**BRIEFING ON THE REPUBLIC OF KOREA FOR THE COMMITTEE AGAINST TORTURE PRESESSIONAL WORKING GROUP, 69th session, Apr/May 2020**

*From the Global Initiative to End All Corporal Punishment of Children, January 2020*

**This briefing describes the legality of corporal punishment of children in the Republic of Korea. In light of the obligation under international human rights law to prohibit all corporal punishment of children, the recommendations of the UN Secretary General’s Study on Violence against Children, the repeated recommendations to prohibit made to the Republic of Korea by the Committee Against Torture, the Committee on the Rights of the Child and during the Universal Periodic Review in 2008, 2012 and 2017 (which the Government accepted), as well as the global commitment to ending all violence against children in the context of the 2030 Agenda for Sustainable Development, we hope the Committee Against Torture will:**

* **raise the issue of corporal punishment of children in its List of Issues Prior to Reporting for the Republic of Korea, in particular asking what progress is being made on drafting and enacting legislation which prohibits all corporal punishment of children, however light, and**
* **recommend, in the concluding observations on its sixth report, that the Republic of Korea immediately enact legislation which clearly and explicitly prohibits all corporal punishment of children, however light, in all settings including the home.**

**1 The legality of corporal punishment of children in the Republic of Korea**

1.1 ***Summary:*** Corporal punishment of children is unlawful in the penal system but it is not yet prohibited in every province in the home, in alternative care and day care settings and in schools.

1.2 ***Home (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. The Government reported in 2016 to the Committee Against Torture that corporal punishment in the home was not prohibited unless it “violates social norms by lacking legitimate purpose or appropriate means for exercising parental authority” in which case the perpetrator would be punished for assault under the existing legislation.[[1]](#footnote-1)

1.3 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. The Framework Act on Juveniles 2004 sets out the rights and responsibilities of juveniles, families and others but does not explicitly prohibit corporal punishment. Similarly, the Juvenile Welfare Support Act 2004 sets out the rights of juveniles and states in article 5 that “the State and local governments shall publicize matters concerning the rights of juveniles provided for in this Act and the United Nations Convention on the Rights of the Child”, but it does not explicitly prohibit corporal punishment.

1.4 According to the Government, the Child Welfare Act was revised in 2008 to provide for parent education on non-violent discipline.[[2]](#footnote-2) The Act states that no person shall commit physical abuse which may hurt the child’s body or physical health and development (art. 17(3)) or emotional abuse which may injure the child’s mental health and development (art. 17(5)). It also provides for precautionary and preventive measures against child abuse including research, public education and a reporting system (art. 22), 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 psychological pain, including violent language, on the children” (unofficial translation),[[3]](#footnote-3) but it does not explicitly prohibit all corporal punishment and does not repeal the “right to discipline”.

1.5 There is no prohibition of corporal punishment in the Act on Special Cases concerning the Punishment, etc. of Crimes of Child Abuse and its Enforcement Decree 2014. The Anti-Discrimination Against and Remedies for Persons with Disabilities Act 2007 (ARPDA) 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, 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, para. 3.2). The prohibition of “unfavourable” treatment of children with disabilities in ARPDA 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.

1.6 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.[[4]](#footnote-4) 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. The 2017 national report to the Universal Periodic Review seems to make a distinction between corporal punishment and “child abuse”.[[5]](#footnote-5) During the review, the Government supported a recommendation to prohibit corporal punishment in all settings;[[6]](#footnote-6) we are seeking confirmation that it is indeed committed to enacting a full legal prohibition. In 2019, the Government stated that corporal punishment was legally prohibited “through the amendment of the Enforcement Decree of the Elementary and Secondary Education Act in 2011 and the Child Welfare Act (Article 5) in 2015”, and further said that “pursuant to Article 912 of the Civil Act, the exercise of parental authority the highest priority is given to the welfare of the child. Thus, this is not considered as providing the grounds for corporal punishment, child abuse, and violence against children”.[[7]](#footnote-7) This was rebuked by the National Human Rights Commission of Korea which in its report to the Committee on the Rights of the Child highlighted that there was no explicit prohibition of corporal punishment and that the “right to take disciplinary action” in the Civil Act 1958 limited the applicability of the provisions against abuse in the Child Welfare Act to more ‘severe’ forms of corporal punishment.[[8]](#footnote-8)

1.7 ***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.

1.8 ***Day care settings (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.[[9]](#footnote-9) The Early Childhood Education Act 2004 was amended in 2016 to include article 21-2 which states (unofficial translation): “(1) A founder, operator and head of a kindergarten shall guarantee the human rights of young children specified in the constitution and international human rights treaties. (2) Teachers and other staff members shall not inflict pain on the body of young children by using tools, body parts, etc. when educating young children or performing their duties under Article 21.” This seems to mimic provisions in the Enforcement Decree of the Elementary and Secondary Education Act 2009 and may be interpreted as allowing indirect corporal punishment (see below). The Government has reported it had “prohibited corporal punishment in childcare centres, kindergartens, and schools”[[10]](#footnote-10) but did not address clearly address the question of indirect corporal punishment and its legality.

1.9 ***Schools (partially lawful):*** Some but not all forms of corporal punishment are prohibited in schools; in Seoul, Gyoenggi province, Gwangju City and Jeollabukdo province all corporal punishment is prohibited by the respective Student Rights Ordinances.

1.10 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”.

1.11 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; according to media reports in January 2011, the Ministry of Education, Science and Technology issued guidelines allowing indirect physical punishment. A 2017 report by the National Human Rights Commission raised the issue, stating that “indirect corporal punishment is still allowed” and that “leapfrogging, a face down position with the support of one’s feet and hands only, running rounds and standing long at the back of the classroom are used for indirect corporal punishment”, as well as students being forced to hit each other as a form of punishment.[[11]](#footnote-11) A similar statement was made by the Commission to the Committee on the Rights of the Child.[[12]](#footnote-12) A 2017 report of the Government to the Committee on the Rights of the Child states that it “encourages city and provincial education offices and schools, depending on their circumstances, to decide on whether to execute alternative disciplinary methods and ways to do so, ensuring that disciplinary methods other than corporal punishment are not indirect corporal punishment.”[[13]](#footnote-13)

1.12 The Private School Act 1963, amended 2015, is silent on the issue. The Act on the Prevention of and Countermeasures Against Violence in Schools 2004 amended 2013 does not address corporal punishment of pupils by teachers, defining school violence as “actions committed against students inside or outside of school premises resulting in a physical or mental injury, or damage to property through a battery, assault, confinement, threat, kidnapping, abduction, defamation, insult, extortion, coercion, forced errand, sexual violence, bullying, or cyber-bullying, or with obscene or violent information via an information and communications network” (art. 2).

1.13 ***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.

1.14 ***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.

**2 Recommendations by human rights treaty bodies and during the UPR**

2.1 ***CAT***: In 2017, the Committee Against Torture recommended to the Government that it should clearly and explicitly prohibit corporal punishment in all settings, “including orphanages and child welfare facilities, in all parts of the country”.[[14]](#footnote-14)

2.2 ***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 four occasions – in concluding observations on the initial report in 1996,[[15]](#footnote-15) the second report in 2003,[[16]](#footnote-16) the third/fourth in 2012[[17]](#footnote-17) and the fifth/sixth in 2019.[[18]](#footnote-18)

2.3 ***UPR***: During the Universal Periodic Review, the Republic of Korea received a recommendation to prohibit corporal punishment in 2008 and stated that it would keep it under review.[[19]](#footnote-19) The Government accepted recommendations to prohibit in 2012[[20]](#footnote-20) and in 2017.[[21]](#footnote-21)

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

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1. 11 April 2016, CAT/C/KOR/3-5, Third/fifth report, para. 198 [↑](#footnote-ref-1)
2. 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 [↑](#footnote-ref-2)
3. Information provided to the Global Initiative [↑](#footnote-ref-3)
4. 12 December 2012, A/HRC/22/10, Report of the working group, para. 124(38) [↑](#footnote-ref-4)
5. 4 September 2017, A/HRC/WG.6/28/KOR/1, National report, para. 52 [↑](#footnote-ref-5)
6. 13 November 2017, A/HRC/WG.6/28/L.8 Unedited version, Draft report of the working group, para. 130(75) [↑](#footnote-ref-6)
7. 15 August 2019, CRC/C/KOR/Q/5-6/Add.1, Reply to list of issues, para. 28 [↑](#footnote-ref-7)
8. [2019], Report of the National human Rights Commission of Korea to the Committee on the Rights of the Child, para. 91 [↑](#footnote-ref-8)
9. *Korea Joongang Daily*, 21 December 2010 [↑](#footnote-ref-9)
10. 19 November 2018, CRC/C/KOR/5-6, Fifth/sixth report, para. 77 [↑](#footnote-ref-10)
11. [2017], National Human Rights Commission report to the UPR, annex [↑](#footnote-ref-11)
12. [2019], Report of the National Human Rights Commission of Korea to the Committee on the Rights of the Child, para. 90 [↑](#footnote-ref-12)
13. 19 November 2018, CRC/C/KOR/5-6, Fifth/sixth report, para. 70 [↑](#footnote-ref-13)
14. 30 May 2017, CAT/C/KOR/CO/3-5, Concluding observations on third/fifth report, paras. 33 and 34 [↑](#footnote-ref-14)
15. 13 February 1996, CRC/C/15/Add.51, Concluding observations on initial report, paras. 15 and 22 [↑](#footnote-ref-15)
16. 18 March 2003, CRC/C/15/Add.197, Concluding observations on second report, paras. 7, 38 and 39 [↑](#footnote-ref-16)
17. 2 February 2012, CRC/C/KOR/CO/3-4, Concluding observations on third/fourth report, paras. 6, 7, 42 and 43 [↑](#footnote-ref-17)
18. 27 September 2019, CRC/C/KOR/CO/5-6 Advance unedited version, Concluding observations on fifth/sixth report, paras. 5, 26 and 27 [↑](#footnote-ref-18)
19. 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 [↑](#footnote-ref-19)
20. 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 [↑](#footnote-ref-20)
21. 13 November 2017, A/HRC/WG.6/28/L.8 Unedited version, Draft report of the working group, para. 130(75) [↑](#footnote-ref-21)