

Corporal punishment of children in Japan



Global Initiative to
End All Corporal Punishment
of Children

Report prepared by the Global Initiative to End All Corporal Punishment of Children (www.endcorporalpunishment.org)

LAST UPDATED March 2017

Child population

19,827,000 (UNICEF, 2015)

Summary of necessary legal reform to achieve full prohibition

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

Article 822 of the Civil Code states that a person with parental authority “can discipline the child within limits for the purpose of supervision, care and education.” The Child Abuse Prevention Law 2000 states that those with parental authority should not discipline their child “beyond the scope required for care and education” (article 14) but does not rule out corporal punishment. The near universal social acceptance of corporal punishment in childrearing necessitates clarity in law that no level of corporal punishment can be considered “appropriate” or lawful. The legal defence for the use of corporal punishment should be repealed and prohibition enacted of all corporal punishment and other cruel or degrading forms of punishment, in the home and all other settings where adults have authority over children.

Alternative care settings – Legislation should prohibit corporal punishment in all alternative care settings (formal foster care, institutions, orphanages, places of safety, emergency care etc).

Day care – Legislation should prohibit corporal punishment in all formal early childhood care (nurseries, crèches, children’s centres, etc) and all formal day care for older children (after-school childcare, childminding, day centres, etc).

Penal institutions – Prohibition should be enacted in relation 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, though it is prohibited in Kawasaki City by local ordinance. Article 822 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(1) of the Child Abuse Prevention Law 2000 was amended in 2015 to state “Those who exercise parental authority shall not discipline the child beyond the scope required for care and education pursuant to the provisions of Article 820 of the Civil Code and shall take into consideration the proper exercise of parental authority over the child” (unofficial translation).

According to article 820 of the Civil Code, “a person who exercises parental authority holds the right and bears the duty on care and education for the children’s interests” (unofficial translation). Previously, article (1) stated “The person who exercises parental authority shall give consideration to proper exercise of authority in disciplining the child.” Article 14(2) states “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.” The Government has stated that this Act obliges parents “to exercise such authority in a proper manner that will not constitute child abuse” and that the Penal Code punishes “exercise of disciplinary rights over a child [which] exceeds reasonable current social standards”.¹ There is no explicit prohibition of all corporal punishment, however light, in childrearing. The Civil Code is being revised.

Article 1 of the Child Welfare Act 1947 states that all citizens shall endeavour to ensure that children are “brought up in good mental and physical health” and that they shall “be kindly treated”. Article 34 lists a number of prohibited acts against children. But the Act does not prohibit all corporal punishment of children. Although the inclusion of prohibition in amendments to the Act had been discussed, during the debate the Government argued against prohibition on the basis that the current legislation provided for sufficient protection. As a result the amendments voted in 2016 did not prohibit corporal punishment.

Although the Government accepted the recommendations to prohibit all corporal punishment made during the Universal Periodic Reviews of Japan in 2008² and in 2012,³ it denied that the legal “right to discipline” allowed for corporal punishment and stated that the law adequately protects children from “excessive” discipline.⁴ Japan’s 2017 mid-term report declared “while the meaning of “corporal punishment” is not absolutely clear, the act of assault (Penal Code Article 308) and injury (Penal Code Article 204) can be punished”.⁵

Alternative care settings

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 under “Home”). 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.

Day care

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 under “Home”). In 2009, the Ministry of Health, Labour and Welfare renewed its

¹ 6 August 2012, A/HRC/WG.6/14/JPN/1, National report to the UPR, paras. 50 and 51; see also 15 September 2011, CAT/C/JPN/2, Second state party report, para. 280

² 30 May 2008, A/HRC/8/44, Report of the working group, paras. 60(17)

³ 14 December 2012, A/HRC/22/14, Report of the working group, para. 147(126)

⁴ 6 August 2012, A/HRC/WG.6/14/JPN/1, National report to the UPR, para. 48

⁵ January 2017, Mid-term report on the progress made in the implementation of the recommendations issued at the second cycle of the Universal Periodic Review

guidelines for the management of day care facilities: the Manual for the guidelines state that corporal punishment should not be used in childcare but there is no prohibition in the law.

Schools

Corporal punishment is prohibited in schools under article 11 of the Education Law 1947, which states that disciplinary punishment may be inflicted but “in no case is corporal punishment permitted” (art. 11). 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. In 2012, the Government asserted that the said article of the Education Law “strictly prohibits corporal punishment” and that Ministerial guidelines and training support this, but did not comment on the High Court ruling.⁶ In 2014, the Government reported it was continuing its efforts to completely ban corporal punishment in schools.⁷

Penal institutions

Corporal punishment is lawful as a disciplinary measure in penal institutions. 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.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. There is no provision for corporal punishment in the Penal Code or the Criminal Procedure Code.

Universal Periodic Review of Japan’s human rights record

Japan was examined in the first cycle of the Universal Periodic Review in 2008 (session 2). The following recommendation was made:⁸

“Prohibit expressly all forms of corporal punishment of children and promote positive and non-violent forms of discipline (Italy)”

Japan accepted this recommendation. However, Japan’s mid-term progress report in 2011 simply describes existing law on the issue and gives no indication of any progress towards prohibiting all corporal punishment of children.⁹

⁶ 6 August 2012, A/HRC/WG.6/14/JPN/1, National report to the UPR, para. 47

⁷ 19 May 2014, CCPR/C/JPN/Q/6/Add. 1, Reply to list of issues, paras.282-286

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

⁹ Government of Japan, March 2011, Mid-term progress report by Japan on its implementation of recommendations made in May 2008, pp. 9-10

Examination in the second cycle took place in 2012 (session 14). The national report describes legal provisions aimed at ensuring parental discipline is “reasonable” and does not amount to “child abuse” but does not mention law reform to explicitly prohibit all forms of corporal punishment in childrearing.¹⁰ During the review the following recommendation was made:¹¹

“Expressly prohibit corporal punishment in all settings (Hungary)”

The Government accepted the recommendation.¹² However its 2017 mid-term report reported only on the criminalisation of assault and injury and stated that the “meaning of “corporal punishment” [was] not absolutely clear”.¹³

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

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

“The Committee welcomes the efforts made by the State party to address some of the concerns and recommendations (CRC/C/15/Add.231) made upon consideration of the State party’s second report (CRC/C/104/Add.2) in February 2004, but regrets that a number of them have not been fully implemented or have not been addressed at all. The Committee reiterates those concerns and recommendations in the present document.

“The Committee urges the State party to make every effort to address the recommendations it made in its concluding observations on the second periodic report which have not yet been implemented (including those contained in ... paragraph 35 on corporal punishment ...) and to comprehensively address the concerns contained in the present concluding observations.

“While noting the explicit prohibition of corporal punishment in schools, the Committee expresses concern at reports that the prohibition is not effectively implemented. The Committee notes with concern the ambiguous ruling of the Tokyo High Court in 1981 which refrained from prohibiting all physical punishment. Furthermore, it is concerned that corporal punishment in the home and in alternative care settings is not expressly prohibited by law and that the Civil Code and the Child Abuse Prevention Law, particularly, allow the use of appropriate discipline and are unclear as to the admissibility of corporal punishment.

“The Committee strongly recommends that the State party:

- a) explicitly prohibit corporal punishment and all forms of degrading treatment of children in all settings by law, including the home and alternative care settings;
- b) effectively implement the ban on corporal punishment in all settings;
- c) undertake communications programmes, including campaigns, to educate families, teachers, and other professionals working with and for children on alternative, non-violent forms of discipline.

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

¹¹ 14 December 2012, A/HRC/22/14, Report of the working group, para. 147(126)

¹² 8 March 2013, A/HRC/22/14/Add.1, Report of the working group: Addendum, para. 147(126)

¹³ January 2017, Mid-term report on the progress made in the implementation of the recommendations issued at the second cycle of the Universal Periodic Review

“The Committee welcomes measures such as amendments to the Child Abuse Prevention Law and the Child Welfare Law, which provide and enforce mechanisms for the prevention of abuse. The Committee remains concerned, however, that the notion of ‘parental authority’ giving the right to exercise ‘comprehensive control’ in the Civil Code as well as undue parental expectations, puts children at risk of violence at home. It notes with concern that the incidence of child abuse continues to rise.

“The Committee recommends that the State party strengthen current efforts to address the problem of child abuse, including by:

a) conducting public education programmes about the negative consequences of abuse and neglect and preventive programmes, including family development programmes, promoting positive, non-violent forms of discipline....”

Committee on the Rights of the Child

(26 February 2004, CRC/C/15/Add.231, Concluding observations on second report, paras. 35 and 36)

“The Committee notes with concern that corporal punishment, although legally prohibited in schools, is widely practised in schools, institutions and the family.

“The Committee recommends that the State party:

- a) prohibit corporal punishment in institutions and the home;
- b) carry out public education campaigns about the negative consequences of ill-treatment of children in order to change attitudes towards corporal punishment, and promote positive, non-violent forms of discipline in schools, institutions and at home as an alternative to such punishment;
- c) strengthen complaints mechanisms for children in institutions and schools to ensure that they deal with complaints of ill-treatment effectively and in a child-sensitive manner.”

Committee on the Rights of the Child

(5 June 1998, CRC/C/15/Add.90, Concluding observations on initial report, paras. 24 and 45)

“The Committee is concerned at the frequency and level of violence in schools, especially the widespread use of corporal punishment and the existence of numerous cases of bullying among students. While legislation prohibiting corporal punishment and such measures as hot lines for victims of bullying do exist, the Committee notes with concern that current measures have been insufficient to prevent school violence.

“In light of, inter alia, articles 3, 19 and 28.2 of the Convention, the Committee recommends that a comprehensive programme be devised and its implementation closely monitored in order to prevent violence in schools, especially with a view to eliminating corporal punishment and bullying. Additionally, it recommends that corporal punishment be prohibited by law in the family and in child-care and other institutions. The Committee also recommends that awareness-raising campaigns be conducted to ensure that alternative forms of discipline are administered in a manner consistent with the child’s human dignity and in conformity with the Convention.”

Committee Against Torture

(28 June 2013, CAT/C/JPN/CO/2, Concluding observations on second report, para. 23)

“Noting that child abuse is prohibited under article 3 of the Act on Child Abuse Prevention, the Committee shares concern raised by the Committee on the Rights of Child (CRC/C/JPN/CO/3, para. 47) that corporal punishment in the home and in alternative care settings is not expressly prohibited by law and that the Civil Code and the Act on Child Abuse Prevention allow the use of appropriate discipline and are unclear as to the admissibility of corporal punishment in some cases (art. 16).

The State party should explicitly prohibit corporal punishment and all forms of degrading treatment of children in all settings by law.”

Human Rights Committee

(20 August 2014, CCPR/C/JPN/CO/6, Concluding observations on sixth report, para. 25)

“The Committee observes that corporal punishment is only prohibited explicitly in schools, and expresses concern at its prevalence and social acceptance (arts. 7 and 24).

The State party should take practical steps, including through legislative measures, where appropriate, to put an end to corporal punishment in all settings. It should encourage non-violent forms of discipline as alternatives to corporal punishment, and should conduct public information campaigns to raise awareness about its harmful effects.”

Prevalence/attitudinal research in the last ten years

A Government survey of public, national and private schools found that in the 2012-2013 academic year, 6,721 teachers at 4,152 schools nationwide inflicted corporal punishment on 14,208 students. Eighty per cent of the teachers were in public schools; only 3% were disciplined for their use of corporal punishment. In elementary schools, 60% of corporal punishment cases took place during class. In junior high and high schools, just over 20% of cases took place in class, and 40% took place during club activities. In 60% of cases, teachers hit students with their hands, in 10% teachers kicked students. Other forms of corporal punishment included punching students and hitting them with a stick or other object. In 20% of cases, children were physically injured, including fractures, sprains and eardrum damage.

(Reported in *The Japan Times*, 10 August 2013)

In a survey of 510 college athletes (427 male and 83 female), 62% said violent punishment is acceptable in school athletics programmes. One third (33%) said they had been physically punished at school. Students who had been physically punished were more likely to think violent punishment was acceptable (73% of those who had been physically punished compared to 57% of those who had not) and to say they would use violence if they became a teacher or athletics coach.

(Reported in *The Asahi Shimbun*, 13 May 2013)

According to Japan’s report to the UN Human Rights Committee in 2012, the number of cases of corporal punishment in schools handled by human rights organisations was 211 in 2006, 263 in 2007, 198 in 2008, 268 in 2009 and 337 in 2010.

(9 October 2012, CCPR/C/JPN/6, Sixth state party report to the Human Rights Committee, para. 312)

In a survey of parents conducted by a national newspaper in August 2010, 58% of respondents regarded physical punishment as a necessary tool in childrearing.

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

In a survey of 1,592 first- and second-year university students, 1.4% reported being slapped, kicked, punched or having something thrown at them by a teacher “often” or “very often” when they were at school.

(Masuda, A. et al (2007), “Intra- and extra-familial adverse childhood experiences and a history of childhood psychosomatic disorders among Japanese university students”, *BioPsychoSocial Medicine*, 1 (9), 1-7, cited in UNICEF East Asia and Pacific Regional Office (2012), *Child Maltreatment: Prevalence, Incidence and Consequences: A Systematic Review of Research*, Bangkok: UNICEF)

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March 2017