

Ending family violence in the Republic of Korea – challenging physical punishment of girls and boys



Information for the Committee on the Elimination of Discrimination Against Women, Pre-Sessional Working Group for the 69th session, from the Global Initiative to End All Corporal Punishment of Children (www.endcorporalpunishment.org), June 2017

Introduction: family violence in the Republic of Korea and CEDAW's examination of the eighth state party report

Legal protection from domestic violence is provided for in the Act on the Prevention of Domestic Violence and Protection, etc. of Victims. Although the legislation does not seem to provide a legal defence to the use of violent punishment in childrearing, there is no clear legal prohibition. The widespread social acceptance of the use of violence in childrearing undermines efforts to eliminate family violence: explicit prohibition of violent punishment of girls and boys must be enacted.

We hope the Committee on the Elimination of Discrimination Against Women will raise the issue of violent punishment of girls and boys in its examination of the Republic of Korea. In particular, we hope the Committee will:

- **in its list of issues for the Republic of Korea, ask what steps are being taken to ensure that violent punishment in childrearing is prohibited by law, and**
- **in its concluding observations on the eighth state party report, recommend that the Republic of Korea ensure that *no* form of violence within the domestic sphere is condoned, including by parents against their children, and that legislation is enacted to prohibit domestic violence against all family members, including the violent punishment of girls and boys.**

The remainder of this briefing provides the following further details:

1. The current law relating to family violence and corporal punishment of children in the Republic of Korea
 2. Treaty body and UPR recommendations on the issue made to the Republic of Korea to date.
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1 Laws on domestic violence and corporal punishment of children in the Republic of Korea

Summary

1.1 Legal protection from domestic violence is provided for in the Act on the Prevention of Domestic Violence and Protection, etc. of Victims. Corporal punishment of girls and boys has been prohibited in Seoul – but this ban has not been extended throughout the territory. There is no legal defence to the use of violent punishment in childrearing enshrined in law.

Detail

1.2 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

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. 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.

1.4 According to the Government, the Child Welfare Act was revised in 2008 to provide for parent education on non-violent discipline.² 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),³ but it does not explicitly prohibit all corporal punishment and does not repeal the “right to discipline”.

¹ 11 April 2016, CAT/C/KOR/3-5, Third/fifth report, para. 198

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

³ Information provided to the Global Initiative

1.5 The Anti-Discrimination Against and Remedies for Persons with Disabilities Act 2007 (ARPD) 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 ARPD 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 Prohibition of all violent punishment of children – which is critical in laying the legal foundations for efforts to reduce child abuse and domestic violence – requires an explicit ban in legislation. We hope the Committee will urge the Government of the Republic of Korea to enact legislation as a matter of priority to clearly prohibit all corporal punishment of girls and boys.

2 Recommendations by human right treaty monitoring bodies and during the Universal Periodic Review

- 2.1 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 1996,⁴ the second report in 2003⁵ and the third/fourth report in 2012.⁶
- 2.2 In 2017, the Committee Against Torture expressed concern at the continued legality of corporal punishment of children and recommended it is explicitly prohibited in law in all settings.⁷
- 2.3 At its first cycle Universal Periodic Review, Korea received a recommendation to prohibit corporal punishment in 2008 and stated that it would keep it under review.⁸ A recommendation to prohibit was again issued in 2012 in the second cycle, which the Government accepted.⁹

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⁴ 13 February 1996, CRC/C/15/Add.51, Concluding observations on initial report, paras. 15 and 22

⁵ 18 March 2003, CRC/C/15/Add.197, Concluding observations on second report, paras. 7, 38 and 39

⁶ 2 February 2012, CRC/C/KOR/CO/3-4, Concluding observations on third/fourth report, paras. 6, 7, 42 and 43

⁷ [May 2017], CAT/C/KOR/CO/3-5, Concluding observations on third/fifth report, Advance unedited version, paras. 33 and 34

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

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