

Corporal punishment of children in China: Briefing for the Universal Periodic Review, 31st session, November 2018

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



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 China, including Hong Kong and Macau, corporal punishment of children is still lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child.

We hope the Working Group will note with concern the legality of corporal punishment of children in China, including Hong Kong and Macau. We hope states will raise the issue during the review in 2018 and make a specific recommendation that China draft and enact legislation, as a matter of priority and throughout the state, to clearly prohibit all corporal punishment of children in all settings, including in the home, and repeal all defences and authorisations for its use.

1 Review of China in the 2nd cycle UPR (2013) and progress since

1.1 China was reviewed in the second cycle of the Universal Periodic Review in 2013 (session 17). The issue of corporal punishment of children was raised in the compilation of UN information¹ and the summary of stakeholders' information.² No recommendation was extended specifically on the issue of corporal punishment, but the Government accepted several general recommendations on the protection of human and children's rights.³ Since the review, there has been no change in the legality of corporal punishment of children.

1.2 **We hope the Working Group will note with concern the legality of corporal punishment of children in China, including Hong Kong and Macau. We hope states will raise the issue during the review in 2018 and make a specific recommendation that China draft and enact legislation, as a matter of priority and throughout the state, to clearly prohibit all corporal punishment of children in all settings, including in the home, and repeal all defences and authorisations for its use.**

¹ 7 August 2013, A/HRC/WG.6/17/CHN/2, Compilation of UN information, para. 23

² 30 July 2013, A/HRC/WG.6/17/CHN/3, Summary of stakeholders' views, para. 29

³ 4 December 2013, A/HRC/25/5, Report of the working group, paras. 186(54), 186(64), 186(77) and 186(80)

2 Legality of corporal punishment in China

Summary of current law and reforms needed to achieve prohibition

Corporal punishment of children in China is lawful in the home, and in alternative care and some day care settings. Legislation should be enacted to explicitly prohibit all corporal punishment in all settings, including in the home, and repeal all defences and authorisations for its use.

- 2.1 **Home (lawful):** Corporal punishment is lawful in the home. 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 child (art. 23), and under the Law on the Prevention of Juvenile Delinquency 1999, families of children in work-study schools must not impose physical punishment on them (art. 36). 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" (arts. 35, 38 and 49). The Government reported to the Committee on the Rights of the Child in 2013 that China's laws explicitly prohibit all corporal punishment of children, including in the home.⁴ However, provisions against violence and abuse in the revised Law on the Protection of Minors 2006 (further revised in 2012), the Criminal Law 1979, the Constitution 1982 and the Marriage Law (amended 2001) do not prohibit all corporal punishment in childrearing. Article 10 of the Law on the Protection of Minors prohibits "domestic violence against minors, abuse, abandonment and infanticide" but does not explicitly prohibit all corporal punishment.
- 2.2 Following a number of high profile cases of the deaths of young children as a result of parental abuse and neglect, new child laws are reportedly being drafted to address implementation of existing child laws and to strengthen protection for very young children.⁵ However, the Anti-Family Violence Law adopted in December 2015 (in force March 2016) does not clearly prohibit all corporal punishment of children. Article 12 of the Law prohibits the use of violence against children by guardians but it does not explicitly prohibit corporal punishment. Family violence is defined in article 2 of the Law as "the physical and psychological and other harms perpetrated against family members in the means of beating, binding, injuring, physical constraints as well as frequent verbal abuse and intimidation" (unofficial translation). Children are legally protected from some but not all forms of corporal punishment under this law.
- 2.3 **Alternative care settings (lawful):** There is no explicit prohibition of corporal punishment in alternative care settings (information unconfirmed).
- 2.4 **Day care (partially lawful):** Corporal punishment is prohibited in kindergartens and nurseries in the Law on the Protection of Minors 2006 (amended 2012, articles 21 and 63). There appears to be no explicit prohibition in other early childhood care (crèches, family centres, etc) or in day care for older children (day centres, after-school childcare, childminding, etc).
- 2.5 **Schools (unlawful):** Corporal punishment is prohibited in schools. Article 16 of the Compulsory Education Law 1986 states: "It shall be forbidden to inflict physical punishment on students." According to article 37 of the Teachers' Law 1994, teachers "imposing corporal punishment on

⁴ [2013], CRC/C/CHN/Q/3-4/Add.1 Unedited Version, Reply to list of issues, Q15

⁵ Reported in *South China Morning Post*, 21 January 2014

students and refusing to mend their way after being criticised” are subject to administrative sanctions or dismissal and “if the circumstances are serious enough to constitute a crime, shall be investigated for criminal responsibility according to law”. The Law on the Prevention of Juvenile Delinquency 1999 prohibits corporal punishment in work-study schools for children found to have perpetrated serious misbehaviour (art. 36). The prohibition is confirmed in article 21 of the Law on the Protection of Minors 2006.

2.6 **Penal institutions (unlawful):** Corporal punishment is explicitly prohibited as a disciplinary measure in penal institutions in a number of laws, including article 248 of the Criminal Law 1979, article 14 of the Prison Law, article 22 of the People’s Police Law, in the Regulations on the Behaviour of People’s Police on Duty in Custody-houses 2001, in article 4 of the Regulations on Detention Facilities 1990, article 3 of the Regulations on Detention Houses 2012, and in the Ordinance on Discipline for the People’s Police of the Public Security Organs 2010.

2.7 Article 36 of the Law on the Prevention of Juvenile Delinquency 1999 also applies (see above). In 2006, the Ministry of Justice issued “Six Prohibitions on People’s Prison Police” and “Six Prohibitions on People’s Reeducation Through Labor (RTL) Police” which include strict prohibition of beating or subjecting inmates serving a prison or RTL sentence to corporal punishment or instigating others to beat or subject an inmate to corporal punishment, regardless of the seriousness of the consequences of that punishment.⁶ In 2012, the Supreme People’s Court issued its Interpretation concerning the Application of the Criminal Procedure Law, confirming that the use of corporal punishment or disguised corporal punishment on defendants constitutes “illegal means such as coercion of confession by torture” as set out in article 54 of the Criminal Procedure Law.⁷

2.8 **Sentence for crime (unlawful):** There is no provision for judicial corporal punishment in the Criminal Law 1979.

3 Legality of corporal punishment in Hong Kong

3.1 **Summary:** Hong Kong is a Special Administrative Region of China, in which corporal punishment of children is still lawful in the home, in alternative care and in some day care settings. Explicit prohibition of all corporal punishment should be enacted and any legal defences or authorisations for its use should be repealed.

3.2 **Home (lawful):** Corporal punishment is lawful in the home. In reporting to the UN Committee on the Rights of the Child in 2010, the Government stated that although there is no explicit prohibition of corporal punishment by parents, the law does not permit violence in childrearing and persons inflicting corporal punishment may be convicted of assault, including common assault, under the Offences Against the Persons Ordinance.⁸ In fact, however, 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”.⁹ Provisions against violence and abuse in the Protection of Children and Juveniles Ordinance 1951, the Domestic and Cohabitation Relationships Violence Ordinance 2009, the Offences Against the Person Ordinance 1950, the Crimes Ordinance 1971 and the Protection of

⁶ Congressional-Executive Commission on China, Press release, 26 July 2006

⁷ 3 April 2014, CAT/C/CHN/5, Fifth state party report, para. 17

⁸ 24 August 2012, CRC/C/CHN-HKG/2 Advance Unedited Version, Second report, para. 149

⁹ Law Reform Commission of Hong Kong (2002), *Report: Guardianship of Children*

Children and Juveniles Ordinance 1951 are not interpreted as prohibiting corporal punishment in childrearing. The Government asserted to the Human Rights Committee that “we do not consider that legislation at this stage would be the most effective means of dealing with the issue [of corporal punishment] in Hong Kong”.¹⁰

- 3.3 **Alternative care settings (lawful):** Corporal punishment is lawful in alternative care settings as for parents. Provisions in the Protection of Children and Juveniles Ordinance and the Protection of Children and Juveniles (Places of Refuge) Regulations 1993 grant “any person or institution to whose care a child or juvenile is committed” “the like control over the child or juvenile as the parent”.
- 3.4 **Day care (partially lawful):** Corporal punishment is explicitly prohibited in childcare centres in the Child Care Services Regulations 1976 (amended 2000, regulation 15). Regulation 45R reiterates the prohibition with regard to mutual help childcare centres. It is possibly prohibited in preschool settings under the Education Regulations 1971 (see below, information unconfirmed). In other forms of early childhood care and day care for older children it is lawful as for parents.
- 3.5 **Schools (unlawful):** Corporal punishment is explicitly prohibited in Regulation 58 of the Education Regulations 1971 (amended 1991).
- 3.6 **Penal institutions (unlawful):** Corporal punishment is prohibited as a disciplinary measure in penal institutions. It is not among permitted disciplinary measures in 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. It is explicitly prohibited in approved institutions by Rule 37 of the Probation of Offenders Rules 1997.
- 3.7 **Sentence for crime (unlawful):** There is no provision for it in the Juvenile Offenders Ordinance 1950, the Magistrates Ordinance 1933, the Criminal Procedure Ordinance 1899 or the Crimes Ordinance. The Bill of Rights Ordinance 1991 provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (s8, art. 3). The Corporal Punishment Ordinance was repealed in 1990.

4 Legality of corporal punishment in Macau

- 4.1 **Summary:** Macau is a Special Administrative Region of China with a legal system largely distinct from China. Corporal punishment of children in Macau is still lawful in the home, in some alternative care settings and in day care settings. Explicit prohibition of all corporal punishment should be enacted and any legal defences or authorisations for its use should be repealed.
- 4.2 **Home (lawful):** Corporal punishment is lawful in the home. In 2013, the Government reported to the Committee on the Rights of the Child that corporal punishment of children is punishable under the Criminal Code 1995 provisions on ordinary, serious and aggravated offences against physical integrity (arts. 137, 138 and 139), “as long as it was committed with the intention of harming the health and the physical integrity of a child”. The Government also stated that article 146 of the Code explicitly prohibits any form of corporal punishment of children.¹¹ However, this article (as amended in 2016) does not explicitly prohibit corporal punishment: it punishes “physical or mental mistreatment or cruel treatment” of children and makes no reference to violence imposed in the guise of “discipline”.

¹⁰ 19 July 2011, CCPR/C/CHN-HKG/3, Third state party report, para. 308

¹¹ CRC/C/CHN-MAC/Q/2/Add.1 Unedited Version, Reply to list of issues, Q15

- 4.3 The Law on Family Policy 1994 states that parents have the “right and duty to ensure, promote and guide the overall development of children” (art. 15); there is a similar provision in the Civil Code, which also states that children must obey their parents (art. 1733). There is no explicit legal defence for the use of corporal punishment in childrearing in these laws or in the Criminal Code 1995 but legal provisions against violence and abuse are not interpreted as prohibiting all corporal punishment of children. The Domestic Violence Prevention and Control Act 2016 does not explicitly prohibit all corporal punishment of children.
- 4.4 **Alternative care settings (?partially lawful):** The Government has reported that corporal punishment is prohibited in residential facilities in article 25 of Decree-law 90/88/M, Regulation of the General Conditions of Social Facilities for Children, Youths, the Elderly, the Disabled and Facilities for developing Social Auxiliary Activities of Residents:¹² we have yet to verify this information. There is no explicit prohibition of corporal punishment in other alternative care settings, where it is lawful as for parents.
- 4.5 **Day care (lawful):** There is no explicit prohibition of corporal punishment in all early childhood care and in day care for older children.
- 4.6 **Schools (unlawful):** Corporal punishment is unlawful in schools, though it is not explicitly prohibited. Order No. 46/SAAEJ/97 Adopting the student disciplinary system of educational institutions officers, pursuant to Law No. 11/91/M on Education in Macau, does not include corporal punishment among permitted disciplinary measures. 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.
- 4.7 In reporting to the Human Rights Committee in 2013, the Government drew attention to the School Operations Manual which prohibits violent, degrading and humiliating punishment of students. But these are guidelines, not law.
- 4.8 **Penal institutions (unlawful):** Corporal punishment appears to be unlawful as a disciplinary measure in prisons but it is not explicitly prohibited in all penal institutions. According to Decree Law 40/94/M (the Prison Establishment Law), physical force may be used against prisoners in certain circumstances but may not be used as a disciplinary measure (arts. 65, 66 and 72). Permitted disciplinary actions are listed in article 75 and do not include corporal punishment. Law 2/2007 establishing educational guardianship measures for young offenders provides for detention in observation centres, education centres, and education and training centres (art. 27). The Law allows for the use of physical force in certain circumstances; it does not explicitly prohibit its use as a disciplinary measure but corporal punishment is not included in the list of permitted disciplinary measures (arts. 88, 93 and 96). The Government reported to the Committee on the Rights of the Child in 2013 that corporal punishment is unlawful in the Youth Correctional Institution under the Education and Supervision Regime for Juvenile Offenders:¹³ we have yet to confirm that prohibition is explicit.
- 4.9 **Sentence for crime (unlawful):** There is no provision for judicial corporal punishment of children in Decree-Law 65/99/M concerning educational and social regimes in the juvenile justice system 1999, the Code of Criminal Procedure and the Penal Code 1995. Article 28 of the Basic Law 1993 prohibits torture or other cruel, inhuman or degrading treatment or punishment.

¹² CRC/C/CHN-MAC/Q/2/Add.1 Unedited Version, Reply to list of issues, Q15

¹³ CRC/C/CHN-MAC/Q/2/Add.1 Unedited Version, Reply to list of issues, Q15

5 Recommendations by human rights treaty bodies

- 5.1 **CRC:** The Committee on the Rights of the Child first recommended to China (including Hong Kong and Macau) that corporal punishment be prohibited in the home and all other settings throughout the state party in its concluding observations on the second state party report in 2005; the Committee reiterated its recommendations following examination of the third/fourth report in 2013.¹⁴ The Committee had previously raised the issue with Hong Kong in 1996, in the context of examining the initial report of the UK on its dependent territories.¹⁵
- 5.2 **CAT:** In 1996, the Committee Against Torture raised the issue of prohibiting corporal punishment with Hong Kong, as a dependency of the UK.¹⁶
- 5.3 **HRC:** In 2013, the Human Rights Committee expressed concern to Hong Kong about the continued use of corporal punishment of children and recommended that the Government of Hong Kong take steps to put an end to its use in all settings.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.

¹⁴ 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; 29 October 2013, CRC/C/CHN/CO/3-4, Concluding observations on third/fourth report, paras. 6 and 7

¹⁵ 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 (Hong Kong ceased to be a dependent territory of the UK in 1997.)

¹⁶ 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. (Note: Hong Kong ceased to be a dependent territory of the UK in 1997.)

¹⁷ 29 April 2013, CCPR/C/CHN-HKG/CO/3, Concluding observations on third report, para. 16