

Corporal punishment of children in the Republic of Korea

LAST UPDATED October 2018

Also available online at

www.endcorporalpunishment.org

Child population 8,925,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Summary of necessary legal reform to achieve full prohibition

Prohibition has been achieved in Seoul, including in the home. Elsewhere, prohibition is still to be achieved in the home, alternative care settings, day care and schools.

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 Article 915 of the Civil Act should be repealed/amended to ensure there is no legal provision that can be construed as authorising the use of corporal punishment in childrearing.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.

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. The Government reported in 2016 to the Committee Against Torture that corporal punishment in the home was not prohibited unless it “violates social norms by lacking legitimate purpose or appropriate means for exercising parental authority” in which case the perpetrator would be punished for assault under the existing legislation.¹

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.² The Act states that no person shall commit physical abuse which may hurt the child’s body or physical health and development (art. 17(3)) or emotional abuse which may injure the child’s mental health and development (art. 17(5)). It also provides for precautionary and preventive measures against child abuse including research, public education and a reporting system (art. 22), but there is no prohibition of corporal punishment in childrearing. Article 5 states that the protector of children (i.e. parents and other adults with parental authority) “shall rear the children healthy and safely within the family, according to the stage of their growth” and all citizens “shall respect the rights, interests and safety of children and rear them healthy”. In 2015 article 5(2) was amended to state that the protector shall not “inflict physical pain or psychological pain, including violent language, on the children” (unofficial translation),³ but it does not explicitly prohibit all corporal punishment and does not repeal the “right to discipline”.

There is no prohibition of corporal punishment in the Act on Special Cases concerning the Punishment, etc. of Crimes of Child Abuse and its Enforcement Decree 2014.

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,

¹ 11 April 2016, CAT/C/KOR/3-5, Third/fifth report, para. 198

² 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

³ Information provided to the Global Initiative

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 ARPDA 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 2012.⁴ 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. The 2017 national report to the Universal Periodic Review seems to make a distinction between corporal punishment and “child abuse”.⁵ During the review, the Government supported a recommendation to prohibit corporal punishment in all settings;⁶ we are seeking confirmation that it is indeed committed to enacting a full legal prohibition.

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 of corporal punishment 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 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.⁷ The Early Childhood Education Act 2004 was amended in 2016 to include article 21-2 which states (unofficial translation): “(1) A founder, operator and head of a kindergarten shall guarantee the human rights of young children specified in the constitution and international human rights treaties. (2) Teachers and other staff members shall not inflict pain on the body of young children by using tools, body parts, etc.

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

⁵ 4 September 2017, A/HRC/WG.6/28/KOR/1, National report, para. 52

⁶ 13 November 2017, A/HRC/WG.6/28/L.8 Unedited version, Draft report of the working group, para. 130(75)

⁷ *Korea Joongang Daily*, 21 December 2010

when educating young children or performing their duties under Article 21.” This seems to mimic provisions in the Enforcement Decree of the Elementary and Secondary Education Act 2009 and may be interpreted as allowing indirect corporal punishment (see under “Schools”). The Government has reported it had “prohibited corporal punishment in childcare centres, kindergartens, and schools”⁸ but did not address clearly address the question of indirect corporal punishment and its legality.

Schools

Some but not all forms of corporal punishment are prohibited in schools; in Seoul, Gyeonggi province, Gwangju City and Jeollabukdo province all corporal punishment is prohibited by the respective Student Rights Ordinances.

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. A 2017 report by the National Human Rights Commission raised the issue, stating that “indirect corporal punishment is still allowed” and that “leapfrogging, a face down position with the support of one’s feet and hands only, running rounds and standing long at the back of the classroom are used for indirect corporal punishment”, as well as students being forced to hit each other as a form of punishment.⁹ A 2017 report of the Government to the Committee on the Rights of the Child states that it “encourages city and provincial education offices and schools, depending on their circumstances, to decide on whether to execute alternative disciplinary methods and ways to do so, ensuring that disciplinary methods other than corporal punishment are not indirect corporal punishment.”¹⁰

The Private School Act 1963, amended 2015, is silent on the issue. The Act on the Prevention of and Countermeasures Against Violence in Schools 2004 amended 2013 does not address corporal punishment of pupils by teachers, defining school violence as “actions committed against students inside or outside of school premises resulting in a physical or mental injury, or damage to property through a battery, assault, confinement, threat, kidnapping, abduction, defamation, insult, extortion, coercion, forced errand, sexual violence, bullying, or cyber-bullying, or with obscene or violent information via an information and communications network” (art. 2).

⁸ [2017], CRC/C/KOR/5-6, Fifth/sixth report, para. 77

⁹ [2017], National Human Rights Commission report to the UPR, annex

¹⁰ [2017], CRC/C/KOR/5-6, Fifth/sixth report, para. 70

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. There is no provision for corporal punishment in the Act on the Treatment of Protected Juveniles, etc. 2004 amended 2013, or its Enforcement Decree 2008 amended 2014.

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:¹¹

“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)”

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.”¹² The Government later stated that the issue would be kept under review.¹³

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.¹⁴ During the review the following recommendations were made:¹⁵

“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.¹⁶

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

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

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

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

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

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

Third cycle review took place in 2017 (session 28). The following recommendation was made and supported by the Government:¹⁷

“Prohibit by law and in practice corporal punishment of children in all settings, including in orphanages and child welfare centers (Ecuador)”

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.”

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

¹⁷ 13 November 2017, A/HRC/WG.6/28/L.8 Unedited version, Draft report of the working group, para. 130(75)

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....”

Committee Against Torture

(30 May 2017, CAT/C/KOR/CO/3-5, Concluding observations on third/fifth report, paras. 33 and 34)

“The Committee is concerned that corporal punishment of children remains permitted in the home, in schools and in alternative care and day-care settings, in particular in orphanages and child welfare facilities, especially outside the capital city (arts. 2, 4 and 16).

“The State party should amend and enact legislation so as to explicitly and clearly prohibit corporal punishment in all settings, including orphanages and child welfare facilities, in all parts of the country, and take the measures necessary to prevent such punishment.”

Prevalence/attitudinal research in the last ten years

According to a 2016 report on student rights by the Seoul Metropolitan Office of Education, about 19% of the 21,000 surveyed students were physically punished at school in the past year. Corporal punishment was most commonly experienced by students in middle school (31%), followed by high school (22%) and elementary school students (15%). More cases were reported in private schools (27%) compared to public schools (16%). About 28% of students said they had also experienced verbal assault or insulting remarks from faculty members.

(Reported in “20% of Seoul students still face corporal punishment: report”, Korea Herald, 4 April 2016 (<http://www.koreaherald.com/view.php?ud=20160404000771>))

According to the “Survey IV on the Human Rights of Korean Children and Adolescents” conducted by the National Youth Policy Institute in 2013, 23.7% of primary, middle and high school respondents have experienced corporal punishment at least once a year at their school.

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)