



Global Initiative to
**End All Corporal Punishment
of Children**

BRIEFING ON CHINA FOR THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, PRESSIONAL WORKING GROUP

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The human rights obligation to prohibit corporal punishment – a key strategy in eliminating all forms of violence

The legality and practice of corporal punishment of girls breaches their fundamental rights to respect for their human dignity and physical integrity, to equality under the law and to protection from all forms of violence – rights guaranteed in the Convention on the Elimination of All Forms of Discrimination Against Women and other international human rights instruments. There are strong links between corporal punishment of children – girls and boys – and all other forms of violence, including gender-based violence. As the Committee on the Rights of the Child emphasised in its General Comment No. 8 (2006), addressing corporal punishment is “a key strategy for reducing and preventing all form of violence in societies”.

The near universal acceptance of a degree of violent punishment in childhood and deeply held views that parents and other adults have a “right” to physically punish children can challenge efforts to achieve prohibition. This situation also means that corporal punishment – at least to some degree – is typically not readily perceived as a violent act in the same way as, for example, sexual and other socially unacceptable forms of violence. Physical violence against girls and boys in their own home is typically assumed not to be domestic violence because it is inflicted under the guise of “discipline” or “correction” – a rationale totally unacceptable when the victim is an adult woman. **It is for these reasons that we respectfully urge the Committee on the Elimination of Discrimination Against Women to specifically recommend that corporal punishment be prohibited in the home and all settings.**

This briefing describes the legality of corporal punishment of children in China, including Hong Kong and Macau. In light of General Recommendation No. 19 on Violence against women (1992), the links between corporal punishment of children and all other forms of violence including gender-based violence, and the repeated recommendations of treaty monitoring bodies, we hope the Committee on the Elimination of Discrimination Against Women will:

- **raise the issue of corporal punishment of girls in its List of Issues for China, asking what progress has been made towards prohibiting and eliminating corporal punishment in all settings, including the home, throughout the state party, and**
- **in the concluding observations on the periodic reports of China, Hong Kong and Macau, recommend that corporal punishment is explicitly prohibited in all settings, including the home, throughout the state party as a matter of priority.**

1 The state party's report to CEDAW

1.1 The seventh/eighth state report of China to CEDAW includes detailed information concerning domestic violence but makes no reference to violence against children in the home and other care settings which may lawfully be inflicted in the guise of “discipline”.¹ As at 21 January 2014, the reports for Hong Kong and Macau are not available on the Committee's website. **We hope the Committee will, during the review of China, emphasise the importance of prohibiting and eliminating physical punishment of girls and boys within the family when taking measures against family violence.**

2 The legality and practice of corporal punishment of children in China, Hong Kong and Macau

2.1 **Summary:** In **China**, corporal punishment is unlawful in the penal system and in schools, kindergartens and nurseries, but it is not prohibited in the home or in alternative care settings and some types of day care. In **Hong Kong**, corporal punishment is unlawful in schools, the penal system and in child care centres but it is lawful in the home, alternative care settings and some forms of day care. In **Macau**, corporal punishment is unlawful as a sentence for crime and possibly in residential facilities but there appears to be no explicit prohibition in schools and penal institutions; it is lawful in the home, alternative care settings and day care.

China

2.2 **Home (lawful):** 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).

2.3 In 2013, the Government reported to the Committee on the Rights of the Child that China's laws explicitly prohibit all corporal punishment of children, including in the home.² However, 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. Numerous research studies have documented a high prevalence of corporal punishment in childrearing. For example, 43.8% of more than 2,300 parents in a study in 2010 said they had physically punished a child, 32.8% in the past year.³ A survey of more than 2,100 9-12 year olds reported in 2010 found that 73% were physically punished by their parents.⁴ In a survey of 100 6-15 year olds and their parents, 58% of parents admitted to smacking or caning their children in the previous year.⁵ Many other studies could be cited.⁶

¹ 17 January 2013, CEDAW/C/CHN/7-8, Seventh/eighth state party report

² [2013], CRC/C/CHN/Q/3-4/Add.1 Unedited Version, Reply to list of issues, Q15

³ Chan, K. L. (2010), “Co-occurrence of intimate partner violence and child abuse in Hong Kong Chinese families”, *Journal of Interpersonal Violence*, (e-publication ahead of print), 1-21, cited in UNICEF East Asia and Pacific Regional Office (2012), *Child Maltreatment: Prevalence, Incidence and Consequences: A Systematic Review of Research*, Bangkok: UNICEF

⁴ Hesketh, T. et al (2010), “Stress and psychosomatic symptoms in Chinese school children: cross-sectional survey”, *Archives of Disease in Childhood*, 95(2), 136-140

⁵ Reported in *Earth Times*, 4 May 2010

⁶ For details, see the research pages at www.endcorporalpunishment.org

- 2.4 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.⁷ **We hope the Committee will urge the state party to take this immediate opportunity to enact legislation prohibiting all forms of physical punishment in childrearing.**
- 2.5 *Alternative care settings (lawful)*: There appears to be no explicit prohibition of corporal punishment in alternative care settings (unconfirmed).
- 2.6 *Day care (partially prohibited)*: Corporal punishment is prohibited in kindergartens and nurseries in the Law on the Protection of Minors 2006 (arts. 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).
- 2.6 *Schools (unlawful)*: Corporal punishment is explicitly prohibited in the Compulsory Education Law 1986 (art. 16), the Teachers' Law 1994 (art. 37) and the Law on the Protection of Minors 2006 (arts 21 and 63). It is prohibited in work-study schools in the Law on the Prevention of Juvenile Delinquency 1999 (art. 36)
- 2.7 *Penal institutions (unlawful)*: Corporal punishment is explicitly prohibited in the Criminal Law 1979 (art. 248), the Prison Law (art. 14), the People's Police Law (art. 22), the Law on the Prevention of Juvenile Delinquency 1999 (art. 36), the Regulations on the Behaviour of People's Police on Duty in Custody-houses 2001, the Regulations on Detention Facilities 1990 (art. 4) and the Regulations on Detention Houses 2012 (art. 3).
- 2.8 *Sentence for crime (unlawful)*: There is no provision for judicial corporal punishment in criminal law.

Hong Kong

- 2.9 *Home (lawful)*: Article 8 of the Basic Law 1997 states that the common law previously in force shall be maintained: the Law Reform Commission of Hong Kong has confirmed the common law right of parents "to inflict moderate punishment".⁸ Provisions against violence and abuse in the Protection of Children and Juveniles Ordinance 1951, the Domestic and Cohabitation Relationships Violence Ordinance 1986, the Offences Against the Person Ordinance 1950, the Crimes Ordinance 1971 and the Protection of Children and Juveniles Ordinance 1951 are not interpreted as prohibiting corporal punishment in childrearing.
- 2.10 In a survey in 2006-7 involving more than 700 parents and secondary school children, 83.3% of parents admitted physically punishing their children; 74.2% of the students and 49.7% of parents said they would support prohibition of corporal punishment.⁹ Research published in 2008 found that more than one in five children had been hit by their parents (21% of nearly 6,000 school students reported this), but the lifetime prevalence was much higher (58%).¹⁰ In the first large scale household survey on domestic violence, commissioned by the Hong Kong Social Welfare Department and reported in 2006, around 44% of the parents admitted physically punishing their children, and most of these had done so at least once in the previous 12 months.¹¹
- 2.11 *Alternative care settings (lawful)*: Corporal punishment is lawful as for parents (Protection of Children and Juveniles Ordinance, s34(4)). The Protection of Children and Juveniles (Places of Refuge) Regulations 1993 provide for the power of the Director of Social Welfare to approve

⁷ Reported in *South China Morning Post*, 21 January 2014

⁸ Law Reform Commission of Hong Kong (2002), *Report: Guardianship of Children*

⁹ Survey announced in 2007 Spank Out Day press conference, information supplied to the Global Initiative, February 2009

¹⁰ Chan, K. L. (2008), *Study on Child-friendly Families: Immunity from Domestic Violence*, Hong Kong: Hong Kong Committee for UNICEF & Dept of Social Work and Social Administration, University of Hong Kong

¹¹ Chan, K. L. (2005), *Study on Child Abuse and Spouse Battering: Report on findings of Household Survey*, Hong Kong: Department of Social Work & Social Administration, the University of Hong Kong

rules made by places of refuge not wholly funded by public funds and states that this power “shall not be deemed to authorise the making or approval of any rules for the punishment, restraint or correction of any person other than such punishment, restraint or correction as a parent could lawfully administer to a child” (Reg. 7).

- 2.12 **Day care (partially prohibited)**: Corporal punishment is explicitly prohibited in childcare centres in the Child Care Services Regulations 1976 (regs. 15 and 45R); it is possibly prohibited in preschool settings under the Education Regulations 1971 (unconfirmed). In other forms of early childhood care and day care for older children it is lawful as for parents.
- 2.13 **Schools (unlawful)**: Corporal punishment is explicitly prohibited in Regulation 58 of the Education Regulations 1971 (as amended in 1991).
- 2.14 **Penal institutions (unlawful)**: Corporal punishment 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.
- 2.15 **Sentence for crime (unlawful)**: There is no provision for judicial corporal punishment in criminal law. The Corporal Punishment Ordinance was repealed in 1990.

Macau

- 2.16 **Home (lawful)**: 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”.¹² The Government also stated that article 146 of the Code explicitly prohibits any form of corporal punishment of children.¹³ In fact, this article 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”.
- 2.17 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 (such as a “right” to administer punishment etc) 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. A draft domestic violence law is under discussion: it does not include prohibition of corporal punishment. **We hope the Committee will stress the importance of prohibiting corporal punishment of children in legislation on family violence.**
- 2.18 **Alternative care settings (?partially prohibited)**: 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:¹⁴ 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.
- 2.19 **Day care (lawful)**: There is no explicit prohibition of corporal punishment in all early childhood care and in day care for older children.
- 2.20 **Schools (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,

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

¹³ *ibid.*

¹⁴ *ibid.*

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.

2.21 **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 do not include corporal punishment (art. 75). 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:¹⁵ we have yet to confirm that prohibition is explicit.

2.22 **Sentence for crime (unlawful):** There is no provision for judicial corporal punishment in criminal law.

3 Recommendations by human right treaty monitoring bodies

3.1 **CRC:** The Committee on the Rights of the Child first recommended to China 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 2013.¹⁶ 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.¹⁷

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¹⁵ *ibid.*

¹⁶ 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

¹⁷ 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.)