

# Corporal punishment of children in Macau

LAST UPDATED May 2019

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**Child population** 94,300 (Macau Statistics and Census Service, 2008)



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, day care and penal institutions.

There appears to be no legal defence for corporal punishment in the Civil or Penal Codes but legal provisions against violence and abuse are not 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.

*Alternative care settings* – Prohibition should be enacted in legislation applicable to all alternative care settings (institutions, foster care, 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).

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

**Note:** Macau is a Special Administrative Region of China. Its legal system is largely distinct from China.

## **Current legality of corporal punishment**

### **Home**

Corporal punishment is lawful in the home. In 2013, the Government reported to the Committee on the Rights of the Child that corporal punishment of children is punishable under the Criminal Code 1995 provisions on ordinary, serious and aggravated offences against physical integrity (arts. 137, 138 and 139), “as long as it was committed with the intention of harming the health and the physical integrity of a child”.<sup>1</sup> The Government also stated that article 146 of the Code explicitly prohibits any form of corporal punishment of children.<sup>2</sup> However, this article (as amended in 2016) does not explicitly prohibit corporal punishment: it punishes “physical or mental mistreatment or cruel treatment” of children and makes no reference to violence imposed in the guise of “discipline”.

The Law on Family Policy 1994 states that parents have the “right and duty to ensure, promote and guide the overall development of children” (art. 15); there is a similar provision in the Civil Code, which also states that children must obey their parents (art. 1733). There is no explicit legal defence for the use of corporal punishment in childrearing in these laws or in the Criminal Code 1995 but legal provisions against violence and abuse are not interpreted as prohibiting all corporal punishment of children.

The Domestic Violence Prevention and Control Act 2016 defines domestic violence as “any physical, mental or sexual abuse committed within the framework of a family relationship or similar” (unofficial translation). It does not explicitly prohibit all corporal punishment of children.

### **Alternative care settings**

The Government has reported that corporal punishment is prohibited in residential facilities in article 25 of Decree-law 90/88/M, Regulation of the General Conditions of Social Facilities for Children, Youths, the Elderly, the Disabled and Facilities for developing Social Auxiliary Activities of Residents:<sup>3</sup> we have yet to verify this information. There is no explicit prohibition of corporal punishment in other alternative care settings, where it is lawful as for parents (see under “Home”).

### **Day care**

There is no explicit prohibition of corporal punishment in all early childhood care and in day care for older children.

### **Schools**

Corporal punishment is unlawful in schools, though it is not explicitly prohibited. Order No. 46/SAAEJ/97 Adopting the student disciplinary system of educational institutions officers, pursuant to Law No. 11/91/M on Education in Macau, does not include corporal punishment among permitted disciplinary measures. Law 9/2006 on the Legal Framework on the Educational System for Non-

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<sup>1</sup> CRC/C/CHN-MAC/Q/2/Add.1 Unedited Version, Reply to list of issues, Q15

<sup>2</sup> CRC/C/CHN-MAC/Q/2/Add.1 Unedited Version, Reply to list of issues, Q15

<sup>3</sup> CRC/C/CHN-MAC/Q/2/Add.1 Unedited Version, Reply to list of issues, Q15

Higher Education is silent on the issue, as are Decree Law No. 33/96/M on education for students with special educational needs and Decree-Law No. 42/99/M on compulsory education.

In reporting to the Human Rights Committee in 2013, the Government drew attention to the School Operations Manual which states that “the execution of penalties that may harm students’ mental, physical and spiritual health and personal dignity, such as hitting students, commanding students to harm themselves or each other, assigning students to stay in certain physically exhausting postures or motions, increasing homework as a form of punishment, ordering students to write school regulations or degrading words, executing confined isolation or social isolation, verbal humiliation, public humiliation, imposing noncompensatory fine, depriving physical needs and so forth, is prohibited”. But these are guidelines, not law.

### **Penal institutions**

Corporal punishment appears to be unlawful as a disciplinary measure in prisons but it is not explicitly prohibited in all penal institutions. According to Decree Law 40/94/M (the Prison Establishment Law), physical force may be used against prisoners in certain circumstances but may not be used as a disciplinary measure (arts. 65, 66 and 72). Permitted disciplinary actions are listed in article 75 and do not include corporal punishment. Law 2/2007 establishing educational guardianship measures for young offenders provides for detention in observation centres, education centres, and education and training centres (art. 27). The Law allows for the use of physical force in certain circumstances; it does not explicitly prohibit its use as a disciplinary measure but corporal punishment is not included in the list of permitted disciplinary measures (arts. 88, 93 and 96). The Government reported to the Committee on the Rights of the Child in 2013 that corporal punishment is unlawful in the Youth Correctional Institution under the Education and Supervision Regime for Juvenile Offenders:<sup>4</sup> we have yet to confirm that prohibition is explicit.

### **Sentence for crime**

Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment of children in Decree-Law 65/99/M concerning educational and social regimes in the juvenile justice system 1999, the Code of Criminal Procedure and the Penal Code 1995. Article 28 of the Basic Law 1993 prohibits torture or other cruel, inhuman or degrading treatment or punishment.

### **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:<sup>5</sup>

“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);

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<sup>4</sup> CRC/C/CHN-MAC/Q/2/Add.1 Unedited Version, Reply to list of issues, Q15

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

“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:<sup>6</sup>

“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:<sup>7</sup>

“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.<sup>8</sup>

## **Recommendations by human rights treaty bodies**

**Note:** Upon regaining sovereignty of Macau in 1999, the Government of China informed the Secretary General of the United Nations that Macau would remain a party to the International Covenant on Civil and Political Rights.

Macau 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: ...

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<sup>6</sup> 4 December 2013, A/HRC/25/5, Report of the working group, paras. 186(54), 186(64), 186(77) and 186(80)

<sup>7</sup> 26 December 2018, A/HRC/40/6, Report of the Working Group, paras. 28(156) and 28(157)

<sup>8</sup> 15 February 2019, A/HRC/40/6/Add.1 Advance version, Report of the Working Group: Addendum

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.

“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**

None identified.