

**BRIEFING ON THE REPUBLIC OF KOREA FOR THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, PRE-SESSIONAL WORKING GROUP, 27 February – 3 March 2017**

*From the Global Initiative to End All Corporal Punishment of Children, (*[*www.endcorporalpunishment.org*](http://www.endcorporalpunishment.org)*), January 2017*

**This briefing describes the legality of corporal punishment of children in 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 recommendations made to Korea by the Committee on the Rights of the Child and during the Universal Periodic Review, 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 on Economic, Social and Cultural Rights will:**

* **raise the issue of corporal punishment of children in its List of Issues for Korea, in particular asking what measures are being taken to explicitly prohibit corporal punishment of children in all settings, and**
* **recommend to Korea, following examination of the state party’s report, that national legislation is enacted which explicitly prohibits corporal punishment of children in all settings.**

**1 Korea’s report to the Committee on Economic, Social and Cultural Rights**

* 1. Korea’s fourth report to the Committee on Economic, Social and Cultural Rights mentions the framework surrounding domestic violence but makes no reference to corporal punishment of children.
	2. **We hope the Committee will raise this issue in its examination of Korea and** **recommend that the law is reformed as a matter of priority to explicitly prohibit corporal punishment in the home and all other settings and to repeal all legal provisions authorising corporal punishment of children.**

**2 The legality of corporal punishment of children in Korea**

2.1 ***Summary:*** Corporal punishment of children is prohibited in all settings in Seoul. Elsewhere, prohibition is still to be achieved in the home, alternative care settings, day care and schools.

2.2 ***Home (partially 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.

2.3 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.

2.4 According to the Government, the Child Welfare Act was revised in 2008 to provide for parent education on non-violent discipline.[[1]](#footnote-1) The Act states that no person shall inflict an injury on a child’s body or on a child’s mental health (art. 29) and provides for precautionary and preventive measures against child abuse including research and public education (art. 23, as amended 2008), 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 emotional distress by using abusive language, etc to children” (unofficial translation),[[2]](#footnote-2) but it does not explicitly prohibit all corporal punishment and does not repeal the “right to discipline”.

2.5 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). 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.

2.6 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.[[3]](#footnote-3) 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.

2.7 ***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.

2.8 ***Day care (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.[[4]](#footnote-4) To our knowledge prohibition has not been achieved: the Early Childhood Education Act 2004, amended in 2015 is silent on the issue.

2.9 ***Schools (partially unlawful):*** Some but not all forms of corporal punishment are prohibited in schools; in Seoul all corporal punishment is prohibited by the Student Rights Ordinance 2012. 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”.

2.10 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.

2.11 ***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.

2.12 ***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.

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

3.1 ***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 three occasions – in concluding observations on the initial report in 1996,[[5]](#footnote-5) the second report in 2003[[6]](#footnote-6) and the third/fourth in 2012.[[7]](#footnote-7)

3.2 ***UPR:*** Korea received a recommendation to prohibit corporal punishment in 2008 and stated that it would keep it under review.[[8]](#footnote-8) A recommendation to prohibit was again issued in 2012, which the Government accepted.[[9]](#footnote-9)

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

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1. 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-1)
2. Information provided to the Global Initiative [↑](#footnote-ref-2)
3. 12 December 2012, A/HRC/22/10, Report of the working group, para. 124(38) [↑](#footnote-ref-3)
4. *Korea Joongang Daily*, 21 December 2010 [↑](#footnote-ref-4)
5. 13 February 1996, CRC/C/15/Add.51, Concluding observations on initial report, paras. 15 and 22 [↑](#footnote-ref-5)
6. 18 March 2003, CRC/C/15/Add.197, Concluding observations on second report, paras. 7, 38 and 39 [↑](#footnote-ref-6)
7. 2 February 2012, CRC/C/KOR/CO/3-4, Concluding observations on third/fourth report, paras. 6, 7, 42 and 43 [↑](#footnote-ref-7)
8. 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-8)
9. 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-9)