

Corporal punishment of children in China

LAST UPDATED November 2018

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Child population 282,260,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Summary of necessary legal reform to achieve full prohibition

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

There appears to be no confirmation in legislation of a right of parents to inflict corporal punishment on their children and the revised Law on the Protection of Minors 2006 prohibits maltreatment and domestic violence against minors, but there is no explicit prohibition of corporal punishment and there is no evidence that legal provisions against violence and abuse are interpreted as prohibiting all corporal punishment. The near universal acceptance of corporal punishment in childrearing necessitates clarity in law that no kind or degree of corporal punishment can be considered reasonable or lawful.

The Law on the Prevention of Juvenile Delinquency 1999 includes several provisions authorising “strict discipline” of children by parents and guardians. The law should make clear that this does not entail a right to inflict corporal punishment. All corporal and other degrading and humiliating punishment should be prohibited in relation to all children.

Alternative care settings – Corporal punishment should be prohibited in all alternative care settings (foster care, institutions, orphanages, places of safety, emergency care, etc).

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

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. There is limited protection from corporal punishment by parents in some circumstances: Rules in the Shenzhen Special Economic Zone 1993 pursuant to the Law of the People's Republic of China on the Protection of the Rights and Interests of Women 1992 explicitly prohibit corporal punishment of the female child (art. 23), and under the Law on the Prevention of Juvenile Delinquency 1999, families of children in work-study schools must not impose physical punishment on them (art. 36). But the same Law states that parents or guardians of children who commit serious misbehaviour may be ordered to subject their children to "strict discipline" (arts. 35, 38 and 49).

The Government reported to the Committee on the Rights of the Child in 2013 that China's laws explicitly prohibit all corporal punishment of children, including in the home.¹ However, provisions against violence and abuse in the revised Law on the Protection of Minors 2006 (further revised in 2012), the Criminal Law 1979, the Constitution 1982 and the Marriage Law (amended 2001) do not prohibit all corporal punishment in childrearing. Article 10 of the Law on the Protection of Minors prohibits "domestic violence against minors, abuse, abandonment and infanticide" but does not explicitly prohibit all corporal punishment.

Following a number of high profile cases of the deaths of young children as a result of parental abuse and neglect, new child laws are reportedly being drafted to address implementation of existing child laws and to strengthen protection for very young children.² However, the Anti-Family Violence Law adopted in December 2015 (in force March 2016) does not clearly prohibit all corporal punishment of children. Article 12 of the Law prohibits the use of violence against children by guardians but it does not explicitly prohibit corporal punishment. Family violence is defined in article 2 of the Law as "the physical and psychological and other harms perpetrated against family members in the means of beating, binding, injuring, physical constraints as well as frequent verbal abuse and intimidation" (unofficial translation). Children are legally protected from some but not all forms of corporal punishment under this law.

Alternative care settings

There is no explicit prohibition of corporal punishment in alternative care settings (information unconfirmed).

Day care

Corporal punishment is prohibited in kindergartens and nurseries in the Law on the Protection of Minors 2006 (amended 2012), which states in article 21: "Teaching and administrative staff in schools, kindergartens and nurseries and faculty members shall respect the personal dignity of the minors, and may not subject them to corporal punishment or corporal punishment in disguised form, or commit any other act that humiliates the personal dignity of the minors." Article 63 states: "...Where a teaching or administrative staff member of a school, kindergarten or nursery subjects a minor to corporal punishment or corporal punishment in disguised form, or to any other act that humiliates the personal dignity of the minor, the unit where the staff member works or the

¹ [2013], CRC/C/CHN/Q/3-4/Add.1 Unedited Version, Reply to list of issues, Q15

² Reported in *South China Morning Post*, 21 January 2014

department at a higher level shall instruct him to rectify; and if the circumstances are serious, he shall be given a sanction according to law.”

There appears to be no explicit prohibition in other early childhood care (crèches, family centres, etc) or in day care for older children (day centres, after-school childcare, childminding, etc).

Schools

Corporal punishment is prohibited in schools. Article 16 of the Compulsory Education Law 1986 states: “It shall be forbidden to inflict physical punishment on students.” According to article 37 of the Teachers’ Law 1994, teachers “imposing corporal punishment on students and refusing to mend their way after being criticised” are subject to administrative sanctions or dismissal and “if the circumstances are serious enough to constitute a crime, shall be investigated for criminal responsibility according to law”. The Law on the Prevention of Juvenile Delinquency 1999 prohibits corporal punishment in work-study schools for children found to have perpetrated serious misbehaviour (art. 36): “... Families and schools shall show concern for and take good care of the juveniles who study in work-study schools and respect their personality and dignity, and may not impose physical punishment on, maltreat, or discriminate against them...” The prohibition is confirmed in article 21 of the Law on the Protection of Minors 2006 (see under “Day care”).

Penal institutions

Corporal punishment is explicitly prohibited as a disciplinary measure in penal institutions in a number of laws. Article 248 of the Criminal Law 1979 states: “Whoever from the supervising or administering persons of a supervising or administering organ such as a prison, bridewell or house of detention subjects prisoners or internees to battery or corporal punishment shall, if the circumstances are serious, be sentenced to fixed-term imprisonment of not more than three years or criminal detention. If the circumstances are especially serious, the offender shall be sentenced to fixed-term imprisonment of not less than three years and not more than ten years. If deformity or death of another person is caused, the offender shall be decided a crime and given a heavier punishment according to the provisions of Article 234 or Article 232 of this Law...”

Article 14 of the Prison Law states: “The people's police of a prison shall not commit any of the following acts: ... (3) to use torture to coerce a confession, or to use corporal punishment, or to maltreat a prisoner; (4) to humiliate the human dignity of a prisoner; (5) to beat or connive at others to beat a prisoner;” Article 22 of the People’s Police Law states: “People’s policemen may not commit any of the following acts: ... (4) to extort confession by torture or subject criminals to corporal punishment or maltreat them;” Article 36 of the Law on the Prevention of Juvenile Delinquency 1999 also applies (see under “Home”) and prohibition is included in the Regulations on the Behaviour of People’s Police on Duty in Custody-houses 2001. In 2006, the Ministry of Justice issued “Six Prohibitions on People’s Prison Police” and “Six Prohibitions on People’s Reeducation Through Labor (RTL) Police” which include strict prohibition of beating or subjecting inmates serving a prison or RTL sentence to corporal punishment or instigating others to beat or subject an inmate to corporal punishment, regardless of the seriousness of the consequences of that punishment.³ The

³ Congressional-Executive Commission on China, Press release, 26 July 2006

Ordinance on Discipline for the People's Police of the Public Security Organs 2010 punishes the infliction of physical punishment of suspects and persons in custody.⁴

Article 4 of the Regulations on Detention Facilities 1990 states: "Persons in custody in detention houses must be administered according to law in a scientific and civilized way so that their legitimate rights and interests can be guaranteed. Beating, corporal punishment and ill-treatment of persons in custody are strictly prohibited." There is a similar provision in the Regulations on Detention Houses 2012 (art. 3): "Detention houses should guarantee the personal safety and legitimate rights and interests of persons in custody according to law. They should neither insult, mete out corporal punishment to and ill-treat persons in custody, nor instigate and connive at others' insult, corporal punishment or ill-treatment of persons in custody."

In 2012, the Supreme People's Court issued its Interpretation concerning the Application of the Criminal Procedure Law, confirming that the use of corporal punishment or disguised corporal punishment on defendants constitutes "illegal means such as coercion of confession by torture" as set out in article 54 of the Criminal Procedure Law.⁵

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in the Criminal Law 1979.

Other

Corporal punishment is explicitly prohibited in the Regulations on Drug Rehabilitation, adopted in 2011 (art. 45).⁶

Universal Periodic Review of China's human rights record

China was examined in the first cycle of the Universal Periodic Review in 2009 (session 4). No recommendations were made specifically concerning corporal punishment of children. However, the following recommendations were made and were accepted by the Government:⁷

"Continue its efforts: for the promotion of human rights (Oman); in legal and judicial reforms, economic development and other areas towards promoting a harmonious society, democracy, the rule of law and human rights (Viet Nam);

"Continue enhancing the quality of life of its people through the enjoyment of economic, social and cultural rights and pursuant to international standards (Nicaragua);

"Attach more importance to the protection of rights of the child through national plans for economic and social development (Qatar)"

⁴ 3 April 2014, CAT/C/CHN/5, Fifth state party report, para. 42; see also http://english.gov.cn/official/2010-09/26/content_1709982_4.htm, accessed 5 August 2014

⁵ 3 April 2014, CAT/C/CHN/5, Fifth state party report, para. 17

⁶ 3 April 2014, CAT/C/CHN/5, Fifth state party report, para. 10

⁷ 5 October 2009, A/HRC/11/25, Report of the working group, paras. 114(2), 114(3) and 114(13)

Examination in the second cycle took place in 2013 (session 17). No specific recommendations on corporal punishment were made. However, the following recommendations relevant to prohibition of corporal punishment were made and were accepted by the Government:⁸

“Continue its ongoing review of national laws to ensure that they are in line with its international human rights law obligations (Turkmenistan);

“Continue to give consideration to the views of treaty bodies and other mechanisms (Kenya);

“Continue to protect the rights of children (Mauritius);

“Continue its effort to promote and protect the rights of children including further action against the abduction, maltreatment and abandonment of children (Ethiopia)”

Third cycle examination took place in 2018 (session 31). The following recommendations were made:⁹

“Prohibit corporal punishment of children in all settings, including in the home (Estonia);

“Explicitly prohibit by law corporal punishment in all settings (Montenegro)”

The Government will examine the recommendations and respond before the 40th session of the Human Rights Council in March 2019.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(29 October 2013, CRC/C/CHN/CO/3-4, Concluding observations on third/fourth report, paras. 6 and 7)

“The Committee, while welcoming the State party’s efforts to implement the Committee’s concluding observations of 2005 on its second periodic report (CRC/C/CHN/CO/2), notes with regret that some of the recommendations contained therein have not been fully addressed.

“Recalling its previous recommendations, the Committee recommends that the State party take all necessary measures to address those recommendations that have not been implemented or not sufficiently implemented, and urges it to: ...

c) explicitly prohibit by law corporal punishment in the family, schools, institutions and all other settings, including penal institutions.”

Committee on the Rights of the Child

(24 November 2005, Concluding observations on second report on China (including Hong Kong and Macau Special Administrative Regions), CRC/C/CHN/CO/2, paras. 46, 47 and 48)

“The Committee is concerned that in mainland China the existing regulations banning corporal punishment in schools are unevenly implemented. It is also concerned that corporal punishment in the home is not banned and continues to be socially acceptable.

“The Committee is concerned that corporal punishment within the family is not prohibited by law and continues to be practised in the home in the Hong Kong and Macau SARs.

⁸ 4 December 2013, A/HRC/25/5, Report of the working group, paras. 186(54), 186(64), 186(77) and 186(80)

⁹ 9 November 2018, A/HRC/WG.6/31/L.3 Unedited version, Draft report of the Working Group, paras 6(156) and 6(157)

“The Committee urges the State party, in all areas under its jurisdiction:

a) to explicitly prohibit by law corporal punishment in the family, schools, institutions and all other settings, including penal institutions;

b) to expand public education and awareness-raising campaigns, with the involvement of children, on alternative non-violent forms of discipline in order to change public attitudes about corporal punishment.”

Prevalence/attitudinal research in the last ten years

A 2014 study which involved 2,518 mothers and fathers of 3-15 year olds found that 53.7% of the mothers and 48.3% of the fathers had physically punished their child in the past year.

(Wang, M. & Liu, L. (2014) “Parental harsh discipline in mainland China: Prevalence, frequency, and coexistence”, *Child Abuse & Neglect*, 38(6), 1128-1137)

In a survey of 1,200 first- and second-year university students, 32.1% reported experiencing corporal punishment by teachers when they were at school.

(UNICEF East Asia and Pacific Regional Office (2012), *Child Maltreatment: Prevalence, Incidence and Consequences: A Systematic Review of Research*, Bangkok: UNICEF)

In a study of 2,363 parents, 43.8% said they had physical punished a child; 32.8% had done so in the past year.

(Chan, K. L. (2010), “Co-occurrence of intimate partner violence and child abuse in Hong Kong Chinese families”, *Journal of Interpersonal Violence*, (epub ahead of print), 1-21, cited in UNICEF East Asia and Pacific Regional Office (2012), *Child Maltreatment: Prevalence, Incidence and Consequences: A Systematic Review of Research*, Bangkok: UNICEF)

A study of the relationship between gender and physical punishment in China, Colombia, Italy, Jordan, Kenya, Philippines, Sweden, Thailand and the US, which used interviews with around 4,000 mothers, fathers and children aged 7-10, found that in China 48% of girls and 60% of boys had experienced “mild” corporal punishment (spanking, hitting, or slapping with a bare hand; hitting or slapping on the hand, arm, or leg; shaking, or hitting with an object), and 10% of girls and 15% of boys had experienced severe corporal punishment (hitting or slapping the child on the face, head, or ears; beating the child repeatedly with an implement) by someone in their household in the past month. Smaller percentages of parents believed it was necessary to use corporal punishment to bring up their child: for girls, 14% of mothers and 20% of fathers believed it was necessary; for boys, 36% of mothers and 33% of fathers believed it was necessary.

(Lansford, J. et al (2010), “Corporal Punishment of Children in Nine Countries as a Function of Child Gender and Parent Gender”, *International Journal of Pediatrics*)

A survey of over 2,100 primary school children aged 9-12 found that 73% were physically punished by their parents, and this was associated with psychosomatic symptoms such as headache and abdominal pain.

(Hesketh, T. et al (2010), “Stress and psychosomatic symptoms in Chinese school children: cross-sectional survey”, *Archives of Disease in Childhood*, 95(2), 136-140)

In a survey of more than 100 children aged 6-15 and 126 parents, carried out by the NGO Against Child Abuse, 58% of parents admitted to smacking or caning their children in the previous 12 months. Almost half (47%) of children who had been physically punished said it had hurt them badly and a third thought it had damaged their relationship with their parents.

(Reported in *Earth Times*, 4 May 2010)

In a study of 6,592 high school students, 23.2% reported experiencing corporal punishment in the past six months.

(Leung, P. W. S. et al (2008), "Prevalence and determinants of child maltreatment among high school students in Southern China: A large school based survey", *Child and Adolescent Psychiatry and Mental Health*, 2(27), 1-8, cited in UNICEF East Asia and Pacific Regional Office (2012), *Child Maltreatment: Prevalence, Incidence and Consequences: A Systematic Review of Research*, Bangkok: UNICEF)

A study of 810 parents with children of pre-school age found that 33% had used non-contact corporal punishment on their child.

(Wang, F. Y. et al (2007), "The Prevalence of Physical Maltreatment by Parents in 810 Kindergarten Children", *Chinese Journal of School Health*, 28(11), 987-990 [in Chinese], cited in UNICEF East Asia and Pacific Regional Office (2012), *Child Maltreatment: Prevalence, Incidence and Consequences: A Systematic Review of Research*, Bangkok: UNICEF)