

Corporal punishment of children in the Republic of Korea



Global Initiative to
End All Corporal Punishment
of Children

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Child population

9,339,230 (UNICEF, 2013)

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings, day care, schools and penal institutions.

Article 915 of the Civil Act 1958 provides for the “right to take disciplinary action” and legal provisions against violence and abuse are not interpreted as prohibiting all corporal punishment in childrearing. The near universal acceptance of corporal punishment as a method of “disciplining” children necessitates clarity in law that no kind or degree of such punishment is lawful or acceptable. Article 915 of the Civil Act should be repealed/amended to ensure there is no legal provision that can be construed as authorising the use of corporal punishment in childrearing.

Alternative care settings – Prohibition should be enacted of all corporal punishment in all alternative care settings (foster care, institutions, places of safety, emergency care, etc).

Day care – Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, kindergartens, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Schools – Prohibition should be enacted of all corporal punishment in all schools, including so-called “indirect” punishments involving painful positions etc.

Penal institutions – Prohibition of corporal punishment should be enacted in legislation applicable to all institutions accommodating children in conflict with the law.

Detailed country report

Current legality of corporal punishment

Home

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.

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.

According to the Government, the Child Welfare Act was revised in 2008 to provide for parent education on non-violent discipline.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.

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 deeprooted 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.

The Government accepted the recommendation to prohibit corporal punishment in all settings made during the Universal Periodic Review of the Republic of Korea in 2012.² 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.

Alternative care settings

Corporal punishment is prohibited in alternative care settings in Seoul in the Children’s Rights Ordinance 2012, article 28 (see under “Home”) 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 in alternative care settings in other provinces.

Day care

Corporal punishment is prohibited in day care in Seoul under articles 28 and 31 of the Children’s Rights Ordinance 2012 (see under “Home” and “Alternative care”) but it is lawful in other provinces. In 2010, the Ministry of Health and Welfare was reportedly drafting laws prohibiting physical

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

² 12 December 2012, A/HRC/22/10, Report of the working group, para. 124(38)

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.³ To our knowledge prohibition has not been achieved: neither the Early Childhood Education Act 2008, amended in 2011, nor its Enforcement Act 2009, amended in 2010, explicitly prohibit corporal punishment.

Schools

Some but not all forms of corporal punishment are prohibited in schools; in Seoul all corporal punishment is prohibited. 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”.

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.

In Seoul, the Student Rights Ordinance 2012 explicitly prohibits all corporal punishment.

Penal institutions

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.

Sentence for crime

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.

Universal Periodic Review of the Republic of Korea’s human rights record

The Republic of Korea was examined in the first cycle of the Universal Periodic Review in 2008 (session 2). The following recommendation was made:⁴

“To urgently amend relevant legislation to expressly prohibit corporal punishment in schools and at home and implement educational measures promoting positive and non-violent forms of discipline (Italy)”

³ *Korea Joongang Daily*, 21 December 2010

⁴ 29 May 2008, A/HRC/8/40, Report of the working group, para. 64(29)

The Government did not accept or reject the recommendation but stated: “Regarding the issue of corporal punishment of children in the home, it is important to reflect the views of various sectors of society in order to amend legislation. Since 2007, the Republic of Korea has designated some pilot schools where corporal punishment is not practiced and alternative measures for student discipline in this regard are provided.”⁵ The Government later stated that the issue would be kept under review.⁶

Examination in the second cycle took place in 2012 (session 14). The national report states that law reform in 2011 prohibits corporal punishment in schools but confirms that there is no legislation explicitly prohibiting corporal punishment in the home.⁷ During the review the following recommendations were made:⁸

“Consider establishing the total prohibition of corporal punishment (Palestine); Carry out public awareness campaigns on the negative consequences of the ill-treatment of children to promote positive and non-violent forms of discipline in schools and at home as alternative measures to these punishments (Uruguay); Expressly prohibit corporal punishment in all settings (Hungary)”

The Government accepted the recommendations.⁹

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

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

“The Committee ... regrets that some of its concerns and recommendations have been insufficiently addressed or not addressed at all.

“The Committee urges the State party to take all necessary measures to address the recommendations from the concluding observations on its second periodic report (CRC/C/124, paras. 79-141) which have not yet been implemented, particularly those related to ... the comprehensive prohibition of corporal punishment....

“The Committee reiterates its previous concerns (CRC/C/15/Add.197, para. 38) on the continued prevalence of corporal punishment in the domestic, school and alternative care context.

“The Committee reiterates its previous recommendation to:

- a) implement the recommendation of the National Human Rights Commission that the relevant legislation and regulations be amended to expressly prohibit corporal punishment in the home, schools and all other institutions;
- b) carry out public education campaigns about the negative consequences of ill-treatment of children in order to change attitudes to corporal punishment, and promote positive, non-violent forms of discipline in schools and at home, including the pilot green mileage system as an alternative to corporal punishment in school;
- c) establish mechanisms which allow for children who are victims of corporal punishment to report such incidents.”

⁵ 29 May 2008, A/HRC/8/40, Report of the working group, para. 58

⁶ 25 August 2008, A/HRC/8/40/Add.1, Report of the working group: Addendum

⁷ 13 August 2012, A/HRC/WG.6/14/KOR/1, National report to the UPR, paras. 60 and 61

⁸ 12 December 2012, A/HRC/22/10, Report of the working group, para. 124(38)

⁹ 16 January 2013, A/HRC/22/10/Add.1, Report of the working group: Addendum, para. 23

Committee on the Rights of the Child

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

“The Committee regrets that most recommendations in the concluding observations (CRC/C/15/Add.51), adopted following its consideration of the State party’s initial report (CRC/C/8/Add.21), have been insufficiently addressed, particularly those regarding:

d) the prohibition of all forms of corporal punishment (para. 22)....

“The Committee notes with great concern that corporal punishment is officially permitted in schools. The Committee is of the opinion that corporal punishment does not conform with the principles and provisions of the Convention, particularly since it constitutes a serious violation of the dignity of the child (see similar observations of the Committee on Economic, Social and Cultural Rights, E/C.12/1/Add.79, para. 36 [re UK]). The fact that the Ministry of Education guidelines leave the decision on whether to use corporal punishment in schools to the individual school administrators suggests that some forms of corporal punishment are acceptable and therefore undermines educational measures to promote positive, non-violent forms of discipline.

“The Committee recommends that the State party:

a) implement the recommendation of the National Human Rights Commission that the relevant legislation and regulations be amended to expressly prohibit corporal punishment in the home, schools and all other institutions;

b) carry out public education campaigns about the negative consequences of ill-treatment of children in order to change attitudes to corporal punishment, and promote positive, non-violent forms of discipline in schools and at home as an alternative to such punishment.”

Committee on the Rights of the Child

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

“... With regard to child abuse and domestic violence, the Committee is concerned at the lack of preventive policies and of adequate reporting mechanisms. Abandonment of children, the high rate of child headed families and the persistence of corporal punishment, widely envisaged by parents and teachers as an educational measure, are other subjects of concern to the Committee.

“... The Committee particularly recommends that legislative measures be adopted with a view to ... clearly prohibiting any form of corporal punishment....”

Prevalence/attitudinal research in the last ten years

A study of 481 high school students, carried out in September and October 2011 and published in 2012 in the journal of the Korea Institute of Criminology, found that 94.6% had experienced corporal punishment at school, including being “spanked”, struck on the cheek and punched.

(Reported in *Asian Correspondent*, 18 July 2012)

A 2011 survey of 1,430 student teachers (783 training to be primary school teachers and 647 to be secondary school teachers) found that 68% of primary student teachers and 62% of secondary student teachers disagreed that any form of corporal punishment was unacceptable and 63% of primary student teachers and 66.5% of secondary student teachers disagreed that corporal punishment should be banned by law. Nearly half (47.6%) of primary student teachers and 58% of secondary student teachers agreed “although a teacher cannot hit a school child with his/her open hand, it is acceptable to use a paddle”; 33.7% of primary student teachers and 37.1% of secondary student teachers agreed that “to maintain order in a classroom, it is acceptable for a teacher to administer physical punishment upon the whole class”. The vast majority of the students had experienced corporal punishment at school as

children: 97.6% had been hit on the palms of their hands, 98.4% physically punished as part of a group, 85.3% hit on the buttocks or thighs and 94.8% forced to kneel down.

(Save the Children Korea (2011), *Incorporating Children's Rights Education into the Teacher Training Curriculum of South Korea: A study on the teacher education curriculum, student-teachers' awareness of children's rights, and development of a children's rights education course*)

Government research into corporal punishment at middle and high schools showed a decline in prevalence, with 6% experiencing it in 2006 compared with 40% in a similar survey by the Korean Teachers and Education Workers' Union in 2000. The research surveyed 1,160 students at 40 schools, 533 parents and 262 teachers. When asked if teachers listened to the student's side of the story before giving the punishment, 89% of teachers said "yes" while 88% of students and 92% of parents answered "no". Corporal punishment is given when students do not obey school rules, e.g. not finishing homework or being late or absent from class.

(Reported in *The Korea Herald*, 26 January 2007)

Large scale comparative research into the views and experiences of 3,322 children and 1,000 adults in 8 countries in Southeast Asia and the Pacific (Cambodia, Fiji, Hong Kong, Indonesia, Mongolia, Philippines, Republic of Korea and Viet Nam) was carried out by Save the Children in 2005. The research in Republic of Korea involved 152 children (69 boys, 83 girls) from urban areas and 175 adults (32 men and 143 women). Methods included research diaries, drawings, body maps, attitude survey, sentence completion, and discussions. Physical punishments mentioned by children in Republic of Korea included slapping, whipping, beaten with a broomstick, punching, kicking, pinching, ear pulling. In the home 97.4% of children experienced physical punishment, 3% emotional punishment; in school 93.6% experienced physical punishment, 6% emotional. Punishment in the home comprised 61% of all punishments, followed by school, then after-school learning centres, playgrounds, and other locations (street, friends' houses, welfare centres). Punishment is most commonly inflicted by parents (45%), teachers (24%) and other relatives (20%). In response to the statement "After I punish a child I feel unhappy", 16.6% of adults disagreed, 65.1% agreed, and 18.3% had no opinion.

(Beazley, H. et al (2006), *What Children Say: Results of comparative research on the physical and emotional punishment of children in Southeast Asia and Pacific (2005)*, Stockholm: Save the Children Sweden)

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