



Global Initiative to  
End All Corporal Punishment  
of Children

## **BRIEFING ON JAPAN FOR THE HUMAN RIGHTS COMMITTEE, COUNTRY REPORT TASK FORCE, 109<sup>th</sup> session (Oct/Nov 2013)**

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### **1 The human rights obligation to prohibit corporal punishment**

- 1.1 The legality and practice of corporal punishment of children breaches their fundamental rights to respect for their human dignity and physical integrity and to equal protection under the law, and the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment – rights guaranteed in the International Covenant on Civil and Political Rights and other international human rights instruments.

**This briefing describes the legality of corporal punishment of children in Japan. 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 Japan by the treaty monitoring bodies, and Japan’s acceptance of the recommendation to prohibit made during the UPRs in 2008 and 2012, we hope the Human Rights Committee will:**

- **raise the issue of corporal punishment of children in its List of Issues for Japan, in particular asking what measures are being taken to explicitly prohibit corporal punishment in the home and all other settings, and**
- **recommend to Japan, following its examination of the state party’s sixth report, that legislation is enacted and enforced which explicitly prohibits corporal punishment in all settings, including the home, as a matter of priority, together with appropriate public education and professional training on positive, participatory and non-violent forms of education and childrearing.**

## 2 Japan's report to the Human Rights Committee

- 2.1 Japan's sixth report to the Committee (CCPR/C/JPN/6) includes information on corporal punishment in schools (paras. 311 and 312) but makes no reference to violent punishment of children in other settings. It describes measures to address child abuse, including revision of the Law on prevention of child abuse and the Civil Code (paras. 295-302), but gives no indication of any moves towards prohibiting all forms of corporal punishment of children.
- 2.2 The obligation to prohibit and eliminate corporal punishment is one frequently evaded by Governments. The near universal acceptance of a degree of violence in childrearing, together with deeply held views that parents and other adults have a "right" to physically punish children, means that corporal punishment is not readily perceived as a violent act in the same way as, for example, sexual and other socially unacceptable forms of violence: it is imperative that corporal punishment be *explicitly* prohibited and that all legal defences or justifications for its use are repealed from legislation. Japan's acceptance of the recommendations to prohibit corporal punishment in all settings made during the Universal Periodic Reviews in 2008 and 2012 (see para. XXX) suggests that the need for law reform is recognised.

## 3 Legality of corporal punishment of children in Japan

- 3.1 In Japan, corporal punishment is prohibited in schools and as a sentence of the courts but it is lawful in the home, alternative care and day care settings, and in penal institutions.
- 3.2 *Home (lawful)*: Article 822(1) of the Civil Code, as amended in 2011, states (unofficial translation): "A person who exercises parental authority can discipline the child within limits for the purpose of supervision, care and education...." Article 14 of the Child Abuse Prevention Law 2000 states: "(1) The person who exercises parental authority shall give consideration to proper exercise of authority in disciplining the child. (2) Persons with parental authority cannot escape criminal punishment for the crimes of violence, injury or other crimes of abuse committed against the children simply because they have been entrusted to their parental authority." While the Government has stated that this Act protects children from corporal punishment which is abusive, it has also confirmed that criminal law punishes only punishes corporal punishment which "exceeds reasonable current social standards".<sup>1</sup> There is no explicit prohibition of all corporal punishment, however light.
- 3.3 In a survey of parents conducted by a national newspaper in August 2010, 58% of respondents said they regarded physical punishment as a necessary tool in childrearing.<sup>2</sup>
- 3.4 *Alternative care settings (lawful)*: Corporal punishment is lawful under the power of those with parental authority to punish and discipline children in the Civil Code and the Child Abuse Prevention Law (see para. 3.2). Minimum Standards for Child Welfare Facilities 1948 address abuse of disciplinary methods but do not prohibit corporal punishment. On 29 March 2012, the Ministry of Health, Labour and Welfare renewed guidelines for the management of alternative care facilities which recommend that management guidelines for such facilities should state that corporal punishment should not be used – but these are guidelines and not law.

<sup>1</sup> 6 August 2012, A/HRC/WG.6/14/JPN/1, National report to the UPR, paras. 50 and 51

<sup>2</sup> Reported in Campaign for Ending Violence against Children (2012), *Briefing for the Human Rights Council Universal Periodic Review 14<sup>th</sup> session*

- 3.5 *Day care (lawful)*: Corporal punishment is lawful in formal early childhood care (nurseries, crèches, children's centres etc) and formal care for older children (after-school childcare, childminding, etc) under the power of those with parental authority to punish and discipline children in the Civil Code and the Child Abuse Prevention Law (see para. 3.2).
- 3.6 *Schools (unlawful)*: Corporal punishment is prohibited in article 11 of the Education Law 1947, which states that disciplinary punishment may be inflicted but "in no case is corporal punishment permitted" (article 11). However, a ruling by the Tokyo High Court on 1 April 1981 suggested this provision did not prohibit all physical punishment in all cases, and in 2007 a ministerial guideline issued to public schools relied on this in suggesting that some forms of physical punishment may be permitted in some circumstances.
- 3.7 *Penal institutions (lawful)*: The Constitution 1946 prohibits cruel punishments and the Act on Penal Detention Facilities and Treatment of Inmates and Detainees (2005) provides for the maintenance of discipline in penal institutions, but there is no explicit prohibition of corporal punishment.
- 3.8 *Sentence for crime (unlawful)*: There is no provision for judicial corporal punishment in criminal law.

#### **4 Recommendations by human rights treaty bodies and during the UPR**

- 3.1 *CRC*: The Committee on the Rights of the Child has three times made recommendations to Japan that corporal punishment of children be prohibited – in its concluding observations on the initial report in 1998,<sup>3</sup> on the second report in 2004<sup>4</sup> and on the third report in 2010.<sup>5</sup>
- 3.2 *CAT*: In May 2013, the Committee Against Torture expressed concern at the legality of corporal punishment of children in the home and care settings in Japan and recommended that it be prohibited in all settings by law.<sup>6</sup>
- 3.3 *UPR*: Japan was examined in the first cycle of the Universal Periodic Review in 2008 (session 2): the Government accepted the recommendation to prohibit all corporal punishment of children.<sup>7</sup> Japan's second cycle review was in 2012 (session 14). The national report submitted to the review made no mention of law reform to explicitly prohibit corporal punishment in all settings.<sup>8</sup> Again, Japan accepted the recommendation to do so.<sup>9</sup>

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<sup>3</sup> 5 June 1998, CRC/C/15/Add.90, Concluding observations on initial report, paras. 24 and 45

<sup>4</sup> 26 February 2004, CRC/C/15/Add.231, Concluding observations on second report, paras. 35 and 36

<sup>5</sup> 20 June 2010, CRC/C/JPN/CO/3, Concluding observations on third report, paras. 7, 8, 47, 48, 56 and 57

<sup>6</sup> [31 May 2013], CAT/C/JPN/CO/2 Advance Unedited Version, Concluding observations on second report, para. 23

<sup>7</sup> 30 May 2008, A/HRC/8/44, Report of the working group, para. 60(17)

<sup>8</sup> 6 August 2012, A/HRC/WG.6/14/JPN/1, National report to the UPR, paras. 47, 48, 49, 50 and 51

<sup>9</sup> 14 December 2012, A/HRC/22/14, Report of the working group, para. 147(126) ; 8 March 2013, A/HRC/22/14/Add.1, Report of the working group: Addendum, para. 147(126)