**BRIEFING ON THAILAND FOR THE COMMITTEE AGAINST TORTURE PRESESSIONAL WORKING GROUP, 63rd session (Apr/May 2018)**



*From the Global Initiative to End All Corporal Punishment of Children,* [*January*](mailto:info@endcorporalpunishment.org) *2018*

**This briefing describes the legality of corporal punishment of children in Thailand. 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 relevant recommendations made to Thailand during the UPR in 2011 and 2016 and by the Committee on the Rights of the Child, and the new 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 Thailand, in particular asking what steps are being taken to ensure that the review of the Child Protection Act 2003 includes explicit prohibition of all corporal punishment of children in all settings, and**
* **recommend, in the concluding observations on its second periodic report, that Thailand enact and implement legislation prohibiting corporal punishment in all settings, including the home, and explicitly repealing all legal defences for its use, as a matter of priority.**

**1 The legality of corporal punishment of children in Thailand**

1.1 ***Summary:***In Thailand, corporal punishment is unlawful in schools and in the penal system. It is still lawful in the home, in alternative care and in day care settings.

1.2 ***Home (******lawful):*** Corporal punishment is lawful in the home. Article 1567 of the Civil and Commercial Code states: “A person exercising parental power has the right … (2) to punish the child in a reasonable manner for disciplinary purposes.” Article 26 of the Child Protection Act 2003 states that no person shall act in a way which tortures the physical or mental condition of a child but it does not clearly prohibit all corporal punishment. Provisions against violence and abuse in the Revised Penal Code 2003, the Criminal Procedure Code, the Domestic Violence Act 2007 and the Constitution 2007 are not interpreted as prohibiting all corporal punishment in childrearing.

1.3 In response to recommendations to prohibit corporal punishment made during the Universal Periodic Review of Thailand in 2011, the Government made a commitment to prohibition: “Corporal punishment is already prohibited in schools and other alternative care settings. We are determined to improve the laws in order to prohibit corporal punishment in communities and families…. As a State Party to the CRC, Thailand is committed to eradicating corporal punishment as well as the abuse and sexual exploitation of children…”[[1]](#footnote-1) In its report to the Universal Periodic Review in 2016, the Government asserted that corporal punishment is prohibited in article 26 of the Child Protection Act 2003 and in article 1567 of the Civil and Commercial Code, “which allows guardian to punish the child only in a reasonable manner for disciplinary purposes”.[[2]](#footnote-2) Nevertheless, the Government went on to accept the recommendations to prohibit corporal punishment in all settings, including the home.[[3]](#footnote-3) As at June 2016, the Child Protection Act is under review and proposed revisions include strengthened protection for children from all forms of violence, including corporal punishment.

1.4 The draft Constitution 2016 also strengthens protection from violence, stating in article 71 that the State should protect children from violence and unjust treatment (art. 71). It appears this article was kept in the final version of the Constitution which was signed by the King on 6 April 2017. Thailand is now in a constitutional grey area: with the new Constitution needing several supporting laws to be enacted before it enters into force, it appears the 2007 Constitution is still being used for the time being. The Government is aiming to enact the supporting laws by early 2018 and then to hold general elections in September 2018, after which the new Constitution would be able to enter into force.[[4]](#footnote-4)

1.5 ***Alternative care settings (lawful):***Corporal punishment appears to be lawful in alternative care settings. The Government has stated that it is prohibited in the Regulation of the Ministry of Social Development and Human Security on Child Punishment of 2005 which does not include corporal punishment among permitted disciplinary measures.[[5]](#footnote-5) However, the prohibition appears to apply only to corporal punishment of a certain severity: under article 61 of the Child Protection Act 2003 an owner, guardian of safety, and staff of a nursery, remand home, welfare centre, safety protection centre and development and rehabilitation centre must not mentally or physically assault or impose harsh punishment on any child under their care and guardianship, “except where such acts are reasonably applied for disciplinary purposes in accordance with the regulations specified by the Minister”. Article 65 of the Act provides for punishment of children which must be “carried out reasonably for disciplinary purposes”.

1.6 ***Day care (lawful):***Corporal punishment is lawful in early childhood centres and in day care for older children under articles 61 and 65 of the Child Protection Act 2003 and article 1567 of the Civil and Commercial Code.

1.7 ***Schools (unlawful):***Corporal punishment was prohibited in schools in 2000, when the Regulation on the Punishment of Students 2000 did not include caning among permitted disciplinary measures. This was subsequently revised and the Ministry of Education Regulation on Student Punishment 2005 similarly does not include corporal punishment among permitted disciplinary measures. Article 6 of the Regulation states (unofficial translation): “It is prohibited to punish pupils and students with violent methods or with harmful, angry or revengeful intention….” The Regulation on the Promotion and Protection of the Rights of Children and Juveniles in Educational Establishments 2000 states in article 8: “Punishment of children and youth must not be carried out with torture or harsh treatment to the body or mind, by cruel, humiliating, inhumane means, or in any inappropriate manner.”

1.8 ***Penal institutions (unlawful):*** Corporal punishment is unlawful as a disciplinary measure in penal institutions under the Department of Corrections Regulation 2005 on Abolition of the Department of Corrections Regulations No. 3 on Punishment by Means of Physical Chastisement (1937). Previously, corporal punishment had been lawful under the Training Arrangement for Certain Groups of Children Act 1936. The Establishment of Juvenile and Family Court and Procedure Act 1991 had provided for the Director of an observation and protection centre to order a child to be flogged for disciplinary breaches. This Act was repealed by the Juvenile and Family Court and Juvenile and Family Case Procedure Act 2010.

1.9 The Ministry of Justice Regulation on Children and Youth Punishment and Provisional Permission for Children and Youth 2003 pursuant to the Child Protection Act, does not include corporal punishment among permitted disciplinary measures; it does, however, authorise the imposition of hard labour (art. 4). Corporal punishment is not among permitted disciplinary actions in the Military Prisons Act 2007: previously the Military Prisons Act 1936 had authorised caning.

1.10 ***Sentence for crime (unlawful):*** Corporal punishment is unlawful as a sentence for crime under the Revised Penal Code 2003 and the Juvenile and Family Court and Juvenile and Family Case Procedure Act 2010: the latter repealed the Establishment of Juvenile and Family Court and Procedure Act 1991, which had authorised courts to order flogging of children and young people in observation and protection centres (art. 39). The Constitution 2007 states that “torture, brutal acts or punishment by cruel or inhumane means shall not be inflicted” but also that “a punishment imposed pursuant to a Court judgment or by virtue of law shall not be deemed as punishment by cruel or inhumane means under this paragraph”.

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

2.1 ***CRC***:The Committee on the Rights of the Child has three times recommended to Thailand that all corporal punishment of children be prohibited, including in the home – following examination of the initial state party report in 1998, the second report in 2006 and the third/fourth report in 2012.[[6]](#footnote-6)

2.2 ***UPR***: At the first cycle Universal Periodic Review of Thailand in 2011, the Government accepted recommendations to prohibit and eradicate corporal punishment of children in all settings.[[7]](#footnote-7) Again in 2016, the Government accepted similar recommendations.[[8]](#footnote-8)

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

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1. 6 March 2012, A/HRC/19/8/Add.1, Report of the working group: Addendum, para. 15 [↑](#footnote-ref-1)
2. 12 February 2016, A/HRC/WG.6/25/THA/1, National report to the UPR, para. 72 [↑](#footnote-ref-2)
3. 15 July 2016, A/HRC/33/16, Report of the working group, paras. 158(103), 158(104), 158(105), 158(106) [↑](#footnote-ref-3)
4. Information provided to the Global Initiative, May 2017 [↑](#footnote-ref-4)
5. 20 January 2012, CRC/C/THA/Q/3-4/Add.1, Written replies to the Committee on the Rights of the Child, para. 44 [↑](#footnote-ref-5)
6. 26 October 1998, CRC/C/15/Add.97, Concluding observations on initial report, para. 21; 17 March 2006, CRC/C/THA/CO/2, Concluding observations on second report, paras. 39, 40, 41, 76 and 77; 17 February 2012, CRC/C/THA/CO/3-4, Concluding observations on third/fourth report, paras. 7, 8, 47 and 48 [↑](#footnote-ref-6)
7. 6 March 2012, A/HRC/19/8/Add.1, Report of the working group: Addendum, para. 15 [↑](#footnote-ref-7)
8. 15 July 2016, A/HRC/33/16, Report of the working group, paras. 158(103), 158(104), 158(105), 158(106) [↑](#footnote-ref-8)