

Corporal punishment of children in Hong Kong

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Child population (0-19) 1,167,600 (Hong Kong Government, 2016)



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, alternative care settings and day care.

The English common law defence of “reasonable chastisement” applies. Given the near universal acceptance of corporal punishment in childrearing, this defence must be repealed so that the law clearly states that no degree or kind of corporal punishment is acceptable or lawful. Prohibition of corporal punishment of children, however light, should be enacted in relation to all those with parental authority over children.

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

Day care – Corporal punishment should be prohibited in all early childhood care and all day care for older children (including after-school childcare, childminding, etc).

Note: Hong Kong is a Special Administrative Region of China.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. In reporting to the UN Committee on the Rights of the Child in 2010, the Government stated that although there is no explicit prohibition of corporal punishment by parents, the law does not permit violence in childrearing and persons inflicting corporal punishment may be convicted of assault, including common assault, under the Offences Against the Persons Ordinance.¹ In fact, however, article 8 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China 1997 states that the common law previously in force shall be maintained, and this would include the "reasonable chastisement" defence in English common law; the Law Reform Commission of Hong Kong has confirmed the common law right of parents in Hong Kong "to inflict moderate punishment".² Provisions against violence and abuse in the Protection of Children and Juveniles Ordinance 1951, the Domestic and Cohabitation Relationships Violence Ordinance 2009, the Offences Against the Person Ordinance 1950, the Crimes Ordinance 1971 and the Protection of Children and Juveniles Ordinance 1951 are not interpreted as prohibiting corporal punishment in childrearing.

The Government asserted to the Human Rights Committee that "we do not consider that legislation at this stage would be the most effective means of dealing with the issue [of corporal punishment] in Hong Kong".³

Alternative care settings

Corporal punishment is lawful in alternative care settings as for parents (see under "Home"). The Protection of Children and Juveniles Ordinance, providing for the powers of juvenile courts in relation to guardianship and custody and control of children in need of care and protection, states that "any person or institution to whose care a child or juvenile is committed under this section shall, whilst the order is in force, have the like control over the child or juvenile as the parent" (s34(4)). The Protection of Children and Juveniles (Places of Refuge) Regulations 1993 provide for the power of the Director of Social Welfare to approve rules made by places of refuge not wholly funded by public funds and states that this power "shall not be deemed to authorise the making or approval of any rules for the punishment, restraint or correction of any person other than such punishment, restraint or correction as a parent could lawfully administer to a child" (Reg. 7).

Day care

Corporal punishment is explicitly prohibited in childcare centres in the Child Care Services Regulations 1976 (amended 2000), regulation 15: "No person shall administer corporal punishment to a child in a centre." Regulation 45R reiterates the prohibition with regard to mutual help childcare centres. It is possibly prohibited in preschool settings under the Education Regulations 1971 (see under "Schools") (information unconfirmed). In other forms of early childhood care and day care for older children it is lawful as for parents (see under "Home").

¹ 24 August 2012, CRC/C/CHN-HKG/2 Advance Unedited Version, Second report, para. 149

² Law Reform Commission of Hong Kong (2002), *Report: Guardianship of Children*

³ 19 July 2011, CCPR/C/CHN-HKG/3, Third state party report, para. 308

Schools

Corporal punishment is explicitly prohibited in Regulation 58 of the Education Regulations 1971 (amended 1991): “No teacher shall administer corporal punishment to a pupil.”

Penal institutions

Corporal punishment is prohibited as a disciplinary measure in penal institutions. It is not among permitted disciplinary measures in the Prison Rules 1954, the Reformatory School Rules 1959, the Remand Home Rules 1955, the Rehabilitation Centres Regulation 2001 and the Detention Centre Regulations 1972. It is explicitly prohibited in approved institutions by Rule 37 of the Probation of Offenders Rules 1997: “(2)(a) No corporal punishment of any kind shall be inflicted on a probationer in an approved institution; (b) For the purpose of this rule the term “corporal punishment” includes striking, cuffing or shaking or the intentional infliction of any form of physical pain as a means of punishment.”

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. There is no provision for it in the Juvenile Offenders Ordinance 1950, the Magistrates Ordinance 1933, the Criminal Procedure Ordinance 1899 or the Crimes Ordinance. The Bill of Rights Ordinance 1991 provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (s8, art. 3). The Corporal Punishment Ordinance was repealed in 1990.

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:⁴

“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)”

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:⁵

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

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

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

“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:⁶

“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 supported the recommendations.⁷

Recommendations by human rights treaty bodies

Note: Upon regaining sovereignty of Hong Kong in 1997, the Government of China informed the Secretary General of the United Nations that Hong Kong would remain a party to the International Covenant on Civil and Political Rights.

Hong Kong is also a party to the Convention on the Rights of the Child, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of Persons with Disabilities, as is China.

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.

⁶ 26 December 2018, A/HRC/40/6, Report of the Working Group, paras. 28(156) and 28(157)

⁷ 15 February 2019, A/HRC/40/6/Add.1 Advance version, Report of the Working Group: Addendum

“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.

“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.”

Committee on the Rights of the Child

(30 October 1996, CRC/C/15/Add.63, Concluding observations on initial report of the United Kingdom of Great Britain and Northern Ireland: Dependent Territories (Hong Kong), para. 27) (Note: Hong Kong ceased to be a dependent territory of the UK in 1997.)

“The Committee wishes to acknowledge once again the important efforts taken to deal with the question of child abuse. Notwithstanding this, the Committee is of the view that the prevention of this violation of children’s rights requires further attitudinal changes in society, not only as regards the non-acceptance of corporal punishment and physical and psychological abuse but also greater respect for the inherent dignity of the child.”

Committee Against Torture

(9 July 1996, A/51/44, Concluding observations on second report of the United Kingdom of Great Britain and Northern Ireland and on the United Kingdom and its dependent Territories, paras. 58-65, para. 65) (Note: Hong Kong ceased to be a dependent territory of the UK in 1997.)

“The Committee recommends that the Government of the United Kingdom take the following measures:

i) reconsidering corporal punishment with a view to determining if it should be abolished in those dependencies that still retain it.”

Human Rights Committee

(29 April 2013, CCPR/C/CHN-HKG/CO/3, Concluding observations on third report, para. 16)

“The Committee notes the efforts made to prevent corporal punishment by parents. However, it is concerned about the continual practice of corporal punishment in the home (art.7).

Hong Kong, China, should take practical steps 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. Hong Kong, China, should take steps to initiate a full public discussion on corporal punishment by parents on children.”

Prevalence/attitudinal research in the last ten years

A survey based on interviews with 1,562 students between 2014 and 2015 found 54% of children aged 6-13 had suffered corporal punishment at the hands of their parents in the year preceding the

survey; 10% said they received physical punishments on a weekly basis, while 5% said they were punished daily. The main reasons for physical punishment were poor grades or failing to submit homework on time (51%) and lifestyle habits such as playing TV games too much or excessive spending of pocket money (47%). Children also reported being subjected to mental abuse, with parents threatening to throw away their favourite toys or other play things (22%), being subjected to boycotts or verbal abuse (12%) and being locked up as a punishment (3%).

(Against Child Abuse (2015), Local and New Arrival Parents' and Children's Views Towards Corporal Punishment, Psychological Harm, Neglect and Home Safety, Hong Kong: Against Child Abuse)

A survey on the views of parents and children concerning prohibiting corporal punishment was carried out Against Child Abuse Ltd in 2006-7; 366 parents and 356 secondary school children participated. More than four in five parents (83.3%) admitted inflicting corporal punishment on their children. The main negative impacts of corporal punishment were seen as "physical injury" (85.7% students, 59.8% parents), "psychological harm" (81.5% students, 64.2% parents) and "affecting parent-child relationships" (81.7% students, 70.5% parents). Three out of five students (74.2%) and nearly half the parents (49.7%) support prohibition of corporal punishment.

(Survey announced in 2007 Spank Out Day press conference, information provided in correspondence with the Global Initiative, February 2009)

Research published by the Department of Social Work and Social Administration of the University of Hong Kong and the Hong Kong Committee for UNICEF in March 2008 found that more than one in five children are hit by their parents (21% of nearly 6,000 primary and secondary school students reported this) – but the lifetime prevalence was much higher, at 58%.

(Chan, K. L. (2008), *Study on Child-friendly Families: Immunity from Domestic Violence*, Hong Kong: Hong Kong Committee for UNICEF & Dept of Social Work and Social Administration, University of Hong Kong)