 - the infliction of torture by any public officer and cruel punishments are absolutely forbidden.
- The Convention on the Right of the Child

The Committee on the Rights of the Child first recommended prohibition of corporal punishment of children in the family and in childcare and other institutions in 1998 to the government of Japan. The recommendation was made again in 2004 and, most recently, in 2010. The General Comment No. 8 (2006) points out that prohibition of corporal punishment in the home, schools and other settings, is not only an obligation of states parties under the Convention. It is also a key strategy for reducing and preventing all forms of violence in societies (Para. 3). The General Comment No.8 also clarify the definition of corporal punishment of children (Para. 11), which should be followed as a clear guide.

- The UN study on Violence against Children

Prohibiting corporal punishment of children is one of the top priorities recommended by the Study and many children made a claim for it.

11. Increasing concerns about violence against children and children's development

Cases of alleged child abuse in Japan have risen to their highest level since records began more than 15 years ago. Responding to it, the government of Japan has amended laws relevant to the child abuse several times and strengthened policies tackling to it. However, there are still many cases of abusive way to children and maltreatment at home. In addition, there are many concerns about violence among children, bullying, school refusal and children's development as a whole, which is said to be related directly or indirectly to the family environments. According to school social workers and counseling staff, there are many cases of abusive conduct, maltreatment, and corporal punishment at many homes.

12. Children's voices and complaints about violence that is ignored and condoned by many adults

Child Line Japan (member of Child Helpline International) receives around 580 phone calls from children and young people a day. There are many complaints about violence and harassments against themselves in those phone calls. It suggests that they are not secured in order to speak out in the family setting and schools, or their voices are ignored and condoned by those who have parental authority and many other adults around them.

13. Parent(s) attitudes

The public opinion generally tends to tolerate use of physical punishment by parents in Japan. Many people think that hitting a child as a way of parenting is harmless and unavoidable in some cases. According to a survey conducted by a national newspaper in August 2010, 58% of parents who responded to it regarded physical punishment as a necessary way in upbringing and 65% of those parents experience use of physical punishment to their children. There is another

research that explored the factors of approving the use of physical punishment among Japanese adults. The results of analysis show that gender and the experience of being a subject of violence in childhood are strongly related to the attitude toward approving physical punishment. Young people who suffered violence in childhood are likely to support the use of physical punishment by parents. In addition, women whose father was perceived to ignore her in childhood are likely to support the physical punishment. However, there are some interesting surveys also available. For instance, “miku” – a parenting magazine conducted a web-based questionnaire about spanking, beating and hitting children in December 2014. The percentage of the answers to the questionnaire was similar to the survey mentioned above, but there were also many positive feedbacks and opinions on non-violent and positive parenting, after providing the respondents with brief information about risks of using corporal punishment in upbringing.

14. Programs for parenting available in Japan

There are many parenting programs available in Japan. Most of them share value of non-violent upbringing and promote positive and problem-solving parenting. Some examples are Common Sense Parenting, My Tree Parenting, Nobody’s Perfect, Positive Discipline and Triple P, and information of human rights and upbringing. Violence prevention programs for children and young people are also available in Japan.

15. Utilizing civil society organizations

There are thousands of civil society organizations working for child welfare and education and some of them specialize skills and have capacities in the field of preventing violence against children and responding it. We know that the cases of violence reported would be increasing if Japan enacts legal prohibition of corporal punishment of children, having a look to the situations in the countries that introduced the legal prohibition, especially in the home setting. However, as described above, utilizing civil society organizations more, we believe that the society of Japan will be able to handle it. Moreover, with awareness-raising by both public and civil society bodies, the society of Japan will be able to establish the foundation to prevent not only physical punishment, but also all other forms of violence against children. It must contribute to preventing conflicts, escalating tensions between parents and their children in many families, and promoting children’s rights.